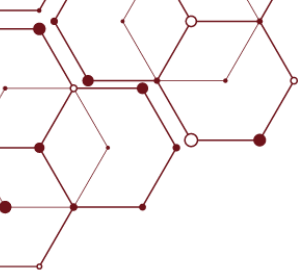


POLICY BRIEF

Institutional Analysis:

Role of institutions in the enforcement of Anti-Corruption laws; Gaps and Way Forward





List of Acronyms

AC	Anti-Corruption
ACE	Anti-Corruption Establishment
ACI	Anti-Corruption Institution
DFID	Department for International Development
FATF	Financial Action Task Force
FIA	Federal Investigation Agency
NAB	National Accountability Bureau
NAO	National Accountability Ordinance
NACS	National Ant-Corruption Strategy
NCA	National Crime Agency
PCA	Prevention of Corruption Act
UNCAC	United Nations Convention against Corruption

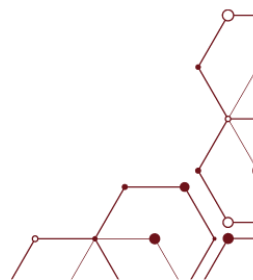




Table of Contents

A. Role of institutions in the enforcement of Anti-corruption laws.

1. Institutions defined
2. How the Anti-corruption institutions are built?

B. Anti-Corruption Enforcement in Pakistan

1. Enforcement Defined
2. Peculiar features of the Anti-Corruption laws in Pakistan
3. Phases of Anti-Corruption Institutions
4. Anti-Corruption Systems & Process
5. Drivers of Anti-Corruption Enforcement

C. Parameters of effective law enforcement

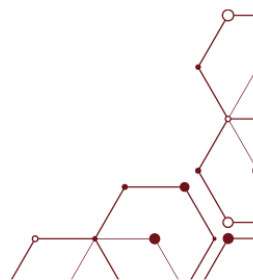
1. Ownership
2. Adoption
3. Autonomy
4. Professionalism
5. Accountability

D. The Gaps in the Anti-Corruption Enforcement.

1. Enforcement Gap
2. Learning/Analysis Gap
3. Strategy Gap
4. Performance Gap
5. Capacity Gap
6. Linkage Gap

E. Way forward for the Institutional Development of ACIs

1. Political Consensus and Way Forward
2. How to address the enforcement gaps?
 - i. Clarity of Jurisdictions
 - ii. Defining Corruption






Executive Summary

Institutions in the wider sense are; combination of laws, agencies that enforcement those laws and both formal and informal norms that surround the enforcement. In the narrow sense, institutions are the agencies or organizations (departments) for public service delivery and law enforcement. Law enforcement institutions are built through political consensus, political will, enforcement strategy and models, and institutional oversight. Anti-corruption law enforcement is further extension of the law enforcement and involves all those actions which are employed to either deter corruption from happening or punish those who are found guilty of corruption. The enforcement can be both pro-active- initiative driven and reactive-report driven.

Anti-corruption enforcement has certain peculiar features. Corruption is considered a victimless crimes and in the absence of culture of whistle blowers, is most initiated by the ACIs (Anti-Corruption Agencies). This opens the Anti-Corruption campaigns to maneuvering and misuse, as those in power have the incentive to employ it for their own objective. Even when the Anti-Corruption measures are carried out professionally, the exercise remains tedious and technical requiring extreme patience and hard work.

Anti-corruption law enforcement in Pakistan has undergone difference phases starting from 1946 to 1958 and then having the federal Investigation Agency in 1974 leading to the setting up of National Accountability Bureau in 1999. During these phases, the system and processes underwent drastic changes and over time different drivers also emerged. Overall except for short periods, the enforcement effectiveness stopped short of the parameters of effective law enforcement; Ownership, Adoption, Autonomy, Professionalism and Accountability. The shortcomings in effectiveness are due to certain gaps in the Ant-Corruption Enforcement which are more prominent in the areas of enforcement, learning/analysis, strategy, performance, capacity and linkages.

The way forward for the Institutional Development of ACIs is dependent on having a way around the political consensus and addressing the enforcement gaps through clarity of jurisdictions, more accurate definition of corruption, inculcating institutional norms, developing institutional processes and coming up with better enforcement models. The better models operate on both front and back ends having the essential-features; capacity, direction and focus, Selection & prioritization and follow up and monitoring.





A. Role of institutions in the enforcement of Anti-corruption laws.

1. Institutions defined

The term institution in the modern sense and the study of the institutions as source of growth and development has been credited to the Economist Douglass North who defined the institutions as ; **“humanly devised constraints that structure political, economic, and social interactions and include the laws, rules, customs, [and] norms constructed to advance and preserve social order.”**

The most important element in North’s theory of institutional change is path dependence—resemblance of today’s institutions to yesterday’s institutions. North argues that institutions exhibit increasing returns to scale and this makes the change in institutions difficult.

