

[TO BE INTRODUCED IN THE NATIONAL ASSEMBLY]

A

BILL

to repeal the National Accountability Ordinance, 1999 and to enact new law of Accountability

WHEREAS it is expedient to repeal the National Accountability Ordinance, 1999 (XVIII of 1999) and to enact new law of Accountability, providing for accountability of holders of public offices in just, transparent and non-oppressive manner;

It is hereby enacted as follows:-

1. **Short title, extent and commencement.**— (1) This Act may be called the Holders of Public Offices (Accountability) Act, 2009.

(2) It extends to the whole of Pakistan and shall apply to all holders of public offices wherever they may be.

(3) It shall come into force at once.

**CHAPTER-I
PRELIMINARY**

2. **Definitions.**— In this Act, unless there is anything repugnant in the subject or context,—

(a) “appropriate Government” in relation to a holder of public office means the Federal Government or, as the case may be, the Provincial Government;

(b) “Chairman” means the Chairman of the Accountability Commission appointed under section 4;

(c) “Code” means the Code of Criminal Procedure, 1898 (Act V of 1898);

(d) “Commission” means the Accountability Commission established under this Act;

(e) “Court” means the Court of Session designated by the Chief Justice of the High Court for the trial of offences under this Act;

(f) “Federal Government” means the Ministry of Law and Justice;

(g) “holder of a public office” means a person who—

(i) has been the President of Pakistan or the Governor of a Province;

(ii) is, or has been, the Prime Minister, Chairman Senate, Speaker of the National Assembly, Deputy Chairman Senate, Deputy Speaker National Assembly, Federal Minister, Minister of State, Attorney-General and other Law Officers appointed under the Central Law Officers, Ordinance, 1970 (VII of 1970), Advisor to the Prime Minister, Federal Parliamentary Secretary, Member of Parliament, Special Assistant to the Prime Minister, and the holder of a post or office with the rank or status of a Federal Minister or Minister of State; and

- (iii) is, or has been, the Chief Minister, Speaker Provincial Assembly, Deputy Speaker Provincial Assembly, Provincial Minister, Advisor to the Chief Minister, Special Assistant to the Chief Minister, Provincial Parliamentary Secretary, Member of the Provincial Assembly, Advocate-General, including Additional Advocate-General and Special Assistant to the Chief Minister, and the holder of a post or office with the rank or status of a Provincial Minister;
- (h) "offence" means the offence of corruption and corrupt practices as defined in section 11;
- (i) "Parliamentary Committee" means the Parliamentary Committee constituted under section 4; and
- (j) "property" includes any or all moveable and immovable properties, situated within or outside Pakistan.

CHAPTER-II THE ACCOUNTABILITY COMMISSION

3. **The Accountability Commission.**— (1) As soon as may be after commencement of this Act the Federal Government shall establish the Accountability Commission for purpose of inquiry and investigation and prosecution of the offences under this Act.

(2) The headquarter of the Commission shall be at Islamabad and the Chairman may with the approval of the Federal Government, set up regional offices at such places as he may determine.

4. **Chairman.**- (1) There shall be a Chairman, Accountability Commission, to be appointed for a term of three years by the Prime Minister in consultation with the Leader of the opposition in the National Assembly and confirmed by a Parliamentary Committee within ninety days.

(2) The Parliamentary Committee shall be constituted by the Speaker of the National Assembly and the Chairman of the Senate which shall consist of six members from treasury benches and six from opposition parties in equal number from the Senate and the National Assembly.

(3) The Chairman of the Standing Committee on Law and Justice shall be the *ex-officio* Chairman of the Parliamentary Committee who shall hold office in rotation from the Senate and the National Assembly.

(4) The decision of the Parliamentary Committee shall be expressed in terms of majority and in case of equality of votes the Chairman of the Parliamentary Committee shall have a casting vote.

(5) The Chairman shall be a person who is, or has been, a Judge of the Supreme Court of Pakistan or is qualified to be appointed as a Judge of the Supreme Court and shall not be eligible for any extension of tenure or for re-appointment.

(6) Till appointment of Chairman under sub-section (1), the Prime Minister may appoint Chairman for interim period not exceeding ninety days who fulfills the qualifications specified in sub-section (2). The Chairman so appointed shall perform the duties and exercise powers conferred on the Chairman under this Act.

(7) The Chairman may resign from office by writing under his hand addressed to the Prime Minister.

(8) The Chairman shall be entitled to the same salary and privileges as a Judge of the Supreme Court of Pakistan.

