

**GOVERNOR'S MESSAGE ON
GOVERNMENT BILL NO. 18 OF 2017
NATIONAL ACCOUNTABILITY ORDINANCE 1999
SINDH REPEAL BILL, 2017**



5-35
5-2
14/7/17
Sindh Karachi

SUMMARY FOR GOVERNOR

SUBJECT: THE NATIONAL ACCOUNTABILITY ORDINANCE 1999 SINDH REPEAL BILL, 2017.

The Secretary, Provincial Assembly of Sindh vide letter at (Annex-A) has forwarded two copies of the National Accountability Ordinance 1999 Sindh Repeal Bill, 2017 (Annex-B) in the form in which it has been passed by the Assembly in its sitting held on 3rd July, 2017, duly signed by the Speaker for obtaining assent of the Governor.

2. As required by sub-rule (viii) of rule 45 of the Sindh Government Rules of Business, 1986, the Chief Minister may be pleased to advise the Governor to accord assent to the Bill in accordance with Article 116 of the Constitution of the Islamic Republic of Pakistan, 1973.

3. Two printed copies of the Bill are placed at (Annex-B) for signature of the Governor.

NO. 5-35711. 04/18/2017/2017
Dated: 30th July, 2017

PS TO CS DNO. 3569
CSH-14
Dated 03/7/17

SUMMARY FOR GOVERNOR SINDH
Outward No. 561
Dated: 13-07-2017

SUMMARY SECTION
C.M.S. OUTWARD 1
DATE

SUMMARY SECTION
1933
OUTWARD No. 1933
03-07-2017

No. Mini/Law & Prison
Dy. No. 102
Inward Date 3.7.2017
Outward Date 3.7.2017

RECEIVED IN C.S. HOUSE
DATED: 3/7/17

NO. 561
04/7/2017

~~4~~ LAW MINISTER

~~5~~ CHIEF SECRETARY

~~6~~ CHIEF MINISTER

~~7~~ GOVERNOR

(Signature)
(MUHAMMAD ASLAM GHOURI)
I/C. LAW SECRETARY

(Signature)
3/7/17

(Signature)
3/7/17

STAFF ROOMS
461
13/7/17



SUMMARY FOR GOVERNOR

7. Having been presented, for assent, the National Accountability Ordinance, 1999 Repeal Bill, 2017 (the Bill), I **Muhammad Zubair**, Governor Sindh in exercise of powers under Article 116 (2) (b) of the Constitution of the Islamic Republic of Pakistan do hereby return the Bill to the Provincial Assembly of Sindh for reconsideration with the message that the Bill is not in accordance of the provisions of Articles 143 read with Article 142 of the Constitution, for the following reasons:

i) The National Accountability Ordinance, 1999 (NAO 1999) provides for investigation, prosecution, trial and punishment etc. of the offence of 'corruption and corrupt practices'. In pith and substance, it is a law on the subjects of 'criminal law', 'criminal procedure' and 'evidence'. These subjects are "concurrent" subjects as per Article 142 (b) of the Constitution and both Parliament and a Provincial Assembly are empowered to make laws regarding these subjects. NAO 1999 is therefore a valid Federal law which is in force throughout Pakistan.

ii) While a Provincial Assembly is also empowered to make laws regarding corruption and corrupt practices, Article 143 clearly states that in case any provision of the provincial law is repugnant to any provision of Federal law, the Federal law will prevail and the Act of the Provincial Assembly shall, to the extent of repugnancy, be void. This principle has also been upheld in the decision of the



Secretariat of Governor Sindh
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Karachi

Full Bench of Peshawar High Court (PLD 2014 Peshawar 114) regarding the Khyber Pakhtunkhwa Ehtesab Act, 2014.

iii) The subject of "measure to combat corruption" is NOT a "residual subject" under the Constitution. This item/subject was never mentioned separately in the erstwhile Concurrent Legislative List. Parliament's competence to legislate on this item has always been derived from the subjects of criminal law, criminal procedure and evidence which were mentioned in the Concurrent Legislative List. Hence, any reference to the Constitution Eighteenth Amendment Act, 2010 to justify the Bill is totally misplaced.

iv) The UN Convention against Corruption, which has been ratified by Pakistan, requires a State Party to adopt legislative and other measures to establish various types of corruption as criminal offences. The Bill is based on the premise that NAO 1999 is not a criminal law, which is not in consonance with the UN Convention.

8. It is also noteworthy that a Private Member's Bill seeking to delete all provisions in NAO 1999 extending jurisdiction of NAB to Sindh Government departments was rejected by the Senate on 18-07-2016. Thereafter, a Parliamentary Committee was constituted to revisit NAO 1999 in which discussions are at an advanced stage.



Secretariat of Governor Sindh
Governor's House
Karachi

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14-7-2017

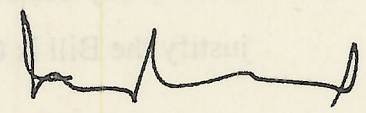
9. In the above circumstances, I call upon the Provincial Assembly of Sindh to reconsider the Bill and reject it, being repugnant to the provisions of NAO 1999 and the Constitution.

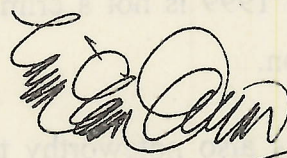
(MUHAMMAD ZUBAIR)
GOVERNOR SINDH

10. ~~CHIEF MINISTER~~

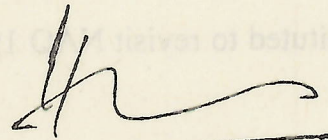
Please process further.

