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Law, Development and How Not To Do It

Feisal H Naqvi June 14, 2000

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The article discusses the problems with the new NAB law from a business perspective. The gist of it is that the NAB law is probably the most anti-business law in the history of legislation.

So, you want the good news or the bad news? The good news is that the new governor of the State Bank, Dr. Ishrat Hussain, appears on the basis of his recently published book, “Pakistan: The Economy of An Elitist State” to be an eminently sensible chappie. The bad news, of course, is that nobody appears to be listening to him.

The reason why the good governor comes in for praise in an article otherwise devoted to legal issues is because unlike the rest of the Establishment, he seems to recognise the value of an efficient, effective and corruption free legal system to economic growth.

The problem, as noted above, is not the sensibility of Dr. Ishrat’s suggestions. The problem lies in the fact that someone, somewhere, with sufficient clout to put his ideas into operation, is making laws

which can only strangle what little economic future we have left. And as evidence, I present to you, the newly amended NAB Ordinance: the only law in history to make it criminal to be a businessman.

Under the original NAB law, it was a crime to be a “willful defaulter.” However, the term “willful default” was itself left undefined, and so it was assumed by rational minds that it would only apply to those people who had taken loans with the explicit intent of not paying them back.

Not so. Just to remove any doubts, the crime of “willful default” has been defined in the NAB Ordinance as any default that is not cured within thirty days. The punishment: 14 years. Default for business reasons is now willful default. Default because of an act of God is willful default. Default because the market hated your product is also willful default. And of course, once a company is a defaulter, so is everybody who has ever been a director, guarantor or sponsor of that company.

The standard justification for the NAB law is that the Government is trying to catch white collar crime and that is really difficult because “thieves don’t leave receipts.” In other words, the Government needs such broad powers because otherwise the bad guys would escape punishment by hiding behind the fiction of a corporate identity and/or dummy directors. In any event, the broader message is, “Trust us. We’re not dumb. We don’t want to hurt legitimate business. We just want to catch the crooks.”

The first problem with this argument is that unfortunately, all of human history stands witness to the fact that people do not tend to use arbitrary power with any degree of sensitivity. Instead, as we all know, power corrupts and absolute power corrupts absolutely. The NAB wallahs are no exception to the rule. To take one example, in the Faisal Saleh Hayat case, not only has Faisal Saleh Hayat been charged but so have fifteen other members of his family, including his mother. Is this really the discrimination and intelligence that one would expect? Admittedly, the law permits the Government to do this. And just as obviously, the law is an ass.

The overall problem which emerges then is that the NAB Ordinance appears to have been drafted in complete ignorance of the basic facts of business. The most fundamental point about business is that it is always, repeat always, a gamble. Obviously, sometimes the odds are more favourable than at other times, but no matter how slight, there is always the chance of failure. However, there is nothing wrong with the fact that it is a gamble. Indeed, it cannot be avoided. What intelligent governments try to do therefore is to entice the businessman to make investments by reducing or minimising the risk of a bad investment.

The entire history of capitalism can therefore be seen as the search for security of capital. The most important step in this direction was the development of the limited liability corporation. What a corporation does is that it allows you to limit your exposure so that your liability is limited to the extent of your shareholding and no more. In other words, if you buy a share of Hubco tomorrow for ten rupees, you cannot lose any more money than the value of your share. So if the government wins its suit for Rs. 17 billion against Hubco tomorrow, that Rs. 17 billion will not come out of your pocket. Obviously, if there was any chance that you would have to pay even a small chunk of that Rs. 17 billion, you would not be buying shares of Hubco.

The net result of the NAB law is that it makes any rational person think very, very hard before

borrowing any money. That would be a good thing only if borrowing money were a bad thing, which is what the NAB-wallahs appear to think. Which, to put it mildly, is not the case.

Simply put, if you are the government, you want to make it easier for people to borrow money, not more difficult. No borrowing means no expansion of business and no fresh investment. More simply, what it means is that the only person who is going to make any investment in this country is the guy who already has plenty of his own money and does not need to borrow from a bank.

On the other hand, if you happen to have money, why on earth would you keep it in this country? For some reason, the bureaucracy is convinced that people who live in Pakistan have no option but to bear with their stupidities. This is no longer true. All you have to do is to call up your friendly broker or e\ *trade and tomorrow you too can be investing in hot dot.com stocks. Memo to the Finance Ministry: this is not, repeat not, a fantasy. People in Pakistan are already happily investing on the New York Stock Exchange. And if you keep on messing with them, more people will go there.

The situation is even worse if one considers the problem from the perspective of an international investor. After all, lets be logical: why would anyone invest in Pakistan today? This is a country in which all governments lie and in which the value of a written contract is approximately that of toilet paper. And this is not a new phenomena – each successive government has left no stone unturned in its quest to destroy our economy. The local tycoons got it in the neck from Bhutto Sr. The ordinary Pakistanis and the overseas Pakistani community got defrauded when the government froze the foreign currency accounts. And the international business community got hammered when we reneged on our commitments to the IPPs. In other words, there is no class of investors which has not been repeatedly abused by the Governments of Pakistan.

So, again, why invest in Pakistan? Invest in Pakistan and the government will steal your money, imprison your employees, tax you to hell and send you to jail for fourteen years if you don't pay money back at the usurious rates that you've been forced to borrow. Invest in Dubai and no one will bother you.

Think of the world of investments as a beauty contest. Every other contestant is dressed in their best and slinkiest. Miss Pakistan on the other hand is wearing a black shuttlecock burqa, holding a Kalashnikov, only too ready to shoot anyone stupid enough to make a move on her.

Any takers? I thought not.

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