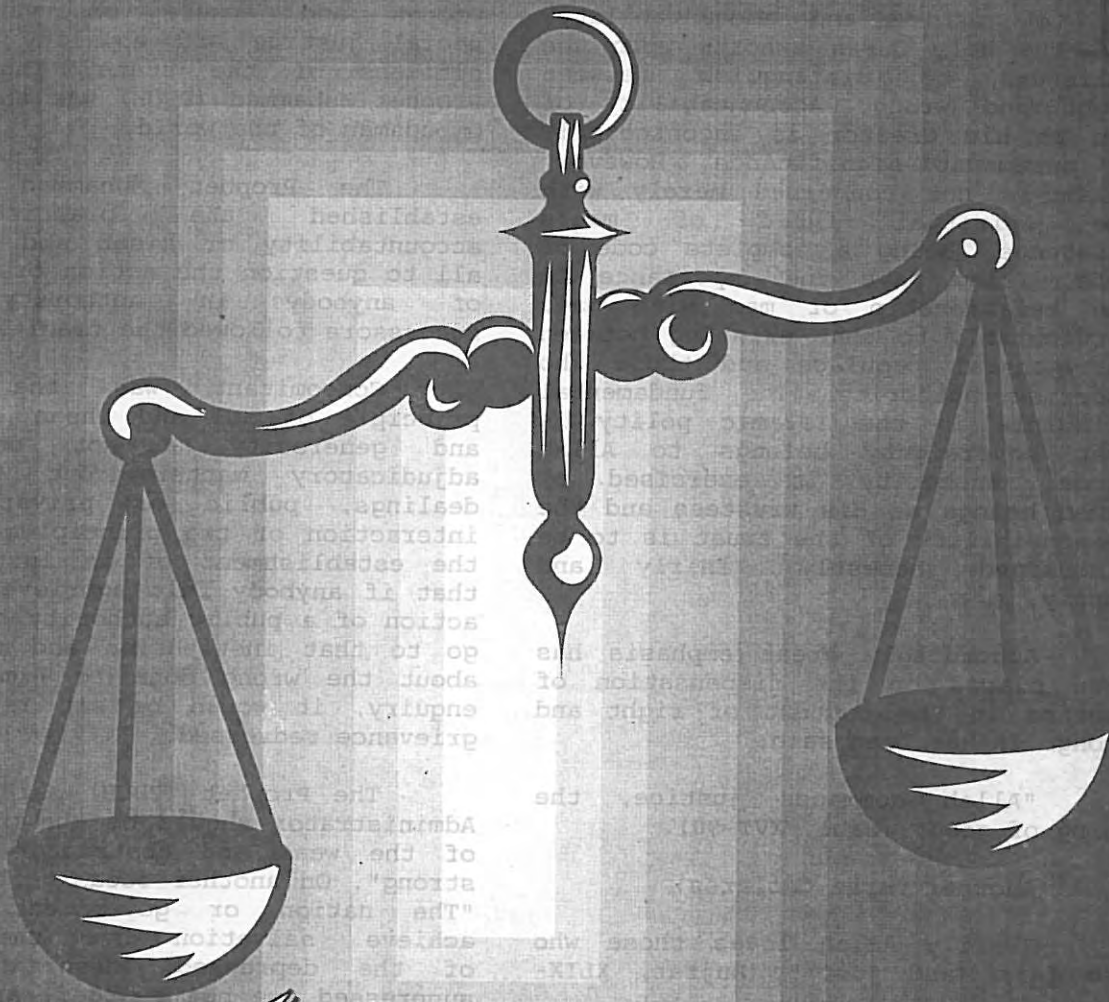


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W A F A Q I
M O H T A S I B

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WAFAQI MOHTASIB

Islam accords pivotal importance to justice and accountability. The Holy Quran exhorts upon the believers to distinguish between right and wrong. Accountability of man to his Creator is incontestably of paramount significance. However, Islam is not concerned merely with the spiritual facet of man's existence. Being a complete code of life, Islam pays due importance to the relationship of man with man, particularly to that existing between the general populace and those who exercise authority. The fundamental principle in the Islamic polity is that sovereignty belongs to Allah alone. Authority is exercised by human beings as His trustees and the responsibility of the trust is to be discharged honestly, fairly and justly.

