**Accountability amendments**

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Amendments in the National Accountability Ordinance, (NAO) 1999 (XVIII of 1999) through the National Accountability (Second Amendment) Act, 2022 are in conformity with constitutional commands and various verdicts of the apex court on the protection of life and liberty, safeguards as to arrest and detention, right to fair trial and due process.

Article 8 of the constitution unequivocally stresses upon the fact that laws inconsistent with or in derogation of fundamental rights are void. The National Accountability Ordinance, (NAO) was a classic example of denial of the fundamental rights enshrined in the constitution and was used for political engineering and victimization for decades. The frequent and blatant abuse of the NAO against political rivals during the last four years sufficiently establishes that the NAO was nothing other than a draconian tool for persecution.

Upholding constitutional guarantees to citizens has always been stressed upon in light of the dictums laid down by the superior courts. The NAO was a void law in light of Article 8 of the constitution as the constitution stays at the top of the pyramid of the legal hierarchy and all other laws are subservient to the constitution; if any piece of legislation is repugnant to the constitution it is void ab initio. The law of the land prohibits forcing someone to give witness against himself but under the repealed NAO, this principle was completely shifted in another direction to force the accused to prove his/her innocence. On this sole score, the repealed NAO was not sustainable. Besides, it unprecedentedly provided for a 90-day physical remand with no legal provision for bail even after such a long and ruthless period of physical remand. This was against the settled judicial precedents, so the apex judiciary used to exercise its constitutional jurisdiction to entertain bail petitions.

The critics of amendments in the NAO have badly failed to appreciate Article 10 (4) of constitution, which categorically prohibits prevention detention except persons acting in a manner prejudicial to the integrity, security or defence of Pakistan etc. The promulgation of the amendment law will protect these constitutional rights as well as defend the inviolability of the dignity of man, privacy of home and protection against torture for extracting evidence.

Regrettably, upon instigation of the PTI government, NAB authorities badly misused their powers and gravely ruined the dignity of the citizens of Pakistan, violating basic human rights. Not only politicians but also government functionaries, civil bureaucracy and business community stopped working due to a fear of maltreatment by NAB. The apex court of the country noticed the atrocity of NAB authorities under the grab of the repealed NAO. Once former CJ Asif Saeed Khan Khosa while taking the accountability watchdog to task asked: “What does NAB do after all? Is NAB's only purpose to make cases? Its only purpose is not to make cases; the only purpose is not to 'pakar dhakkar'.”

Shifting of the burden of proof on NAB authorities is in line with the direction of Justice Khosa: “registering a case is not the only objective; NAB's purpose is also to prove a case and have a suspect punished…NAB should also attach evidence for those who it has made cases against.” The CJ also pointed out that NAB law does not mean that it can be used “whatever the way you like”. He remarked that, “we used to hear that in the past, NAB law was misused to change political affiliations. But now, the civil laws are being treated under the criminal laws, and civil cases are also being heard under the NAB law, and it (NAB law) should not be misused.”

The amendment act rectifies the flaws pointed out in various dictums of the SC, as in another case a three-member bench of Supreme Court held that “the onus of providing tangible material and evidence against the accused was on NAB.” The view taken by the court affirmed that its utmost priority is to protect the civil liberties and fundamental freedoms of the individual which has been done through this amendment law. On a number of occasions, the Supreme Court found NAB authorities violating the well-celebrated constitutional principles of rights to fair trial and due process. The amendments to the law will protect the individual’s rights, improving the social and international fabric of Pakistan. In this context, the Supreme Court’s bail order in Khawaja Saad Rafiq and Khawaja Salman Rafiq’s case – who were detained for 15 months without reasonable grounds – held that the accountability bureau had “violated the rights to fair trial and due process.”

The NAB law being in conflict with the constitutional provisions, coupled with its performance, demanded it be either repealed or revised. NAB could not hide from constitutional courts itd abuse of power in order to hamper the freedom of innocent people without any legal justification and evidence. That is why the country’s top judges have repeatedly lashed out at the performance of NAB, observing that it was “no longer fulfilling its purpose and being used for exploitation.” While heading the three-member bench of the Supreme Court, then CJ Gulzar Ahmad observed that “NAB has become a hurdle to the very role it was supposed to play for the betterment of the country. The purpose for which it was formed is now lost.”

On all these illegalities and violation of the constitution, parliament could not just choose to shut its eyes. A vigilant and prudent parliament is always expected to respond to address such issues promptly. Due to all these anomalies, NAB has lost its credibility, respect and justification of existence in the eyes of all the pillars of the state. People – including government functionaries and the business community – no longer trust in NAB to get fair treatment. Therefore, this enactment is a fair and legitimate response by parliament to protect the fundamental rights of the citizens as guaranteed by the constitution of Pakistan. It embeds all the possible provisions to address the maladministration and abuse of powers highlighted by the apex court of the country.

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