(9) The Chairman may be removed from office on the ground of misconduct or being incapable of performing the duties of his office in the manner specified in Article 209 of the Constitution.

(10) Where the Chairman is appointed from amongst sitting Judges of the Supreme Court, on his resignation from office or on relinquishment of his office, he shall resume office as such Judge, if in the meantime he has not attained the age of sixty-five years.

5. **Acting Chairman.**— At any time when the Chairman is absent or unable to perform the functions of his office due to any other cause, the most senior Deputy Chairman shall act as Acting Chairman not exceeding six months.

6. **Deputy Chairman.**- (1) There shall be two Deputy Chairmen of the Accountability Commission who shall be appointed by the Federal Government in consultation with the Chairman. The Deputy Chairman shall assist the Chairman in discharge of his duties and performance of his functions and shall perform such functions as the Chairman may, by order in writing, direct.

(2) A person shall not be appointed as Deputy Chairman unless he is or has been a Judge of a High Court or is qualified to be appointed as Judge of a High Court.

(3) The Deputy Chairman shall hold office for a period of three years and shall not be eligible for any extension of tenure or for re-appointment.

(4) The Deputy Chairman may resign from office by writing under his hand addressed to the Federal Government.

(5) The Deputy Chairman shall be entitled to the same salary and privileges as a Judge of the High Court.

(6) The Deputy Chairman may be removed from office by the Federal Government in consultation with the Chairman.

(7) Where the Deputy Chairman is appointed from amongst sitting Judges of the High Court, on his resignation from office or on relinquishment of his office he shall resume office as such Judge, if in the meantime he has not attained the age of sixty-two years.

7. **Chief Prosecutor.**- (1) The Federal Government, in consultation with the Chairman, may appoint any person who is qualified to be appointed as a Judge of the Supreme Court, as Chief Prosecutor who,—

- (a) shall hold independent office on whole time basis and shall not hold any other office concurrently;
- (b) shall hold office for a non-extendable period of three years; and
- (c) may, by writing under his hand addressed to the Federal Government, resign his office.

(2) The Chief Prosecutor may be removed from office by the Federal Government in consultation with the Chairman.

(3) The Chief Prosecutor shall give advice to the Chairman on such legal matters and perform such other duties of a legal character as may be referred or assigned to him by the Chairman and in the performance of his duties, he shall have the right of audience in the Court, High Court and the Supreme Court.

(4) The Federal Government, in consultation with the Chairman, may appoint Additional Chief Prosecutor, Deputy Chief Prosecutor, Assistant Chief Prosecutor and may engage prosecutors, consultants and advocates to institute, conduct or defend cases, appeals, petitions, applications and all other matters before the Court, High Court and the Supreme Court in matters arising out of or relating to proceedings under this Act.

(5) In case the Chief Prosecutor is absent or unable to perform the functions of his office due to any reason whatsoever, any other Law Officer of Accountability Commission duly authorized by the Chairman shall act as the Chief Prosecutor Accountability.

8. **Appointment of members of the staff and officers of the Accountability Commission.**— (1) The members of the staff and officers of the Accountability Commission shall be appointed by the Chairman in consultation with the Federal Government.

(2) The members of the staff and officers of the Accountability Commission shall be entitled to such salary, allowances and other terms and conditions of service as the Chairman shall, in consultation with Federal Government, determine.

9. **Order to produce document or others.**— Whenever the Chairman or any Officer authorized by him considers that the production of any document or other thing is necessary or desirable for the purpose of any investigation of any offence under this Act, the Chairman or such Officer may issue written order, to the person in whose possession or power such document or thing is believed to be, requiring him to attend and produce it, or to produce, at the time and place stated in the order:

Provided that no such order requiring the production of any document or other thing shall be issued which is in the custody of a bank or banker as defined in the Bankers Books Evidence Act, 1891 (XVIII of 1891) and relates, or might disclose any information which relates to the bank account of any person except with the prior permission in writing of the Court.

10. **Voluntary return, etc.**— (1) Where any person accused of an offence under this Act, voluntarily returns to the Commission, the property, assets or gains as determined by the Commission, acquired through corruption or corrupt practices before filing of the reference, the Chairman shall not file the reference and the case shall stand closed.

(2) Where at any time after filing of the reference and before the commencement of the trial or at any time thereafter with the leave of the Court, any person accused of an offence under this Act voluntarily returns to the Commission, the property, assets or gains as determined by the Chairman with approval of the Court, acquired through corruption or corrupt practices, the Court shall not proceed with the trial and the accused shall stand discharged or, as the case may be, acquitted.

