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THE ROLE OF SUPERIOR JUDICIARY IN THE ACCOUNTABILITY FRAMEWORK OF PAKISTAN

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Abstract:
In this paper, the author had analyze the anti corruption system of Pakistan, especially focusing on National Accountability Bureau (NAB), the more recent legislative changes and how the superior judiciary has contributed to the accountability and enabled judicial review. The landmark cases, in particular, the 2018 Panama Papers sentence, are examined, the Supreme Court disenfranchised Prime Minister Nawaz Sharif and told the NAB to probe the matter. It also review Articles 184(3) and 199 of the Constitution which define the original jurisdiction of the Supreme Court and the writ jurisdiction of the High Courts in accountability issues. The issue of public perceptions and politicisation is addressed, an empirical study suggests that selective accountability, which is the case with the Panama case, leads to a decrease in the trust the NAB has in its neutral side. A poll indicates that there is strong support on reforms, with 78 per cent of middle level citizens supporting more openness in the anti graft agencies, and a significant number of citizens ready to blow the whistle as long as the whistle blowers are accorded security. The paper ends by suggesting institutional change geared towards strengthening transparency and judicial independence in the accountability regime in Pakistan.

Keywords
Accountability, National Accountability Bureau (NAB), Judicial Review; Panama Papers Case, Whistle blower Protection.

Introduction

The chronological history of the anti-corruption efforts in Pakistan has always focused on the intractable issues of graft and the consequent quest of accountability. When the country became independent, President Muhammad Ali Jinnah described bribery and corruption as a poison that would have to be eradicated with an iron hand[1]. To this end, the Constituent Assembly passed the Prevention of Corruption Act of 1947, thus making the first anti-graft law in Pakistan[2]. This was followed by a series of legal tools that aimed at improving accountability such as the Public Offices (Disqualification) Acts of 1949 and 1959, and the ordinance and act of 199697[3], the ordinance and act of ethics and accountability, the ethisab. The most significant

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[1] wfd.org https://www.wfd.org/sites/default/files/2022-01/2021-01-24-Its-complicated-V2-UPDATED-1.pdf

[2] ibid

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[3] Anti-corruption Institutions and Governmental Change in Pakistan

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institutional change was the restructuring of the Ehtesab system into the National Accountability Ordinance (NAO) in November 1999 by the military government then under the leadership of General Pervez Musharraf to introduce the National Accountability Bureau (NAB) as a permanent anti-corruption agency[4]. These consecutive laws and institutions offered the structural basis of the anti-corruption drive and at the same time outlined the field where the high judiciary would then move in.

The 1973 Constitution of Pakistan gives authority to the higher courts in the form of judicial review in order to ensure accountability within well-stipulated boundaries. Article 184(3) gives the original jurisdiction to the Supreme Court in any question of national concern in terms of the implementation of any of the Fundamental Rights[5]. By so doing the Court is able to hear petitions (including actions taken suo motu) directly when the fundamental rights and interest of the population come in conflict with each other. Article 199 on the contrary do assigns comparable writ jurisdiction to the High Courts, but specifically forbids suomotu action: the High Court may take action only on the petition of any aggrieved party and must limit relief to the prayer of the petition[6]. Concisely, the Supreme Court is the protectors of the Constitution having unusual powers over issues of national concern, and High Courts cannot establish issues or give relief other than issues effected.

Such a constitutional structure connotes moderation and divisiveness. The Supreme Court has on numerous occasions made it clear that its jurisdiction is stipulated in the Constitution and can never be arbitrated. As an illustration, in Islamabad Bar Council v. Federation the Court emphasized that its action of judicial restraint should not be confused with the invocation of the discredited doctrine of necessity i.e. that courts cannot perceive expediency to override the law because it is expedient[7]. Meanwhile, the Pakistani courts have not been afraid of a vigorous supervision in case of the fundamental rights being at stake. Article 184(3) permits and requires the Supreme Court to demand documentary evidence and to demand substantive evidence even outside the pleadings[8]. On the same cases the Court has not been averse to investigate relevant facts vigorously, although always reminding that the rights of respondents (e.g. fair trial) cannot be defeated in the name of public zeal[9].

