

## **Corruption and Corrupt Practices: Analysis of the NAB Ordinance 1999 in the Perspective of Islamic *Shari'ah***

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### **Abstract**

*In the world we live in, money is extremely important since it is a man's basic necessity to survive, and money is needed for that. However, religion and the state impose some restrictions that limit a person to legal sources of earning money and forbid them from using illegal means. Nevertheless, corruption has spread across our society. It occurs on different scales and takes a number of forms. It is believed to negatively impact the economic growth of our country and deteriorate its overall social welfare. Numerous anti-corruption legislation have been put into effect to eradicate corruption since the birth of Pakistan. One of them is the National Accountability Ordinance, 1999. This paper aims to focus on the corruption and corrupt practices as mentioned in this Ordinance and analyze them from Shari'ah's perspective..*

**Keywords:** NAB, Corruption, Bribe, Misappropriation, Misuse, Office, Authority.

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### **1. Introduction:**

The National Accountability Bureau (NAB) was founded on November 16, 1999 in Islamabad almost twenty-three years ago. Originally known as Ehtesab Cell, this governing body bears the responsibility of combating corruption and corrupt practices, like bribery, kickbacks and grafts, as well as eliminating misuse of authority and power (Qureshi, 2014). It is a vibrant, reliable, and successful organization that is aiming to promote the ideal conditions for cleaning a society from corruption. The operation of this institution is governed by the NAB Ordinance 1999.

#### **1.1. The National Accountability Bureau Ordinance, 1999:**

The National Accountability Bureau Ordinance 1999 was enacted by Pervaiz Musharraf, the President of Islamic Republic of Pakistan at that time. This body was established, as stated in the preamble, to combat corruption and corrupt practices and to hold those accountable who were involved in such practices. After coming into force, it extended to all citizens of Pakistan and to those who were or had been in the service. It covered the whole country, including areas of Federally and Provincially

Administered Tribal Areas. (S. 2 and 4)

### **1.2. Corruption and Corrupt Practices:**

Section 9 of the NAB Ordinance 1999 mentions corruption and corrupt practices that fall under the purview of this Ordinance. It clarifies that the offence of corruption and corrupt practices applies to “*a holder of a public office, or any other person.*” [S. 9 (a)] The public office includes position at federal, provincial, local council level, and the office holder might have served in any capacity related to these offices. And if someone holds no public office, but he has assisted, or conspired with a public office holder is also considered an offender (Ibid).

There are eight corrupt practices that come under the purview of section 9 this Ordinance as follows: “(1) To accept or offer any gratification other than legal remuneration [S. 9(a)(i)] (2) To accept or offer any valuable thing without consideration or for an inadequate consideration [S. 9(a)(ii)] (3) Misappropriation of property by fraud or dishonesty [S. 9(a)(iii)] (4) To seek any property, valuable thing, or pecuniary advantage [S. 9(a)(iv)] (5) To have any movable or immovable property disproportionate to the known sources of income [S. 9(a)(v)] (6) Misuse of authority so as to gain any benefit or favor [S. 9(a)(vi)] (7) To issue any directive, policy, or order to give someone any concession or benefit in any taxation matter or law or otherwise [S. 9(a)(vii)] (8) To commit an offence of willful default [S. 9(a)(viii)].”

All these offences are non-bailable. [S. 9(b)] If the offender deposits the amount of corruption, the Chairman NAB has the authority to make decision about his detention or his release from custody. [S. 9(c)] And the amount deposited by him shall be transferred to the Federal Government within one month. [S. 9(d)]

### **1.3. Corruption and Corrupt Practices: Analysis in Islamic Perspective**

There are eight sub-clauses in S.9 (a) of the NAB Ordinance; each of which addresses a particular kind of corruption. The majority of them discuss bribery, which includes any kind of payment that is accepted in exchange for a favour, gift, or other non-legal form of reward. In return, the receiver of bribe renders a specific kind of service to the bribe-giver. He abuses his position of power, violates his oath of office, and gives the bribe-giver preferential treatment.

### **1.4. Corruption: A General Prohibition in Islam**

The Cambridge Dictionary defines corruption as a “dishonest or illegal behaviour involving a person in a position of power, for example, accepting money for doing something illegal or immoral.” (Cambridge Dictionary, n.d.)

The Arabic term for corruption is ‘*fasad*.’ Lane defines *fasad* as: “Badness, evilness, corruptness, unsoundness, wrongness, wrongfulness, impropriety, unrighteousness, wickedness, vitiousness, depravity, or dishonesty; the state of being devoid of virtue or efficacy; a corrupted, vitiated, perverted, marred, spoiled, deteriorated, or tainted, state; a state of disorder or disturbance, or of destruction, annihilation, consumption, waste, or ruin.” (Lane, 1863).