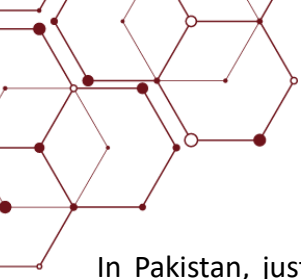
Laws are the aspirations of the public reflected and the issued through the parliament. But laws on their own cannot bring the aspired change. That requires a mechanism, a vehicle and a system to bring the rewards promised in the laws. Such mechanism, vehicle and system would be called as institutions. The institutions instill life in laws, movement in the static words and reality in dreams.

Eleanor Ostrom, political scientist and Nobel prize winner further defines the institutions as;

“the sets of working rules that are used to determine who is eligible to make decisions in some arena, what actions are allowed or constrained, what aggregation rules will be used, what procedures must be followed, what information must or must not be provided, and what payoffs will be assigned to individuals dependent on their actions.”

Institutions in the wider sense thus are combination of laws, agencies that enforcement those laws and both formal and informal norms that surround that enforcement. In the narrow sense, institutions are the agencies or organizations (departments) which are used as the public service delivery and law enforcement vehicles. In the either sense, the institutions are indicators of state capacity and are tasked with meeting the twin goals of development and justice. For the present analysis, the institutions would be taken mainly as the agencies but in a wider sense and will include the role of laws and norms too.





In Pakistan, just like most developing countries, making laws is the most convenient way to bring change or the semblance of it. Most of the drafts of laws are taken from outside or commissioned through out-sourcing; the legislature is either uninterested or indifferent; the committee system does not address the issues effectively; the expert advice is missing from the law making ; the law enforcement is hardly taken on board, and the law is made none-the-less. The application or enforcement of laws which should be the purpose of the whole exercise thus remains a challenge. The enforcement requires establishment of institutions and institutional development remains the weak point of our system. We take law making for institution making, while the former is drafting words and the latter is drafting action, latter is always more challenging than the former.

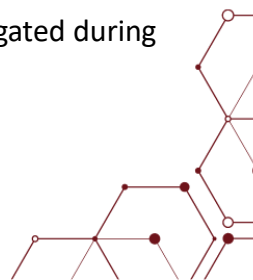
2. How the Anti-corruption institutions are built?

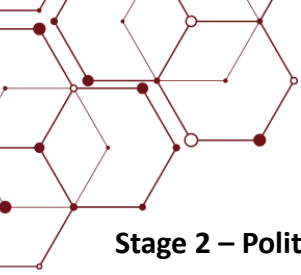
Anti-corruption institutions have a distinct place amongst the governance institutions. Dr Ishtat Hussain , former Governor State Bank of Pakistan and former head of National Commission on Governance Reforms has included the AC institutions as the Institutions of accountability, transparency, and oversight and has opined that an effective AC institution should have “capacity to take timely action without fear or favor against those indulging in malfeasance, corruption, or the misuse of public office for personal gains”.

In Pakistan, the institutional development has undergone rapid changes and even for so for the AC institutions. The focus of this policy brief is on the development and evolution of Anti-Corruption (AC) institutions therefore the stages mentioned below are included with special reference to these institutions.

Stage 1 – Political consensus:

The first condition precedent for institutional development is a broader political consensus. Usually the law-making itself represents that consensus. In our case however, the law making is either too hurried or so delayed that either the consensus is not developed or lost over time. The absence of consensus takes away the will from the application of laws. In case of AC institutions, the consensus part is by-passed as many of the laws have been promulgated during the times of military takeover.





Stage 2 – Political will

The political will accompanies the political consensus. The will makes the whole operation of law successful and credible. Laws require institutions and the institutions require resources and political backing to succeed. New laws also require the institutional space which is already in possession of the existing actors. Political will is essentially will of the government but also includes the support of the allied stakeholders like judiciary and regulators. The anti-corruption due to their peculiar place in the government institutions specially depend upon the political will for their efficacy.

Stage 3 – Enforcement Strategy

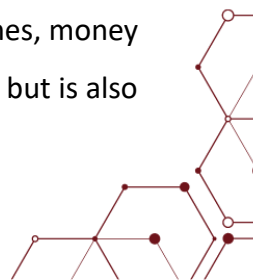
Once the political will is forthcoming, the strategy has to be formulated to provide actions for the words of law. The strategy has following components;

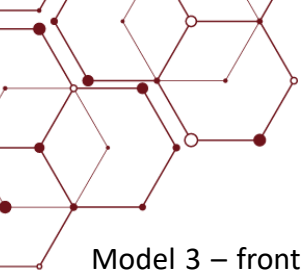
- Institutional mapping– who is who and what is what in the system
- The extent of problem – how big is the problem ? In the case of Anti-corruption, how much money is being lost every year, or how much is the percentage of leakages in the procurement system etc
- Gap analysis – what will the new law achieve which the old one could not ?
- Risk analysis – what factors will cause the failure of proposed law ?
- Response parameters - how will the success of the response be measured ? will it be convictions, seizures or the overall ranking ? How will the monitoring and evaluation be done ?

Stage 4 – Enforcement delivery mechanism/institution

Model 1 – The process model : The delivery system or organization will have wings or sections that will mirror the process of anti-corruption enforcement like complaints-inquiries-investigation-prosecution.

