

Citizens' Periodic Reports on the Performance of State Institutions

Accountability Structures:

A Comparative Analysis



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Pakistan Institute of
Legislative Development
And Transparency

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PREFACE

As part of its 'Democracy and Governance Programme', PILDAT has undertaken a performance assessment of the National Accountability Bureau – NAB, one of the agencies ensuring accountability in governance, transparency, and anti-corruption in the Federal and Provincial spheres of Pakistan.

The paper on 'Accountability Structures: A Comparative Analysis' has been commissioned by PILDAT to study anti-corruption efforts and structures of other Asian countries and to draw possible lessons for the Government of Pakistan and the NAB. This paper explores the accountability mechanisms of Japan, Hong Kong, and India, to offer a comparative perspective to the discourse on how accountability in Pakistan can be improved further.

Dr. Munir Ahmed, founding President and Patron of Islamic Countries Society of Statistical Sciences, and **Dr. Alia Ahmed**, Assistant Professor, National College of Business Administration and Economics, have authored this paper, to compare three different accountability models employed by major Asian countries, and to identify what drives the accountability initiatives of a country to be effective.

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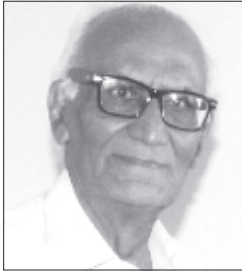
The views expressed in this paper are of the author and do not necessarily represent the views of PILDAT or that of DANIDA, the Government of Denmark, and the Royal Danish Embassy, Islamabad.

Islamabad
April 2015

Abbreviations and Acronyms

ACA	Anti-Corruption Authority
ACB	Anti-Corruption Bureau
ACE	Anti-Corruption Establishment
ACO	Anti-Corruption Office
ADB	Asian Development Bank
APPOPEI	Act on Punishment of Public Officials' Profiting by Exerting Influence
C&AG	Controller & Auditor General
CBI	Central Bureau of Investigation
CIC	Chief Information Commission
CPI	Corruption Perceptions Index
CVC	Central Vigilance Commission
CVO	Central Vigilance Officers
DSPE	Delhi Special Police Establishment
HKSAR	Hong Kong Special Administrative Region
ICAC	Independent Commission Against Corruption
IPS	Indian Police Service
ISESCO	Islamic Educational, Scientific and Cultural Organization
ISOSS	Islamic Countries Society of Statistical Sciences
LoP	Leader of the Opposition
NAB	National Accountability Bureau
NACS	National Anti-Corruption Strategy
NAO	National Accountability Ordinance
NCBA&E	National College of Business Administration and Economics
NRO	National Reconciliation Ordinance
OECD	Organisation for Economic Co-operation and Development
OIC	Organisation of Islamic Cooperation
PAC	Public Accounts Committee
PCA	Prevention of Corruption Act
PGA	Prosecutor General Accountability
POBO	Prevention of Bribery Ordinance
PPC	Pakistan Penal Code
PPRA	Public Procurement Regulatory Authority
PSPE	Pakistan Special Police Establishment
RTI Act	Right to Information Act
TI	Transparency International
UCPA	Unfair Competition Prevention Act
UNCAC	United Nations Convention Against Corruption

ABOUT THE AUTHORS



Professor Dr. Munir Ahmed graduated from the Murray College, Sialkot, and received his Masters from the University of the Punjab. He received his post-graduate Diploma (MSc.) from Aberdeen University, Aberdeen, United Kingdom, and subsequently his PhD from the Iowa State University, Iowa, United States of America. He has taught at the University of the Punjab, University of Karachi, Michigan Technical University, Houghton, Michigan, Tripoli University, Tripoli, and K.F. University of Petroleum and Minerals, Dhahran, Saudi Arabia. Presently, he is working as Professor and Rector, National College of Business Administration and Economics, Lahore.

He has been awarded ISESCO of OIC, Morocco and ISOSS jointly for Contribution to Statistical Sciences in the Islamic Countries; Colombo Plan Scholarship for higher studies in the United Kingdom; USAID Scholarship for higher education in the United States of America and the Punjab University Research Scholarship. A book has been published in the United States of America in honour of Dr. Munir Ahmad for his outstanding contribution in the fields of statistics and the integrity system of Pakistan. He was an elected Member of International Statistical Institute, Netherland, elected Fellow of Royal Statistical Society, London and Member of American Statistical Association from 1965 to 2002.

He has published more than 200 research papers and numerous books. He founded Islamic Countries Society of Statistical Sciences and was its President from 1988 till 2006 and is now its life Patron. He has also established Pakistan Journal of Statistics in 1985, and Journal of Islamic Countries Society of Statistical Sciences in 2014. He is also the Editor of the Journal of Applied Probability and Statistics. He remained Contributing Editor, Current Index to Statistics, and American Statistical Association from 1989 to 2003.

He has organized more than 35 international conferences, seminars, and workshops around Islamic countries, including Pakistan. He had so far supervised more than 70 PhDs more than 120 M.Phils and numerous MScs.



Dr. Alia Ahmed earned her LLB from the University of the Punjab and holds her Ph.D. in Management from the National College of Business Administration and Economics (NCBA&E). With her core interest in criminal law, she has been a practicing lawyer and has also served as an Investigation Officer (BS-18) at the National Accountability Bureau on a contractual basis where she was posted in the Awareness and Prevention wing. She is also a teacher of law, and is presently an Assistant Professor (Management) at NCBA&E, Lahore. Her key research areas include corruption in the public sector and corporate governance.

