

## **Book Review**

### **Corruption and Misuse of Public Office**

*Book review by Asad Jamal\**

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The second edition of *Corruption and Misuse of Public Office* is a revamped new version of its first edition. Several important developments have taken place since 2005 when the first edition came out. This new edition provides a more comprehensive and detailed analysis of the law relating to corruption as it has evolved in the UK and around the world, with greater focus on developments that have taken place in recent years.

In Pakistan, the law and practice relating to corruption and the misuse of public office has assumed a new political and legal dimension in recent years with the increasing demand for new effective anti-corruption measures in accord with internationally recognized standards and principles. The reasons for this new climate are, among others, that the existing framework has proved to be inadequate and inefficient thus ineffective. The ineffectiveness of our legislative framework also emanates from the abuse of it at the hands of the rulers for political gains.

A new proposed bill on accountability by the title of Holders of Public Offices (Accountability) Act, 2009 has been pending before the Parliament, but no headway is being made due to difference of opinion between the government and the opposition over various proposed provisions. The issue is, therefore, of considerable topical interest for legal, political and civil society circles in Pakistan. The book provides critical insight in several respects to better understand issues in and demerits of Pakistan's existing anti-corruption legislative framework as well as the proposed accountability law.

The legal instruments for which insight has been provided in the book include new addition to UK's anti-corruption regime i.e. the Bribery Act, 2010 as well as the pre-existing Prevention of Corruption Acts of 1889 and 1916 as amended by Anti-terrorism, Crime and Security Act (ATCSA) of 2001, and the Proceeds of Crime Act, 2002. A detailed historical background encompassing judicial interpretations of various elements of the law, have been discussed providing the context to understand the present law.

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Apart from that the book discusses at length the United States' Foreign Corrupt Practices Act, 1977; the United Nations Convention against Corruption, 2005; current revisions and implementation of anti-corruption legislation in some foreign jurisdictions.

The book informs us that legislation across the globe has made great strides over recent years, For example, with the implementation of statutes like UK's Anti-Terrorism, Crime and Security Act, 2001 and the Proceeds of Crime Act, 2002 extend jurisdiction to corruption offences committed abroad by UK nationals as well as incorporated bodies/companies. More significantly, these UK laws strengthen the mechanisms to recover assets and wealth obtained as a result of unlawful activity.

The book also examines the legal and practical issues relating to the investigation and prosecution of corruption cases and includes coverage of specialist areas such as recovering the proceeds of corruption, and whistle-blowing. It also discusses changes to the area of mutual legal assistance and civil recovery including the Stolen Assets Recovery Initiative (StAR).

The book is arranged in six sections. Chapters 2 – 7 UK criminal law relating to the prosecution of corruption offences under the old law, and under the new Bribery Act, 2010. Several aspects such as the definition and scope of common law bribery offences and various aspects, including the treatment of facilitation payments, the mental element, entrapment, defences and immunities have been examined. The section also gives an adequate sketch of the movement in the UK for reform in recent decades. Chapters 8 and 9 discuss confiscation and recovery of assets under criminal and civil law. Chapter 10 takes up the critical topic of regulation of conduct in public life in the UK.

Chapters 11 - 15 move out of the domestic context to discuss international and regional conventions, initiatives, and instruments. This section, first of all, records the background to the UN Convention against Corruption (UNCAC) and sets out its purposes and structure. The measures for maintaining integrity in the public sector including candidature for public office, political office, political funding, detailed treatment of managing and avoiding conflicts of interest, asset declaration, codes of conduct for public officials, and whistle-blowing guidelines, are discussed in chapter 11. The aspect of criminalization, international cooperation, asset recovery, and mechanisms for implementation of UNCAC are discussed in chapter 12.

The subject of the bribery of foreign public officials is discussed in chapter 13 with focus on Convention on Combating Bribery of Public Officials in International Business Transactions of the Organisation for Economic Cooperation and Development (OECD). The chapter 13 highlights difficulties which arise in defining offences under the common law and achieving compatibility with the civil law jurisdictions. Also included are the issues of money laundering, mutual legal assistance, tax deductibility and extradition.

Chapters 16 to 19 venture into discovering corruption laws of other jurisdictions, both civil law and common law, including Australia, Canada, Hong Kong, and India, Brazil, China, France and South Africa.

The effect and implementation of the US FCPA, 1977 is discussed in Chapter 16. Chapter 17 discusses bribery of foreign officials, the role of anti-corruption agencies, investigation and prosecution, jurisdiction, defences, and penalties in common law jurisdiction and Chapter 18 focuses on key civil law and other jurisdictions. The book thus presents a holistic comparative view.

Finally, and very importantly, the role of the civil society organizations in fighting corruption has been discussed in chapter 20.

The writers of the book are well known legal practitioners. Colin Nicholls QC is a leading international criminal lawyer specializing in complex commercial crime cases including corruption, extradition, and war crimes. He acted for the defense in the Guinness case, Brent Walker and BCCI. Tim Daniel has extensive experience of major civil cases concerned with corruption and asset recovery. Alan Bacarese is Head of Legal and Case Consultancy at the International Centre for Asset Recovery, Basel Institute on Governance. John Hatchard has written widely on criminal law, human rights and good governance issues and is Professor at the UK's Open University, School of Law. He is also the Vice-President of the Commonwealth Legal Education Association.

The book has great relevance to the Pakistani context. For instance, one of the reported objections, among others, to the pending government proposed bill on accountability is their argument against the provision of immunity to holders of public office for acts supposed to have been done in good faith. The issue of good faith and other such issues have been discussed and explored in various respects to provide us a lesson or two. The book, therefore, can be extremely useful for legislators, lawyers, and human rights and other civil society players in understanding substantial questions. Such an understanding can help us make headway on a critical national issue.

This book enables practitioners to handle any aspect of a corruption case by providing them with detailed analysis of the international efforts to combat corruption, and the legal developments taking place in key jurisdictions and regions covered by UN, EU, OECD, the Commonwealth, as well as important regional initiatives. Detailed references to over 400 case judgments have been made. It's a must read for researchers, students and teachers of law, judges, lawyers, civil society activists working for the elimination of corruption, and journalists. It's also a must addition to library collections across Pakistan.