Model 2- The specialized model : The institution will have specialized wings/sections who will perform all the process in their respective field, like banking crimes, cyber-crimes, money laundering etc. This model is more popular due to having the institutional memory but is also subject to misuse and thus requires close supervision.





Model 3 – front-back end model: The core functions are put at the front end like investigation and prosecution but the models takes into account the specialized support for complex operations which are placed at the back end. The support functions would be information technology, forensics and data analysis etc.

Stage 4 – Institutional oversight:

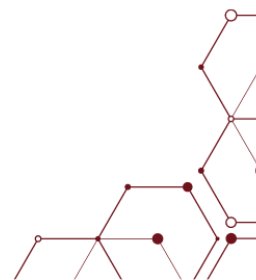
The oversight includes three crucial functions ; quality assurance, monitoring & evaluation, and accountability for misconduct.

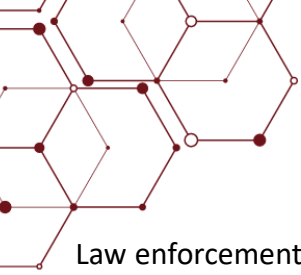
- Quality Assurance ; to be employed more in the management sense and focuses on the efficient utilization of the resources in real time , but also on developing the standards and business processes and then following those processes.
- Monitoring & Evaluation ; goes beyond the day-to-day quality assurance and focuses on the targets and periodic review. It also involves planning and changing the course of strategy if required. The review might result in closing down some functions of the department/institution or even recommendation to start afresh, though that is practically considered impossible but theoretically no institution should go on forever.
- Accountability ; focuses on the complaints of misconduct and excesses by the institutions which are quite likely in our case because ACIs do have tendency to go over-board as a whole or some members become over-zealous and over-step their authority. These excesses, either institutional or personal need to be checked.

B. Anti-Corruption Enforcement in Pakistan

1. Enforcement defined:

Enforcement literally means to push people to do things which they otherwise would not do. The push is the result of ‘force’ which is the core of enforcement. Force is an involuntary action which makes people obey any command and direction, often against their will.





Law enforcement means using the force or compulsion to make people obey the law. Enforcement through law is different from the otherwise use of brute force because it has a sanction of legislation behind it. It is thought to be enforced for public purpose and even when it causes inconvenience, it is deemed necessary for larger good. When force is used for laws it is also kept well defined, limited and guarded. The parameters of force are included in the same laws which allow the force in the first place. A responsible law enforcement member is not fond of using force by choice but only when it is just and proper to employ force.

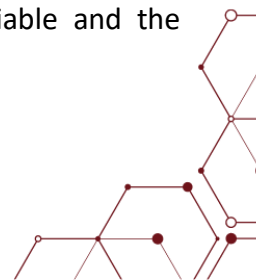
Anti-corruption law enforcement is further extension of the law enforcement and involves all those actions which are employed to either deter corruption from happening or punish those who are found guilty of corruption. This implies that corruption is able to be known, exposed, identified and then interfered with through punitive actions. Anti-corruption process thus involves reporting, sorting, analyzing, collecting and prosecuting the instances of corruption. Enforcement further is of two types ; reactive and pro-active

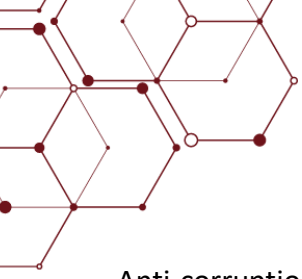
a. Reactive enforcement ; When the agency or in our case, the ACIs come to know about the crime or corruption after it has happened and decides to act upon it. The reactive enforcement is triggered by report of someone affected by corruption , or some internal departmental inquiry or audit reports.

b. Pro-active enforcement; when the agency pre-empts the crime and apprehends the offenders right in the act. Intelligence and analysis are key to the pro-active enforcement because law by definition can only respond once a crime has happened not when it is thought. Though the planning and preparation do give enforcers a window to enter in the process. The undercover operations, controlled deliveries and whistle blowers are some of the methods of pro-active enforcement.

2. Peculiar features of the anti-corruption laws in Pakistan

i. Anti-corruption is not a crime against one person or a group of persons but is a crime against the society, government and state. When one person is wronged, he goes from pillar to post to obtain the remedy. The justice process is person specific, the accused are also identifiable and the question of loss and gain is quite obvious.





Anti-corruption cases are different. The accused are known persons but the victim is not. This makes the offence forgettable and easy to hide. The state is all powerful but state is also impersonal. A theft of few hundreds pinches a common man but theft of few billion is lost and forgotten. Since it did not happen to you so you are not bothered. Same attitude is shown even by those in the government.

But at the same time, corruption is source of anguish and discomfort. You also know that something wrong is going on, but can't do much about it. Corruption is thus an offence which is more felt than seen.

Anything relating to feelings makes the public emotional and sentimental, making the enforcement all the more challenging.

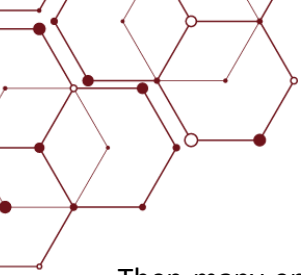
ii. Corruption is an offence by the powerful against the powerful. It is an offence carried out by the powerful because the corruption by definition is abuse of power. Only those having some kind of government and state power are able to commit it.