Executive Summary

This paper examines the accountability mechanisms of four countries: **Japan, Hong Kong, India and Pakistan**. This paper is one of its kinds as no recent research has been conducted for a comparative analysis of Pakistan's accountability mechanism with those of other Asian countries.

The Accountability mechanisms in the mentioned countries have their positive and negative aspects, and no one system can be a 'fit to all' best model. The major elements in a successful accountability mechanism are the political will and public's attitude towards corruption. Being corruption free has not been easy for Japan or Hong Kong, however one thing common in both is the public's zero tolerance towards it. Political will has also shown to have an impact to strengthening anti-corruption efforts of Japan and Hong Kong. In the latter, the Independent Commission Against Corruption (ICAC) could only accomplish what it achieved on the basis of the political will of the regime. While the lack of an independent Anti-Corruption Authority (ACA) in Japan is also a manifestation of political will, it has not affected its corruption rankings because the sort of grand corruption present there does not impact the public.

For India and Pakistan, political will has been instrumental in raising or lowering their ranks, particularly when political will is coupled with tolerance of the public towards corruption. Had it not been for the steadfast political will of Hong Kong and public attitude in Japan, both would not have shown such positive results. The presence of 'committed and honest' political will is a prerequisite for success in any anti-corruption effort. Based on the lessons learned from the experiences of Japan, Hong Kong, and India, the following are the suggestions to improve the performance and effectiveness of the NAB:

- i. Incorporating provisions that ensure investigation and prosecution of corrupt officials and politicians without seeking any Government's permission. This would allow impartial and across the board accountability without any political control.
- ii. The Parallel jurisdictions ought to be withdrawn and a single Anti-Corruption Authority (ACA) must handle all the corruption cases.
- iii. The convictions rate must increase particularly in high profile cases. This will help in gaining public support for the NAB.
- iv. The NAB should educate the public on adverse effects of corruption through extensive 'continuous' (at least monthly) campaigning instead of scattered efforts.
- v. Motivate the public to come forward with their complaints and information when they notice corrupt activities.
- vi. Involve the public using social media and smartphone technology (as used by Hong Kong where an ICAC application was launched for smartphone users).
- vii. The right to information and whistleblower protection laws should be implemented strictly.
- viii. Convictions in corruption case should be publicized regularly using social and other media.

Introduction

Research on Accountability Structures has identified three patterns of corruption control, particularly in Asian countries.¹ The first pattern comprises the presence of anti-corruption laws without any independent Anti-Corruption Authority (ACA) to implement them (Japan). The second pattern is composed of a combination of laws and multiple ACAs (India). The third pattern consists of anti-corruption laws, which are implemented through a single ACA (Hong Kong). The objectives of this paper are to study the functioning of accountability mechanisms in countries based on these three prevalent models and carry out a comparative analysis with the accountability mechanism of Pakistan.

The following indicators were used to compare the accountability structures of Japan, India and Hong Kong:

1. The laws that govern accountability organizations, especially in regards to structure, scope and powers of the accountability organizations
2. The procedure for the appointment of the head of the accountability organizations
3. The effectiveness and performance of the accountability organizations over the years
4. The use of technology in ensuring effective accountability
5. Engagement with the public in ensuring effective accountability

Japan and Hong Kong have continuously been scoring high on worldwide anti-corruption rankings and are two leading corruption-free countries of the world. On the other hand, India and Pakistan with their complex

Pakistan is the lowest scorer of all the mentioned countries and its mechanism deviates from the identified patterns as it has various anti-corruption laws, multiple anti-corruption agencies as well as an independent ACA

web of laws and institutions have been scoring low (see Table 1). Pakistan is the lowest scorer of all the mentioned countries and its mechanism deviates from the identified patterns as it has various anti-corruption laws, multiple anti-corruption agencies as well as an independent ACA.

Japan

Japan is ranked at 15 out of 174 countries on the Transparency International Corruption Perceptions Index (TI CPI) 2014 and since 1995 has been ranking as one of the cleanest countries in Asia along with Singapore and Hong Kong.² It is a signatory to the OECD Anti-Bribery Convention and the UNCAC, as well as a member of the ADB/OECD Anti-Corruption Initiative for the Asia and the Pacific. Despite some positive developments, the OECD has been expressing concerns over Japan's enforcement of the foreign bribery law, and a 'yellow card' has been issued twice for not showing vigilance in detecting and investigating foreign bribery cases. To date, only two such cases have been prosecuted since Japan's foreign bribery offence came into force in 1999. Thus the enforcement of Japan's anti-bribery law continues to be low.³ The OECD asked Japan in February 2014 to establish and implement an action plan to address its concerns.⁴

Japan is perceived to be clean in terms of petty corruption but not when it comes to grand corruption, which is said to be endemic in Japanese politics, hence problematic for Japan.⁵ This paradox is a result of the systematic perpetration of practices such as '*Kansei dango*' (Government-led bid-rigging on public projects), '*amakudari*' (literally means descent from heaven, which is a practice of former high-level bureaucrats retiring into lucrative positions in businesses regulated by them), '*yakusa*' (organized crime) and a 'gift-giving culture' (which makes it difficult to differentiate between bribe and gift), that have made corruption structural and embedded in the

Table 1: Transparency International Corruption Perceptions Index Scores and Ranks

