

Institutionalizing Accountability?

Dr. Sania Nishtar

The Holders of Public Offices (Accountability) Act 2009, which currently exists as a Bill and is to be introduced in the National Assembly, will perhaps be one of the most vital instruments of governance in Pakistan, over the coming years; its connotations and covenants defining responsibility for decisions and actions.

Given its importance, the relative lack of informed and constructive debate on the subject in civil society, political and analytical circles is indicative of a deep-seated phenomena in the country's societal political culture—we tend to engage in trivialities of governance and remonstrate when the manifestations of poor governance are apparent, but when it comes to substantive structural issues, there is somehow limited proactive engagement to shape governance norms. This comment underscores the importance of seven points in relation to the proposed statute with the hope that the nation will pay greater attention to this subject.

First, it must be recognized that accountability as an aspect of governance is central to problems in the public and private worlds. As a result of limited accountability, poor governance, mismanagement, inefficiencies and malpractices have become pervasive in our systems. On the one hand, malpractices are exacerbated by poor management and lack of accountability whereas on the other, there are disincentives for strengthening management and mainstreaming mechanisms that compel accountability. Both these factors complement each other in a vicious circle. Limited accountability is the core determinant of this pattern.

Most of the issues that we see today, whether they are related to conflict and insurgency; issues of national security; ethnic and religious divides; Pakistan's macroeconomic downturn; the looming issue of water security; the energy crisis; periodic shortages of commodities; poor performance of the social sector and of course, the overarching issue of extremism, exist because individuals and institutions, knowingly or inadvertently, have taken decisions and have opted for directions or have had deliberate inattention to oversight to the detriment of desired outcomes. If we continue to regard responsibility, answerability, blameworthiness, liability and other attributes of accountability, the low level of importance they have been receiving, governance will further weaken and we will continue to face challenges, as we do presently.

Secondly, from an institutional perspective, the difference between an Accountability Commission and an Anticorruption Agency should be brought to bear. The writer has elaborated on the difference between the two in these columns on January 27, 2009. As per the stipulations of the proposed statute, the National Accountability Bureau (NAB) will be abolished and the Accountability Commission will be created in its stead. There was an expectation that since accountability (a mandate of the Accountability Commission) is a more overarching thread in governance, compared to anticorruption (the remit of NAB), the scope of the Accountability Commission would be broader than NAB. However, a review of the Bill reveals that jurisdiction of the Accountability Commission is more limited.

Thirdly, there are concerns that with promulgation of the proposed statute, a higher percentage of policy and decision makers and other offenders will be excluded from the ambit of accountability. The NAO is wide-ranging and covers a wider category of persons and offences; scope of the new law, on the other hand is relevant to

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Given its importance, the relative lack of informed and constructive debate on the subject in civil society, political and analytical circles is indicative of a deep-seated phenomena in the country's societal political culture—we tend to engage in trivialities of governance and remonstrate when the manifestations of poor governance are apparent, but when it comes to substantive structural issues, there is somehow limited proactive engagement to shape governance norms. This comment underscores the importance of seven points in relation to the proposed statute with the hope that the nation will pay greater attention to this subject.

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cluded from the ambit of accountability. The NAO is wide-ranging and covers a wider category of persons and offences; scope of the new law, on the other hand is relevant to holders of public offices only. Offences such as accumulation of assets beyond known sources of income, acquisition of unmarked properties and vital bank details stand excluded from the jurisdiction of the Accountability Commission under the bill. There is a perception therefore that instead of strengthening the proposed statute might weaken the process of accountability.

In the fourth place, a commission by constitution in a high-level renewable/rotational or executive/governing body in the event of the former, is time-bound and in the case of the latter, as is presently the case, it is on a more permanent basis. The idea in both is to fashion independence, objectivity, transparency and visibility in arrangements in view of the fact that com-

missioners are usually created in a controversial and sensitive space; arrangements are traditionally structured to guard against capture. Within this context, the proposed statute stipulates appointment of the commission chair for a non-renewable three-year period and stipulates that both the treasury and opposition benches would be included in the consultation process for appointment of the chair—these are positive steps indeed. However, the bill does not mandate the creation of an independent participatory governance arrangement. An inquiry can be initiated only when it is allowed by the chairman or a designate. De-tracting decision-making powers to one individual does not mesh with the spirit of a commission that creates space for manoeuvrability and capture by Pakistan's dis-democratic patronage-characterised political dispensation. We need to move away rather than reinvent the same factors, which were responsible for

dictatory governance with civil society representation in an open discourse policy and transparent terms and process must be adhered to the structure of this commission.

In the fifth place, the bill does not clearly stipulate the legal status of the proposed commission. Other existing commissions in the country have legislative arrangements, the corporate regulator Securities and Exchange Commission of Pakistan, a parastatal statutory body Simlari, the National Tariff Commission and the Competition Commission are also permanent statutory bodies. All have a perpetual existence in the form of a 'body corporate' with independent and distinct legal personality. The bill does not, however, specifically discuss the legal status of the Accountability Commission in any detail.

In the sixth place, it must be brought to bear that federal and provincial government employees will fall within the purview of the Federal Investigation Agency (FIA) and the Anti-Corruption Establishment (ACE), respectively, under the purview of the bill. However, the capacity of these institutions and their past history, which is indicative of politicisation, needs to be factored into consideration. FIA's failure to prosecute any one above grade 19 in its entire history is often perceived to be in this regard. Institutions are addressing under-resourced and lack capacity. Considerable reform, market-based incentives, capacity building and reorganisation of these organisations would therefore be necessary.