From an Islamic perspective, the term “corruption,” or “*fasad*,” has a wide meaning. But the corruption that we are dealing with is of a financial nature. It was not unusual among the people of Madyan to

whom the Prophet Shu‘ayb, peace be upon him, was sent. In the following Qur’anic verse, Allah informs about their corrupt practices:

"فَأَوْفُوا الْكَيْلَ وَالْمِيزَانَ وَلَا تَبْخَسُوا النَّاسَ أَشْيَاءَهُمْ وَلَا تُفْسِدُوا فِي الْأَرْضِ بَعْدَ إِصْلَاحِهَا ذَلِكُمْ خَيْرٌ لَّكُمْ إِن كُنْتُمْ مُؤْمِنِينَ" (الاعراف 85:7)

*“So, fulfill the measure and weight and do not deprive people of the things that are their due and cause not corruption upon the earth after its reformation. That is better for you, if you should be believers.”*

As the above verse discloses, they were not honest in their financial dealings. They used to engage in two corrupt practices: failing to uphold measure and weight and depriving people of their right. Al-Tabari comments: “Do not wrong with people regarding their rights and do not deprive them of their due.” (Al-Tabari, 1999).

### 1.5.Bribery:

Most sub-clauses of Section 9(a) define bribery as a corrupt practice. The public office holder or any other person is involved in corrupt practices if he is taking “*any gratification directly or indirectly, other than legal remuneration,*” [9 (a)(i)] or “*any valuable thing without consideration, or for a consideration which he knows to be inadequate,*” [9 (a)(ii)] or “*any property, valuable thing, or pecuniary advantage.*” [9 (a)(iv)] He is also assumed to have taken bribe if he is possessing “*any movable or immovable property or pecuniary resources disproportionate to his known sources of income.*” [9 (a)(v)]

In Islam, bribe is strongly prohibited. Regarding this corrupt practice that was prevalent among Jewish rabbis, Allah the Almighty tells:

"يَا أَيُّهَا الَّذِينَ آمَنُوا إِنَّ كَثِيرًا مِّنَ الْأَحْبَارِ وَالرُّهْبَانِ لَيَأْكُلُونَ أَمْوَالَ النَّاسِ بِالْبَاطِلِ وَيَصُدُّونَ عَنْ سَبِيلِ اللَّهِ" (التوبة 9: 34)

*“O you who have believed, indeed many of the scholars and the monks devour the wealth of people unjustly and avert [them] from the way of Allah.”*

On this verse, Ibn Jazzi remarks that they used to consume the wealth unfairly by accepting bribes (*al-rishwah*) in exchange for favourable legal ruling (*ahkam*). (Ibn Jazzi, 1999)

"وَلَا تَسْتُرُوا بِآيَاتِي تَمَنَّا قَلِيلًا وَآيَاتِي فَاتَّقُون" (البقرة 2: 41)

*“And do not exchange My revelations for a small price, and fear only Me.”*

Under this verse, Al-Tabari recounts the words of Ibn Zayd, who advises against accepting a bribe (Al-Tabari, 1999). Al-Qurtubi comments: “Although this verse was specifically revealed about Bani Israel but it includes everyone who would follow their footsteps. Whoever takes bribe to change a right or render it vain; or to abstain from imparting obligatory knowledge or from paying what is incumbent on him unless he gets reward for it; is included in the requisites of this verse.” (Al-Qurtubi, 1964)

Allah warns those who accept bribes of a terrible punishment on the Day of Judgment and condemns

them for it. According to Al-Baydawi, the following verse was revealed about the Jewish scholars who tempered the Torah and altered the attributes of the Prophet Muhammad: (Al-Baydawi, 1999)

"إِنَّ الَّذِينَ يَشْتَرُونَ بِعَهْدِ اللَّهِ وَأَيْمَانِهِمْ ثَمَنًا قَلِيلًا أُولَٰئِكَ لَا خَلَاقَ لَهُمْ فِي الْآخِرَةِ وَلَا يُكَلِّمُهُمُ اللَّهُ وَلَا يَنْظُرُ إِلَيْهِمْ يَوْمَ الْقِيَامَةِ وَلَا يُزَكِّيهِمْ وَلَهُمْ عَذَابٌ أَلِيمٌ" (آل عمران 77:3)

*"Indeed, those who exchange the covenant of Allah and their [own] oaths for a small price will have no share in the Hereafter, and Allah will not speak to them or look at them on the Day of Resurrection, nor will He purify them; and they will have a painful punishment."*

Allah warns Muslims against the bribe that is given to rulers or judges to get decisions or judgments in favour to devour the wealth of others unjustly. He commands:

"وَلَا تَأْكُلُوا أَمْوَالَكُم بَيْنَكُم بِالْبَاطِلِ وَتُدْلُوا بِهَا إِلَى الْحُكَّامِ لِتَأْكُلُوا فَرِيقًا مِّنْ أَمْوَالِ النَّاسِ بِالْإِثْمِ وَأَنْتُمْ تَعْلَمُونَ" (البقرة 188:2)

*"And do not consume one another's wealth unjustly or send it (in bribery) to the rulers (or judges) in order that (they might aid) you (to) consume a portion of the wealth of the people in sin, while you know (it is unlawful)."*