No.	Country	Rank	2014	2013	2012
1.	Japan	15/174	76	74	74
2.	Hong Kong	17/174	74	75	77
3.	India	85/174	38	36	36
4.	Pakistan	126/174	29	28	27

Japanese system.⁶ Until the late 1990s, corruption was quite prevalent and built on a close-knit collusion, known as the 'iron triangle', between Japanese politicians, bureaucrats and the business sector and was a major contributor in its economic boom. Some of the most notorious scandals like Lockheed case (1976), the Recruit case (1989), the Zenecon (general contractors) cases (1993-1994), and the Bank of Japan / Ministry of Finance cases (1997-1998), involving massive cash payments, leakage of highly lucrative insider stock information and officials bribed through lavish entertainment for lucrative gains. These shook the public's trust in the Government and led to the convictions of a former Prime Minister, governors and other high ranking officials, and subsequently brought down the administration of another Prime Minister, and resulted in a few suicides from amongst the accused.⁷

Japan does not have a comprehensive anti-corruption legal system or a single independent Anti-Corruption Authority (ACA). The anti-corruption measures focus on improving public service ethics, preventing collusion in public bidding/public procurement, the disclosure, whistleblower protection, and financial audit and control mechanisms. The key laws on corruption particularly address bribery of national or Local Government officials, members of an assembly and committee, or other employees engaged in the performance of public duties in Japan, and are included in the Penal Code (Act No. 45 of April 24, 1907) and the Act on Punishment of Public Officials' Profiting by Exerting Influence (Act No. 130 of November 29, 2000) (APPOPEI).

Certain provisions of the Unfair Competition Prevention Act (Act No. 47 of May 19, 1993) (UCPA) cover bribery of foreign public officials. Non-Japanese nationals are liable for bribery only if the crime is committed within Japan, but Japanese public officials are liable for accepting bribe in or outside the territorial jurisdictions of Japan. The provisions pertaining to foreign bribery were included in pursuance of the implementation of OECD Anti-Bribery Convention in 1998.⁸ To ensure transparency in public contracting, procurement and bidding and for promoting fair competition and eradication of collusion, the Act for Promoting Proper Tendering and Contracting for Public Works in 2001 and the Act on Elimination and Prevention of Involvement in Bid Rigging and Punishments for Acts by Employees that Harm Fairness of Bidding (Act No. 101 of 2002) were enacted. To promote quality in public works, the Act on Promoting Quality Assurance in Public Works (2005) was enforced. The disclosure of the information law and Whistleblower Protection Act, 2006 are also in

Until the late 1990s, corruption was quite prevalent and built on a close-knit collusion, known as the 'iron triangle', between Japanese politicians, bureaucrats and the business sector and was a major contributor in its economic boom

place to expose corruption.

In response to the major scandals up to the 1990s, the Japanese Government brought about various reforms, including laws for disclosure of politicians' assets and the imposition of stricter ethical codes (Cabinet Order No. 101 of March 28, 2000) provided under the National Public Service Ethics Act (1999), to be observed by public officials. The National Public Service Ethics Board was also established by the Japanese Government as part of the reforms which provides for a website displaying the ethics code and detailed guidelines applicable to bureaucrats.⁹

Japan is one of the few countries, which does not rely on an Anti-Corruption Authority for enforcement of anti-corruption laws. The enforcement bodies in Japan are the Public Prosecutor's Office, which operates under the Cabinet and the National Police Agency for all matters relating to corruption whether national or foreign. Public prosecutors are empowered to investigate and prosecute corruption in the Civil Service. Cases of bribery and high level financial crimes involving senior public officers and/or politicians are to be investigated and prosecuted by public prosecutors. The Public Prosecutor's Office operates under the supervision of the Ministry of Justice. It has operational independence under the law from any interference or fear of removal². There are 4 levels of Public Prosecutor's Offices that correspond to their level of district courts. Public prosecutors in three major cities, Tokyo, Osaka, and Nagoya have highly qualified and well trained prosecutors, assistant officers and special investigation departments to investigate and ensure prosecution in cases of corruption.

Although public prosecutors in Japan have exclusive and broad powers to indict a criminal under the Code of Criminal Procedure (Act No. 131 of 1948), there are also Committees for the Inquest of Prosecution, with each district court consisting of 11 randomly selected citizens that could initially only provide a nonbinding advisory opinion to the Prosecutor's Office on whether a filed case or complaint was worthy of prosecution or not.¹⁰ With a subsequent amendment of the Act, the Committees can now compel a prosecution. This has turned out to be a very important reformatory process and resulted in the indictment of well-known politician in 2011.¹¹

As far as engagement with the public is concerned, studies have shown the 70% of public in Japan is not informed about the laws on whistleblower protection and complaint mechanisms.¹²

Japan has been maintaining its rank on the TI CPI since 1995 and has stayed in the top 20 for most of it. There were 103 reported cases of corruption in 2013 involving Civil Servants and 101 in 2012. The data of the last 10 years reveals corruption of 89-190 staff members out of 2.77 million local Civil Servants.¹³ Although corruption in the Civil Services is low and the public in general do not have to face day-to-day petty corruption, but the huge financial scandals have downgraded public trust in politicians and the Government. The absence of any anti-corruption plan/strategy and an independent ACA manifests lack of political will and enforces the notion that corruption in Japan is structural and political.

