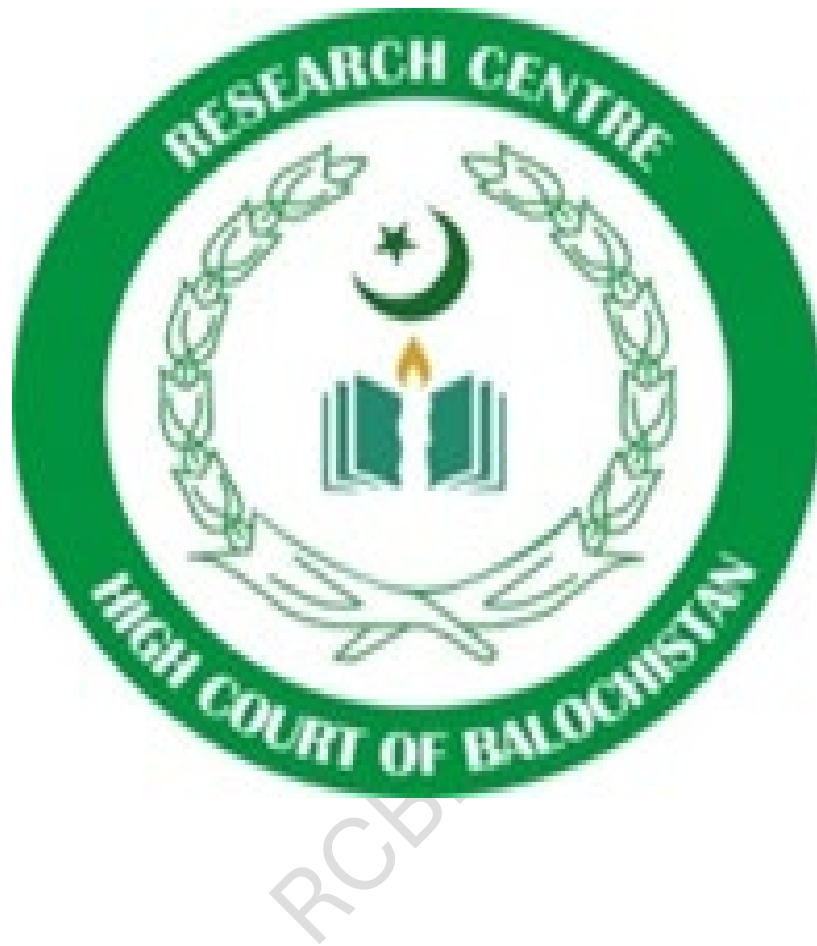

Overview of NAB Amendments 2022-23



RESEARCH CENTER, HIGH COURT OF BALUCHISTAN



RESEARCH CENTER, HIGH COURT OF BALOCHISTAN

COURT: HON'BLE MR. JUSTICE SHOUKAT ALI RAKHSHANI

SUBJECT: CRIMINAL LAW/CONSTITUTIONAL LAW

DATE: 01ST NOVEMBER 2024.

BY: RESEARCH OFFICER

QUERY OVERVIEW

QUERY: An Analysis of the 2022-2023 Amendments to Pakistan's National Accountability Bureau Ordinance"

The National Accountability Bureau Ordinance 1999 saw significant amendments through three Amendment Acts, two Amendments in the years 2022 and one Amendment Act in the year 2023. Here's an overview of the changes and their implications:

1. **NAB (Amendment) Act, 2022:** Enacted on June 22, 2022.
2. **NAB (2nd Amendment) Act, 2022:** Enacted on August 12, 2022.
3. **NAB (Amendment) Act, 2023:** Enacted on May 29, 2023.

Details of the Amendments

The **National Accountability (Amendment) Act, 2022**, was enacted on June 22, 2022, and introduced several significant changes to NAB's laws. Here are the key details:

Key Changes:

1- Limitation of NAB's Jurisdiction (Section 4):

- Certain public office functions, such as tax-related matters, procedural lapses, and Cabinet decisions, were exempted from NAB's jurisdiction unless there was evidence of monetary gain for the officeholder.
- This change narrowed NAB's scope, focusing it on cases with direct links to corruption or financial gain.

2- Definitions and Scope (Section 5):

- The definitions of terms like “accused,” “public officeholder,” and “benamidar” were expanded, clarifying who could be investigated and under what conditions, as well as redefining assets and associates related to the accused.

3- Revised Appointment and Term of NAB Officials (Sections 5A and 6):

- Appointment processes and terms for key NAB positions were revised. For instance, the chairman's term was set to three years without reappointment eligibility, and the appointment required bipartisan consultation.

4- Prosecutorial and Investigative Process (Sections 8, 18, 24):

- Amendments specified that NAB could only proceed with investigations upon strong evidence and, after an inquiry, could convert it into a full investigation if substantiated. Additionally, warrants for arrest were limited to instances where the accused was evading investigation or likely to tamper with evidence.

5- Restriction on Public Statements (Section 33F):

- NAB officials were prohibited from making public statements about ongoing investigations or inquiries until formal charges were filed. Violation of this restriction would result in imprisonment and a fine.