Al-Baghawi remarks: "Do not consume each other's property in unpermitted ways, such as usurpation, plunder, gambling, the singer's wages, and similar practices involving bribery and dishonesty. And do not take your financial matters to the rulers while being aware that money is unlawful for you. Ibn 'Abbas says this verse is about a man who owes money to someone but there is no witness of it. So, he denies it and disputes about it before a judge knowing that this money is due on him. Mujahid says, do not quarrel when you are unjust. Al-Kalbi says, do not establish false testimony." (Ibid)

A number of verses mention a corrupt practice of Bani Israel, known as *Al-Suht*. Lane provides its meaning as: "A thing that is forbidden, prohibited, or unlawful; or what is disapproved, abominable, or foul, of gains, that occasions disgrace and bad repute; or any property that is forbidden, not lawful to be gained nor to be eaten; or anything forbidden, or unlawful, and of bad repute." (Lane, 1863)

Allah the Almighty reminds a corrupt practice of some Jews who were listeners to falsehood and used to distort words beyond their proper usage for the sake of bribe (*suht*):

"وَمِنَ الَّذِينَ هَادُوا سَمَّاعُونَ لِلْكَذِبِ سَمَّاعُونَ لِقَوْمٍ آخَرِينَ لَمْ يَأْتُوكَ بِبَحْرٍ فَوْنَ الْكَلِمِ مِنْ بَعْدِ مَوَاضِعِهِ..... سَمَّاعُونَ لِلْكَذِبِ أَكَّالُونَ لِلسُّحْتِ" (المائدة 42-41:5)

*"Among the Jews are avid listeners to falsehood, listening to another people who have not come to you. They distort words beyond their (proper) usages..... (They are fond of) listening to falsehood, of devouring anything forbidden."*

This verse tells that the Jews used to devour *suht* which is a bribe given in judgment as Mujahid, Dahak, Ibn Zayd explain (Al-Tabari, 1999). In response to a question concerning *suht*, the Prophet (peace be upon him) said: "Every flesh that has been grown by unlawful things (*suht*), the fire is more worthy of it. He was asked: O Messenger of God, what is unlawful? He said: Bribe in judgment." (Ibn Hajar, 1979)

Once, the Companion Ibn Mas‘ud was asked about *suht*. He replied: A man asks someone for help when he needs it and he gives it to him. At this point, the former presents the latter with a gift, which he accepts. Then, this gift is *suht* (Al-Tabari, 1999). According to Al-Hakm ibn ‘Abd Allah, his father was in the city police. Anas ibn Malik advised him: If you turn to your father, say to him: Beware of bribery, for it is unlawful (Ibid).

‘Umar ibn al-Khattab says the bribe given to a ruler is *suht* (Al-Qurtubi, 1964). Ibn ‘Abbas also confirms that the bribe given to a ruler is *suht*, which Allah has mentioned in His Book (Ibn Abi Hatim, n.d.). Mu‘adh ibn Jabal asked Ta‘us about the gifts given to a ruler. He replied, they are *suht* (Ibid). Anas ibn Malik narrates from the Messenger of Allah: Whoever takes bribe in judgment, it becomes a barrier between him and the heaven (Al-Wahidi, 1999).

Al-Qurtubi explains that unlawful money is called *suht* because it destroys acts of worship. He quotes Abu Hanifah who says: If the ruler takes bribe, he is temporarily removed from office. But if he is not removed, then his every subsequent ruling is considered null and void. Al-Qurtubi concludes that it is agreed upon that using bribe to annul a right or to take something that is not allowed is *suht* (Al-Qurtubi, 1964).

## 2. Gift as Bribe:

Generally speaking, exchanging gifts as a show of affection and goodwill is *Sunnah* of the Holy Prophet (peace and blessings be upon him). A gift is a sign of love and builds relationship between people. The Prophet declares: “Shake hands and rancour will disappear. Give presents to each other and love each other and enmity will disappear.” (Malik, n.d.)

In fact, a gift given to a public office holder is bribe. This is evident from the account of Ibn al-‘Utbiyyah, who belonged to the tribe of Azd. The Prophet appointed him to receive *sadaqat* from Bani Sulaym. When he returned, he said: “This wealth is for you (i.e. for the public treasury) and this is a gift (presented to me).” The Messenger of Allah rebuked him and said: “You should have remained in the house of your father and your mother until your gift should come to you if you are truthful.” (Muslim, No. 1832c)

The Quraysh sent a delegation to the Abyssinian king, Najashi, with gifts to persuade him and asked for the return of Muslims who had migrated to Abyssinia. Ja‘far ibn ‘Ali Talib spoke for Muslims and convinced the king of their innocence. He allowed them to stay and returned the gifts, saying, “Your gifts are actually a bribe for me.” (Al-Tha‘labi, 2001)

Once Masruq interceded for someone who needed help and that person gifted him a slave girl. This prompted him to reprimand him, saying, “I would not have intervened in your affair if I had known that you would do this. And I wouldn't speak for the remainder of your needs either since I heard Ibn Mas‘ud saying: “Who accepts a gift for intercession to obtain someone’s right or defend him against injustice, then he is engaging in *suht* (bribe).” (Al-Tabari, 1999).

