

CHAPTER - 2

HISTORICAL BACKGROUND OF PUBLIC ADMINISTRATION IN PAKISTAN

A feature of public administration in Pakistan was the blending of the executive and judicial functions of government. The administration of justice and the collection of land revenue continue to be important jobs. The maintenance of law and order is still the first priority. One of the major political phenomena of the last three decades in Pakistan has been the tremendous expansion of government functions and responsibilities. This is explained by the increase in food production, transportation and communications, by the expansion of formal education and by increased urbanization and industrialization.

A second phenomenon is the country-wide awareness of the necessity for economic development; including the need to stem the tide of population growth so that increases in productivity might be created. Government efforts to support and extend agriculture, water, power, education, transportation, industrialization and population planning have assumed increasing importance. Over a period of years, the bureaucracy in Pakistan has developed firm roots. It provides a source not only of facts and experience but of ideas and solutions to public problems. In many fields, the initiative is taken by the administrative agencies.

The prestige of government service as well as of the elite cadres seems not to have changed very much in Pakistan. The importance of Deputy commissioner remains unchanged. The dominance of the generalist administrator still prevails, despite some concessions to participation by specialists. The paramountcy of the secretariat remains strong in Pakistan. There has been no sharp conceptual break with the past so

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far as the government and politics in Pakistan is concerned. Pakistan seeks to find the path to economic modernity. It has delineated a wide range of governmental activity from the maintenance of law and order and the encouragement of banking to the enforcement of contracts and investment in social overhead capital.

The civil service bureaucracies in Pakistan seem to drive the strength to resist change most directly from reforms aimed at internal relationships. They either absorb the reforms within their own infrastructure or they gain from them increased responsibility for self-discipline. The more the people demand from the bureaucracy, the more important it becomes to make use of self-generating professional standards as a means of improving internal relationships. It is a fact that civil service reform can not be brought about in a few months. It must reflect a constant effort to adapt the provisions governing state personnel to evolving political, economic and social conditions. With the enlargement of the public sector in Pakistan and the nationalization of basic industries, the need for a highly professional and competent managerial class has begun to be acutely felt by the government at the highest level.

The nature of governmental functions has in the post independence period undergone a marked change, after the adoption of state planning as the means of achieving the socio-economic development of the country. Administration became more specialized and problems of the technical and scientific nature acquired new dimensions.

The government of Pakistan has shown keen interest in the establishment of local institutions to perform services related to economic and social development. A new system of local government is being conceived with a view to increasing the contribution of local authorities to economic and social development programs. The federal and provincial governments appear to be interested in using the local bodies as instruments for accelerating development. The nation-wide consensus that emerged supports the contention that local institutions should serve in Pakistan to increase the partici-

pation of people in the administration of services, thereby facilitating the adoption of programs to local conditions and needs while securing their acceptance by the people. It has been seen that local government bodies should increase the resources available for development.

Pakistan's dedication to Islam and Its friendship for the Muslims is by no means a product of recent developments. It has found expression at all times not only after the establishment of Pakistan but also during the period when the Muslims were struggling for their independence. Quaid-e-Azam had stated as follows on the occasion of Eid-ul-Fitre celebration:

"Today when we are engaged in the struggle for our independence, we should not forget those of our brethren in other parts of the world, who are also striving for the same goal. let us pray for their success as also for those Muslims countries which by the grace of Allah Al-Mighty are already sovereign and independence so that they should have divine assistance in the preservation of their freedom and independence."

Programs of national development in Pakistan keep local trends and prospects in view. Pakistan responds selectively to the models in its international environment. To a great extent the present challenge lies in elaborating and reconciling new orientations to development, and in designing policies to effect the national goals of an emerging development-oriented society. Science and technology continue to reduce economic and social distance. As ideas and information flow across the country, they produce new social currents which in turn stimulate change in life styles and value systems. Radio, television, cinema, journals and newspapers increasingly bring conditions and events in one part of the country to the notice of every other part.