CHAPTER-III
OFFENCES AND PUNISHMENTS

11. **Corruption and corrupt practices.**- A holder of a public office is said to commit the offence of corruption and corrupt practices—

- (i) if he accepts or obtain from any person any gratification, other than legal remuneration, as a motive or reward such as is specified in section 161 of the Pakistan Penal Code (Act XLV of 1860), for doing or forbearing to do any official act, or for showing or forbearing to show in the exercise of his official functions, favour or disfavour to any person, or for rendering or attempting to render any service or disservice to any person; or
- (ii) if he accepts or obtains any valuable thing without consideration, or for a consideration which he knows to be inadequate, from any person whom he knows to have been, or to be likely to be, concerned in any proceeding or business transacted or about to be transacted by him, or having any connection with his official functions or from any person whom he knows to be interested in or related to the person so concerned; or
- (iii) if he dishonestly or fraudulently misappropriates or otherwise converts for his own use, or for the use of any other person, any property entrusted to him, or under his control or willfully allows any other person so to do; or
- (iv) if he, by corrupt, dishonest, or illegal means, in abuse of his position as a holder of public office, obtains or seeks to obtain for himself, or for his spouse or any of his dependents any property, valuable thing, or pecuniary advantage.

Explanation.- In this clause “dependent” in relation to a holder of a public office, means his wife, children and step-children, parents and minor brothers residing with and wholly dependent on him.

12. **Punishment for corruption and corrupt practices.**- (1) A person who commits the offence of corruption and corrupt practices shall be punishable with imprisonment for a term which may extend to seven years, or with fine, or with both, and such of the moveable or immovable property of such person, whether in his name or in the name of any of his dependents obtained through such an offence during the tenure of his office, shall be liable to be forfeited to the appropriate Government.

(2) A person aiding or abetting holder of a public office shall fall within the scope of this section and shall be liable to the same or a lesser punishment that may be awarded to a holder of a public office as may be deemed fit by the Court.

13. **Imposition of fine.**—Where a person found guilty of an offence is sentenced to pay a fine, irrespective of whether or not a sentence of imprisonment is imposed, the amount of the fine shall in no case be less than the gain derived by the accused.

14. **Disqualification to contest elections.**— (1) Subject to sub-section (2) where a holder of a public office is convicted for the offence of corruption and corrupt practices and sentenced to a term of imprisonment or fine or both, he shall stand disqualified from being elected or chosen as and from being a member of the Parliament, or the Provincial Assembly, as the case may be, for a period of five years reckoned from the date when he is released.

(2) When a holder of public office is discharged or acquitted, as the case may be, under sub-section (2) of section 10 he shall also be disqualified from being a member of the Parliament, or the Provincial Assembly as provided in sub-section (1).

CHAPTER-IV

COGNIZANCE AND TRIAL OF OFFENCE AND APPEAL

15. **Cognizance of offences, etc.**— (1) The Court shall not take cognizance of an offence under this Act except on a reference made by the Chairman or any officer of Accountability Commission duly authorized by the Chairman in this behalf.

(2) A reference under this Act may be initiated by the Accountability Commission on—

- (a) a complaint received from the appropriate Government; or
- (b) a complaint received from a private person accompanied by the attested copy of his Computerized National Identity Card, an affidavit supporting the allegations made in the complaint duly attested by the Oath Commissioner and his postal address; or
- (c) its own accord.

(3) Where the Chairman is of the opinion that it may be necessary to initiate proceedings on a complaint or on his own accord, as the case may be, he shall refer the matter for inquiry or investigation which shall be completed within sixty days.

(4) The responsibility for inquiry and investigating an offence alleged to have been committed under this Act shall rest on the Accountability Commission to the exclusion of any other agency or authority:

Provided that the Accountability Commission may require the assistance of any agency, police officer or other official, if it so deems fit and such agency, police officer or other official shall render necessary assistance.

(5) On the completion of the investigation indicating that the matter may require a reference to the Court, the Chairman, after appraisal of material and evidence submitted to him in the form of a report as required under section 173 of the Code by the investigating officer, shall make a reference along with such report within fifteen days.

(6) If after completing the investigation of an offence against the holder of public office, the Chairman is satisfied that no *prima facie* case is made out against the holder of a public office, the Chairman shall close the investigation and intimate the Court accordingly.

(7) In the event that the Chairman is of the opinion that a complaint received by him is patently *mala fide*, or has been filed with the intent to malign or defame the holder of a public office, he may refer the matter to the Court and if the complainant is found guilty he shall be punishable with imprisonment for a term which may extend to three years, or with fine, or with both.