Lastly, performance of the Accountability Commission must be contextualised to the broader context of the state's capacity to mainstream accountability in governance arrangements. The broader anti-corruption agenda should be revitalised in tandem. The National Anti-Corruption Strategy (NACS), which has been dormant should be revived, the potential within certain impact transparency-building arrangements such as electronic procurement, electronic tracking of supply chains and the use of technology in public finance management—budgeting, accounting and auditing systems—should be fully leveraged and preventive efforts to bridge weaknesses in the Ombudsman's office should be optimally strengthened for creating avenues of public redressal; creation plans for incentivising the civil service and promoting integrity therein, should be implemented; a level playing field should be provided for businesses and jobs should be sought from the Competition Commission to weaken organised vested interests; moreover, a broad-based agenda for systemic reform of governance, which puts institutional accountability should be consolidated building further on measures that have been initiated piecemeal over the last 12 years.

Accountability is the unifying thread in governance. Enacting legislation and restructuring an institution should not be about change of name and an opportunity to structure space for manoeuvrability; instead it should be about substantively mainstreaming change that can bring value to strengthening governance. Sustainable Open and impartial oversight, independent governance, an open disclosure policy and a meritocratic mandate are critical inputs of the Accountability Commission that can make a well-resourced entity function effectively within this space.

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holders of public offices only. Offences such as accumulation of assets beyond known sources of income, acquisition of unmarked properties and willful loan default stand excluded from the jurisdiction of the Accountability Commission under the Bill. There is a perception therefore that instead of strengthening, the proposed statute might weaken the process of accountability.

In the fourth place, a commission by connotation is a high level review/analytical/enquiry or executive/governing body. In the event of the former, it is time-bound and in the case of the latter, as is presently the case, it is on a more permanent basis. The idea in both is to fashion independence, objectivity, transparency and visibility in arrangements in view of the fact that commissions are usually created in a controversial and sensitive space; arrangements are additionally structured to guard against capture. Within this context, the proposed statute stipulates appointment of the Commission Chair for a non-renewable three year period and stipulates that both the treasury and opposition benches would be included in the consultation process for appointment of the Chair—these are positive steps indeed. However, the Bill does not mandate the creation of an independent participatory governance arrangement. An inquiry can be initialized only when a go ahead is given by the Chairman or a designate. Entrusting decision-making powers to one individual does not resonate with the spirit of a Commission; it creates space for maneuverability and capture by Pakistan's elite-dominated and patronage-characterized political dispensation. We need to move away rather than reinvent the same factors, which were responsible for NAB's partial stance in some cases. Impartial and participatory governance with civil society representation, an open disclosure policy and transparent terms of reference must be inherent to the structure of this Commission.

In the fifth place, the Bill does not clearly stipulate the legal status of the proposed Commission. Other existing commissions in the country have legally defined arrangements; the corporate regulator, Securities and Exchange Commission of Pakistan, is a 'permanent' statutory body. Similarly, the National Tariff Commission and the Competition Commission are also 'permanent' statutory bodies. All have a 'perpetual existence' in the form of a 'body corporate' with independent and distinct legal personality. The Bill does not however specifically discuss the legal status of the Accountability Commission in any detail.

In the sixth place, it must be brought to bear that federal and provincial government employees will fall within the purview of Federal Investigation Agency (FIA) and Anti-Corruption Establishments (ACE), respectively, after the enactment of the Bill. However the capacity of these institutions and their past history, which is indicative of politicization, needs to be factored into consideration. FIA's failure to prosecute anyone above grade 19 in its entire history is often referred to in this regard. Institutions are additionally under-resourced and lack capacity. Considerable resourcing, market based incentives, capacity building and reorganization of these organizations would therefore be necessary.

Lastly, performance of the Accountability Commission must be contextualized to the broader context of the state's capacity to mainstream accountability in governance arrangements. The broader anticorruption agenda should be revitalized in tandem. The National Anti Corruption Strategy (NACS), which has been dormant should be revived; the potential within certain implicit transparency building arrangements such as electronic procurement, electronic tracking of supply chains and the use of technology in public finance management—budgeting, accounting and auditing systems—should be fully leveraged and previous efforts to bridge weaknesses in the Freedom of Information Ordinance, 2002 should be resumed. Furthermore, institutions such as the Ombudsman's office should be optimality strengthened for creating avenues of public redressal; strategic plans for incentivizing the civil service and promoting integrity therein, should be implemented; a level playing field should be promoted for businesses and help should be sought from the Competition Commission to weaken organized vested interests; moreover, a broad based agenda for systemic reform of governance, which can institutionalize accountability should be consolidated building further on many elements of that framework, which have been initialized piecemeal over the last 62 years.

Accountability is the unifying thread in governance. Enacting legislation and restructuring an institution should not be about change of name and an opportunity to structure space for maneuverability; instead it should be about substantively mainstreaming change that can bring value to strengthening governance, sustainably. Open and

impartial oversight, independent governance, an open disclosure policy and a non-selective mandate are critical inputs in this regard and can make a well-resourced entity function effectively within this space.

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