

[AS LAID BEFORE THE NATIONAL ASSEMBLY]

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ORDINANCE No. XXIII OF 2021

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ORDINANCE

further to amend the National Accountability Ordinance, 1999

WHEREAS it is expedient further to amend the National
Accountability Ordinance, 1999 (XVIII of 1999), for the
purposes hereinafter appearing;

AND WHEREAS the Senate and the National Assembly are not in session and the President of the Islamic Republic of Pakistan is satisfied that circumstances exist which render it necessary to take immediate action;

NOW, THEREFORE, in exercise of the powers conferred by clause (1) of Article 89 of the Constitution of the Islamic Republic of Pakistan, the President of the Islamic Republic of Pakistan is pleased to make and promulgate the following Ordinance:—

1. **Short title and commencement.**—(1) This Ordinance may be called the National Accountability (Second Amendment) Ordinance, 2021.

(2) It shall come into force at once.

2. **Amendment of section 4, Ordinance XVIII 1999.**— In the National Accountability Ordinance, 1999 (XVIII of 1999), hereinafter referred to as “the Ordinance”, for section 4, the following shall be substituted, namely:—

“4. **Application.**—(1) This Ordinance extends to the whole of Pakistan and shall apply to all persons, including those persons who are or have been in the service of Pakistan, except persons and transactions specified in sub-section (2).

(2) The provisions of this Ordinance shall not be applicable to the following persons or transactions, namely:—

- (a) all matters pertaining to Federal, Provincial or Local taxation, other levies or imposts, including refunds, or loss of exchequer pertaining to taxation;
- (b) decisions of Federal or Provincial Cabinet, their Committees or Sub-Committees, Council of Common Interests (CCI), National Economic Council (NEC), National Finance Commission (NFC), Executive Committee of the National Economic Council (ECNEC), Central Development Working Party (CDWP), Provincial Development Working Party (PDWP), Departmental Development Working Party (DDWP), and the State Bank of Pakistan;
- (c) any person or entity who, or transaction in relation thereto, which are not directly or indirectly connected with the holder of a public office;

- (d) procedural lapses in any public or governmental work, project or scheme, unless it is shown that a holder of public office or any other person has been conferred or has received any monetary or other material benefit from that particular public or governmental work, whether directly or indirectly on account of such procedural lapses, which the said recipient was otherwise not entitled to receive;
 - (e) an advice, report or opinion rendered or given by a public office holder or any other person in the course of his duty, unless there is sufficient evidence to show that the holder of public office or any other person received or gained any monetary or other material benefit, from that advice, report or opinion, whether directly or indirectly, which the said recipient was otherwise not entitled to receive.
- (3) Upon the National Accountability (Second Amendment) Ordinance, 2021 coming into force, all pending inquiries, investigations, trials or proceedings under this Ordinance, relating to persons or transactions mentioned in sub-section (2), shall stand transferred to the concerned authorities, departments and Courts under the respective laws, as the case may be."

3. **Amendment of section 5, Ordinance XVIII of 1999.**— In the Ordinance, in section 5:—

- (i) clause (c) shall be substituted, namely:—

““Asset” includes all kinds of property owned, controlled by or belonging to an accused, whether directly or indirectly, or held as benami in the name of his spouse, relatives, associate, or any other person, whether within or outside Pakistan, which he cannot reasonably and lawfully account for;”

- (ii) clause (g) shall be substituted, namely:—

““Court” means Accountability Court established under section 5A of the Ordinance;” and

- (iii) clause (h) shall be substituted, namely:—

““Judge” means a Judge appointed or deemed to have been appointed under section 5A of this Ordinance;”

- (iv) in clause (p) after the word "all" the words "kinds of shall be inserted."

4. **Substitution of section 5A, Ordinance XVIII of 1999.**— In the Ordinance, for section 5A, the following shall be substituted, namely:—

"5A. Establishment of Accountability Courts.— (a) The President, in consultation with the Chief Justice of the Pakistan, shall establish as many Accountability Courts through out the country, as he may deem necessary, to try offences under this Ordinance.

