

**IN THE HONOURABLE HIGH COURT OF SINDH AT KARACHI  
(CONSTITUTIONAL JURISDICTION)**

Constitution Petition No. 5388 of 2017

1. Fahim Zaman Khan,  
Son of Sultan Zaman Khan,  
Muslim, Adult,  
Resident of 73, Khayaban-e-Ghazi,  
Phase-6, DHA,  
Karachi
2. Karamat Ali,  
Son of (Late) Amanat Ali,  
Muslim, Adult,  
Resident/office at 143-A, Sector X-5,  
Gulshan-e-Maymar,  
Karachi-75340
3. Mahnaz Rahman,  
Wife of Ahfaz ur Rahman,  
Muslim, Adult,  
Resident of R-375, Block 4A,  
Journalist Society,  
Gulshan-e-Iqbal,  
Karachi
4. Javed Iqbal Burki,  
Son of (Late) Muhammad Deen,  
Muslim, Adult,  
Resident/Office at Panorama,  
Centre No. 2, 3<sup>rd</sup> Floor, 316,  
Raja Ghazanfur Ali Khan Road,  
Saddar, Karachi
5. Pakistan Institute of Labour,  
Education & Research,  
Registered as an Association under Section 42,  
Companies Ordinance, 1984,  
Through its authorized person,  
Having its registered office at PILER Centre,  
ST-001, Sector X, Sub-Sector V,  
Gulshan-e-Maymar,  
Karachi-75340.....Petitioners

Versus

1. Federation of Pakistan  
Through Secretary,  
Ministry of Law,  
Islamabad
2. National Accountability Bureau (NAB),  
Through the Chairman,  
NAB Head Quarters,  
Attaturk Avenue G-5/2, Islamabad

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3. The Director General, Sindh,  
National Accountability Bureau (NAB),  
Regional Office at PRCS Building,  
197/5 Dr. Daudpota Road, Karachi Cantt,  
Karachi
  4. Province of Sindh,  
Through the Secretary,  
Services, General Administration & Coordination Department,  
Government of Sindh,  
Sindh Secretariat, Karachi
  5. Province of Sindh,  
Through the Secretary,  
Ministry of Law,  
Government of Sindh,  
Sindh Secretariat,  
Karachi
  6. Province of Sindh,  
Through the Home Secretary,  
Home Ministry,  
Sindh Secretariat,  
Karachi
  7. I.G. Sindh  
Sindh Police  
Police Head Office,  
I.I. Chundrigar Road,  
Karachi.....Respondents

**CONSTITUTIONAL PETITION UNDER ARTICLE 199 OF THE  
CONSTITUTION OF THE ISLAMIC REPUBLIC OF PAKISTAN, 1973**

It is most respectfully and most humbly submitted on behalf of the abovenamed  
Petitioners as under:

1. That the subject matter of this present Petition is the constitutionality and  
legality of the 'National Accountability Ordinance 1999 Sindh Repeal Act,  
2017' (hereinafter referred to as the 'Impugned NAB Repeal Act'). It is  
submitted that the aforementioned Impugned Act is an unconstitutional  
and malafide attempt on the part of the Government of Sindh to prevent  
and subvert an effective, independent and impartial investigation and trial  
of matters/offences relating to corruption especially of holders of public  
office, and such an attempt is clearly against the public interest. Therefore,  
this petition has been filed by public spirited individuals and organizations  
to question and challenge the aforementioned Impugned NAB Repeal Act.