16. **Trial of offences.**- (1) Notwithstanding anything contained in the Code or any other law for the time being in force, an offence punishable under this Act shall be exclusively triable by a Court of Session designated by the Chief Justice of the High Court concerned for the purposes of this Act.

(2) Where more than one Court of Session have been designated the Chief Justice of the High Court shall designate a Judge of any such Court to be an administrative Judge and all cases triable under this Act shall be filed before Court of the administrative Judge and such Judge 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 charge.

(3) In respect of a case assigned to a Court under sub-section (2), all orders made or proceedings taken before the case is assigned shall be deemed to have been made or taken by the Court to which the case has been assigned.

(4) A holder of a public office shall be triable by a Court in a Province from which he was elected.

(5) In case of holder of public office from the Federally Administered Tribal Areas the Chief Justice of Peshawar High Court shall designate a Court of Session for trial of such holder of public office for any offence under this Act.

17. **Provisions of the Code to apply, etc.**— (1) Notwithstanding anything contained in any other law for the time being in force, unless there is anything inconsistent with the provisions of this Act, the provisions of the Code shall *mutatis mutandis* apply to the inquiry or investigation and other proceedings under this Act.

(2) Subject to sub-section (1), the provisions of Chapter XXIIA of the Code shall apply to trials under this Act.

18. **Bail.**- Notwithstanding anything contained in the Code or any other law for the time being in force, the offences under this Act shall be bailable and the accused shall not be arrested but shall execute personal bond for appearance before the Chairman, investigation officer or the Court, as the case may be.

19. **Withdrawal from prosecution.**- The Chief Prosecutor may, with the consent of the Court, withdraw from the prosecution of any accused generally or in respect of any one or more of the offences for which he is tried and upon such withdrawal if it is made:

- (a) before a charge has been framed, the accused shall be discharged in respect of such offence or offences; and
- (b) after a charge has been framed, he shall be acquitted in respect of such offence or offences.

20. **Chief Prosecutor etc deemed to be public prosecutor.**- The Chief Prosecutor, the Deputy Chief Prosecutor, the Additional Chief Prosecutor or any other officer conducting prosecution under this Act shall be deemed to be public prosecutor within the meaning of the Code.

21. **Cognizance of false evidence, etc.**— (1) Notwithstanding anything contained in this Act or any other law for the time being in force, on pronouncement of judgment, the Court shall have the jurisdiction and power to take cognizance of an offence committed in the course of the investigation or trial of a case by any officer, a witness, including an expert, who has tendered false evidence in a case, relating to matter covered by his specialty, whether he deposed in Court or not, or any other person, under sections 176 to 182 of Chapter X, or sections 193 to 204, or 211 to 216, 217 to 223, or 225-A of Chapter XI of the Pakistan Penal Code (Act XLV of 1860), or under any other law relating to false evidence and offences against public justice, and to summarily try him and award punishment provided for the offence under the law.

(2) For the purpose of trial under sub-section (1), the Court may, as nearly as may be, follow the procedure specified in Chapter XXII of the Code.

(3) The proceedings under sub-section (1) may be initiated by the Court on its own accord at any time after the decision of the case or, in the event that there is an appeal, after the decision thereof, or on an application made by the Prosecutor or the person accused of an offence tried by the Court, within ninety days.

22. **Appeal.**— Any person convicted or the Chief Prosecutor, if so directed by the Chairman, aggrieved by the judgment or order of the Court under this Act may, within thirty days of the judgment or the order, prefer an appeal to the High Court.

23. **Copy of judgment to be given to accused.**— In every case where the accused is convicted of an offence under this Act a copy of the judgment shall be given to him free of cost at the time of announcement of judgment.

24. **No prosecution after certain period.**— No holder of public office shall be prosecuted, after three years of the expiry of his term or of his ceasing to hold office, for offence which he is alleged to have committed during his tenure.

CHAPTER-VI MISCELLANEOUS

25. **International cooperation and request for mutual legal assistance.**— (1) The Federal Government, the Chairman or if so authorized by the Chairman any officer of the Accountability Commission, may request a Foreign State to do the following acts in accordance with the law of such State-

- (a) have evidence taken, or documents or other articles produced; and
- (b) transfer to Pakistan any such evidence, documents, things, articles, assets or proceeds realized from the disposal of such articles or assets.

(2) The evidence and other matters mentioned in clause (a) and clause (b) of sub-section (1) shall be admissible in accordance with the *Qanoon-e-Shahadat* Order, 1984 (P.O. 10 of 1984).

