

Historical Trends in the Process of Accountability in Pakistan

Dr. Inayatullah

1. Due to dependence on state and its power to corrupt itself and society, accountability is seen to be a process which state and government should conduct through legal process. Consequently other several non-static, political and societal mechanisms of accountability have been neglected.

2. The rulers that introduce accountability invariably ensure that they themselves escape accountability. Example from history include PRODA, EBDO, two laws passed in last days of Bhutto era, two Presidential orders by Ziaul Haq, Ordinance of caretaker' of 1996 and present Ehtasab Act. They excluded them or their period of rule from the scope of law. Z. A. Bhutto's laws excluded PM's and CMs' excluding past actions; Ziaul Haq started accountability from 1971 to 1977 period and PM and CMs. Present Act; excludes period of 1985 to 1990.

3. The laws have historically been used for political purposes for political victimisation and gain political advantage. examples Khuro three times; Ayub's Ebdo cut off date 1966 December. Ishaq Khan and present Ehtesab Act.

4. Process lacks institutionalisation, that is , continuity and autonomy; executive initiated accountability, it investigated alleged crimes to be punished. Ordinance of Caretaker first time appointed Ehtesab Commissioner granting him the power to initiate and determine the culpability of the alleged crime. The present Act takes away this power from the Commissioner and places back in the partisan executive hands.

5. Accountability by PTV; 1990 and now.

II. Mechanism to strengthen Accountability;

State Centred

1. Broadening the scope of accountability in terms of period starting with emergence of the country.
2. Giving administrative, financial autonomy to the Ehtesab Commissioner and enhancing his power; disbanding ehtesab cell.
3. Strengthening parliamentary Committees to investigate corruption;
4. Judicial activism;
5. political parties debarring members known for corruption from party offices and tickets.
6. holding regular and fair elections in which electorate deprives a ruling party indulging in corruption to return to power.

Society centred

1. Public given the right to institute cases against corruption before the EC.
2. Establishing and strengthening NGOs concerned with eradication of corruption; TI, Ehtesab committee
3. enhancing the capacity of the press, to act as a neutral watchdog of political system.

Culture Centred

Abuse of power deeply rooted in human culture and psyche. Therefore no society is free from political corruption including the so-called "developed societies" and democratic. Indeed, they have been able to curtail the level of such corruption through different means which most Third World countries have yet to develop. In Pakistan this cultural weakness got aggravated as our all powerful groups and classes are becoming more power and greed driven due to various reasons including globalisation and privatisation of economy and culture, breakdown of traditional mechanism of probity. Hence the need for

a radical transformation of human consciousness in the direction of breakdown of narrow and parochial identities including centeredness on self.

50 Years of Accountability in Pakistan

Dr. Inayatullah

From late forties up to present nine laws were made to establish accountability in Pakistan. They include PRODA made in 1949 (repealed by Constituent Assembly in 1954), PODO and EBDO of Ayub era, two laws introduced by first PPP government in 1972, two laws created by Ziaul Haq government, Ehtesab Ordinance introduced by caretakers under President Leghari and finally the Ehtesab Act of 1997. With marginal variations these laws have at least six common characteristics reflecting continuity of trends in accountability and their failure to institutionalise fair and even accountability in the country.

First they often emerged from the state system itself to meet the needs of the rulers to deal with political opponents whom they could not politically defeat or try under ordinary law of the land.

While lives of people, intelligentsia were deeply affected by state produced corruption, there was no public pressure from them for accountability. The public was indifferent towards accountability as it perceived the state an alien, remote and powerful entity whom citizen could not hold accountable. However, since mid nineties a change has occurred in the attitude of urban middle classes of Punjab and urban Sindh, particularly lawyers, teachers, traders, and journalists which now demand effective and fair accountability of rulers. This has led to the introduction of two Accountability Ordinances of 1996, 1997 and Ehtesab Act of 1997. However, these laws have fallen short of the demand of public for evenhanded and inclusive accountability of all power holders.

Second, both rulers and public have historically viewed accountability to be mainly a legal process to be initiated by the state. Only recently the significance of other mechanisms of accountability such as debate in parliamentary committees, investigation

and articulation of government irregularities by opposition political parties, investigative reporting in press, and citizen's fora and judicial activism have been realised. These methods have yet to become part of the political system and culture of society.

Democratic process of accountability through electoral process also did not take root to provide the people an opportunity to vote out the corrupt governments. No elections were held during first decade of civilian rule.

Often governments were removed either through martial laws or dismissal by governor generals or presidents, the citizens did not get an opportunity to remove an irresponsible and corrupt government by voting it out. Even when a government held election, as happened in 1977, widespread electoral malpractices created the belief that it could not be removed through elections. Allegedly corrupt politicians were often dismissed from above.

