

[Working Paper Series: Horizontal Accountability in Asia]

Horizontal Accountability in Pakistan

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1. Background

Horizontal accountability refers to the ability of state institutions, including the legislative and judicial branches and other oversight agencies, to hold accountable the executive branch of the government. Horizontal accountability can be achieved when different institutions implement efficient checks and balances to prevent the abuse of power. For example, when the legislature oversees the executive branch or when a constitutional court reviews the laws adopted by the legislature, these are also called forms of accountability that run horizontally ‘among equals’ (O’Donnell 1998; Lindberg 2013).

In a political structure, horizontal accountability is commonly defined as the exercise of oversight by different institutions over one another. Institutions that exercise such oversight include legislative committees, which not only check the actions of the government but also have the power to hold them accountable. The legislature, specifically the National Assembly in the case of Pakistan, can also exercise accountability by initiating a vote of no-confidence. Therefore, the horizontal accountability mechanism emphasizes the separation of powers among state institutions, which prevents the abuse of power and allows other state institutions to ask for information, question officials, and possibly punish improper behavior (Rose-Ackerman 1996).

Most democratic countries stand on three pillars with well-defined functions. The legislature makes laws, scrutinizes the executive's performance, and provides a platform to express public sentiments through elected representatives; the judiciary settles disputes between people, groups, and governments; and the executive is responsible for carrying out laws and managing state affairs. In Pakistan, the line between the legislative and executive branches is blurry because the Prime Minister serves as the chief executive and leader of the majority party in the national assembly and, as such, simultaneously represents both pillars of the state. In an ideal system, these three state pillars would not interfere with each other's affairs. In Pakistan, however, inter-institutional interference is such a severe issue that former Chief Justice of Pakistan, Justice Asif Saeed Khosa, proposed an inter-institutional dialogue among these three pillars including military and intelligence agencies to resolve this issue (Mehboob 2023).

Over the last two decades, ‘accountability’ has become Pakistan's most famous political slogan (Mehboob 2022). Despite many reforms in the accountability system, Pakistan received the worst ranking in the Corruption Perception Index (CPI) released by Transparency International (TI) (TI 2023). Per CPI rankings, Pakistan's score has been declining continuously since 2019.

Similarly, the Control of Corruption Index (CCI) that measures horizontal accountability also depicted poor performance by Pakistan. From 2013 to 2020, Pakistan's score ranked less than 1.0, except for in 2014, when its score was 0.83. Institutions like the judiciary, legislature, and oversight agencies like the National Accountability Bureau (NAB) and Anti-Corruption Departments are responsible for executing horizontal accountability in Pakistan.

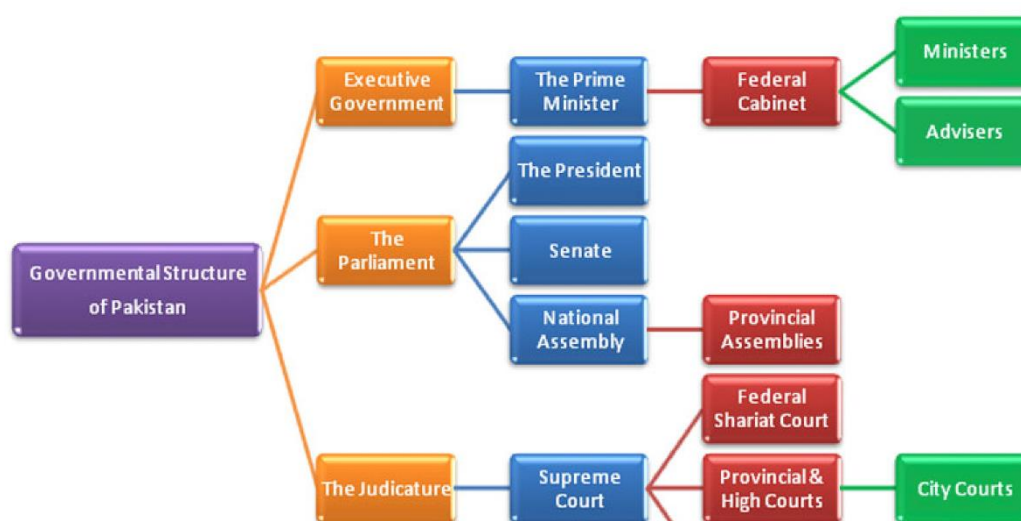
In Pakistan, it is widely believed that the existing institutions associated with ensuring accountability, especially the NAB, are responsible for political instability and the worst economic conditions in the country. Apart from its poor performance, the media, politicians, and even the judiciary have observed that the NAB is involved in selective accountability, political victimization, political engineering, and misuse of authority (Iqbal and Mustafa 2022).

