

Govt reviews draconian NAB law

ISLAMABAD: A committee under law minister Farogh Nasim has sought proposals from NAB, law and interior ministries and other concerned about the changes required in the NAB law to improve the accountability system, which has been repeatedly misused for political witch-hunt besides hounding civil servants and business community.

Although, the decision has already been taken that NAB's purview will not be extended to judges and generals, there is a consideration to set some limits for chairman NAB's power to arrest a person.

Government sources said that in different official meetings, Prime Minister Imran Khan has been told that unfettered powers and misuse of authority by the NAB has been a major reason for harassment of government servants as well as the business community. The prime minister wants to restrict NAB to mega corruption cases.

According to an official source, the NAB chairman has been vested with extraordinary powers, considered draconian, whose application in a number of cases violates fundamental rights of the accused. However, there is no check on the chairman.

It is said that all quasi-judicial and administrative powers rest with the chairman and are not distributed among different tiers as in other laws but are delegated at the will of the chairman. He is authorised by the law to initiate any case and arrest any person at any stage.

The chairman NAB can freeze the property of the accused and also of his relatives if believed to be connected to the offence even before the commencement of the trial. The property, it is explained, would not be automatically de-frozen after the acquittal of the accused.

The chairman may allow voluntary return during inquiry and thus discharge the accused of all liability; allow plea bargain; and even allow so during the trial or pendency of the appeal and not the court but he would determine the quantum of return of assets or gains. To decide the terms and conditions of the return would be his discretion.

Similarly, the sources explain, the chairman has the power to hire and fire all staff including the HR of the Prosecutor General's office thus giving him absolute control over all aspects of inquiry, investigation and trial. In the absence of Prosecutor General, the chairman may authorize any law officer to act as the Prosecutor General too.

It is said that this law which was made in a dictatorial regime was based on the presumption that the chairman NAB and the persons with delegated powers are infallible people of highest moral standing and there would be no abuse of law or process by them, a presumption made by all dictatorial regimes about their nominees in a drive to purge the system of the corrupt elements.

"As there are no checks and balances or audit therefore the reality is far cry," the source said, adding that centralization of powers and presumption of beacon of honesty in a sea of corruption has resulted in inconsistent behavior and performance of NAB with changing chairmen.

Overtime seepage of corruption, induction of mediocre, inexperienced and unethical human resource, and poor work culture (such as filing of weak prosecutable cases) has led to abuse of power and process, while at the same time in opening up the organization for misuse as a tool of victimization, persecution and political engineering. Filing of fake cases with strong media management has become a central technique for achieving such ends as such action has zero cost to the organization because of absence of internal accountability, the source said.

“Main dilemma is that a law formidable enough to bring to heels the most powerful ones when set loose on an innocent or an average citizen (who could be tried under other laws/rules) virtually assures destruction of such an individual and his family besides becoming a deterrent to the functioning of public offices or attraction of investment,” an official commented.

It is explained that the NAB law is inconsistent with the Constitution as the onus of proof is on the accused. Due to 90 days physical remand in a white collar crime, the un-bailable incarceration afterwards, high cost of legal services, people are made to enter plea bargain even with their life time savings to put an end to this ordeal.

It is added that due to the absence of protection of fundamental rights in the NAO 1999, action of arrest unleashes a chain of events that is equivalent to institutionalized ‘kidnap-for-ransom’ with plea bargain appearing to be the only way out for the guilty and non-guilty alike. In cases even innocent citizens end up taking plea bargain to avoid 90 days torture in remand and hand over their legitimate life-savings to NAB to avoid lawyer fees and loss of livelihood and family relations due to the fact that one or one and a half year time period is needed for an accused to get bail from the High Court even if innocent as there is no bail envisaged under the law.

A source pointed out that investors' confidence has been shattered with mistreatment of private investors by NAB and it is unlikely that investors will be forthcoming in government's main agenda of public-private partnerships, joint ventures and privatization as long as such regressive form of accountability continues.

It is argued that accountability is a necessary condition for progress and development, but it must be fair, humane and judicious. “Investors do not fear accountability in itself as long as fair opportunity is presented to defend the case in a transparent manner. But local practice of unrestrained use of arrest power, 90-day detention with torture, public humiliation through dissemination of false information and extended incarceration without conviction raises the risk beyond acceptance,” it is said.

It is pointed out that the NAB authorities have been indemnified against any action by their victims but the victims cannot claim similar indemnities under other laws which were made their frame of reference when they were accused of misuse of authority. No public official wants to take financial, procurement or hiring decisions individually or even as a part of a committee ever since NAB's arbitrary action against members of boards, procurement committees and management of Punjab public sector companies.

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