**Chairman NAB: Law and his Extension**

[Gohar Ali Khan](https://dailytimes.com.pk/writer/gohar-ali-khan/)

October 6, 2021

There cannot be two opinions about the core principle of any democracy being “accountability in public life.”

And no one (Government or Opposition) disagrees. The question is – could it mean different things for different people? In our democracy, yes. We mean “misconduct or corrupt practice” when we say “accountability.”

That is what was introduced otherwise previous laws used the term “disqualification law” than “Accountability or Ehtesab” laws. And the “difference” is not just the “name.”

Before going to the topic, consider its history to understand the “importance of head of any investigation agency.” The first law on the subject Public Representative (Disqualification) Act, 1949 was enacted to apply with effect from 14-08-1947. It was applicable only to “elected representatives” (not government or civil servants). The “Governor-General or Governor” in his “discretion” to hold inquiry may file “Reference” before Federal Court, High Court or Tribunal for an alleged “misconduct” of the public representative. And the Court, only to report back to the Governor-General or Governor. It mainly aimed at “disqualifying” the representatives. It was repealed in 1954 but no other law was simultaneously enacted till 1959 when the Elective Bodies (Disqualification) Order, 1959 was promulgated to remain “valid law” till 31-12-1960.

In the 1959 law, “misconduct” was expanded. So much so that an activity that could contribute to “political instability” was termed as “misconduct.” And even “general reputation of being corrupt” was a “misconduct’.” And for these, representatives were “not charged, prosecuted or convicted by an impartial tribunal,” yet “several representatives” stood “disqualified to hold public office.” Because it contained a provision-take an offer to retire from public life till December 1966-and that would close all proceedings against that representative. There was no “right to appeal.” Instead, it provided the “order of tribunal shall be final and not called in question in any Court or forum.”

And it was only in 1963 that the Elective Bodies Disqualification (removal and Remission) Ordinance, 1963 was promulgated to provide that “the President on application by a disqualified person, may ‘remove or remit’ the ‘disqualification.”

When Chairman NAB entered upon his office (10-11-2017), his TENURE as Chairman NAB was ONLY for four years.

The 1959 law had a sunset clause to lapse on 31-12-1960. And on 09-01-1977, two separate laws were enacted, one called Holders of Representative Offices (Prevention of Misconduct) Act, 1976 to deal with “an offence of misconduct” which included the taking of illegal gratification, a valuable thing without consideration, dishonest misappropriation, obtaining pecuniary advantage or having assets beyond reasonable sources of income. It provided “trial by High Court” and upon conviction, a sentence of imprisonment for seven years. But this was only be invoked if the accused representative was still holding his office. And another law known as Parliament and Provincial Assemblies (Disqualification for Membership) Act, 1976, was to cover mainly what is now known as “misuse of authority” cases. Under that law, trial by High Court and upon conviction, it only provided a sentence of disqualification to hold office till next General Elections. However, an “accused could be ‘charged”’ under either of these Acts. But two offices were “exempted”- Prime Minister and Chief Minister could not be tried under either of these Acts. These laws were substituted by similarly worded and named “Orders,” promulgated by Martial Law Administrator General Zia in 1977.

Those Orders of 1977 were formally repealed when Ehtesab Ordinance, 1996 was enacted. With Ehtesab Ordinance, 1996, this so-called “accountability law” came into force with effect from 01-01-1985 and when replaced by Ehtesab Act, 1997, it was with effect from 06-11-1990.

Under these laws, whether you call it disqualification or accountability, the impression has been, that mostly, the victims are “political opponents.” Therefore, to ensure “fair and impartial inquiries,” investigation including trial, the emphasis has always been on the “person who decides to invoke this law in the first place.”That means -Chairman, NAB.

National Accountability Ordinance, 1999 (NAB Ordinance) was enacted on 16-11-1999. A permanent Accountability Bureau was established to be headed by Chairman. Section 6 of NAB Ordinance provided that “There shall be Chairman NAB to be appointed by the President and he shall hold office during the pleasure of the President.” This reflected that mode and manner of appointment of Chairman NAB or his qualifications or terms and condition of service including tenure not provided for in the law. When NAB Ordinance was challenged before Supreme Court, “tenure of Chairman NAB” was one of the “issues” for the purpose of “independence of NAB.”Supreme Court decided those petitions challenging NAB Ordinance known as Asfandyar Wali Case (PLD2001SC607) on 24-04-2001. While holding that the law was constitutional, Supreme Court directed “appropriate amendments,” which included specific directions with respect to – (i) Chairman NAB, (ii) Deputy Chairman NAB, and (iii) Prosecutor General NAB.

