

Of accountability and matters of concern*
by Masood Hasan

Attempts to 'control' the executive by outside bodies just cannot and has never worked, says MASOOD HASAN. Control, used in its good sense, of the executive, can only be through the executive.

If, for example, by some miracle the law were applied as required to trucks guilty of overloading the apple cart economy of the country would be grievously upset. Hence, we need to make a distinction between curative action and preventive methods.

Curative action is taken after the happening of an event, by dealing with historical evidence. Both judicial and audit accountability are backward looking (no denigration intended) hence their approach must be procedural. No country should have an innovative judiciary or auditors knowing the onerous nature of their responsibilities. The maxim: "If the body isn't found the murder was not committed" is a corollary to their methodology. Any manager/executive/administrator leaving no hard evidence behind can rarely be found guilty and attract penal action even though you, me and the lamp post know exactly what has happened. Martial Law also has a curative nature, but just look at the wilderness of routine sand it has led us into. Our creative faculties have indeed been dulled.

A result of what has been pointed out above, matters are allowed to ferment for too long. A penal mono-approach is bound to fail for no fault of the concerned institutions with the authority to inflict punishment. To expect adequate productivity with the sword of action dangling, is bound to demotivate all concerned.

Another result is the cherished security the government servant wishes to have cannot be his. A balance sheet tells you what you've got, on the left hand side (British convention) and where it's gone, on the right hand side and both totals are the same. In an analogous fashion the provision of security (one side of the coin) requires to be balanced by accountability on the other side. But what brand of accountability should it be? Are we satisfied or happy with the shenanigans of the past forty-three years? Of course not, so why not think through something and get out of the blessed rut that we are so firmly set in. Adaptation to technological developments demands this.

Neither the law nor audit can plan or budget for all the permutations and combinations of variables (circumstances) and both find it difficult to appreciate that the administrative is always basing decisions made on incomplete evidence, invariably affecting the future course of action. A system that has no use of time, to be sure, has no use for functional competence. Time does not seem to be of much significance when the sins of commission are being examined. The procedurals must reign supreme even though it is commonly said and uncommonly understood that justice delayed is justice denied. And what of the sins of omission which may be a hundred times worse! We need to accept the

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first and foremost requirement is not to concentrate on the negative aspects of corruption because the emphasis will be entirely curative resulting in the ineffective whipping spectacles of Martial Law. After all what is wrong with Government Servants (efficiency and discipline) Rules, the Government Servant (conduct) Rules, the Anti-Corruption Rules, the Establishment Manuals, the System of Internal Inspections, the Vigilance Officers Scheme, the External Inspection Teams, the use of O&M Teams and so on and so forth? We place our "faith" in the judicial correctness of following (imperfect) rules and procedures that may bear no relevance to the problems at hand. Judicial correctness in interpreting administrative regulations many times, adds up to administrative nonsense, precisely on account of inadequate faulty *antediluvian* procedures. Hence the negative penal emphasis needs to be altered to an emphasis on improving productivity, that is output in a unit of time, and this is firmly rooted in a preventive approach.

It is also true that attempts to "control" the executive by outside bodies just cannot and has never worked. However, we are aware that misuse of the lower executive by the higher executive has really been "effective". What's sauce for the goose is sauce for the gander, so why not ensure that such demonstrated effectiveness is made to work positively rather than negatively!

Control, used in its good sense, of the executive can ultimately only be through the executive. Quality control is never the responsibility of the production (line) manager or executive. This support function operates in parallel reporting ultimately to the same Chief Executive Officer as the production manager does. A well organized organisation benefits from this function; just look at Japan who used Demings approach (developed out of Shewharts work) after he was turned down in his own country! In a coals back to Newcastle fashion the USA is now adopting "Japanese" quality management which is firmly rooted in not allowing the wrong things to raise their head.

If we look at the Administrative process of government in a few countries---France, Turkey and Sweden it will be found that the institution of Administrative Courts have helped in their day to day functioning by providing security to honest officers along with its concomitant: Administrative Accountability. While these courts have power to punish their emphasis is to ensure service to the citizen.

The apex of the administrative courts is a Council of State. In Pakistan it would be Constituted with the Prime Minister as its head with say, the Ministers of Justice, Finance & Planning, Industries and Production---as members. The Head of the Administrative Courts would be part of this set up lodged in the Executive. Justice or should I use the world Equity will be truly meaningful. And wonder of wonders our provisional constitution of 1972 Article 216 (sic) reads as follows:

"(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 punishment;

- (b) matters relating to the imposition, levy and collection of any tax, duty, cess or impost;
 - (c) matters relating to claims arising from tortious 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 the law.
- (2) Where any administrative court or tribunal is established under Clause (1), no other court, including the Supreme Court and 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 tribunal extends”.

