
EVOLUTION OF CIVIL SERVICE IN PAKISTAN

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ABSTRACT

The civil service of Pakistan has roots in the B.C. period when well comprehensive centralized administrative structure of the state was established under the Maurya Empire. The administrative structure including the civil service grew under the different dynasties of Delhi Sultanate and Mughal Empire. However, with the advent of the English in the subcontinent, the various legislations were passed for introducing and strengthening civil service on modern patterns. The Government of India Act 1935, was adopted as Interim Constitution of newly created country Pakistan. The Act contained provisions regarding the civil service and provided constitutional safeguards to the members of the civil service. The first constitution of Pakistan enforced in 1956, continued the constitutional safeguards, however, it proved a short lived when the Martial Law was imposed in the country in October, 1958. The next constitution 1962 continued almost same safeguards. Thus, such the constitutional safeguards, as provided in two earlier constitutions, were taken away when constitution 1973, effected from 14th August, 1973. It does not mean that the constitution is without provisions regarding the civil service. The Majlis-e-Shoora and the provincial legislatures were empowered to make legislation on the matters relating to civil service within their respective jurisdiction which established the civil service on sound footings.

Keywords: Administration, civil service, civil servant, constitution, constitutional safeguards, public servant

INTRODUCTION

The civil service is a back bone of public administration. The elected political leaders of the country make legislations through the appropriate forums and subsequently make rules, regulations and policies to run the business of the country. The members of the civil service implement them. Efficient and honest civil service proves panacea for healing the ailments and problems of the citizens of a state. Reverse is a position if civil service fails to perform its duties in accordance with law and through due process of law.

The civil service is not restricted only to its members, but it has wide scope and meaning. It comes into existence through law. It gets its roots mainly from a constitution or other such document of the state. It consists of institutions and organizations having top to bottom approach of growth. It is responsible to constitutional forums and other quarters determined by law. It has certain constitutional and legal safe guards aimed at performing functions and duties independently and without any interference and having due rights. The legal structure of a civil service obligates and bounds political leaders that civil service is to be mobilized in the public interest and not at ones whims and wishes. And where such understanding and exercise of authority are lacking civil service fall prey to chaos and schism which causes poor service delivery and bad governance. Consequently, entire state including members of a civil service suffers badly.

The major foundations of civil service were laid in Indo-Pak sub continent under the Maurya Empire. Under it proper grading system for employees was introduced in the empire. There was highly centralized government where patronage was main basis of the selection of officers (L. Shanthakum, 2011). The state comprised of seven elements beginning from the king, group of councilors, the territory, the fortified towns and cities, the treasury, the forces and the allies (L.N., 1992).

The foundation laid during the Maurya Empire mainly proved *raison d'être* for further building administration of which the civil service was a part. Administration under the Delhi Sultanate was well established from the Center to village levels through province and division. The province was divided into many *shiqqdars* and if they were administrative officials at all, there must have several shaqiqs (Ishtiaq, 1958). Ishtiaq writes that Parganah was the smaller unit after shaqiq or sarkar and village was the further division.

The Mughals based their administration on the *mansabdari system*. The administrative officials were the mansabs and the emperor awarded them grades for position in the army and administration (Krishma, 2013). The modern system of civil service began developing under the English rule in the sub-continent. The various Acts including but not limited to the Charter Act 1773, Pitt's Act 1784, the Charter Act 1853, the Indian Councils Act 1909, the Government India Act 1919, and the Government of India Act 1935, were passed

by the parliament of colonial master i.e., Great Britain which laid the foundation of, along with others, Indian Civil Service, provisions for inclusion of the citizens of the sub-continent into civil service, establishment and constitution of the Public Service Commission and dividing civil service into covenanted and non covenanted service etc. The foundation of pre- partition civil service provided base for building post partition civil service in Pakistan.

RESEARCH METHODOLOGY

Rich material is available on evolution of civil service in the sub-continent on pre and post partition periods written by foreign and local scholars. This secondary source of research has been used for writing this article. Books written by the different authors are basic source. However, material available on various websites relating to the topic has also been filtered and included in the article. Moreover, efforts were also made to collect material about administrative reforms introduced in the country time by time.

LITERATURE REVIEW

Kautilya in the beginning was academician of Taxila University. He arose and became Prime Minister of the Maurya Empire. He wrote a famous book Arathashastra in 3rd B.C. which is an ancient Sanskrit treatise. It is compendium of political diplomacy, military strategy, structure of government and social and economic life etc., of the empire. L.N.Rangarajan translated and edited the book in English. The translation facilitated the persons who are unknown to Sanskrit to know about nature, philosophy and establishment and constitution of the empire.