Accordingly great emphasis has been placed on the dispensation of justice in the context of right and wrong. It has been said:

"Allah commands justice, the doing of good" (Nahl, XVI-90).

Another verse declares:

"Verily Allah loves those who are fair (and just)" (Hujrat, XLIX-9).

The Quranic injunctions about justice are binding on every public functionary in the Islamic State. And the higher one is placed, the greater is the level of responsibility, and more rigorous the standard of accountability.

At the Dawn of Islam, the Holy Quran laid special emphasis on accountability here and hereafter. The Holy Prophet (PBUH) himself acted as a Mohtasib. He used to inspect market places to check prices and

quality of goods, rectify moral wrongs and ensure observance of social justice and equality to the citizens of the state. Thus Holy Prophet Muhammad (PBUH) was the first Ombudsman of the world.

The Prophet Muhammad (PBUH) established the practice of accountability or hisab and allowed all to question the action or conduct of anybody in authority. His successors followed the tradition.

Concomitant was the other principle of adl and ihsan, justice and generosity - not only in adjudicatory matters but in all dealings, public or private. The interaction of two principles led to the establishment of an institution that if anybody felt aggrieved of an action of a public authority he could go to that institution and complain about the wrong done to him. After enquiry, it would be set right and grievance redressed.

The Prophet (PBUH) said: "The Administrator should be the protector of the weak and obstructor of the strong". On another occasion he said, "The nation or government cannot achieve salvation where the rights of the depressed, destitutes and suppressed are not guarded, and where mighty and powerful persons are not forced to accede to these rights."

The first Caliph Hazrat Abu Bakr (May Allah be pleased with him), in his khutba (address) on the assumption of office, said, "The weakest amongst you will be the strongest before me till I have restored to him his rights and the strongest will be the weakest in my eyes till I have extracted from him what he forcibly wrested from others."

A typical example of accountability and answerability by the ruler is that of the Second Khalifa (Caliph) of Islam Hazrat Umar Bin Khattab (RA). He had proclaimed it throughout the Muslim world that whoever suffered oppression at the hands of any public functionary may approach him during the Hajj season. He had likewise ordered his Governors to meet him on this occasion. The attitude continued during the era of the caliphs.

The era of Caliphs was followed by the reign of the Umayyads and of the Abbasids (upto 847 AD). It was marked by foreign influences, specially from the Byzantines and the Sasanids. In North Africa, Roman influence was predominant. Nevertheless, the institution of special office to examine grievances was preserved. With increasing frequency independent judges were entrusted with this function. It was also in the era of the Abbasids (750-847 AD) that the complaint handling agencies called Diwan-ul-Mazalim were established. Diwan means an office, a secretariat of an official agency.

The function of the Diwan-ul-Mazalim was to examine complaints brought by the public against government officials. This institution was headed by a senior judge responsible for examining these grievances. The practice of entrusting high judges with the function of handling complaints has been retained to the present day. Under Turkish rule it was the Quadi-ul-Qudat, the Judge of Judges, who exercised this office. In Saudi Arabia today the members of the "Board of Grievances" enjoy judicial privileges and in fact, have the status of supreme court judges.

An interesting fact in this context is that the institution of hisbah and its function was also adopted by the Crusaders in Jerusalem. They even used the Arabic word Muhtasib although they spelled it Mathessep. The institution of Quadi-al-Qudat of Turkey influenced the establishment of the Ombudsman's Institution in Sweden in 1809.