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[4] ibid

[5] Article 184, Constitution of pakistan | Pakistan Kanoon

https://pakistankanoon.com/statutes/constitution-of-pakistan/article-184/

[6] Article 199, Constitution of Pakistan | Pakistan Kanoon

https://pakistankanoon.com/statutes/constitution-of-pakistan/article-199/

[7] P L D 2020 Supreme Court 1

https://www.ibc.org.pk/wp-content/uploads/2025/03/PLD-2020-SC-1.pdf

[8] P L D 2018 Supreme Court 189

https://www.ibc.org.pk/wp-content/uploads/2025/03/P-L-D-2018-Supreme-Court-189.pdf

[9] ibid

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All this combined implies that the higher judiciary in Pakistan has actively applied accountability laws but has asserted a deference to the legislative power. The courts have on numerous occasions implored that unless a law is clearly unconstitutional, the law must be assumed to succeed. Judges, it was observed in one recent Supreme Court decision, must endeavor to affirm legislation, and may not invalidate an Act simply because the judge believes the Act would have been better formulated[10]. In the intra-court appeals on the 2022 amendments to the NAB, such as, the Court overturned the prior quashing order and struck down the petition, with the Court stating the appellant did not satisfy the burden of proving that the amendments were unconstitutional. Overall, the judiciary in Pakistan fulfills the role of constitutional protection of rights and government checks, but urges judicial discipline and constitutionalism to text wherever it assumes its accountability jurisdiction[11].

History of the Accountability Institutions and legislation in Pakistan.

A decade since the 1990s, the accountability institutions in Pakistan have been irrevocably tied with the political field . The Ehtesab Cell in the year 1996 and the Ehtesab Act in the year 1997 did not last long since the coup by Musharraf in the year 1999 brought in the NAO with the creation of the NAB [3]. The NAB was given a broad authority to arrest and prosecute the public officials in cases of financial crimes which was termed as ruthless and aimed at imposing accountability initiatives [12]. During the next 20 years, both elected administrations and caretaker governments used the NAB in an aggressive manner, most of the time frustrating its resources against political opponents. Critics argue that this politicisation made the NAB a tool of the powerful, and as governments took turn in having those opposed to them prosecuted, or having cases against those on their side of the fence dismissed[13]. Under the PMs of the Pakistan Peoples Party (PPP) and the Pakistan Muslim League (N) (2008-2013 and 2013-2018, respectively), NAB kept up a large number of investigations and at the same time faced the accusations of selective targeting. Simultaneously, the judiciary and the legislature discussed the reforms: e.g., in 18 th and 19 th Constitutional Amendments, the judicial power was extended, and every few years, the NAO was amended to introduce corrections to the mandate that the bureau needed to pursue (in 2001, 2016, 2019, and 2022). These political and legal changes were set in the context of popular outrage against corruption scandals and street movements, such as the Lawyers movement of 2007-2009[14]. All along, the superior courts of

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[10] Pakistan court restores changes to accountability laws, widely seen as blow to anti-graft efforts | Arab News

https://www.arabnews.com/node/2570299/pakistan

[11] Article 199, Constitution of Pakistan | Pakistan Kanoon

https://pakistankanoon.com/statutes/constitution-of-pakistan/article-199/

[12] Anti-corruption Institutions and Governmental Change in Pakistan

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[13] ibid

[14] Two steps forward one step back: The non-linear expansion of judicial power in Pakistan | International Journal of Constitutional Law | Oxford Academic

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Pakistan were brought closer and closer to the focal point of accountability issues, as the judicial review came into play to balance out legislative, and executive measures.

National Accountability bureau and judicial review.

The fundamental part of the anti-corruption regime in Pakistan is the National Accountability Ordinance (NAO) of 1999 (and its subsequent regulations). The NAO/NAB accord was implemented under the military rule and has since been amended severally by the different governments. The jurisdiction of NAB (e.g. 2016, 2017, 2019-20, 2022) has been seen as restricted or expanded in response to the changing political agenda. An example is 2016-17 amendments that required the confidentiality of investigation; new law in 2020 excluded transactions (such as sale of state gifts) that NAB was required to monitor; and in 2022 Parliament made changes to the financial thresholds that NAB could apply its cognizance to and prevented it investigating acts on which the Cabinet gave its approval. All the changes are controversial and most of them were immediately marked by the court.

These legislative changes have been subject to interpretation and even rejection by the Supreme Court. As an illustration, in Nadir Ali v NAB (PLD 2020 SC 193) the Court ruled that a default on a Voluntary Return (VR) settlement under the NAO invalidated the settlement so that NAB could re-examine the offence instead of pursuing the original agreement as irremediable[15]. According to the Court, two years was sufficient to pay defendants, and they did not make such a payment, thus the VR was invalidated. Thus the anti-corruption prosecution was not dismissed as a result; the opposite order of the High Court (with reference to the double jeopardy) was overturned[16]. Equally, in Jamali v Federation (PLD 2019 SC 675) the Court construed NAO SS15(a) (which causes disqualification following conviction). It decided that disqualification to hold office in the country only commences when the convict has successfully served the imprisonment and the fine. Mir Faiq Ali Jamali had served his jail term and paid the fine on 29 November 2016, and therefore, his disqualification was calculated since that date[17]. The cases demonstrate how the Court unravelled procedural and substantive issues of the accountability law to make it work equitably and yet effective in punishing corruption.

Legislative Amendments to NAB and Supreme Court.