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2. That the Petitioners No.1 to No.4 are known activists and the Petitioner No.5 is a known Non-Governmental Organization involved in various struggles for the enforcement of legal and human rights of the people of Pakistan. Significantly, the Petitioners, on behalf of the citizens of Pakistan, have always fought for attainment of justice and for upholding rule of law by ensuring that the Governments and public functionaries perform their duties and responsibilities within the ambit of the authority and power conferred upon them and that such power or authority is not misused. In doing so, the Petitioners continue to struggle for eradication of corruption and corrupt practices prevalent in Government and public organizations. The Petitioner No.1 is a former Administrator of Karachi Metropolitan Corporation who has worked over the years to protect the heritage of Karachi, and ensure provision of municipal services for the benefit of the citizens of Karachi. He continues to raise awareness through his writings and work about various issues that involve, inter alia, corruption and corrupt practices, misuse of authority and power by inter alia, public functionaries and measures that should be taken in order to tackle them. The Petitioner No.2 is the Executive Director of Pakistan Institute of Labour Education and Research (i.e. Petitioner No.5), who is engaged in numerous social and welfare activities, which include, but are not limited to, the enforcement of the rights of labourers and workers, as evident from his immense contribution towards, inter alia, fighting for the rights of the 2012 Baldia Factory Fire Victims. The Petitioners No.1 and No.2 have filed CP No.2598 of 2017 [‘Fahim Zaman Khan and Others Versus Federation of Pakistan and Others’] before this Honourable Court, through which various illegalities committed by private and public authorities in respect of misuse of public land i.e. Bagh Ibne Qasim, have been challenged. The Petitioner No.2 has also filed CP No.7097 of 2016 [‘Karamat Ali and Others Versus Federation of Pakistan and Others’] before this Honourable Court through which, inter alia, the repeal of the

Police Order 2002, through enactment of a new law by the Sindh Government has been challenged. The Petitioner No.3 is the Resident Director of Aurat Foundation and has written extensively on socio-economic and political issues and women rights. The Petitioner No.3 had been advocating and lobbying for women and minority rights since decades and in doing so, she recommends effective measures for ensuring effective implementation of laws by the Governments. The Petitioners No.4 and No.5 have fought for the rights of the victims of, inter alia, 2012 Baldia Factory Fire tragedy and had filed CP No.3318 of 2012 ['PILER and Others Versus Federation of Pakistan and Others'] and CP No.295 of 2013 ['PILER and Others Versus SBCA and Others'] before this Honourable Court in relation to the above tragedy. The Petitioners No.4 and No.5 had also filed CP No.1181 of 2014 ['PILER and Others Versus Federation of Pakistan and Others'] before this Honourable Court regarding the deaths caused in Tharparkar due to, inter alia, drought and negligence of Federation and Province. By initiating the aforementioned legal proceedings, the Petitioners are at all levels fighting to ensure protection of the citizens of the country against injustice, corruption, corrupt practices and misuse of authority by any individual or public authority.

*A copy of the Board Resolution and Certificate of Incorporation of Petitioner No.5, list of projects of Petitioner No.5, Order dated: 17-03-2016 in CP No.1181 of 2014, Order dated: 29-01-2013 and 16-03-2016 in CP No.3318 of 2012, List of PIL cases filed by the Petitioners, Memo of CP No.7097 of 2016 and Order dated: 28-12-2016 and 03-04-2017, Memo of CP No.2598 of 2017 is annexed and marked as Annex 'A' to 'A-10'.*

3. That the constitutional history of the subcontinent shows that the issue of matters/offences relating to corruption have always been under the rubric of a concurrent subject on which both the federal and the Provincial legislative assemblies could legislate and make laws as this was the constitutional position under the Government of India Act, 1935, the 1956 Constitution, the 1972 Interim Constitution and the 1973 Constitution. It is

because of the aforementioned constitutional position that the Ehtesab Act, 1997, was enacted by the federal legislature during the period of constitutional and democratic rule. Thereafter, the Ehtesab Act, 1997, was repealed by the National Accountability Ordinance, 1999.

4. That before the enactment of the Impugned NAB Repeal Act, the constitutional and legal position in the province of Sindh was that there were a Provincial law i.e. Sindh Enquiries and Anti-Corruption Act, 1991, and Provincial Anti-Corruption Courts operating side by side with the National Accountability Ordinance, 1999 and the National Accountability Courts established there under. It is important to note here that in all the other three provinces, the aforementioned constitutional and legal position of concurrent exercise of legislative and executive powers in relation to matters/offences of corruption is also in existence.
5. That on July 3<sup>rd</sup>, 2017, the Sindh Assembly passed the 'National Accountability Ordinance 1999 Sindh Repeal Act, 2017' repealing the National Accountability Ordinance, 1999 (hereinafter referred to as 'NAB Ordinance') to the extent of its application to the province of Sindh and also purportedly seeking to transfer all references and legal proceedings pending before the National Accountability Courts under the NAB Ordinance to the Provincial Anti-Corruption Courts. It is submitted that it is common knowledge that a large number of enquiries and references under the NAB Ordinance were pending against politicians belonging to the political party ruling the Government of Sindh, bureaucrats of the Government of Sindh and members of the assemblies belonging to the political party ruling the Government of Sindh and it was obvious and apparent that there was a clear cut and malafide conflict of interest and intention in passing the aforementioned Impugned NAB Repeal Act.

