

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

Mr. Justice Anwar Zaheer Jamali
Mr. Justice Asif Saeed Khan Khosa
Mr. Justice Amir Hani Muslim

Criminal Appeal No. 140 of 2005 & Criminal Miscellaneous Applications No. 629 of 2010, 141 of 2005, 228 to 233 of 2004, Civil Petition No. 205 of 2006 & Civil Miscellaneous Application No. 393 of 2007, Civil Appeals No. 91 and 609 of 2006 & Civil Miscellaneous Application No. 2710 of 2013, Civil Appeal No. 1189 of 2008, Criminal Appeal No. 1-Q of 2010, Civil Appeal No. 1324 of 2007, Criminal Appeals No. 274 to 279 of 2006, Criminal Petitions No. 78-L & 79-L of 2004, Civil Petitions No. 1355-L, 1188-L, 1363-L and 1013-L of 2010, Civil Petitions No. 1749, 1548 of 2009, 226-L of 2010, 1936-L of 2011, 1145-L, 1326-L, 2534-L of 2009, 629-L of 2008, Criminal Original Petition No. 31 of 2007 in Civil Appeal No. 1324 of 2007, Civil Petition No. 318 of 2008, Civil Appeal No. 483-L, 484-L of 2009, Criminal Appeals No. 101, 102 of 2005, 86 of 2003 & Criminal Petitions No. 96 and 97 of 2003

<i>Abdul Aziz Memon</i>	(Crl.A. 140/05)
<i>Mst. Farida Abdul Aziz</i>	(Crl.A. 141/05)
<i>The State through NAB</i>	(Crl.As. 228 to 233/04, C.P. 1548/09)
<i>The State through PG NAB</i>	(C.A. 91/06, C.P. 318/08, Cr.As. 96 & 97/03)
<i>The State through Chairman NAB</i>	(Crl.As. 274-276/06, C.P.1936-L/11)
<i>Sohail Akhtar, etc.</i>	(C.P. 250/06)
<i>Shahbaz-ud-Din Ch. etc.</i>	(C.A. 609/05)
<i>Mst. Farzana Shaheen</i>	(C.A. 1189/08)
<i>Muzaffar Hussain, etc.</i>	(Crl.A. 1-Q/10)
<i>Nadeem Majeed</i>	(C.A.1324/07)
<i>Muhammad Asif Sehgal</i>	(Crl.As. 277 to 279/06)
<i>Mohib Fabrics Limited</i>	(Crl.Ps. 78 & 79-L/04)
<i>Mazhar Wakil Malik</i>	(C.P. 1355-L/10)
<i>Brig. Retd Zaheerullah</i>	(C.Ps. 1188-L/10, 1145-L/09)
<i>Munir Ahmad Virk</i>	(C.P. 1363-L/10)
<i>Dr. Ayesha Tahir, etc.</i>	(C.P. 1013-L/2010)
<i>Mehran Bibi, etc.</i>	(C.P. 1749/09)
<i>Anjuman Mutasareen Double Shah</i>	(C.P. 226-L/05)
<i>Mohammad Yaseen</i>	(C.P. 1326-L/09)
<i>Mohammad Amin Bhatti</i>	(C.P. 2534-L/09)
<i>Muhammad Ashraf</i>	(C.P. 629-L/08)
<i>Nadeem Majeed</i>	(Crl.O.P. 31/07)
<i>M. Anees-ur-Rehman Butt, etc.</i>	(C.As. 483 & 484-L/09)
<i>Ch. Aamir Sher Ali</i>	(Crl.As. 101 & 102/05)

Haji Kabir Khan

(Crl.A. 86/03)

... Appellant(s)/Petitioner(s)

versus**The State**

(Crl.As. 140-141/05, 277 to 279/06, Crl.Ps. 78 & 79-L/04, Crl.As. 101 to 102/05 & 86/03)

Nasim-ur-Rehman

(Crl.A. 228/04)

Anwar-ur-Rehman

(Crl.A. 229/04)

Masood-ur-Rehman

(Crl.A. 230/04)

Mujeeb-ur-Rehman

(Crl.A. 231/04)

Faisal Saleem

(Crl.A. 232/04)

Asad Saleem

(Crl.A. 233/04)

Chairman NAB, etc.

(C.Ps. 250/06, 1355-L, 1188-L, 1363-L, 1013-L/2010, 1145-L/09, 629-L/08)

Naseem-ur-Rehman, etc.

(C.A. 91/06)

The State, etc.

(C.A. 609/05, Crl. A. 1-Q/10, C.A. 1324/07, Crl.O.P. 31/07)

Federation of Pakistan through Secretary, Interior, etc.

(C.A.1189/08, C.P. 1749/09)

Brig (R) Karar Ali Agha

(C.P. 1548/09)

Government of Pakistan, etc.

(C.P. 226-L/2010)

Dr. Abdul Basit

(C.P. 1936-L/11)

DG NAB, Lahore, etc.

(C.Ps. 1326-L/09, 2534-L/09)

M. Kamran Khan, etc.

(C.P. 318/08)

Rashid Ahmad Yaqoob, etc.

(C.As. 483 & 484-L/09)

Haji Kabir Khan, etc.

(Crl.Ps. 96-97/03)

...Respondent(s)

Criminal Appeal No. 140 of 2005 & Criminal Miscellaneous Application No. 629 of 2010 and Civil Appeal No. 141 of 2005

For the appellant(s) : Mr. Abid Hassan Minto, Sr. ASC
Mr. Afzal Siddiqui, ASC
Mr. M. S. Khattak, AOR

For the respondent : Mr. K. K. Agha, Prosecutor-General, NAB
Mr. Fauzi Zafar, Additional Prosecutor-General, NAB

Crl. As. 228 to 233/2004

For the appellant(s) : Mr. K. K. Agha, Prosecutor-General, NAB
Mr. Fauzi Zafar, Additional Prosecutor-General, NAB

For the respondent(s) : Raja Muhammad Bashir, Sr. ASC

C. P. 205/2006 & CMA No.393/07

For the petitioner : Mr. Afzal Siddiqui, ASC
Sardar Muhammad Ghazi, ASC

For respondent No.1 : Raja M. Ibrahim Satti, Sr. ASC
Mr. M. S. Khattak, AOR

For respondent No.3 : Nemo

C. A. No. 91/2006

For the appellant : Mr. K. K. Agha, Prosecutor-General, NAB
Mr. Fauzi Zafar, Additional Prosecutor-
General, NAB

For respondent No.1 : Nemo.

C. A. No. 609/2006 & CMA 2710/13

For the appellant : Mr. Wasim Sajjad, Sr. ASC
Mr. Mehr Khan Malik, AOR

For respondent No.1 : Raja M. Ibrahim Satti, Sr. ASC
Mr. M. S. Khattak, AOR a/w

For Complainant : Syed M. Iqtidar Haider (in person)

C. A. 1189/2008

For the appellant : Mr. M. Akram Sheikh, Sr. ASC
Mr. Naseer-ud-Din Khan, ASC
Ch. Akhtar Ali, AOR

For respondent No.1 : Nemo.

Crl. A. No.1-Q/2010

For the appellant : Nemo.

For the respondent : Mr. K. K. Agha, PG (NAB)

C. A. No.1324/07

For the appellant : Mr. Kamran Murtaza, ASC

For respondent No.1 : Mr. K. K. Agha, Prosecutor-General, NAB
Mr. Fauzi Zafar, Additional Prosecutor-
General, NAB

Respondent No. 7 : Mr. M. S. Khattak, AOR
Mr. Ali Shafi (in person)

Crl. A. No. 274 & 276/2006

For the appellant(s) : Mr. K. K. Agha, Prosecutor-General, NAB
Mr. Fauzi Zafar, Additional Prosecutor-
General, NAB

For the respondent : Ch. Aitzaz Ahsan, Sr. ASC

**Crl. A. No. 277 to 279/2006 & Crl. Ps.78 & 79-L/2004
and C. P. 1335-L/2010**

For the appellant(s) : Ch. Aitzaz Ahsan, Sr. ASC
For the respondent : Mr. K. K. Agha, Prosecutor-General, NAB
Mr. Fauzi Zafar, Additional Prosecutor-General, NAB

Cr. P. 79-L/2004

For the petitioner : Nemo
For the respondent : Mr. K. K. Agha, Prosecutor-General, NAB
Mr. Fauzi Zafar, Additional Prosecutor-General, NAB)

C. P. 1188/2010

For the petitioner : Nemo
For the respondent : N.R.

C. Ps. No. 1363-L & 1013/2010

For the petitioner : Nemo.
For the respondent : N.R.

C. P. No. 1749/2009

For the petitioner : Mr. M. Akram Sheikh, Sr. ASC
Mr. Naseer-ud-Din Khan, ASC
For the respondent : N. R.

C. P. 1548/2009

For the petitioner : Mr. K. K. Agha, Prosecutor-General, NAB
Mr. Fauzi Zafar, Additional Prosecutor-General, NAB)
For the respondent : Nemo.

C. P. No. 226-L/2011

For the petitioner : Dr. A. Basit, Sr. ASC
For the respondent : N.R.

C. P. No. 1936-L/2011

For the petitioner : Mr. K. K. Agha, Prosecutor-General, NAB
Mr. Fauzi Zafar, Additional Prosecutor-General, NAB
For the respondent : In person

C. Ps. No. 1145-L, 1326-L/2009 & 2534-L/2009

For the petitioner(s) : Nemo.

For the respondent(s) : N.R.

C. P. No. 629-L/2008

For the petitioner : Nemo.

For the respondent : N.R.

C. P. No. 318/2008

For the petitioner : Mr. K. K. Agha, Prosecutor-General, NAB
Mr. Fauzi Zafar, Additional Prosecutor-General, NAB

For the respondent : Nemo.

C. A. 483 & 484-L/2009

For the appellant : Appellant No. 2 in person

For respondent No.1 : Nemo.

Official respondents : Nemo.

CrI. As. No. 101 & 102/2005

For the appellant(s) : Mr. M. Akram Sheikh, Sr. ASC
Mr. Naseer-ud-Din Khan, ASC

For the respondent(s) : Mr. K. K. Agha, PG (NAB)
Mr. Fauzi Zafar, Dy. PG (NAB)

CrI. A. No. 86/2003

For the appellant : Mr. Abid Hassan Minto, Sr. ASC

For the respondent : Mr. K. K. Agha, PG (NAB)
Mr. Fauzi Zafar, Dy. PG (NAB)

CrI. Ps. No.96 & 97/2003

For the petitioner(s) : Mr. K. K. Agha, Prosecutor-General, NAB
Mr. Fauzi Zafar, Additional Prosecutor-General, NAB

For the respondent : Mr. Abid Hassan Minto, Sr. ASC.

Dates of hearing : 21.05.2013 & 22.05.2013

JUDGMENT

Asif Saeed Khan Khosa, J.: There are two features common to all these appeals and petitions for leave to appeal and they are, firstly, the persons affected have been proceeded against

under the National Accountability Ordinance, 1999 and, secondly, such persons claim not to be holders of any public office during the period relevant to the offences regarding which they have been proceeded against. These two common features in these appeals and petitions have given rise to a common question as to whether the provisions of the National Accountability Ordinance, 1999 are applicable to a person who is not holder of a public office or not. Thus, before taking up these appeals and petitions for decision in terms of their individual factual and legal merits we have decided to resolve and answer the said common question in the first instance and have heard the arguments of the learned counsel for the parties regarding the said issue.