At the same time, corruption signifies vulnerability of the powerful and used as tool to bring them down. That makes anti-corruption a source of exploitation too. Often the small fish bears the brunt and the proverbial big fish manages to escape, but often the only way to thwart the designs of the big fish is through anti-corruption. Thus political influence and institutional weakness have all been cited in the literature as factors hindering the effectiveness of ACIs.

iii. Anti-corruption is also a tedious exercise. It requires patience and hard-work. Anti-corruption investigations are not like Sherlock Holmes solving crimes but operate like building a large infrastructure brick by brick. In-fact, anti-corruption results hardly appear in the short run. There are thus no quick fixes but slow and patient work on thousands of transactions being detected in the maze of millions.

iv. Anti-corruption is also prone to exploitation at the hands of either over-zealous or even the corrupt enforcers. In developing countries, the corruption and misuse in the anti-corruption institutions is also endemic.





Then many enforcers are swayed too much by public sentiments and ignore or by-pass the due process to frame the accused wrongfully. Public by default is happy when some big-wig is arrested or prosecuted and are hardly bothered about evidence. They see him as the embodiment of corruption they endure but justice requires that those who stand trial are proved guilty beyond any doubt.

NAB law after seeing many ups and down is quite a watered down version of what it used to be and the its powers have been diluted considerably. In this analysis, the existing institutional position of NAB has been taken but context cannot be fully understood without history.

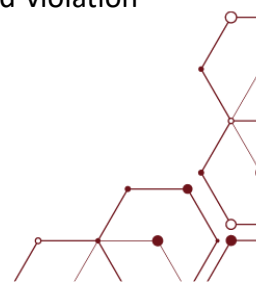
3. Phases of Anti-corruption Institutions:

Phase-1 PCA-1947, Prevention of Corruption Act 1947 came into existence shortly before the coming into existence of the country i.e. March 1947, though commonly it is thought that the law was promulgated after 14 August 1947. In-fact the law making process had commenced while the second world war (1939-1945) was going on and massive corruption was reported in the war procurement.

The lawmaking took its time and even when the British had decided to leave the sub-continent, they did make the very first anti-corruption law which was inherited by both new countries. The institutional setup didn't exist then and officers from the police service were taken to set up what was the called 'special police establishment' which was also continued in the new country.

Phase-2 ACE-1958 , ACE or Antic-corruption establishments were more product of the martial law of 1958. The establishments were set up in 1956 but the law regulating them came in 1961.

Politicians and minor bureaucrats were the targets of ACE and the most common offence was in allotments of refugee properties which had been going on since 1947, and violation of quotas and licensing which had been freshly instituted.





Phase-3 FIA-1974 , The Bhutto years (1972-1977) besides the political and economic measures, were also marked by institutional developments as many new entities were set up as regulators, enforcers and facilitators. Identification cards, passports, immigration, social security, labor, industries, agriculture and so many other institutions were set-up.

The law enforcement also saw lot of growth and an all-powerful FIA (Federal Investigation Agency) on the lines of American FBI was established which was not just given powers under the PCA 1947, but other laws dealing with immigration, banking and drugs were included in its schedule of offences.

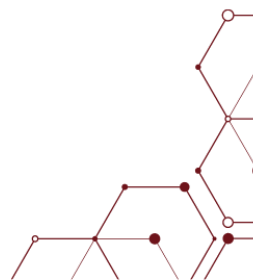
Phase-4 – NAB-1999. National Accountability Bureau (NAB) came into existence with the arrival of the military government and has been the most potent and powerful ACI during the last 75 years specially in the period between 1999-2002.

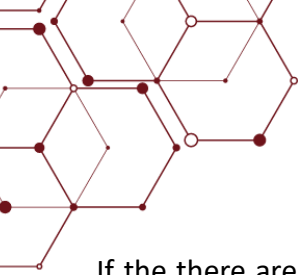
Although the anti-corruption wave had been going on for some time- through an ordinance during the caretaker government of 1996 and later Ehtesab (Accountability) Act of 1997, but the pinnacle reached with the establishment of NAB in 1999.

4. Anti-corruption System and Process:

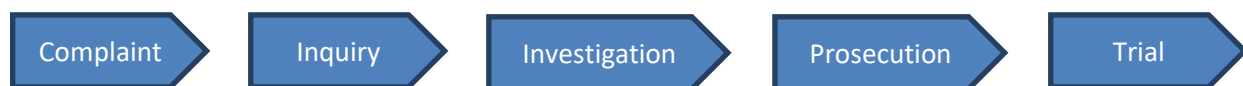
Institutions operate in the form of a system. The system thus links more than one institutions to each and produces desired results. The anti-corruption (AC) system thus does not just include the institutions mandated by the AC law but has links with other institutions as well, the judiciary, finance, bureaucracy, even the global institutions.

The institutional process thus operates like a giant supply-chain operating from refinery to end use. There are number of hubs and filters in the supply chain for adding value to the product and there is always a possibility of leakages which will decrease the value of the product.