6- Procedural Amendments (Various Sections):

- Cases involving procedural lapses were moved to relevant departments outside NAB's purview.
- The amendments also included provisions on case management and trial timelines, aiming to expedite case proceedings and avoid prolonged delays.

The **National Accountability (Second Amendment) Act, 2022**, was enacted on August 12, 2022. This Act further amended the National Accountability Ordinance, 1999, with the goal of further restricting the jurisdiction of the National Accountability Bureau (NAB).

Key Changes:

1- Expanded Scope of Exemptions (Section 4):

- The amendment expanded exemptions from NAB's jurisdiction to include decisions by boards of directors of state-owned enterprises (SOEs) and

statutory bodies, as well as transactions covered by government amnesty schemes. It further excluded private transactions where government funds or property were not involved unless they pertain to specific offenses.

2- Financial Threshold for Cases (Section 5):

- A minimum pecuniary threshold was established, limiting NAB's authority to cases involving amounts of at least 500 million PKR. This aimed to restrict NAB's resources to larger-scale financial crimes.

3- Judicial Authority and Location Requirements (Section 5A):

- The amendment centralized authority in the federal government to establish NAB courts and appoint judges, with appointments requiring consultation with the relevant High Court's Chief Justice. Judges were given a fixed three-year term with protections against premature removal without similar consultations.

4- Limitations on Filing Additional Charges (Section 16):

- NAB was restricted from filing supplementary references after an initial reference unless new facts emerge and with court permission. This aimed to expedite proceedings by ensuring that cases would not be prolonged by additional charges after formal prosecution begins.

5- Informed Rights for the Accused (Section 19):

- During investigations, individuals were to be informed of their status (accused or witness) and provided sufficient information on the allegations to enable them to prepare a defense. This measure was designed to prevent undue harassment during investigations.

6- Conditions on Plea Bargains (Section 25):

- If an accused failed to fulfill the payment conditions of a plea bargain, the agreement would become void, protecting the government's interests. Additionally, the court could revoke a plea bargain found to be obtained under duress or illegal influence.

7- Withdrawal of Proceedings (Section 31B):

- The Chairman NAB, in consultation with the Prosecutor General, could withdraw or terminate proceedings if they were deemed unjustified, with court approval required once a formal reference was filed.

The National Accountability (Amendment) Act, 2023 was enacted on May 29, 2023 and came into effect immediately. The Act includes the following amendments:

1-Effective Date:

- The amendment takes effect immediately and is considered effective retroactively from the original 1999 ordinance's commencement.

2-Amendments in Definitions and Terminology:

- Specific references such as "clause (2)" have been omitted.
- The word "Cousis" has been corrected to "courts."

3-Procedural Changes:

- New subsections have been added to outline the transfer of cases. For instance, if the Chairman finds insufficient grounds against an accused, they can refer the matter for court approval to release the accused.
- When the Chairman determines a prima facie case exists under other applicable laws, the case will be referred to the appropriate agency, authority, or department for further investigation or prosecution.

The Petition (Constitution Petition No. 21 of 2022)

Following these amendments, Imran Khan, former Prime Minister, filed a constitutional petition in the Supreme Court Contravened fundamental rights under Articles 9, 14, 24, and 25 of the Constitution. Undermined NAB's ability to serve as an effective anti-corruption body, allowing public officeholders to evade accountability. The petition argued that the financial thresholds and expanded exemptions compromised the Ordinance's original purpose, thus posing a risk to public interest.

Supreme Court's Initial Decision (September 15, 2023)

A three-member bench of the Supreme Court, in a split decision, struck down several amendment provisions, finding them unconstitutional.

Majority Opinion:

Chief Justice Umar Ata Bandial and Justice Ijaz ul Ahsan held that provisions setting the financial threshold at 500 million PKR and exempting certain officials from NAB jurisdiction violated fundamental rights.

Key Reasoning: The amendments were seen as infringing upon equality (Article 25), public accountability (Article 24), and dignity (Article 14).

Dissenting Opinion:

Justice Syed Mansoor Ali Shah argued that legislative authority allows Parliament to determine NAB’s scope and that judicial restraint should be exercised unless constitutional rights are explicitly contravened.

Intra-Court Appeal and Final Decision (September 6, 2024)

Following the initial ruling, an intra-court appeal was filed and reviewed by a larger bench:

1. Judgment by the Larger Bench:

Chief Justice Qazi Faez Isa led a larger bench, ultimately overturning the initial ruling. The larger bench underscored principles of judicial restraint, noting that the judiciary should avoid interference in legislative reforms unless fundamental rights are demonstrably breached. This reinforced a separation of powers approach, whereby legislative policy is respected barring explicit constitutional violations. The Bench held that the amendments did not contravene constitutional protections directly. The legislative prerogative empowers Parliament to adjust NAB’s jurisdiction and prosecutorial thresholds, especially to address judicial backlog and procedural inefficiencies.

Final Ruling: The amendments were reinstated as law, with the court affirming that Parliament has the authority to shape accountability frameworks unless a clear constitutional violation exists.

Current Legal Status and Implications

Following the Supreme Court’s reversal, the amendments remain valid and active within the NAB Ordinance. NAB now operates under the revised thresholds and procedural rules established by the 2022 and 2023 amendments.

Annexuures:

RCBHC