2. Mr. Abid Hassan Minto, Sr. ASC appearing for the appellants in some of the appeals has submitted that a close examination of the provisions of section 9(a) of the National Accountability Ordinance, 1999 shows that three categories of persons can be proceeded against by the National Accountability Bureau for the offences mentioned in that section and they are:

- (a) a person who is holder of a public office,
- (b) a person who aids and abets or conspires with holder of a public office, and
- (c) any other person who may not be holder of a public office and may have nothing to do with holder of a public office.

He has taken us through different provisions of section 9(a)(i) to 9(a)(xii) of the National Accountability Ordinance, 1999 pointing out which provision relates to which of the categories of persons mentioned above. While Mr. Minto was making his submissions Mr. Wasim Sajjad, Sr. ASC interjected and maintained that there is also a fourth category of persons who have held a public office at some point of time and they are proceeded against for an offence under section 9(a) allegedly committed before and during the period of holding the public office and he has maintained that such persons cannot be proceeded against for an offence allegedly committed during the period when they were not holding any public office. Mr. Minto has acknowledged that there indeed exist some provisions of section 9(a) of the National Accountability

Ordinance, 1999 whereunder any private person who may not be holder of a public office himself and who may have nothing to do with any holder of a public office may independently be proceeded against by the National Accountability Bureau if the offence committed by him affects the public at large.

3. Mr. Muhammad Akram Sheikh, Sr. ASC appearing for the appellants/petitioner in some of the appeals and a petition has argued that holder of a public office is a trustee and for dealing with the offence of corruption committed by such a person different laws have been framed in this country from time to time. He has argued that if a private person is also covered by such laws then an uncertainty is to creep in as to whether in a given case such private person ought to be tried under the normal laws of the land or under the special law generally meant for holders of public offices and in matters of penal laws any uncertainty is to be avoided. He has referred in this respect to the cases of Jamat-i-Islami Pakistan through Syed Munawar Hassan, Secretary-General v. Federation of Pakistan through Secretary, Law, Justice and Parliamentary Affairs (PLD 2000 SC 111), In the matter of: Reference No. 2 of 2005 by the President of Pakistan (PLD 2005 SC 873) and Jibendra Kishore Achharyya Chowdhry and 58 others v. The Province of East Pakistan and Secretary, Finance and Revenue (Revenue) Department, Government of East Pakistan (PLD 1957 SC (Pak.) 9). He has gone on to contend that any law which allows the authorities to pick and choose at their whims as to which person is to be proceeded against under which law is bad law. He has maintained that a law which is capable of discriminatory applicability is violative of the Fundamental Right guaranteed by Article 25 of the Constitution of the Islamic Republic of Pakistan, 1973. Mr. Sheikh has referred in this regard to the cases of Inamur Rehman v. Federation of Pakistan and others (1992 SCMR 563), Sh. Liaquat Hussain and others v. Federation of Pakistan through Ministry of Law, Justice and Parliamentary Affairs, Islamabad and others (PLD 1999 SC 504) and Rauf Bakhsh Kadri v. The State and others (2003 MLD 777).

4. Ch. Aitzaz Ahsan, Sr. ASC appearing for some of the parties to these matters has contended that the words "any other person" appearing in different parts of section 9(a) of the National Accountability Ordinance, 1999 ought to be read as any person who has benefitted from a person holding a public office because beneficiaries from the offences committed by holders of public offices are covered by different provisions of section 9(a) and he has referred in this respect to the cases of Mir Munawar Ali Talpur v. State through Chief Ehtesab Commissioner, Islamabad and 2 others (PLD 2003 SC 46) and Vijant Kumar and 4 others v. State through Chief Ehtesab Commissioner, Islamabad and others (PLD 2003 SC 56). He has maintained that the National Accountability Ordinance, 1999 is a very harsh and stringent law as there is no provision therein for bail, it allows freezing of properties, the sentences provided therein are high and excessive, remissions are not available to convicts, a conviction also entails disqualifications and transfer of property is not allowed even to those facing an investigation or trial and, therefore, such a law is to be interpreted quite strictly and beneficially towards a citizen.

5. Mr. Wasim Sajjad, Sr. ASC appearing for the appellant in one of the appeals has argued that the accountability laws introduced in the country from time to time were meant to apply mainly to holders of public offices and the purpose invariably was to curb the menace of public sector corruption. According to him a "Holder of Public Office" has been defined in section 5(l) of the National Accountability Ordinance, 1999 quite elaborately and the words "holder of a public office or any other person" appearing in section 9(a) of the said Ordinance are to be treated as *ejusdem generis*. By referring to the Black's Law Dictionary and 2nd Edition of Mr. S. M. Zafar's book 'Understanding Statutes' he has elaborated that it is an established principle of interpretation of statutes that where general words follow an enumeration of persons or things, by words of a particular and specific meaning, such general words are not to be construed in their widest extent, but are to be held as applying only to persons or things of the same general kind or class as those specifically mentioned. He has

gone on to submit that if the intention of the legislature was to include every person within the scope of section 9(a) of the National Accountability Ordinance, 1999 then there was no need to refer to holder of a public office specifically in that section. Mr. Wasim Sajjad has also referred to Article 4 of the Constitution of the Islamic Republic of Pakistan, 1973 to maintain that every citizen has an inalienable right to enjoy the protection of law and if the ordinary law of the land covers the allegations leveled against a private person then subjecting him to a harsher special law adversely affects his constitutional right under Article 4. He has also drawn our attention towards the National Accountability Bureau Ordinance, 1999 as introduced originally (published in PLD 2000 Central Statutes 57) and has pointed out that the originally introduced provisions of section 9(a)(i) to 9(a)(vii) were relevant only to holders of public offices and any other person who aided such holder of public office or who was a beneficiary of the corruption of such holder of public office. According to him subsequent widening of the net through amendments introduced in the main Ordinance was not in consonance with the spirit and scope of the original law. He has lastly pointed out that that the High Court of Sindh in the case of Abdul Aziz Memon v. The State (2003 YLR 617), the Lahore High Court in the case of Ch. Zulfiqar Ali v. Chairman, NAB and others (PLD 2003 Lahore 593) and the Peshawar High Court in the case of Haji Kabir Khan v. The State (2003 YLR 1607) have rendered divergent views regarding interpretation of the words "any other person" appearing in section 9(a) of the National Accountability Ordinance, 1999 and, thus, there is a pressing need that the said words may be interpreted by this Court so that the prevalent ambiguity in that regard may be brought to an end.

6. Mr. Sardar Muhammad Ghazi, Mr. Kamran Murtaza, Raja Bashir Ahmad and Dr. A. Basit, Sr. ASCs appearing in some of the appeals and petitions have adopted the arguments advanced by Mr. Muhammad Akram Sheikh and Mr. Wasim Sajjad and have maintained that a private person not holding a public office, other than a private person aiding or abetting or conspiring with holder of a public office or a beneficiary from holder of a public office,

cannot be proceeded against under the National Accountability Ordinance, 1999. Written synopses of their arguments have also been submitted before us by some of the learned counsel mentioned above. No other learned counsel has addressed arguments or submitted written synopsis in support of the submissions noted above.

7. As against the arguments and submissions noted above Mr. K. K. Agha, the learned Prosecutor-General Accountability appearing for the National Accountability Bureau, has taken us through the legislative history of this country and the laws introduced from time to time concerning accountability of holders of public offices. He has particularly highlighted how different laws were amended or new laws were enacted extending the jurisdiction of the agencies established for curbing corruption not only in high public places but also in the public at large. According to him the National Accountability Ordinance, 1999 is a hybrid law in its present form and the same is now applicable not just to holder of a public office or a person aiding or abetting or conspiring with holder of a public office but also to any other person who is neither holder of a public office himself nor has anything to do with holder of a public office. He has extensively compared the provisions of the erstwhile Ehtesab Act, 1997 with the provisions of the National Accountability Ordinance, 1999 to show how through the latter legislation the net has deliberately been spread wider even to cover large-scale corruption in the private sector and in the public at large. He has also extensively read out many portions of the judgment handed down by this Court in the case of Khan Asfandyar Wali and others v. Federation of Pakistan through Cabinet Division, Islamabad and others (PLD 2001 SC 607) to maintain that this Court has already recognized the enlarged scope of the provisions of the National Accountability Ordinance, 1999 and that the question being debated before the Court already stands answered by this Court in that judgment. Referring to the judgment delivered by this Court in the case of Justice Khurshid Anwar Bhinder and others v. Federation of Pakistan and another (PLD 2010 SC 483) he has submitted that while interpreting the words in a statute the ordinary meanings of the words are to be

the preferred option unless the context requires otherwise and, thus, the words "any other person" appearing in section 9(a) of the National Accountability Ordinance, 1999 ought to be understood to mean any other person not necessarily connected with holder of a public office. Mr. Agha has emphasised that different High Courts in the country have understood and applied the said words differently and, thus, this Court may clarify the correct legal position in this regard. As regards the submission made by some of the learned counsel mentioned above regarding the power of the Chairman, National Accountability Bureau to pick and choose cases for their handling under the National Accountability Ordinance, 1999 he has maintained that the National Accountability Bureau has a safe mechanism for deciding as to which case is to be handled by it and the decision of the Bureau in that regard is subject to judicial scrutiny, as held by the High Court of Sindh in the case of Rauf Bakhsh Kadri v. The State and others (2003 MLD 777). He has gone on to submit that this aspect of the jurisdiction of the National Accountability has already been examined by this Court in the case of Khan Asfandyar Wali (supra) on the touchstone of the Fundamental Rights guaranteed by the Constitution and no violation of the Constitution had been found by this Court in that regard.

8. Raja Muhammad Ibrahim Satti, Sr. ASC appearing for the respondents in an appeal and a petition has also traced the legislative history *qua* accountability in this country and has referred in this respect to the case of Federation of Pakistan and others v. M. Nawaz Khokhar and others (PLD 2000 SC 26). He has also made a reference to the case of Chaudhary Aamir Ali v. The State (2002 YLR 1902) wherein a view identical to that in the case of Ch. Zulfiqar Ali v. Chairman, NAB and others (PLD 2003 Lahore 593) had been taken by the Lahore High Court on the issue being considered by this Court.

9. After hearing the learned counsel for the parties and the learned Prosecutor-General Accountability and after going the relevant laws and provisions and attending to the precedent cases

cited before us we have found that the stance that a person can be proceeded against under the National Accountability Ordinance, 1999 only if he is holder of a public office is clearly misconceived. It may be true that the accountability laws in this country introduced till the Ehtesab Act, 1997 were mainly directed against holders of public offices and persons aiding and abetting or conspiring with holders of public offices but at the same time it is equally true that, in the words of Mr. K. K. Agha, the National Accountability Ordinance, 1999 had brought about a "sea change" by expanding the jurisdiction of the National Accountability Bureau far beyond holders of public offices and by covering corruption of high scale even in the public at large. For a proper understanding of this change a look at the legislative history in this field may be in order and fortunately the same has already been summed up by this Court in the case of *Federation of Pakistan and others v. M. Nawaz Khokhar and others* (PLD 2000 SC 26) as follows:

"Before we proceed to consider the above contentions of the learned counsel for the parties, it may be stated here that transparent, even-handed and across the board accountability of holders of all public offices, is the essence of Islamic polity and a democratic set-up. Presence of accountability process in a system of governance not only deter those who hold sway over the populace from misusing and abusing the power and authority entrusted to them but it also ensures principles of good governance. It would be pertinent at this stage to briefly refer to the legislative history of accountability laws in Pakistan.

