

**Our temperament is close to that of the French rather than the British**

**Islam and accountability of Public Servants**

**By**

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GIVEN our existing system of accountability and the 57-year experience we have had of it, it has not succeeded (all will agree with that). Should we thus not look for something different but yet familiar? Do we not need to look at what the Muslims have done in the past? Looking at the Islamic Caliphate, there was this special branch of justice, Mazalim (nazar fi'l mazalim), which dealt with the infringement of the rights of citizens by public servants.

This was distinct from the other two major branches of justice, namely Diwan-ul-Qazi for ordinary crimes and Siyasat for political crimes against the State. Public servants were the agents of the Caliph and it was the latter's duty to keep them in order and ensure honest, impartial and efficient administration. Cases pertaining to abuse of power by public servants and wrongs done to citizens, as a result came to the courts of Mazalim for investigation and were subject to a disciplinary action by the Caliph or his nominee. The origin of this system dates back to the time of Holy Prophet (May peace be upon Him) who sat as a court of Mazalim and as the CEO to hear complaints himself. The direct implication of this system was that the accountability of the executive rested firmly within the executive and nowhere else. However, the practice had not been institutionalized or well defined until Hazrat Ali's tenure in office. For instance, Hazrat Ali's directions to Malik-e-Ashtar Governor of Egypt, included the following: "Out of your hours of work, fix a time for complaints and for those who want to approach you with their grievances. For his purpose you must public audience for them, and during this audience, for the sake of God, treat them with kindness, courtesy and respect. Do not let your army and police be in the audience hall at such times so that those who have grievances against your government may speak to you freely, unreservedly and without fear. All this is a necessary factor of your rule because I have often heard the Prophet (May peace be upon Him) saying "That nation or government cannot achieve salvation where the rights of the depressed, destitutes and suppressed are not guarded, and where mighty and powerful persons are not forced to accede to these rights' ...." You must take care not to cut yourself off from the public. Do not place a prestige curtain between you and those over whom you rule. Such pretensions and show of pomp and pride are in reality, the manifestations of an inferiority complex and vanity. The result of such an attitude is that you remain ignorant of the conditions of your subjects and actual causes of incidents happening in the State." Abdul Malik bin Marwan was the first Caliph to formally set aside a day for sitting as a court of Mazalim, though he often assigned the

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duties of inquiry and judgment to his Qazi (Judge) who acted for and on his behalf. Thus, it marked the formal establishment of separate courts of Mazalim, either presided over by the Caliph or monarch himself, or by his nominee who was a high official of the State. By the time of the Moghul conquest, it had become customary in the Indo-Pak sub-continent for the monarch to set aside a day for sitting as a court of Mazalim. The Moghul emperors, as history has it, took pains to keep in touch with the people. They devised special methods to ensure that the poor and oppressed were not denied access to the highest.

Reporters were scattered all over the empire and instructed to report lapses on the part of officials. The Moghuls looked upon a proper discharge of their duties as worship. Emperor Akbar, who rules the sub-continent for 50 years, is reported to have said: "For the rulers, worship consists in the dispensation of justice and the improvement of the realm." The Moghuls firmly believed in the well-known and oft-quoted maxim of Muslim statecraft, that "a policy can endure despite disbelief but it cannot last without justice" (Nizam-ul-Mulk). Likewise, a hadith of the Holy Prophet (May peace be upon him) was frequently recited and quoted in which He had said: "A moment spent in the dispensation of justice is better than 70 years of meditation." At one time Emperor Akbar had said: "If I were guilty of an unjust act, I would rise in judgment against myself. What shall I say then of my sons, my kindred and others?" The highest were summoned to answer the complaint even that from a beggar. Akbar's son Jehangir punished Muqarrab Khan on the complaint of a poor old women. The very first order to his reign was to construct the famous 'chain of justice' which anyone seeking the protection of the Emperor against the injustice and highhandedness of any of his public officials, could pull to raise an alarm in the palace. The Emperor regularly appeared (even in illness) in the jharoka-i-darshan and the diwan-i-khas-o-a'am of his palace.

Thus, the image of the Moghul emperor in the popular mind was that of a protector of the weak and an avenger of the persecuted. No wonder, it irked the early British writers to see the Hindus cherishing with nostalgia the memory of their erstwhile Muslim and Moghul rulers. During the 1857 freedom fight against the British, the Hindus had joined hands with the Muslims. We have been seeking guidance from illustrations of our own Islamic culture and heritage. But these pages in history belong to the 8th, 16th and 17th centuries.

