
National Accountability Bureau (NAB) Amendments Acts 2022-23.





RESEARCH CENTER, HIGH COURT OF BALOCHISTAN

COURT: MR. JUSTICE HON'BLE SHAUKAT ALI RAKHSHANI.

SUBJECT: National Accountability Bureau Ordinance, 1999 ('NAB Ordinance').

DATE: 1ST NOVEMBER, 2024.

BY: IZHAR AHMED LANNGOVE RESEARCH OFFICER

ASSISTED BY: BIBI TAYYABA, MARIA FAROOQ UZ ZAMAN, FATIMA JAHANZAIB
(RESEARCH ASSOCIATES)

QUERRIES: - When was NAB Ordinance amended? When did Hon'ble Supreme Court of Pakistan declare such NAB Amendments null and void and to what extent?

When did Hon'ble Supreme Court of Pakistan reinstate the NAB Amendments by reversing the 15 Sep. 2023 verdict and What NAB Law is in field at present?

KEYWORDS:

NATIONAL ACCOUNTABILITY BUREAU, AMENDMENTS, FUNDAMENTAL RIGHTS.

BACKGROUND:

The NAB Ordinance was enacted thirty-four days after Army Chief General Pervez Musharraf forcibly assumed power after he was sacked. He overthrew the constitutional-democratic order, and bestowed on himself legislative and executive powers, and removed the judges of the superior courts who did not endorse his take over. The preamble of the Ordinance provided the reason for its enactment, which was, '*to eradicate corruption and corrupt practices and hold accountable all those persons accused of such practices.*'

The NAB Ordinance underwent the following 05 Amendments from year 2019 to 2021.

- (a) Ordinance No. XXI of 2019 ('**First Amendment Ordinance**'),
- (b) Ordinance No. XXVII of 2019 ('**Second Amendment Ordinance**'),
- (c) Ordinance No. V of 2021 ('**Third Amendment Ordinance**'),
- (d) Ordinance No. XXIII of 2021 ('**Fourth Amendment Ordinance**'), and
- (e) Ordinance No. XXVI of 2021 ('**Fifth Amendment Ordinance**') (collectively referred to as '**the Amending Ordinances**').

However, in 2022 and 2023, the following amendments have been made to the Nab Ordinance:

- (1) National Accountability Bureau (Amendment) Act, 2022, which were enacted on 22 June 2022;
- (2) National Accountability Bureau (2nd Amendment) Act, 2022, which was enacted on 12 August 2022; and

(3) National Accountability Bureau (Amendment) Act, 2023, which was enacted on 29 May 2023.
(The list of amendments is annexed as annexure- A)

When did Hon'ble Supreme Court of Pakistan declare such amendments null and void and to what extent?

On 15 September 2023 a three-member bench of Hon'ble Supreme Court with a majority of two-one struck down and declared such NAB Amendments null and void without taking into account the 3rd Amendment which was in the field at the time of hearing of the petition. It was held that the NAB Amendment ACTS are in contradiction with fundamental rights as enshrined in The Constitution of Islamic Republic of Pakistan. It particularly violates Article 9, Article 14 Article 24 and Article 25 of the Constitution as unlawful use of State resources harms public welfare. Key sections of the NAB Ordinance amendments, including the Rs. 500 million threshold and exceptions for public office holders, were declared void when applied to elected officials and specific corruption offenses. However, these amendments remain valid for certain offenses committed by government servants. Additionally, all previously disposed cases based on invalidated sections were reinstated for further proceedings.

The case is reported as *PLD 2024 Supreme Court 102*, the relevant paras thereof are replicated as *infra*:

- i. *“The titled Constitution Petition is maintainable on account of violating Articles 9 (security of person), 14 (inviolability of dignity of man), 24 (protection of property rights) and 25 (equality of citizens) of the Constitution and for affecting the public at large because unlawful diversion of State resources from public development projects to private use leads to poverty, declining quality of life and injustice.”*
- ii. *“Section 3 of the Second Amendment pertaining to Section 5(o) of the NAB Ordinance that sets the minimum pecuniary threshold of the NAB at Rs.500 million and Section 2 of the 2022 Amendments pertaining to Section 4 of the NAB Ordinance which limits the application of the NAB Ordinance by creating exceptions for holders of public office are declared void ab initio insofar as these concern the references filed against elected holders of public office and references filed against persons in the service of Pakistan for the offences noted in Section 9(a)(vi)-(xii) of the NAB Ordinance;”*
- iii. *“Section 3 of the Second Amendment and Section 2 of the 2022 Amendments pertaining to Sections 5(o) and 4 of the NAB Ordinance are declared to be valid for references filed against persons in the Service of Pakistan for the offences listed in Section 9(a)(i)-(v) of the NAB Ordinance;”*

- iv. *“The phrase 'through corrupt and dishonest means' inserted in Section 9 (a) (v) of the NAB Ordinance along with its Explanation II is struck down from the date of commencement of the First Amendment for references filed against elected holders of public office. To this extent Section 8 of the First Amendment is declared void;”*
- v. *“Section 9(a)(v) of the NAB Ordinance, as amended by Section 8 of the First Amendment, shall be retained for references filed against persons in the service of Pakistan;”*
- vi. *“Section 14 and Section 21(g) of the NAB Ordinance are restored from the date of commencement of the First Amendment. Consequently, Sections 10 and 14 of the First Amendment are declared void;” and*
- vii. *“The second proviso to Section 25(b) of the NAB Ordinance is declared to be invalid from the date of commencement of the Second Amendment. Therefore, Section 14 of the Second Amendment is void to this extent.”*