‘Umar ibn al-Khattab, the Second Caliph, used to keep a record of the possessions of his officials. If they had added anything while in office, he would confiscate that property because he thought they had used their position for personal gains (Taqi al-Din Nabhani, 2001). The Umayyad Caliph, ‘Umar ibn ‘Abd al-‘Aziz was also of the view that an officer should not trade because he might misuse his position to benefit himself and harm others. (Arafa, n.d.)

An individual who accepts a bribe will face Allah's wrath. This is evident from the fate of Bal'am ibn Ba'ura' narrated in Surah al-A'raf, verses 175-176. When the Prophet Musa (upon him be peace) was about to attack Canaan, the Canaanites turned to their countryman Bal'am whose prayers were always heard. They asked him to pray against Musa and his army. But he was prevented from praying against him in a vision, so he declined to do it. Subsequently, his people asked him to pray once more and brought him gifts. After he accepted the gifts, his vision did not show any signs. He thought this was a permission to pray against him. He continued to a mountain top while mounted on his camel. Nonetheless, the writ of the divine prevailed, and he prayed against his own people rather than Musa's army. Allah cursed him, his tongue fell out of his mouth like a dog and he lost blessing of this world and the hereafter. (Al-Baghawi, 1999)

Allah and His Messenger (upon him be peace and blessings) curse the one who bribes others and the one who takes a bribe (Al-Tirmidhī, No. 1337). However, according to the scholars, a person is allowed to give bribe if doing so is the only way to obtain his right or prevent injustice or evil. However, taking it is a sinful act. Ibn Taymiyah clarifies this point as: "If someone gives a gift to prevent any wrongdoing against him or to obtain his due right, then this gift is permissible for the giver but forbidden for the receiver, as the Prophet used to say: I give someone a gift, and he takes it out with a fire under his arm. It was said, O Messenger of Allah, why do you give them? They refuse but to ask me, and God does not allow me to be stingy." (Ibn Taymiyah, 1995)

### 3. Misappropriation of Property:

The NAB Ordinance S. 9 (a) (iii) deals with this corrupt practice. It says that a person has committed the offence of corrupt practice: "*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 willfully allows any other person so to do.*"

Islam stresses a great deal on honesty in all affairs of life. This is true specifically about monetary dealings. If financial matters are not done with honesty, the subsequent corruption will lead a society to economic instability and lawlessness. Allah the Almighty commands the believers to shun all corrupt practices to devour the wealth of others by fraud and deceit. He says in the Holy Qur'an:

"يَا أَيُّهَا الَّذِينَ آمَنُوا لَا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبَاطِلِ إِلَّا أَنْ تَكُونَ تِجَارَةً عَنْ تَرَاضٍ مِّنْكُمْ" (النساء 29:4)

"O you who have believed, do not consume one another's wealth unjustly except it be a trade by mutual consent."

By this verse, Allah forbids all corrupt means of making money, such as bribery, kickbacks, and grafts. One of such practices is misappropriation of the property entrusted to a public office holder. This is always done by a person who is dishonest and does not fulfill his duty towards a trust entrusted to him. Such a person is a fraudulent and deceives people like those traders who used to deal in fraud and were prone to deceiving people by changing the weights and measures. Allah condemns them in the following verses of Surah *al-Mutaffifin*:

"وَيْلٌ لِّلْمُطَفِّفِينَ (1) الَّذِينَ إِذَا اكْتَالُوا عَلَى النَّاسِ يَسْتَوْفُونَ (2) وَإِذَا كَالُواهُمْ أَوْ وَزَنُوهُمْ يُخْسِرُونَ (3)" (المطففين 3-1:83)

“Woe to those that deal in fraud, those who, when they have to receive by measure from men, exact full measure, but when they have to give by measure or weight to men, give less than due.”

Ibn Kathir remarks that *al-tatfif* means to deceive in measurements and weights, either by stealing from people more than is rightfully theirs or by giving them less than that (Ibn Kathir, n.d.).

According to Al-Suddi, these verses were revealed regarding Abu Juhaynah, a man from Madina, who had two scales of measurement: one for receiving things from people and another for giving them (Al-Baghawi, 1999). Once Ibn 'Umar spoke to a vendor as he walked by, telling him to fear Allah and give full measure and weight. He added that those who give less will remain standing on the Day of Resurrection until their perspiration reaches their middle ears (Ibid).

The Prophet conquered Makkah and sent 'Ali to get the keys of Ka'bah from 'Uthman ibn Talha. He snatched the keys from him and gave them to the Prophet. He entered the Ka'bah and performed two rakah *salah*. When he came out, 'Abbas ibn 'Abd al-Muttalib asked for the keys; but Allah revealed the following verse inside the House:

"إِنَّ اللَّهَ يَأْمُرُكُمْ أَنْ تُؤَدُّوا الْأَمَانَاتِ إِلَىٰ أَهْلِهَا" (النساء 58:4)

“Indeed, Allah commands you to render trusts back to whom they are due.”

