

Administrative Accountability and NRB*
by Masood Hasan

The National Reconstruction Bureau (NRB) has invited suggestions for specific improvements in its advertised proposed plan on devolution. It needs to be understood that for better governance administrative accountability is of fundamental relevance. Administrative accountability is oriented towards our colonial judicial inheritance which should be understood to handle it. Results can be achieved by trying not to what has been done earlier.

Having seen martial laws and some not so martial, it is obvious that there is a common thread leading up to their imposition and that is maladministration resulting in unconstitutional overthrow of governments. However, all is sanctified in due course. This time it was not only bad governance plus loot and plunder on a massive scale that forced the change which echoes what Yahya Khan said in August 1969 to "rehabilitate the administration which was never at a lower ebb in our country".

Whatever is done to help create wealth the right way and to distribute it in an equally right way whether it concerns the federal, provincial, district or village, the ministries of finance, defence production or semi-autonomous institutions including WAPDA, Railways, PIA, PTCL or the *patwar khana*, police station, hospital---it all depends on good governance ie doing the right things efficiently (it is also possible to do the wrong things efficiently). If the relationship between the three administrative pillars ie the institutions, the human component and its systems/procedures are properly laid out with adequate checks and balances there is chance of sustainability.

Sustainability also means to look back, for even if we refuse to learn from our history we should at least learn from the successes of other. The Chief Justice in a TV appearance on March 24 said that the courts will provide "fair and equal justice".

Why fair? Why equal? Is justice by itself insufficient? Of course it is because laws are man-made and can never take care of all situations. Having inherited British legal tradition let us look at it. In the 1200s British Common Law courts found it difficult to meet new complex situations as interpretation of man-made laws led to inequity. Hence in the 1300s and 1400s the Chancellor dealt with legalities not found by precedent; he had powers with a minimum of procedural (due process) formalities.

In the 1600s equity was recognized in the UK as the law of the land administered through the Chancery Courts (common law courts are now the Queen's bench apart from specialty courts of probate, divorce and admiralty). This means the UK has nearly 600 years of experience in dispensing equity---not justice (man drafted) through the Chancery Courts. In Pakistan, Chief Justice Munir went overboard---because there was no precedent---introducing the concept of the "doctrine of necessity" which he admitted in his declining years was not quite the right thing.

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The moderating influence of precedent (inertia) was missing, the 600 years of judgments concerning cases not defined in existing laws ie equity were equally missing. This is why the UK with increasing intervention of technology in human life and its development is absorbed more easily into their system.

Look at France, Napoleon had Muslim fiqh translated into French and quite logically ensured the independence of each of the three pillars of the state ie the legislature, the judiciary and the executive. This means no appeals from the executive went to the judicial courts. Administrative Courts which ensured accountability of the executive remained within the executive (as it is in the military establishments and in all non-government civil organizations the world over).

External accountability of the executive through the judicial courts, auditor general or public accounts committee simply does not work. That is why France and other European countries were able to progress economically better than the UK, in short through better governance/administration through internal accountability.

When the district governments come into being they will be a brand new product involving unpredictable problems similar to what is experienced when a complex weapon system is manufactured the first time. That is why we go in for prototypes, then to mass production.

It would be in the fitness of things if an urban and rural district in each province were made prototypes to iron out teething problems because one of the three pillars ie the systems/procedures (the organics) analogous to the nervous and blood supply will not have been fashioned to be sympathetic to the institutions' decision-making structure (the mechanistic). Systems/procedures are not easy to draft---they appear in the form of manuals containing Standard Operating Procedures (SOPs) which need updating all the time (maintenance/desilting) so as to adjust to change.

Military thinking is good to an extent ie when the going gets tough, the tough get going, but from a systems/procedures point of view it has to be properly directioned and only after defining the objectives (measures and targets) can strategies be defined which have to have sympathetic systems/procedures at the operative/tactical level. Then and only then will the administrative process improve with maintainability. If this is difficult to accept, let me add that oversimplification throws the baby out with the bath water.

Of course the determined can prove me wrong by successfully implementing in one year in only one government department what Malaysia has done to several government organizations ie have obtained ISO 9000 certification which had made for operational transparency improving the administrative life support organics (systems/procedures)!

The delegation of authority or devolution of powers (administratively) is a reality. Many years ago when I was connected with NIPA, which had the status of a semi-authority vested their Board of Governors to frame rules. However, pending rules framing it was necessary to use some ready framework for day-to-day functioning. Hence the easiest thing to do was to induct provincial government procedures.

Once this happened the notorious *status quo* had a field day. The same will happen in the proposed District Administration because of the necessity of following the easy way out. Further the District Coordination Officer (DCO) is to provide staff supports to the Mayors. The DCO is the line in charge of Finance, Planning and Budgeting. Staff Officers should be like quality controllers in an organization, have no line authority but having access to all data/information keeping their boss informed, so that he can perform his only job ie making decisions based on available information. What will happen is the DCO on account of having line authority will be able to "condition" the upward movement of information.

Attempts were made to do this to me when as a private sector "entrepreneurial manager" I took over as a Federal Secretary. My subordinates (giving them the bet of intentions) decided in their own wisdom what information I needed to make my decisions to discharge my responsibilities upwards. It took tremendous effort on my part to bypass the system and ensure I decided at my own level what information was required for me to discharge my responsibilities upwards. To this end I had staff officers who were not in a position to order matters unless I authorized them to do so.

Since coordination is an economic function the need is to ensure the lateral movement of information follows properly designed channels (which must be maintained). This will come not by having an Ombudsman with legal antecedents because the does not have the authority to enforce his decisions/judgments. To follow the entrepreneurial managerial pattern calls for accountability which must reside within the executive or go in for a few centuries of gaining experience the UK way!

Over a period of time the judicial courts will be swamped with suits (litigation is our strong point) and due process must be observed because the inertia of legal precedent must not be thrown overboard. It would be like getting a million ton supertanker to make a U-turn. It will break up, whereas it is no great shakes for a two-wheeler. The Ombudsman no longer is an Ombudsman the moment he has a budget co conduct investigations to generate evidence.

There will be a hotch potch of investigations into "wrongs" committed by an individual. The system or process will not be improved. Why no do what makes sense ie make the executive truly independent, with its hierarchy of Administrative Coutts whose jurisdiction is independent of the judiciary?

The development of Information Technology starting with manual systems as the base makes sense but it will not work the way NRB says it will because there is no legal or authorized way of taking care of the sins of omission. Accountability to be preventive is prospective. To cure malaria maybe a few pills of a drug will work. But to prevent malaria, the flood control system, the water supply and drainage system and the health department may need investigation, for that no anti-malarial curative will ever work which is the judicial approach.

The NRB devolution plan is certainly comprehensive in nature but can be very materially improved from the administrative point of view as both our judicial system and the Ombudsman's organization have not succeeded to date. To expect a turnabout in their ways of functioning to deliver the goods in good time is a big question mark.

/Administrative Accountability