If there are no leakages and filters operate well, the consumers get the quality product ; if however there are more leakages and the corresponding filters are dysfunctional, the quality of the product will be sub-standard. In the Anti-corruption system, the product is the criminal case, which moves from complaint to the final conviction. The supply chain has number of filters like registration, arrest, prosecution and trial, and possibility of leakages at every filter. If the complaint or first reports gains value while moving along the supply line, the case would be effective and the justice would be served. But on the other hand, if the case is sub-standard or just wrong, then neither justice be served nor the purpose of law would be achieved. The process is mapped something like below;



5. Drivers of Anti-Corruption Enforcement

i. Power and interests

As already mentioned, anti-corruption in Pakistan has become a game of power like so many other countries including the developed ones too. Power and interests are not limited to the government but are spread all across the state and even outside it. The enforcement depends on the relative power or lack of it. Linked with powers are the interests ; commercial, political and personal.

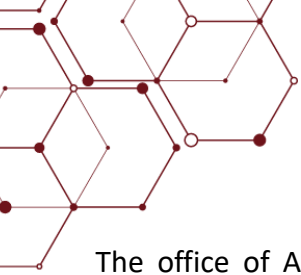
ii. Perceptions and impressions

ACI's head or the governments operate mostly on the perceptions and impressions. As discussed earlier, corruption is not a crime which is reported regularly by ordinary citizens. It has to be probed and identified. Where one finds corruption depends a lot on where one looks and where one looks depend upon perception created in the minds of the enforcers through media or otherwise. These perceptions have also a reactive nature to them, and depend upon how the impression is created and spread.

iii. Government reports and irregularities

The government does produce reports of the spending and quite frequently the instances of irregularities surface about the misuse of power by government functionaries.





The office of Audit General also produces its reports though the evidentiary value of these reports remain below-par. Normally the process of arrival of cases from the government side is slow and takes months if not years. The evidence is mostly compromised by then and those involved are able to cover their tracks too.

C. Parameters of Effective Law Enforcement

1. Ownership:

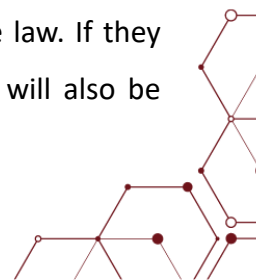
Laws are made by the legislature of the politicians and enforced by the agencies or institutions. If these enforcers do not show ownership of the laws, the enforcement remains lagging. On the other hand if the agencies take the ownership in letter and spirit, they will be able to serve the law according to its purpose. Mostly in the case of Anti-Corruption laws, we see mixed response. In the start when a new institution is set-up, the level of ownership is high but with the passage of times it starts to wane. This also has a lot to do with the fortunes of the agencies being tied with the government of the day so the when the government or the regime loses its luster, the institutions also lose the sense of ownership.

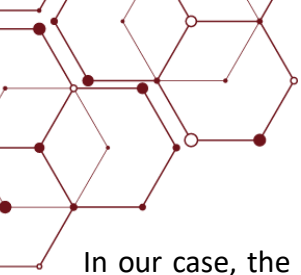
2. Adoption:

Ownership is mainly a thought process, an idea and the state of mind for those who are tasked with the mission, and really significant. But the ownership on its own becomes just a lip-service if the laws are not adopted by the institutions. Adoption signifies the foundation on which the legal structure is raised. If the law instructs that the priority of the organization will be for example money laundering, the institution is required to adopt it into its system. The adoption mechanism includes making of rules, administrative directions and standing operating procedures.

3. Autonomy

No institution can operate without sufficient autonomy. Autonomy provides the agency to act upon the laws. The ACIs (Anti-corruption institutions) need to have that agency to chart out their path and design their functions in the light of the objective laid down in the law. If they lose their autonomy and are micro-managed, they will lose incentives to act and will also be bogged down, not to mention the effect on the transparency and fairness.





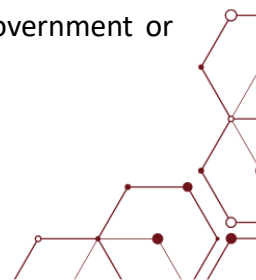
In our case, the ACIs autonomy has been a significant issue. Two of the ACIs (FIA & ACE) are not autonomous at all while the third one (NAB) despite being legally autonomous has been subject of controversies for having its autonomy compromised. It may also be noted that autonomy is not restricted to operational and enforcement autonomy but also includes administrative autonomy as well. Both FIA & ACE depend heavily on the government for provision of manpower and logistical resources. There have been many instances in which the government of the day is seen to be applying pressure through the budget and human resource etc.