K.Ali has written Indo-Pak History in two volumes. Volume I cover the period from the pre-historic races upto 1526 A.D. He has surveyed an administrative structure, governance, wars fought and socio-economic life under the Maurya Empire, Gupta Empire and Delhi sultanate. Volume II contains material about the advent, rise and downfall of the Mughals in the sub-continent, emergence and downfall of Suri dynasty, entry of European powers including East India Company, establishment of colonial rule in the sub-continent, freedom movement launched by the Muslims for the creation of Pakistan and post Pakistan history.

Pakistan has impressive and epoch- making history of constitutional and political development. It has been covered by G.W. Chaudhry in his book entitled, “Constitutional Development of Pakistan. It mentions the background of the constitutional development and gradual constitutional growth to the constitution 1973. It also contains a few important amendments including 17th amendment and 18th amendment. Latter amendment was made to the constitution 1973 in 2010, which devolved powers from Center to the provinces. It amended about 102 articles of the constitution 1973.

Another important book written on constitutional development is “Constitutional and Political History of Pakistan” by Hamid Khan. This book is unique in the sense that it has sketched both constitutional and political history and discusses the various important cases which left impact on the constitutional making and political development of the country.

Ihstiaq Hussain Qureshi is celebrated historian and academician of Pakistan. He wrote book entitled, “Administrative History of Delhi Sultanate”. The book contains detailed account on the administration of Delhi Sultanate. The book mentions about structure and division of the administration of Sultanate from center (emperor) to bottom i.e., village as last unit of the administration.

Krishna Kumari has written book entitled, “Mughal Government and Administration”. The author has given detailed account from the ministries at center and then down to suba and divided further administratively. She mentioned that Akbar divided the empire into 15 subas, each suba headed by Subedar. The suba (province) touched with the villages through faujdars in sub-divisions.

DISCUSSION

The colonial rulers (ruled mainly from 1857 to 1947) decided to partition the sub-continent and announced 3rd June Plan 1947. Subsequently India Independence Act 1947 was passed in July 1947. It provided for the creation of two independent dominions namely Pakistan and India. Thus, Pakistan came into existence on 14th August 1947. The Government of India Act 1935 was adopted as an interim constitution with some modifications. The honorable Supreme Court of Pakistan held in Muhammad Saleem vs Federal Public Service Commission and others in civil appeal No. 1481 of 2015 decided on 16th December, 2019 (2020 SCMR 221) “ It will be seen that the 1935

Act made two significant changes. Firstly, it empowered the Governor General to make the rules as regards the terms and conditions of service. Secondly, it empowered the Indian legislatures created by the 1935 Act also to have legislative competence in this regard. The rule making power of the Governor General was subject to any law so made”.

A word “civil service” is combination of two subsidiary words i.e., “civil” and “service”. According to the Concise Oxford Dictionary a word civil means “(1) of or proper to citizen. (2) polite, obliging not rude. (3) not naval, military etc. (4) not ecclesiastical (5) (Law) not criminal or political; pertaining to civil law. (6) (of time measurement) fixed by custom or enactment, not natural or astronomical. The Oxford further contains that Service means “Being service, servant’s status; master’s mistress employ” (Oxford, 1981). According to Collins English Dictionary civil service means “the Civil Service of a country consists of its government departments and all the people who work in them. In many countries, the departments concerned with military and legal affairs are not part of the Civil Service” (Collins dictionary .com).

Now we turn to define a word “civil servant”. According to Cambridge Dictionary, a civil servant is “a person who works in civil service” (cambridge.org). According to clause b of sub-section 1 of section 2 of the Civil Servants Act 1973, applicable to civil servants of the Government of Pakistan, a civil servant (Zaka, 2017) “means a person who is a member of an All Pakistan Service or of a civil service of the Federation, or who holds a civil post in connection with the affairs of the Federation, including any such post connected with defense, but does not include:

- (i) a person who is on deputation to the Federation from any Province or other authority;
- (ii) a person who is employed on contract, or on work charged basis or who is paid from contingencies ; or
- (iii) a person who is a "worker" or "workman" as defined in the Factories Act, 1934, or the Workmen's Compensation Act, 1923.

Aforementioned provisions of the Civil Servants Act 1973 indicate that except five categories of employees, rest employees may be called a civil servant subject to the provisions of the Civil Servants

Act 1973. A Civil servant is a member of a civil service which may be either at federal or provincial level.