*A copy of the abovementioned Impugned NAB Repeal Act, 2017, passed on 03-07-2017, is annexed and marked as **Annexure 'B'**.*

6. That in view of the unconstitutionality of the abovementioned Impugned NAB Repeal Act, the Governor of the province of Sindh under Article 116 of the Constitution, 1973, returned the bill to the Sindh Provincial Assembly with a message that the bill may be reconsidered. It is further submitted that on July 24<sup>th</sup>, 2017, the Sindh Provincial Assembly again passed the Impugned NAB Repeal Act.

*A copy of the abovementioned Governor's summary and the Impugned NAB Repeal Act, passed on 24-07-2017, is annexed and marked as Annexure 'C' & 'C-1', respectively.*

7. That after the passage of the Impugned NAB Repeal Act on 24-07-2017 by the Sindh Provincial Assembly, the Governor did not give his assent to the aforementioned law and in view of Article 116(3)&(4) of the Constitution, 1973, the Impugned NAB Repeal Act became an Act of the Provincial Assembly. It is submitted that a Notification dated: 09-08-2017, was issued publishing the Impugned NAB Repeal Act.

*A copy of the abovementioned Notification dated: 09-08-2017 is annexed and marked as Annexure 'D'.*

8. That in pursuant to the abovementioned Impugned NAB Repeal Act, the Respondent No.4 through letter dated: 10-08-2017, to the Chairman, NAB, directed that all pending complaints, enquiries and investigations under the NAB Ordinance should be transferred to the Provincial Anti-Corruption Establishment, Sindh. It is further submitted that the Respondent No.4 through another letter dated: 10-08-2017 directed various departments of the Government of Sindh not to share any information or provide any record to the NAB Authorities. It is obvious and apparent that the implementation of the Impugned NAB Repeal Act

has started in haste by the Provincial Respondents for their obvious and apparent malafide intentions to subvert any fair and just accountability.

*A copy of the letters both dated: 10-08-2017, is annexed and marked as Annexure 'E' & 'E-1' respectively.*

9. That it is most respectfully and most humbly submitted that being aggrieved by the abovementioned Impugned NAB Repeal Act as being unconstitutional, without jurisdiction, illegal and malafide, the Petitioners have no alternative or efficacious remedy except to invoke the Constitutional jurisdiction of this Court on the, inter alia, facts and grounds stated herein.

#### GROUNDS

- A. That the Impugned NAB Repeal Act seeks to repeal the application and effect of the NAB Ordinance to the province of Sindh. In short, a Provincial law seeks to repeal a federal law in its entirety of its application and effect in a particular province. It is submitted that the constitutional history of the subcontinent shows that the issue of matters/offences relating to corruption have always been under the rubric of a concurrent subject on which both the federal and the Provincial legislative assemblies could legislate and make laws as this was the constitutional position under the Government of India Act, 1935, the 1956 Constitution, the 1972 Interim Constitution and the 1973 Constitution. Even after the passage of the 18<sup>th</sup> Amendment and the omission of the Concurrent List from the Fourth Schedule, the subjects of criminal law, criminal procedure and evidence remain as concurrent subjects under Article 142(b) of the Constitution, 1973, and the subject of the matters/offences relating to corruption come within the ambit of criminal law and criminal procedure,



both in terms of its definition and also in terms of the past constitutional history. In short, matters/offences with respect to corruption or measures to combat corruption have never been a residual subject or an exclusively Provincial subject. It is most respectfully and most humbly submitted that there is no provision in the constitution which allows the repeal, in its entirety of its application and effect in a particular province, of a federal statute like the NAB Ordinance by a provincial statute like the Impugned NAB Repeal Act. Therefore, the Impugned NAB Repeal Act is unconstitutional, without jurisdiction and of no legal effect.

