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Tax frauds, corruption & NAB

In majority tax frauds, the usual parties are the official(s) and the taxpayer(s). Cases where unilateral tax fraud is committed are rare such as using fictitious bank account(s) to obtain fake refunds. But even in such cases, bank officials are involved with tax officials. It is thus imperative that wherever tax fraud is involved, the National Accountability Bureau (NAB) will have to initiate proceedings against the tax official being public officeholders as defined in the section 5(m) of National Accountability Bureau Ordinance, 1999 (NAB Ordinance), and the other beneficial party then would have to be booked as partner in crime. The Supreme Court, on January 15, 2020 gave the government three months to make a decision on the matter of plea bargain contained in section 25(A) of the NAB Ordinance. Strangely, the Government while curtailing many powers of NAB did not address this issue in the National Accountability (Amendment) Ordinance, 2019. This Amendment Ordinance has already been challenged in the Supreme Court.

The National Accountability (Amendment) Ordinance, 2019 provides that the NAB can now only proceed in corruption cases of Rs 500 million and more. Additionally, its jurisdiction over matters relating to tax, bank loans, stock, etc., has been curtailed. The Federal Investigation Agency (FIA), Securities and Exchange Commission of Pakistan (SECP) and Federal Board of Revenue (FBR) are assigned the exclusive jurisdiction in all such matters.

Even before the promulgation of National Accountability (Amendment) Ordinance, 2019, there was a statement by the Chairman of NAB on October 6, 2019 that none of Bureau's officials would call any businessman directly for questioning unless the matter is referred to NAB by FBR or any other tax agency. It obviously made both the dishonest tax officials and unscrupulous tax advisers/taxpayers jubilant. Not only the FBR but the officers of other departments where unholy alliance of law-keepers and law-breakers exist showed "satisfaction" that ultimately they had managed to convince the Prime Minister that NAB was the root cause of all troubles on economic front! This thinking/policy and National Accountability (Amendment) Ordinance, 2019 needs to be reviewed, especially after recent alleged mega tax fraud cases in FBR causing losses of billions to the national exchequer.

The government departments at best can suspend or dismiss the accused from services if proved guilty, but for committing corruption and indulging in corrupt practices, the prescribed punishments under the NAB law, if not awarded, makes accountability process totally meaningless. The remedy is suitably amending the NAB Ordinance as directed by Supreme Court/reforming NAB and not make it redundant. Can any law become redundant for want of action by the institution, e.g., tax frauds in FBR? How will money be recovered/punishment awarded unless criminal cases are registered with NAB or FIA?

The following articles were published in this newspaper about massive tax frauds and acts of corruption committed within FBR, but till today those who caused losses of billions of rupees are neither punished, nor any substantial recovery ever made:

1. Dismantle containers' mafia, Business Recorder, September 14, 2018
2. Performance audit of FBR, Business Recorder, July 6, 2018
3. The FBR and revenue losses, The News, February 25, 2018
4. Sordid story of tax frauds-III, Business Recorder, February 3, 2013.

5. Sordid story of tax frauds-II, Business Recorder, February 2, 2013.
6. Sordid story of tax frauds-I, Business Recorder, February 1, 2013.
7. Allying with tax evaders, Business Recorder, January 25, 2013.
8. Recouping tax losses, Business Recorder, July 13, 2012.
9. FBR in dire need of restitution, Business Recorder, July 29, 2011.
10. Rampant corruption and crippled system, Business Recorder, February 7, 2009.
11. Enough of Revenue losses!, Business Recorder, May 12, 2008.

Now, according to a report, the Customs Intelligence Department "has unearthed a network of top officials involved in large-scale misdeclarations of description and value of imported goods in over 900 containers causing losses worth billions to the national exchequer". It is claimed that the misdeclarations at several collectorates were detected a few months ago especially at the Karachi-based collectorates, Torkham Customs Stations and Collectorate of Appraisal in Quetta, "but the issue was placed on cold burner for months". The report disturbingly mentioned that "official documents seen....and background interviews with senior tax officials showed that those posted as 'collectors or chief collectors' are linked to political circles or top bureaucracy at the federal level and are using this clout to their advantage and causing huge revenue losses to the national exchequer". It was mentioned that "the corruption in customs department has become so vivid at the collectorate level that DG Customs Intelligence Muhammad Zahid had sent several letters to FBR Chairman Shabbar Zaidi for taking action against the involved officials". Reportedly, a special report on fraud at Customs Station, Torkham was also sent to the Chairman on Dec 6, 2019.