Hong Kong

Amidst its massive population growth and social and

The ICAC was built upon a tripartite strategy comprising enforcement, prevention and community-based education.

With a strength of approximately 1400 staff members, the ICAC works through three functional departments; Operations, Corruption Prevention and Community Relations

economic development between the 1960s and 1970s, Hong Kong became a fertile ground for corruption, particularly within its public sector. Up until 1974, a specialized unit of the police force, the Anti-Corruption Office (ACO), handled all the bribery and corruption cases. However, the ACO itself was perceived as the most corrupt Government Department.¹⁴ By mid 1970s, public opinion emerged as a powerful force demanding strict action against public sector corruption, particularly after a corruption scandal involving a Chief Police Superintendent who managed to escape the country when accused of corruption charges in 1973. In response to the mounting public outcry, the Independent Commission Against Corruption (ICAC) was established as an independent agency to fight corruption, which at the time seemed impossible to do. However, in its initial three years, the ICAC smashed all corruption syndicates in the public sector, prosecuting corrupt Government officials including police officers. Since then onwards, Hong Kong has been one of the cleanest countries of the world,¹⁵ and ranks high on the Transparency International's Corruption Perceptions Index charts.¹⁶

The ICAC is now the principal agency responsible for investigating and preventing corruption in Hong Kong. It was established in 1974 with the enactment of the Independent Commission Against Corruption Ordinance, under the British rule, however, after Hong Kong's reversion to China, the ICAC's independence and accountability were given constitutional protection under Article 57 of the Hong Kong Basic Law.¹⁷ The Commission is independent of the Civil Service and is headed by the Commissioner, who is answerable to the Chief Executive of the Hong Kong Special Administrative Region (HKSAR) Government,¹⁸ and is appointed for a fixed term of 5 years, by the State Council of the Peoples' Republic of China, on recommendation of the Chief Executive, and the same process and mechanism apply for his removal.¹⁹

The ICAC was built upon a tripartite strategy comprising enforcement, prevention and community-based education. With a strength of approximately 1400 staff members, the ICAC works through three functional departments; Operations, Corruption Prevention and Community Relations. Operations Department investigates alleged corruption offences. Corruption Prevention Department examines procedures and practices of Government departments/public bodies to identify loopholes, and make recommendations to reform in order to reduce corruption opportunities and upon request provides free corruption prevention advice to private

organizations. The Community Relations Department educates the public against the evils of corruption.²⁰

With the provision of wide investigative powers, there is a robust system of checks and balances to prevent abuse of powers, which includes Hong Kong's free media, Independent Judiciary, Internal Monitoring Unit, and most importantly four independent advisory committees that play a very important role and keep the Commission's performance under close scrutiny. To ensure its effectiveness, these committees examine and monitor investigations and operations, examine complaints against the ICAC or its staff, offer advice and improvement proposals on the overall policies of the Commission and on measures to foster public support.²¹

The Commission is authorized to investigate corruption offences under the main anti-corruption law i.e. the Prevention of Bribery Ordinance (POBO), along with offences under the Independent Commission Against Corruption Ordinance and the Elections (Corrupt and Illegal Conduct) Ordinance. It not only governs corruption in the public and private sector, but is also authorized to deal with corruption in various public elections, including that of the Chief Executive. It has powers of arrest, detention, granting bail, search and seizure for alleged offences. However, after completion of investigations, prosecution is handed over to the Department of Justice.²²

Winning public trust and cooperation in the fight against corruption has been a slow and a painstaking process for the ICAC. The ICAC's annual opinion surveys have shown that 96-98% of citizens expressed their support for the ICAC and almost 75% of complainants do not hesitate to identify themselves, indicating strong public confidence in the ICAC. To raise and sustain the public's corruption prevention awareness, the Community Relations Department of the ICAC has had a comprehensive and long-term sector specific strategy to proactively promote a culture of integrity and foster community support. Anti-corruption messages are disseminated to targeted sectors of the community, such as business people, youth, professional and technical personnel in various fields through the mass and the social media. Seven regional community offices too, spread anti-corruption messages via various community projects. The community has access to the ICAC through its website, and only in 2013, it had 2,700,000 visitors. An ICAC Smartphone App was recently launched to enhance the Commission's transparency.²³

In terms of effectiveness and performance, ICAC has

The Commission is authorized to investigate corruption offences under the main anti-corruption law i.e. the Prevention of Bribery Ordinance (POBO), along with offences under the Independent Commission Against Corruption Ordinance and the Elections (Corrupt and Illegal Conduct) Ordinance

excelled as an anti-corruption agency, and is recognized internationally for its efforts. In the last 40 years of its existence, ICAC and its vigilant investigators have managed to keep corruption under effective control in the public as well as private sectors and have made Hong Kong the world's freest economy for 20 consecutive years,²⁴ a corruption-free society,²⁵ with no sign of deterioration and has brought a silent revolution in the public attitude.²⁶ Almost 83% of the people in Hong Kong now consider corruption totally intolerable, 99% think it is important to keep Hong Kong corruption-free, whereas 81% are willing to report corruption.²⁷ The ICAC takes complaints through its 24-hour report center and hotline, as well as its Regional Offices in various districts and through mails. 80% of prosecutions brought by the ICAC each year, result in convictions, making corruption a very high-risk crime in Hong Kong.²⁸ In 1974, 86% of corruption reports were related to Government departments, a figure which was reduced to 30% by 2013. Similarly, corruption reports against police force have been reduced from 45% to 9%. With its continuous efforts, the ICAC, through education and publicity has won the confidence of the private sectors as well and in collaboration with it has succeeded in promoting business ethics and creating awareness against dangers of corruption.²⁹