Soon after the establishment of State of Pakistan, Public and Representative Offices (Disqualification) Act, 1949 (PRODA) was passed by the Legislature which became effective from 15th August, 1947. This Act provided for debarring from public life for a suitable period of persons judicially found guilty of misconduct in any public office. It remained enforced until 21st September, 1954 when it was repealed by Public and Representative Offices (Disqualification) (Repeal) Act, 1954. After the repeal of PRODA, there was no special law on the statute book dealing with the accountability of holders of public offices between the period from 21st September, 1954 to 6th August, 1959. On 7th August, 1958 while the country was under the Martial Law, Elective Bodies (Disqualification) Order, 1959 (President's Order No.13 of 1959) (EBDO) was promulgated which remained enforced only until 31st December, 1960 (EBDO provided for disqualifications of certain categories of persons from being a member or a candidate for the membership of any elective body until 31st December, 1966. EBDO was amended by P.O. No.7 of 1960 dated 10-2-1960; P.O. 9 of 1960 dated 5-3-1960; P.O. 27 of 1960 dated 28-11-1960 and P.O. 29 of 1960 dated 27-11-1960. On 7th January, 1963, Elective Bodies Disqualification (Removal and Remission) Ordinance, 1963 was promulgated which authorised the President to reduce the period of disqualification of a person disqualified under EBDO. Once again, after expiry of EBDO on 31st December, 1960, no special law existed on the subject of

accountability of holders of public offices until 8th of January, 1977. On 9th January, 1977, Holders of Representative Offices (Prevention of Misconduct) Act IV of 1976 and Parliament and Provincial Assemblies (Disqualification from Membership) Act V of 1976 were passed which provided for trial of offences of misconduct of holders of public offices before a Bench of the High Court consisting of not less than two Judges. On 13th November, 1977 Holders of Representative Offices (Punishment for Misconduct) Order (President's Post Proclamation) Order No.16 of 1977 (P.P.P.O.16) and Parliament and Provincial Assemblies (Disqualification for Membership) Order (President's Post Proclamation Order 17 of 1977 (P.P.P.O. 17) were promulgated. P.P.P.Os. 16 and 17 of 1977, however, did not repeal Holders of Representative Offices (Prevention of Misconduct) Act, 1976 and Parliament and Provincial Assemblies (Disqualification for Membership) Act, 1976 with the result from 13-11-1977 onwards we had on the Statute Books Act IV of 1976, Act V of 1976, P.P.P.O.16 of 1977 and P.P.P.O. 17 of 1977, all dealing with punishment for misconduct and disqualification of the holders of public offices. Holders of Representative Offices (Prevention of Misconduct) Act, 1976 and Parliament and Provincial Assemblies (Disqualification for Membership) Act, 1976 were finally repealed by Parliament and Provincial Assemblies (Disqualification for Membership) (Amendment) Act, 1991 which was assented to by the President on 28-4-1991. P.P.P.O. 16 of 1977 was amended through P.P.P.O. 5 of 1978 dated 17-1-1978 and President's Order I of 1981. Similarly, P.P.P.O. 17 was also amended by Ordinance IX of 1990 dated 15-10-1990 and Act V11 of 1991 dated 28-4-1991.

On 18th November, 1996, Ehtesab Ordinance CXI of 1996 was promulgated which repealed P.P.P.O. 16 and P.P.P.O. 17 of 1977. Ordinance CXI was amended by Ordinance CXXIII of 1996, Ordinance V11 of 1997 and Ordinance XI of 1997. Ordinance CXI amended as aforesaid was repealed and replaced by Ordinance XX of 1997. Ordinance XX was repealed by Act IX of 1997. Act IX of 1997 was amended through Ordinance II of 1998 on 4th February, 1998 but this Ordinance stood repealed on 3rd June, 1998 as it was not passed by the Parliament.

From the legislative history mentioned above, two conclusions clearly emerge. Firstly, the necessity for special legislation relating to accountability of holders of public offices has been recognised both by the Civilian as well as Military Governments. Secondly, except for two brief interludes, the special laws relating to accountability of holders of public offices remained in the field from 15th August, 1947 till today.

At this stage, we may also mention that at least on two previous occasions, the justification for imposition of Martial Law and deviation from the Constitutional Rule in the country was sought to be justified on the plane of rampant corruption of the politicians. It is also not without significance that four previous elected Civilian Governments were also dismissed before completion of their tenure under the Constitution on allegations of corruption besides other allegations. In this backdrop, when the second Benazir Bhutto's elected Government was dismissed under Article 58(2)(b) of the Constitution in November, 1996, there was a public outcry for a severe accountability of the holders of public offices. The caretaker set-up which came into existence as a result of dismissal of elected Government of Benazir Bhutto, therefore, promulgated Ehtesab Ordinance CXI of 1996, which was later amended through Ordinance CXXIII, Ordinance VII and Ordinance XI, before it was repealed and replaced by Ordinance XX of 1997. Nawaz Sharif's Government which came into power as a result of general elections in the country held in February, 1997 promulgated the Act which

repealed Ordinance XX of 1997. In the light of the preceding discussion, we now proceed to consider the above contentions of the parties."

The "sea change" regarding spreading the net wider and enlarging the scope of the accountability law referred to by Mr. K. K. Agha in his submissions with reference to the Ehtesab Act, 1997 and the National Accountability Ordinance, 1999 already stands noticed and recognized by this Court in the case of *Khan Asfandyar Wali (supra)* as it was observed by this Court in that case as under:

"106. Mr. Minto submitted that while examining the *vires* of this law, the following provisions may be given deeper consideration:

- Section 5 (a) wherein 'accused' has been extensively defined;
- Section 5 (m) defines 'holder of public office', which has been gathered from all the previous statutes on the subject and thus *the scope and purview of the process of accountability has been enlarged;*
- Clause (iv) of section 5 (m) has brought all persons in the service of Pakistan within the purview of accountability, inasmuch as even the serving officers of the Armed Forces, who are employed in organizations other than the Armed Forces, have been included;
- Likewise in clause (vi) (*ibid*), all those persons have been included who have served in, resigned, retired, discharged or dismissed from the Armed Forces and thus only a limited class of persons employed in the Armed Forces, who are within the discipline of the Force concerned, have been excluded with a view to maintaining integrity in the institution inasmuch as public trial in such cases would not be in the interest of the Institution. Even otherwise, such persons are amenable to the discipline of the Force concerned:
- **The word 'person' used in various provisions of this law is wide enough to cover any person and thus no body is being spared and across the board accountability is being conducted throughout the length and breadth of the country with no discrimination whatsoever, inasmuch as there is no political bias, no provincial bias.**
- **The impugned law is applicable to the politicians, bureaucrats and other persons, it is vast in its application and the exceptions are very exceptional and very limited;**

157. The case of the Federation/respondents is that the NAB Ordinance does not suffer from any legal infirmity inasmuch as:

-- It is a valid piece of legislation made and promulgated by the competent authority under the Chief Executive's Order No. IX of 1999 dated 15.11.1999, as amended from time to time;

-- The legislation has been duly acted upon and is being administered throughout the country inasmuch as numerous Accountability Courts have been established and Judges have been appointed to such courts in consultation with the Chief Justice of Pakistan. This ensures the independence of the courts and the judiciary in general. All these Courts are presided over by serving and retired District & Sessions Judges, who are under the direct supervisory control of the Chief Justices of the respective High Courts of the four Provinces;

-- The NAB Ordinance is a special law falling in the series seeking to combat the evil of high level corruption. For the first time, through the NAB Ordinance, members of hitherto an untouchable class of influential and powerful persons, **not merely restricted to holders of public offices, but also including bankers, businessmen, industrialists, bureaucrats and other persons, who are involved in corruption and corrupt practices as defined in the NAB Ordinance, fall within the purview of accountability in an effective and coherent manner;**

The NAB Ordinance seeks to:

(i) re-define certain offences and re-prescribe their punishments;

(ii) provide for Special Courts and procedure for trial of specified offences;

(iii) provide for special agency for pre-trial investigation/inquiry, namely, the National Accountability Bureau;

-- One of the objectives of the NAB Ordinance is the retrieval of the looted public money. It also provides for 'plea bargaining', which appears for the first time in such a law in Pakistan and in consequence 1064.600 million rupees have been recovered during a short span;

-- Up to 2.4.2001, 759 authorized investigations have been undertaken by the NAB out of which 143 have been completed while 586 are in progress and 30 have been closed or suspended. Similarly out of 261 filed in the Accountability Courts, 120 have been decided with 73 convictions and 16 acquittals. 46 'plea bargaining' cases were concluded while 13 were rejected. Only 36 accused are in NAB custody for interrogation, 156 are in the judicial lock-ups, 56 have been released and 69 are at large;

-- The NAB Ordinance was framed keeping in mind Articles 175, 202 and 203 of the Constitution and the principles laid down in Mehram Ali's case (supra);

-- It does not create a new offence with retrospective effect, but an offence, which is in the nature of continuation of 'wilful default' after coming into force of the NAB Ordinance;

-- Section 5(r) does not negate the freedom of trade, business and profession as contemplated in Article 18 of the Constitution. It merely *seeks to penalize deliberate evaders of due payments to financial institutions*. Prosecution of genuine cases where there are no deliberate and wilful evasions is abandoned within the contemplation of the NAB Ordinance;

-- Section 5 (r), no doubt, is a constitutional deviation in view of the provisions of Article 12(2) of the Constitution, but on the ground of state survival and having regard to the objectives of the Chief Executive coupled with the law declared in the case of Syed Zafar Ali Shah (supra), no objection can be taken to section 5 (r), particularly when adequate safeguards have been provided by making appropriate amendments in the Ordinance;

-- Conciliation Committee has been established and no proceedings against the loan defaulters can be initiated by the NAB without the recommendation of the Governor, State Bank of Pakistan. However, section 25-A requires to be further suitably amended so as to empower the Court of competent jurisdiction to

decide as to whether or not accept the agreement/conciliation reached between the parties;

-- The NAB Ordinance does not contravene the provisions of Articles 23/24 of the Constitution, in that, freezing of property of the accused persons (ill-gotten properties) is merely an interlocutory measure;

-- The vires of the NAB Ordinance cannot be tested on the touchstone of the Fundamental Rights, which stood suspended by the Proclamation of Emergency of 28th May 1998, which has been upheld by this Court in Syed Zafar Ali Shah's case (supra);

-- The burden of proof on accused is not an alien concept in jurisprudence. There are number of existing laws, which place the burden of proof on the accused and/or require an accused to rebut a statutory presumption. Such a course is not violative of the equality clause(s) of the Constitution;

-- **The choice of Court to which a reference is sent for trial is a matter of procedure and no body has a vested right to demand that his case be tried by a particular Court/Bench;**

-- **The power conferred on Chairman NAB is not uncontrolled and his discretion is to be exercised judiciously having regard to the provisions of section 24A of the General Clauses Act, 1897**, which require reasons to be recorded in writing for a deviation while passing any discretionary order;

-- The provisions of the Ordinance are in conformity with the established principles of procedure for criminal proceedings;

-- The nature of investigation and inquiry under the NAB Ordinance is of special kind, which entails inquiry and investigation into such offences, and in most cases requires tedious efforts including careful perusal of voluminous records of companies/banks, which cannot be completed overnight and therefore the period of 90 days for custody has been prescribed;

-- The period of remand of 90 days is not violative of Article 10(2) of the Constitution, in that, section 24 (d) requires production of the accused before an Accountability Court within 24 hours of the arrest;

