

PRESS RELEASE

A Full Bench of the Supreme Court of Pakistan headed by Mr. Justice Irshad Hasan Khan, Chief Justice of Pakistan and comprising Mr. Justice Muhammad Bashir Jehangiri, Mr. Justice Muhammad Arif and Mr. Justice Qazi Muhammad Farooq, today announced judgment in Constitution Petitions brought by Khan Asfand Yar Wali and others challenging the validity of the National Accountability Bureau Ordinance, 1999 on various grounds.

Mr. Justice Irshad Hasan Khan, Chief Justice of Pakistan who authored the unanimous judgment disposed of all the Constitution Petitions under the following sub-heads :

1. Maintainability of the petitions under Article 184(3) of the Constitution;
2. Competence of Federal Legislature to promulgate the NAB Ordinance;
3. Whether the establishment of Accountability Courts in their present form creates a parallel Judicial System;
4. Retrospectivity and wilful default;
5. Arrest, detention, remand of the accused and bail;
6. Power of Chairman NAB to freeze property;
7. Burden of proof;
8. Disqualification to contest elections or to hold public office;
9. Venue of trial;
10. Transfer of cases;

11. Power of Accountability Court to dispense with any provision of the Code of Criminal Procedure;
12. Cognizance of offences by the Accountability Court;
13. Transfer of property;
14. Plea bargaining;
15. Discretion of Chairman NAB to reject recommendations of Committee and Governor, State Bank of Pakistan;
16. Stay of proceedings before Accountability Court;
17. Appointment of officers and staff of NAB;
18. Withdrawal of prosecution;
19. Special treatment to be meted out to women-accused.

Maintainability of the petitions under Article 184(3) of the Constitution.

1. The petitions were held to be maintainable under Article 184(3) of the Constitution and it was observed that the Court is charged with the duty to authoritatively interpret not only the validity of the NAB Ordinance but also its scope, inasmuch as, the points agitated and questions raised in the CPs are of public importance with regard to enforcement of Fundamental Rights.

Competence of Federal Legislature to promulgate the NAB Ordinance.

2. It was held that the Federal Government was competent to promulgate the NAB Ordinance in view of Article

175, Entry 55 of Part I of Federal Legislative List and Entries 1, 2, 4, 46 and 47 of the Concurrent Legislative List. Establishment of Courts by the Federal Government cannot be termed as invasion on the concept of Provincial autonomy and the principles of Federalism.

Whether establishment of Accountability Courts in their present form creates a parallel Judicial System.

3. It was ruled that the Accountability Courts have been competently established by the Federal Government. However, for smooth and effective functioning of the Accountability Courts all the Presiding Officers should be serving District & Sessions Judges qualified to be Judges of the High Court. They shall be appointed for a period of three years in consultation with the Chief Justices of the concerned High Courts and shall not be transferred to any other place or removed from service except on the grounds of misconduct, or physical or mental infirmity as determined by the High Courts concerned under the relevant rules. They shall be entitled to such remunerations, privileges, fringe benefits and allowances as are admissible to their counterparts performing functions in respect of Courts and Tribunals established by the Federal Government. They shall not be paid the salaries and privileges of the Judges of the High Courts, except security arrangements. The remunerations already drawn by the present incumbents shall not be recovered. They shall perform their functions at their

respective places of posting and deemed to have been appointed for a period of three-years from the day they entered upon their respective offices. They shall perform their functions under the supervision and disciplinary control of respective High Courts. Necessary funds shall continue to be paid by the Federal Government, as heretofore.

The present incumbents/Judges of the Accountability Courts who are not serving District and Sessions Judges shall be given an option to serve as such on the last pay/salary drawn at the time of their retirement as District and Sessions Judges for the remainder part of their term of three years otherwise their services shall be dispensed with by giving them three months salary.

Retrospectivity and wilful default.

