

Corruption and its Containment*
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CAN ways and means for inflicting accountability for wrongs done in the past be the same for the future? After all, what was is and what is will be. We need to change the "is" otherwise the same cycle will continue to be repeated.

What must be understood is that punishment for (historical) wrong-doing is meant to target an individual wrongdoer which also means it does nothing to improve the process which permitted the wrong-doing in the first instance. This leads to two different methodologies in attacking corruption.

To take the first, we are witnessing the parlous state of our economics, rightly described by the chief executive as "worse than I thought", which has come about as a result of incredible levels of corruption through exploitation of the citizens by a handful of avaricious individuals who have always had a feudal mind-set. The attack, therefore, is legally based. This means evidence has to be diligently garnered, analyzed, evaluated and then presented in a court of law. Since the "case for" is never established unless the "case against" is heard, the accused presents the other side. Procedures, ie due process, must be inflexibly followed to avoid technical legal default. Judicial activism better be in low key otherwise we may be in for another doctrine of necessity (which is the root cause of the present-day dysfunction).

Let us presume that the "case for" is upheld and the individual is punished. What next, because what is, will be.

Looking to the future to ensure that crimes yet to be committed will not be committed means we cannot adopt a legal approach to ensure prevention. The law is good enough for the sins of commission, but it is helpless in attacking the sins of omission. The sins of omission in the administrative or executive decision-not-making mode are far worse than those of commission. An examination of administrative delays will reveal the harm done to the country---it forms the absolute bedrock for corruption---whether withholding a decision is by a corrupt individual (for obvious reasons) or by an honest individual (for blinkered rule-following). No man-made law, no man-made system, no man-made procedures can ever expect to embrace the plethora of permutations of exceptional

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circumstances which rear its head with unexpected frequency. Witness the “anomalies” that have to be straightened out after the rules are defined consequent upon our hardy perennial, the Finance Acts.

A new way has to be found because the system that has not delivered since 1947 should not be expected to do so by 2047. It is usual, given our way of thinking, to accept as a panacea whatever the advanced/developed world thrusts on us. This is a result of the long drawn-out hangover of colonialism synonymous to a feudal outlook. We appear to have conveniently forgotten that the renaissance built upon the knowledge gathered, expanded and applied during the early days of Islam, when conclusions were acceptable only when subject to confirmed observation. This meant applying one’s mind through examination of phenomena and then arriving at a conclusion.

It was this, the empirical or inductive method, that led to progress. When this approach atrophied, thinking became inflexible, hence ossified, and the torch of learning moved over to southern Europe (Renaissance), then to northern Europe (Reformation) then to North America (Pilgrim Fathers) and thence to Japan (per kind favour of Deming).

Islamic concepts, based on reason, were accepted (though not necessarily acknowledged) by Europe. On the individual plane Napoleon had Imam Malik’s fiqh translated into French and it is said 85 per cent to French Law is consistent with it, 15 per cent personal law is completely different.

What was it that was pushed forward in France? It was the concept that accountability of the administrative brand must reside within the executive. To that end a council of state was set up as the apex body to adjudicate on matters administrative without recourse to judicial courts. This is similar to the Muslim code whose functioning was called Nazar-ul-Mazalim. Our Wafaqi Mohtasib (Ombudsman) has no powers to enforce his decision and so the two cannot be compared.

A US Panel of Technology report underlined that externalized assessment “separates authority from responsibility while internalized assessment tends to re-define responsibility without separating it from authority.... Any scheme devised for improving the assessment and management of technological change should make maximum possible use of the internal decision-making process and should proceed by making these processes more sensitive rather than by imposing external constraints, but it should

recognize the necessity for some external assessment and supervision to make the system function properly”.

The message is clear that in large systems effective controls are always internal, particularly when harnessing technology. Further, when the executive or administrator realizes the brand of accountability that is applicable, his reaction is intelligent and will conform to the dictum: if the body is not found, the crime was not committed. Administrative courts with independent jurisdiction can finance (judicial courts can never) an investigation to reconstruct the evidence because of having budgets to do so.

A way out, which will not be welcome to few, is to adopt Article 216 of our provisional constitution 1972 which lays the basis for Islamic administrative courts as in Scandinavia and France. The article laid down:

- “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 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 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 order or entertain any proceedings in respect of any matter to which the jurisdiction of such Administrative Court or Tribunals extends.

Ways and means must be devised to provide a civil/commercial overlay to military discipline. This calls for some quick conversion training, now non-existent, similar to when a pilot moves over from one type of aircraft to another.

A bold and thoroughly Islamic concept working so well in several countries of the developed world needs immediate introduction in Pakistan, to ensure that what is will not be.

/Corruption