



Discussion Paper:

THE ROLE OF JUDICIARY IN PAKISTAN: CASE OF NAB

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The purpose of this write up is not to analyze the objectives and the features of the NAB Ordinance. This is also not a critical study of the functions and performances of the National Accountability Bureau. The purpose of this short article is to evaluate the performance of the incumbent Chairman Mr. Qamar Zaman Chaudhry through the critical eyes of the Supreme Court of Pakistan.

When General Pervaiz Musharraf seized power in October 1999 after overthrowing the civilian government of Prime Minister Nawaz Sharif, one of the first tasks that he undertook was to promulgate National Accountability Bureau Ordinance. For its intent and purpose the NAB ordinance was a remarkable piece of legislation in the law making history of Pakistan. NAB is an autonomous apex body to root out corruption from body polity of Pakistan.

However we will briefly describe the Objectives and salient Features of NAB for the digestion of our readers. The Ordinance also provides punishment for certain offences for example any person who refuses to answer questions put up by the Bureau or by the NAB Court or any person who gives false information or misleads the Bureau may be punished under the provisions of this Ordinance.

The noble Objectives of this Ordinance are:



- (i) Eradicate corruption and corrupt practices
- (ii) Prepare critical national economic intelligence report
- (iii) Hold accountable to those who are accused of corrupt practices
- (iv) Detect and investigate, prosecute and speedily dispose of corrupt cases
- (v) Recover outstanding amounts from default persons and from those who are accused of misappropriation of fund.

Salient Features:-

1. Though this Ordinance was promulgated in 1999, it was given Retrospective effect from 1st. January 1985
2. It overrides all other laws for the time being enforced.
3. There is a provision of appointment of Deputy Chairman along with the Chairman.
4. The Chairman has the power to arrest under certain conditions.
5. In fact the Chairman and the Bureau has been given sweeping powers to give effect to its provisions.
6. This Ordinance provides opportunity to the culprits, offender and accused persons of misappropriation, fraud, embezzlement, money laundering and loans from the bank to bargain from the NAB and undertake to pay back the said amount in installment or in full so that they could escape punishment. This is called plea bargain.
- 7.

However NAB is criticized by the media and the political circles for (i) not touching army officers (ii) for sparing the big fish (elite/or ruling class.) Incumbent NAB Chairman has been accused of his partisan attitude for the ruling party.

Mr. Qamar Zaman the current Chairman is a retired major. After retirement from the army, he appeared in the CSS exam. Having been successful, he joined DMG (District Management Group). He has served the country in various capacities.

He served as the Chairman Capital development (CDA), as Chief Commissioner Islamabad, Lahore, Rawalpindi and Joint Secretary, Ministry of Defense. He had served as Executive Director Higher



Education Commission. He was considered as one of the credible officers in the bureaucracy of Pakistan.

The office of the Chairman NAB is supposed to be of impeccable character. Through an amendment in the NAB Ordinance, the Chairman NAB is appointed by the President with the consultation of the Leader of the House in the National Assembly and the Leader of Opposition. In order to remove the Chairman NAB from his office, proceedings may be initiated before the Supreme Judicial Council against the Chairman NAB under article 209 of the Constitution of Pakistan.

Unfortunately in the light of the judgments of the Supreme Court judges, the incumbent has shown nepotism towards Sharif family. Appearing in person before a bench of the Supreme Court hearing the Panama Petitions number 29 of 2016, 30 of 2016 and 03 of 2017 when asked as to why he did not appeal against the judgment of the Lahore High Court, the Chairman NAB replied that he was waiting for the regulators to look into the matter. The Court asked who the regulators were and where did they figure in NAB Ordinance 1999. He kept quiet.

When his attention was drawn that under **section 18 of the NAB Ordinance 1999 he himself could take cognizance of such matter¹**, (section 18 has been reproduced below verbatim) he simply said he would take actions under the terms of the Ordinance.

The Court asked whether he would consider challenging the judgment of Lahore High Court quashing the reference No.5 of 2000, he categorically stated that he has decided not to file any petition or appeal.