(b) The President shall appoint any person as a Judge of the Accountability Court:—

(i) who is a serving District and Sessions Judge or Additional District and Sessions Judge, after consultation with the Chief Justice of the concerned High Court; or

(ii) who has been or has acted as a Judge of a High Court or is a retired District Judge or a retired Additional District and Sessions Judge or a serving or retired Judge of a Special Court, not being more than sixty eight years of age at the time of appointment, after consultation with the Chief Justice of Pakistan.

(c) A Judge of the Accountability Court shall be appointed for a period of three years on such pay and allowances as that of a Judge of a High Court.

(d) A Judge of the Accountability Court shall only be removable by the President, in consultation with the Chief Justice of the concerned High Court, before the expiry of his tenure, if he is guilty of misconduct or is incapable of properly performing the duties of his office by reason of physical or mental incapacity.

(e) Disciplinary proceedings against a Judge of the Accountability Court shall be conducted in the same manner and under the same legal provisions and rules as prescribed for a District and Sessions Judge.

(f) During his tenure a Judge of the Accountability Court may be transferred to another Accountability Court within the same Province, by the President, in consultation with the Chief Justice of the concerned High Court.

(g) Where more than one Court has been established at a place, the Chief Justice of the concerned High Court shall designate a Judge of any

such Court to be an Administrative Judge and a case triable under this Ordinance shall be filed before the Court of the Administrative Judge who may either try the case himself or, assign it for trial by any other Court established at that place at any time prior to the framing of the charge.

- (h) In respect of a case assigned to a Court under sub-section (g), all orders made or proceedings taken before the assignment shall be deemed to have been made or taken by the Court to which the case has been assigned.
- (i) Any Court established or a Judge appointed therein, prior to the coming into force of the National Accountability (Second Amendment) Ordinance, 2021, shall be deemed to be a Court or a Judge under this section.”

5. **Amendment of section 6, Ordinance XVIII of 1999.**— In the Ordinance, sub-section (b) of section 6 shall be substituted by the following:—

(b) **Chairman, National Accountability Bureau:**

- “(i) There shall be a Chairman, National Accountability Bureau to be appointed by the President in consultation with the Leader of the House and the Leader of the Opposition in the National Assembly.
- (ii) If there is no consensus on the name of the Chairman, the names(s) proposed by the Leader of the House and the Leader of the Opposition shall be forwarded by the President to a Parliamentary Committee appointed under clause (iii), which may confirm any one name for appointment as Chairman.
- (iii) The Parliamentary Committee under clause (ii) shall be constituted by the Speaker, National Assembly, comprising fifty percent members from the Treasury benches and fifty percent from the Opposition benches, based on their strength in Majlis-e-Shoora (Parliament), to be nominated by the respective Parliamentary Leaders.
- (iv) The total strength of the Parliamentary Committee shall be twelve members out of which one third shall be from the Senate. If the National Assembly is dissolved at the material time, all the members of the Committee shall be from the Senate.

- (v) The Chairman shall hold office for a period of four years on such terms and conditions as may be determined by the President and shall not be removed from office except on grounds provided for the removal of a Judge of Supreme Court in the manner and by the forum provided under Article 209 of the Constitution of Pakistan:

Provided that on expiry of the period of four years, the incumbent Chairman may be appointed for another period of four years by the President in the same manner as provided for appointment in clauses (i) and (ii) of sub-section (b):

Provided further that till the assumption of charge by the Chairman appointed under this section, the outgoing Chairman shall continue to act, exercise authority and perform functions as the Chairman and shall have all powers vested in the Chairman under the Ordinance.

- (vi) The Chairman may, in writing under his hand, addressed to the President, resign his office.”

