

Administrative Accountability*
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Redress of a citizen's grievance against a decision made by a government functionary can be obtained through the courts. And who is not aware that this procedure is cumbersome. The excessive discretion enjoyed by Pakistani officers.

In government processes administrative discipline is a requirement. When this discipline is thrown out of the window, corruption rears its head and gets progressively worse. Pakistan has been awarded the silver medal in this field. It appears we are well placed to go for the gold!

In a factory production manager is never put in charge of quality control for obvious reasons. The quality controller reports to top-most management so that if preventive action is required, it is taken before the system breaks down, as it may not only involve the production department but the purchase and stock control departments also. Likewise, when we consider our armed forces, the chief do not wait for matters to go wrong and then takes action. The chief takes preventive action because he has the power to do so within his organization.

We need to understand the difference between prevention and cure. In order to treat an individual case of malaria the clinical/curative approach is simple: to dose the person with quinine or its synthetic derivatives. However, over a period of time malarial parasites can become immune to curative measures. If we act preventively it may mean looking into the flood control system, water supply and drainage systems, the organization or disorganization of the health departments and so forth. An ounce of prevention is certainly worth a pound of cure.

Our courts of law have to wait for something to go wrong and then be involved in, say, embezzlement or murder cases. Further, if the body isn't found, the murder was not committed. The law, therefore, has to wait for a sin of commission before coming into action. Court actions deal with past occurrences.

Administrators or managers when they make decision invariably concern the future, hence their approach is not the same as that of a court of law. They are aware that their only accountability is judicial, hence they ensure the evidence is not there by the time an investigation takes place or do things in a 100% correct procedural fashion but wrongs are committed. The courts are then helpless. However, we need to be careful about the innovative process in courts. Courts should restrict themselves to precedents and make small adjustments at a time. If this does not happen, just consider what happened to Pakistan when the innovative "law of necessity" was introduced.

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In administration the task is not to apply a formula but to decide, in accordance with the procedure, issues on a case-to-case basis and not fixed, inflexible rule can never substitute for a sound basis for administrative-cum-commercial issues in the decision-making process.

Our provisional constitution of 1972 laid the basis of Administrative Courts. Article 216 is reproduced below:

- 1) Notwithstanding anything herein before 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 aware 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 as 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 other or entertain any proceedings in respect of any matter to which the jurisdiction of such Administrative Courts or Tribunal extends.

Most unfortunately the Article never made it into our current Constitution. Given the complete failure to cope with corruption, we must expect more of the same. A qualitatively different approach is required.

It needs to be understood that there has been a tremendous expansion over the last few years in the range, complexity and power of the state and this process will most surely continue. It devolves upon the civil servant to man and run the administrative process so as to ensure smooth and free flow of activities, provided that in the exercise of administrative discretion there should be no arbitrariness or insolent use of the powers so delegated to him.

The present position regarding redress of a citizen's grievance against a decision made by a government functionary is to obtain justice through the courts. And who is not aware that this procedure is cumbersome, justice is delayed (hence denied) and expensive. This amounts to saying that the excessive discretion enjoyed by Pakistani officers leaves no

speedy or effective remedy for the aggrieved citizen. It does not amount to delegation of authority but abdication. This is one main reason for the rising corruption.

It is also clear that whatever attempts have been made in the past to improve efficiency have failed, if not on account of the fact that it has never been appreciated that modifications of procedures or rules are continuously required to be made from time to time to suit changed circumstances. The reason lies in the incompetence of the human instrument is devised to provide citizens with a safety valve must also have a built-in mechanism to sense change and measure it, to enable corrective action – the exercise of control – in good time. And what is more important is to keep going through this cycle again and again. The maintenance of this cyclical process is the secret of good governance. There can be no let-up, the world is moving far too fast to permit the luxury of taking things easy and making attempts at evaluation every third of fifth year or even annually.

Everybody knows how all attempts to achieve desirable results have failed – eg the Government Servants (Conduct) Rules, the Anti-Corruption Rules, the Establishment Manuals, the system of internal inspections by departmental heads, the Vigilance Officers Scheme, the External Inspection Teams of one kind or another, not to talk of commission and task forces have all achieved precious little. Even the setting up of Organization and Methods (O&M) Units with a view to promoting efficiency in government business have proved unsuccessful.

What have other countries done in an effort to redress citizen's grievances. "The Swedish constitution (1809) created the office of the Justetieto-Ombudsman. Later, Finland (1919), Denmark (1954-55), and Norway (1953) introduced the same, though there are some differences in their activities. Other countries have also considered or gone in for this administrative safety valve – New Zealand is one such country.

Usually an ombudsman is generally elected by parliament for a fixed tenure and his annual report is submitted to parliament. The ombudsman gives no orders but can prosecute a delinquent official. He can initiate inquiries himself or look into matters brought up to him and has unlimited access to files. He advises administrators to give reasons for decisions. Generally, whatever administrative remedies for relief exist must be exhausted before the ombudsman steps in. The ombudsman listens to complaints brought to him by government servants, also concerning such matters as the services tribunal is concerned with here.

However, because the ombudsman cannot always redress grievances arising out of harsh and unreasonable exercise of administrative discretion, the need for administrative courts arises. These courts must be a part of the executive and not the judiciary. Whilst the judiciary is concerned with the proper implementation of procedures, it usually does not concern itself with the content of an administrative decision. Administrative courts are not handicapped by any jurisdictional or procedural niceties.

(To be concluded) /Admin Account