

How to contain, not eliminate corruption
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IN an earlier article in this journal, a couple of months ago, I had brought out the necessity to set up institutional arrangements sympathetic to our temperament and made brief mention of Article 216 of the 1972 Interim Constitution of the IRP of Pakistan.

It is reproduced below:

Administrative courts and Tribunals:

216. (1) Notwithstanding anything hereinbefore contained, the Federal Legislature may by Act establish one or more Administrative Courts or Tribunals to exercise exclusive jurisdiction in respect of – a) Matters relating to the terms and conditions of persons in the service of Pakistan, including the award of penalties and punishments; b) Matters relating to the imposition, levy and collection of any tax, duty, cess or impost; c) Matters relating to claims arising from tortuous action of Government, any person in the service of Pakistan, any local or other authority empowered by law to levy any tax or cess and any servant of such authority acting in the discharge of his duties and such servant; d) Matters relating to industrial and labour disputes ; and e) Matters relating to the acquisition, administration and disposal of any property which is deemed to be evacuee property or enemy property under any law.

(2) Where any Administrative Court or Tribunal is established under clause (1), no other Court, including the Supreme Court and the High Courts, shall grant an injunction, make any order or entertain any proceedings in respect of any matter to which the jurisdiction of such Administrative Court or Tribunal extends”.

This needs to be read with what the courts have had to say on several occasions, one such reference was published in Daily Dawn, around three year ago, wherein the Chief Justice of Lahore High Court had observed that matters of administrative nature should not come up to the Judiciary. One of the results of our present methodology is that we stress restructuring, forgetting that the mother of all restructurings ie the setting up of One-Unit failed. It failed inn the writers opinion, not on account of political opposition but because the work methods or systems & procedures could not cope with such a high degree of centralization of authority in the Lahore Secretariat of what now constitutes as whole of Pakistan. Political opposition was a result of bad governance arising out of discontinuities explained later below. It is another matter that the Punjab Secretariat is now larger than what it was in One-Unit days! We have dutifully followed Parkinson’s first law that work expands to fill the time available for its completion followed by expenditure rises to meet income.

President Musharraf is on record to have stated that corruption at the strategic level no longer exists, but it is very much there at the tactical level. It may be added our macro economic indicators are very good but there is failure at the micro level. We can make excellent plans, but fail in their implementation. Our wholesaling is good but our problems at the retail level cannot deal with inflation.

To be noted herein is that very few individuals are involved in the formulation of strategy or the macro problems or in planning or in the wholesaling.

Countless people are involved in tactics, micro economics, implementation or retailing. Without doubt it is at the lowest levels where the physical transactions take place that makes or breaks the reputation of the system. This means there is something seriously missing in the administrative value chain.

The problem, therefore, is that why does this discontinuity persist? It arises out of judicial and audit accountability, both of which are also basically discontinuous in nature. Both come into play after a sin of commission, never before. If there is any futurity it can be said it is only bail before arrest (which has a limited time frame); whereas the decision maker has to give judgments every day concerning the future and should be encouraged to work on the approach that the approximately correct decision at the right time is far better than the absolutely correct at the wrong time, you can correct yourself as you go along.

After all continuity is the hall mark of the job of an executive/administrator. Our accountability process positively discourages this.

The administrative process, since it is continuous, the question arises how the law should be administered with an open mind considering both equity and avoiding delays. This vital aspect is usually ignored as it concerns "lowly" procedures, which are best left to the clerical staff to work out.

They were not worked out in One-Unit days. The lowly procedures constitute the tactics/micros/implementation/retailing.

These include the processes at the level where the physical transactions take place i.e where the actual work gets accomplished (or otherwise) in pursuance of the overall objectives. The process or the systems and procedures (the organics) must be defined in all their glorious detail (what with the computer and binary); this will reduce considerably but not eliminate discretion.

There are well established ways of doing so by mapping. Again there also has to be a mechanism to ensure continuous updating otherwise it will be like using a 1920 map of Lahore to move from Badshahi Mosque to House No 63 in Block Y Street 5 in Defence Housing Lahore Cantt, you will never get there.

This implies the use of the relevant management techniques for definition of the “lowlies” at the lower administrative levels. Senior administrators fight shy of this essential donkey work.

