



**T R A N S P A R E N C Y
I N T E R N A T I O N A L - P A K I S T A N**

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Jus (R) Javed Iqbal,
Chairman,
National Accountability Bureau,
Islamabad.

Subject: Abuse of NAO 1999, Perpetual Illegality by Changes made of Allegations without Authority and in Violation of Law by NAB in the Name of Complaint Verification, Suo Moto action, and Entertaining Anonymous Complaints viz Informers / Source Reports as well as Planting Surveillance in Violation of Constitution, Section 19 of NAO 1999 and NAB SOPs for Ulterior Motives.

Dear Sir,

Transparency International Pakistan refers to the ACA Report by Transparency International **Anti-corruption Agency Strengthening Initiative Assessment of Pakistan's National Accountability Bureau Report 2016**". 20 copies of the report were sent to NAB in 2016 and a copy was also given to you on 12 October 2017 with certain suggestions to improve NAB procedures.

Unfortunately National Accountability Bureau has made any efforts to implement the TI recommendations, NAB should make a thorough analysis of the entire chain of system to improve its conviction rate., NAB should ensure that the reference prepared and successfully tried in the Accountability Courts should be upheld in all subsequent review petitions in High Courts and Supreme Court, and above all Precautionary measures need to ensure the agency does not itself become a source for extortion and corruption by instilling the values of honesty and integrity into its culture.

The result is that NAB performance is seriously affected due to the illegal acts of NAB officers which is consistently damaging the reputation of NAB as an credible Anticorruption institution.

One of the most vital issue with some NAB officers is non compliance of NAB Ordinance law by themselves during complaint handling during three stages i.e. CV, Inquiry and Investigations.

The use of corruption complaint other than reference received from the appropriate government; or receipt of a complaint; the two prescribed sources in Section 18 are against NAB Ordinance NAO 1999.

Section 18, (c) (iii) on its own accord is only applicable by Chairman NAB or officer authorized by Chairman and that too in special circumstances when concrete documentary proof is available. Source report, suo moto, anonymous



The use of other sources suo moto, anonymous, as being done in many NAB cases in pretext of Section 18, (c) (iii) is a violation of NAO 1999, in presence of the following provision of subsection (h) of Section 18.

(h) If a complaint is inquired into and investigated by the NAB and it is concluded that the complaint received was prima facie frivolous or has been filed with intent to malign or defame any person, the Chairman 2[NAB] or Deputy Chairman NAB or 10[an officer of the NAB duly authorised by the Chairman NAB], 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 one year, or with fine or with both.

Section 18 (h) does not allow NAB cases taken up Source report, suo moto, anonymous, as these three sources are in fact NAB Chairman or his authorized officer, as they enjoy immunity under Section 36 of NAO 1999.

TI Pakistan is compelled to point out gross illegalities being perpetuated in NAB in the pretext of “accountability for all” by abusing the NAB ordinance by some of the NAB officers for ulterior motives.

It has not only opened Vistas of corruption in NAB at individual levels, but has also caused serious repercussions to the reputation, stakes, and personal life of innocent people at large.

This obnoxious exercise has inflicted severe harm to the cause of accountability in Pakistan and meanwhile has stigmatized a large chunk of persons for no fault of their own. Consequently, it has become a tyrannical tool for rent seeking and extortion in the name of NAB.

It is therefore imperative in the interest of NAB particularly and Pakistan generally to go through following contents meticulously and take serious action to plug the loop holes, so pointed out, herewith;

1. Illegally Entertaining Anonymous complaints (informers):

It is an established fact that NAB law doesn't provide for complaint verification (CV). However, understanding operating procedure (SOP), it is loosely governed and regulated in NAB through CV Cell.

Given that, itself NAB SOP vide chapter two, para 9 to 11 of SOP of NAB about complaint verification categorically provides for rejection of anonymous complaint.

But NAB entertains them whimsically, in a colorable exercise, which is not only illegal but is root cause of misuse of NAB for ulterior motives.