India

India has been fighting corruption since 1941 and follows a multi-agency model, i.e., a national anti-corruption framework comprising several public bodies to tackle corruption. However, the multi-layered model seems to have been ineffective and India has consistently been scoring low on various corruption rankings while corruption continues to be endemic and

pervasive.³⁶

The anti-corruption mechanism in India is a complex web of laws and institutions. The Prevention of Corruption Act (PCA) 1988 (amended in 2008)³¹ is the primary law, along with the Prevention of Money Laundering Act 2002 (amended in 2005) and Indian Penal Code (IPC) 1860 for curbing corruption in private as well as the public sector. State Governments have State laws at the local level to address corruption in the public sector. Another robust statute *Lokpal* and *Lokayuktas* Act, 2013 appeared on statute books in 2014 for more effective implementation of the United Nations Convention Against Corruption, aiming to establish the *Lokpal* (an anti-graft ombudsman) at the Centre and *Lokayuktas* at the state level with broad powers to prosecute public sector corruption.³² However, despite the lapse of a year, the *Lokpal* has not yet been established and the Government is still in course of making appointments of chairperson and members of *Lokpal*.³³ Once established under the approved law, the *Lokpal* would be the new independent Anti-Corruption³⁴ Agency with its jurisdiction extending to investigation of complaints against the Prime Minister, ministers, legislators, and public servants in the central Government. The *Lokpal* would have a comprehensive system of investigation and prosecution, and have superintendence over the Central Bureau of Investigation (CBI) for the cases referred to it. Ultimately Central Vigilance Commission (CVC), the departmental vigilance, and anti-corruption branch of the CBI, will most probably be merged into *Lokpal*.³⁵

For the time being, the main authorities empowered to investigate official corruption are the CVC, the CBI, the Chief Information Commission (CIC), and the

Office of the Controller & Auditor General (C&AG) at the Federal/Union level. States have local Anti-Corruption Bureaus (ACBs) for the implementation of anti-corruption laws.³⁶ The CBI and State ACBs investigate cases of corruption under the PCA and the Indian Penal Code.

Figuring in the Union List of the Seventh Schedule of the Constitution of India, the Central Bureau of Investigation (CBI) was established in 1963 and derives its power to investigate from the Delhi Special Police Establishment Act, 1946.³⁷ It is a successor organization to the Delhi Special Police Establishment (DSPE) which was established in 1946 under the DSPE Act to 'investigate cases of corruption in transactions. It is headed by a director, an IPS (Indian Police Service) officer with a rank of Director General of Police or Commissioner of Police (State), who under the new existing provisions of Lokpal Act, has to be appointed by the central Government on the basis of recommendations of the selection committee comprising the Prime Minister, the Chief Justice of India or his nominee and the Leader of the Opposition (LoP) or the leader of the single largest opposition party.³⁸ It is the premier investigating agency comprising nine divisions, 16 investigative zones and 60 investigative branches under these zones with the strength of 5,796 officers. Vis-à-vis corruption, it has jurisdiction to investigate alleged cases of corruption and fraud in all branches of the Central Government, Central Financial Institutions, ministries, Central Public Sector Undertakings and Union Territories. It is supervised by the Central Government, but for investigations of offences under the PCA, its functioning is supervised by the CVC. The Lokpal will also have supervisory jurisdiction over the CBI for cases referred to it by the Lokpal.³⁹ However, to investigate cases at the state level, CBI either can be instructed by the Higher Courts of the land or has to seek permission of the state government.⁴⁰

For the time being, the main authorities empowered to investigate official corruption are the CVC, the CBI, the Chief Information Commission (CIC), and the Office of the Controller & Auditor General (C&AG) at the Federal/Union level

The Central Vigilance Commission (CVC) is an independent statutory body established in 1964 under a Resolution and was later on given a statutory status by the CVC Act, 2003. It is a multi-member body comprising a Central Vigilance Commissioner, (Chairperson) and not more than two Vigilance Commissioners (Members) appointed by the President on recommendations a Committee consisting of the Prime Minister (Chairperson), the Minister of Home Affairs and the Leader of the Opposition as members. It functions as an apex body for prevention of corruption in Central Government departments, institutions and public administration. The CVC is vested with powers to inquire into or cause an investigation for alleged

corruption in public administration. However, it has no authority to directly investigate or prosecute public servants for PCA 1988 violations. It either refers the case to the Central Vigilance Officer (CVO) in related Government department or to the CBI. In matters of inquiry, it acts as a civil court and the proceedings before the commission are judicial proceedings.⁴¹ The CBI, in respect of cases referred to it by the CVC, has to submit its investigation report to the Commission, whereupon the Commission may either file charge sheet or closure report before the Special Court against the public servant or initiate the departmental proceedings or any other appropriate action against the concerned public servant by the competent authority.⁴² All such cases are tried by Special Judges appointed by the Central or State Governments.⁴³

As the premier integrity institution, it supervises vigilance administration through a well-established vigilance administrative set up and advises the Government on implementing policies against corruption. There are vigilance units in all central departments/undertakings under Commission's jurisdiction, headed by Chief CVOs. By 2013, there were 197 full time and 410 part time posts of CVOs, who did vigilance audit and submitted monthly and annual reports to the Commission. The Commission also observes Vigilance Awareness Week every year and important activities like training of CVOs on disciplinary proceedings, publication and dissemination of information on whistle blower case studies, Vigilance newsletter, journals, and talks on corruption and vigilance are organized to motivate officials.