4. The Court ruled that it was absolutely necessary to create the offence of 'wilful default' as there was great loss of public revenues owing to massive corruption by divergent strata of the society and failure of all concerned to recover the money looted through huge Bank-loans which had posed serious threat to economic life, financial stability, credit and security of the country. Legitimacy has been accorded to the present Government to achieve its declared objectives, including elimination of menace of corruption through transparent accountability, before 12th October, 2002. The offence of 'wilful default' is a continuing offence being a continuing breach of duty and obligation to repay loans/dues

and having come into being on account of non-payment of loans etc. within 30 days of the promulgation of the NAB Ordinance, it is prospective in nature. However, in order to ensure across the board accountability in respect of wilful default the following directions have been issued :

- i. No prosecution for 'wilful default' shall be launched before the expiry of 30-days statutory notice and an additional 7-days notice shall also be served on the alleged defaulter to satisfy Governor, State Bank of Pakistan that he has not committed any 'wilful default'. The report of Governor, State Bank of Pakistan as to the *prima facie* guilt or innocence will be subject to the final decision of the Accountability Court. The same procedure will be followed with regard to recovery of other public dues falling within the contemplation of Section 5(r) of the Ordinance. The Governor, State Bank of Pakistan shall record his recommendations within 7-days with reasons therein.
- ii. Any settlement arrived at with the defaulters by the Chairman, National Accountability Bureau or compounding of any offence shall be subject to the decision of the Accountability Court.
- iii. In respect of any person who is being investigated under the Ordinance, if the final report after full investigation, is that no *prima facie* case is made out to proceed further and the case must be closed against

him, that report must be promptly submitted to the Accountability Court concerned for its satisfaction that the concerned authorities have not failed to perform their legal obligations and have reasonably come to such conclusion. The final decision in the matter would be by the concerned Accountability Court. The Accountability Court shall conclude the trial expeditiously after giving fair opportunity to the accused.

- iv. Everyone against whom there is reasonable suspicion of commission of a crime under the NAB Ordinance is to be treated equally and if need be, proceedings may be held in camera to the extent necessary in public interest and to avoid prejudice to the accused.
- v. The concerned prosecuting agencies shall conduct their responsibilities and functions without being influenced by extraneous consideration.
- vi. The Chairman NAB shall ensure reasonable and expeditious time-frame for the completion of investigation and launching of prosecution.
- vii. The Chairman NAB should take time-bound steps to establish a grievance redressal mechanism to promptly deal with the complaints received from the public against the Bureau.

viii. Unless a competent prosecution follows a fair and competent investigation, the ultimate analysis would be violative of the principle of fair trial. A panel of competent lawyers of experience and impeccable reputation should be prepared with the advice of Ministry of Law, Justice and Human Rights. Their services should be utilised as prosecuting lawyers in cases of significance on reasonable remuneration. For terms and conditions of their services, guidance may be sought from the Central Law Officers Ordinance, 1970, prescribing method for the appointment of Standing Counsel and Deputy Attorney Generals.

Sections 2 and 5(r) of the NAB Ordinance were held to be valid and *intra vires* the Constitution.

Arrest, detention, remand of the accused and bail.

5. The Court held that provision with regard to arrest and detention of an accused for a period of 90-days is *ultra vires* to the extent it denies the right of the accused to consult and be defended by a legal practitioner of his choice. It was also held that the accused shall be produced before the Accountability Court within 15 days of the last remand order for further orders in that behalf. It was also ordered that prolonged detention of an accused without sufficient cause for such detention is violative of personal liberties of citizens as

guaranteed under the Constitution which cannot be countenanced by this Court. If sufficient and reasonable cause appears for further remand after the expiry of first 15 days, the accused shall be brought before the Court for appropriate orders and in no case each remand shall be for a period more than 15 days at a time. It was also held that proviso to clause (d) of Section 24 that no accused arrested under the Ordinance shall be released without the written orders of the Chairman NAB was *ultra vires* being repugnant to the concept of independence of judiciary. On the question of bail, it was held that as noted in the case of Syed Zafar Ali Shah and others v. General Pervez Musharraf, Chief Executive of Pakistan and others (PLD 2000 SC 869), the powers of the Superior Courts under Article 199 of the Constitution are available to their full extent notwithstanding anything contained in any legislation instrument enacted by the Chief Executive the Superior Courts therefore have the power to grant bail under Article 199 of the Constitution independently Section 497 Cr.P.C. therefore Section 9(b) of the NAB Ordinance which denies to all Courts including the High Courts the jurisdiction under Section 426, 491, 497, 498 and 561-A Cr.P.C. is *ultra vires* to the extent of High Court.

Power of Chairman NAB to freeze property.