6. Amendment of section 8 Ordinance, XVIII of 1999.— In the Ordinance, in section 8:—

- (1) in sub-section (a), clause (ii) shall be substituted, namely:—

“Subject to the provisions of the Ordinance, the Prosecutor General and Special Prosecutors shall render independent advice to the Chairman and shall ensure fair, consistent, uniform, non-discriminatory and expeditious prosecution of cases and in doing so shall protect and accord all lawful rights and interests of the accused persons.”

- (2) After sub-section (d), the following shall be inserted, namely:—

“(e) Chairman, NAB shall provide Investigation Report to the Prosecutor General and seek concurrence of the Prosecutor General for commencement or continuation of prosecution.”

7. Amendment of section 9, Ordinance XVIII 1999.— In the Ordinance, in section 9, sub-section (b) shall be substituted as follows:—

“All offences under the Ordinance shall be non-bailable and notwithstanding the provisions of sections 439, 491, 496, 497, 498,

498 (a) and 561A of the Code, no Court other than the Court under the Ordinance, shall have the power or the jurisdiction to grant bail to or otherwise release an accused person in a case triable by an Accountability Court:

Provided where an accused person is released on bail, the amount of surety shall be fixed having regard to the gravity of the charge against such person and where the charge specifies any amount in respect of which the offence is alleged to have been committed, the surety amount shall not be less than the said amount."

8. **Amendment of section 15, Ordinance XVIII of 1999.**— In the said Ordinance, in the proviso to sub-section (a) of section 15, the expression "sub-section (b)" shall be omitted and shall always be deemed to have been so omitted.

9. **Substitution of section 16, Ordinance XVIII of 1999.**— In the said Ordinance, for section 16, the following shall be substituted, namely:—

- "16. Case management and trial of offences.**—(a) Notwithstanding anything contained in any other law for the time being in force, an accused shall be prosecuted for an offence under this Ordinance in the Court established under this Ordinance and the case shall be heard day to day and shall be disposed of within six months.
- (b) Notwithstanding anything contained under this Ordinance, the Chairman NAB in consultation with the Prosecutor General, having regard to the facts and circumstances of the case, may file a Reference before any Court established anywhere in Pakistan under this Ordinance and such Court shall have exclusive jurisdiction to try the case.
- (c) Whenever a Reference under this Ordinance is filed before the Court, a copy of the same shall be sent to the accused and a Reference filed in the Court shall be accompanied by a certificate to that effect.
- (d) The Court shall prescribe the case management schedule, as soon as practicable, but preferably not later than seven working days from the date when the Court takes cognizance of the trial.
- (e) In trials before the Court, save as expressly provided otherwise, the evidence of all witnesses and the accused, including examination-in-chief, cross-examination and re-examination, or any other statement under the Code, shall be recorded through electronic audio-video means,

or any other modern device, whereafter the recording shall be transcribed verbatim in the same language in which the evidence has been uttered.

Explanation:—

- (i) It is clarified that, for the purposes of this section, the Presiding Officer of the Court may not himself dictate or write down the evidence, but may correct any violation of the Qanun-e-Shahadat Order, 1984 (P.O No. X of 1984) during the recording of the evidence.
 - (ii) The Court shall record any remark as is material regarding demeanour of the witness, and shall also note the objections raised during the proceedings.
- (f) The transcript shall be prepared expeditiously and not later than twenty four hours, whereafter the transcript, along with the audio-video recording, shall be given to the witness, who after having been read over the transcript, shall affix his signatures or thumb impression on the transcript. The Presiding Officer shall also sign the transcript, which shall be *prima facie* evidence of correctness of the transcript and shall be made part of the record.
 - (g) In case the witness, the accused or anyone else, dispute the contents of the transcript, the Court may resolve such dispute after consulting the electronic audio-video recording.
 - (h) In an appropriate case concerning documentary evidence, the Court in its discretion, may direct the witness to produce a written witness statement, duly sworn and signed by the witness, for the whole or part of his testimony, treating such written witness statement to be the examination-in-chief, which shall then be subject to cross-examination, and re-examination if required.
 - (i) For the purposes of sub-section (h), the witness shall testify under oath administered by the Court, verifying and affirming the contents of his written witness statement to be true and correct to the best of his knowledge and belief.
 - (j) In case the witness in his evidence, utters any word other than in English or Urdu, in addition to transcribing such utterance either in the Urdu or English script verbatim, a translation of such utterance shall

also be transcribed in English or Urdu, as deemed convenient by the Presiding Officer of the Court, either on his own or through the assistance of anyone else, including a translator.