In Pakistan, the role of the government continues to widen and diversify. The share of expenditure channelled through the public sector rises as the government assumes responsibility for providing social services in health, educa-

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tion, and social welfare. Public regulatory agencies continue to increase and to effect economic and social change. The public sector is influencing a much wider range of social and economic variables such as prices, development incentives, tourism, energy supply and public safety. These reflect an acceptance by the government of a wider responsibility for examining the quality and direction of change. Resources and administrative capabilities are being enhanced to meet these needs. Social scientists have accumulated enough evidence to indicate the emergence in Pakistan of a new order of social relations, a new style of life, a new set of cultural rules for the pursuit of social objectives. The government is committed to a diffusion in the standards of welfare. Modernization has entailed several types of action (a) transportation of inputs into growth oriented output, (b) diversion of resources from current to future-oriented use, and (c) economical use of the national output that is future required in economic development.

The state of Pakistan has demonstrated in present times both willingness and capacity to play a responsible role in world politics. There appears to be a consensus at the national level that Pakistan is moving towards a sufficient breadth of contract with other states to gain the increasing experience and discipline needed for full acceptance as an internationally responsible state. The following points exhibit the existence in Pakistan of a predisposition to act responsibly in external affairs:

- (i) University of formal recognition by other states, exchange of diplomatic officials, membership of world organizations, acceptance of third party assistance in the settlement of disputes between the states, and impartial legal protection of aliens in harmony with international norms.

The essential problems of Pakistan which remain to be solved are:

- i) establishment of a clean and efficient public administration;
- ii) reorientation of the social, economic and political organi-

- zations with the object of making them fair and just to all;
- iii) providing functional education for all;
 - iv) achieving technological progress;
 - v) making the standard of development uniform in the country and
 - vi) uplift of the poor and needy.

For a long time, students of political science have debated whether excellent laws are more vital than the individuals who enforce the laws for the welfare of the society and social justice. Plato said that men of integrity and wisdom-philosopher kings-could improve the lot of society even if its laws were bad, while Aristotle claimed that individuals can not be as impartial and perfect as the law and that therefore good laws are more crucial than good administrators. They have believed that good laws and norms guarantee the well-being of society and keep the individual whims and ambitions of administrators under control.

Islamic society emphasizes legal continuity. There is a strong correlation between Islamic laws and ethics, between law and society, between law and political structure. The cultural achievements develop either from definite legal situations or may be viewed as responses to them. The legal system of Pakistan is founded upon a series of codes enacted between 1866 and 1881 and subsequently amended through hundreds of enactments before and since the creation of Pakistan. It is administered through the municipal, district, provincial and federal courts staffed by personnel of Government service. Deeply imbedded in the village and tribal areas of Pakistan is a vast array of local folk systems of law varying from village to village and from area to area. As social justice became a conscious end of state policy there was an inevitable increase in the frequency with which ordinary citizens came into a direct relationship with government power-holders. The citizens significant encounter was not with the subedar of police but with the officials representing patronage such as a rehabilitation and resettlement authority, an administrator of local government, a rent control body

or a land acquisition officer. It was this dramatically increased incidence of encounter that laid the basis of judicial review of administrative discretion in Pakistan.

The judiciary in Pakistan has classified administrative authorities into two groups so far as the judicial review is concerned. The first group consists of those which may be called tribunals or quasi-judicial bodies while second comprises those who are mere administrators. In the first category, the control of the court is confined to compelling them to do or abstain from doing any specific act which requires them to do or abstain from doing. The judicial institutions and prevalent practices can be upgraded by a system of long-range education and training. Training is an essential long-range strategy for improving not only judicial administration but also the capabilities of judges. Everywhere programs of governmental modernization have been associated with in-service training both in the fields of public administration and the judiciary. The law reform commission proposed the establishment of a judicial services academy which is now functioning at Islamabad. The commission also called for the separation of the judiciary from the executive. This process of separation of the judiciary from the executive is going on.

The founders of Pakistan were interested in minimising injustice resulting from the exercise of discretionary power. In order to attain this goal, the Quaid-e-Azam put forward the suggestion that the system should do everything possible to confine, structure and check discretionary power so as to keep it confined to the minimum level desirable.