The Parliament of Pakistan executes the public sector financial accountability function through the Public Accounts Committee (PAC) and parliamentary committees. Motions, resolutions, call attention notices, and points of public importance are raised in the House, and parliamentarians ask questions accordingly. In parliamentary democracies, the committees are considered the “eyes, ears, hands and even brain of the Parliament.” Another saying about the importance of the Committee is the “Congress in session is Congress in Exhibition, while Congress in its Committee Room is Congress at work” (Joseph P. Haris). In considering Pakistan, ‘Congress’ can be replaced by ‘Parliament’.

The purpose of this paper is to evaluate the current state of horizontal accountability in Pakistan by studying the strengths and weaknesses of its mechanisms, including laws and regulations. This paper will also help to develop a basic understanding of key issues of horizontal accountability structures in Pakistan by providing different perspectives on how horizontal accountability can contribute to the functioning of democracy.

2. Horizontal Accountability Mechanisms in Pakistan

Pakistan's governmental structure is composed of three major institutions: the executive government, the parliament, and the judiciary, and all three are guaranteed separated and independent by the Constitution of the Islamic Republic of Pakistan. The executive branch includes the Prime Minister, who leads the cabinet. The legislative branch contains a bicameral parliament consisting of the Senate, the National Assembly and four Provincial Assemblies. Finally, the judicial branch consists of the Supreme Court, the High Courts, and the lower Courts. Additionally, there are oversight agencies meant to check the abuse of power by the executives. These agencies include the National Accountability Bureau (NAB), the Office of the Auditor General of Pakistan (AGP), federal and provincial ombudsmen, and anti-corruption establishments at the provincial levels.

Figure 1. Governmental Structure of Pakistan

2.1. The Legislature

The Parliament of Pakistan and provincial assemblies have three key functions: legislation, representation, and oversight, or to monitor the performance of the elected government through plenary and ministry-wise committees. The Rules of Procedure and Conduct of Business in the National Assembly, the Senate, and provincial assemblies contain special provisions that empower the standing committees to monitor the performance of the Ministries and their associated public bodies and forward their recommendation reports to the Ministry, which then submits its response to the Committee (National Assembly of Pakistan n.d.). The committees deal with a large part of the business of the House because many parliamentary tools that include legislation, motions, resolutions, call attention notices, question hours, and points of public importance are raised in the House but may eventually end up in the committees.

The role of the PAC includes the examination of the government's annual financial accounts, the report of the AGP, and other matters that the Minister of Finance refers to it. Similar rules in the provincial assemblies regulate PAC working within them. The Controller General of Accounts compiles the annual accounts, which the AGP audits. Under Article 170 of the Constitution of Pakistan, the AGP then submits its annual audit reports to the President, who lays them before the Parliament. After this, the Parliament refers these yearly audit reports to PAC for scrutiny (Cheema 2020).

Performance

During the past four years, from 2018 to 2022, 38 standing committees of the National Assembly convened 806 meetings and presented 319 reports, while 37 Senate standing committees convened 801 meetings and presented 440 reports to the House between 2019 and 2022.

On the other hand, between December 18, 2018, and December 2022, PAC held 503 meetings, including meetings of sub-committees. PAC discussed 10,278 paras and referred 78, 31, and 3,821 paras to NAB, FIA, and DAC, respectively. Moreover, PAC settled 617 grants and 2,984 paras. However, 1,029 grants and 21,217 paras are still pending. During this period, 999,013.06 million rupees (Rs.) were recovered.

Table 1. Performance of 15th Public Accounts Committee (PAC)

PERFORMANCE OF 15TH PAC

(18TH December, 2018 TO DECEMBER, 2022)

Meetings	10 years Workload AR-2010-11 to AR-2019-20		No. of Paras Discussed by 15 th PAC	Paras referred to NAB by 15 th PAC	Paras referred to FIA by 15 th PAC	Paras referred to DAC by 15 th PAC	Settled by 15 th PAC		Pendency after meetings	
	Grants	Paras					Grants	Paras	Grants	Paras
503	1646	25532	10278	78	31	3821	617	2984	1029	21217
Total Recovery Rs. 999,013.06/- million from 18 st December, 2018 to December, 2022										

The National Assembly can also constitute a special committee. For instance, a special committee on railways was established on April 22, 2008, by the National Assembly through a resolution on the issue of the allotment of Pakistan Railways land to the Royal Palm Golf and Country Club, Lahore, on nominal prices. The committee presented its report on August 26, 2010, and subsequently recommended the termination of the contract, the recovery of losses from the contractor, and legal proceedings against the involved officials (National Assembly of Pakistan 2010). The Supreme Court (SC) nullified the lease agreement and gave possession of the land back to Pakistan Railways (Sheikh 2019). In this way, the committees of the Parliament successfully responded to the unlawful encroachment of the executive officials.