The Prophet (upon him be peace and salutations) gave the keys back to 'Uthman saying: O Children of Talha! Take it up to the Day of Resurrection, and it will not be taken from you unless by an oppressor. 'Uthman then migrated to Madina and gave his keys to his brother Shaybah which were kept by his descendants (Al-Raazi, 1999).

Al-Tabari comments that this command addresses the rulers to give trust (*amanah*) back to those who have entrusted them with their affairs and rights; and with justice in legal cases and equality in distribution of resources. Allah establishes a balance between their duties. He enjoins upon the rulers to protect the trusts given to them and commands the public to obey their rulers. (Al-Tabari, 1999)

Surah al-Mu'minun begins with the glad tidings of success for believers. It describes some of their characteristics due to which they will inherit their stations in Paradise. One of those characteristics is that they keep their trust:

"وَالَّذِينَ هُمْ لِأَمَانَاتِهِمْ وَعَهْدِهِمْ رَاعُونَ" (المؤمنون 8:23)

“And those who keep their trusts and covenants.”

Al-Baghawi explains that they keep what they have been entrusted with, and they fulfill the contracts they contracted with people (Al-Baghawi, 1999). The Prophet of Allah said during his address: “There is no faith for the one who has no trust, and there is no religion for the one who has no covenant.” (Ahmad, No. 11975) This tells that a true believer is a person who takes care of the property entrusted to him. Neither will he misappropriate a property of trust nor will he allow someone to do so. Even if someone cheats or betrays, an honest believer is not asked to do the same. The Messenger of Allah says: “Pay the deposit to him who deposited it with you, and do not betray him who betrays you.” (Abu Daud, No. 3534)

Misappropriation of the spoils of war is known as *al-ghalul*. The following verse of Surah Ale 'Imran prohibits this practice, indicating that anything which is withheld by an inappropriate manner will become manifest on the Day of Judgment:

"وَمَا كَانَ لِنَبِيٍّ أَنْ يَغُلَّ وَمَنْ يَغُلَّ يَأْتِ بِمَا غَلَّ يَوْمَ الْقِيَامَةِ ثُمَّ تُوَفَّى كُلُّ نَفْسٍ مَا كَسَبَتْ وَهُمْ لَا يُظْلَمُونَ" (آل عمران 161:3)

"It is not [possible] for any prophet that he would act unfaithfully [in regard to war booty]. And whoever betrays, [taking unlawfully], will come with what he took on the Day of Resurrection. Then will every soul be [fully] compensated for what it earned, and they will not be wronged."

The Prophet elaborates the same by saying: "Whosoever from you is appointed by us to a position of authority and he conceals from us a needle or something smaller than that, it would be misappropriation (of public funds) and will (have to) produce it on the Day of Judgment." (Muslim, No. 1833). One day he delivered a sermon about the misappropriation of booty and said: "I would not like to see any of you coming on the Day of Judgment with a growling camel mounted on his neck, and appealing to me for help saying: Messenger of Allah, help me. And I would say: I have no authority to help you; I already communicated to you." He also mentioned "a neighing horse," "a bleating sheep," and "a crying person," mounted on his neck in the same hadith. (Muslim, No. 1831). This means that every person who misappropriates a property or wealth will carry it on his neck and will be answerable to Allah for his misdeed.

Misappropriation or embezzlement of funds or property is a sign of a hypocrite as the hadith warns that whenever a hypocrite is entrusted with a trust he proves to be dishonest. (Al-Bukhari, No. 2749). This corrupt practice is also a sign that the Last Day is approaching near. The Holy Prophet (peace be upon him) said: "When honesty is lost, then wait for the Hour. It was asked: How will honesty be lost, O Allah's Messenger? He said: When authority is given to those who do not deserve it, then wait for the Hour." (Ibid, No. 6496)

#### 4. Misuse of Authority:

In exchange of the bribe, the receiver gives some benefits to the giver by misusing his position. The NAB Ordinance says that he "*misuses his authority so as to gain any benefit or favour for himself*" [9 (a) (vi)] and issues "*any directive, policy, or any SRO (Statutory Regulatory Order) or any other order which grants or enables any concession or benefit in any taxation matter or law or otherwise.*" [9 (a) (vii)]

The office is a trust entrusted by Allah. Those who do not do justice to their office, in fact, betray the trust. Allah the Almighty prohibits this kind of betrayal:

"يَا أَيُّهَا الَّذِينَ آمَنُوا لَا تَخُونُوا اللَّهَ وَالرَّسُولَ وَتَخُونُوا أَمَانَاتِكُمْ وَأَنْتُمْ تَعْلَمُونَ" (الانفال 27:8)

"O you who have believed, do not betray Allah and the Messenger or betray your trusts while you know (the consequence)."