Keeping the Systems & Procedures (S&P) up to date is not easy. It has to be budgeted for as a necessary revenue maintenance expenditure to keep the “capital expenditure” spent in setting up the S&Ps (software) relevant. When we do not have an adequate word in Urdu for “maintenance” how can the concept be understood much less the activity – whether preventive, predictive or even break down! The administration everywhere is having to develop new areas or redevelop the old and should ensure the tax-payers money gives reasonable value for resources utilized. But what is there to ensure this? It is not for good reason that the overall policy/guide for conducting the work or government is entitled the Rules of Business yet things are done in a thoroughly unbusiness-like fashion. Our approach is generally to think in terms of curbing executive discretionary powers resulting in the neglect of generating good executive methodology. We need to pay attention to the “lowlies” which when defined in ultimate detail equates with binary which is what the computer can digest.

It is not difficult to fathom why all these problems arise, it is on account of our penchant for judicial or audit accountability applied to administrative decisions.

The approach is: if the body (evidence) is not found the murder (crime) *WAS NOT COMMITTED*. We have become experts of camouflaging the evidence/records. Since we have laws of Anglo-Saxon lineage a quick look at how the English got about it could be of help.

Going back to about 1200 A.C. England exported black faced sheep wool for manufacture of cloth to Europe because they did not have the technology. When disputes arose the common law courts in England it was found that the bald application of the law lead to severe injustices. The main reason was that there were no precedents.

Technology had caused all the trouble. Under these circumstances both the judges and lawyers did not know how to cope. Judicial activism is best avoided as it may lead to extreme consequences. (A good example is the application of the doctrine of necessity which has led to severe problems in our country. Incidentally the late Chief Justice Munir in his book “From Jinnah to Zia” admits his error. We are yet dealing with the terrible damage inflicted on us).

Problems arose, involving assessments for duties and excise which meant pricing of various qualities of wood etc. These cases were taken away from the common law courts by the Chancellor who using his commonsense got rid of due process and concentrated on equity and morality.

Since this worked out better than expected, after about 200 years of this experiment the Chancellor’s court was absorbed in their legal system, now known as the Chancery Division of the courts of law. With now almost 800 years of experience of dealing with

cases with no precedent the English know how to get about it. Our courts do not, at least our 59 years experience proves it. Napoleon was not as patient. In his short tenure as a brilliant administrator (later a failed militarist), ensured complete separation of the judiciary, administration and legislature from each other. A Council of State (Conseil d'Etat) and Administrative Courts (Droit Administratif) were set up ensuring accountability of executive resided within the executive as it does in any private or public company or MNC or in any Army, Navy or Air Force the world over. This has worked very well. This is also in accordance with our Islamic heritage.

Such courts have both the staff and the budget to reconstitute the evidence if missing (our judicial courts cannot do so).

This approach leads to emphasis over a period of time on prevention rather than cure encouraging quicker decision making. Delays, most of the time, are a direct reflection of corrupt practices.

The methodology is different e.g. to cure malaria a pill can do the trick for an individual, but to prevent malaria one may have to examine the water drainage and swerage arrangements and the competence of the health department to do its job effectively amongst many other considerations.

Please observe the malaria infected individual is cured of an earlier contracted disease (audit and legal approach) whereas prevention is forward looking (administrators approach).

Further, the curative approach never enlightens us on how to adequately define the "lowlies" or help to keep them up to date, but inflicts individual punishment through the side effects of drugs or a prison sentence.

Prevention is concerned with systems. The preventive approach, over a period of time removes a lot of administrative loose jointedness as it includes specific training of administrators or executives on-the-job to help them perform their functions more productively i.e a value added approach.

Developing countries that are doing well in Information Technology (IT), have always started at its low end i.e the tactical/micro/implementation/rental level where all the steps to accomplish results have been well defined.

The results are, therefore, acceptable because there is no discontinuity between the strategy, macro, planning, wholesale aspects and delivery (the level where physical transactions actually occur). Over a period of time it is possible to graduate to the higher levels of IT.

We need to accept thinking i.e concepts determine the nature and conduct of personality. If you think you are weak, you become weak.

As you think so will you feel. Symptoms are our friends and should be constructively used. Courage to break with the past is not easy as a lot of the historical baggage, that we have incrementally accumulated, needs to be jettisoned.

Creative imagination provides true perception of current status and lays the basis for its accurate definition,(mapping!) which hopefully is converted into the sword of resolution to march forward where do we go from here? The need is to build up a critical mass of those who are prepared to think on the lines brought out above so that a self-sustaining process is generated.

The alternative is to work within our present system which will ensure the yielding of dividends at the end of the day.

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