Reaffirming the control of the National Accountability Bureau (NAB) was underscored by the turn of events that came after the 2022 general elections in Pakistan. The new coalition government passed the NAB (Amendment) Act, 2022, which significantly limited the power of NAB, that is, on cases whose amount exceeds a monetary limit of Rs. 500 million, time restrictions were imposed on NAB officials, decisions of a cabinet were exempted, and pending cases were referred to alternative adjudicators [18]. The amendments were taken to the Supreme

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[15] P L D 2020 Supreme Court 193

https://www.ibc.org.pk/wp-content/uploads/2025/03/P-L-D-2020-Supreme-Court-193.pdf

[16] ibid

[17] PLD 2019 SC 675 | PDF | Sentence (Law) | Judgment (Law)

https://www.scribd.com/document/626785549/PLD-2019-SC-675

[18] Pakistan court restores changes to accountability laws, widely seen as blow to anti-graft efforts | Arab News

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Court where they were argued out by former Prime Minister Imran Khan who argued that they were made to protect the powerful politicians against justice[19] . A three-judge panel under the leadership of the Chief Justice, Umar Ata Bandial, ruled, by two to one, in September 2023 that the amendments were illegal and unconstitutional[20]. The Court ordered that all cases that had been closed due to the amendments, below the Rs. 500 million limit, should be reopened and NAB should reinstate case files with the relevant courts[21]. Justice Mansoor Ali Shah dissented, saying that the reasons given by the majority required a constitutional change and were too broad.The government appealed, and in September 2024 a five-judge panel led by Chief Justice Qazi Faez Isa reversed the 2023 decision without any ambiguity[22]. The bench found out that the appellants had not succeeded in showing the violation of any constitutional provision and stressed that the amendments failed to criminalise any offence and were only procedural changes to the jurisdiction of NAB [23]. The decision clearly reiterated the principle of the separation of powers, and warned that the Chief Justice and the Supreme Court are not gatekeepers of Parliament[24] . Thus, the decision of the Court reduced the ability of NAB to initiate high-profile investigations, including the Toshakhana gift scandal and a land-sale

[19] PLD 2019 SC 675 | PDF | Sentence (Law) | Judgment (Law)

https://www.scribd.com/document/626785549/PLD-2019-SC-675

[20] Pakistan court restores changes to accountability laws, widely seen as blow to anti-graft efforts | Arab News

https://www.arabnews.com/node/2570299/pakistan

[21] Imran Khan not out, Jahangir Tareen disqualified for being 'dishonest': Supreme Court - Pakistan - DAWN.COM

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[22] Pakistan court restores changes to accountability laws, widely seen as blow to anti-graft efforts | Arab News

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[23] P L D 2018 Supreme Court 189

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bribery case, since they were under the Rs. 500 million limit[25] . These advancements highlight the delicate equilibrium in which the judiciary can nullify or sanction accountability laws, which has significantly affected the range of individuals who would be put to the test.Besides amendments, the judiciary has also taken on an active role by determining the application of statutes by NAB. In NAB v. The Supreme Court reaffirmed those cases (such as Shahid Haroon 2000) that the investigative authority of NAB (arrests and detentions) had to follow the constitutional protection like Article10-A (the right to fair trial) and Article 9 (personal liberty)[26]. The Court held that the pre-trial detentions under NAB should be based on prima facie evidence as opposed to random arrest to maintain due process . In Benazir Bhutto v. It also emphasized in NAB (2001) that politically relevant cases should be prosecuted without prejudice and partisanship[27]. These decisions-as well as NAB v. Syed Shahid Ali, 2002-explain how the judicial review has made NAB operational so that it operates within the limits of the law. Most of these decisions remain unpublicized, but the Pakistani legal commentaries point at how post-2000 jurisprudence has limited excessive powers of NAB using rights-based arguments.

Judicial review as a Check and balance on Accountability Laws.

Judicial review serves as one of the pillars of the constitutional order in Pakistan especially the accountability legislation. The Supreme Court and High Courts working under Article 184(3) of the 1973 Constitution, have the original jurisdiction over any question of public interest with references to the enforcement of any of the Fundamental Rights. This broad constitutional directive has made judicial review a principle concept in the legal system of Pakistan, and thus, through which courts determine the legality of the government actions and legislations [28]. As scholars note, the Supreme Court has extended its public-law scope over the past 20 years by making such review. As an illustration, under the rule of Chief Justice Iftikhar Chaudhry (2009-2013) the Court has created wonderful changes in its institutional stance by its jurisprudence in the public law[29]. More broadly, the courts serve as a balance-keeper to constitutional balance of power: the judges need to acknowledge the superiority of legislature, but they protect against the legislation or changes in the constitution that contradict the Constitution or violate the basic rights.