Pakistan is a federation having federating constituents. Clause 1 of article 1 of the constitution of 1973 provides, “Pakistan shall be a Federal Republic to be known as the Islamic Republic of Pakistan” (Nadeem, 2018). He writes that Clause 2 (a) of the said article provides, “the territories of Pakistan shall comprise the province of Balochistan, the Khyber Pakhtunkhwa, the Punjab and Sindh”.

Nadeem further writes that Article 7 of the constitution *ibid* provides definition of a state “ means the Federal Government, Majlis-e-Shoora [Parliament], a Provincial Government, a Provincial Assembly, and such local or other authorities in Pakistan as are by law empowered to impose any tax or cess”.

He also writes that the constitution, 1973 provides for the establishment of a civil service. Article 240 of the said constitution provides, “Subject to the constitution, the appointments to and the conditions of service of persons in the service of Pakistan shall be determined:

- (a) In the case of the services of the Federation, posts in connection with the affairs of the Federation and All-Pakistan Services, by under Act of Majlis-e-Shoora, and
- (b) in the case of the services of a Province and posts in connection with the affairs of a province and posts in connection with the affairs of a Province, by or under Act of the Provincial Assembly.

Explanation. In this article, “All Pakistan Service” means a service common to the Federation and the Provinces which was in existence immediately before the commencing day or which may be created by Act of Majlis-e-Shoora”.

Layman interpretation of aforementioned article may be that the Majlis-e-Shoora and Provincial Legislature have been empowered to make legislation regarding services falling within their respective jurisdiction. Thus, the Civil Servants Act 1973 was made at the level of Government of Pakistan (at central level). The Provincial Legislatures made their own respective legislation to be dealt with matters relating to the service and posts of a Province. Thus, Sindh, the

Punjab, the Khyber Pakhtunkhwa and Balochistan have made and enforced their respective Civil Servants Act.

The Majlis-e-Shoora is empowered to make legislation on the items mentioned in Schedule-IV of the Constitution 1973. The Provincial Legislatures are also authorized to legislate on matters relating to residuary items. When ever, statutory body is established either at federal or provincial level concerned legislature passes an Act in accordance with the constitutional provisions. For example, National Vocational and Technical Training Commission was established through Act 2011 passed by the Majlis-e-Shoora. Section 15 of the Act *ibid* contains the status of employees of the Commission as a public servant (navtec.gov).

Here, it may be relevant to define Public Servant. Section 21 of the Pakistan Penal Code provides for categories of public servant (M, 2016). He writes that Section 2 of the Prevention of Corruption Act 1947 interprets a Public servant. It retains definition of a Public Servant mentioned in Section 21 of the Code *ibid* with addition, “organization set up controlled or administered by or under the authority of the Federal Government. It is for the purpose of this Act (M, 2016:1407). Thus, a public servant of above categories may be proceeded under the *ibid* Act 1947. Sections 51, 99, 116, 119, 128, 129, 141, 152, 161, 162, 164, 165, 169 and 172 etc. of the Pakistan Penal Code may further help to understand the term Public Servant.

While defining a term Public Servant it was held, “Generally speaking a public servant signifies a person in the pay or service of the government, performing a public duty or function. The fact that such person is armed with authority or executive power of the government, direct or delegated, or is concerned with public dealing” (M. Ilyas, 2006). The honorable Supreme Court in Constitutional Petition No.23/2012 (famous Anita Turab case) held, “It is not in contention that civil servants are public servants and are, therefore, meant to take decisions only in accordance with law in the public interest” (cssforum.com).

The Service Tribunals found their respective existence at the federal and the provincial levels under article 212 of the constitution 1973. Federal Service Tribunal was established by passing its Act 1973. It was given jurisdiction in matters relating to the terms and conditions of service of civil servants. The Section 2-A of the Act *ibid*

provides, “Service under certain corporations, etc., to be service of Pakistan. Service under any authority, corporation, body or organization established by or under a Federal law or which is owned or controlled by the Federal Government or in which the Federal Government has a controlling share or interest is hereby declared to be service of Pakistan and every person holding a post under such authority, corporation, body or organization shall be deemed to be a civil servant for the purposes of this Act” (fst.gov.pk).