6. Section 12 of the NAB Ordinance has conferred unchallengeable powers on the Chairman NAB to freeze the property of an accused which order shall not accede 30 days

unless confirmed by the Accountability Court. It was held that these provision suffers from excessive delegation and the ends of justice will be fully met if the period is curtailed to 15 days. Section 12 (f) also provides that order of freezing mentioned in Section 12 (a) to (c) shall remain operative under final disposal of case by the Accountability Court or the appellate forum. It was held that the provision impinges upon the doctrine of independence of judiciary and suffers from excessive delegation. Similarly, clause (f) of Section 12 makes operative the freezing order notwithstanding the filing or pendency of appeal. This provision was also held to be against the concept of independence of judiciary. It is for the appellate Court alone to decide whether or not the orders of freezing shall remain operative upon filing of or during the pendency of appeal. Amendment shall be made to the effect that in case of acquittal of an accused, the freezing orders shall continue for 10 days to be reckoned from the date of receipt of certified copy of the final order to enable the NAB to file an appeal.

Objections against freezing

Clause (c) of Section 13 of the Ordinance deals with claims or objections against freezing. This provision also denies the right of appeal against an order under Section 12 of the Ordinance. It was held that denial of right of appeal is not only violative of the Article 2A of the Constitution but also powers of the Superior Courts to correct such orders through exercise of their constitutional jurisdiction. Section 13 of the

NAB Ordinance shall be amended so as to allow right of appeal to the accused as also to non-accused third party whose claim or objection against freezing of property is dismissed by the Accountability Court.

Burden of proof.

7. Section 14 (d) of the NAB Ordinance provides that when a person is accused of an offence under Section 9 (a) (vi) and (vii) i.e., misuse of authority and issuance of direction and SROs etc., the burden of proof that he used his authority/ powers or issued any directive/SRO etc. in the public interest fairly, justly etc. shall lie on him and in the absence of such proof, he shall be guilty of the offence and his conviction shall not be invalid for the reason that it was solely founded on such presumption. It was held that placing of burden of proof on an accused is not an unfamiliar concept in legal parlance as there is a large number of statutes wherein the burden of proof has been placed on the accused. It was held that placing of burden of proof on an accused in terms of the above provisions may not be bad in law in its present form but would be counterproductive when considered in juxtaposition with the principle of good governance in that : *“...If decision making level officials responsible for issuing orders, SROs etc. are not protected for performing their official acts in good faith, the public servants and all such officers at the level of decision making would be reluctant to take decisions and/or avoid or prolong the same on*

one pretext or another which would ultimately lead to paralysis of State-machinery. Such a course cannot be countenanced by this Court.

Be that as it may, the prosecution has to establish the preliminary facts whereafter the onus shifts and the defence is called upon to disprove the presumption. This is also the consistent stand taken by Mr. Abid Hasan Minto as well as the learned Attorney General who adopted his arguments. This interpretation appears to be reasonable in the context of the background of the NAB Ordinance and the rationale of promulgating the same notwithstanding the phraseology used therein. We are also of the view that the above provisions do not constitute a bill of attainder, which actually means that by legislative action an accused is held guilty and punishable. For safer dispensation of justice and in the interest of good governance, efficiency in the administrative and organizational set up, we deem it necessary to issue the following directions for effective operation of Section 14(d):

- 1. The prosecution shall first make out a reasonable case against the accused charged under Section 9 (a)(vi) & (vii) of the NAB Ordinance.*
- 2. In case the prosecution succeeds in making out a reasonable case to the satisfaction of the Accountability Court, the prosecution would be deemed to have discharged the prima facie burden of proof and then the burden of proof shall shift to the accused to rebut the presumption of guilt.*

Disqualification to contest elections or to hold public office.

8. It was observed that in case of conviction simpliciter or by virtue of plea bargaining, envisaged by Section 15(a) of the NAB Ordinance disqualification to contest elections or to hold public office for a period of 21 years is too excessive and through an amendment be reduced to 10 years to be reckoned from the date the convict is released after serving his sentence.

Venue of trial.

9. It was held that determination of venue of trial under the NAB Ordinance in terms of Section 16(d) thereof is valid provision as it does not contravene the concept of Federalism and/or Provincial Autonomy.

Transfer of cases

10. Section 16A (b)(i) & (ii) of the NAB Ordinance empowers the Chairman NAB to direct the Prosecutor General Accountability “...to apply for the transfer of the case from any such court in one Province to a Court in another Province or from one Court to a Court in another Province or from one Court in a Province to another Court in the same Province...” It was held that in the matter of transfer of cases from one Court to another either within a Province or from one Province to another the Prosecutor General and the accused must be placed on equal footing and to that extent amendment be made in Section 16A of the NAB Ordinance.

With regard to “rule of holding of open trial” it was observed that this rule is not rigid and inflexible and that it remains within the discretionary power of the Accountability Court to forbid excess of public generally or any particular person to remain in Court at any stage of inquiry or trial for sufficient reasons in the interest of administration of justice.