-- *Section 23 of the Ordinance, insofar as it prohibits transfer of any right, title, interest or creation of charge on property after Chairman NAB has initiated investigation into the offences under the NAB Ordinance, is an interlocutory measure, in that, it is not desirable that persons accused of such offences should frustrate the objects of law by creating third party rights in respect of illegally acquired property thereby creating hurdle in the objects of law;*

-- Power vesting in Chairman NAB under section 24 (a) of the NAB Ordinance to order arrest of the accused if not already arrested at any stage of the investigation, is neither discriminatory nor violative of Article 25 of the Constitution, in that, similar powers are conferred upon police officers under section 54 Cr.P.C.;

-- As to the case of voluntary return, i.e. 'plea bargaining' under section 25, the provision stands amended by virtue of Amendment Ordinance No. XXIV of 2000 and now, by virtue of section 25 (a) (ii), after cognizance of the offence has been taken

by the Court or the trial has commenced, Chairman NAB may release the accused only with the approval of the Court;

-- There is no restraint on freedom of contract, in that the powers earlier vesting in Chairman NAB under section 25 (e) & (g) have now been vested in the Governor, State Bank of Pakistan by virtue of the Amendment Ordinance No. XXIV of 2000, thus clause (g) of section 25 does not suffer from excessive delegation;

-- Section 32 (d) of the NAB Ordinance is subject to the Constitution and does not purport to oust the constitutional jurisdiction of the Courts;

-- The Civil Servants Act, 1973 continues to apply to civil servants, who are deputed to or posted in the NAB. Those, who are appointed directly, are distinct and separate category and class of persons and therefore no violation of Article 25 of the Constitution is caused;

-- The mere fact that the Ehtesab Act, 1997 was competently and validly made and its *vires* were upheld by this Court does not curb the power of the Legislature to make a new law on the same subject;

-- *The NAB Ordinance is neither discriminatory nor un-Islamic and in any case, its vires cannot be examined on the touchstone of Article 2A of the Constitution;*

-- The method of appointment in respect of Chairman NAB is contained in section 6 (b) (l) and for other officers in section 28 *ibid*. Provisions relating to transfer of cases qua the provincial courts within the territories of a Province and from one Province to another Province, do not suffer from excessive delegation;

-- As regards special treatment to be meted out to women accused, the provisions of section 167 Cr.P.C. are applicable and the same have not been ousted;"

(italics and bold letters have been supplied for emphasis)

The above mentioned stands taken by the Federation of Pakistan had been accepted by this Court in the said case and the National Accountability Bureau Ordinance, 1999 (as the said Ordinance was titled at that time) had been declared by this Court to be a constitutionally valid piece of legislation. It had been observed and held by this Court as follows:

"201. For the last several years there has been tremendous increase in allegations of massive corruption against divergent strata of the society. The necessity for creating the offence of 'wilful default' arose because in the past the prosecution agency and other government agencies had not properly carried out their public duty to investigate the offences disclosed due to the alleged involvement of several persons holding high offices in the executive, public offices, etc. Indifferent/casual attitude of the concerned agencies to conduct and proceed with the investigation is understandable. This is, indeed, a grave situation. Supreme Court can take judicial notice of the fact that great loss of public revenue owing to enormous corruption and failure to recover the looted money through huge bank loan defaults pose a serious threat to economic life, financial stability, credit and security of

Pakistan including the unity and integrity of the nation. These are the circumstances in which the vires of the Ordinance are to be judged, which was promulgated for an expeditious and thorough probe into corruption and corrupt practices and holding accountable those accused of such practices, which had already been delayed for several decades. The validity of the impugned Ordinance is also to be judged keeping in view the extraordinary circumstances prevailing in the country and the adverse impact of lacking probity in the public life leading to highest degree of corruption. Such a situation has also adversely affected the foreign investment and funding from the International Monetary Fund as well as the World Bank who have warned that future aid to Pakistan shall be subject to the requisite steps being taken to eradicate corruption. If the pervading corruption in the society is permitted to continue unchecked it would lead to economic disaster.

202. It was on 12th October, 1999, that the situation prevailing in the country in the sphere of economic debacle was recognised. The factors leading to the above situation on the ground, included the acts and omissions of **persons who were the Members of the National and Provincial Assemblies, the Senate, the Civil Services, in business and/or working for gain in other disciplines in the country.**

203. In Syed Zafar Ali Shah and others v. General Pervez Musharraf, Chief Executive of Pakistan and others (PLD 2000 SC 869) Supreme Court took notice of the pleadings of the parties, and after considering the adverse effects of the inaction etc. of all concerned to collect the looted wealth of the country from those who were responsible therefor, it was observed that the action taken on 12-10-1999 was justifiable and that the speeches of the Chief Executive dated 13-10-1999 and 17-10-1999 correctly spelt out the plan/scheme to be adhered to by him for the purposes of making recovery thereof: It was held that Chief Executive of the Islamic Republic of Pakistan is entitled, inter alia, to perform all such acts and promulgate all legislative measures as would establish or lead to the establishment of the declared objectives of the Chief Executive as spelt out in his speeches referred above. The Chief Executive in his speech dated 17-10-1999 clearly stated:

"Revival of economy is critical. Our economy is in deep trouble and revolutionary steps are needed to put it back on track. The Pakistani people were subjected to betrayal of their trust. Their hard-earned money was frozen or taxed in violation of State commitment. We need to restore this trust."

.....

"The process of accountability is being directed especially towards those guilty of plundering and looting the national wealth and tax evaders. It is also directed towards loan defaulters and those who have had their loans rescheduled or condoned. The process of accountability will be transparent for the public to see. My advice to the guilty is to return voluntarily national wealth, **bank loans** and **pay their taxes** before the hand of law forces them to do so with penalty. As a last chance I urge **all defaulters** to come forth and settle their debts within a period of four weeks, after which their names will be published and the law will take its due course. They owe this to Pakistan and I expect their spirit of patriotism to guide them."

It was in the above backdrop that the Ordinance was promulgated and amendments made therein, subsequently. The plea that **a person entering into contractual obligations** before the promulgation of the impugned Ordinance cannot be made to suffer for his alleged failure to clear his said indebtedness under the impugned Ordinance and that too as an offence, loses all significance in the light of the above circumstances. It is not the case of any one that they have been willing to account for the ill-gotten wealth and that it was not their inaction which has placed them in the predicament in which they find themselves today. The sources of **amassing wealth by the specific individuals and juristic persons** being what they are, they should not expect any lenient view in the cases, against them provided the action taken against them is not contrary to a valid piece of law. More so, when the efforts on behalf of Bureau in putting them under notice of 30-days in terms of section 5(r) of the impugned Ordinance also fell on deaf ears. Viewed in this perspective, **the transformation of the alleged civil action flowing out of the contractual obligations, into an "offence" under the impugned Ordinance, does not suffer from any flaw whatsoever.**

208. Yet another factor, which is to be taken into consideration while judging the validity of the impugned Ordinance would be that one of the grounds on which validation and legitimacy was accorded to the present regime as stated in the case of Zafar Ali Shah (supra) was that the representatives of the people, who were responsible for running the affairs of the State were themselves accused of massive corruption and corrupt practices in the public as well as **private spheres** and were benefiting therefrom. They were resisting the establishment of good governance. There was a general perception that **corruption was being practised by diversified strata including politicians, parliamentarians, public officials and ordinary citizens** and there was no political and economic stability in the country. **The bank loan defaults were rampant**, in that, as per report of the Governor, State Bank of Pakistan, Rs. 356 billion were payable by the bank defaulters upto 12.10.1999. There being no accountability and transparency, economic stability in the country was highly precarious and there was an overall economic slowdown as GDP growth during the past three years had hardly kept pace with the growth of population and that Pakistan has a debt burden which equals the country's entire national income."

(bold letters have been supplied for emphasis)

We have also found Mr. K. K. Agha to be quite justified in maintaining that the stand of the Federation of Pakistan that the provisions of the said Ordinance are applicable not just to holders of public offices and to persons who aid and abet or conspire with holders of public offices but also to any other person who may not be holder of any public office or connected with holder of a public office in any manner had been accepted by this Court in the said case. The issue raised before us through the present appeals and petitions, thus, already stands resolved by this Court in the above mentioned case.

10. We have observed that on different occasions different High Courts in the country have made an effort to understand and interpret the words "any other person" appearing in section 9(a) of the National Accountability Ordinance, 1999 and some times they have reached conclusions which are divergent and at variance. On 01.02.2001 a learned Division Bench of the Peshawar High Court held in the case of *Haji Kabir Khan v. The State* (2003 YLR 1607) as follows:

"12. Haji Kabir Khan remained a member of the Parliament from 1993 to 1999. Apart from this, he had not held public office in any other period. Though there is a controversy regarding the dates on which some of the properties were acquired but the admitted position is that the list of the properties for which Haji Kabir Khan was charged, and which were found by the trial Court to be the assets of Haji Kabir Khan, included properties acquired by him prior to the year 1993. The question thus arose as whether such properties would fall within the scope of NAB Ordinance and the accused prosecuted for them. The argument of the defence was that since the properties were acquired before Haji Kabir Khan held a public office, he could not be tried for these acquisitions under the Ordinance. The learned Prosecutor however submitted that as the Ordinance has come into force from 1-1-1985, all properties acquired by the appellant since that date shall be treated as the appellant's assets for the purpose of the offence under section 9(a)(v) of the Ordinance.

13. The charge framed in this case stated that the accused was being tried for "the properties acquired during the period 1988 to 1999, which included his tenure as holder of public office at National Assembly". Thus, the trial of the accused was also for the assets acquired by him during the period of five years in which he did not hold any public office. The learned Prosecutor relied upon the definition of "holder of public office" given in section 5(1)(ii) of the Ordinance which not only includes a person who is, but who has been, a member of Parliament. By this definition the present as well as past member of Parliament have been termed as holders of public office. Though past members of Parliament can be tried under the Ordinance, the definition by no means can be stretched retrospectively so as to make an accused accountable for acts done by him prior to his becoming a member of Parliament. Again by section 2 the Ordinance has been given retrospective effect from 1-1-1985. By this retrospectively no doubt persons who have held public office since the commencing date of the Ordinance can be tried thereunder. It does not however mean that the holder of public office can be tried under the Ordinance for acts, though committed after 1-1-1985, but during the period when he did not hold any public office. To hold otherwise would be going against the very object of the Ordinance as stated in the preamble, that is, "to provide for effective measures for the detection, investigation, prosecution and speedy disposal of cases involving corruption, corrupt practices, misuse/abuse of power, misappropriation of property, kick-backs, commissions and for matters connected and ancillary or incidental thereto". The corruption, corrupt practices and misuse of power obviously must relate to the periods during which a person is in a position as a holder of public office to misuse this office for private gains. If wealth is acquired by illegal means at a time when the accused did not hold a public office, it may constitute an offence under some other law but not under the NAB Ordinance.

14. The principle laid down in the unreported judgment of this Court in *Syed Zahir Shah v. The State* (Ehtesab Appeal No.5 of 2000, decided on 2-1-2001) is not relevant for resolving the present controversy. In that case the question was, whether the appellant, who was a civil servant, could be charged and tried for properties and assets acquired by him prior to 1-1-1985, the date on which the NAB Ordinance came into force. The question was answered in the positive and it was held that the appellant could be made accountable under the Ordinance for accumulation of wealth illegally prior to the commencing date during his tenure as civil servant. The question before the Court there was not whether the appellant could be tried for properties or assets acquired by him before he was inducted in the civil services but whether he could be tried for assets acquired by him prior to 1-1-1985, but during his holding of public office.