Now, we again return to discuss civil service. The members of a civil service were protected with constitutional safeguards since independence of Pakistan on 14th August 1947. As stated earlier that the Government of India Act 1935 was adopted as interim constitution of the country. The Pakistan (Provisional Constitution) Order, 1947 was promulgated which paved the way for the establishment of federation of Pakistan. It provided that country would have four provinces East Bengal, Sindh, the Punjab and the N.W.F.P. [now KPK]. Secondly, Balochistan, thirdly, any other areas which might with the consent of the federation be included therein. Fourthly, Karachi became its capital. Fifthly, such Indian states that might accede to the federation (Hamid, 2001).

The sections 240 to 268 of the Government of India Act 1935 mainly dealt with matters relating to civil service. The sections contained the provisions relating to judicial and medical etc service. These sections had also the provisions relating to recruitment, tenure, dismissal, payment of compensation, retirement, principles and guidance of framing rules, strengths of respective service and rights in respect of appeals. Section 253 provided for the Judges of Federal Court and High Courts. Sections 254 and 255 of the Act dealt with District Judge and subordinate civil and judicial service respectively. Sections 264 to 268 contained provisions for establishing Public Service Commission at Federal and Provincial levels and their employees, expenses and functions etc (gov.uk).

The first constituent assembly of Pakistan came into existence based on the elections held in 1945-46 in the British Indo-Pak subcontinent. A notification appeared in gazette of India on 26th August 1947 which showed sixty nine members of the constituent assembly which later on increased to seventy nine including one female member (gomal.pk, p.7).

It was prime responsibility of the constituent assembly to legislate constitution of Pakistan. After period of nine years the assembly got success and gave a country its first constitution 1956. With this, interim constitution ceased to exist.

The constitution 1956 also extended safeguards to civil servants as provided in interim constitution of Pakistan (Estacode, 2015). The book contains articles 176 to 183 which mainly dealt with civil service and civil servants. Article 179 related to conditions of service of persons in the service of Pakistan. Article 180 dealt with tenure of office of persons employed in public services. Article 181 mentioned about dismissal and disciplinary matters etc. Article 182 (a) provided that President or such person as he may direct shall make appointments in case of the Federation and posts in connection with the affairs of the Federation. Clause (b) of the said article provided in case of a province the Governor shall services of a Province and posts in connection with the affairs of a Province. It also mentioned forums and authorities etc., for making laws/rules in connection with posts and terms and conditions of appointment including tenure of posting to civil service. Estacode also contains that article 183 had provisions about all Pakistan Service, procedure of posting federal employees in a province and a member of an All-Pakistan Service serving in connection with the affairs of a Province, his promotion and transfer within that Province, and the initiation of any disciplinary proceedings against him in relation to his conduct in that Province, shall take place by order of the Governor of that Province (Estacode, p.11).

The constitution of 1956, proved a short lived. On 27th October 1958, Martial Law was imposed in Pakistan. It is pertinent to point out here that the Constituent Assembly had earlier passed Establishment of West Pakistan Act 1955 on 30th September 1955. It ceased provincial status of the provinces of the Punjab, Sindh and the Khyber Pakhtunkhuwa and merged them into one province i.e., the West Pakistan. Now the country consisted of two provinces i.e., West Pakistan and East Pakistan.

The President of Pakistan, General Muhammad Ayub Khan issued the Basic Democracy Order 1959. It provided five tier structure of the newly introduced system. It included Provincial Development Advisory Council, Union Council, Thana Council, District Council and Divisional Council. Later on Provincial Development Advisory

Council was abolished (K, 2018). The members of the Basic Democracies constituted Electoral College for the election of a President in 1960. General Muhammad Ayub Khan was elected as the President of country through the referendum.

The President appointed a commission headed by justice Shahab-ud-din for making recommendations for the future constitution. The commission submitted its report on 1st May 1961. The cabinet appointed its sub-committee headed by Manzoor Qadir, then Minister for External Affairs. The sub-committee examined the report; however, it prepared its own report which still a restricted document (G, 2011). He writes that however, at last, the President promulgated constitution in 1962.

Articles 174 to 179 of the constitution 1962 dealt with civil service and its members. Article 174 provided for terms and conditions of service to be regulated by law. Article 175 contained provisions for eligibility of becoming member of civil service. Article 176 dealt with tenure of office of persons in service. It also contained the provisions of continuing in service. Article 177 provided for removal from service, authority to impose penalty, types of penalty, showing cause before imposing penalty a member of civil service who shall not be given opportunity of hearing (Estacode, 2015:13-15). It contained that the article 178 provided for appointments to posts in connection of affairs of the centre and the provinces, framing of rules relating to terms and conditions of an employee. The Estacode says that article 179 dealt with mode of temporary employment and framing rules governing the temporary employment. It was also mentioned that articles 175 to 178 were not applicable to this type of appointment.