With respect to Chairman NAB, it was directed by Supreme Court that Section.6 of the NAB Ordinance be amended to include that “Chairman NAB shall be appointed by the President in consultation with the Chief Justice of Pakistan. He shall hold office for a period of three years. And shall not be removed from office except on the grounds of removal of a Judge of the Supreme Court of Pakistan….”

It was also held that then-Chairman NAB “should be deemed to have been appointed for three years from the day he entered upon his office.”

With respect to Deputy Chairman NAB, it was directed he shall be appointed for “a minimum” period of two years. And with respect to Prosecutor General, it was directed that “he should hold a tenure post of not less than two years.”

NAB Ordinance 2001 was amended on 10-08-2001 and the Tenure of Chairman NAB, Deputy Chairman NAB and PG, NAB was fixed for three years. After General Elections 2002, a law was amended on 23-11-2002. This time, the tenure of Deputy Chairman and PG was fixed at Three years and Chairman NAB at Four years. But each one for a “non-extendable period.”

Can such a “non-extendable period” be “extended” by any means? Such an issue was taken up before Supreme Court against the then Prosecutor General, NAB Irfan Qadir who after serving full term had been appointed afresh for another term. Supreme Court held (PLD2010SC1109) that “non-extendable term, referred to a duration of time which was  incapable of being enlarged or extended or lengthened or prolonged or stretched.” Supreme Court also observed that “the intention of the law-giver by inserting the said word through an amendment in the relevant provision is obvious i.e. that since the Prosecutor-General could be called upon to prosecute the holders of the highest of public offices in the country including the sitting Prime Minister, therefore, he should be a person who should be placed above all kinds of temptations and greed and should not at any time be looking for any favour from any quarter which could become a hindrance in his way of fearlessly discharging his said obligations.”

The reappointment of PG was declared illegal.

These principles were quoted with approval by the Supreme Court (PLD2011SC365) in the case of former Chairman NAB, Deedar Hussain Shah who had assumed office on 08-10-2010 and whose “appointment had been challenged on the ground of no consultation with the Leader of the Opposition.”

During the course of proceeding earlier notification dt.08-10-2010 was rescinded and another Notification was issued on 09-02-2011 to “overcome the issue of consultation with the Leader of the Opposition.”

Supreme Court reaffirmed the principles that tenure of Chairman NAB was for a “non-extendable” period of four years that practically means “an appointment of a person for one term of office only and no fresh appointment of the same person can be made to that office whether he completes the original term of office or not.”[And incumbent Chairman NAB (Justice (R) Javed Iqbal) was heading that Bench of Supreme Court.]

For a valid and important purpose, the words “non-extendable” have been used in the statute. It is not just for Chairman NAB but also for Deputy Chairman and Prosecutor General, even though their tenure is for three years. Can this be “amended” for the “sole purpose” to confer extension either by providing that “the same person (an expression used by Supreme Court) may be reappointed” or that “the same person shall continue till his successor is appointed.”

When Chairman NAB entered upon his office (10-11-2017), his TENURE as Chairman NAB was ONLY for four years. Even to continue as Chairman “till his successor” is appointed, another notification is to be issued. No such notification can be issued even if the “non-extendable” word is “deleted.”

Because the same person (who held the office for “non-extendable period”) cannot “hold that office” under any name for any other period” because the end of four years marks the end of his office for all purpose. The appointment of another Chairman NAB is mandatory. And that too in light of directions of Supreme Court as held in the Choudhry Nisar Ali Khan case (PLD2013SC568) when the then Chairman NAB Fasih Bukhari’s appointment was declared “illegal.” If at all, an amendment in the law is made, although “bad intention” cannot be (legally) attributed to the legislature but in such a situation (to achieve a specific purpose), it would be difficult to attribute bona fide to it (as once observed by Justice Asif Saeed Khosa, in 2013SCMR1752).

*The writer is a Supreme Court Advocate and can be reached at barristergohar@gmail.com.*