- B. That the Impugned NAB Repeal Act seeks to repeal the application and effect of the NAB Ordinance to the province of Sindh. In short, a provincial law seeks to repeal a federal law in its entirety of its application and effect in a particular province. It is submitted that the constitutional history of the subcontinent shows that the issue of matters/offences relating to corruption have always been under the rubric of a concurrent subject on which both the federal and the provincial legislative assemblies could legislate and make laws as this was the constitutional position under the Government of India Act, 1935, the 1956 Constitution, the 1972 Interim Constitution and the 1973 Constitution. Even after the passage of the 18<sup>th</sup> Amendment and the omission of the Concurrent List from the Fourth Schedule, the subjects of criminal law, criminal procedure and evidence remain as concurrent subjects under Article 142(b) of the Constitution, 1973, and the subject of the matters/offences relating to corruption come within the ambit of criminal law and criminal procedure, both in terms of its definition and also in terms of the past constitutional history. It is most respectfully and most humbly submitted that the repeal, in its entirety of its application and effect in a particular province, of a federal statute like the NAB Ordinance by a provincial statute like the Impugned NAB Repeal Act is violative of Article 143 of the Constitution because the Impugned NAB Repeal Act i.e. provincial law, is inconsistent



and repugnant to the previously existing NAB Ordinance i.e. NAB law. Therefore, the Impugned NAB Repeal Act is unconstitutional, without jurisdiction and of no legal effect.

C. That the Impugned NAB Repeal Act is based on the assumption that the proclamation of emergency of 14-10-1999 and the Provisional Constitutional Order 1, dated 14-10-1999 have been declared as without lawful authority under Article 270AA(1), Constitution, 1973, and on such purported basis, the Impugned NAB Repeal Act seeks to repeal the NAB Ordinance. It is most respectfully and most humbly submitted that under Article 270AA(2), all ordinances like the NAB Ordinance were constitutionally protected until altered, repealed or amended by the competent authority, which competent authority under the Constitution for the concurrent subject of matters/offences of corruption in relation to a federal law like the NAB Ordinance is the federal parliament. Therefore, the Impugned NAB Repeal Act is unconstitutional, without jurisdiction and of no legal effect.

D. That the Impugned NAB Repeal Act is based on the assumption that since the Six Schedule to the Constitution, 1973, has been omitted through the 18<sup>th</sup> Constitutional amendment, thus, purportedly the provincial assembly can repeal the NAB Ordinance. It is most respectfully and most humbly submitted that since the subject regarding matters/offences of corruption is a concurrent subject under Article 142(b), Constitution, 1973, and since the NAB Ordinance is a federal law, thus, the omission of the Sixth Schedule to the Constitution, 1973, cannot confer the power on the provincial assembly to repeal a federal law or legislate in violation of Article 143, Constitution, 1973. Therefore, the Impugned NAB Repeal Act is unconstitutional, without jurisdiction and of no legal effect.

- E. That the Impugned NAB Repeal Act is based on the assumption that the NAB Ordinance was a kind of emergency legislation on a purportedly exclusive provincial subject purportedly issued by Parliament and it purportedly ceases to have effect after six months of the lifting of the emergency under Articles 232(5) and 234(6), Constitution, 1973. It is most respectfully and most humbly submitted that it is obvious and apparent that Article 234 and 235, Constitution, 1973, have no application to the NAB Ordinance as they were not enacted by Parliament during democratic rule. More importantly, such an interpretation of 234 and 235 of Constitution, 1973, would completely nullify the protection given to such ordinances under Article 270AA(2), Constitution, 1973. Therefore, the Impugned NAB Repeal Act is unconstitutional, without jurisdiction and of no legal effect.
- F. That the Impugned NAB Repeal Act is based on the assumption that purportedly under Entry 55 of the Federal Legislative List Part 1 of the Constitution, 1973, the purported establishment of the National Accountability Courts has taken place on a purportedly residual and exclusively provincial subject. It is most respectfully and most humbly submitted that as explained in detail in Ground A and Ground B above, matters/offences regarding corruption is not a residual or exclusively provincial subject but rather a concurrent subject, on which there is a federal law like the NAB Ordinance and courts thereunder and also provincial laws like Sindh Enquiries and Anti-Corruption Act, 1991, and provincial Anti-Corruption Courts and thus, there is no violation of the above mentioned Entry 55 of the Federal Legislative List Part 1, Constitution, 1973. Therefore, the Impugned NAB Repeal Act is unconstitutional, without jurisdiction and of no legal effect.
- G. That the Impugned NAB Repeal Act is based on the assumption that two parallel laws relating to corruption cannot be imposed on the people of

