

REPORT OF THE STANDING COMMITTEE ON LAW AND JUSTICE



“THE NATIONAL ACCOUNTABILITY (AMENDMENT) BILL, 2015”

**Report No. 12
(Thirteenth Parliamentary Year)**

PRESENTED BY

**SENATOR MUHAMMAD JAVED ABBASI
CHAIRMAN**

SENATE SECRETARIAT

REPORT OF THE STANDING COMMITTEE ON LAW AND JUSTICE ON "THE NATIONAL ACCOUNTABILITY (AMENDMENT) BILL, 2015"

I, Chairman of the Standing Committee on Law and Justice, have the honour to present report on "The National Accountability (Amendment) Bill, 2015" introduced by Senator Taj Haider, on 2nd November, 2015. The Bill, upon introduction, was referred to the Standing Committee for consideration and report.

2. The composition of the Standing Committee on Law and Justice is as under:-

1.	<i>Senator Muhammad Javed Abbasi</i>	<i>Chairman</i>
2.	<i>Senator Raja Muhammad Zafar ul Haq</i>	<i>Member</i>
3.	<i>Senator Aitzaz Ahsan</i>	<i>Member</i>
4.	<i>Senator Dr. Muhammad Ali Khan Saif</i>	<i>Member</i>
5.	<i>Senator Syed Muzafar Hussain Shah</i>	<i>Member</i>
6.	<i>Senator Saleem Zia</i>	<i>Member</i>
7.	<i>Senator Ms. Ayesha Raza Farooq</i>	<i>Member</i>
8.	<i>Senator Nawabzada Saifullah Magsi</i>	<i>Member</i>
9.	<i>Senator Saeed Ghani</i>	<i>Member</i>
10.	<i>Senator Zaheer ud Din Babar Awan</i>	<i>Member</i>
11.	<i>Senator Mrs. Zahida Khan</i>	<i>Member</i>
12.	<i>Senator Farooq Hamid Naek</i>	<i>Member</i>
13.	<i>Minister for Law and Justice</i>	<i>Ex-Officio Member</i>

3. The Committee considered the Bill in its meetings held on 18th November, 2015, 23rd December, 2015, 14th January, 2016 and 27th January, 2016.

4. According to the Statement of Objects and Reasons "the 18th Amendment of the Constitution of Pakistan provides for greater autonomy of the Federating units. The subject of Anti-Corruption is a residuary subject. There is a need to constitute autonomous Accountability Bureau at the level of the provinces. Legislation to this effect is already underway in the provinces. It is therefore, expedient that while the provincial Accountability Bureaus deal with the ceases within the respective provinces, the National Accountability Bureau (NAB) performs its duties more diligently in the departments of the Federal Government. The Bill seeks to delete the provisions extending the jurisdiction of NAB in departments of provincial governments from the National Accountability Ordinance, 1999."

5. Secretary, Ministry of Law, Justice and Human Rights opposed the Bill on the following grounds:-

- a. National Accountability Bureau Ordinance, 1999 is a Criminal Law thus covered under Article 142 (b) read with entry 32 of Part-I of Federal Legislative List (FLL) of the Constitution. Further conducted research on the issue and the only instrument defining 'criminal law' is Black's Law Dictionary, Tenth Edition P:- 456 reproduced as below:-

"Criminal Law. -- The body of law defining offenses against the community at large, regulating how suspects are investigated, charged, and tried, and establishing punishments for convicted offenders -- Also termed penal law.

The Criminal law represents the pathology of civilization.

Often the term 'criminal law' is used to include all that is involved in 'the administration of criminal justice' in the broadest sense. As so employed it embraces three different fields, known to the lawyer as (1) the substantive criminal law, (2) criminal procedure, and (3) special problems in the administration and enforcement of criminal justice.

- b. Hence this Division is of the opinion that National Accountability Bureau Ordinance, 1999 is a criminal law thus is covered under Article 142 (b) of the Constitution and supportive entry of Federal Legislative List (FLL) is entry 32 of Part-I thereof. Furthermore, even in 1999 it was promulgated as criminal law because even at that time there was no entry on 'Anti-Corruption' in the erstwhile Concurrent Legislative List (CLL) so Eighteenth Amendment has had no bearing on the National Accountability Bureau Ordinance, 1999, except that the entry of 'criminal law' in erstwhile CLL now finds place in Article 142 (b) of the Constitution.