Power of Accountability Court to dispense with any provision of the Code of Criminal Procedure.

11. Clause (c) of Section 17 empowers the Accountability Court to dispense with any provision of Code of Criminal Procedure and follow such procedure as it may deem fit in the circumstances of the case. It was held that a similar provision contained in Section 12(3) of the Ehtesab Act, 1997 was not held *ultra vires* the Constitution in Federation of Pakistan v. M. Nawaz Khokhar (PLD 2000 SC 26). However, the Court’s power to dispense with a provision of Cr.P.C. is not uncontrolled and if it deems fit to make departure from the provisions of Cr.P.C. reasons will have to be recorded in writing therefor. The provision is not *ultra vires* of Articles 4 and 25 of the Constitution.

Cognizance of offences by the Accountability Court.

12. Section 18 of the NAB Ordinance provides that the Accountability Court shall not take cognizance of any offence under this Ordinance except on a reference made by the Chairman NAB or an officer of the NAB duly authorised by

him. It was held that in view of the complicated nature of investigation the provision is quite reasonable. It was also observed that a similar provision contained in Ehtesab Act, 1997 was declared to be a valid piece of legislation in the case of *M. Nawaz Khokhar*.

Transfer of property.

13. Section 23 of the NAB Ordinance has imposed a total ban on transfer of property by an accused or his relatives and associates etc. where an investigation has been initiated into an offence. It was observed that Section 23 be suitably amended so as to provide that transfer of property by accused or his relatives shall not be void if made with the prior approval in writing of the Judge, Accountability Court subject to such terms and conditions as may be deemed fit in consonance with the well established principles of law for passing interlocutory orders in consonance with the objects of the NAB Ordinance.

Plea Bargaining.

14. The scheme of plea bargaining envisaged by the NAB Ordinance has been approved for the reasons that it will provide an opportunity to an accused who is an investor to play his role in the society after he has cleared his liability. The rationale behind the Ordinance is not only to punish those who are found guilty of the charges levelled against them but also to facilitate early recovery of the ill-gotten wealth through settlement where practicable and settlement of disputes out of the Court is now an established method of

settlement of disputes in several developed societies. However, certain fetters have been imposed on plea bargaining. They are that it is not desirable in cases opposed to public policy, it should be approved by the Accountability Court and should not be the outcome of pressure or threats.

Discretion of Chairman NAB to reject recommendations of Committee and Governor, State Bank of Pakistan.

15. Section 25A of the NAB Ordinance has given an unfettered discretion to the Chairman NAB to reject recommendations of a duly appointed Committee and refuse to recognise a settlement arrived at between a creditor and a debtor. It was held that the provisions of Section 25A (e) and (g) suffer from excessive delegation of power and should be amended as to provide that the recommendations made by the Governor, State Bank of Pakistan shall be binding on the Chairman NAB except for valid reasons to be assigned in writing subject to approval of the Accountability Court to be accorded within a period not exceeding 7 days.

Stay of proceedings before Accountability Court.

16. Clause (d) of Section 32 provides that no stay of proceedings before Accountability Court be granted by any Court on any ground nor prosecuting thereof be suspended or stayed by any Court on any ground whatsoever. It has been held on the strength of case-law that constitutional jurisdiction vesting in the High Courts under Article 199 of

the Constitution cannot be taken away or abridged or curtailed by subordinate legislation. The provision is, therefore, *ultra vires* the Constitution and Section 32 of the NAB Ordinance is to be amended accordingly. It was observed emphatically that the High Courts shall exercise this power sparingly in rare and exceptional circumstances for valid reasons to be recorded in writing.

Appointment of officers and staff of NAB.

17. The appointments were assailed on the ground of discrimination. It was held that the appointments do not involve violation of Article 25 of the Constitution as the officers and staff consist of two different categories of employees i.e. direct employees and deputationists.

Withdrawal from Prosecution.

18. With reference of Section 31B of the NAB Ordinance empower the Chairman NAB to direct the Prosecutor General Accountability to withdraw from prosecution of any accused, it was held that withdrawal of cases can neither be controlled by the Chairman NAB nor the Prosecutor General or Deputy Prosecutor General. Such course can be resorted to only if the Accountability Court so permits. Suitable amendment be made in Section 31B of the Ordinance.