Sindh on the same subject of matters/offences of corruption. It is most respectfully and most humbly submitted that before the enactment of the Impugned NAB Repeal Act, the constitutional and legal position in the province of Sindh was that there were provincial laws i.e. Sindh Enquiries and Anti-Corruption Act, 1991, and Provincial Anti-Corruption Courts, operating side by side with the National Accountability Ordinance, 1999, and the National Accountability Courts established thereunder. In short, there have always been two laws on this matter/offence regarding corruption. It is further most respectfully and most humbly submitted that the enactment of two laws on a concurrent subject can only be challenged on the ground of Article 143, Constitution, 1973, which conflicts with the contention raised by the Government of Sindh. Therefore, the Impugned NAB Repeal Act is unconstitutional, without jurisdiction and of no legal effect.

- H. That it is common knowledge that a large number of enquiries and references under the NAB Ordinance were pending against politicians of the political party ruling the Government of Sindh, bureaucrats of the Government of Sindh and members of the assemblies belonging to the political party ruling the Government of Sindh and it was obvious and apparent that there was a clear cut and malafide conflict of interest and intention in passing the aforementioned Impugned NAB Repeal Act. It is most respectfully and most humbly submitted that it is obvious and apparent that the Impugned NAB Repeal Act is an attempt by the present Provincial Government to politically capture the institution of accountability and to make accountability of public office holders ineffective and politicized. Such an attempt is a violation of Article 4 (Rule of Law), Article 9 (the right to life includes a right to accountability), Article 10-A (the right to fair accountability) and Article 25 (the right to non-discriminatory accountability). Therefore, the

Impugned NAB Repeal Act is unconstitutional, without jurisdiction and of no legal effect.

- I. That it is most respectfully and humbly submitted that the Petitioners seek the indulgence of this Honourable Court to raise further grounds at the time of the hearing of this Petition.

### **PRAYER**

It is, therefore, most respectfully and most humbly prayed that this Honourable Court may graciously pass judgment, and orders, in the following terms:

- (a) Declare that 'National Accountability Ordinance 1999 Sindh Repeal Act, 2017' (Annexure D), or any rules, orders and directions made thereunder, are unconstitutional, without jurisdiction and of no legal effect;
- (b) Permanently restrain the Respondents, or any person acting under them, from implementing, or giving effect, or acting in pursuant to the, 'National Accountability Ordinance 1999 Sindh Repeal Act, 2017', or any rules, orders and directions, made pursuant to the 'National Accountability Ordinance 1999 Sindh Repeal Act, 2017', including but not limited to the letters, Both dated: 10-08-2017 (Annexure 'E' & 'E-1'), or any other such letters/directions;
- (c) Direct the Respondents, especially the Respondents No.2 and 3, to implement the National Accountability Ordinance, 1999, throughout the province of Sindh, without any reference, or effect given, to the 'National Accountability Ordinance 1999 Sindh Repeal Act, 2017', or to any rules, orders and directions made thereunder;

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(d) Grant such further, additional or alternative relief, as this Honourable  
Court may deem fit and proper;

PETITIONER NO.1

PETITIONER NO.2

PETITIONER NO.3

PETITIONER NO.4

PETITIONER NO.5

ADVOCATE FOR THE PETITIONERS

Karachi;

Dated: August 15<sup>th</sup>, 2017

DOCUMENTS FILED:	As shown in the Petition
DOCUMENTS RELIED UPON:	The abovementioned documents e.t.c.
ADDRESS OF PETITIONERS:	As per in title of the petition
ADDRESS OF PETITIONERS COUNSEL:	Faisal Siddiqi Advocate HC-8504/HC/KHI 14-C, 21 <sup>st</sup> Street, Off Khayaban-e- Sehr, Karachi.

DRAWN BY ME

ADVOCATE