The Right to Information Act 2005 (RTI Act), which empowers the citizens to have access to Government documents within 30 days, has played a vital role in the fight against corruption in India. To fulfill the requirements of the RTI Act, the Commission has set up a separate RTI Cell to deal with RTI applications, where officers of the rank of Director and Deputy Secretary act as Central Public Information Officers and that of the rank of Additional Secretary functions as the Appellate Authority.⁴⁴ The Commission has also been actively advocating on promoting technology like e-procurement, e-payment etc. for reducing direct contact points with public officials, improving transparency and better project management. Moreover, the CVC has laid down a detailed procedure for lodging complaints which along with the whistleblower complaint mechanism is available on its website. The commission regularly publicized the procedure through the intranet of the organizations, publications, in-house journals, and seminars to create

Pakistan, with a score of 29 has ranked at 126 of 175 countries in the TI CPI 2014, which as per the TI has so far been the best performance at the CPI charts since 1995. But ironically, that still does not place Pakistan in the list of corruption free countries and corruption has become a way of life in Pakistan

awareness and to encourage public and insiders to come forward with their complaints/disclosures.⁴⁵

The Central Bureau of Investigation in the past 65 years, has emerged as a premier investigating agency with credibility, capability and legal mandate to investigate and prosecute offences under existing 82 Central Acts, 22 State Acts and 252 offences under the Indian Penal Code anywhere in India. The conviction rate for 2013 was 68.62%, however, CBI's independence has come under scrutiny by the superior courts, particularly in cases of ruling party politicians or influential individuals.⁴⁶

As far as Commission's performance is considered, as per the latest annual report of 2013, it has tendered advices of minor and major penalties in 4801 cases and 79% of the advices were given within one month. On its sanction, the related authorities granted sanction for prosecution against 16 public servants. According to the annual reports of the CVOs, 17672 major and minor penalties were imposed on all categories of public servants.⁴⁷

Despite the figures, the general perception is that there is a disconnect between corruption investigation, prosecution and punishments, since the CVC can only recommend action but cannot punish anyone, and too often their recommendations are not acted upon and "actual punishment of these offenses rarely occurs"⁴⁸ and during 2005-2009 only 6% of cases in which CVC had found evidence of corruption were prosecuted by the Government.⁴⁹

Pakistan

Pakistan, with a score of 29 has ranked at 126 of 175

countries in the TI CPI 2014, which as per the TI has so far been the best performance at the CPI charts since 1995.⁵⁰ But ironically, that still does not place Pakistan in the list of corruption free countries and corruption has become a way of life in Pakistan.⁵¹ Pakistan inherited the basic legal framework and legislations from the British rule at its independence in 1947. Initially corruption was dealt with under the Pakistan Penal Code, 1860. Over the period of 68 years, numerous anti-corruption efforts were made and despite development of numerous laws and law enforcement agencies, corruption in the private or public sector could not be curtailed.

Primary laws to deal with corruption in Pakistan are the Pakistan Penal Code (PPC) 1860, the Prevention of Corruption Act (PCA), 1947 and the National Accountability Ordinance (NAO), 1999.⁵² Two Anti-Corruption Authorities (ACAs) i.e. the National Accountability Bureau (NAB) and Federal Investigation Agency (FIA) work at the Federal level and four ACAs i.e. Anti-Corruption Establishments (ACEs) operate at Provincial level are empowered to investigate into various cases of public sector corruption.⁵³ Accountability Courts are established under the NAB Ordinance and deal with cases sent by the NAB. The Central and Provincial Special Courts set up under the Criminal Law Amendment Act 1958 deal with the cases sent by FIA and ACEs respectively. Various authorities like Public Procurement Regulatory Authority (PPRA) through Public Accounts Committees (PACs).⁵⁴ The Office of the Auditor General of Pakistan, and Office of the Wafaqi Mohtasib (Ombudsman) of Pakistan⁵⁵ too are empowered to check executive acts.

Like in India, Pakistan also had the Special Police

The NAB was created on the lines of ACAs of Hong Kong and Singapore. It has peculiar features that defy criminal procedure codes norms, such as shifting the onus of proof on the accused and making the accused testify against himself

Establishment as the first ACA of the sub-continent, set up in 1938 by the British Government. It was renamed as Pakistan Special Police Establishment (PSPE) in 1947. The PSPE was empowered to investigate corruption of the Central Government Employees, but was not very effective, hence was replaced by the Federal Investigation Agency (FIA) in 1975, which was set up under the Federal Investigation Agency Act (1974). To deal with corruption at provincial level, four Anti-Corruption Establishments (ACEs) were set up.⁵⁶ FIA became a political tool for the regimes, which led to creation of the Ehtesab (meaning Accountability) Bureau created under the Ehtesab Act 1997. The fourth military coup in 1999 replaced the Ehtesab Bureau with the National Accountability Bureau (NAB), with the enactment of the National Accountability Bureau Ordinance (No XVIII of 1999) (NAO) with a retrospective effect, taking cognizance of offences as far back as 1985.⁵⁷

