

Islamic Work Ethics, Public Service Motivation and Punjab Civil Servants Act 1974 in the Context

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Abstract: *The gap between administration as processed in the reported history of Islam and as we experience it now in Pakistan underpins the need to discuss the administrative law and the administration of laws in a whole new scheme so as to reclaim the trust and confidence in the administrative law and the administration of laws. The paper argues that the inclusion of Principles of Islamic Work Ethics and Public Service Motivation in the reading of laws relating to administrative law and the application of these principles in the administration of law itself can be a practical solution to the problem.*

Key Words: Islamic Work Ethics, Administrative Law, Administration Of Law, Public Service Motivation

Introduction

In Pakistan, the religious norms and identity have a lot to do with the ethnic and religious perception of the legal system and state policies. The normative discourse as guided and influenced by Islamic principles could be used as a crucial feature for administrative efficacy, proficiency, and honesty in Pakistan. This paper seeks to underline Islamic normative discourse in administrative law and related statutes in Pakistan with an objective to introduce, rethink and link principles of Islamic Work Ethics and Public Service Motivation in administrative affairs of administration. This paper also seeks to reveal the need to reinforce the intersection of public officers, their public affairs, public dealings, and consequential impact on individual's rights and liberties through discussion of administrative law in Pakistan in the context of Islamic principles of justice, equity and good conscience.

Research Methodology

This research is carried out as qualitative research using doctrinal research methods for the inductive and deductive content analysis of legal provisions in the Punjab Civil Servants Act 1974.

Literature Review

For brevity of the discussion, this article will look into Punjab Civil Servants Act 1974(hereinafter as PCSA), and analyzes PCSA to have an Islamic perspective of its provisions, and suggests how Islamic Work Ethics (Hassan and Ahmad 2021)and Public Service Motivation (Vandenabeele and Schott 2020)could be related to this law for efficacious administration in Pakistan. The first part of this paper will deal with the Summary of the purpose and scope of PCSA 1974 and then different streams of discussion will evolve under different nodes according to provisions of PCSA including appointment, probation, confirmation, and removal from service, retirement and social security benefits to the civil servants. The discussion will reveal Islamic injunctions regarding each stream. The latter part presents the Principles of Islamic Work Ethics (Hassan and Ahmad 2021) and Public Service Motivation(Vandenabeele and Schott 2020), their need and linkage in the administrative laws, and the suggestion for sensitizing the administrative bodies and awareness campaigns to rethink on these principles in the context of administrative laws for efficacious administration.

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Overview of Punjab Civil Servants Act 1974

This Act, Punjab Civil Servant Act 1974 (PCSA 1974), was enforced in the province of Punjab on 4th June 1974 and it is applicable to all civil servants in the province of Punjab but not applicable to those who worked on contract base and receive payment of their work as a charge for their services, and those who are in Punjab but they serve on deputation in Punjab province as the civil servant of the federation, other province or any other authority and who are the worker under the factories act, 1934 and the workmen compensation act, 1923 (PCSA Sec. 1, [b]).

The main objective of PCSA is that it deals with the matter of the appointment of the civil servants and the terms and conditions of their services and deals with the other matters that are connected with these earlier mentioned matters. Under PCSA the terms and conditions of the services of the civil servant include the matter of conduct and disciplinary actions of a civil servant during his service, pay for the post of his service, and leave the matter of the civil servant. All terms and conditions in different public offices relating to these matters are determined according to PCSA and the rules (Punjab Civil Service Rules 1975) which are made under the object and scope of PCSA. This Act enables the Governor or any other person to whom the Governor delegates his authority to make rules for the purpose of PCSA, with the effect that these rules must not be inconsistent with the provisions of PCSA.

Currently, keeping in line with the modern conception of legality (Massadeh 1992), the scheme for employment laws follows the similar pattern, which is observed in the PCSA including provisions for the appointment, removal, conduct and salary and the other relevant matters about the civil servants in Punjab. In the section below, this paper deals with the analysis of the provisions of this Act and these are purposefully tested along the lines of Islamic injunctions to trace the authenticity and support of these provisions in the Islamic injunctions and tenets of Islam from Islamic history.