- (k) In case it is not practicable or feasible for a witness to attend the Court in person, his evidence may be recorded through video-link or any other modern device, in which case the Court may dispense the requirements of section 353 of the Code.
- (l) For the purposes of sub-section (k), if the evidence is recorded through video-link, the following protocols shall be observed:—
- (i) The video conferencing shall be held at the place approved by the Court.
 - (ii) If the witness is in Pakistan, a Commission shall be issued to the Magistrate of the first class under section 503 or 506 of the Code to facilitate and supervise the process as hereinafter mentioned, which shall apply *mutatis mutandis* to this clause.
 - (iii) If the witness resides in any country with which Pakistan has reciprocal arrangements, a Commission as aforesaid shall be issued to such Court or Judge having authority in this behalf as may have been specified in terms of sub-section (2-B) of section 503 of this Code. However, where no such arrangements exist, the statement of the witness must be recorded in the Pakistan Embassy or High Commission or Consulate or, if the Court permits, in a Notary's office in the presence of an officer of that Embassy or High Commission or Consulate or the Notary, as the case may be.
 - (iv) The judge, magistrate, officer of the Pakistan Embassy or High Commission, Consulate or Notary, as the case may be, must ensure that the witness is alone at the time of video conference and is not coached, tutored or prompted and he shall orally affirm to this effect to the Court.
 - (v) Before examination or evidence of the witness under audio-video link would start, he shall submit to the judge, magistrate, officer of the Pakistan Embassy or High Commission, Consulate or Notary, as the case may be, his original identity card, passport, driving licence or other document to prove his identity along with an affidavit, signed and thumb marked, duly verified before a judge, or a magistrate or a notary that the person who is shown

as the witness is the same person who is going to depose on the screen. The said identification document and affidavit shall be shown on the screen to the other side and the officer present with the witness shall forward a copy of these papers duly attested by him in a sealed cover to the Court for which expenses shall be borne by the Pakistan Embassy or High Commission or Consulate and the said document shall be made part of the Court record.

- (vi) As soon as the identification part is complete, oath shall be administered to the witness through audio video link according to the Oaths Act, 1873 (X of 1873), or any other law for the time being in force.
 - (vii) The witness shall, as far as possible, be examined during the working hours of the Courts in Pakistan.
 - (viii) The proceedings shall be conducted, as far as practicable, without any interruption and no adjournment shall be granted unless the Court thinks necessary to meet the ends of justice.
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- (ix) The Court shall provide to the witness copies of any documents that he may be entitled to demand under any law for the time being in force, which if demanded at the time of recording of evidence, may be sent to the witness electronically.
 - (x) Sub-section (e) shall apply *mutatis mutandis* to the recording of evidence under sub-sections (k) and (1). The transcript shall be read over to the witness and if possible his digital signature shall be obtained as a *prima facie* proof of its correctness. After that the Presiding Officer shall also sign the transcript.
 - (xi) The visual must be recorded at the Court's end, secured with the seal of the Court and shall be made part of the record.
 - (xii) If a video link fails during the proceedings, the Court may adjourn the proceedings or make such other order as it may deem appropriate.
 - (xiii) The Court may put such conditions and issue directions as may be required in the circumstances of a case to meet the ends of justice.

