

GOVERNANCE OR THE LACK OF IT*
by Masood Hasan

Societies are always faced with problems that do need resolution through adjudication in one form or another.

A correspondent in a newspaper has made a case for setting up an executive magistracy because of changes brought about through technology. The recommendation made means moving back to the Deputy Commissioner who combined both judicial and magisterial powers ie to a regime, which was set up by our colonial masters to take good paternal care of their subjects. This system worked well when land revenue generated 90% of the income for government. Not so now, where much less than 10% is generated through land taxes!

Since the 1960s, development, rather the introduction of the fruits of technology ie the increasing use of knowledge has made nonsense of both time and distance. In short, the citizenry is better informed, even if the illiterate moving in one fell swoop from the spoken to the audiovisual word. It is true that law and order has suffered and this essential hygiene factor is the foundation that permits, but does not generate, economic activity. There is need to understand that we must make use of history to avoid repeating errors. History tells us that encouraging the use of the status quo has always failed. That is why no change equals no leadership. Change demands leadership without question. This means external forces, over which we have no control; such as pressures exerted by the large multinationals and banks on their governments, leads to foreign policies that have disastrous outcomes in the world, just look around! This means internal dislocations are forced upon us, which further complicates the situation. As if adapting to technology is easy. It is affecting our way of life whether we like it or not.

It is true that the “devolution” of power NRB-wise has not achieved what it set out to be done. The reason is obvious. The necessary homework was simply not done. If the military anywhere were asked to induct a “new weapon system” without first satisfying itself through trials that it works along with considerations involving logistics, maintenance, consumables availability, retraining of operatives and several others. In this case NRB should have done in for an educational order by identifying a rural and urban district in each province and trying out the new deal. Not that it was not suggested to them! They would have found out quickly enough where the shoe pinches. So what can be done now when the nazim’s et al find it impossible to handle emergencies arising out of earthquakes, blasphemy or reaction to police excesses and others?

It has not been possible to hold individuals accountable for administrative indiscretions because in our system to establish guilt, given due legal process with all its intricacies--- the need for hard evidence and all that goes with it---can hardly be said to have worked successfully over the past 59 years. Should we not go back to the ideas developed in early Islam? After all it did form the basis for the renaissance or progress in the West leading

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later, to physical colonization which has now graduated to economic colonization by ensuring a "level" playground for nations to function even though it is tilted against the developing world. The contradiction we can see is: the USA blocking UAE's proposal run a number of their ports or the French reacting to Mittals offer to acquire a steel organization.

Islam laid the basis of social justice and paved the way to ensuring wealth did not circulate amongst the wealthy. It ensured it circulated from the top to the bottom and the higher the velocity the better. What are the discontinuities that prevent this? We are aware of our macroeconomics, our planning, our strategies and our wholesaling are all very good. But we are equally aware our microeconomics, implementation, tactics and retailing do not work successfully. What prevents the translation of good ideas at the top into success at the ground level where the physical transactions, which makes or breaks us---take place? It is nothing else but ubiquitous corruption!

We are aware that societies are always faced with problems that do need resolution through adjudication in one form or another. The Holy Prophet (PBUH) never sat as Chief Justice nor as Auditor General. He presided as the Chief Executive Officer and gave judgments. His example was followed by the rightly guided caliphs and it was the fifth Omayyad caliph Abdul Malik bin Marwan who institutionalized the complaints court (nazar fil mazalim). Nearer home the Mughal kings also did the same. Jehangir's first act when he became king was to install the chain of justice. A poor woman used it; as a result the highly placed Muqarrab Khan was punished. It is clear accountability of the executive resided within the executive. This approach is reflected in private and public limited companies including multinationals and all armies, navies and air forces the world over. Decisions by their CEOs are acted upon and in matters administrative and there is no recourse to a court of law.

Because of our British administrative inheritance it needs to be pointed out that when England started exporting black faced sheep's wool to Europe in the 1200s---as they did not have the technology to manufacture cloth---disputes arose which went to their common law courts. Because there were no precedents, the judges and lawyers were involved in absurd verdicts. Fortunately the Chancellor pulled out these cases with unjust verdicts from the common law courts, dispensed with due process, applied his grey matter to ensure equity and morality. After 200 years this system was absorbed into their legal system and now these courts (of equity) are called the Chancery Division of their courts of law. We do not have the luxury of so much time. Napoleon when stranded in Egypt after Lord Nelson sank his fleet in Aboukir Bay, studied Islam. He had Imam Malik's fiqh translated into French. Later, Administrative Courts were set up in France whose jurisdiction was kept independent of the judicial. This also effectively insulated the judiciary, legislature and the executive from each other. This system, which should be ours works very well in other European countries, where adopted there is no judicial review of executive decisions. Since Courts need to be set up as per Article 216 of the Interim Constitution of the Islamic Republic of Pakistan (1972) which yet needs to see the light of day.

Now how does this relate to the severe administrative problems we face today? This methodology forces movement away from punishment (curative/penal measures) which directly punishes individuals (not the system). It moves on to prevention which is forward looking and deals with setting up systems culminating in operating procedures at the ground level that ensure what is worked out at the top is implemented at the ground level. Such courts are lodged within the executive and have their appeal hierarchy. These courts have professionals with them with the resources to recreate evidence, which many a time is spirited away. Such facilities are not available with the judiciary and should not be.

In this fashion the bureaucrat is aware that there is an agency that has the authority to receive complaints from the public, acquire or even recreate the evidence from government departments and award damages where necessary. The state is the defendant! With the setting up of this Islamic institution positive results can be achieved within a very short time. Of course the corrupt bureaucrat will not want it, neither the lawyers would want it because it will reduce the incidence of litigation and the politicians who want things done willy-nilly will also not want it as it will be more difficult to get the bureaucrat to do the wrong things. But who wants it? The common citizen, the taxpayer, of the country who has no say in such matters and is groaning under increasing inflation. The moment it is possible to hold a government functionary accountable, even the police can be tamed, in spite of the poor recruitment in large numbers in their ranks in the 1990s. Many have moved up in their hierarchy. If we do not move in this direction now our tomorrows will continue to ensure history repeats itself. Whenever the civil bureaucracy is at their wit's end and by their own faults they lay the basis for martial laws.

Let us see how the recently set up Commission (a familiar word isn't it?) on Government Reforms succeeds in its quest towards transparency. It will require bags of luck to succeed. Our administrative landscape is littered with the debris of several investigations made in the past, all with good intent but all were failures. We need to consider a strategy that looks at the initial change as the transient (project) phase to be handled differently from the routine. The problems of each are very different. If we cannot learn our failures at least let us learn from the successes of other some going back 1400 years!

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