Special Treatment to Women Accused

19. The NAB Ordinance was criticised on the ground that it did not cater for special treatment to women accused on the pattern of the provisions in the Code of Criminal

Procedure. It was held that there is no direction in Article 25 of the Constitution to make special provisions for women. It merely permits making of such provisions of the Code of Criminal Procedure apply where such provisions are not strictly over-ridden or ousted. The said provisions having not been over-ridden are ousted in the NAB Ordinance retain their applicability in law to women accused under the NAB Ordinance.

20. Referring to the challenge thrown to the Ordinance on the basis of Universal Declaration of Human Rights of 1948 and Cairo Declaration of Human Rights in Islam, it was held that the question raised will be considered at length in some other appropriate case as the order proposed to be passed here does not contravene any one of the said Declarations.

21. It was prayed in the petitions that the NAB Ordinance be struck down on the ground that Ehtesab Act, 1997 was held to be competently and validly made. The prayer was repelled with the observation that laws are not made only when previous laws on the subject have been declared invalid.

22. The prayer that vires of the NAB Ordinance be examined on the touchstone of Article 2A of the Constitution was answered in the terms that it was not necessary to deal with the question in view of the law declared in Hakim Khan and 3 others versus Government of Pakistan through Secretary Interior and others (PLD 1992 SC 595) and the reasons that

the learned counsel for the petitioners had not been able to point out any of the provisions of the NAB Ordinance to be repugnant to the Injunctions of Qur'an and Sunnah and directions have been issued to amend various provisions of the NAB Ordinance so as to render it *intra vires* the Constitution.

Chairman NAB

23. While adverting to variegated criticisms in regard to the appointment of the Chairman NAB it was held that in order to ensure transparency and coherence of the process of accountability it is necessary to make the National Accountability Bureau independent. Clause (b) (i) of Section 6 of the Ordinance to the effect that the Chairman NAB shall hold office during the pleasure of the President was held to be *ultra vires* the Constitution being repugnant to the concept of independence of this institution. Section 6 was directed to be amended in the following terms :

- (a) The Chairman NAB shall be appointed by the President in consultation with the Chief Justice of Pakistan.
- (b) The Chairman NAB shall hold office for a period of three years.
- (c) The Chairman NAB shall not be removed from office except on the grounds of removal of a Judge of the Supreme Court of Pakistan.
- (d) The Chairman NAB shall be entitled to such salary, allowances and privileges and other terms and conditions of service, as the President determines and these terms

shall not be varied during the term of his office.

- (e) The Chairman NAB may, by writing under his hand, addressed to the President, resign his office.

With a view to ensuring continuity of the accountability process and in light of the decision in Zafar Ali Shah's case (supra) that the process of accountability be accelerated, it was also directed that the present incumbent of the office of Chairman NAB shall be deemed to have been appointed for a term of three years from the day he entered upon his office.

24. With regard to the Deputy Chairman NAB it was held that he shall hold office for a minimum period of two years and shall not be removed except on the ground of misconduct as defined under Section 2(4) of the Government Servants (Efficiency & Discipline) Rules, 1973.

Prosecutor General Accountability

25. In view of the legal nature of the duties to the Prosecutor General Accountability which include right of audience before the Superior Courts, it was directed that Section 8(a) of the NAB Ordinance be amended as below :

- (a) The Prosecutor General Accountability shall hold an independent office on whole time basis and shall not hold any other office concurrently.
- (b) He shall be appointed by the President in consultation with the Chief Justice of Pakistan and Chairman, NAB on such terms and conditions as may be determined by the President.

- (c) His remuneration and fringe benefits shall in no case exceed those of the Attorney General for Pakistan, who is the Principal Law Officer of the country and holder of a constitutional office.
- (d) He shall hold a tenure post of not less than two years.
- (e) His services shall not be dispensed with except on the grounds prescribed for removal of a Judge of the Supreme Court.
- (f) He shall not be permitted to conduct private cases and in lieu thereof he may be allowed a special allowance.
- (g) He may, by writing under his hand addressed to the President of Pakistan, resign his office.

In the interest of continuity of accountability it was held that the present incumbent shall continue in office on the existing terms and conditions of his service till his successor is appointed or he is found suitable to be retained in service as such subject to recommendations of the consultees.

Independent Prosecution Agency

26. The following directions have been issued in relation to above sub-heading :

“293. A panel of competent lawyers of experience and impeccable reputation shall be prepared in consultation with the Law and Justice Division. Their services shall be utilized as Prosecuting Counsel in cases of significance at reasonable fee on case-to-case basis. Even during the course of investigation of an offence, the advice of a lawyer chosen from the panel should be taken by the NAB.