The twentieth century has been termed "the century of the common man. Our own Constitution contains a resolve of the nation to ensure equality before law, to observe principles of social justice, to strive for and to attain an egalitarian society through a new order. It has been remarked that whatever action is taken by Governments to improve or reorganise their administrations it always results in increases in the size and power of the executive. Thus, while the administration has created a place for itself in every corner and recess of day to day life of human beings, the common man has not been allowed comparable access to the administration, and for this reason a unique one-sided relationship of "Little Man and Big government" has come into existence. To bridge this inequality, to reduce the inaccessibility, to inform and to educate the citizen and alleviate his sufferings at the hands of the administration, to evoke responsiveness and attention and to make the administration more humane, institutions like that of the ombudsman are multiplying the world over. The informality, the cheapness, the rapidity of action, the flexibility, the ability to enforce new policy, the freedom from elaborate rules of procedure and of evidence, all these make this institution an ideal one for the common man to seek relief against administrative excess and to get his grievances, small or great, redressed without expending time or money. It is an institution of the present and the future.

The principal objective for establishing the institution of Wafaqi Mohtasib (Ombudsman) is to ensure dispensation of free, fair, transparent and prompt justice in matter arising out of the interaction of the citizen with the state in administrative matters. The process simultaneously involves enforcement of administrative accountability. By setting up this organisation a new mechanism has been sought to be institutionalised for diagnosing, investigating, rectifying and

redressing injustice done to a person through maladministration. The basic principle is Ubi ius ibi remedium i.e., where there is a right there is a remedy.

The concept of Ombudsman was picked up across the world by New Zealand which appointed the first Ombudsman in 1962. In Europe, the office was established in the United Kingdom under the Parliamentary Commissioner Act of 1967.

The institution of Ombudsman is now accepted as an important and very useful part of a democratic society. Institutions of Ombudsmen with different nomenclature are functioning around the world at various levels. These operate over Federal Provincial, Local or Municipal areas. These are also established for special purposes like Hospitals, Education, Prisons, Press etc.

The Ombudsman institution has developed rapidly all over the world. In 1983, only 27 countries had the Ombudsman Office whereas presently over 75 countries have an Ombudsman or an Ombudsman-like institution at the national or at regional/local level.

The Institution of Ombudsman finds its first serious mention in Pakistan in the interim Constitution of 1972 which provides for the appointment of Ombudsman both at Federal and Provincial levels. However, in the constitution of 1973, the subject is mentioned only in the Federal Legislative List. Ombudsman can be appointed in the Provinces by enactments by the provincial legislatures.

The institution of Wafaqi Mohtasib (Ombudsman) was established under the Establishment of the Office of Wafaqi Mohtasib (Ombudsman) Order, 1983 (President's Order No.1 of 1983) also indicated under Statutory Provision. Wafaqi Mohtasib (Federal Ombudsman) is appointed by the President and has a tenure of 4 years. The first Federal Ombudsman took oath of the office in August, 1983. The institution of Wafaqi

Mohtasib (Federal Ombudsman) has its headquarters at Islamabad, the capital of the country and has four Regional Offices. These are located at the Provincial headquarters, i.e. Lahore, Karachi, Peshawar and Quetta.

The salient features of the Institution as enunciated in the said Order are:-

- Independence from the Executive Authority
- Easy accessibility to the complainants
- Informality of procedure and
- Totally free service to the citizens.

The Wafaqi Mohtasib (Ombudsman) is charged with the responsibilities to investigate matters of maladministration defined in the Law as below:-

- ♦ a decision, process, recommendation, act of omission or commission which:
 - is contrary to law, rules or regulations or is a departure from established practice or procedure, unless it is bona fide and for valid reasons; or
 - is perverse, arbitrary or unreasonable, unjust, biased, oppressive, or discriminatory;
 - is based on irrelevant grounds; or
 - involves the exercise of powers or the failure or refusal to do so, for corrupt or improper motives, such as, bribery, jobbery, favouritism, nepotism and administrative excesses; and
- ♦ neglect, inattention, delay, incompetence, inefficiency, and ineptitude, in the administration or discharge of duties and responsibilities.

The most populous province of Punjab and Sindh now have Provincial Ombudsman. The Institution of Ombudsman also exists in Azad Jammu and Kashmir. It is hoped that the provinces of North West Frontier and Balochistan will also follow suit.