The NAB was created on the lines of ACAs of Hong Kong and Singapore. It has peculiar features that defy criminal procedure codes norms, such as shifting the onus of proof on the accused and making the accused testify against himself.⁵⁸ It attained the status of the supreme anti-corruption authority and came into the field with full force having wide powers, stiff procedures and harsh punishments for anyone, in the public or private sector, involved in corruption and corrupt practices, misuse and abuse of power and authority, defrauding and cheating the public at large, willful bank loan default, money laundering, etc. Its jurisdiction extends to all sitting or former members of the public, politicians and government officials, including the Chief Minister of a province or Prime Minister, former President or the Governor of a Province. Special provisions of 'voluntary return' and 'plea bargain' were incorporated,⁵⁹ which helped in bringing back the looted wealth to Government's treasury.⁶⁰ It can seek information from any organization/department during investigations and has extra ordinary powers to seize assets of an accused even at the inquiry stage. A holder of public office or anyone involved in an offence under the NAO is liable to be punished for up to 14 years imprisonment.⁶¹ Until 1999 and prior to the formation of the NAB, the FIA was the primary accountability institution at the Federal level. It still operates as an Anti-Corruption Authority, but with curtailed jurisdiction. The NAO and the NAB have jurisdiction that extends to the whole of Pakistan and overrides all other corruption related laws and no court can grant bail to a person accused of an offence by the NAB.⁶² Being a statutory body, the NAB has a very strong and independent legal setup. The provisions of its enabling law (NAO, 1999) have an overriding effect

of all other laws and jurisdictions. Hence when the NAB takes cognizance of an offence all other agencies are barred from taking cognizance of the same.⁶³

The NAB has two offices; the Chairman and the Prosecutor General Accountability (PGA).⁶⁴ The Chairman and the Prosecutor General Accountability are appointed by the President with consent of the Leader of the House and the Leader of the Opposition in the National Assembly for a non-extendable period of four and three years respectively, and can only be removed on grounds that are required for removal of the Judge of the Supreme Court.⁶⁵

By virtue of law, the NAB has sufficient operational and functional independence. There is no legal provision that holds NAB accountable to any institution or to any Federal or Provincial Government. However, in practice, the NAB has not been free from political influence. It has been accused of being exploited as a tool of political victimization.⁶⁶ Various regimes have been trying to curtail or replace the NAB and these pressures have made the NAB 'sluggish'.⁶⁷ The exoneration of politicians, political workers and bureaucrats accused of corruption under controversial National Reconciliation Ordinance (NRO) on October 05, 2007 and acquittals in high profile political corruption scandals undermined its trust in the public.⁶⁸ However, against all odds, the NAB has still managed to recover Rs. 247.331⁶⁹ and has on its credit prosecution of public servants, politicians and senior military officials resulting in convictions.⁷⁰

Initially, the NAB had an enforcement based policy and focused more on punishments and recovery, however, failing the objective of curbing corruption, it initiated the three pronged National Anti-Corruption Strategy (NACS) in 2002, directed towards eliminating corruption not only through enforcement, but also through prevention and education. To comply with the objectives, the NAB has an awareness and prevention wing engaged in eliminating corruption by implementing preventive measures in public sector and by creating awareness in public, using media campaigns and educational programs. It also implements its authority, to call for contract copies and inspects mega public projects and contracts.⁷¹ It also examines legal frameworks, procedures and systems of Federal and Provincial Government departments, ministries, statutory corporations, public bodies, and the conduct of public office holders,⁷² to identify loopholes and makes recommendations for reducing corruption opportunities.

For effective accountability, the NAB ensures dissemination of adequate information regarding its functioning through publication of its annual reports and quarterly updates.⁷³ Its official website also has a complaint mechanism, and the NAB under law has to provide anonymity to the informer.⁷⁴ The NAB's official website guides the 'informers' to provide information or evidence that leads to investigation and prosecution of corruption or corrupt parties, bank loan defaults and write-offs, and help in recovering the looted public money.⁷⁵ Provisions regarding rewards to whistleblowers can be found under section 33A of NAO, 1999. However, whistleblowers are reluctant to disclose public corruption, as they do not trust the implementation of protective provisions.⁷⁶

Conclusion and Recommendations for the NAB

The study examined the functioning of accountability mechanisms in three Asian countries working on three prevalent models and on the basis of the defined models, assessed the accountability structure in Pakistan. The distinctive features are summarized in Table 2.

After a comparison between the three countries and their respective models, it can be construed that Hong Kong has one of the best systems when it comes to cleaning corruption because its performance is the most effective on all above-mentioned indicators. While Japan has ranked better on the TI CPI charts it is not free from the grand corruption and the 'iron triangle'. It ranks better because scores on the TI CPI are based on public perceptions, and since petty corruption is non-existent in Japan, the Japanese people do not have to suffer at the hands of public servants, hence the better ranking. India and Pakistan have robust mechanisms but lack of public trust is an issue. They need to free their institutions from political pressures, be accountable to the public and build their trust, through across the board accountability.

The accountability mechanisms in all the countries have their pros and cons, and there is no single 'fit to all' best model. According to previous researches, ACAs in order to be effective must not only have a strong legal framework and adequate resources, but should also be incorruptible, liberated from political control, must be able to enforce the anti-corruption laws impartially and have support of a committed political will to curb corruption.⁷⁷ The comparative analysis of all the four countries in the present study not only finds support for

the aforementioned rudiments, but also highlights other factors such as whistleblower protection, information disclosure, strong and fearless media and above all, the public's intolerance towards corruption.