In fact, the office is an authority given by Allah and it comes with responsibility. A public office holder should be aware of his duties and perform them with courage and equanimity. Someone who is weak



in mind is not assumed to be fit for a job that is taxing. For this reason, the Holy Prophet (peace be upon him) denied Abu Dharr al-Ghiffari a post when he asked for it and said: “Abu Dharr, you are weak and authority is a trust. On the Day of Resurrection, it would be a cause of humiliation and repentance except for the one who fulfils its obligations and (properly) discharges the duties.” (Al Bukhari, No. 1825)

In the Prophet’s view, a person who is covetous of a public office is not fit for it. He is possibly demanding a post to take undue advantage of his official power. Abu Musa entered the apartment of the Prophet with his two cousins. One of them asked an office. He replied: “We do not appoint to this position one who asks for it nor anyone who is covetous for the same (Muslim, No. 1733). He gave a similar advice to ‘Abd al-Rahman ibn Samurah: “Do not ask for a position of authority, for if you are granted this position as a result of your asking for it, you will be left alone (without God's help), and if you are granted it without making any request for it, you will be helped (by God in the discharge of your duties).” (Ibid, 1652). A similar report tells about people who would misuse their authority to earn money: “You will become keen for positions of authority, but that will become a regret and loss. What a good life they will live, but how hard it will be for them when they die.” (Al-Nasa’I, No. 1422)

Hence, a public office holder should discharge his duties faithfully, and stand firmly against any illegal order. He should be a steadfast, devout person having roots in the core of justice even if his near relatives turn away from him. He should not become a prey to his desires like many those who fail to be fair in their office duties.

## 5. Willful Default:

The NAB Ordinance 1999 also says that it is a corrupt practice “*if he commits an offence of willful default.*” [9 (a) (viii)]. This has been defined in the NAB Ordinance 5 (r). If a person fails to pay, return, or reimburse money to a bank, financial institution, or government department by the deadline specified by the laws and regulations and thirty days have passed since then, it is considered a willful default crime. It does not apply when the breach of agreement comes from that bank or financial institution, or a government department.

Islam enjoins all believers to pay their dues. The Holy Qur’an guides us regarding debts. He commands to write the agreement of debt, so that no one can refuse the statement of amount. This command of writing shows that the creditor has a right to get his money back and the debtor has a duty to pay his debt. Allah says:

"يَا أَيُّهَا الَّذِينَ آمَنُوا إِذَا تَدَايَيْتُمْ بِدَيْنٍ إِلَى أَجَلٍ مُّسَمًّى فَاكْتُبُوهُ وَلْيَكُنْ بَيْنَكُمْ كَاتِبٌ بِالْعَدْلِ وَلَا يَأْبَ كَاتِبٌ أَنْ يَكْتُبَ كَمَا عَلَّمَهُ اللَّهُ فَلْيَكْتُبْ وَلْيُمْلِلِ الَّذِي عَلَيْهِ الْحَقُّ وَلْيَتَّقِ اللَّهَ رَبَّهُ وَلَا يَبْخَسَ مِنْهُ شَيْئًا" (البقرة 2:282)

“O you who have believed, when you contract a debt for a specified term, write it down. And let a scribe write [it] between you in justice. Let no scribe refuse to write as Allah has taught him. So let him write and let the one who has the obligation dictate. And let him fear Allah, his Lord, and not leave anything out of it.”

The one who is the guarantor between the creditor and the debtor also has its duty to facilitate the paying of debt. The Holy Prophet (upon him peace and blessings) said: “The guarantor is responsible and the debt must be repaid (Ibn Majah, No. 2045). He also said that the best among people is a person who pays his dues within the specified date. Once he took a camel on loan and returned a camel of a

mature age, and said: “Good among you are those who are good in paying off the debt (Muslim, No. 1601). A person who takes loan with the intention to return it, Allah helps him to pay his debt. Maymunah, the wife of the Prophet, took a loan while she had no means to return it. When she was inquired about it, she told the Prophet said: “Whoever takes a loan intending to pay it back, Allah will help him.” (Al Nasai, No. 4687)

If someone does not clear his dues willfully, he has committed the offence of wilful default. The Holy Prophet calls this corrupt practice injustice as follows: “Delay in paying debts by a wealthy person is injustice. So, if your debt is transferred from your debtor to a rich debtor, you should agree” (Al-Bukhari, No. 2288). He warned against the practice of willful default. He used to inquire about debt and would not offer funeral prayer of a dead man in debt. (Ibid, No. 5371) Hence, a public office holder who has committed the offence of willful default would not be forgiven even he is a martyr unless he pays off his dues as the following hadith proves: “All sins of a martyr are forgiven except debt.” (Al Muslim, No. 1886a)

## 6. Assets beyond Means:

The NAB Ordinance 9(a) (v) deals with assets beyond means. It says that a public office holder has committed the offence of corrupt practice “*if he or any of his dependents or benamidars owns, possesses, or has any 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.*”

Sometimes a corrupt person who is in charge of a public office does not involve himself directly in a corrupt practice. He places his money with other people, usually his dependents such as wife, son, and daughter. He may hire some front-men who serve as his con who take care of his money (*benamidar*). Such people close to a public office holder should also be investigated for corruption and they are answerable if their assets are disproportionate to their known sources of income. This practice is another way of consuming illegal money that is prohibited in Islam as Allah the Almighty forbids:

"وَلَا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبَاطِلِ وَتُدْخُلُوا بِهَا إِلَى الْحُكَّامِ لِتَأْكُلُوا فَرِيقًا مِّنْ أَمْوَالِ النَّاسِ بِالْإِثْمِ وَأَنْتُمْ تَعْلَمُونَ" (البقرة 188:2)

“And do not consume one another's wealth unjustly or send it [in bribery] to the rulers in order that [they might aid] you [to] consume a portion of the wealth of the people in sin, while you know [it is unlawful].”