2.2. The Judiciary

The judicial branch in Pakistan is constitutionally and legally independent to check and penalize executive wrongdoings. Article 184 (3) of the Constitution of Pakistan empowers the Supreme Court to take 'suo motu,' meaning "on its own accord," notice on any question of public importance involving the enforcement of fundamental rights (Mehboob 2020). Similarly, Article 186A of the Constitution authorizes the SC to transfer any case, appeal, or other proceedings pending before any High Court. Furthermore, as per the Supreme Court Rules, 1980, the constitution of benches is also at the discretion of the Chief Justice of Pakistan.

The Constitution of Pakistan provides a method of appointing superior court judges in addition to the qualification criteria. As per Articles 175 & 175A of the Constitution, the Judicial Commission of Pakistan (JCP) fulfills the appointment of judges for the Supreme Court and the High Courts. Once JCP approves the name of a judge for the Supreme Court, it goes to the eight-member Parliamentary Committee, which then has two weeks to consider the nomination.

The Constitution also provides the procedure for removing judges from the superior courts through the Supreme Judicial Council (SJC). Thus, the Constitution ensures freedom, independence, and impartiality from the superior judiciary.

Performance

According to the SC press release dated February 25, 2023, 52,450 cases are pending with the SC. Comparably, as per the 2020 annual report of Judicial Statistics of Pakistan, Pakistan's superior and lower judiciaries face a backlog of 2.15 million cases (Law and Justice Commission of Pakistan 2020). Moreover, Pakistan was ranked 129th out of 140 nations according to the 2022 Rule of Law Index formulated by the World Justice Project, while in 2021, Pakistan was ranked 130th out of 139 countries (World Justice Project 2022).

2.3. Other Oversight Agencies

National Accountability Bureau (NAB)

The National Accountability Bureau is a leading anti-corruption agency in Pakistan, charged with eliminating corruption. It follows the National Accountability Ordinance (NAO)-1999. In 2002, NAB launched the National Anti-Corruption Strategy (NACS), which allowed the NACS team to conduct surveys, study external models of international anti-corruption agencies, and involve local stakeholders (National Accountability Bureau n.d.).

Accountability courts are put into place to protect against all forms of abuse of power, and cases may be transferred between these courts. Under Section 22 of the NAO, the NAB chairman may investigate any suspected offense that appears credible under reasonable grounds and is either referred to him or discovered by himself. If deemed necessary, the chairman may collaborate with other agencies or people who can provide adequate assistance in the investigation. NAB refers the cases to accountability courts, which then decide the outcomes as per law.