49. *On account of our above findings, all orders passed by the NAB and/or the Accountability Courts placing reliance on the above Sections are declared null and void and of no legal effect. Therefore, all inquiries, investigations and references which have been disposed of on the basis of the struck down Sections are restored to their positions prior to the enactment of the 2022 Amendments and shall be deemed to be pending before the relevant fora. The NAB and all Accountability Courts are directed to proceed with the restored proceedings in accordance with law. The NAB and/or all other fora shall forthwith return the record of all such matters to the relevant fora and in any event not later than seven days from today which shall be proceeded with in accordance with law from the same stage these were at when the same were disposed of/closed/returned.*

EMPHASIS LAID:

SUPREME COURT (PRACTICE AND PROCEDURE) ACT, 2023

During the pendency of the Petition the Supreme Court (Practice and Procedure) Act, 2023 ('the Act') was enacted, on 21 April 2023. The Act states that all cases requiring the interpretation of the Constitution must be heard by not less than five Judges of the Supreme Court. The Petition had stated that the amendments made to the Ordinance offended the Constitution, therefore, to ascertain this the interpretation of the Constitution was required. Syed Mansoor Ali Shah, J, one of the three Hon'ble Judges hearing the Petition opined (on 18 August 2023) that the Petition should 'be taken up for further hearing only after the constitutionality of the Act [which was under challenge in this Court] is finally decided by this Court.'

On 6th September 2024 through **Intra Court Appeals No. 2, 3 and 4 of 2023** [*On appeal from the judgment dated 15.09.2023 passed by this Court in Constitution Petition No. 21 of 2022*]

AND CMA No. 9264/2023 in ICA No. 02 of 2023

A five-member bench of Hon'ble Supreme of Pakistan restored the Amendments to the National Accountability Beurau (NAB) Law by accepting the Federal Government's Appeal/ Intra Court Appeal No. 2/2023 etc. against the court's verdict of 15 September. 2023.

The above-mentioned judgment lays emphasis on the theory of separation of powers of the State Institutions. It was held that it is the duty of Supreme Court to uphold the legislation unless such amendment or legislation are unconstitutional. The Court held that the impugned judgment improperly assessed the NAB Amendments using criteria beyond constitutional parameters and did not adequately justify striking them down. Judges are bound by the Constitution and must establish that any law contravenes constitutional provisions before it is invalidated. The impugned judgment did not demonstrate adequately the how the Amendments violated fundamental rights, such as security (Article 9), dignity (Article 14), or equality (Article 25), without proper explanation or evidence. The relevant portion of the Judgment is quoted as under;

19. The impugned judgment did not test the Amendments on the touchstone of the Constitution, it instead proceeded to consider the Amendments by applying their lordships' own criteria and yardstick, which, with respect, was not permissible in terms of the Constitution. Needless to state, Judges must abide, as their oath of office prescribes, by 'the Constitution of the Islamic Republic of Pakistan and the law.' Unless the law is clearly found to offend the Constitution, and it is first so declared, it cannot be disregarded or struck down. The Petition had challenged the Amendments, therefore, it had to be established that the two pre-requisites of Article 184(3) of the Constitution (mentioned above) were met.

20. The impugned judgment did not demonstrate how the Amendments violated or infringed any of the Fundamental Rights which were cursorily mentioned therein. The impugned judgment had referred to Article 9 (security of person) but did not even briefly explain how anyone's security was undermined or affected by the Amendments. Reference was also made to Article 14 (inviolability of dignity of man) but there was no explanation forthcoming on how any of the Amendments had affected anyone's dignity. The next reference in the impugned judgment was to Article 25 (equality of citizens) but once again no explanation was offered nor was it elaborated how citizens were being subjected to different laws or were being treated differently. Passing reference was also made to Article 23 (provision as to property) and to Article 24 (protection of property) but neither of these Articles were expounded or elucidated with regard to the Amendments, let alone that the Amendments, or any part thereof, offended either of them. Without stating, demonstrating and then establishing that the Amendments, or any of its provisions did not conform to the said Fundamental Rights, the same could not be struck down.

21. *In view of the aforesaid the Petition should not have been allowed; it merited dismissal. Having arrived at this conclusion we need not consider the remaining submissions of the appellant's counsel and those who supported them, including that some of the Amendments gave effect to the decisions of the superior Court, that Mr. Niazi himself was the architect of many of the provisions which were later incorporated into the Amendments and that Mr. Niazi did not act bona fide.*

22. *The Supreme Court whenever possible must try to uphold legislation rather than rush to strike it down, and if there be two or more interpretations of any legislation to adopt the interpretation which upholds it. This does not mean that when the law, or any provision thereof, is unconstitutional it should not be so declared and struck down. However, the Petition and the impugned judgment failed to establish that the Amendments were unconstitutional, nor have we been so persuaded in this regard.*

23. *The Constitution has set out the respective roles of the Legislature and that of the Judiciary and every care should be taken to ensure that neither encroaches onto the domain of the other. Constitutional institutions better serve the people when they respect each other and perform the functions respectively granted to them by the Constitution. The Chief Justice and the Judges of the Supreme Court are not the gatekeepers of Parliament.*

24. *Therefore, for the aforesaid reasons, we allow these appeals by setting aside the impugned judgment, and dismiss the Petition. However, there is no order as to costs.*

RESEARCH NOTE:

Since the judgement dated 6th September 2024 of five member bench of Hon'ble Supreme Court of Pakistan, reversed the judgement dated 15th September 2023 reported as "PLD 2024 102" so the NAB Amendment Acts 2022 & 2023 are functional and in field at present.