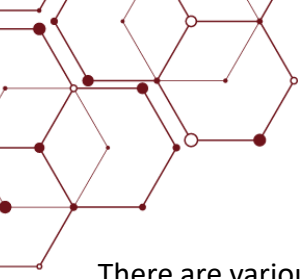
4. Professionalism:

Professionalism is the most common complaint regarding the working of our ACIs. Professionalism is reflected in the ability to do the job and the resources employed. Both the capacity and resources have been a serious issue in our case. The quality of investigation and enforcement shows significant variations and even the relatively professional NAB has been at the receiving end of the remarks by the superior courts for their lack of professionalism. In contrast, the UK's National Crime Agency (NCA) which has been raised quite recently and in very short time has established itself as an effective enforcement institution. Our ACIs on the other hand are found struggling when it comes to professional enforcement; be it use of technology, forensics, intelligence, or even research and analysis. The number of convictions, seizures and recoveries largely paint a dismal picture specially in the case of FIA and ACEs.

5. Accountability:

Autonomy is a must for any institution but the other side autonomy is accountability. ACIs being all powerful and strong must be allowed to chart out their path and devise strategies to realize their objectives but also have to be taken to account for their actions without controlling them or compromising their operations. They being the recipient of the public money have to be made answerable on the criterion of efficiency but also need to be questioned on fairness for having the power to take liberty and property of people. One big caveat always remain with the accountability in the systems like ours, that the oversight forums become instruments of control. The temptation to control an all-powerful ACI will be too much to resist by an government or watchdog , and the trend has been really prominent in our system as well.





There are various models of accountability of the ACIs prevalent in other countries ;

- Judicial oversight
- Independent oversight through an ombudsperson type forum
- Public or parliamentary oversight

D. The Gaps in the Anti-Corruption Enforcement

1. The Enforcement Gap:

In the light of the enforcement parameters defined in the previous section, the level of enforcement in each specific parameter (based on the interviews with former and current members) has been identified and then total average effectiveness is given at the end which ranges from low to medium high at best.

S No.	Enforcement Parameters	FIA	NAB	ACE
1	Ownership	Low	High	Low
2	Adoption	Medium	High	Low
3	Autonomy	Low	Medium	Low
4	Professionalism	Medium	High	Very Low
5	Accountability	Low	Low	Low
	Total Average effectiveness	Medium-low	Medium-high	Low

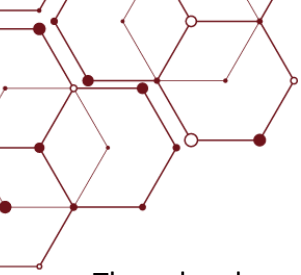
2. Learning/Analysis Gap:

This may be called as R & D (research and development) gap or the intuitional memory gap. The ACIs suffer from serious learning gap which is hardly surprising because the learning capabilities are mostly for the long run and the ACIs unfortunately have hardly operated in the longer terms. Without the learning and analysis, the institutional memory is not created and lessons learnt are not analyzed to bring changes. The modern tools like trend analysis, risk analysis, market surveys and use of information systems are rarely employed for the sake of analysis.

3. Strategy Gap:

The role of enforcement strategy has already been discussed above. The ACIs under discussion and overall institutional development has been carried out mostly without strategy.





There has been one effort in the form of National Anti-corruption strategy (NACS) in 2002-03 but that proved to be too ambitious and too broad. The ACIs need to have their indigenous and focused enforcement strategies which have not been seen so far.

4. Performance Gap:

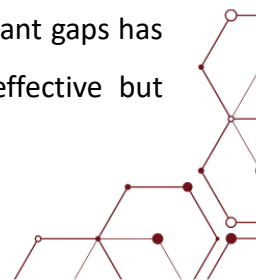
The ACIs have either not been aware of the targets which they are required to meet or even if they do, end up largely failing to meet those targets. The performance parameters as far as made, focus only on the input or activity performed by the ACIs. The outputs by which most of the ACIs around the world measure their performance like; arrest, seizures, recoveries, assets confiscated, convictions, are either not paid much attention or too poor to highlight. The results depend upon two factors, resources and capacity and the ACIs lack in the both. It is also common that resources are diverted towards the ACSs like the raise in salaries etc but it must be considered that the resources without the corresponding increase in capacity do not translate into results.

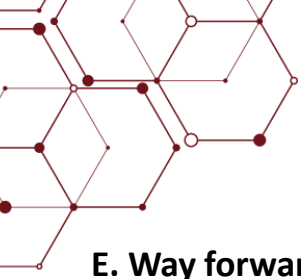
5. Capacity Gap:

Capacity has been defined as the budget, human Resource, training, internal accountability, prosecution, forensics, information technology (IT), Awareness & Outreach and International Cooperation. In the same analysis, it has been found that except for NAB, the other two ACIs suffer from serious lack of capacity specially when it comes to prosecution, IT, forensics and quality of human resource. United Nations in its country review of the United Nations Convention Against Corruption (UNCAC) has also urged Pakistan to “significantly strengthen its specialized investigative, prosecutorial and enforcement capacities for corruption cases”.

6. Linkage Gap:

The ACIs cannot operate in isolation. In-fact, their entire work and performance is dependent on other actors. They are dependent on the banks and financial institutions for the data, government and regulators for enforcement action, prosecution and courts for legal action and international linkages for the repatriation and information. One of the most significant gaps has been the failure to form and ensure linkages. NAB in its heyday was quiet effective but otherwise situation is quite dismal.