How can the shining spirit and example of those times be translated into a language and an idiom that will fit the conditions and compulsions of the 21st century in which we now live? How do the governors of today become the watchdogs of the public rights especially when the burgeoning functions of government make administration the biggest of businesses around? As populations explode, rapid economic and social advancement take faster strides, and the Welfare State ushered in sooner than the awakened social conscience can bear waiting.

In this process, as administration becomes a bigger priority, the opportunities for corruption and misuse of discretion increase.

In Pakistan: the worst features of bureaucracy set in, in such conditions, as we in Pakistan know to our cost the official arrogance and excessive sense of self-importance, a deadening of feelings towards the inconvenience and suffering of the masses, an obsession with the inflexible authority of departmental decisions, irrespective of the injustice and hardship they mean in individual cases; a mania for procedures, precedents and the rules, pre-occupation with departmentalism without ever seeing the government as a whole; inaccessibility and remoteness from the rest of the community; delay in decision making and unwillingness to accept the responsibility, etc. The list is long and painful. These maladies can and should be remedied to a large extent by positive administrative reform measures and a system of effective administrative accountability. But still, an extensive area of administrative action will remain which will call for other special remedies. These are the areas of discretionary powers, which lead to complaints of maladministration involving allegations of unfair discrimination, abuse of authority, oppressive or hard treatment, incompetence or negligence causing loss or damage, all these acts amount to a kind of lawlessness which demands quick and effective administrative justice. Administrative corruption is an additional particular feature in Pakistan, which is responsible for many of the citizens' grievances. Economically advanced countries have developed special organs of administrative justice, such as independent Administrative Courts, the Scandinavian Ombudsman, the English Administrative Tribunals and Parliamentary Commissioner for Administration, the French droit administratif etc. Incidentally, Napoleon had Imam Malik's fiq'h translated into English and apart from 15% personal law, the rest conforms to Islamic principles i.e. the Executive/administration, the Judiciary and the Legislature are kept apart from each other. This means there can be no judicial review of an executive or administrator's decision. Our temperament is closer to that of the French rather than the British.

In Pakistan, in accordance with colonial tradition the superior courts have the power of judicial review, or the power to probe into the exercise of public power by executive authorities, howsoever high, to determine whether they have acted with lawful authority. We are well aware of how successful this is. However, apart from the chronic delays (which could well amount to justice denied), the expense and the cumbersome procedures in the dispensation of justice in the ordinary courts, there are numerous areas of grievance against the exercise of public authority which fall outside the scope of these courts. Here, now organs of administrative justice are needed-administrative courts and administrative tribunals independent of the judiciary. No such formal agencies to deal with complaints against the abuse of administrative authority, discretion, delays and unfair discrimination exist. The office of the Ombudsman cannot fulfill this task as he has no authority to have his decisions enforced. The old Vigilance Officers Scheme was introduced in various government departments over 30 years ago to check delays, corrupt practices and irregularities within the departments. The scheme had many defects at the very outset; though there is no evidence if it has had any impact or if it led to any improvement. The "Governor's Inspection Team" idea was originated at the inception of the First Martial Law regime, and the first ever team was constituted nearly 40 years ago. Among several other functions, it was also required to look into complaints of corruption against senior officers. Although a "Complaints Section" was established, the number of subsequent

enquiries was limited. This system thus hardly got an opportunity of dealing with citizens grievances. The experience has in fact been disappointing. Apart from the above, we have had several other instruments to ensure good governance such as the Efficiency & Discipline Rules etc. Lately NAB has also come into existence. It's approach is largely penal or curative as it ignores prevention and that is what is required to introduce sustainable good governance. The continuing expansion of the executive power of government is an unavoidable consequence of development needs. Therefore, it is necessary to recognize that the larger the power conferred on public authorities, the greater will be the need to provide adequate institutional safeguards against their improper use or abuse. An average citizen is oppressed, bewildered and helpless. The government, without being unjust to any one should be on his side and should be his side and be the principal defender in line with the principles of Islamic statecraft and practice. The State must set up statutory and formal institutional organs for redressing the wrongs of the humbles citizens. Article 216 of our Interim Constitution of 1972 did precisely this. Unfortunately, it has never been put into practice. This is what is required as it will ensure complete separation of the Executive from the Legislative and Judiciary, but what is to be remembered is that our present dispensation is not working.