294. Every prosecution which results in the discharge or acquittal of the accused

must be reviewed by a lawyer on the panel and, on the basis of the opinion given, responsibility should be fixed for dereliction of duty, if any, of the concerned officer. In such cases, strict action should be taken against the officer found guilty of dereliction of duty in accordance with law.

295. Steps shall be taken for the constitution of an able and impartial agency comprising persons of unimpeachable integrity to perform functions of investigation and inquiry, etc. by the National Accountability Bureau.

296. Till the constitution of the aforesaid body, Special Counsel shall be appointed for the conduct of important trials in consultation with the Law and Justice Division.”

Performance of NAB

27. Referring to the report, instructions, charts etc. regarding performance of the NAB produced by Mr. Maqbool Ilahi Malik, learned ASC and to the criticism made by the learned counsel for the petitioners that the performance of the NAB was not satisfactory in comparison with the performance of the Ehtesab Bureau and its functionaries it was ruled that performance of NAB is comparatively satisfactory. However, it would be appropriate to frame rules under the NAB Ordinance as expeditiously as possible so that the process of accountability is further geared up to achieve the desired results.

Accountability of Armed Forces.

28. Advertising to the criticism that members for the Armed Forces have been excluded from the process of accountability, it was observed that notwithstanding the

constitutional safeguards provided in Articles 8(3)(a), 63(1)(g) and 199 (2) (3) members of the Armed Forces are subject to an ongoing process of accountability under the Pakistan Army Act, 1952 and the Pakistan Army Act Rules, 1954 which expressly provide for prosecution and punishment in cases involving corruption, corrupt practices and illegal gratification etc.

Accountability of National Accountability Bureau.

29. The following directions were issued on the above subject :

“308. The accounts of the National Accountability Bureau shall be kept in such form and in accordance with such principles and methods as the Auditor General of Pakistan may prescribe.

309. The accounts shall be audited by the Auditor General, Pakistan annually and his report shall be submitted to the President of Pakistan.

310. The Chairman NAB shall submit his Annual Report to the President of Pakistan as to affairs and performance of the National Accountability Bureau by 15th January of each succeeding year.

311. A mechanism shall be evolved by the Chairman NAB for redressal of the grievances against the functionaries of the National Accountability Bureau.”

Accountability of the Superior Judiciary.

30. After noticing the provisions of Article 209 of the Constitution which relate to the constitution of the Supreme Judicial Council, the issuance of Code of Conduct for the Judges of the Superior Courts and the law declared in Malak

Asad Ali v. Federation of Pakistan (PLD 1998 SC 161) it was observed that the Chief Justice of Pakistan/Chairman, Supreme Judicial Council convened meetings of the Council on 19.3.2000, 13.4.2000 and 30.4.2000 wherein inter alia decisions were taken to make it obligatory on the members of the Superior Judiciary to take all steps for expeditious disposal of cases and effective control of the said process by adhering to the Code of Conduct pursuant to the provisions of Articles (ii)(ix) and (x) thereof. It was observed that the Supreme Judicial Council is a unique institution, which comprises the senior most Judges in judicial hierarchy and entrusted with the onerous responsibility of deciding complaints that are referred to it through references by the President alone. It is an essential prerequisite of the independence of judiciary that there is put in place a system of accountability. It should, therefore, be the endeavour of the Judges of the Superior Courts to make the Code fully applicable and ensure that it is strictly adhered to. As held in the case of *Zafar Ali Shah* (supra), the Judges of the Superior Courts are not immune from accountability. They are accountable only in the manner laid down under Article 209 of the Constitution. We may also observe that no question was raised by the learned counsel for the petitioners in regard to the accountability of Judges vis-à-vis NAB Ordinance. However, we thought it in the fitness of things to reaffirm the observations in the case of *Zafar Ali Shah* (supra) that the Judges of the Superior Courts are not immune from

accountability and that it is for the President to make a reference if in a case such a course is desirable at his end.

The right to move the Supreme Judicial Council against a Judge of the Superior Court is not available to any individual and the President alone on the advice of the Prime Minister or the Cabinet, as the case may be, can refer a case of a Judge of the Superior Court to the Supreme Judicial Council for holding an inquiry against him and the Supreme Judicial Court exercises jurisdiction to hold inquiry against Judge of the Superior Court only when reference is made to it by the President of Pakistan in this behalf.