E. Way forward for the Institutional Development of ACIs

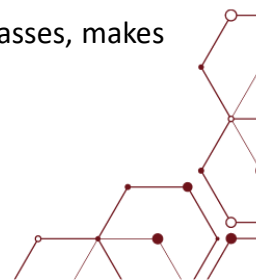
The institutional framework does not reveal a very encouraging picture. Already the FATF experience has revealed serious strategic deficiencies in our enforcement institutions. Although, FATF was focused on money laundering and terrorist financing but since the institutions under review were the same ACIs therefore the external analysis provides a good neutral and outside view of their working.

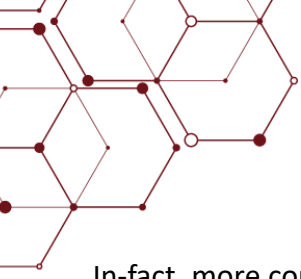
These strategic deficiencies coincide with the enforcement parameters identified in this analysis. Added to the strategic deficiencies, is the varied and tumultuous journey of the ACIs, having been tied with the political fortunes. The ACIs have seen so many periods of highs and lows as far as the enforcement activity is concerned. Unfortunately, even the heightened activity brought more harm than good when it comes to the credibility and effectiveness of the ACIs. The effects have also been seen in the reversal of the fortunes of the ACIs too as has been witnessed in the recent amendments in the NAB law which has shrunk the scope of NAB considerably.

1. Political consensus and Way Forward:

The institutional analysis of ACIs does not present a very bright picture. Political conflict has got a lot to do with the ACIs being led astray. It is not at all surprising to thus conclude that the way forward for the ACIs is linked with the political developments. Indeed, the political strife has taken the focus away from the endemic corruption. Political instability makes the anti-corruption institutionalization harder and as noted by renowned anti-corruption expert based at SOAS UK Mushtaq Khan “Formal rules and across-the-board anti-corruption strategies are only likely to be effectively enforced when their enforcement is aligned with the interests of powerful organizations in the country”.

The window of opportunities does however arise where the train of anti-corruption can be put back in track. One of the chronic institutional hazards has been that political issues take away too much limelight and all the activity is defined by the political lens. While in fact, so much enforcement can be ensured without the political considerations. Here the big caveat has been the top-down enforcement approach. The top-down enforcement appeals to the masses, makes more headlines and has appearance of impact.





In-fact, more corruption any day is being done at the micro level. It is the street level bureaucrat, the patwari (land clerk), the street cop, and the tax collectors who are doing their business unhindered while all the hullabaloo is about the corruption at the top. One important thesis is that the top corruption gives rise to micro-corruption but much of the micro corruption has the life of its own. Therefore alternative approach identifies anti-corruption strategies from the bottom up. This involves identifying the characteristics of the corruption constraining particular development outcomes.

The missing link of the whole puzzle is mostly focused on the government that is politicians and the ACIs but the big machine that is the bureaucracy hold the key to any effective anti-corruption enforcement. Any enforcement action leads to a disruption in the bureaucratic process and it is in their interest to slow down that process. Any detection of corruption in the government makes the hierarchy looks bad and it is in their interest to gloss over or ignore even if they are not involved. Any enforcement action that hopes to succeed thus should start from bottom and start internally.

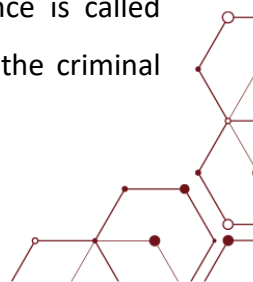
2. How to Address the Enforcement Gaps:

i. Clarity of jurisdictions

There has been a lot of over-lapping and confusion over the jurisdictions of ACIs. Ideally, there has to be a single AC law and single AC agency enforcing that law. The devolution of federal powers post-18th amendment has made the task tricky and challenging. The decision by the Supreme Court on sustaining the NAB jurisdiction over the provincial governments has been clear but the ACEs still are playing their role too. A larger institutional consensus is needed to address the issue of jurisdiction.

ii. Definition of Corruption :

It would appear strange to a layman but corruption has not been clearly defined in the law yet. The Prevention of Corruption Act 1947 has corruption in its title but the offence is called 'criminal misconduct' which extends the public servants' official misconduct into the criminal domain.





The NAB law did make an effort by having an offence of 'corruption and corrupt practices' but the offence had list of instances which would come under the larger umbrella. These instances were as varied as the bank default, cheating public at large and misuse of authority.

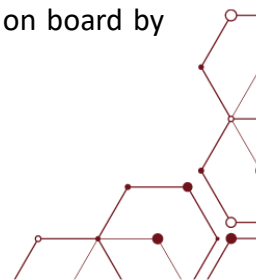
The way forward is going back to drawing board and take the universally accepted definition of corruption i.e. abuse of public office for personal gain, and develop the instances of abuse and gain while further explaining the public office too. It is also necessary that corruption may be defined in the specific terms so that the ingredients of the offence, evidence parameters and the process of investigation is made clear.