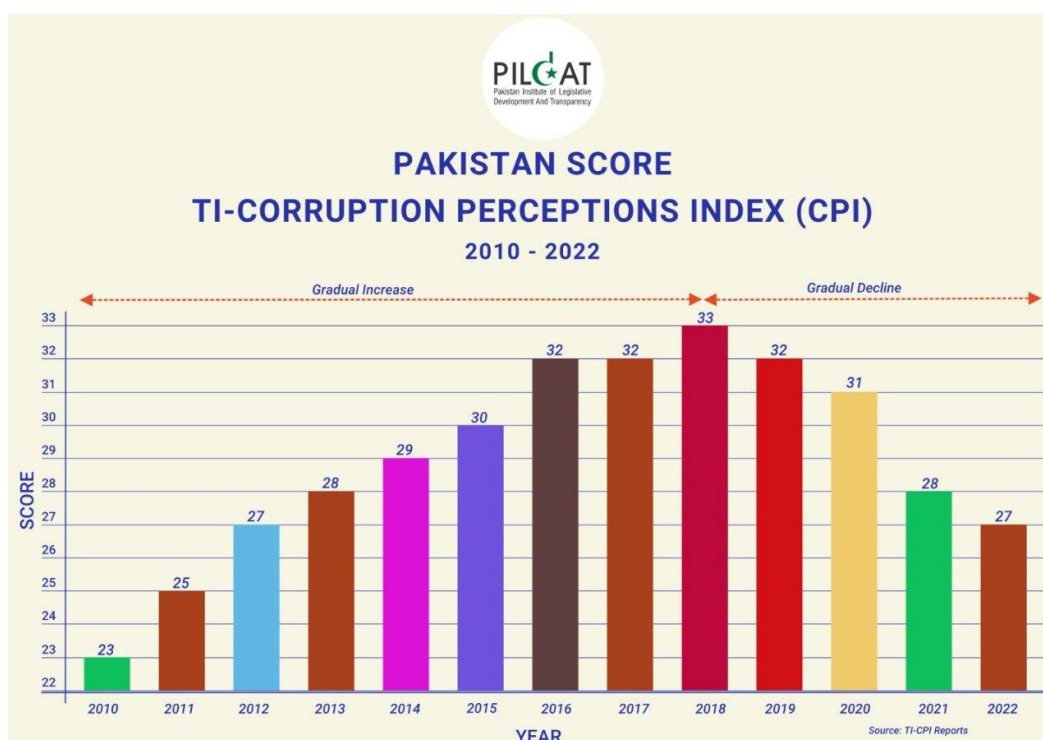
The NAO has experienced many amendments since 1999. The amendments passed by Parliament in 2022 have addressed almost all of the issues which were criticized either by the courts or the victims of the NAO, including the appointment process for the chairman, exclusion of tax matters from the scope of NAO, reduction of the period of remand from 90 to 14 days, and the reduction of the terms of the NAB chairman and prosecutor general from four to three years. NAO has also been made inapplicable to cabinet ministers and several other officeholders who have made policy decisions in which no monetary gain is evident. The powers of arrest have also become rationalized (Mehboob 2022).

Performance

According to the 2021 annual report, NAB received 34,813 complaints. During 2021, NAB authorized 392 inquiries and 121 investigations and filed 93 References in Accountability Courts. Additionally, NAB recovered Rs.91.195 billion of the money looted from corrupt elements (directly and indirectly) during the year. As per the report, the success rate of NAB cases is 71.5%. A total of

11 cases of former Presidents of Pakistan, 19 cases of sitting/former Prime Ministers, 280 cases of sitting/former ministers or parliamentarians, and 354 cases of former/serving bureaucrats are either under process at NAB or under trial at accountability courts (National Accountability Bureau 2022). The perception of NAB is that it is performing well, but international reports on Pakistan depict a gloomy picture. Pakistan was ranked 129th out of 140 nations according to the 2022 Rule of Law Index formulated by the World Justice Project, while in 2021, Pakistan was ranked 130th out of 139 countries. Similarly, based on the annual reports of Transparency International, Pakistan's Corruption Perception Index (CPI) score has shown a continuous decline since 2018.

Figure 2. Corruption Perception Index (CPI) score of Pakistan (2010-2022)



Auditor General of Pakistan

The Office of the AGP is a constitutional position and is considered one of the main pillars of Pakistan's governance and accountability framework that ensures good use of public money. The term, appointment, removal, functions, and powers of the AGP are defined from Articles 168 to 171 of the Constitution. Article 168 of the Constitution of Pakistan appoints the AGP (Auditor General of Pakistan n.d.).

The functions of the AGP include, but are not limited to, the determination of principles and methods under which the accounts of the Federation and the provinces are kept; the certification of financial year accounts compiled by the Controller General of Accounts; the annual receipts and disbursements of the Federation, the provinces, and the districts; the submission of the certified accounts with recommendations; the preparation of reports on the accounts of the Federation and provinces; and the submission of these report to the President and governors, respectively, who then allow them to be presented to the National and Provincial Assemblies.

Performance

Per the 2020-2021 annual report of AGP, Federal Audit Operations (FAO), which work under the supervision of various audit wings of the AGP, carried out the audit of 6,848 formations of Federal and Provincial Governments during the 2020-2021 audit year. It audited an amount of Rs. 19,149.49 billion and recovered an amount of Rs.487.24 billion (Auditor General of Pakistan 2022).