15. We therefore hold that Haji Kabir Khan could not have been tried for properties or assets acquired by him before he was elected member of Parliament. Such properties were therefore wrongfully included in the charge framed by the trial Court. The charge was therefore defective."

Subsequently on 08.06.2002 a learned Division Bench of the Lahore High Court had held in the case of *Chaudhary Aamir Ali v. The State* (2002 YLR 1902) as under:

"9. There is weight in the submission made by the learned Law Officer that not only holder of a public office but also "any other person" can be tried for the offence of corruption and corrupt practices under section 9 of the Ordinance. This is clear from the plain reading of section 9 of the Ordinance. Therefore, the prosecution need not establish any nexus with the exercise of powers by the appellant as Mayor of the Corporation and acquisition of the disputed properties by him. He can be tried in his position as an ordinary person and be held guilty of the offence of corruption and corrupt practices. -----"

Later on a learned Division Bench of the High Court of Sindh had attended to this issue in the case of *Abdul Aziz Memon v. The State* (2003 YLR 617) and in its judgment dated 06.11.2002 it had concluded as follows:

"A perusal of the first para. of preamble shows that it envisages setting-up of National Accountability Bureau so as to eradicate corruption and corrupt practices and to hold accountable all those persons accused of such practices and matter ancillary thereto. In this para. the purpose of setting-up of National Accountability Bureau has been given very vividly which is to "hold accountable all those persons accused of such practices and matters ancillary thereto". Thus, the purpose of setting up of National Accountability Bureau is not confined to eradication of corruption committed by the holders of public offices only but to hold accountable to all those persons who are found involved in corruption. Again in section 4 of the NAB Ordinance, dealing with the application of said Ordinance, it is provided that, "it extends to whole of Pakistan and shall apply to all persons in Pakistan". Again it is stated by the Legislature in very clear and unambiguous terms that the NAB Ordinance extends to all persons in Pakistan. Thus, no section or group of persons or individuals has been excluded from the applicability of the NAB Ordinance. Section 5 of the NAB Ordinance contains the

definitions in clause (a) of section 5, the term "accused" has been defined to include a person in respect of whom there are reasonable grounds to believe that he is or has been involved in the commission of any offence triable under the Ordinance. Here again the term "accused" is not confined to the holder of public office only. In clause (c) of section 5, the expression "assets" has been defined to mean any property owned, controlled by or belonging to any accused whether directly or indirectly or held benami in the name of his spouse or relatives or associates, whether within or outside Pakistan, for which they cannot reasonably account for, or for which they account prove payment of full and lawful consideration". In this definition also the properties owned, controlled by or belonging to any accused, his spouse or relatives or the associates are required to be reasonably accounted for and the burden of giving reasonable account and to prove the payment of full and lawful consideration is on all those persons and the accountability is not restricted to the holder of public office only. Here it is pertinent to note that the terms "assets" has been defined with the expression "means" while the expression "accused" has been defined with the word "include". Thus, the definition of the term "assets" is conclusive while the definition of term "accused" is inclusive and thus, the definition of term "accused" is wider in its import. In clause (d) of section 5, the expression "associates" has been defined. In this definition any individual who is or has been managing the affairs or keeping accounts of the accused has been included. An association of persons, body of individuals, partnership firms and private limited companies are also included in which such a person is or has been a member, partner or director or which have been promoted, floated, established or run by the same group of persons. It also includes any Trustee of a private Trust or any person who ostensibly holds or is in possession of any property of an accused on his behalf for the benefit and enjoyment of the accused. Clause (m) of section 5, contains the definition of holder of public office.

Mr. Khalid Anwar learned counsel for the appellants, has conceded that the appellant Abdul Aziz Memon was holder of public office as an MNA in between the years 1993 and 1996, therefore, no discussion is required in respect of this definition. Clause (r) of section 5 contains the definition of willful default and a bare reading of this provision shows that this particular provision is applicable to the persons other than holders of public offices as well. Clause (n) of section 5 contains the definition of offence. According to this definition the offence for the purpose of NAB Ordinance means offence of corruption and corrupt practices as defined in the NAB Ordinance and includes the offences as specified in the Schedule to the NAB Ordinance. This provision is to be read with section 9 of the NAB Ordinance, which defines the expression "corruption and corrupt practices". Various acts and omissions have been enumerated in paras. (i) to (ix). It provides that, a holder of public office, or any other person (emphasis provided by us), is said to commit or to have committed the offence of corruption and corrupt practices, if the acts and omissions specified in paras. (i) to (ix) of clause (a) of section 9 are committed. It includes para. 5, which is relevant in this case. If the opening sentence of section 9(a) of the NAB Ordinance is read with para. (v) it reads as follows:--

"A holder of public office, or any other person, is said to commit or to have committed the offence of corruption and corrupt practices, if he or any of his dependents or Benamidars owns, possesses, or has acquired right or title in any movable or immovable property or pecuniary resources disproportionate to his known sources of income, which he cannot reasonably account for."

The word 'he' used in para. 5 above, is a reference to holder of public office as well as any other person. Thus, the act specified in section 9(a)(v) is not confined to holder of public office only but is extended to any other person as well. Section 20 of the N.A.B. Ordinance, is also pertinent in this behalf. For the sake of convenience, the section 20 of NAB Ordinance is reproduced below:--

"20. Reporting of suspicious financial transactions.

---(a) Notwithstanding anything contained in any law for the time being in force, it shall be the duty of all banks and financial institutions to take prompt and immediate notice of all unusual or large transactions in an account, which have no apparently genuine, economic or lawful purpose and upon bona fide professional judgment of the Bank or financial institution, that such transactions could constitute or be related to illegal or illicit activities, corruption or corrupt practices, the manager or director of such Bank or financial institution shall report all such transactions to the Chairman, NAB forthwith by the quickest possible mode of communication to be confirmed in writing.

(b) Whoever fails to supply the information in accordance with subsection (a) shall be punishable with rigorous imprisonment, which may extend to 5 years, or with fine, or with both.

(c) Where there are reasonable grounds to believe that the assets of a person or any part thereof were acquired through corruption or corrupt practices, and there was no other likely source of acquiring such assets or part thereof, it shall be presumed, unless proved to the contrary by the accused person, that such assets or part thereof were acquired, generated or obtained through corruption and corrupt practices."

A perusal of the above section shows that it starts with the non obstante clause and is comprehensive so as to include every bank account without any exception. It is not confined to the bank accounts of the holders of public offices only. It enjoins upon the Manager of Bank or Director of a financial institution about all the transactions by any account holder constituting or relating to illegal or illicit activities, corruption or corrupt practices. Clause (c) of section 20 also speaks of an assets of 'a person' acquired through corruption or corrupt practices and provides that if no other likely source of acquiring such assets or part thereof is furnished there shall be a presumption unless proved to the contrary by the accused persons that such assets or part thereof are acquired/generated through corruption and corrupt practices. Thus, the provisions contained in section 20 of the NAB Ordinance are also leading to the conclusion that the scope and applicability of the NAB Ordinance is not confined to the holders of public offices only.

Consequent to the above discussion, we are persuaded to agree with the contention of Mr. S. M. Zafar, that the scope of NAB Ordinance is wider in terms and is applicable to all citizens of Pakistan and all persons including the holders of public offices. The result is that, the appellants are accountable for acquiring the assets from the year 1985 till the year 1996, the period for which they were tried."

Still later a learned Division Bench of the Lahore High Court decided the case of Ch. Zulfiqar Ali v. Chairman, NAB and others (PLD 2003 Lahore 593) on 12.05.2003 and after a detailed analysis of the relevant statutory provisions and the precedent cases available till then it held as under:

"11. The questions which have cropped up for consideration in these petitions are as under:--

(i) -----

(ii) Whether a 'person' other than holder of a public office can be tried under the NAB Ordinance for any act which falls within the mischief of the said Ordinance?

(iii) Can the holder of a public office being tried for an act committed when he held the said office, be tried alongwith the afore-referred act for an offence relatable to a period when he did not hold the office?

(iv) -----

Reply to Question (ii).--Whether A "PERSON" other than holder of a public office can be tried under the NAB Ordinance for any act which falls within the mischief of the said Ordinance?

13. This is the foundational question so far as the ambit and scope of the law under which the petitioners are being tried, is concerned. To appreciate the import of the expression "a holder of a public office or any other person (section 9) it is essential to examine the context in which it has been used i.e. the Pre-ambule of the enactment, its various provisions and the mischief it sought to remedy. The preamble of the National Accountability Bureau Ordinance XVIII of 1999 declared the objective of the enactment as under:--

"An Ordinance to provide for the setting up of a National Accountability Bureau so as to eradicate corruption and corrupt practices and hold accountable all those persons accused of such practices and matters ancillary.

Whereas it is expedient and necessary to provide for effective measures for the detection, investigation, prosecution and speedy disposal of cases involving corruption, corrupt practices misuse or abuse of power or authority, misappropriation of property, taking of kickbacks, commissions and for matters connected and ancillary or incidental thereto.

And whereas there is an emergent need for the recovery of outstanding amounts from those persons who have committed default in the repayment of amounts to Banks, Financial Institutions, Governmental agencies and other agencies.

And whereas there is a grave and urgent need for the recovery of State money and other assets from those persons who have misappropriated or

removed such money or assets through corruption, corrupt practices and misuse of power or authority.

And whereas there is an urgent need to educate the society about the causes and effects of corruption and corrupt practices and to implement policies and procedure for the prevention of corruption in the society.

And whereas there is an increased international awareness that nations should co-operate in combating corruption and seek, obtain or give mutual legal assistance in matters concerning corruption and for matter connected, ancillary or incidental thereto."

Section 4 of the Ordinance provides:--

"It extends to the whole of Pakistan and shall apply to all persons in Pakistan, all citizens of Pakistan and persons who are or have been in the service of Pakistan wherever they may be, including areas which are part of Federally and Provincially Administered Tribal Areas". (Underlining is our).

Section 5(a) defines the accused in the following:--

"Accused" shall include a person in respect of whom there are reasonable grounds to believe that he is or has been involved in the commission of any offence triable under this Ordinance or is subject of an investigation or inquiry by the National Accountability Bureau, or any other agency authorized by the National Accountability Bureau in this regard under this Ordinance." (Underlining is ours).