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[25] ibid

[26] Law Gratis

https://lawgratis.com/blog-detail/landmark-rulings-under-national-accountability-bureau-nab

[27] ibid

[28] Towards Legal and Judicial Reforms: In Pursuit of Transforming the Justice System

https://ojs.ahss.org.pk/journal/article/download/825/863/1529

[29] Two steps forward one step back: The non-linear expansion of judicial power in Pakistan | International Journal of Constitutional Law | Oxford Academic

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Practically, this empowers the courts to overturn the statutory provisions or executive acts that are ultra vires and above the legitimate authority. Throughout the history, the Pakistani courts have been using judicial review to override amendments of the accountability laws. However, in 2001, the Supreme Court invalidated some of a NAB Amendment Ordinance that would have granted immunity to the military, judiciary and armed forces of NAB jurisdiction, declaring it unconstitutional and in violation of the separation of powers, a rare reproach to the Musharraf executive[30]. Similarly, in 2019, the Supreme Court majority consisting of two judges ruled that the 2019 NAB Amendment Ordinance was unconstitutional by arguing that it unjustifiably reduced the definition of a public office and shifted the burden of proving guilt on the convicted official[31]. These decisions are illustrations of the role of judicial review as a check over legislative inroads on accountability procedures. Scholarly research supports the validity of the fact that judicial review is one of the core principles that limit the power of the government[32]. The higher court has thus established itself as the protector of the rule of law and has been keen to examine the accountability laws on whether they are in conformity with the constitution.

Panama Papers Judgment and Its Effect.

The Panama Papers case (Constitution Petition No.29/2016, PLD 2017 SC 265 and PLD 2017 SC 692) became the landmark in the accountability movement in Pakistan. The Supreme Court enquired in it about the offshore companies which were reported after the leaked documents and finally disqualified Prime Minister Nawaz Sharif because he was not honest under Article 62(1)(f) of the Constitution[33]. This stretch of Article 184(3) original jurisdiction was without precedent: the Court was striking down a sitting PM lawfully and morally on a first instance. The majority in the Court judged Sharif unsuccessful in the honesty test, and thus ineligible, disqualifying him off the office and permanently prohibiting him[34]. The impacts were instant: the government led by Sharif collapsed, other prominent leaders (e.g. Jahangir Khan Tareen, finance minister of Nawaz) were confronted or ousted, and the decision was overtaking the political scene all the way to the 2018 elections.

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[30] Pakistan court restores changes to accountability laws, widely seen as blow to anti-graft efforts | Arab News

https://www.arabnews.com/node/2570299/pakistan

[31] ibid

[32] Towards Legal and Judicial Reforms: In Pursuit of Transforming the Justice System

https://ojs.ahss.org.pk/journal/article/download/825/863/1529

[33] L D 2018 Supreme Court 189

https://www.ibc.org.pk/wp-content/uploads/2025/03/P-L-D-2018-Supreme-Court-189.pdf

[8] court restores changes

[34] Panama Papers: court rejects call to oust Pakistani PM over corruption claims | Pakistan | The Guardian

https://www.theguardian.com/world/2017/apr/20/pakistani-pm-nawaz-sharif-narrowly-survives-corruption-court-case

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The Panama ruling, as interpreted by the law, re-emphasized the view that in the eyes of the law, anyone in office in the public office has a fiduciary duty of honesty and integrity, to the citizens[35]. Nonetheless, the Court also indicated that the honesty criterion does not have unlimited boundaries. One of these views was that dishonesty is not to be inferred on the basis of every failure to disclose an asset and that to do so would make asset,disclosure regulations a sword of Damocles hanging over the heads of all parliamentarians. That is, the Court appreciates that not all lapses and omissions constitute corruption , that a prejudiced dishonesty is required. This is a sign of restraint: whereas the Court found Nawaz Sharif to be dishonest in the situation, it acknowledged that good faith mistakes or omissions ought not to be disqualifying on their own[36]. As a matter of practice, though, the case gave authority to anti,corruption agencies: in 1993, institutions such as NAB and even the Election Commission used it to initiate or reopen investigations (such as action was ordered on the basis of the Section 62(1)(f) and Election Act SSSS203-205) even in cases that had long been dismissed. In this way, Panama enlarged the accountability areas beyond the details of the papers in question[37]. There were also extended ramifications of the case as regards judicial review. The Supreme Court intervention into Panama marked the fact that the judiciary was now at the core of high politics and this was what many observers noted. The international commentators noted that the Supreme Court has melted into an institution of governance that exercises a balance of political forces instead of mechanized application of the law. The role of the Court in intervening led to the accusation of a judicial coup, as the opposition groups and allies of the ousted PM alleged that the bench was being pressured by the influential (including the military) to oust a democratically elected government[38]. You can consider it as an act of daring imposition or judicial activism but there is no doubt that Panama transformed the political profile of Pakistan. It disqualified one party to power and led the way to the rise of a party to power in 2018. It also triggered a chain of court cases and legislative remedies (including election law s.203 amendments) over the next few years.