- (xiv) The Court may at any time vary or revoke a direction/permission for examination of a witness on video link.
- (m) The recording of the evidence through electronic audio-video means or other modern devices shall be preserved in such manner and for such duration as may be prescribed.
- (n) The Federal Government shall take immediate steps to install the appropriate facilities to record evidence through electronic audio-video means or any other modern device, in all Courts throughout Pakistan, preferably within a period of six months from the date of commencement of this section.
- (o) Before commencement of trial, the Court shall provide an opportunity to the parties for either admitting or denying documentary evidence produced or relied upon, and if admitted, the Court shall not allow the authenticity of such document to be contested, unless the document has been declared fake by a competent court of jurisdiction.”

10. **Insertion of new section 31DD, Ordinance XVIII of 1999.**— In the said Ordinance after section 31D, the following new section shall be inserted, namely:—

“31DD. **Approval of the State Bank of Pakistan.**—Notwithstanding anything contained in this Ordinance or any other law for the time being in force, no inquiry, investigation or proceedings in respect of a decision of a Board of a bank or financial institution, shall be initiated without the prior approval of the Governor, State Bank of Pakistan.”

11. **Insertion of new section 33F, Ordinance XVIII of 1999.**— In the said Ordinance, after section 33E, the following new section shall be inserted, namely:—

“33F. **Withdrawal and termination of pending proceedings.**— (1) Prior to filing of a Reference, the Chairman, NAB in consultation with the Prosecutor General, having regard to the totality of facts, circumstances and evidence, may partly, wholly, conditionally or unconditionally withdraw or terminate any proceedings under the Ordinance, if such proceedings are unjustified.

(2) After the filing of a Reference, if the Chairman, NAB in consultation with the Prosecutor General, having regard to the totality of facts, circumstances and evidence is of the view that the Reference is partly

or wholly unjustified, he may recommend to the Court where the matter is pending that the Reference may partly or wholly be withdrawn or terminated, in which event the Court shall pass appropriate orders.

(3) No action or claim by way of suit, prosecution, complaint or other civil or criminal proceedings shall lie against the Federal, Provincial or Local Government, the National Accountability Bureau or any of their officers and functionaries for any act or thing done or intended to be done in good faith pursuant to withdrawal or termination of cases under sub-sections (1) and (2).”

STATEMENT OF OBJECTS AND REASONS

Currently National Accountability Bureau (NAB) is dealing with a large number of inquiries and investigation in addition to handling mega corruption cases. Under the existing regime a number of inquiries have been initiated against the holders of Public Office and government servants on account of procedural lapses where no actual corruption is involved. This has enhanced NAB's burden and had an adverse impact on the workings of the Federal Government. Additionally, NAB has also assumed parallel jurisdiction and is inquiring into matters pertaining to taxation, imposition of levies etc., and therefore interfering in the domain of tax regulatory bodies. As such, a number of amendments have been proposed to redefine the operational domain of NAB.

2. Under the proposed amendment a mechanism for establishment of Accountability Courts, appointment, removal and terms and conditions of Judges of said Courts have been provided. In order to curb delays and bring the trial procedures in line with modern practices, a new mechanism for recording of evidence has been devised whereby the evidence of all witnesses and the accused shall be recorded through electronic audio-video means or any other modern devices. Also, if any of the witness is unable to attend the trial in person, his evidence may be recorded through a video link.

3. There is no authority or forum for seeking bail under the existing regime and the accused has to file constitutional petitions before High Courts for grant of bail, but through an amendment a power to exercise the grant of bail has been given to the trial Court.

4. Presently, on completion of the tenure of the Chairman NAB, the office falls vacant till the appointment of the new Chairman which stymies the operations of the bureau during that period. To overcome this impediment, the amendment proposes that till the appointment of Chairman NAB, the outgoing Chairman shall continue to act, exercise authority and function as the Chairman under the NAO 1999.

5. The National Accountability (Second Amendment) Ordinance, 2021 (XXIII of 2021) laid before the National Assembly under sub-paragraph (ii) of paragraph (a) of clause (2) of Article 89 of the Constitution and deemed under paragraph (b) of clause (3) of the said Article 89 to be a Bill has been designed to achieve the aforesaid objectives.

Minister-in-charge