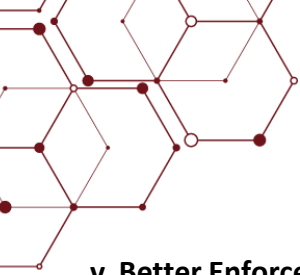
iii. Institutional Norms:

No institution can thrive or grow without formal and informal norms. The formal norms are incorporated as Rules, these have been discussed in detail in an earlier brief. Unfortunately the Anti-corruption institutions have been swinging between aggressor and victims, and between the hatred, aggression and over-zealousness on one side, and bitterness, anger and frustration on other, both negative feelings which fester negative norms. The way forward is to create and structure small wins for the ACIs which become source of encouragement and establishment of norms. For this, the contested areas have to be set aside and consensus areas have to be focused. These small wins will instill confidence both internally and externally and go a long way in setting the norms of actions.

iv. Institutional process:

The process like that of a supply chain has been discussed above. A smooth institutional process ensures less leakages and production of quality product. As already mentioned, the ACIs suffer from huge workload, most of which does not go anywhere. A process following the 20-80 principle will ensure that limited resources are put on high impact cases which are selected by a larger consensus. The process should also focus on developing the linkages with other stakeholders which are suffering from serious gaps. Here again the minimum effort-maximum impact principle will be most useful and would result in the actors being brought on board by consensus.





v. Better Enforcement Model:

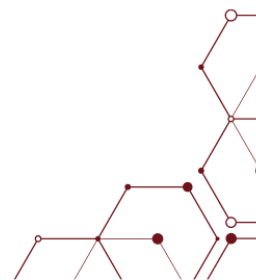
No enforcement model is perfect but the model can be improved and made better. It has been discussed earlier that the present enforcement model of the ACIs is reactive and prone to ad-hocism.

It has also been discussed that the complaint driven reactive model does work in the conventional law enforcement where the complaints are automatically coming forth but does not achieve results in anti-corruption where the offence is victimless mostly and spread across the layers of officialdom.

To control corruption, one needs to locate corruption first and to locate corruption one needs to have an idea of the hubs and nodes where the corruption takes place. Locating corruption is not the defining step, it should be followed by the responsibility, the classic what and who. Then comes when, where and how, which are brought on surface by the evidence.

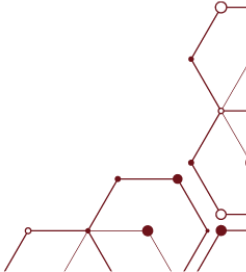
All this requires following features in the ACIs ;

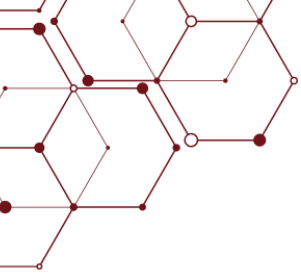
- Capacity
- Direction and focus
- Selection & Prioritization
- Follow up and monitoring







Bibliography


- Douglass North, *Institutions, Institutional Change, and Economic Performance* (New York: Cambridge University Press, 1990).
 - Eleanor OStrom, *Governing the Commons: The Evolution of Institutions for Collective Action*, Cambridge University Press, 1990
 - Ishrat Hussain , *Why Institutional Capacity Matters and Where Reforms Should Star*, in *Pakistan's Institutions We Know They Matter, But How Can They Work Better ?* edited by Michael Kugelman & Ishrat Hussain, Wilson Center Washington DC, 2018.
 - Ehsan Sadiq (2020) , *Anti-corruption investigation agencies in Pakistan: an appraisal*, NDU ISSRA Papers Volume-XII, 2020 [47-73]
 - DFID UK *Why corruption matters: understanding causes, effects and how to address them Evidence paper on corruption Evidence paper on corruption. (2015)*
 - Ehsan Sadiq (2020) , *Anti-corruption investigation agencies in Pakistan: an appraisal*, NDU ISSRA Papers Volume-XII, 2020 [47-73]
 - NAB, *National Anti-Corruption Strategy (2002)* accessed at https://baselgovernance.org/sites/default/files/2020-04/pakistan_national_ac_strategy_endorsing_ips_2002.pdf
 - Ehsan Sadiq (2020) , *Anti-corruption investigation agencies in Pakistan: an appraisal*, NDU ISSRA Papers Volume-XII, 2020 [47-73]
 - United Nations , *Executive summary Pakistan, Review of implementation of the United Nations Convention against Corruption (2017) s* accessed at <https://www.unodc.org/documents/treaties/UNCAC/WorkingGroups/ImplementationReviewGroup/ExecutiveSummaries/V1705613e.pdf>
 - APG (2019), *Anti-money laundering and counter-terrorist financing measures - Pakistan, Third Round Mutual Evaluation Report*, APG, Sydney
 - DFID, *Anti-Corruption in Adverse Contexts: A Strategic Approach*, Mushtaq H. Khan et al Working Paper SOAS 2016
 - (2015) *ibid*
 - *Section 5 Prevention of Corruption Act 1947*
 - *Section 9 , National Accountability Ordinance 1999*
- 



 [accountabilitylabpk](#)

 [AccountLab](#)

 [accountlab](#)

 0300-8555349

 accountabilitylab.org/Pakistan

