



Chapter VI

CONTROLLING MECHANISMS OF GOVERNMENTAL POWERS

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Introduction

- ❑ **concentration of tripartite powers**
- ❑ **Threat to individuals' rights**
- ❑ **Separation of power and check and balance**
- ❑ **Separation of power cannot control Ad. Agencies**
- ❑ Ad law emerged to ***regulate the powers*** of administrative agencies (theoretical perspectives)
- ❑ So
- ❑ hence, we must devise necessary controlling mechanisms

The Need for Controlling the Powers of Government

- ❑ **Concentration** of the tripartite powers + *their discretionary nature* → **inevitable threat on individual freedom and liberty.**
- ❑ separation of power and the concept of check and balance is developed as a response to the arbitrary exercise of power
- ❑ But, ***separation of power cannot control Ad. agencies***
- ❑ Therefore we need to have other controlling mechanisms
- ❑ To ***protect individuals' rights and liberties***, ensure ***efficient and proper exercise*** of governmental power

Controlling Mechanisms

- ❑ there are **different controlling mechanisms**
- ❑ ***supplement each other*** in checking the powers of administrative agencies.
- ❑ Some of the commonly used controlling mechanisms are:
 1. Internal administrative review by superior officials;
 2. Parliamentary control;
 3. Political control;
 4. External administrative review by tribunals;
 5. External scrutiny and recommendations by Ombudsmen and other watchdog institutions and
 6. Judicial control
 7. Mass Media

Why we need many controlling mechanisms ?

- ❑ Such diversification is justified by **inadequacies of each mechanism**
- ❑ **Hence, parallel application of all is required to shield individuals interest against arbitrary exercise of power**
- ❑ More over it would promote the following benefits:
 - Improves the **quality, efficiency and effectiveness of government decision making**
 - Enables **people to test the legality and merits of decisions** that affect them;
 - Provides mechanisms for ensuring that the government acts within its lawful powers;
 - Provides mechanisms for **achieving justice in individual cases** and
 - Contributes to the accountability system for government decision-making.

Internal control

- ❑ Are set ***within the organizational structure*** of Agencies.
- ❑ the process by which **original agency decisions are reviewed on their merits** within the responsible agency
- ❑ could be **formal** (established in the parent act) or **informal**
- ❑ Gives opportunity for agencies **to reconsider their decisions and rectify the mistakes**, if any

External control

- ❑ By ***authorized bodies that are found outside*** the structure of such agencies.
- ❑ Consists of different bodies including the **parliament**, **executive**, tribunals and others

Parliamentary/legislative control

- ❑ Controls both the **allocation** and the **manner of exercise** of agencies power
- ❑ **Allocation**: determines ***what power should be delegated*** to a certain agency and to ***what extent***
- ❖ Manner of exercise:
 - ❑ Provides **procedures** which need to be observed
 - ❑ ***Laying the instrument before parliament***
(Britain and USA)
 - ❑ **Conduct oversight hearings** (**through standing committees**)
 - ❑ **Reduce budget**
 - ❑ **Amend the parent act if dissatisfied by its performance** and reduce the power

Contd...

❖ **Legal frameworks in Ethiopia**

- FDRE constitution articles: 50(3), 55(17), 55(18), (74(11) ,
- HPR Working Procedure and Members' Code of Conduct (Amendment) Proclamation No. 470/2005 and
- The federal administrative procedure act

Executive control

- ❑ Oversees the activities of various government agencies
- ❑ Executive control **comes at the exercise stage not allocation**
- ❑ Executive vs independent agencies
- ❑ **Appointment and removal of leaders**
- ❑ Determine **organizational structure of the agency**
- ❑ **Control the rule making (Attorney general art. 12(4) of FAPP)**
- ❑ Legal basis: 77(2), 74(7), 76(2) and (3) of FDRE constitution and the FAP proclamation
- ❑ **NB: the executive body cannot be trusted fully as it is political organ**

Control by Administrative Tribunals

- ❑ Exercise important ***supervisory role over the decisions*** of administrative agencies
- ❑ Undertake **merits review over the decision** of administrative agencies falling under the former jurisdiction.
- ❑ The purpose of such review is to decide **whether the decision is correct and preferable** decision

Judicial Control

- ❑ There are two modalities by which the judiciary can **exercise supervisory role over the powers** of administrative agencies.
- ❑ These are **appeal** and **judicial review**.
- ❖ Their difference:
 - Judicial review: inherent power of courts, technical review, checks only legality of the decision, cannot replace the decision
 - Appeal: statutory power, merits review, checks the correctness of the decision, substitute with its own decision

Control by Human Rights Commission and Ombudsman

- ❑ Alternative forums
- ❑ easily **accessible**, and devise **speedy solutions** to administrative grievances.
- ❑ Are very important to **ensure high quality good governance**
- ❑ On matters that are ***not suitable for parliamentary deliberation and adjudication.***
- ❖ Proclamation No.210/2000 articles 5 and 6 (human right commission)
- ❑ The commissions **recommendations are not binding** but it has far reaching **moral and political outcome**
- ❑ Receive reports of human right violations **formally or informally** and can also **initiate investigation of its own motion**

Ombudsman

- ❑ The word ombudsman which is ***Scandinavian in origin*** can be **translated as citizen's defender or representative of the people**
- ❑ Proclamation No.211/2000,
- ❑ Preamble , articles 5 and 6
- ❑ Challenge: ***lack of institutional capacity and independence***

Mass Media Control

- ❑ Strong media plays vital role in promoting the ideals of democracy and good governance
- ❑ Brings administrative malpractices and corrupt behaviors of the agencies ***to the attention of the public***
- ❑ **Exert moral and political pressure**
- ❑ forum for **mobilizing public opinions** concerning governmental activities
- ❑ Challenge: **freedom of press**