If at all there is extremely specific allegation showing arithmetically provable proof, only then NAB can consider anonymous complaint. That too strictly in accordance with section 24 (a) of General Clauses act. The exercise of section 24 (a) of General clauses act has to be in accordance with a number of judgments delivered by Hon'ble Supreme Court, which is absolutely not being adhered to.



Such action not only contravenes provisions of constitution like article 4, laws of land, and NAB's own SOP whatsoever, but also is against principle of natural justice and social ethos. How can a complaint be taken cognizance of without knowing the motive and identity of complainant? Wouldn't it bulldoze the spirit of criminal jurisprudence in first place? How would it save someone from fishing and arbitrary making of cases against someone, especially against whom proceedings would start even on anonymous complaint, when investigation officer is fed that "high ups" have authorized to proceed against someone, no matter illegally?

How could a person on earth be saved from hubris of illogical proceedings in the name of Accountability? How would IO recommend closure in such a situation, when one has already got the sense that upper tier wants making of case as exercise of authorization, illegal though, speaks volumes to convey message?

In a strange and illegal way, anonymous complaints are presumably converted into Suo Moto Jurisdiction. Such conversion and presumption of Suo Moto Jurisdiction & Authority is nowhere provided into NAO 1999, SOP, and etc. whatsoever.

On the contrary in the rules and laws of similarly placed organizations like FIA, Ombudsman, Anti-Corruption, provide for non entertaining of anonymous or pseudonymous complaints. Besides, in Esta Code vide notification dated S&GAD: DEPARTMENT. NO.SORII (S&GAD) 5(29)/97 Vol:II Dated Peshawar the 7th July 1998 also Explicitly bars from considering anonymous complaints, let alone taking action.

Even section 18 of NAO 1999 provides for stringent action against frivolous complainant but it's not possible in anonymous complainant scenario, because in absence of complainant no one can be declared as frivolous so can't be taken to task. Hence on this very ground, only sufferer is the one against whom motivated complaint is advanced and NAB joyously starts tossing the turban of individual in media, courts, and society. This is inhumane, which requires to be stopped forthwith.

2. Whimsical cooking of source report / Suo Moto action taken subsequent to surveillance without permission of High Court in violation of section 19 (e) NAO 1999;

Similarly, some officers of NAB cooks up cases through "source reports / discreet information". Such an occurrence is so vindictive and biased that it leaves no other option but filing of reference against an individual at any cost. Because mindset would already go trickled down. Since matter starts upon self generated report by NAB, which investigates herself, the chances of justice and closure can't be 1 % even. However, this exercise too is legally self defeating and in contravention to section 19 (e) of NAO 1999. In latter section, no one can be subject to surveillance except permission of High court. Since "source report / Suo Moto" is something wherein information against a subject is gathered through surveillance, invariably, the permission from High Court is never obtained by NAB. This can be proved from record and data of itself NAB. Which would prove that in history of NAB not a single permission for surveillance after source report, Suo Moto action, or self styled change of allegation against individual has ever been obtained. As if NAB authorities have conveniently omitted the provision under section 19 (e) at their own, only to have unbridled powers to cause blackmailing and harassment of persons they want to put in fix. This is very alarming. How can Authority of a Court be bypassed and exercised by agency in questionable manner?



3. **Suo Moto Action / At ones own action;**

Under section 18 of NAO 1999, NAB is supposed to exercise *Suo Moto* Jurisdiction to initiate proceedings against an offence falling in NAO 1999. However, *Suo Moto* action is to be exercised in accordance with law of land and in accordance with principles held in number of judgments delivered by Hon'ble Supreme Court of Pakistan. It has to be taken against some ostensible offence, which hurts public at large, and causes loss to state, which if not challenged might cause severe damage. That too, if taken cognizance of has to be exercised in a structured way by applying mind and recoding reasons in writing by competent authority i-e Chairman NAB only (presumably).