CS/ Law Minister


14/7/17


14/7/17

See / find :


14/7/17

No. Min/Law & Prison
Dy. No. 117
Inward Date 14/7/17
Outward Date 14-7-2017

SUMMARY SECTION

C.M.S/OUTWARD No. 2011

DATE: 14/7/17

(AS PASSED BY THE PROVINCIAL ASSEMBLY OF SINDH)

**A
BILL**

to repeal the National Accountability Ordinance 1999 (XVIII of 1999) to the extent of Province of Sindh.

WHEREAS the National Accountability Ordinance, 1999 enacted in pursuance of the proclamation of emergency of 14th October 1999 and Provisional Constitutional Order No.1 of 14th October 1999, was also made applicable to the Provinces and was subsequently included in Schedule VI of the Constitution of Islamic Republic of Pakistan alongwith Local Government Ordinance, 2001 and Police Order 2002, in order to prevent the provinces from repealing or amending the said laws.

AND that the Proclamation of Emergency of 14th October 1999 and Provisional Constitution Order No.1 of 14th October 1999 were declared to have been made without lawful authority by the parliament and Sixth Schedule to the Constitution was omitted under 18th Constitutional Amendment.

WHEREAS the legislative and the executive authority of the province extends to the "offences with respect to provincial subjects" and measures to combat corruption" being residual subjects under the Constitution.

AND WHEREAS the Federation legislated on three provincial subjects of (1) Local Government, (2) Public Order and Police and (3) "Measures to combat Corruption" and "offences with respect to provincial subjects" under an unlawful Emergency and provinces have already repealed or amended Local Government Ordinance 2001 and Police Order 2002.

AND WHEREAS emergency legislation on any provincial subject by the Parliament ceases to have any effect six months of lifting of emergency under Article 232 (5) and 234 (6) of the Constitution of Islamic Republic of Pakistan and measures to combat corruption being concurrent subject in the Constitution of 1956 now exclusively vests in the provinces not being mentioned in Federal Legislative List of the Constitution and the executive and legislative authority of the province fully extending to offences with respect to provincial subjects.

AND WHEREAS under entry 55 of the Federal Legislative List Part I of the Constitution, the Federal Government can establish Courts on the matters enumerated only in the Federal Legislative List and the subjects of Anti-Corruption or offences with respect to provincial subjects not mentioned the said list, establishing any such Courts as provided under National Accountability Ordinance, 1999 extending their jurisdiction and powers to the provinces neither was nor is in consonance with the Constitution and amounts to exercising the executive authority in the province by an authority or government other than the lawfully elected provincial government.

AND WHEREAS Anti-Corruption Administration of Federal and Provincial Governments has been historically and legally independent under separate laws enacted by respective legislatures under the division of powers scheme envisaged in the Constitution and section 197 of the Code of Criminal Procedure.

AND WHEREAS the Province of Sindh has independent Anti-Corruption Administration and Laws which could not be amended, repealed or replaced by any federal law explicitly or impliedly as Majlis-e-Shoora (Parliament) is not competent to legislate on provincial or residual matters under the Constitution except in terms of Article 144, 232, 234 of the Constitution and under the aforesaid Articles also the Provincial Assembly is always competent to repeal the relevant laws enacted by Parliament to the extent of province or they cease to have effect after six months of lifting of emergency respectively.

AND WHEREAS two parallel laws could not be imposed on the people of Province of Sindh or in a federation on the same subject and offences with respect of provincial subjects being solely within the legislative competence to the provinces under the Constitution.

(3)

Now, therefore, in exercise of the Powers under Article 142(c) read with Article 232(5) and other enabling provisions of the Constitution of Islamic Republic of Pakistan, the Provincial Assembly of Sindh is pleased to make and promulgate the following Act:

1. **Short Title, extent and commencement:-** (1) This Act may be called "National Accountability Ordinance 1999 Sindh Repeal Act, 2017".

(2) It extends to the whole of the Province of Sindh.

(3) It shall come into force with immediate effect.

2. **Repeal:-** (1) The National Accountability Ordinance 1999, to the extent of its applicability to the Province of Sindh, is hereby repealed, hereinafter referred to as repealed Ordinance.


(2) All proceedings, inquiries and investigations pending under the repealed Ordinance immediately before the commencement of this Act shall stand transferred to Sindh Anti-Corruption Establishment and shall be dealt with in accordance with the provisions of Sindh Inquiries & Anti-Corruption Act, 1991 and Rules made thereunder.

(3) All references and legal proceedings whatsoever filed or pending before Accountability Courts under the repealed Ordinance immediately before the commencement of this Act shall stand transferred to the respective Provincial Anti-Corruption Courts of the competent Jurisdiction and such courts shall proceed with the references and legal proceedings from the stage at which they were pending without the necessity of recalling any witnesses.

(4) All Appeals, Revisions and Bails applications filed, pending or arising out of order or judgment of any court under the repealed Ordinance including High Court and Supreme Court shall continue to proceed in accordance with law applicable to Appeals, Revisions and Bails application arising out of order or judgment of Provincial Anti-Corruption Courts.

The Bill was passed by the Provincial Assembly of Sindh in its sitting held on Monday, the 03rd July, 2017.

Karachi, the
July, 2017


SPEAKER
PROVINCIAL ASSEMBLY OF SINDH

I assent to this Bill

Karachi, the
July, 2017

GOVERNOR OF SINDH