26. **Indemnity.**— (1) No proceeding under this Act shall lie against the holder of a public office for anything which has been done in good faith or in pursuance of or in exercise of powers vested in him or believed to be vested in him, or intended to be done at the material time by virtue of that office.

(2) Not suit, prosecution or any other proceedings shall lie against the Federal Government, Provincial Government, Chairman, Accountability Commission or any other member

of the Accountability Commission or any person exercising any power or performing any function under this Act or the rules made hereunder for any act or thing which has been done in good faith or intended to be done under this Act or the rules thereof.

27. **Overriding effect to other laws.**— The provisions of this Act shall have effect notwithstanding anything contained in any other law for the time being in force.

28. **Chairman to submit an annual report.**— The Chairman shall as soon as possible after the end of every calendar year but before the last day of March next following, submit to the Parliament a report of its affairs for that year which report shall be a public document and on its publication copies thereof shall be provided to the public at a reasonable cost.

29. **Delegation of power.**— The Chairman may, by order in writing, delegate any of his powers under this Act to the Deputy Chairman or any officer of the Accountability Commission subject to such conditions and limitations as he may think fit to impose.

30. **Power to make rules.**— The Federal Government may, by notification in the official Gazette, make rules for carrying out the purposes of this Act.

31. **Repeal and savings.**— (1) The National Accountability Ordinance, 1999 (XVIII of 1999) is hereby repealed.

(2) On the commencement of this Act, —

- (a) the Accountability Courts in existence on such commencement shall stand abolished and Judges of such Courts who are serving Judges shall stand repatriated to their respective High Courts and the services of retired Accountability Courts Judges shall stand terminated;
- (b) all cases pending before any Accountability Court immediately before the commencement of this Act, shall stand transferred to the Court having jurisdiction under this Act and such Court shall proceed with the cases from the stage at which they were pending, without the necessity of recalling any witnesses:

Provided that the Court shall decide such cases in accordance with the provisions of National Accountability Ordinance, 1999 (XVIII of 1999) as if it has not been repealed;

- (c) all inquiries, investigations and proceedings initiated and conducted by the National Accountability Bureau shall stand transferred to Accountability Commission and on finalization of an inquiry or investigation if reference is made by the Accountability Commission to the Court the same shall be decided in accordance with the provisions of National Accountability Ordinance, 1999 (XVIII of 1999) as if it has not been repealed;
- (d) all members of the staff serving on deputation with the NAB shall stand repatriated to their parent departments and those appointed on contract shall notwithstanding anything in their terms of contract shall cease to hold office:

Provided that any of such contract employees may be re-appointed on new terms and conditions keeping in view his experience and usefulness for the Commission;

- (e) for the employees of NAB, other than those covered under clause (d), the Ministry of Law and Justice shall lay down a policy for their retention or otherwise in consultation with the Finance Division and the Establishment Division; and
- (f) all assets, rights, privileges and all property, moveable and immoveable, cash and bank balance, reserve funds, and all interests and rights in or arising out of such property and all debts liabilities and obligations of whatever kind of the NAB subsisting immediately before the commencement of this Act shall stand transferred to the Accountability Commission.

(3) Unless otherwise provided in this Act, the repeal of National Accountability Ordinance, 1999 (XVIII of 1999), hereinafter referred to as the repealed law, shall not—

- (a) revive anything not in force or existing at the time at which the repeal takes effect; or
- (b) affect or be called in question in any court of law the previous operation of repealed law or anything duly done or suffered thereunder; or
- (c) affect or be called in question in any court of law any acquittal or withdrawal of prosecution by operation of law or otherwise, right, privilege, obligation or liability acquired, accrued or incurred under repealed law; or
- (d) affect or be called in question in any court of law any penalty, forfeiture or punishment incurred in respect of any offence committed against repealed law; or
- (e) affect or be called in question in any court of law any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid.

STATEMENT OF OBJECTS AND REASONS

The Hon'ble Prime Minister in its 100-Days Action Plan announced the repeal of the NAB Ordinance, 1999 and to replace it with a new law of Accountability in the spirit of Charter of Democracy signed by Mohtarma Benazir Bhutto of Pakistan People Party and Mian Muhammad Nawaz Sharif of Pakistan Muslim League on May, 14th 2006 in London. The Cabinet Committee constituted for the purpose examined the National Accountability Ordinance, 1999 (XVIII of 1999) and proposed its repeal and recommended new law of Accountability in its place, namely, the Holders of Public Offices (Accountability) Act, 2009.

2. The Bill is designed to achieve the aforesaid object.

DR. ZAHEER UDDIN BABAR AWAN
Minister-in-Charge