PERFORMANCE

Since the inception of Wafaqi Mohtasib's Office in August, 1983 upto 31st August, 1997, 557,010 cases were received in the Secretariat. Out of these 392,762 were against the agencies belonging the Federal government whereas remaining 164,248 grievances related to Provincial matters. During the same period relief was provided in 151,216 cases. 13,555 cases were under various stages of inquisition/inquiry of investigation in the Secretariat. It is to be noted that the complaint handling system has a broad spectrum since relief provided in one case has a multiplier effect and may be instrumental for relief to hundreds and thousands of other people also. Generally the proportion of relief comes to 75% as far as total complaints have been dealt so far is concerned and this ratio is increasing year to year. For the current year the proportion of relief has increased to 87% of the total cases disposed of after detailed investigation.

The year 1996 marks the 14th year of the establishment of Ombudsman Institution in Pakistan. First Asian Ombudsman Conference in Islamabad was held on 15th and 16th April, 1996. Eighteen delegations from various Asian countries, as well as the Ombudsman of Sudan, and the Northern Territories of Australia, attended the Conference. The significant achievement of the Conference was the formation of the Asian Ombudsman Association. The delegates chose the Ombudsman of Pakistan as the first Chairman, and Islamabad as the Secretariate of the Association. The formation of this Association would lead to the exchange of information and facilitate the learning from each others' experience for relieving the suffering of the citizens.

On first of January 1996, there were 14,403 cases pending for disposal. 42,178 complaints were received during the year under report upto 31st of December, 1996. All pending cases (14,403) were disposed of during the year under report upto 31st December, 1996. Out of the cases filed during the year 1996, 29,741 were disposed of making the total disposal to 44,144. Pending cases on 1st of January, 1997 were 12,437.

The detailed statistics including year to year disposal of cases is given in table 15.

Table 15 COMPLAINTS HANDLED BY WAFaqI MOHTASIB

Year	Complaints received						Disposal			
	Total	Fed. Agen.	Prov. Agen.	Not Entertained	Entertained	Brought Forward	Total	Relief	Reject	Total
1983	7812	3922	3890	5871	1941		1941	334	253	58
		50	50	75	25			57	43	30
1984	38030	18509	19521	31633	6397	1354	7751	2048	1942	3990
		49	51	83	17			51	49	51
1985	34937	19546	15391	27518	7419	3761	11180	3733	2472	6205
		56	44	79	21			60	40	56
1986	42744	26413	16331	33723	9021	4975	13996	5040	3331	8371
		62	38	79	21			60	40	60
1987	44323	28415	15908	33396	10927	5625	16552	7337	3925	11262
		64	36	75	25			65	35	68
1988	30007	20030	9977	20406	9601	5290	14891	6771	3333	10104
		67	33	68	32			67	33	68
1989	26634	19808	6826	14897	11737	4778	16524	7540	3602	11142
		74	26	56	44			68	32	67
1990	31489	24114	7375	18505	12984	5328	18366	8349	3361	11710
		77	23	59	41			71	29	64
1991	49044	34914	14130	28343	20701	6990	27691	11722	3325	15047
		71	29	58	42			78	22	54
1992	52299	38515	13784	28744	23555	12644	36199	16042	4525	20567
		74	26	55	45			78	22	57
1993	44578	33048	11530	23644	20934	15632	36566	16249	4450	20699
		74	26	53	47			81	19	60
1994	44244	33419	10825	23888	20356	15867	36223	17510	4211	21721
		76	24	54	46			81	19	60
1995	39921	33175	6746	21477	18444	14843	33287	16057	2827	18884
		83	17	54	46			85	15	57
1996	42178	34642	7536	21985	20193	14403	34596	18961	3198	22159
		82	18	52	48			86	14	64
1997	28770	24292	4478	11961	16809	12437	29246	13523	2215	15738
		82	18	52	48			86	14	54
Total	557010	392762	164248	345991	211019			151216	46970	198186
		71	29	62	38			76	24	94

Note: Second line figures are percentages

Source: Wafaqi Mohtasib, Islamabad