Section 5(o) stipulates as under:--

" 'Person' unless the context otherwise so requires, includes in the case of a company or a body corporate, the sponsors, Chairman, Chief Executive, Managing Director, elected Directors, by whatever name called, and guarantors of the company or body corporate or anyone exercising direction or control of the affairs of such company or corporate body, and in the case of any firm, partnership or sole proprietorship, the partners, proprietor or any person having any interest in the said firm, partnership or proprietorship concern or direction or control thereof"

Section 9 further spells out the scope of the enactment, those who can be tried and lists the offences. It stipulates as under:--

"9. Corruption and corrupt practices.--(a) A holder of a public office, or any other person, is said to commit or to have committed the offence of corruption and corrupt practices--

(i) if he accepts or obtains from any person or offers any gratification directly or indirectly, other than legal remuneration, as a motive or reward such as is specified in section 161 of the Pakistan

Penal Code 1860 (Act XLV of 1860) for doing or for bearing to do any official act, or for showing or for bearing to show, in the exercise 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 or offers 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 likely to be, concerned in any proceedings or business transacted or about to be transacted by him, or having 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 wilfully allows any other person so to do; or

(iv) if he by corrupt, dishonest, or illegal means, obtains or seeks to obtain for himself, or for his spouse or dependents or any other person, any property, valuable thing, or pecuniary advantage; or

(v) if he or any of his dependents or Benamidars owns, possesses, or has acquired right or title in any assets or holds irrevocable power of attorney in respect of any assets or pecuniary resources disproportionate to his known source of income, which he cannot reasonably account for or maintained his standard of living beyond that which is commensurate with his source of income; or

(vi) if he misuses his authority so as to gain any benefit or favour for himself or any other person, or renders or attempts to render or wilfully fails to exercise his authority to prevent the grant, or rendition of any undue benefit or favour which he could have prevented by exercising his authority; or

(vii) if he issued any directive, policy, or any S.R.O. (Statutory Regulatory Order) or any other order which grants or attempts to grant any undue concession or benefit in any taxation matter or law or otherwise so as to benefit himself or any relative or associate or a benamidar or any other person; or

(viii) if he commits an offence of wilful default; or

(ix) if he commits the offence of cheating as defined in section 415 of the Pakistan Penal Code, 1860 (Act XLV of 1860), and thereby dishonestly induces members of the public at large to deliver any property including money or valuable security to any person; or

(x) if he commits the offence of criminal breach of trust as defined in section 405 of the Pakistan

Penal Code, 1860 (Act XLV of 1860) with regard to any property including money or valuable security entrusted to him by members of the public at large;

(xi) if he, in his capacity as a banker, merchant, factor, broker, attorney or agent commits any breach of trust as provided in section 409 of the Pakistan Penal Code, 1860 (Act XLV of 1860) in respect of property entrusted to him or over which he has dominion; and if he aids, assists, abets, attempts or acts in capacity with a person or a holder of public office accused of an offence as provided in clauses (i) to (xi).

(b) All offences under this Ordinance shall be non-bailable and, notwithstanding anything contained in section 426, 491, 497, 498 and 561-A or any other provision of the Code, or any other law for the time being in force no Court shall have jurisdiction to grant bail to any person accused of any offence under this Ordinance.

(c) If after completing the investigation of an offence against holder of public office or any other person, the Chairman is satisfied that no prima facie case is made out against him and the case may be closed, the Chairman NAB shall refer the matter to a Court for approval and for the release of the accused, if in custody."

In the ordinary use, the word "or" is disjunctive that marks an alternative which generally corresponds to the word "either" (Crawford's Interpretation of Laws). The word "person" has been used in the general sense and includes every person. It is one of the fundamental rules of Construction that the general words should be given a general construction unless the statute in some manner reveals that the legislative intent was otherwise. We have not been able to find any contrary intent after going through various provisions of Ordinance referred to in the preceding paragraphs. A close examination of section 9, reproduced above would show that with reference to subject-matter there are three kinds of offences. Those kinds are as under:--

- (i) Offences which are holder of public office specific;
- (ii) offences which are committed by the holder of a public office along with any other person and in which the latter are also liable,
- (iii) offences committed by person who do not hold any public office.

14. The arguments of the petitioner's learned counsel that the "person" used in section 9, only refers to a person who abets, the offence with a holder of public office, is not tenable as the offence of abetment has been separately dealt with in clause (xii) of section 9.

15. Even in section 10 of the NAB Ordinance which relates to punishments, "the holder of public office" and "person" have been separately described. It reads as under:--

10. Punishment for corruption and corrupt practices:

(a) A holder of public office or any other person who commits the offence of corruption and corrupt practices shall be punishable with rigorous imprisonment for a term which may extend to 14 years and with fine and such of the assets and pecuniary resources of such holder of public office or person, as are found to be disproportionate to the known sources of his income or which are acquired by money obtained through corruption and corrupt practices whether in his name or in the name of any of his dependents, or benamidars shall be forfeited to the appropriate Government or the concerned bank or financial institution as the case may be. (Underlining is ours).

Similarly, the legislative intent of making it applicable to all persons is clear from a reading of section 20 of the Ordinance.

16. Precisely, this question came up for consideration before a learned Division Bench of this Court in an unreported Ehtesab Criminal Appeal No.753 of 2001 (Ch. Amir Sher Ali v. The State) and it was held as under:--

"There is weight in the submission made by the learned Law Officer that not only holder of a public office but also "any other person" can be tried for the offence of corruption and corrupt practices under section 9 of the Ordinance. This is clear from the plain reading of section 9 of the Ordinance. Therefore, the prosecution need not establish any nexus with the exercise or powers by the appellants as Mayor of the Corporation and acquisition of the disputed properties by him. He can be tried in his position as an ordinary person and be held guilty of the offence of corruption and corrupt practices."

A Division Bench, of Sindh High Court Karachi in an unreported Ehtesab Appeal No.58 of 2002 (Abdul Aziz Memon v. The State) held as under:--

"Thus the purpose of setting up of National Accountability Bureau is not confined to eradication of corruption committed by the holders of public offices only but to hold accountable to all those persons who are found involved in corruption. Again in section 4 of the NAB Ordinance, dealing with the application of said Ordinance, it is provided that, it extends to whole of Pakistan and shall apply to all persons in Pakistan. Again it is stated by the legislature in very clear and unambiguous terms that the NAB Ordinance extends to all persons in Pakistan. Thus, no section or group of persons or individuals have been excluded from the applicability of the NAB Ordinance."

In an unreported judgment of the Peshawar High Court in Ehtesab Criminal Appeal No.5 of 2001 (Haji Kabeer Khan v. The State) copy of which was placed before us, a contrary view has been taken. The operative part of the judgments is para 13 wherein the learned Bench held as under:--

"...Though past member of Parliament can be tried under the Ordinance, the definition by no means can be stretched retrospectively so as to

make an accused accountable for acts done by him prior to his becoming a member of Parliament. Again by section 2 the Ordinance has been given retrospective effect from 1-1-1985. By this retrospectively no doubt persons who have held public office since the commencing date of the Ordinance can be tried thereunder. It does not however mean that the holder of public office can be tried under the Ordinance for acts, though committed after 1-1-1985, but during the period when he did not hold any public office. To hold otherwise would be going against the very subject of the Ordinance as stated in the Preamble that is, to provide for effective measures for the detection, investigation, prosecution and speedy disposal of cases involving corruption, corrupt practices, misuse/abuse of power, misappropriation of property, kickbacks, commissions and for matters connected and ancillary or incidental thereto. The corruption, corrupt practices and misuse of power obviously must relate to the periods during which a person is in a position as a holder of public office to misuse his office for private gains. If wealth is acquired by illegal means at a time when the accused did not hold a public office, it may constitute an offence under some other law but not under the NAB Ordinance."

Having held so, the case was remanded to the trial Court for a re-trial in terms of the observations made. This judgment was challenged before the august Supreme Court in Criminal Petitions Nos. 54, 55, and 96 of 2002. The august Supreme Court allowed the appeal in terms of an agreement between learned counsel for the appellant and the NAB. The operative part of the order reads as under:--

"Grievance as canvassed by both the learned counsel for the petitioner Mr. Abid Hasan Minto, Advocate Supreme Court as well as Mr. Muhammad Afzal Siddiqui, Advocate Supreme Court for NAB was that sufficient material existed before the High Court to resolve the controversy instead of remanding the case to the trial Court. The contention raised by both the learned counsel has force, because we feel that no ground existed for re-trial, inasmuch as, inadmissible evidence could have been bifurcated from the admissible evidence, and thus the High Court itself ought to have decided the question of guilt or innocence of the petitioner in the light of admissible evidence. Accordingly, we convert these petitions into appeal and allow the same with direction that High Court shall decide the appeal on the basis of admissible evidence with regard to properties, which the petitioner had allegedly procured after 1993."

17. We are bound by the law declared by the august Supreme Court. However, it is a settled principle of law that a judgment rendered on concession given by a counsel is not a law declared. The Supreme Court of India was called upon to decide a similar issue in *Municipal Corporation of Delhi v. Gurnam Kaur* (AIR 1989 Supreme Court 38) and it held as under:--

"It is axiomatic that when a direction or order is made by consent of the parties, the Court does not adjudicate upon the rights of the parties nor lay down any principle. Quotability as 'Law' applies to

the principle of a case, its ratio decidendi. The only thing in a Judge's decision binding as an authority upon a subsequent Judges is the principle upon which the case was decided. Statements which are not the part of the ratio decidendi are distinguished as obiter dicta and are not authoritative. The task of finding the principle is fraught with difficulty because without an investigation into the facts, it could not be assumed whether a similar direction must or ought to be made as a measure of social justice. Precedents sub silentio and without argument are of no moment. This rule has ever since been followed. One of the chief reasons for the doctrine of precedent is that a matter that has once been fully argued and decided should not be allowed to be re-opened. The weight accorded to dicta varies with the type of dictum. Mere casual expressions carry no weight at all. Not every passing expression of a Judge, however eminent, can be treated as an ex cathedra statement, having the weight of authority."

As reflected in the operative part of the judgment of the Hon'ble Supreme Court reproduced in the earlier part of this para, learned counsel for the NAB had conceded for remanding the case. That judgment, therefore, cannot be classified as declaring a law. The judgment of the Peshawar High Court, therefore, shall have to be examined on its own merit. With utmost humility and respect for the Court, we have not been able to persuade ourselves to agree with the view expressed therein for following reasons:--

(i) The Court was persuaded to render the judgment solely with reference to a portion of the preamble. It did not appreciate that the expression 'corruption, corrupt practices' used in the preamble stand defined and exemplified in section 9 of the NAB Ordinance and it includes criminal acts which may be committed by any other person as well;

(ii) the learned Court did not take note of the fact that the word 'person' (section 9) has been used in the general sense and it includes every person;

(iii) the import of section 3, 4, 5, 10, and 20 of the NAB Ordinance escaped the attention of the Court. The legislative intent and the meaning of the word 'person' could not have been appreciated without a careful glance at these provisions.

Reply to Question No. (iii).---Can the holder of a public office being tried for an act committed when he held the said office, be tried alongwith the afore-referred act for an offence relatable to a period when he did not hold the office?

18. In view of answer to Question No. 2 above we hold that the holder of a public office can be tried alongwith an offence which may have been committed when he was not holder of a public office as there is no bar in any law and an ordinary person can be tried under the National Accountability Bureau Ordinance, 1999."

We note that the case of *Haji Kabir Khan v. The State* (2003 YLR 1607) decided by the Peshawar High Court was the only case which struck a note different from that of the Lahore High Court and the High Court of Sindh but we further note that the said judgment of the Peshawar High Court had been set aside by this Court through appeals arising out of Criminal Petitions No. 54, 55 and 96 of 2002 and the matter was remanded to the Peshawar High Court with consent of the parties for deciding the convict's appeal afresh on the merits of the case. After setting aside of that judgment of the Peshawar High Court by this Court what remains in the field is complete harmony on the issue as far as the Lahore High Court and the High Court of Sindh are concerned.

11. As has been noticed above, the Lahore High Court and the High Court of Sindh agree that the words "any other person" appearing in section 9(a) of the National Accountability Ordinance, 1999 show that any person not holding any public office and not aiding and abetting or conspiring with any holder of a public office can also be proceeded against under the said Ordinance and this Court has also made observations to that effect in the judgments referred to earlier on. The reasons for handing down such an interpretation of those words appearing in the National Accountability Ordinance, 1999 are not difficult to explain or understand and although some reasons for holding so have already been recorded in the afore-referred judgments of the Lahore High Court and the High Court of Sindh in some detail, which reasons we endorse, yet we may also briefly allude to some other reasons in support of the same conclusion so that the issue in this respect is clinched and the controversy is set at rest.