British India was ruled as a colony for many years and it was only in the last 40 years of its existence as a territory under the control of the British Government that political constitutions were given. These expressly declared that all powers of every kind over British Indian territories, vested in the British Sovereign. It was only by devolution and delegation that these powers came to reside in other bodies and persons, some of whom were in England, and remaining powers given to the executive, the legislature and judiciary in British India.

The British had introduced a parliamentary, electoral style of politics which in Britain was organized around interests and classes. But the British presence in British India had served to sharpen Hindu-Muslim, Sikh consciousness. The belief among Muslims grew that Hindu extremists would deny them a place within the British Indian nation and Muslims saw themselves as a separate nation. The Indian Council Act of 1909 saw the creation of separate electorate's for Muslims in response to appeals by the All India Muslim League, founded in 1906. In 1916 separate electorate's were introduced in the United Provinces (UP) even for local elections. The territories constituting Pakistan were governed before independence by the Government of India Act 1935. It was continued in operation by the Indian independence Act, 1947. The Constituent Assembly created under this Act was dissolved in 1954 and a new Assembly was elected which adopted the First Constitution of 1956 of Islamic Republic of Pakistan. The constitution of 1956 was abrogated on October 7, 1958 and Martial Law was imposed through out the country. Three days later, Order was promulgated by the President of Pakistan and the Chief Martial Law Administrator, the general effect of which was the restoration of laws that were in force before the proclamation of Martial Law. The country was to be governed as nearly as might be in accordance with the late constitution.

Martial Law was withdrawn with the promulgation of another Constitution of June 8, 1962. It was again abrogated on March 25, 1969 and the Provisional Constitutional Order was issued on March 31, 1969. With the secession of East Pakistan on December 16, 1971, power was transferred to representatives of West Pakistan on December 20, 1971 and the interim constitution of 1972 was enforced on April 21, 1972. This was later replaced by the 1973 constitution on August 14, 1973.

Under the 1973 constitution, a federal republic was brought into existence with a parliamentary form of government. The constitution conferred guarantees of fair trial and of due process of law in the protection of life, liberty and

property. By its provisions, each citizen became subject to the control of the federal and provincial governments. Matters of national significance such as defence, external affairs, foreign exchange and currency were administered by the federal Government whereas other matters of intimate concern to the social life of the people were administered by the provincial governments.

The 1956 constitution had a short life. Pakistan passed through a political crisis and it was abrogated on the 7th of October, 1958 by Iskandar Mirza, then President of Pakistan, who dismissed the federal as well as provincial legislatures and placed Pakistan under Martial law, with General Muhammad Ayub Khan as a Chief Martial Law Administrator. On October 28, 1958, Iskandar Mirza was forced to relinquish his office and General Ayub Khan assumed the office of President. The country was divided into martial law zones and the issuance of martial law orders and regulations became the rule of the day. Special and Summary military courts were established in order to deal with cases under martial law.

Three days after the 1956 constitution had been abrogated, the Laws Order 1958 was promulgated where under the laws in force before the abrogation of the constitution were restored, including the jurisdiction of all courts. Under the aforesaid Order, Pakistan was to be governed in accordance with the provisions of the previous constitution. Thus the superior courts continued to exist and exercise the same powers as before subject to martial law regulations and orders.

On the March 1, 1962, a new constitution was promulgated where under the parliamentary form of government was discarded. The new constitutional structure adopted the presidential form of government. It was based on the assumption that it was suited to the genius of the people. The Supreme Court remained at its apex with two High courts below it in each province of West and East Pakistan. The Government of Ayub Khan came to an end when the 1962 constitution was also abrogated on March 25, 1969. Ayub Khan relinquished his office and invited General Yahya

Khan, Commander-in-Chief of the Pakistan Army to do his constitutional job of restoring law and order in the country. Yahya Khan as the chief martial law administrator, imposed martial law in the country and also assumed the office of President. In pursuance of the proclamation of martial law, the provisional constitutional order 1969 was enforced. According to which Pakistan was to be governed as nearly as might be in accordance with the 1962 constitution, subject to any regulation or order made by the chief martial administrator. Fundamental rights were abrogated. Neither the orders of the martial law authorities nor the proclamation or any regulation or order made could be challenged in any court. The courts could function and derived their powers and authority through the proclamation of martial law and the provisional order 1969.