Since NAB is the only organization operating under an ordinance sans framed rules since 1999, there is no policy or statutory instrument, which should regulate *Suo Moto* action vis a vis delegation of powers in this regard. Even the latest SRO issued by worthy Chairman NAB is silent on this aspect. Consequently, actions taken under *Suo Moto* Jurisdiction are illegal, loaded, and highly biased. The record of NAB itself would narrate beyond doubt that *Suo Moto* exercise is undertaken by every officer of NAB in a colorable manner for personal gains and whims, without being checked. They are initiated against individuals and petty allegations hardly involving Rs. 10-20 million, in defiance of spirit of NAB law and orders of Honorable Courts. itself the exercise becomes sham and dubious in root. This requires immediate correction.

4. After CV, Inquiry and Investigation, making change in the allegation in departure from actual contents of complaint, report, etc whatsoever, by Investigation officers of NAB without permission of High Court (because changed allegations and record gathering involves surveillance) necessitated under section 19 (e) NAO 1999;

In almost 90% cases investigated by IOs in NAB, the byproduct (reference) is never in consonance with allegations leveled in complaint no matter filed by genuine complainant. IOs at their own start fishing in complaint verification, inquiry, investigation, and reference for years altogether. Somehow, they cook up irrelevant record and allegations, which would never be in actual complaint. Subsequently, a reference is filed on the basis of allegations and record, which was never mandated. Amusingly, if IO or CIT is palm greased, the person gets easily off the hook because allegations were never part of actual proceedings. High ups are kept in dark about entire fraudulent exercise. While taking final decision, IO / CIT takes stand that whatever allegations were leveled have not been proved so it merits no further action. However, if hush money is not given to CIT or so called experts, IO presses for up-gradation of matter because some irrelevant record and allegations he / she has dogged out to fix an individual. This has opened flood gates of corruption in NAB at the cost of severe loss to innocent people. It's a worst occurrence perpetuated in NAB without plug off. Almost all NAB references of assets beyond means are never on complaint, but are made up by NAB itself, To quote one is the famous ACR No. 14/2001 Asif Ali Zardari Ex Senator for assets of Rs 22 Billion plus US \$ 1.5 Billion, and Inquiry authorised in 2001 against privatization of MCB on Mian Muhammad Mansha and others at S. No. 20, is still going on since last 17 years, were based on "**Source Report**".



Surprisingly, in trial courts, the examination of complainant as well as above cited deviation from actual allegations is hoodwinked through pretention that Chairman has signed the reference and IO becomes witness cum complainant. The illegality cited above is not only bereft of good faith but is highly flawed on legal account as well. In the first place it's against principles of fair trial and criminal justice system for being unauthorized, illegal and void Ab initio. It also is a pervasive mode of corruption within NAB, which is main hurdle in trust winning and launch of actual accountability across the country. The very exercise contravenes provisions of section 18 and 19 (e) of NAO 1999 itself. Because, manipulative change of allegation and proceeding further, without authority, invokes fixing of surveillance and is a mysterious type of Suo Moto action initiated by IO at ones own! Neither it is authorized by any authority nor it is provided in law at all. Through malafide, so called authorization letter is managed, deceptively, while concealing actual treachery mentioned above. However, the authorization letter (post facto to malafide doing) doesn't cover up illegality in bottom of procedure.

Since, subject is put to surveillance through self chosen change of allegations is a colorable exercise, the permission by High Court under NAO 1999 Section 19(e) becomes mandatory. But astonishingly this has never happened in history of NAB.

Therefore, in the light of above irrefutable facts, TI Pakistan requests Chairman that theses illegal practice of source report, Suo Moto action, informers or illegal addition in AB files new allegation in name of complainant makes, mockery of law and justice, and recommended to be immediately be plugged for once and for all in the interest of public and country.

Transparency International Pakistan is striving for across the board application of Rule of Law, which is the only way to stop corruption.

With Regards,

Sohail Muzaffar
Chairman

Copy forwarded for necessary action as per rules to,

1. Secretary to the Prime Minister, Islamabad.
2. Prosecutor General, Nab, Islamabad.
3. Federal Minister of Law, Govt. of Pakistan, Islamabad.
4. Registrar, Supreme Court of Pakistan, Islamabad.