Importantly, judicial accountability was demonstrated as both strong and weak in Panama case. On the one hand, it established the fact that even the prime ministers were subject to legal

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[35] Full text of Supreme Court order in Panama Papers case - Pakistan - DAWN.COM

https://www.dawn.com/news/1348209

[36] Panama Papers case - Wikipedia

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[37] Panama Papers: court rejects call to oust Pakistani PM over corruption claims | Pakistan | The Guardian

https://www.theguardian.com/world/2017/apr/20/pakistani-pm-nawaz-sharif-narrowly-survives-corruption-court-case

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liability, and the highest moral principles of the Constitution are equally applied to rulers[39]. Conversely, it highlighted why most jurists caution against broad constitutionalism: the Court cautioned itself that unless there are restraint, limitations Article 62(1)(f) will be used to marginalize the opposing politician on account of trivialities. Following Panama, researchers observed that judicial review in Pakistan was now promiscuous and not principled, it was now mixed up with political interests. Ultimately, the Panama verdict remains the proverbial two-sided coin: it enhanced the accountability regime, yet at the same time it provoked hard questions of separation of powers and democracy when the courts become the centre-stage[40].

Public Perceptions of judicial interventions.

There is heterogeneity in the public attitudes toward the issue of judicial activism when it comes to accountability cases. According to the 2025 National Corruption Perception Survey prepared by Transparency International-Pakistan, the majority of 78% of the survey indicates their support of the suggestion that accountability be placed on anti-corruption agencies including the National Accountability Bureau (NAB) and the Federal Investigation Agency (FIA) should be placed under accountability mechanism[41]. In this sense, the citizenry no longer seeks to have the corrupt officials checked but also the institutions that are supposed to probe such officials.

Notably, the judiciary is reported to be the third-corrupt institution according to the same survey with 14 per cent of the respondents positioning the judiciary under the police and procurement agencies. The implication of this finding is that there is a slight level of mistrust: whereas a 86% majority of the Pakistanis do not find judges to be especially corrupt, still a significant minority is very much skeptical of judicial integrity. The questionnaire also shows that only about two-thirds of the respondents do not feel pressured by bribes, and more than three-quarter are not satisfied with the way that anti-corruption actions are conducted by the government[42].

Some commentators rejoice over the role played by the Supreme Court in media and civil society discussion. Following the 2024 decision to reintroduce amendments to the NAB, PTI leader Sayed Zulfiqar Bukhari welcomed the result as standardisation of NAB practices and stopping random arrests, citing that it had brought more consistency to accountability procedures[43]. It was then observed that one of the beneficiaries of the reinstated amendments

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[39] Full text of Supreme Court order in Panama Papers case - Pakistan - DAWN.COM

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[40] Pakistan: The state of liberal democracy | International Journal of Constitutional Law | Oxford Academic

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could be ironic considering that the amendments made could result in the key cases against Imran Khan to have extraterritorial effects. Legal theorists argued that the discretionary authority of NAB should have been curtailed as this would strengthen democratic principles by arguing that the less a power institution can do that can be engineered, the more democratic it is[44].

On the other hand, detractors are outcrying what they believe to be judicial activism or usurpation of political power. Critics of the Supreme Court argue that the Supreme Court inappropriately made law on the bench or arranged itself towards certain political interest groups. A dissenting opinion when the amendments were reinstated in 2024 emphasized that the earlier majority ruling involved determining a tenuous constitutional pivot and as such threatened omni causal judicial intervention[45]. Similarly the courts were accused by political leaders of frustrating the will of Parliament- the Court swiftly reminded the politicians that the judges were not the custodians of Parliament instead they were the servants.

Popular opinion becomes hard to measure; the accounts by the media reveal a divided reaction; some groups of the population applaud when courts reduce corruption, and others show concern of partisanship results. The TI survey highlights the fact that Pakistanians require higher levels of accountability in all institutions, the judiciary included, and the NAB[46]. Therefore, judicial activism broadly supported seems to require the capacity to promote accountability, and transparency and restraint to exclude abuses.

Whistle blower Laws and Legal protection.

To have proper accountability, it is not just necessary to prosecute corruption but also to promote its disclosure. Whistleblowers – internal reporters of transgression – are a very important first line in corruption prevention[47]. To their dismay, no federal law on whistleblower protection in Pakistan exists at the moment. The current media and anti-corruption legislations do not specifically provide protection to those who report malpractices in the government. The narrow Freedom of Information Ordinance (2002) provides no protection of confidentiality of sources and does not stop any kind of reprisal, and does not contain any special statute of anonymity and rewards of whistleblowing. Due to this, there is a high risk of retaliation (job loss, harassment, legal suits) to the whistleblowers in Pakistan despite no guaranteed security[48].