6. The National Accountability Bureau also opposed the Bill on the ground that the National Accountability Ordinance is Criminal Law as all the procedures provided in the Criminal Procedure Code are being followed. Furthermore, in view of certain international obligations the need of central legislation becomes manifold.

7. The Committee also invited Provincial Law Secretaries in order to take their input. Accordingly, representatives of Law Departments of Khyber Pakhtunkhwa and Sindh supported the amendments, representative of Law Department of Punjab opposed the proposed amendments whereas, representative of Law Department of Balochistan informed that input has been sought from other concerned departments which is still awaited.

8. Due to divergence of opinion between the Members of Committee, the Bill was put to vote in the Meeting dated 27th January, 2016. Following Members voted in favour of the Bill:-

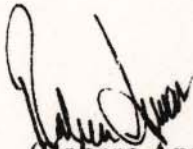
- i. Senator Aitzaz Ahsan, Leader of the Opposition
- ii. Senator Saeed Ghani
- iii. Senator Zaheer ud Din Babar Awan
- iv. Senator Zahida Khan
- v. Senator Farooq Hamid Naek

Following Members opposed the Bill:-

- i. Senator Raja Muhammad Zafar ul Haq, Leader of the House
- ii. Senator Muhammad Ali Khan Saif
- iii. Senator Saleem Zia
- iv. Senator Ms. Ayesha Raza Farooq

9. As a result of voting, the Committee approved the Bill with majority.

10. Accordingly, the Committee recommends that the "The National Accountability (Amendment) Bill, 2015", as introduced in the Senate, may be passed. (Copy of Bill is annexed)



(Rabeca Anwar)
J.S / Secretary Committee



(Senator Muhammad Javed Abbasi)
Chairman

As
[TO BE INTRODUCED IN THE SENATE]

**A
BILL**

further to amend the National Accountability Ordinance, 1999

WHEREAS the Majlis-e-Shoora passed the 18th Constitutional Amendment to provide greater provincial autonomy to all the Provinces of the Federation of Pakistan;

AND WHEREAS it is essential that all statutory organizations must act strictly within the parameters laid by the Constitution of Pakistan and there should be no transgression or interference in matters pertaining to the Provinces;

NOW THEREFORE it is expedient further to amend the National Accountability Ordinance, 1999 (XVIII of 1999), so as to bring it in consonance with the parameters laid down in the Constitution of Pakistan and for ancillary matters connected therewith:

It is hereby enacted as follows:-

1. Short title and commencement.- (1) This Act may be called the National Accountability (Amendment) Act, 2015.

(2) It shall come into force at once.

2. Amendment of section 5, Ordinance XVIII of 1999.- (1) In the National Accountability Ordinance, 1999 (XVIII of 1999), hereinafter referred to as the said Ordinance, in section 5,-

(i) in sub-section (b), the words "and in other cases the Provincial Government or the Local Government" shall be omitted; and

(ii) in sub-section (m),-

(a) paragraph (iii), shall be omitted;

(b) in paragraph (iv), the words and comma "or of a Province," and the words "or Provincial" occurring once and the words "or a Provincial Government", occurring twice, shall be omitted;

(c) in paragraph (v), the words "or Provincial", shall be omitted; and

(d) paragraph (va), shall be omitted.

3. Amendment of section 25, Ordinance XVIII of 1999.- (1) In the said Ordinance, in section 25, in sub-section (c), the words "a Provincial Government or", shall be omitted.

4. **Amendment of section 27, Ordinance XVIII of 1999.-** (1) In the said Ordinance, in section 27, the words and comma "Provincial Government," shall be omitted and after the words "public sector", the words "working only under the Federal Government" shall be inserted.
5. **Amendment of section 33B, Ordinance XVIII of 1999.-** (1) In the said Ordinance, in section 33B, the words "Provincial and" and the words "Provincial Government or", occurring once shall be omitted and the words "or Provincial Government", occurring twice, shall be omitted.
6. **Amendment of section 33C, Ordinance XVIII of 1999.-** (1) In the said Ordinance, in section 33C, in sub-section (c), the words "or Provincial Government", shall be omitted.
7. **Amendment of section 36, Ordinance XVIII of 1999.-** (1) In the said Ordinance, in section 36, the words and comma "Provincial Government," shall be omitted.
8. **Amendment of Schedule to Ordinance XVIII of 1999.-** (1) In the said Ordinance, in the Schedule, in the entry at serial No. 5, the words and commas ", a Provincial Government," shall be omitted.

