

The police: Proper investigative body in money laundering cases?

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UNDER the Anti-Corruption Commission Act, 2004 (ACCA), all corruption related offences as specified in the Act have to be investigated by no other agency but the Anti-Corruption Commission (ACC). Newspaper reports indicate that the government, acting on the proposal of the ACC, is now considering the case for stripping the ACC of the power of investigation into certain offences specified in the ACCA. According to the proposed change, the ACC would continue to investigate frauds committed by government employees, including public representatives, and employees of banks and financial institutions but frauds committed by private parties would be investigated by the police.

From a logistical viewpoint, this proposed lessening of the burden of the ACC which apparently does not have sufficient manpower; makes very good sense. The ACC should not be burdened by the duty to investigate allegations of petty frauds committed by private persons and the police should be able to take care of this. On this issue, clearly a line should be drawn between a graft (the act of securing advantage through the dishonest use of political power and influence) and a petty fraud as the proposal of the ACC appears to do. However, the same cannot be said about the thought of entrusting the police with the power to investigate cases filed under the Money Laundering Prevention Act, 2012 (MLPA).

The investigative power of police in violent and other crimes punishable under the Penal Code and various other penal laws has been criticised for long. Some critics have argued that the police is overburdened with various law enforcement duties and this impedes their ability to conduct painstaking and timely investigation into offences. Critics also often argue that the members of the police force in general do not receive adequate training for conducting investigation into crimes and, because of this, they often feel that resorting to coercion of suspects is the principal way of investigation and securing

convictions for crimes. In view of these issues, some analysts have recommended the setting up of a separate investigating agency.

While the actual operational independence of the ACC has often been questioned by many, at least legally the ACC is an independent statutory body. The commissioners of the ACC enjoy far greater security of their tenures than that of the members of the police force, and if the ACC wants it surely can act with greater latitude than the police force can do. This is due to the fact that the police force works under the direct control of the government and would naturally be subject to undue pressure by the government. The process of investigation into crimes in this country can at times be so much politicised that in numerous occasions an investigation taking place during the regime of one government has been totally thrown apart by the subsequent political regime and started afresh. And the finding of the subsequent investigation has not only differed from that of the prior one, but also in some cases it has been completely contradictory.

Of course, investigation is a process of unearthing cogent evidence, and it is a dynamic process. Hence, discovery of new facts can lead to new directions in the investigation process and, accordingly, the conclusions may legitimately vary. However, the frequent incidence of such radical change in conclusions reached by police investigations would imply that either there are some systemic flaws in the investigation process followed by the police force which made the first investigation ineffective or that in exercising their investigative functions, the investigators have not been able to work freely.

Possession of power and engagement in corrupt practices, especially the ones which would have severe adverse consequences, would often go hand in hand. For this reason, more often than not, politicians or public servants would be the perpetrators of corruption related offences. This would make the police force even more susceptible to political pressure and may restrain its members from freely conducting investigations into corruption cases which would include offences under the MLPA.

Another concern with the proposed change is that rigorous investigation into some of the offences punishable under the MLPA requires very extensive and specialised training. This would particularly be applicable in case of various financial offences as

mentioned in the MLPA, all of which can now be investigated only by the ACC. It is difficult to think that the members of our police force are endowed with the expertise to investigate them.

Although we fail to find merits in the proposed move of empowering the police force to investigate offences punishable under the MLPA, we do not imply that the existing investigative powers of the ACC are functioning efficiently. Probably not many would claim that the investigation procedure of the ACC is functioning well. Nonetheless, the alternative lies not in the police force, but rather in strengthening the ACC. The move of the government is likely to cause a malfunctioning system to deteriorate even further.

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