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https://www.aljazeera.com/news/2024/9/6/pakistans-top-court-restores-anticorruption-law-amendments

[44] ibid

[45] SC to hear govt's NAB amendment appeal

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[46] Transparency International Pakistan survey says police, tender and procurement, judiciary most corrupt sectors - Pakistan - DAWN.COM

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[47] TI calls for enforcing whistle-blower protection law

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The provincial legislation provides an example in a few. The Protection against corruption and Vigilance Commission Act of 2016 and the Right to Information Act of 2013 of Khyber Pakhtunkhwa offer some protection to corruption reporters. A whistleblower exposing graft can get confidentiality and an award (up to 20% of any recovery) in KP, and a commission of indpendence decides claims[49]. Similar measures (Protected Persons Acts) covering limited protections have been passed by Sindh and Punjab legislatures. Yet with the key lawmaking authority over anti-corruption on the centre stage, these provincial laws leave a patchwork of coverage. Federal bills (e.g. a proposed bill Whistleblower Protection and Vigilance Commission) have been floated, but none of them have been passed into law. In brief, the legal system of Pakistan does not provide any statutory safeguard to honest whistleblowers with the exception of KP example[50].

There is a practical impact of this legislative gap. Based on the surveys on the public opinion provided by Transparency International, it is evident that the citizens desire whistleblows protection. According to a national survey, 78% of the surveyed reported that anti-corruption agencies should be held to account themselves (meaning, they wanted the agencies to be impartial enforcing authorities)[51]. Similarly, forty-two percent of interviewees noted that they would feel safe in the case of reporting corruption in the presence of good laws to counteract whistleblowers. Yet little is known: just 30 per cent of citizens were aware of any system that they could use to report official corruption and of them only 43 per cent had ever reported an incidence. Almost forty percent of them indicated guaranteed anonymity would motivate reporting and an equivalent percentage indicated rewards or whistleblower programs to be motivating[52]. Essentially, we have a big silent majority who feel that something is wrong but do not have the courage to speak. Research has established that insiders usually resign in frustration or are intimidated attempting to blow the whistle, putting off most of them thinking of even blowing the whistle.

The international standards facilitate greater protection. As a signatory to the United Nations Convention against Corruption (UNCAC), Pakistan (in Article 33) urges signatories to provide the power to report and safeguard whistleblowers. Pakistan is bound to establish protective mechanisms in the domestic legislation since it has ratified UNCAC and the ICCPR. At the constitutional level, even the right to information (Art.19-A) was to bring transparency but without confidentiality and anti-retaliation measures, it cannot be fully used by the

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[49] The Khyber Pakhtunkhwa Whistleblower Protection And Vigilance Commission Act, 2016 – PAKP

https://www.pakp.gov.pk/act/the-khyber-pakhtunkhwa-whistleblower-protection-and-vigilance-commission-act-2016/

[50] Country Report: The Right to Information in Pakistan - ARTICLE 19

https://www.article19.org/resources/country-report-the-right-to-information-in-pakistan/

[51] Transparency International survey says police, tender and procurement, judiciary most corrupt sectors - Pakistan - DAWN.COM

https://www.dawn.com/news/1960110

[52] ibid

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whistleblowers. Practically, this loophole compromises accountability: numerous instances of corruption merely do not surface to the public due to the fear on the part of the potential witnesses of being the victim of the criminal act.

Incremental steps have been made in the last few years. There has been pressure on lawmakers by civil society, bar associations and the media[53]. In 2017, Whistleblower Protection Bill (50th Amendment) was passed in the Senate that ensured confidentiality and rewards to those who disclosed matters as a public servant but later died in the National Assembly. In 2022-24 a number of provinces added to their laws (KP, Punjab, Sindh) and federal government endorsed draft legislation (the 2023 Whistleblower Protection Bill). Nevertheless, all these federal efforts are still pending enactment into law as of 2025. Consequently, there is still an informal or anecdotal reporting by whistleblowers.

In conclusion, the system of whistleblowers in Pakistan is not good at the moment. A small number of positive models exist in the provincial level[54], but none exists on a nationwide basis. The inertia of the law implies that such institutions as NAB and the FIA can not protect confidential sources. This loophole undermines the larger accountability ecosystem: without the ability to trust whistleblower systems, it is likely that lots of corrupt activities will never make it to a court or a prosecutor. Enhancing the whistleblower law – as per UNCAC and best practice – thus is one of the key supplements to the judicial review of corruption. Until then, a significant part of the load will remain on ad hoc disclosures (e.g. leaks) and the good will of journalists and activists, which is an unreliable alternative to the transparent legal safeguards[55].

Political context of the Accountability Process.