Third the rulers who introduced accountability ensured that they themselves escaped accountability when in power or even when out of power. Besides excluding themselves from net of accountability, they also provided that other powerful groups in the state who possibly could hold them accountable are also protected from accountability. Governor Generals, Governors of the provinces, presidents, military leaders including those who abrogated constitutions and judiciary have been beyond the reach of these laws, The later two were excluded on the argument that they have their internal mechanism of accountability without taking into account the bias and ineffectiveness of these mechanism. Those who used and introduced ? PRODA and EBDO were not accountable for their actions including their acts of dismissal of governments, dismissal of assemblies and abrogation of constitution. Laws introduced by Prime Minister Z.A. Bhutto excluded from their scope the Prime Minister, the four chief ministers of the provinces (what was the cut off period). Two presidential orders introduced by Gen. Ziaul Haq in 1977 included the former PM and chief minister and were applicable from the period of 1971 absolving the two previous military rulers from accountability. General himself was accountable to none during the period of martial law and in exchange for lifting the Martial Law he secured the

8th amendment to the Constitution which indemnified all his actions, however illegal and arbitrary, during the martial law period. The Ehtesab Ordinance of 1996, excluded the powerful president from accountability and on his urging, the first draft of the Ordinance excluded the loan defaulters from accountability. The then Law Minister who resigned on this exclusion thought that amendment was made to benefit a particular political party. The Ehtsab Act by giving a cut off point of 1990 also excluded from its scope the period of 1985 to 1988 when former Prime Minister Nawaz Sharif was the chief minister of Punjab.

A fourth characteristic of these laws is that they were used to victimise political opponents and recalcitrant bureaucrats who were near to the previous rulers and not necessarily for illegal acts and misdeeds. and take political advantage from such victimisations. Under EBDO Ayub Khan disqualified more than four thousand politicians up to 31 December, 1966 which enabled him to bar them to participate in 1965 presidential elections. With Suharawardy and many other senior politicians disqualified opposition found it hard to find an established and active politician who could oppose Ayub in 1965 elections. Gen. Ziaul Haq directed the heat of his accountability Orders exclusively against PPP leaders either to punish them or win them over. Ghulam Ishaq Khan after dismissing Benazir Bhutto government in 1990 used accountability laws against her and her PPP colleagues during the period of election which affected their capacity to effectively contest them. Benazir Bhutto government elected in 1993 used these laws to harass and demoralise leaders of PML-N. One of them was imprisoned under a false case. The PML-N government used the Ehtesab Act to pay back PPP in the same coin. Thus vicious cycle of political victimisation and vendetta remains uninterrupted. Significantly when the rulers opponents were subdued and were willing to found victim of their accountability could serve their political interest they pardoned them and their alleged misdeeds forgotten.

Fifth, the accountability process lacks institutionalisation, that is it lacks continuity and autonomy; executive initiated accountability, it investigated alleged crimes to be punished. Under PRODA only the General who was to investigated for corruption. After the

court determined a misdeed he decided if the person should be punished and the extent of such punishment. The 1997 Ordinance first time appointed Ehtesab Commissioner granting him the power to initiate and determine the culpability of the alleged crime. The Ehtesab Act took away this power from the Commissioner and placed back in the partisan executive hands.

Sixth, violating the fundamental precept of rule of law that every one is innocent unless proved guilty through due process of law all Pakistani rulers have used public media to establish the guilt of the person subjected to accountability laws before he or she was proven guilty. Before the emergence of PTV, only Radio Pakistan served this purpose. Now both radio and PTV are used for this purpose. With widespread diffusion of television, and radio the media trials are held more frequently with deadly effect both on the legal process and the public.

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REFERENCES

9 July, 1949. Public Representative Offices Disqualification Act (PRODA) passed. Constituent Assembly repealed PRODA on 20 September, 1954.

Article 213 of the 1956 Constitution said "Neither the President nor the Governor of a Province shall be answerable to any court for the exercise of powers and performance of duties of his office."

21 March, 1959. Public Office (Disqualification) Order (PODO) promulgated.

7 August, 1959. Elective Bodies (Disqualification) Ordinance (EBDO) promulgated. Under this law, 92 senior politicians who held offices at national and provincial levels and more than 2,000 lesser politicians who were members of the assemblies, Municipalities, District Boards or other elected bodies were disqualified to take part in politics.

12 March, 1972. Martial Law Regulation called The Removal From Civil Service (Special Provisions) Regulation, 1972 promulgated. 1300 Civil Servants dismissed under this Regulation.

Article 248 of the 1973 Constitution states "The President, a Governor, the Prime Minister, a Federal Minister, a Minister of State, the Chief Minister and Provincial minister shall not be answerable to any Court. ... No process for the arrest or imprisonment of the President or Governor shall issue from any Court during his term of office. ... No criminal proceedings whatsoever shall be instituted or continued against the President or Governor in any Court during his term of office."

Holders of Representative Office (Prevention of Misconduct) Act IV of 1977 and Parliament and Provincial Assemblies (Disqualification for Membership) Act V of 1977 enacted (exact date unknown. Probably enacted soon before 1977 elections).

25 November. Holders of Representative Office (Punishment for Misconduct) Order No. 16 of 1977 and the Parliament and Provincial Assemblies (Disqualification from Membership) Order No. 17 of 1977 promulgated.

18 November, 1996. President introduced Ehtesab (Accountability) Ordinance.

30 May, 1997. Senate adopted the Accountability Bill. National Assembly passed it on May 29. The law is applicable on public office holders since November 6, 1990.