STATEMENT OF OBJECTS AND REASONS

The 18th Amendment of the Constitution of Pakistan provides for greater autonomy of the Federating units.

The subject of Anti-Corruption is a residuary subject. There is a need to constitute autonomous Accountability Bureau at the level of the provinces. Legislation to this effect is already underway in the provinces.

It is, therefore, expedient that while the provincial Accountability Bureaus deal with the ceases within the respective provinces, the National Accountability Bureau (NAB) performs its duties more diligently in the departments of the Federal Government.

The Bill seeks to delete the provisions extending the jurisdiction of NAB in departments of provincial governments from the National Accountability Ordinance, 1999.

SENATOR TAJ HAIDER
Member-In-charge

ORIGINAL SECTIONS AND SCHEDULE OF THE NATIONAL ACCOUNTABILITY ORDINANCE, 1999 (XVIII OF 1999), WHICH THE NATIONAL ACCOUNTABILITY (AMENDMENT) BILL, 2015, SEEKS TO AMEND [MOVED BY SENATOR TAJ HAIDER]

5. Definitions:-

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- b. "Appropriate Government" means in relation to any person serving in connection with the affairs of the Federation, including any person employed by a corporation, body, financial institution, bank, authority undertaking or any other organization set up, controlled or administered by or under the authority of the Federal Government and in other cases the Provincial Government or the Local Government.

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- m. "Holder of Public Office" means a person who:-

(i) has been the President of Pakistan or the Governor of a Province;

(ii) is, or has been the Prime Minister, Chairman Senate, Speaker of the National Assembly, Deputy Speaker National Assembly, Federal Minister, Minister of State, Attorney General and other Law Officer appointed under the Central Law Officers Ordinance, 1970 (VII of 1970), Advisor to the Prime Minister, Special Assistant to the Prime Minister, Federal Parliamentary Secretary, Member of Parliament, Auditor General, Political Secretary, Consultant to the Prime Minister and holds or has held a post or office with the rank or status of a Federal Minister or Minister of State;

(iii) is, or has been, the Chief Minister, Speaker Provincial Assembly, Deputy Speaker Provincial Assembly, Provincial Minister, Advisor to the Chief Minister, Special Assistant to the Chief Minister, Provincial Parliamentary Secretary, Member of the Provincial Assembly, Advocate General including Additional Advocate General and Assistant Advocate General, Political Secretary, Consultant to the Chief Minister and who holds or has held a post or office with the rank or status of a Provincial Minister;

- (iv) is holding, or has held, an office or post in the service of Pakistan, or any service in connection with the affairs of the Federation, or of a Province, or of a local council, cooperative societies constituted under any Federal or Provincial law relating to the constitution of local councils, or in the management of corporations, banks, financial institutions, firms, concerns, undertakings or any other institution or organization established, controlled or administered by or under the Federal Government or a Provincial Government, other than a person who is a member of any of the armed forces of Pakistan, except a person who is, or has been a member of the said forces and is holding, or has held, a post or office in any public corporation, bank, financial institution, undertaking or other organization established, controlled or administered by or under the Federal Government or a Provincial Government; or, notwithstanding anything contained in the Pakistan Army Act, 1952 (XXXIX of 1952), or any other law for the time being in force, a person who is a civilian employee of the Armed Forces of Pakistan;
- (v) or has been, the Chairman or Vice Chairman of a Zila Council, a Municipal Committee, a Municipal Corporation or a Metropolitan Corporation constituted under any Federal or Provincial law relating to local councils;

Explanation:- For the purpose of this sub-clause the expressions "Chairman" and "Vice Chairman" shall include "Mayor" and "Deputy Mayor" as the case may be, and the respective councilors therein.

- (va) is or has been a district Nazim or Naib Nazim, Tehsil Nazim or Naib Nazim or Union Nazim or Naib Nazim; and
- (vi) has served in and retired or resigned from or has been discharged or dismissed from the Armed Forces of Pakistan.