The president General Muhammad Ayub Khan step down from government in 1969 and General Muhammad Yahya Khan imposed martial law in the country. He issued Legal Framework Order in 1972 which dissolved the West Pakistan and restored provincial status of the Punjab, Sindh and the Khyber Pakhtunkhwa. Moreover, Balochistan was given status of a province. It also set principles of future constitution (historypak.com) as constitution 1962 came to an end with the imposition of the martial law.

The general elections were held in the country in 1971. The National Assembly of Pakistan adopted Interim Constitution of the country on 17th April, 1972 and was enforced after four days on 21st April, 1972. The Interim Constitution 1972 contained twelve parts,

295 articles and seven schedules (Govt. of Pak, 1972). The interim constitution included fundamental rules and principles of policy, the federal executive, the federal legislature, enactment of constitution, the governors, the provincial legislatures, distribution of legislative powers, administrative relations between federation and provinces, the judiciary and the service of Pakistan etc. Part IX of the Interim Constitution dealt with the terms and conditions of service and public service commission etc.

In 1973 the Majlis-e-Shoora passed constitution 1973 which was effected on 14th August. The constitution did not provide constitutional safeguards as had in the earlier constitutions of the country. However, there are various articles in the said constitution which ensure the rights of the civil service members. Articles 9,10, 10-A, 13, 14, 18, 19, 19-A, 27, 70, 99, 139, 212, 240, 241 and 242 etc of the constitution 1973 contains provisions regarding composition, safeguards and legal remedies to service matters. The Majlis-e-Shoora (parliament) and the provincial legislatures are empowered to make legislation for governing and regulating the civil service within their respective jurisdiction.

Establishment and constitution of a civil service is one approach, but continuous reformation and improvement as the second approach for making the civil service more efficient and smart equipped with all the latest skills for quality service delivery. The various reforms have been introduced at central and provincial levels. The Government of Pakistan constituted about forty commissions/committees/task forces since establishment of the country till 2019, for reforming civil service and improving governance (ifpri.org). These include but not limited to Commission 1988-89, headed by Durab Patel, Cabinet Committee for restructuring of ministries/divisions, 1990-1991, National Commission headed by Nasir Chattha for suggesting the measures to improve the efficiency of the federal government (1993-95), Committee (1996) headed by Hafeez Pasha for restructuring of federal ministries /divisions etc., Administrative Reforms Task Force-1997-98, Commission (1997-99) headed by Fakhar Imam for administrative restructuring, Local Government Reforms in 2001, National Commission for government reforms in 2006, Commission for the implementation of 18th amendment 2010, Task Force on civil service reforms 2018, Task Force on Reforms headed by Dr Ishrat Hussain (2019), and Cabinet Committee on Institutional Reforms headed by Shafqat Mehmood, Federal Minister for Education and Professional Training.

The Government of Pakistan constituted 29 commissions, other than task forces, aimed at chalking out road map for civil services reforms. But no significant came out as most of the reforms deliberations merely tinkered with organizational restructuring, minor adjustments of pay scales, creation, merger, or disbanding of occupational groups and changes in functions and powers (*Dawn*, 2021).

A Service Reforms Commission led by Durab Patel could not produce consensus report on the administrative reforms in the country (Faisal, 2014). The Commission headed by Fakhar Imam submitted report, but recommendations could not take effect (Faisal, 2014, p-224). Task Force headed by Dr Ishrat Hussain held sixty consultative sessions in four provincial capitals and federal capital of Pakistan. The Task Force made the various recommendations including that officers of ex-cadre and non cadre might also be given training on the pattern of cadre officers. It suggested the constitution of specialized cadres of service and reconstitution of cadre service at federal and provincial levels (*Dawn*, February, 2021)

CONCLUSION

Pakistan has modern and well organized civil service having roots in 300 B.C (Maurya Dynasty). It grew with the passage of time under the different dynasties and got the present shape during the English period over Indo-Pak sub-continent particularly from 1857 A.D. to 1947 A.D. After independence the constitutions of Pakistan except constitution 1973 provided constitutional safe guards for the members of the civil service. However, the constitution 1973 contained provisions for protecting rights and privileges of the members of a civil service. The Government of Pakistan constituted the various Commissions, Task Forces and Committees aimed at introducing reforms in civil service.

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