12. None of the learned counsel appearing before us has challenged the constitutionality and legal validity of the National Accountability Ordinance, 1999, and rightly so, as the same already stands accepted and established through the judgment of this Court handed down in the case of *Khan Asfandyar Wali (supra)*. It also cannot be denied that there is a marked difference between the Ehtesab Act, 1997 and the National Accountability Ordinance, 1999 *vis-à-vis* the canvas and the scope of their

applicability and Mr. K. K. Agha is spot on when he maintains that a necessity of enacting a new piece of legislation arises only where the old law is found incapable of catering for a totally new approach because otherwise an amendment of the old law can serve the purpose. The Preamble to the Ehtesab Act, 1997 manifested that the said law had been enacted only "for eradication of corruption and corrupt practices from the public offices" whereas the Preamble to the National Accountability Ordinance, 1999 does not even mention "public offices" and instead it states the objects to be achieved as to eradicate corruption and corrupt practices and hold accountable all those persons accused of such practices; to provide for effective measures for the detection, investigation, prosecution and speedy disposal of cases involving corruption, corrupt practices, misuse or abuse of power or authority, misappropriation of property, taking of kickbacks, commissions; recovery of outstanding amounts from those persons who have committed default in the repayment of amounts to banks, financial institutions, governmental agencies and other agencies; recovery of state money and other assets from those persons who have misappropriated or removed such money or assets through corruption, corrupt practices and misuse of power or authority; to seek, obtain or give mutual legal assistance internationally in matters concerning corruption; and to educate the society about the causes and effects of corruption and corrupt practices and to implement policies and procedures for the prevention of corruption in the society. It is but obvious that the scope of applicability of the National Accountability Ordinance, 1999 is much larger than the scope envisioned in the Ehtesab Act, 1997 and, thus, it would be naïve to examine the former through the narrow prism of the latter. The stated object of the National Accountability Ordinance, 1999 was to rid the whole society of the menace of corruption and that is why section 33C of the said Ordinance had provided as follows:

"33C. Measures for the prevention of Corruption and Corrupt practices. The Chairman NAB, shall from time to time as he deems fit, constitute committees comprising officers of the NAB or other persons or organization from the private or public sectors to --

- (a) educate and advise public authorities, holders of public office and the community at large on measures to combat corruption and corrupt practices;
- (b) develop, arrange, supervise, participate in or conduct educational programmes or media campaigns, and generally to disseminate information on the detrimental effects of corruption and corrupt practices and the importance of maintaining the integrity of public administration;
- (c) examine the laws in force, and also rules and regulations relating to the practice and procedure of various ministries, departments of the Federal Government or Provincial Government, statutory or other public corporations or bodies and the conduct of holders of public office and to recommend amendments in such laws, rules or regulations, as the case may be, in order to eliminate corruption and corrupt practices;
- (d) instruct, advise and assist any statutory or other public corporation or bodies or upon request, any organization in the private and public sector on measures for the reduction and elimination of corruption and corrupt practices; and
- (e) monitor the implementation of the instruction and advice as aforesaid and to assess and evaluate success or otherwise of such instructions and advice on the reduction and elimination of corruption and corrupt practices."

According to section 1(2) of the Ehtesab Act, 1997 the said Act was applicable only to "holders of public offices" whereas by virtue of section 4 of the National Accountability Ordinance, 1999 the said Ordinance applies to "all persons in Pakistan, all citizens of Pakistan and persons who are or have been in the service of Pakistan". It is, thus, quite clear that the Ordinance of 1999 is not restricted in its applicability to "holders of public offices" only and the all-encompassing sway of the same covers all Pakistani citizens wherever they may be and even persons of other nationalities available, operating or transacting within Pakistan and it is in this context that the words "any other person" appearing in section 9(a) of the National Accountability Ordinance, 1999 must be understood. The Black's Law Dictionary defines a "person" as "a human being" and that is why section 5(n) of that Ordinance clarifies that the word "person" used in the Ordinance includes the relevant persons of a company or a body corporate. Inclusion of a company or a body corporate in the definition of the word "person" is also an unmistakable indication that the said Ordinance was not restricted in its applicability to holders of public offices only. Apart from that section 3 of the Ehtesab Act, 1997 showed that the offence of corruption and corrupt practices triable under that Act was relatable only to holder of a public office whereas the

provisions of section 9(a)(i) to 9(a)(xii) of the National Accountability Ordinance, 1999 show quite evidently that "any other person" not holding any public office and not aiding or abetting or conspiring with holder of a public office may also be tried independently for the offence of corruption and corrupt practices. The provisions of section 9(a)(viii), (ix), (x), (xi) and (xii) particularly make the intention of the legislature quite clear in this respect. It may be advantageous to reproduce sections 9(a)(xi) and 9(a)(xii) here which read as under:

"(xi) if he, in his capacity as a banker, merchant, factor, broker, attorney or agent, commits criminal breach of trust as provided in Section 409 of the Pakistan Penal Code, 1860 (ACT XLV of 1860) in respect of property entrusted to him or over which he has domination; and

(xii) if he aids, assists, abets, attempts or acts in conspiracy with a person or a holder of public office accused of an offence as provided in clauses (i) to (xi)."

(underlining has been supplied for emphasis)

If we were to accept the contention that the National Accountability Ordinance, 1999, and particularly section 9(a) thereof, is applicable only to holder of a public office and a person aiding and abetting or conspiring with holder of a public office then the provisions of sections 9(a)(xi) and 9(a)(xii) reproduced above would be rendered partially or wholly redundant. It is trite that redundancy cannot or ought not to be attributed to the legislature.

13. The discussion made above leads us to an irresistible conclusion that the principle of *ejusdem generis* pressed by Mr. Wasim Sajjad does not apply to the words "any other person" appearing in section 9(a) of the National Accountability Ordinance, 1999 and that the words "A holder of a public office, or any other person," used in that section are disjunctive as they refer to different classes of persons. In the context of the scheme and scope of that Ordinance the words "any other person" are to be given their ordinary meanings and are simply to be accepted as referring to any other person, nothing more and nothing less. On the subject of interpretation of such words appearing in a statute we may usefully refer to the following passages of the judgment rendered by this Court in the case of Justice Khurshid Anwar

Bhinder and others v. Federation of Pakistan and another (PLD 2010 SC 483):

"A fundamental principle of constitutional construction has always been to give effect to the intent of the framers of the organic law and of the people adopting it. The pole star in the construction of a Constitution is the intention of its makers and adopters. When the language of the statute is not only plain but admits of but one meaning, the task of interpretation can hardly be said to arise. It is not allowable to interpret what has no need of interpretation. Such language best declares, without more, the intention of the lawgivers, and is decisive of it. The rule of construction is "to intend the Legislature to have meant what they have actually expressed". It matters not, in such a case, what the consequences may be. Therefore if the meaning of the language used in a statute is unambiguous and is in accord with justice and convenience, the courts cannot busy themselves with supposed intentions, however admirable the same may be, because, in that event they would be travelling beyond their province and legislating for themselves. But if the context of the provision itself shows that the meaning intended was somewhat less than the words plainly seem to mean then the court must interpret that language in accordance with the indication of the intention of the legislature so plainly given. The first and primary rule of construction is that the intention of the Legislature must be found in the words used by the Legislature itself. If the words used are capable of one construction only then it would not be open to the courts to adopt any other hypothetical construction on the ground that such hypothetical construction is more consistent with the alleged object and policy of the Act. The essence of law lies in its spirit, not in its letter, for the letter is significant only as being the external manifestation of the intention that underlies it. Nevertheless in all ordinary cases the courts must be content to accept the *litera legis* as the exclusive and conclusive evidence of the *sententia legis*. They must, in general, take it absolutely for granted that the Legislature has said what it meant, and meant what it has said. Its *scriptum est* is the first principle of interpretation. Judges are not at liberty to add to or take from or modify the letter of the law simply because they have reason to believe that the true *sententia legis* is not completely or correctly expressed by it. That is to say, in all ordinary cases grammatical interpretation is the sole form allowable. It is no doubt true that the felt necessities of the times must, in the last analysis, affect every judicial determination, for the law embodies the story of a nation's development through the centuries and it cannot be dealt with as if it contains only axioms and corollaries of a book of mathematics. A Judge cannot stand aloof on chill and distant heights. The great tides and currents which engulf the rest of men, do not turn aside in their course and pass the Judge by. But at the same time, the Judge must remember that his primary function is to interpret the law and to record what the law is. He cannot allow his zeal, say, for social or agrarian reform, to overrun his true function. He does not run a race with the Legislature for social or agrarian reform. His task is a more limited task; his ambition a more limited ambition. Of course in this process of interpretation he enjoys a large measure of latitude inherent in the very nature of judicial process. In the skeleton provided by the Legislature, he pours life and blood and creates an organism which is best suited to meet the needs of society and in this sense he makes and moulds the law in a creative effort. But he is tied by the basic structure provided by the Legislature which he cannot alter and to appeal to the spirit of the times or to the spirit of social or agrarian reforms or for the

matter of that any other reform for the purpose of twisting the language of the Legislature is certainly a function which he must refuse to perform.

The words of a statute must, *prima facie*, be given their ordinary meaning. Court must not shrink from an interpretation which will reverse the previous law; for the purpose of a large part of our statute law is to make lawful that which would not be lawful without the statute, or, conversely, to prohibit results which would otherwise follow. Judges are not called upon to apply their opinions of sound policy so as to modify the plain meaning of statutory words but where, in construing general words the meaning of which is not entirely plain there are adequate reasons for doubting whether the Legislature could have been intending so wide an interpretation as would disregard fundamental principles, then Court may be justified in adopting a narrower construction. At the same time, if the choice is between two interpretations the narrower of which would fail to achieve the manifest purpose of the legislation, court should avoid a construction which would reduce the legislation to futility and should rather accept the bolder construction based on the view that Parliament would legislate only for the purpose of bringing about an effective result."

14. Adverting to the argument that the provisions of the National Accountability Bureau allow the Chairman, National Accountability Bureau to pick and choose cases to be proceeded with under the National Accountability Ordinance, 1999 and such power to pick and choose is discriminatory besides being capable of abuse we may observe that during the course of his arguments Mr. K. K. Agha, the learned Prosecutor-General Accountability, has informed us that the National Accountability Bureau has framed and it follows a considered policy guiding the Bureau as to which kind of cases of private sector are to be picked up for proceeding with under the National Accountability Ordinance, 1999 and which kind of such cases are to be left to be proceeded with under the ordinary and normal laws of the land. He has also informed us that the National Accountability Bureau follows a mechanism of assessment and scrutiny of all such cases even during their inquiry and investigation and finally the Chairman of the Bureau, a person of highest caliber, experience and accomplishment as is evident from the qualifications of that office mentioned in section 6(ba) of the National Accountability Ordinance, 1999, applies his mind to the matter before filing a Reference before an Accountability Court. He has also pointed out that the Bureau's and the Chairman's decisions in such regards are justiciable before the superior judiciary. He has, thus, maintained that intelligible differentia exists in this respect and sufficient safeguards against

mistakes and abuse are in place and, therefore, the assertion regarding discrimination does not hold water. It has also been pointed out by him that this aspect of the matter has already been attended to by the High Court of Sindh in the case of Rauf Bakhsh Kadri v. The State and others (2003 MLD 777) and a learned Division Bench of the said Court had observed in that case as under:

"12. Against this background learned counsel argued that the unbridled discretion conferred upon the Chairman N.A.B. or an officer authorized by him to refer a matter involving commission of substantially the same offence which was triable by a Special Judge under the 1958 Act or the power to seek transfer of a pending case to an Accountability Court under section 16-A was ultra vires the fundamental right of equality and equal protection of laws guaranteed by Article 25 of the Constitution. In support to his contention learned counsel placed reliance inter alia upon two well known pronouncements of the Honourable Supreme Court in Waris Meah v. State (PLD 1957 SC 157) and Inamur Rehman v. Federation of Pakistan (1992 SCMR 563).