Assessing the NAB on these prerequisites, we find most of them lacking except for a free media and the NAB's adequacy in resources. The National Accountability Bureau in Pakistan was established on the lines of the Hong Kong's Independent Commission Against Corruption (ICAC). Despite sufficient operational and functional independence with excellent legal provisions to hold any public or institution accountable, the NAB has been unable to make a significant impact in the fight against corruption. It has successfully prosecuted some senior public officials and corrupt citizens, but exoneration of politicians, political workers and bureaucrats and acquittals in high profile political corruption scandals has damaged its trust in the public.

This paper presents certain best practices from all the three mechanisms that can be incorporated into Pakistan's anti-corruption structure. Hong Kong, being the most effective in controlling corruption undertook certain measures that went a long way. For instance, to begin with, the ICAC is headed by individuals with no previous track of corruption. Appointments are made by the State council on the recommendation of the Premier. Secondly, the ICAC built up public confidence and conveyed the message of zero tolerance towards corruption by focusing on big cases like extraditing and subsequently prosecuting several high ranked former policemen. Thirdly, it focused on educating the public on laws and adverse effects of corruption. Fourthly, it also publicized cases involving prosecution of citizens in petty corruption cases, creating a deterrent environment and making corruption a high-risk activity. India too is on its way to reforming and restructuring its anti-corruption mechanisms. It has implemented a robust anti-corruption law accompanied with an operationally and functionally independent ACA with jurisdiction extending to the Prime Minister. Not only the new laws have made the appointment procedure stringent, but have also granted the ACA (once established) the power to prosecute any Government functionary without obtaining the consent of any authority.

The Japanese system is focusing mainly on implementation of disclosure of information in the public institutions and citizens' involvement in initiation of prosecutions. In light of the discussion of Japan, Hong Kong, and India, certain reforms are recommended for the NAB in Pakistan,

Hong Kong, being the most effective in controlling corruption undertook certain measures that went a long way. For instance, to begin with, the ICAC is headed by individuals with no previous track of corruption

Table 2: Distinctive Features of Accountability Mechanisms

Indicators	Japan	Hong Kong	India	Pakistan
Legal framework	Multiple laws; No ACA; Public prosecutors	Single ACA -ICAC	Multiple ACAs; (CBI & CVC etc.) Multiple Laws; Establishment of Lokpal awaited	Strong ACA framework along with other agencies, but with curtailed jurisdiction
Procedure for the appointment of the head	System under Ministry of Justice	Commissioner appointed for 5 years by the State Council on recommendation of the Chief Executive and same procedure for removal	Commissioner CVC by the President on recommendations of a Committee consisting of the Prime Minister (Chairperson), the Minister of Home Affairs and the Leader of the Opposition and CBI Director appointed by the Central Government by the president on the basis of recommendation of the selection committee comprising the Prime Minister, the Chief Justice of India or his nominee and the LoP	Chairman appointed by the President and removal on grounds akin to that for removal of Supreme Court's judge
Use of technology	Not effectively used to create awareness; No comprehensive website	Effective; recently a smartphone application was launched to enhance ICAC's transparency; Effective websites & online complaint mechanism; effective use of media	Advocacy on promoting technology like e-procurement, e-payment etc. for reducing direct contact points with public officials, improving transparency; comprehensive websites and complaint mechanisms; effective use of media	Moderately comprehensive website; online complaint mechanism; low use of media
Engagement with the public	Citizens' inquest of prosecution committees	A comprehensive and long-term sector specific strategy to proactively promote a culture of integrity and foster community support	Awareness campaigns by the CVC	Strategy is there, but not extensively implemented
Effectiveness in controlling both petty and grand corruption	Effective in controlling petty corruption	Very effective	Not very effective	Not effective at all

- i. Incorporating provisions that ensure investigation and prosecution of corrupt officials and politicians without seeking any Government's permission should also make a difference and would allow impartial and across the board accountability without any political control.
- ii. Parallel jurisdictions ought to be withdrawn, and all cases of corruption must be handled by a single ACA.
- iii. To be effective, the NAB has to have public support for its effectiveness, and to gain that it has to achieve convictions particularly in high profile cases.
- iv. It should educate the public on adverse effects of corruption through extensive 'continuous' (at least monthly) campaigning instead of scattered efforts.
- v. Motivate the public to come forward with their complaints and information when they notice corrupt activities.
- vi. Involve the public using social media and smartphone technology (as used by Hong Kong where an ICAC application was launched for smartphone users).
- vii. The right to information and whistleblower protection laws should be implemented seriously.
- viii. Convictions in political or public sector corruption should be publicized regularly using social and other media.

Being corruption free has not been easy for Japan or Hong Kong, however one thing common in both is the public's zero tolerance towards corruption. In case of Hong Kong, political will was the driving force. The ICAC could only accomplish what it did on the basis of the political will of the regime. On the other hand, lack of an independent ACA in Japan is also a manifestation of a missing political will' when it comes to controlling political or grand corruption, though it has not affected its corruption rankings. However, it was public's criticism that made corruption free public services, possible. For India and Pakistan, political will has been instrumental in raising or lowering their ranks, particularly when it is coupled with tolerance of the public towards corruption. Had it not been for the steadfast political will in Hong Kong and public's attitude in Japan, both would not have shown the results.

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