So the original thinking has already been made. What is needed is to make this a part of our Constitution. Naturally, there will be a howls of protest---but from whom can it be expected? Firstly, from lawyers because it will reduce their need, because the head of an administrative court could deal with the two parties across the table. Secondly, from the corrupt who are happy to wallow in a fluid state of affairs. The state would be the defendant making justice cheap for the citizen. Satisfaction would be subjective and its jurisprudence or system, creative. It would be able to commission investigations to find the ever elusive “body”. Over a period of time it would prevent misuse of discretion. A lush green pasture, unfenced, is open provocation to hungry bovines to have their fill. A fence will ensure that only few of the more energetic will jump over. In a like fashion if administrative fences are put in place to ensure that none but a few of the more energetic can vault over---problems are decreased considerably. Such protection includes new methods of training and performance evaluation. Better promotion policies. The introduction of the missing vital support functions that all large organisations the world over require. Ensuring the organisational structure is sympathetic to obtaining decisions for results, that this mechanistic device (you can only transmit force through a structure) is matched on the organic side by relevant up-to-date systems and procedures (currently usually missing). All this is related to the dictates of technology adaptation, ie self-reliance.

Thus this approach will improve the assimilation or digestive process for technology resulting in higher organizational efficiencies, currently on the downgrade. Another result is that the specialist/generalist controversy is neatly by-passed! Of course for any major system change (merely changing the rifle in any army anywhere in the world could take say, 7 years or more) requires that a transitional plan be worked out. Such an approach is also required when introducing a computer to an organisation to ensure it works productively and not merely as an extension to a typewriter or hand calculator. Even this would need several years to assimilate, involving training, modifications in the structure and day to day operating procedures It is also of interest to note when an administrator

has to make decisions quickly there is increasing likelihood of better decisions being made because matters, to translate the Urdu, are "hot hot". Administrative courts would hand out decisions quickly---over a period of time commanding greater and greater respect. The experience of other countries confirms this.

It needs to be pointed out that this in no way duplicates the function of an Ombudsman who would report to the legislature. In Sweden there are both Ombudsmen and Administrative Courts.

An assessment made by the US Panel on Technology a long time ago perceptively stated:

"Implicit in much of this report has been the distinction between internalized assessment (ie assessment built into the incentive structure, the decision making process in question) and externalized assessment (ie assessment conducted by an institution deliberately separated from the front line decision-maker). There has been general agreement in the panel that internalized assessment whenever it can be applied, is far preferable essentially because self regulating close-loop systems are best able to adjust to net variations within the system itself. Externalized assessment separates authority from responsibility while internalised assessment tends to redefine responsibility without separating it from authority (and further). However, self-regulating systems may have to be substituted by externalized open-loop systems. Thus although there are advantages in being on the scene, proximity and commitment tend to generate blind spots. In sum, 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 improving external constrains, but it should recognize the necessity for some external assessment and supervision to make the system function properly, the effort should be made to modify goals and criteria of success without dictating the means of achieving them."

The above statement also helps to give another view which indicates clearly the requirement for internal corrective preventive evaluations as it helps in adapting to technological change. It does not eliminate the need for some external assessments, in any case ways and means can be found to work out this detail. After all look at our "achievements" in administrative control over the years, who do they satisfy.

From time to time we hear of the lack of suitability of parliamentary democracy and that a presidential system is more suited to us. This sort of thinking arises out of frustrations for various reasons. However, it is clear, to be sure that one big input to such frustrations is the failure of the administrative *process*. Helping to strengthen the same will help parliamentary democracy to develop and ultimately find firm roots.

It is of interesting to note that T&T recently dug a ditch which caused a massive traffic jam which took six hours to unscramble. Can a court of law given judgement on who is responsible. It cannot. Even if it did, so what? May be some junior functionary by no stretch of imagination gets punished! Administrative courts are our only solution to preventing such occurrences from happening.

Let us use our faculties of observation and reasoning and then arrive at conclusions, for this methodology has been one of the greatest achievements of Islam, ie to popularizing the empirical, scientific or inductive method fourteen centuries ago. Laisa lil insaani illa ma sa-aa 53:39.

/Of accountability