Pakistan cannot do without accountability and politics. Partisan struggle has often been mixed with the anti-corruption laws and institutions. The formation of NAB itself (1999) and the initiating of high-profile investigations generally go hand-in-hand with the change of power[56]. Opposition parties are also accused of having ruling elites use accountability agencies to attack their opponents and grant immunity to their supporters. People think so: according to a recent survey, 32 percent of the participants mentioned the abuse of the authority to attack political opponents by using anti-corruption powers as one of the primary barriers to accountability . In the same manner, most citizens (78 per cent) insisted that greater control of institutions such

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[53] Microsoft Word - COSP9 submission - UNCAC Coalition - PILDAT - Civil society parallel report - Executive summary - Pakistan.docx

https://uncaccoalition.org/wp-content/uploads/COSP9-submission-UNCAC-Coalition-PILDAT-Civil-society-parallel-report-Executive-summary-Pakistan.pdf

[54] The Khyber Pakhtunkhwa Whistleblower Protection And Vigilance Commission Act, 2016 – PAKP

https://www.pakp.gov.pk/act/the-khyber-pakhtunkhwa-whistleblower-protection-and-vigilance-commission-act-2016/

[55] Country Report: The Right to Information in Pakistan - ARTICLE 19

https://www.article19.org/resources/country-report-the-right-to-information-in-pakistan/

[56] Anti-corruption Institutions and Governmental Change in Pakistan

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as NAB and FIA be ensured because they fear politicization[57]. Concisely, according to many Pakistanis, accountability is usually distributed unequally.

All these tensions came to the fore in the Panama case. Imran Khan and the PTI headed the anti-PML-N movement and made accountability the termination of the dynasty rule. By disqualifying Nawaz Sharif, PTI fans rejoiced that they had won the case, and PML-N supporters lamented a judicial coup[58]. This 2018 election gave PTI a mandate and the discourse of anti-corruption took a new dimension: the government of Imran was later establishing cases against those in the previous regimes (and eventually Imran was charged with graft himself). Every cycle increased the skepticism of people that accountability procedures are bound to the political winds[59].

Sometimes this politicization has been admitted by judges. To illustrate, according to the Chief Justice Isa (in his 2024 judgment on NAB amendments), the anti-corruption laws had been viewed by previous regimes as a political victimisation tool. But the Court too demanded that its scrutiny should be a detached one; it cannot make decisions founded on perceptions and is not a usurpation of the policies of Parliament[60]. On their part, politicians have attempted to employ accountability to attack their rivals. This is shown most vividly by the passage (and subsequent reversal) of the NAO amendments of 2022: the laws were viewed as favoring some political leaders (and their supporters) and on the occasion that Imran Khan sought to question them, his opponents would later justify the legislation[61].

The effect of the cycle on democracy has been observed to be uneasy by international commentators. Oxford Int'l Journal of Constitutional Law noted that the frequent intervention of the Supreme Court had left the people fearful of a political court and the leading parties in Pakistan were said to be stuck in turf battles[62]. Judicial review has become a delicate and

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[57] Transparency International survey says police, tender and procurement, judiciary most corrupt sectors - Pakistan - DAWN.COM

https://www.dawn.com/news/1960110

[58] Panama Papers: court rejects call to oust Pakistani PM over corruption claims | Pakistan | The Guardian

https://www.theguardian.com/world/2017/apr/20/pakistani-pm-nawaz-sharif-narrowly-survives-corruption-court-case

[59] ibid

[60] Pakistan court restores changes to accountability laws, widely seen as blow to anti-graft efforts | Arab News

https://www.arabnews.com/node/2570299/pakistan

[61] Pakistan's top court restores anticorruption law amendments | Imran Khan News | Al Jazeera

https://www.aljazeera.com/news/2024/9/6/pakistans-top-court-restores-anticorruption-law-amendments

[62] Pakistan: The state of liberal democracy | International Journal of Constitutional Law | Oxford Academic

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political balancing of competing values in the Court has become entangled in political matters (through impeachment of a PM to the cancelling of electoral nominations), according to some analysts[63] . Conversely, some believe that the absence of an active judiciary would enable a lot of abuses to remain unchecked. The Pakistani reality has become a pendulum: spurts of judicial activism (which often coincide with political crises) are followed by a push towards reform [64](e.g. make the Parliament stronger in checks).

In a practical sense, politics and accountabilities are interconnected and therefore, legal reforms are insufficient. A well-established legal system may be undermined in case agencies are not independent. Critics note that NAB is still biased on the executive with the leadership appointment and funding, which makes priorities biased[65]. The courts have infused institutional protection: e.g. they have hinted at putting in place statutory protection (as opposed to one presidential figure head of a single bureau) that would better shield NAB against politics. The opinion of people emphasizes it: almost three-quarters of the Pakistanis believe that increasing the independence of anti-corruption bodies would prevent graft[66].

In short, the problem of political interference is still a major issue. The accountability movement has been a significant success (especially convictions on the highest ranks and court empowerment), yet it has not comprehensively broken through partisan polarities. The judicial work should also be met by the extension of reforms to include electoral transparency, independent ombudsmen, and private watchdogs in order to make sure that combating corruption is not an issue of politics but the national business[67].

Proposals and Recommendations.