The Supreme Court has refrained from taking any action against the Chairman NAB **because the term of office of the Chairman would expire in the next few months. Besides, the term of office of the Chairman is not extendable.**² (relevant section has been reproduced below.) Enjoying Constitutional protection from the removal of office, he had elevated himself to haughtiness and arrogances. For his haughtiness, he was humiliated by the Supreme Court judges.



The incumbent Chairman has lost confidence and trust in the eyes of the learned judges of the Supreme Court. Justice Asif Khosa writing the judgment in Panama case observed, “As the neutrality and impartiality of the incumbent Chairman NAB Mr. Qamar Zaman Chaudhry has been found by me to be compromised, he is directed not to exercise any power, authority or function in this case.”

Agreeing with the remarks of Justice Asif Khosa, Justice Aijazul Hasan wrote,” It has been quite obvious to us during the proceedings, Chairman NAB is too partisan and partial.” Justice Gulzar Ahmad was more vocal. He wrote, “Chairman NAB shamelessly defended the decision of not filing the appeal.”³

In our present day society in Pakistan where Islamic values are revered, a man of integrity is puzzled as to why the Chairman NAB has not resigned so far. Is it his personal ego or conceit? May be he considers himself invincible. After the judgment of the Supreme Court of Pakistan in Panama case, he has become dysfunctional. Given the enormous powers both tangible and potential, which the Chairman NAB enjoys, he could have elevated his post and his personality to the highest degree of respect, esteem and honor.

The latest update is that a new Chairman NAB has been appointed. He is retired Justice M. Iqbal.

“¹Cognizance of Offences

- a. The Accountability Court shall not take cognizance of any offence under this Ordinance except on a reference made by or on behalf of the Chairman National Accountability Bureau.
- b. A reference under this Order shall be initiated by the Chairman National Accountability Bureau on
 - i. a reference received from the appropriate government; or
 - ii. receipt of a complaint; or
 - iii. his own accord.



- c. Where the Chairman National Accountability Bureau is of the opinion that it is or may be necessary and appropriate to initiate proceedings against any person on receipt of a reference or complaint or **on his own accord**, as the case may be, he shall refer the matter to the Deputy Chairman National Accountability Bureau or to any other officer for inquiry and investigation.
- d. The responsibility for inquiry into and investigation of an offence alleged to have been committed under this Ordinance shall rest on the NAB to the exclusion of any other agency or authority, unless any such agency or authority is required to do so by the Chairman or/and Deputy Chairman NAB.
- e. The Chairman NAB and such members, officers and/or servants of the NAB shall have and exercise, for the purposes of an inquiry and/or investigation the power to arrest any person, and all the powers of an officer-in-charge of a Police Station under the Code, and for that purpose may cause the attendance of any person, and when and if the assistance of any agency, police officer or any other official or agency, as the case may be, is sought by the NAB such official or agency shall render such assistance provided that no person shall be arrested without the permission of the Chairman or any officer duly authorized by the Chairman NAB.
- f. Any Inquiry and Investigation under this Order shall be completed expeditiously but not exceeding a period of 75 days, or earlier as soon as may be practical and feasible.
- g. The Chairman NAB, shall appraise the material and the evidence placed before him during the inquiry and the investigation, and if he decides that it would be proper and just to proceed further, he shall refer the matter to an Accountability Court.



h. If a complaint is inquired into and investigated by the NAB and it is concluded that the complaint received was prima facie frivolous or has been filed with intent to malign or defame any person, the Chairman or Deputy Chairman NAB or the prescribed law officer, may refer the matter to the Court, and if the complainant is found guilty he shall be punishable with imprisonment for a term which may extend to one year, or with fine or with both.

²6. (a) There shall be constituted a National Accountability Bureau for the whole of Pakistan.”

2[(b) Chairman, National Accountability Bureau:

(i) There shall be a Chairman NAB to be appointed by the President in consultation with the 3[Leader of the House and the Leader of the Opposition in the National Assembly] for a 4[non-extendable] period of 5[four] years on such terms and conditions as may be determined by the President and shall not be removed except on the grounds of removal of Judge of Supreme Court of Pakistan 6[:]

³ All the remarks from of the judges of the Supreme Court have been borrowed verbatim from their judgments published on the internet and in print media.