While lamenting that that "no action was taken against those officers involved in the corruption", the report mentioned that "only a few customs officers posted in Peshawar and Quetta were transferred and relieved from their job with immediate effect".

As per reports of the DG intelligence sent to Chairman FBR, 355 containers of imported goods were allegedly cleared "without duty and taxes at Customs Station, Torkham. All these containers were released on fake goods' declarations". The matter was not referred to NAB instead reportedly FIA was assigned the task to investigate the role and fix responsibility".

The report quoted without mentioning the name of a senior customs intelligence official, that the "Customs Station, Torkham case is very unique in the way that trucks carrying imported goods passed through the station without filing mandatory declaration and paying duty and taxes". The network, it claimed was so powerful that even Prime Minister Imran Khan openly commented on it in a public speech given at Pind Dadan Khan on Dec 26, 2019 saying: "We found one customs official in one area making Rs. 70 crore per month".

Yet another report claimed that the competent authority "recently dismissed seven customs officials from service over their alleged involvement in wheat smuggling in the backdrop of wheat shortage and unbridled flour prices across the country". It claimed that among the sacked officials are four collectors, additional collectors and deputy commissioners who were part of the Torkham and Chaman Customs operations". The officials were allegedly found involved in smuggling and fabricating concession certificates to allow undue tax and duty exemptions as well. In this case also, NAB was never asked to investigate and reportedly FBR wrote to the FIA "to carry out further investigations into the scam so as to bring to light all those involved in the scandal".

It is time for the Prime Minister to understand that tax frauds and corruption are intertwined and deceitful businessmen in such cases should not be given any concession under the pretext that "we are being harassed by NAB". If they are doing business honestly and paying due taxes they should not be afraid of any authority, but as mentioned above there exists an unholy alliance of law-makers, law-keepers and law-breakers in this country that Prime Minister is fully cognizant of, and reportedly had already ordered a probe to look into the wheat scarcity in the country. For dismantling this unholy alliance we need a special agency and not FBR or FIA etc where corruption is rampant as per their own reports given to the Press. Why would the mafias there take any action against those whom they serve and mint millions at the expense of the state. The decision of Prime Minister of December 10, 2019 to lodge a crackdown against tax evasion in cigarette industry and other sectors by reactivating Inland Revenue Enforcement Network (IREN) also failed to bring the desired results.

Let us refresh the Prime Minister's memory that in November 2017, NAB, Khyber Pakhtunkhwa arrested one appraiser from Customs Dry Port, Peshawar, for his alleged involvement in corruption "causing a loss of approximately Rs.4 billion to the national exchequer". The accused along with other accused persons cleared 1,450 items of construction machinery illegally. There was another famous case where fraud was committed again in Khyber Pakhtunkhwa in which a builder with the connivance of Customs officials caused a loss of Rs. 9 billion to the national exchequer. In this case, unholy alliance of unscrupulous businessman, corrupt official(s) and even bankers was at work.

A story [10 registered persons involved in sales tax evasion blacklisted, Business Recorder, December 27, 2019] reported that Directorate of Intelligence & Investigation (DI&I)-IR, Karachi blacklisted 10 registered persons involved in sales tax evasion amounting Rs 1.305 billion through fake and flying invoices. Another story published on December 10, 2019 revealed sales tax evasion of around Rs 18 billion by a corporate taxpayer for the last five years. On November 14, 2019, a news item revealed that Large Taxpayers Unit of Karachi detected Rs 100 billion tax avoidance/evasion by around 12 companies. Yet another story in this newspaper [Sindh, Punjab & KP: FBR massive tax evasion by sugar mills, November 12, 2019] revealed massive tax evasion by sugar mills, operating in Sindh, Punjab and Khyber Pakhtunkhwa through under-reporting of stocks and fake sales.