The accountability process has certainly been influenced by the high-quality judiciary in Pakistan. It has limited executive and legislative excess, applied due process to the anti-corruption sprees, and created systems of investigation, as seen in the Panama case. Scholars note that the courts have increasingly played a broad institutional role in governance by reviewing administrative-law[68]. However, this judicial activism has been met with controversy with regard to the separation of powers; the judiciary should strike a delicate balance between

[63] ibid

[64] ojs.jdss.org.pk

https://ojs.jdss.org.pk/journal/article/download/448/329

[65] Two steps forward one step back: The non-linear expansion of judicial power in Pakistan | International Journal of Constitutional Law | Oxford Academic

https://academic.oup.com/icon/article/16/2/503/5036471

[66] Transparency International survey says police, tender and procurement, judiciary most corrupt sectors - Pakistan - DAWN.COM

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what it takes to be politically crucial and what it takes not to cross over to encroaching on the democratic mandate[69]. The fact that the reaction of the population is ambivalent shows that only a reasonable use of power with the clear constitutional reason standing behind it will ensure the existence of legitimacy.

One of the recurrent criticisms is that accountability institutions in turn are not well supervised. The TI survey indicates that the citizens require mechanisms to hold National Accountability Bureau (NAB) and Federal Investigation Agency (FIA) accountable[70]. Such checks and balances were ironically administered by the Supreme Court which struck down executive amendments to the NAB law in 2023[71]. This case study explains why courts may stabilize the vacuity of governing authorities in situations where other organizations collapse. However, institutional reform is needed that is much more formal. According to one piece of scholarly research, a National Accountability Commission, an independent institution not associated with NAB, should be instituted, to help create a more balanced accountability framework[72]. The other reforms to be done without the staff reaction are to strengthen parliamentary control (e.g. by giving joint accountability committees powers), and to increase the powers of the Elections Commission and Public Accounts Commission[73]. Importantly, Pakistan would need to strengthen whistleblower protection. The parliament needs to create a strong Federal Whistleblower Protection Act, either expanding PIDA 2017 or creating new legislation, and implement it. Such laws should be embraced in the courts and their interpretation broad in order to protect good-faith disclosers[74].

The judiciary can also improve the transparency and accountability in a number of ways. To start with the Supreme Court and the High Courts must periodically issue detailed judgments in accountability cases as was done in the case of Panama to clear up reasoning and strengthen confidence in the people[75]. Second, the independence of courts should be safeguarded; the newly introduced power of the Judicial Commission suggested by the 2022 Judicial Policy

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[69] ibid

[70] Transparency International Pakistan survey says police, tender and procurement, judiciary most corrupt sectors - Pakistan - DAWN.COM

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[71] SC to hear govt's NAB amendment appeal

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[72] ojs.jdss.org.pk

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[73] Towards Legal and Judicial Reforms: In Pursuit of Transforming the Justice System

https://ojs.ahss.org.pk/journal/article/download/825/863/1529

[74] TI calls for enforcing whistle-blower protection law

https://tribune.com.pk/story/2473192/ti-calls-for-enforcing-whistle-blower-protection-law

[75] Full text of Supreme Court order in Panama Papers case - Pakistan - DAWN.COM

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needs to be applied to its full extent, so that the actions of judges are controlled by their colleagues, which will maintain the integrity[76]. Third, the courts should increase the application of suo-motu notices to combat corruption and governance problems without being overly assertive in order to prevent charges of prejudice. As an example, the Supreme Court may start whistleblower reprisal lawsuits or may also carry out sectoral investigations during cases of paralysis by legislative and executive authorities. These should be based on constitutional rights at all times to avoid the impression of judicial overreach[77].

Conclusion

The legal, political and institutional interactions surrounding judicial review and accountability laws in Pakistan show that the interaction is complicated and multifaceted. The higher courts have also been agent and guardian: on the one hand, they have invoked Article 184(3) to superimpose basic rights and unravel corruption scandals, but on the other, they have warned of encroaching on their jurisdiction[78]. The landmark cases, starting with Panama and reaching to the NAB amendments and others revealed that the judiciary is capable of holding the strong to account on the issue of corruption, but it was also shown that it should do so without going outside the confines of the constitution. The downside is that lawmakers and enforcement bodies can be subjected to judicial review at all times: any changes in the statutes or prosecutorial decision can be subjected to Supreme Court or High Court review[79].

The effect of this dynamic has been both positive and negative. On the affirmative, the best courts have overthrown or reformed clauses that were unconstitutional, reaffirmed the fact that a state office is a state trust, and by even demanding that not one is above the law[80]. Conversely, judicial intrusion in politically sensitive cases has been constant and has resulted in fatigue and some backlash. As experts observe, accountability can only be real when it is backed by effective institutions on all levels: there must be logicality in the laws and autonomy among the enforcement agencies and must protect the citizen in case of whistle blowing.

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