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Administrative Improvements*
by Masood Hasan

A lot has been written on administrative dysfunction, particularly corruption. The Chief Justice, as ported in newspapers, has raised the bogey of the doctrine of necessity, ie judicial activism at its extreme. It is necessary to point out that approaches that deal with wrongs that have been committed in the past must not indulge in U-turns in their judgments. The doctrine of necessity on which the late CJ Munir in his book Jinnah to Zia, says he erred---is the cause of so many consequential ills we suffer from today. The law is like a 500,000 ton supertanker that has to change direction; the radius it has to generate/navigate is not like a motor car making a left turn in a small radius of a few meters. A tanker would generate a huge curve and alter direction slowly. Likewise with the inertia of precedent the law must alter slowly. Similarly in audit quick about-turns result in creative accounting (audit activism), made manifest when the World Bank sometime ago refused to digest figures thrown up to them. This means, if we are looking for speedier means of containing corruption, do not make quick alterations either in judicial or accounting procedures. This hits at the grass roots of law by abrogating due process. We must not short-circuit the norms of bringing evidence to light of day.

Most of the corruption being looked into is bound up with the systems and procedures which have been deliberately framed with loopholes large enough for an elephant to wallow through---so what can a judicial court do? It has no means of making investigations itself for it is not in its charter. Each country has adapted its methodology to its development over the centuries to take care of administrative dysfunction. In the UK starting with common law then the Queens Bench and other judicial courts such as the Admiralty. The concerned specialist Chancery court, with the centuries-old inertia of precedent, swings into action and is prepared to distinguish between man defined justice and equity. Equity is what we are looking for and it may have no precedent.

But what of the future? Surely it needs different treatment, otherwise we will repeat the past. After all today is yesterday's tomorrow and tomorrow's yesterday. So a qualitative change or a new method of attack is required. By passing strategies are best, not to batter ones head against a brick wall.

The way to prevent corruption is to by pass the courts of law by setting up Administrative Courts whose jurisdiction is independent of them. It takes the dictum of independence of the Legislature, Judiciary and the Executive to its logical conclusion in that no appeals from the executive would go to a judicial court. It means accountability of the executive would reside within the executive as it does in the armed forces. T his natural approach in Islam was recognized by an administrative genius but military failure called Napoleon.

The dire need of this new approach is borne out by what the Secretary-General Finance had to say at the Pakistan Administrative Staff College a few days ago. That the debt trap of the country has come about through the failure of identifying good projects. Now can

* The Sun International---March 20, 2000

any one be held accountable for this in of omission by the courts of law, or NAB? Certainly not. But this is wrong, very wrong. The need, therefore, is to improve our systems preventively so that the cult of the individual is downgraded. Given our present conditions this can only be done through Administrative Court *a la* Article 216 of our provisional Constitution of 1972. This will help fulfill our Chief Executive's objective of having first appointed those on merit but ensuring continuance is on performance.

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