3. Deficiencies in Horizontal Accountability Mechanisms

Unfortunately, parliamentary committees in Pakistan at both the national and provincial levels have not been very active or effective despite their powers. There is no constitutional, legal, or institutional limits of the legislative branch to check the executive branch sufficiently. For instance, the Finance Bill does not get referred to any of the standing committees of the National Assembly. Under Article 73 of the Constitution, it is mandatory that the Senate provide its recommendations on the Finance Bill, containing the Annual Budget Statement, within fourteen days after its referral by the National Assembly of Pakistan. The National Assembly can pass the Finance Bill with or without the recommendations of the Senate. Similarly, PAC has limited provisions as it only scrutinizes inputs and compliance audits. Moreover, dealing with the previous year's reports consumes most of the PAC's time. Its recommendatory nature is also not taken seriously by government officials. For example, on April 2, 2022, the Islamabad High Court (IHC) set aside its directives when it restored 68 previously dismissed employees from the Pakistan Agricultural Research Council (PARC). Additionally, the political nature of PAC membership also influences its ability to work, as the members of treasury benches are not keen to hold their government accountable to the legislature.

The immense backlog of cases in the courts is also a significant problem. Even the superior judiciary has not been able to deal with case pendency effectively. Besides this, the alleged encroachment by the judicial branch on the executive domain is criticized widely in the media. Some examples of these encroachments include the opening of shopping malls by the SC in 2020, which were previously closed down by the government due to the coronavirus; a penalty of \$6 billion imposed by the International Centre for Settlement of Investment Disputes (ICSID) in 2019; and the removal of Prime Ministers Syed Yousuf Raza Gillani and Mian Muhammad Nawaz Sharif in 2012 and 2017, respectively (Bhatti and Iqbal 2023).

Political victimization is a primary issue of NAB. The courts and honorable justices have not only questioned the performance of NAB but have also criticized the NAO. Therefore, while hearing cases of the NAB, Parliament has been advised to make suitable amendments many times. Furthermore, the subject of accountability always remains controversial in Pakistan as it challenges the dominant sectors of society, which then respond with their full powers, resulting in immense controversy. The accountability system itself is also responsible for creating doubts and complaints about the credibility of the accountability process. In addition to political victimization, establishment interference is a major factor in civilian governments. The previous NAB Chairman, appointed on July 21, 2022, served for only seven months before resigning on February 21, 2023, citing “interference” and “pressure.”

4. Reforms to Improve the State of Horizontal Accountability

There is a dire need to reform the parliamentary budget process, and the Finance Bill should be referred to the committees for discussion and recommendations. The legislators should also be regulars in the House to answer questions and to showcase the Ministry's performance. Moreover, the Prime Minister should personally answer questions in Parliament regularly. The PAC must expand its scope and discuss the results of budget allocations, the performance of the executive body, and compliance with rules and regulations. There is also a need to develop a mechanism to eliminate the backlog of audit reports. Finally, the PAC can create a Parliamentary Budget Office, analogous to industrialized countries, to ensure ex-ante control of the country's financial management process (Masood 2018).

There is a considerable need for inter-institutional dialogues among the state pillars to avoid overreaching in the domains of other institutions and to build trust among these institutions. Additionally, the performance of the judges should also be audited. Judges who fail to meet the prescribed standards may be provided additional training or terminated from the office. The judiciary must ensure the disposal of cases at the earliest possible time in order to provide speedy justice to the common man. Similarly, the discretion of constituting benches, the transfer of judges, the appointment of cases, and the power of suo motu by the CJP alone should be revised and accomplished through a committee.

There is a dire need for a constitutional, legal, and institutional framework that may enhance the neutrality of the accountability institutions to exercise oversight over the powers of the executives and prevent the abuse of power. The number of accountability courts needs to increase in order to cope with the workload. Moreover, the prosecution is under-resourced, as the prosecutors available to deal with the delay in cases are short in number. Other key issues, including interference by influential sectors, also need to be addressed to enhance the efficiency of accountability institutions.

5. Conclusion

As a democratic country possessing a parliamentary system, Pakistan has tested various accountability mechanisms since 1947 after its independence from Britain. Unfortunately, all these structures were manipulated either by the civilian governments or military dictators during their regimes. On the other hand, the interference of one constitutional institution in the affairs of other institutions is a common occurrence in Pakistan, which always leads to political chaos in the country. For instance, the judiciary has recently overreached into the executive and parliamentary domains. Recent developments show that the politicians drag the judiciary branch into political affairs in attempts to make matters controversial. Besides this, the pressure of military governments and the influence of political leaders and the powerful sectors of society further derail the process of horizontal accountability in Pakistan. Therefore, there is a significant need for inter-institutional dialogues among the three state pillars to reform the current accountability structure for the betterment of society. Otherwise, the situation would become worse. ■

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