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25. Voluntary return and plea bargain.- (a) Notwithstanding anything contained in section 15 or in any other law for the time being in force, where a holder of public office or any other person, prior to the authorization of investigation against him, voluntarily comes forward and offers to return the assets or gains acquired or made by him in the course, or as the consequence, of any offence under this Ordinance, the Chairman NAB may accept such offer and after determination of the amount due from such person and its deposit with the NAB discharge such person from all his liability in respect of the matter or transaction in issue:

Provided that the matter is not sub-judice in any Court of law.

(b) Where at any time after the authorization of investigation, before or after the commencement of the trial or during the pendency of asp appeal, the accused offers to return to the NAB the assets or gains acquired or made by him in the course, or as a consequence; of any offence under this Ordinance, the Chairman, NAB, may in his discretion after taking into consideration the facts and circumstances or the case, accept the offer on such terms and conditions as he may consider necessary, and if the accused agrees to return to the NAB the amount determined by the Chairman, NAB the Chairman, NAB shall refer the case for the approval of the Court, or as the case may be, the Appellate Court and for the release of the accused.

(c) The amount deposited by the accused with the NAB shall be transferred to the Federal Government or, as the case may be, a Provincial Government or the concerned bank or financial institution, company, body corporate, cooperative society, statutory body, or authority concerned within one month from the date of such deposit.

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27. Power to seek Assistance.- The Chairman NAB, or an officer of the NAB duly authorized by him, shall have the power to seek full and complete assistance and call for all or any documents and information relevant to or in connection with any matter or inquiry or investigation pending before the NAB, or disposal of any property surrendered to or seized by the NAB from any Department of the Federal Government, Provincial Government, Local Authority, Bank, Financial Institution, person or any authority and institution or department in the public sector or the private sector, as he may deem it fit and proper to demand or require, provided that in any case in which a question of secrecy is involved or is raised at any time, the Chairman's decision shall be final.

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33B. Reporting of public contracts.---All Ministries, Divisions and Attached Departments of the Federal Government, all departments of Provincial and local governments, statutory - corporations or authorities established by the Federal Government or Provincial Government and holders of public office shall furnish to NAB a copy of any contract, entered into by such Ministries, Divisions and Attached Departments of the Federal Government, all departments of Provincial Government or local government, statutory corporations or authorities established by the Federal Government or Provincial Government or such holder of public office on its behalf, as the case may be, of the minimum monetary value of fifty million rupees or more, within such time as is reasonably practicable from the date of signing such contract.

33C. Measures for the prevention of corruption and corrupt practices.- The Chairman NAB, shall from time to time as he deems fit, constitute committees comprising officers of the NAB or other persons or organizations from the private or public sectors to-

- (a) educate and advise public authorities, holders of public office and the community at large on measures to combat corruption and corrupt practices;
- (b) develop, arrange, supervise, participate in or conduct educational programmes or media campaigns, and generally to disseminate information on the detrimental effects of corruption and corrupt practices and the importance of maintaining the integrity of public administration;
- (c) examine the laws in force, and also rules and regulations relating to the practice and procedure of various Ministries, departments of the Federal Government or Provincial Government, statutory or other public corporations or bodies, and the conduct of holders of public office and to recommend amendments in such laws, rules or regulations, as the case may be, in order to eliminate corruption and corrupt practices;

- (d) instruct, advise and assist any statutory or other public corporation or bodies or upon request, any organization in the private and public sector on measures for the reduction and elimination of corruption and corrupt practices; and
- (e) monitor the implementation of the instructions and advice as aforesaid and to assess and evaluate the success or otherwise of such instructions and advice on the reduction and elimination of corruption and corrupt practices.

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36. Indemnity:- No suit, prosecution, or any other proceedings shall lie against the Federal Government, Provincial Government, Chairman NAB, or any other member of the NAB or any person exercising any power or performing any function under this Ordinance or the Rules made hereunder for any act or thing which has been done in good faith or intended to be done under this Ordinance or the Rules thereof.

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THE SCHEDULE
[See section 10(b)]

S.No.	Offences	Punishment
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5.	Deceitfully, fraudulently or dishonestly causing loss to a bank, a financial institution, a co-operative society, a Government department, statutory body or an authority established or controlled by the Federal Government, a Provincial Government, or a local government.	Rigorous imprisonment for a term which may extend to fourteen years.

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