On January 28, 2020, the Supreme Court directed the Chairman FBR to restart inquiry against an officer in illegal tax refund matter. The three-member bench, headed by Chief Justice of Pakistan, ordered FBR to complete its inquiry against DC Sales Tax in refund of taxes. The Apex Court passed a strict observation: "How is an officer being cleared and another punished having committed the same offence". It was reported in the Press that the Honourable Chief Justice of Pakistan expressed his disappointment and asked, "Why are you people not telling the truth to the court....."don't play games, we know you will produce an old inquiry (before the court). Why don't you catch an officer involved in misconduct?" On earlier hearing of the case on January 7, 2020, the Supreme Court expressed its disappointment at the FBR over the delay in investigation of undue tax refund. The Chief Justice of Pakistan asked the Acting Chairperson of FBR, "why the investigation was not completed in the three-month period". "Billions of rupees have been looted, government is suffering loss...", the honourable Chief Justice of Pakistan added and remarked: "The FBR is busy with other tasks, but not paying attention to court's orders".

On January 30, 2020, the Federal Tax Ombudsman (FTO) directed initiation of action against officials of FBR involved in an illegal tax refund case. The FTO said that "the recovery of the tax refund amount should be as speedy as the refund was claimed and acquired by some people". He directed: "The case should be resolved within 45 days". It is worthwhile to mention that this suo moto notice case pertaining to unlawful issuance of tax refund pertained to the period from 2011 to 2014 and no recovery was made till the end of January 2020. The FTO also noted that despite issuing red alerts over the refunds, the officials issued unlawful refunds that later turned out to be fake. According to report, the refund claimed during the period "caused a loss of Rs. 40 billion to the national exchequer".

The above are just some recent examples of fraud and forgeries in FBR. Numerous cases were reported and documented in articles published from 2008-2019 mentioned above. Now in 2020, the same sordid stories of corruption are resurfacing when the Prime Minister keeps on showing his determination to uproot corruption and mafias causing not only loss of billions of rupees but also making the lives of ordinary citizens hell with every passing day.

The reformation of NAB or establishment of an independent authority having professional skills of investigation and courts for speedy trial is the need of the hour, and if the Prime Minister is really serious in making Pakistan a place worth living and investing by honest people he should take some emergent measures that include necessary legislation as directed by the Supreme Court within three months. By and large, people want to do things transparently, but the unholy alliance of just a handful of corrupt politicians, administrators and adjudicators forces the overwhelming majority to give up honesty and compliance of law that are prevalent in many countries having top positions of transparency and have earned praise for anti-corruption efforts in the Corruption Perception Index (CPI) 2019.

Way back in March 2015, the NAB forwarded several recommendations to FBR "to plug loopholes" that are the main cause of massive tax evasion and other irregularities. These recommendations, prepared by NAB's Prevention Committee on FBR, were worth considering but nobody even now knows about it, what to speak of briefing the Prime Minister about the same. The one recommendation was that 'Automated Income Tax System' in the FBR should be fully functional, so that doors of corruption and misuse of authority by the tax collectors should be stopped to increase the volume of revenue in the economy. This one goal remains unfulfilled till to date.

The matter of corruption is not restricted to FBR alone. All government departments have contracted this malaise. The recent case of abuse by government officials of funds of Benazir Income Support Programme meant for the needy testifies to the grave malady we are faced with. We need all-out reforms in all institutions to make them efficient and transparent, manned by competent people who can deliver. It is high time that report of Tax Reform Commission of 2016 should be made public and its recommendations are debated and after taking input of all stakeholders should be implemented. The same should be the case with other reports relating to anti-corruption efforts that are now part of official dusty shelves. All these should be implemented without any further delay.

A forensic audit of FBR's own affairs should be the starting point of telling the nation that the PTI government really believes in accountability and is serious to uproot the causes of corruption. If an agency itself is not clean and transparent how can it enforce tax obligation fairly and fearlessly? The Prime Minister must come out of rhetoric now and take some positive and concrete steps in this direction or we will never be able to uproot the cancerous growth of corruption, tax evasion, and all forms of rent-seeking. For this, fundamental structural reforms are needed in all institutions. Searching and appointing only honest persons without effective internal and external checks, prevalent in many countries, will never work to make institutions effective as recently proved where an honest and able person could not stop massive tax evasion in FBR resulting in huge shortfall in collection target in first seven months of the current fiscal year.

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