13. In Waris Meah's case, the validity of certain provisions of the Foreign Exchange Regulation Act providing three different modes of trial and punishment for offence under the Act were called in question. The law enabled the Central Government or the State Bank to proceed against a person accused of an offence under the Act either before a Sessions Court or a Magistrate under section 23, or before an Adjudicating Officer under section 23-A or before a Special Tribunal under section 23-B. Different procedures for trial of offence before different fora and different extent of punishments which could be imposed were laid down. Muhammad Munir, C.J, speaking for the Full Court held that, in the absence of any statutory guidelines to make a classification of persons required to be tried before a particular forum the provisions conferring such arbitrarily discretion to apply any of the three modes of trial upon any person without any classification was ex facie discriminatory and violative of Article 5(1) of the 1956 Constitution (which is in pari materia with Article 25 of the 1973 Constitution).

14. In the subsequent case of Inam-ur-Rehman Alvi v. Federation of Pakistan (1992 SCMR 563) the provisions of M.L.R. 104 stipulated that any person having any claim against a person repatriating foreign exchange could seek redress through an authorized officer was called in question. Their Lordships speaking through Zafar Hussain Mirza, J., held that, a provision denying the right to defend through judicial procedure in a Court to a person having repatriated foreign exchange against any claim which may have no nexus with the repatriation of foreign exchange could not satisfy the test of reasonable classification and therefore, the provision was hit by Article 25 of the Constitution.

15. In support of his contention Mr. Khalid Anwar also referred to the following observations of Ajmal Mian, CJ, in the recent case of Liaqat Hussain v. Federation of Pakistan (PLD 1999 SC 504) decided by nine members Bench of the Honourable Supreme Court:

"As regards the violation of Article 25 of the Constitution, it may be observed that the

contention of the learned counsel for the petitioners was that the impugned Ordinance contravenes the above Article, inasmuch as it gives discretion to the Federal Government to pick and choose cases which may be referred to the Military Courts. On the other hand, the learned Attorney-General has urged that the offences triable under the impugned Ordinance are those which are mentioned in section 6 and the Schedule to the impugned Ordinance and that this Court has already held in more than one case that different laws can be enacted for different sexes, persons of different age group, persons having different financial standards and persons accused of heinous crimes. No doubt, that this Court *inter alia* in the case of *I. A. Sherwani v. Government of Pakistan* (1991 SCMR 1041) has held so, which has been reiterated in the case of *Mehram Ali and others v. Federation of Pakistan and others* (PLD 1998 SC 1445) (*supra*). However, in the present case the basic question is as to the vires of the impugned Ordinance on the ground of providing parallel judicial system, but at the same time the impugned Ordinance is also violative of Article 25 of the Constitution, inasmuch as it gives discretion to the Federal Government under section 3 thereof to pick and choose cases for referring to the Military Courts as has been held by this Court in the case of *Brig. (Retd.) F. B. Ali* (*supra*). There is no mandatory provision providing that all the offences mentioned in section 6 and the Schedule shall be triable by the Military Courts convened under section 3 of the impugned Ordinance."

16. Learned counsel candidly conceded that different laws could be enacted for different classes of people but it was well-settled that the classification must be rational and bear a reasonable nexus with the object of the legislation. He argued that possibly Ehtesab Act, 1997 could not be questioned on this score as its provisions were made applicable only to Government servants in BS-18 or above. The Ordinance in question however, did not create any classification or lay down any guideline but only enables the Chairman, N.A.B. to exercise absolute arbitrary discretion in filing a reference against any person triable under the 1958 Act or to apply for transfer of a pending case from a Special Court under to an Accountability Court. Conferment of such discretion according to Mr. Khalid Anwar was plainly violative of Article 25 of the Constitution in view of the abovementioned weighty pronouncements of the Honourable Supreme Court.

30. For the foregoing reasons we are inclined to hold that the qualifications laid down in clause (ix) will also have to be read in the other clauses of section 9(a). In other words the discretion of the Chairman, N.A.B. or an officer authorized by him to file a reference before the Accountability Court is not absolute or arbitrary. Such reference could be filed only when the Chairman or the Authorized Officer is satisfied that the amount involved is of large magnitude and resort to the facility of pre-bargaining to the accused would be in the national interest. In the absence of such satisfaction a case could only be triable under the ordinary law.

31. As regards the new offences created by the Ordinance we are constrained to observe that strictly speaking, it is not possible

for us to declare them ultra vires the Constitution. Nevertheless, it is expected that the Chairman, N.A.B. will keep in view the spirit of the law in accordance with the guidelines referred to in para. 29 and file references only when the amounts involved are large enough and it is worthwhile in the public interest and same mens rea on the part of the defaulter is involved.

32. Since filing of a reference is essentially the function of the Chairman, N.A.B (though it may be amenable to judicial review in proper cases) and since he in view of the experience of the Institution is in a better position to determine whether the amount involved in these cases could be classified as large or otherwise. We would remand these matters to the Chairman, N.A.B. to re-examine these cases from the above stand-point. In case he is satisfied that the amounts involved are large enough to justify proceedings under the Ordinance, they may continue before the Accountability Courts. In case he is not so satisfied the cases may be transferred to the appropriate Courts and such Courts may proceed with them from the stage they had reached without recalling witnesses. A definite decision is expected to be taken within one month from today and till such time the interim order passed earlier will continue. The petitions stand disposed of in the above terms."

We may add that the offence of cheating mentioned in section 9(a)(ix) of the National Accountability Ordinance, 1999 and the offence of criminal breach of trust referred to in section 9(a)(x) of that Ordinance can be dealt with under the said Ordinance only if such offences affect "the public at large", as stipulated therein, and, thus, a reasonable classification exists in those provisions so as to ward off a criticism based upon discrimination. The question as to whether an alleged cheating or criminal breach of trust affects the public at large or not is a question which is initially to be determined by the National Accountability Bureau and its Chairman and subsequently such determination may, in an appropriate case, be amenable to judicial review. Apart from that the constitutional validity of the National Accountability Ordinance, 1999 and all its provisions has already been judicially determined by this Court in the case of *Khan Asfandiyar Wali (supra)* and, therefore, there is hardly any occasion for us to re-examine the same at this stage.

15. In the end we may also advert to the submissions made before us regarding the provisions of the National Accountability Ordinance, 1999 being very stringent, harsh and oppressive in the matters of transfer/withdrawal of cases, bail, remissions, freezing of property, transfer of property, presumption of guilt, higher sentences and disqualifications, etc. We note that all such aspects

of the said Ordinance had also been taken due notice of by this Court in the case of *Khan Asfandyar Wali (supra)* and constitutional validity of such provisions was affirmed. It may be pertinent to mention here that in the judgment delivered in that case this Court had prepared a detailed chart showing that the above mentioned stringent provisions were identical or similar to many such provisions already existing in many other statutes which included the Control of Narcotic Substances Act, 1997, the Establishment of Office of Federal Tax Ombudsman Ordinance, 2000, the Anti-Terrorism Act, 1997, the Banks (Nationalization) Act, 1974, the Offences in respect of Banks (Special Courts) Ordinance, 1984, the Anti-Narcotics Force Act, 1997, the Conciliation Courts Ordinance, 1961, the Criminal Procedure Code, 1898 and the Employment of Children Act, 1991. This Court had also found that such provisions of the National Accountability Ordinance, 1999 were quite justified in view of the gravity of the menace of rampant corruption the said Ordinance was meant to tackle. Dealing with such stringent provisions of the Control of Narcotic Substances Act, 1997 and their interpretation one of us (Asif Saeed Khan Khosa, J.) had observed as a Judge of the Lahore High Court in the case of *Nazar Hussain v. The State* (2002 P.Cr.L.J. 440) as under:

"7. The learned counsel for the petitioner is quite right in pointing out that in the cases of Ghani-ur-Rehman v. The State 1996 PCr.LJ 347, Muhammad Afzal v. The State 1998 PCr.LJ 955 and Naveed Ahmad Khan v. The State 1999 PCr.LJ 63 it had been held that if the allegation levelled against an accused person attracts the provisions of section 9(b) of the Control of Narcotic Substances Act, 1997 as well as the provisions of Articles 3 and 4 of Prohibition (Enforcement of Hadd) Order, 1979 then in such a case of two penal provisions attracted to the same allegation against an accused person that penal provision is to be applied which carries a lesser punishment or attracts lesser rigours of the law, i.e. Articles 3 and 4 of the Prohibition (Enforcement of Hadd) Order, 1979. However, we have noticed in this context that in all the abovementioned cases the provisions of section 76 of the Control of Narcotic Substances Act, 1997 had not been brought to the notice of the Honourable Judges deciding those cases. Section 76 of the said Act of 1997 provides for giving an overriding effect to the provisions of the Control of Narcotic Substances Act, 1997 over anything contained in any other law for the time being in force. The provisions of section 74 of the said Act may also be advantageously referred to in this context. The overriding effect of section 76 of the Act of 1997 was clearly noticed and expressly referred to in the case of Khalil-ur-Rehman. v. The State 1998 PCr.LJ 1625 for brushing aside an argument that the case of the accused person in that case may be considered to be one under Articles 3 and 4 of the Prohibition (Enforcement of Hadd) Order, 1979 and not to be that under section 9 of the Control of Narcotic

Substances Act, 1997 for the purposes of the said accused person's bail. We respectfully subscribe to the view expressed in this regard in this precedent case.

11. We are conscious that some of the views expressed by us above and some of the interpretations advanced by us vis-a-vis different provisions of the Control of Narcotic Substances Act, 1997 may appear to some to be somewhat harsh or stringent but we maintain that the same are in consonance with the spirit of the said law. The said law is not an ordinary law as the menace that it purports to curb is not commonplace and the criminals who indulge in it are not of the normal type. The mischief sought to be suppressed by this law is not just a crime against a human being but a crime against the humanity and, therefore, a response to the same has to be aggressive and punitive rather than benign and curative. It may be true that an individual subjected to the rigours of this law may sometimes suffer disproportionately but the greater good of the society emerging from stringent application of this law may make this approach worth its while."

The perils of corruption in a society are far greater than the hazards of narcotics and, thus, the observations made above in the context of the Control of Narcotic Substances Act, 1997 are attracted with a greater force in the context of the National Accountability Ordinance, 1999. It may not be forgotten that by virtue of section 3 of the National Accountability Ordinance, 1999 the provisions of the said Ordinance are to have an overriding effect over any other law for the time being in force.

16. For what has been discussed above we hold and declare that the provisions of the National Accountability Ordinance, 1999 are applicable even to a person who is not holder of a public office and also to a person who has not aided, assisted, abetted, attempted or acted in conspiracy with holder of a public office and the words "any other person" appearing in section 9(a) of the said Ordinance are to be understood and applied accordingly. For removal of any doubt or ambiguity it is clarified that a stand alone private person can be proceeded against under the said Ordinance if the other conditions mentioned in that Ordinance in that respect are satisfied.

17. After settling the common legal controversy in the above mentioned regard we direct the Office of this Court to fix the titled appeals and petitions for hearing before appropriate Benches of the

Court for their decision on the basis of their individual factual and legal merits.

Judge

Judge

Judge

Announced in open Court at Islamabad on 07.06.2013

Judge

Approved for reporting.