## 7. Arrest of the Accused: A Critical Analysis

Here, it is important to mention that the Chairman NAB has vast powers according to this Ordinance. He may order to arrest a suspect even before his trial. Section 24 (a) of the NAO 1999 reads as: “*The Chairman NAB shall have the power, at any stage of the investigation under this Ordinance, to direct that the accused, if not already arrested, shall be arrested.*”

Whereas in the Islamic law, it is the right of every free citizen to be arrested only after trial. The Holy Qur'an tells that the Prophet Yusuf was sent to prison ignoring evidence in his support. This shows that he went through a trial definitely. The Qur'an says:

"ثُمَّ بَدَأَ لَهُمْ مِن بَعْدِ مَا رَأَوُا الْآيَاتِ لَيْسَ جُنُنُهُ حَتَّىٰ جِيئَ" (يوسف: 35)

“Then it occurred to the men, after they had seen the signs, (that it was best) to imprison him for a time.”

The Qur'an does not support the detention of accused, however, witness can be detained for a short period to testify the witness. It says that two just men should be taken as witnesses when death approaches someone at the time of bequest. Then, it says about these witnesses:

"تَحْبِسُونَهُمَا مِنْ بَعْدِ الصَّلَاةِ فَيُقْسِمَانِ بِاللَّهِ إِنِ ارْتَبْتُمْ" (المائدة 106:5)

“Detain them after the prayer and let them both swear by Allah if you doubt (their testimony).”

The Holy Prophet said that the accused should be given a fair chance to defend him before putting him behind the bars. He sent 'Ali b. Abi Talib to Yemen as judge and instructed him that he should not decide for the claimant till he heard from the other defendant (Abdel Razek, 2012). Once the Prophet (peace be upon him) was delivering a sermon and a man asked him, “O Prophet of God, for what crime have my neighbours been arrested?” He heard the question three times but did not answer. Then he ordered release of his neighbours. It is said that the officer who had detained them was also present in that mosque but was not able to give reasons for detention (Malik, 2021). In these *ahadith*, the Prophet taught the principle of assumption of innocence. According to it, an accused is presumed innocent unless proven guilty. In fact, he stated: “Had men been believed only according to their allegations, some persons would have claimed the blood and properties belonging to others, but the accuser is bound to present solid proof.” (Mahmood, 2021)

'Abd Allah ibn Abi Amir accused a person of theft and wanted to bring him tied up to the Caliph 'Umar. However, 'Umar disapproved it and refused to take action against the suspect without any proof. The Caliph 'Ali also believed that it was unfair to imprison someone for a civil debt matter. Ibn 'Umar went on to say that since the Prophet had forbade arrests based just on suspicion, it was forbidden to hold someone in custody for that reason. According to reports, Abu Yusuf advised Caliph Harun al-Rasheed to direct his governors not to detain anybody upon charge. (Ibid)

The arrest of the accused is also against section 15 of the Constitution of Pakistan 1973, which addresses freedom of movement of every citizen. It reads as: “*Every citizen shall have the right to remain in, and, subject, to any reasonable restriction imposed by law in the public interest, enter and move freely throughout Pakistan and to reside and settle in any part thereof.*” (Article 15, The Constitution of Islamic Republic of Pakistan, 1973).

## 8. Plea Bargaining: A Critical Analysis

Plea bargaining is a negotiation process through which the prosecution and the defence team reach a resolution to drop one or more criminal charges against the defendant without holding a trial. Prosecutors use this tactic to provide defendants concessions in return for their plea deals. As a result of these negotiations, the prosecution typically consents to drop charges against the defendant, lessen accusations against him, prosecute him with one crime while dropping others, or grant the defendant a sentence concession. (Herman, n.d.)

Plea bargaining is included under NAB Ordinance 1999 section 25. The accused parties ask the NAB chairman for a plea under section 25(b) of the National Accountability Ordinance of 1999. The

chairman has the option to approve or reject the application. Upon accepting the application, he forwards the case to the Accountability Court for approval. Under the plea bargain clause of the NAB statute, an accused individual is required to pay 15 percent additional fine of the total embezzled money. In addition to paying that punishment, he loses his employment immediately and is prohibited from running for office for the following ten years if he is a politician.

