In a landmark decision on December 16, the Supreme Court has ruled on the legal validity of the National Reconciliation Order (NRO) and has termed it *void ab initio* for being *ultra vires* of the Constitution. In layman’s terms, the NRO stands null and void since its inception and all benefits acquired, accrued or incurred under it stand withdrawn. This decision is a very important cog in a chain, which is paving the way for strengthening the moral basis of anti-corruption reform in Pakistan. The sequence of events began with a series of *Suo Moto* actions by the Supreme Court, which played an important role in strengthening the societal political culture—a demonstration of which was part of the lawyers’ movement. Subsequently, the media’s drive to bring corruption as a leading public debate to the fore has also been commendable. The role of successive governments, which allowed a free media to thrive—reservations notwithstanding—should additionally be acknowledged. It appears that these events along with the realization that the need for clean and competent hands on the governments reigns are critical to alleviating the day-to-day crises facing the common man, can be key to lending impetus to holistic anti-corruption reform.

Why the emphasis on anti-corruption reform when the country suffers from so many crises—the question may be posed? The answer to this is embedded in some key realizations.

Corruption relevant to state governance has many shades—financial, ethical and procedural. Closely related to these are mal-governance, inefficiency and ineptitude, which in the absence of mechanisms to compel accountability can be equally damaging. Each of the problems that we see plaguing our nation today is a manifestation of one of these.

Over the years, we have seen the emergence of a form of governance where systemic manipulation was fast becoming well-ingrained; where state capture by vested interest groups and undue influence to shape state policies, laws and regulations, was becoming common place. In these environments, procurement graft was becoming institutionalized, preferential treatment and nepotism guided human resource decisions, and patronage and support for debt writing off, tax exemptions and other favours was fairly common. In general, decisions were usually not grounded in evidence and misuse of authority was fast gaining acceptance.

This style of governance steadily eroded the capacity of state institutions over time; it fostered public-private collusion and furthered vested economic interests of the powerful elite. There was massive diversion of state resources for personal gains and a growing trend towards cartel activity, which manifested itself in frequent commodity shortages of the kind witnessed over the last few years. These malpractices helped to further strengthen Pakistan’s growing informal and black economies, which thrived on smuggling, trafficking and a range of financial crimes.
As these practices got firmly ingrained, state resources got channeled to the well-connected through patronage and political links were furthered, establishing a vicious circle. Regulatory capture became pervasive and procedures were circumvented to settle police cases, change land documents, evade tax and get permissions and licenses. The ability of state institutions to target welfare was weakened. Moonlighting in the private sector and levying of charges for services that were meant to be provided by the state for free became common in the social sectors. The resulting outcomes were devastating—the rich-poor divide was augmented, the society become polarized and impoverished masses became exploitable in extremist hands. Upright politicians and state functionaries were weeded out of the system and reforms were held hostage. We were left with frail governance, weak political systems and a thriving informal economy.

All this may pleasantly be up for a change now! By upholding constitutional stipulations, the judiciary, and through its open confrontation of this menace, the media have lent impetus to a burgeoning transition. The two pillars of the state—judiciary and the media—have played their respective roles; it is now imperative that the two other pillars—legislature and the executive—also play their part in this transition. Anti-corruption measures necessitate deep-rooted systemic reform and it may not be possible to do everything at once. However, they are some critically important next steps, which need to follow.

The legislature must do five things: one, in the forthcoming 18th Amendment to the Constitution, it must aim for the right separation of powers and structure appropriate institutional checks and balances between the executive, judiciary and the legislature and ensure that constitutional restraints upon the elected government are in order. Second, it must revisit the freedom of information law—the oxygen of democracy—which has to do with access to information and disclosure, which can enable public discourse in larger national interest on issues of governance. Pakistan’s existing Freedom of Information Ordinance, 2002, which is still in force, has many weaknesses; some of these such as the excessive broad regime of exceptions and the restrictive approach to the definition of public record need to be addressed through appropriate amendments. Third, the Parliament must strengthen its Public Accounts Committee and empower it as an engine of oversight with active engagement with the civil society and expert groups. Fourth, it must revisit the Competition Commission law to enable the Commission to function independently as it is playing an important role in creating a level playing field for businesses and weakening economic interests that promote state capture. Finally, the legislature must finalize a legal and institutional accountability framework for the country. Weaknesses of the Holders of Public Offices Act 2009, in terms of the envisaged Accountability Commission’s prerogatives, the flexibilities and space for maneuverability, its structure in relation to purported independence, moreover the fragmented institutional design being structured under the bill’s aegis, has been the subject of great debate. These concerns need to be addressed in a new legal and institutional dispensation.

Finally, there is a set of imperatives for the third pillar of the state—the executive, or the government. Theoretically speaking, there are many things in that fold that need to be undertaken—revival of the National Anti-Corruption Strategy, strengthening of several institutions that have a role to play, mainstreaming technology to plug leakages, institutional changes in ministries that would separate policy making from regulation and implementation to reduce space for collusion, revival of the many donor-supported projects initialized by several governments, which can have a knock on effect on transparency, civil service reform, changes in public finance management, procurement reform and many other areas. It is accepted that it would not be possible for the executive to commence work on all of these areas at once. However, some strategic measures need to be taken to pave the way for broader reform and keep the momentum going. By doing just two things the executive can signal a strong commitment to change. One, upholding merit and creating incentives for integrity in public service at all levels—the cabinet and bureaucracy and two, assisting with needed reform in the judicial system itself.
The road to anti-corruption reform is long and winding but with the needed measures at the right time, progress is possible. As a nation we have long under-estimated and ignored the cost of corruption and mal-governance. We may be familiar with the staggering costs of commissions, revenue lost due to crony privatization, political patronage, tax evasion and the shadow economy but what we don’t recognize is the erosion of the social fabric and ethical and democratic values it has caused and the risks it poses to national security and peace. For now the judiciary has played a watershed role in what can be a burgeoning transition. Its coming to fruition will depend on how well the two other pillars of the state play their role to uphold accountability, transparency, professionalism and neutrality.

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