Yahya Khan handed over power to Mr. Zulfikar Ali Bhutto on December 20, 1971. Mr. Bhutto assumed the office of President as well as Chief Martial Law administrator and summoned the session of the National Assembly which passed an interim Constitution enabling martial law to be lifted. The interim constitution came into force on April 21, 1972. It was to remain in force for a period of one year. A new constitution as passed in August 1973. Fundamental rights were incorporated in it but remained suspended due to the imposition of the emergency. The powers and jurisdiction of the superior court were more or less identical to those of the constitutions of 1956 and 1962. The complete separation of the judiciary from the executive was to be accomplished within three years. The Supreme Court remained at the apex and then existed a high court for each province. The existing system of subordinate courts civil as well as criminal was kept intact. The writ jurisdiction under article 199 was a reproduction of Article 98 of the 1962 constitution. The ordinance making power of the executive was assigned to the president and the governors under the 1962 constitution. This aspect was the same as it was under the 1956 constitution. The 1962 constitution had provision for the proclamation of an emergency. Article 30 incorporated this provision which was in fact an extraordinary power. Prior to the pro-

mulgation of the 1962 constitution the judiciary accepted the jurisdiction of cases in which the citizens sought redress against government, principally through the use of prerogative writs as extraordinary remedies for violations of fundamental rights. The large number of writs sought against government was an anger to the executive which unofficially regarded this as an interference in orderly administration.

According to the interim constitution of 1972, sovereignty over the entire universe was declared to belong to Allah alone in Pakistan. The authority exercised by the people within the limits prescribed by Allah was considered to be a sacred trust. It was asserted that the powers and authority of the state would be exercised through the chosen representatives of the people. Among the principles that were required to be fully observed, reference was made to the principles of democracy, freedom, equality, tolerance and social justice as enunciated by Islam. Under the new legal order the courts continued to remain inclined to adopt a wider interpretation of their jurisdiction. They continued to review administrative action and developed the principle that if any authority believed itself to be acting within the limits of a martial law regulation or a martial Law order, then this by itself would not deprive any court of the jurisdiction to decide any question that had arisen in a proceeding which the court had jurisdiction to hear. The new legal orders was passed by the military courts. But the courts consistently held that there was no ouster of jurisdiction where an order of the military court itself was without jurisdiction.

Constitutionalism was considered an accomplishment in the attainment of political order in 1973. The constitution included the ideologically significant directive principles of state policy. Federalism appears to be one of the most important aspects of the new constitution. It is accompanied by the establishment of an increasing number of federal schemes which seek to combine a measure of unity with a measure of diversity. A comparison of the several federal constitutions shows that certain matters such as foreign affairs, money, and currency, postal services and national defence are attributed to the federal authorities. On the other hand, matters

such as education, agriculture, the police and local government are usually left to the federating units.

The constitution had developed a wide area of effective cooperation between the provinces and the federal government which is mutually advantageous and not necessarily destructive of the broader division of power. The federal government stands in need of more intimate contacts with local problems while on the other hand the provinces such as the NWFP and Balochistan require financial aid from the national government. The constitution advances a federal government structure with territorial division of powers. Such a division operates as an effective restraint upon the abuse of governmental powers by the federal authorities.

A constitutional judiciary is an integral part of the federal structure enshrined in the constitution. If there is a division of powers between the federal and local authorities, conflicts over the respective spheres of authority are bound to arise and a procedure for their settlement is necessarily needed. The federalism in Pakistan has reinforced the idea of judicial review along with the idea of a constitution which embodies law higher than ordinary legislation. The judicial interpretation also develops important constitutional principles. It makes it possible to keep the constitutional role of the judiciary separate and distinct. The supreme court becomes the ultimate organ for adjusting the relationship of one unit with another and of all units individually and severally with the federation. The judicial body under the 1973 constitution serves as the moderating influence between rival groups and classes. Of great domestic significance is the issue of the maintenance of the supreme court and the high courts as bulworks to enforce the guarantee that no man shall be deprived of life and liberty without the due process of law. Recognition of this fact is coupled with the recognition that the public at large believes the judiciary to be non-partisan.