In fact, plea bargaining is a concept which is unknown to Islamic criminal proceedings. It is not possible in *hudud* crimes. In *qisas*, it is up to the victim or his heirs to agree on compensation instead of punishment. Moreover, blood money (*diyyah*) may be received by the heirs of victim instead of *qisas*. The opinion is divided on plea bargaining in *ta'zir* crimes because punishment of such cases may be decided by rulers or judges. Babaji and Danjuma remark on this point as: "If it is in respect of right of a man, a person or victim may reconcile and forgive the offender, and upon such he may be rewarded for the forgiveness. Thus plea bargaining might be supported under Islamic Law of Crimes in cases of *Qisas* or *Ta'azir* offences but not in case of *Hudud* Offences." (Ibid).

In the opinion of the author, the permissibility of plea bargaining is limited to cases that involve matters among the public. In this way, a person or a firm or financial institution might agree on terms lesser than that is due. But when state wealth is involved, as in cases of public office holders, forgiving a large amount of money will cause a loss in the public treasury. Hence, if a public office holder causes damage to state's wealth, whole amount shall be collected from him. The following verse supports this view:

"وَالَّذِينَ كَسَبُوا السَّيِّئَاتِ جَزَاءُ سَيِّئَةٍ بِمِثْلِهَا وَتَرْهَقُهُمْ ذِلَّةٌ" (يونس: 27)

"And those who have earned evil deeds, the recompense of an evil deed is the like thereof, and humiliating disgrace will cover them."

## 9. Conclusion:

The NAB Ordinance 1999 provides a legal basis to reform the apex anti-corruption body in the country. Additionally, it prevents the abuse and misuse of power and authority and upholds the norms and laws of good governance. Most of its clauses related to corruption and corrupt practices are strongly supported by evidences from the Qur'an, Hadith and practices of *Sahabah* and the prominent Imams of Shari'ah. As this evil of corruption has set roots in the society, the punishments must be severe to mitigate its severity. However, unbridled powers also should not be given to the NAB authorities to prevent their misuse which can be used as a tool to quench personal vendetta. Plea bargaining and arrest of the accused remain two controversial sections of this Ordinance from an Islamic perspective which should be amended.

## References:

- Abdel Razek, A. (2012). *Islam and The foundations of Political Power* (M. Loutfi, Trans.). Edinburgh: Edinburgh University Press.
- Al-Baghawi. (1420). *Ma'alim al-Tanzil* (Vol. 1). Bayrut: Dar Ihya al-Turath al-'Arabi.
- Al-Baydawi. (1999). *Anwar al-Tanzil wa Asrar al Ta'wil* (Vol. 2). Bayrut: Dar Ihya al-Turath al-'Arabi.

- Al-Qurtubi. (1964). *Al-Jami' li Ahkam al-Qur'an* (Vol. 1). Al-Qahirah: Dar al-Kutub al-Misriyyah.
- Al-Qurtubi. (n.d.). *Al-Jami' li Ahkam al-Qur'an* (Vol. 6).
- Al-Tabari. (1999). *Jami' al-Bayan* (Vol. 12). Bayrut: Mu'sasah al-Risalah.
- Al-Tha'labi. (1422). *Al-Kashf wa 'l Bayān* (Vol. 3). Bayrut: Dar Ihya al-Turath al-'Arabi.
- Al-Wahidi. (1999). *Al-Wasit* (Vol. 2). Bayrut: Dar al-Kutub al-'Ilmiyah.
- Arafa, I. (n.d.). Corruption and Bribery in Islamic Law: All Islamic Ideals Being Met in Practices? Cambridge Dictionary. (n.d.). *Corruption*. Retrieved from <https://dictionary.cambridge.org/dictionary/english/corruption>
- Herman, J. (n.d.). *Plea Bargaining*. Publisher.
- Ibn Abi Hatim. (n.d.). *Tafsir Ibn Abi Hatim* (Vol. 4).
- Ibn Hajar. (n.d.). *Fath al-Bari* (Vol. 4). Bayrut: Dar al-Ma'rifah.
- Ibn Jazzi. (1999). *Al-Tashil li 'ulum al-Tanzil* (Vol. 1). Bayrut: Dar al-Arqam.
- Ibn Kathir. (n.d.). *Al-Tafsir al-Qur'an al-'Azim* (Vol. 8). Bayrut: Dar al-Kutub al-'Ilmiyah.
- Lane, E. W. (1863). *Arabic-English Lexicon* (Vol. 1). London: Willams & Norgate.
- Mahmood, M. T. (2021). *Rights of Accused Under International Human Rights, Islam and Domestic Legislation of Pakistan* (Unpublished doctoral dissertation). Selinus University.
- Malik, A. F. (2021, May 25). Pre-Trial Arrest and Detention – Its Place In Islamic Criminal Law and Procedure. *Publication Name*. Retrieved from <https://courtingthelaw.com/2021/05/25/commentary/pre-trial-arrest-and-detention-its-place-in-islamic-criminal-law-and-procedure/>
- Malik. *Al-Muwatta*. (n.d.).
- Muslim. *Al-Sahih*. (n.d.).
- Qureshi, M. I. (2014). *The National Accountability Ordinance, 1999*. Lahore: Manzoor Law Book House.
- Taqi al-Din Nabhani. (2001). *The Islamic State* (Vol. 2, p. 33). Delhi: Milli Publications.