Appointment of Civil Servants

In section 4 PCSA, the provisions for the appointment of civil servants (PCSA 1974) are to be made by the Governor and any other person to whom the Governor delegates his authority and appointment is to be made with the consultation and on the recommendations of the selection authority. This law provides for different kinds of appointments including initial appointment (PCSA 1974 sec.2(1)(d)), promotional appointment

(PCSA 1974 sec.2(1)(g-b) & 8), transfer appointment (PCSA 1974 sec.9), appointment on a permanent post (PCSA 1974 sec.2(1)(f)), and besides of all these appointments an ad-hoc appointment (PCSA 1974 section 2(1)(a)) of a civil servant which is an appointment made on temporary post for temporary tenure otherwise than a prescribed manner for an appointment for any post. In contrast to this appointment criteria, is the promotional based appointment (PCSA 1974 sec.2(1)(g-b) & 8) is made that may be either a simple promotion; which may be made on the selection post and non-selection post, or a Performa promotion (PCSA 1974 section 2(1)(g-a)). It is to note that in both forms of promotions, no civil servant has a vested right for appointment to the promotional post, even if he/she satisfies the criteria of promotion along with it. It is also noteworthy that backdate or previous performance is only seen in Performa promotion and not in selection-based promotional appointments (PCSA 1974). On the other hand, there may be a transfer based appointment (PCSA 1974 sec.9), where a civil servant of the province can be transferred to any post within and outside of the province, and that post may fall under any authority but that transfer should not have any adverse effect on the remuneration of the civil servant which he receives before such transfer. The remuneration shall remain the same even after he/she gets transferred anywhere out of the Federation. However, that remuneration may be raised to be higher or equal remuneration as to the pay that he was receiving before such transfer, but remuneration cannot be lowered after the transfer of his own post to another place.

According to section 3 of PCSA, the terms and conditions of service of a civil servant must be according to PCSA and Punjab Civil Servant Rules 1975. The effect of this law is that appointments of any kind shall be based on the prescribed procedure and required under the law. It is to be inferred from here that education and character are implicitly mentioned for the principle of legality (Massadeh 1992) stresses uniformity of procedure for this purpose. In comparison with Islamic rules and practice in the time of the Holy Prophet (PBUH) and in the time of Hazrat Ali, the character of servant was an important factor for appointments to public service posts (Jawad and Abbas 2010). Moreover, at that time, any specific education was not compulsory for any specific post, but in practice Holy Prophet (PBUH), Hazrat Abu Bakar Sadique (R.A.) and Hazrat Ali (R.A.) did specify the education of the Quran and Sunnah and preferred full knowledge of Islamic injunctions to consider the person eligible for the appointment on the post (Qadri 2016). The second caliph Hazrat Omar (R.A.), also stressed

the behavioral and moral values and also on the performance potential of the person to be considered for appointment in a public service office (Islamciv 2017). However, it is important that the processes of recruitment be carried out in a fair and just manner and the recruiting authority is himself pious and just so that he does not practice discrimination while recruiting and selecting the person for the post.

As noted above that, civil servants are appointed by Governor or by any person to whom Governor delegates his authority. It is to note that the appointment guidelines are similar to Islamic injunctions and tenets of Islam, where it is observed that the public servant is appointed by either wali (Governor), Head of Province, or Head of State (Islamciv 2017). As to the delegation of the Governor's authority to make an appointment, it is to note that Hazrat Usman bin Affan (R.A.) also delegated authority to his Governor in that if *Khilafa* is not available, the then-Governor or his appointed person can select any servant (Islamciv 2017). Under PCSA, the civil servant is appointed by appointing authority with the consultation of the selection authority, which is similar to the Islamic injunctions in that the Islamic history shows that the Governor (Wali) made appointments with the consultation of the regional assembly. For instance, the appointment of all four *Khulfa Rashdeen* was made by consultation (Alim F. 2020).

Confirmation of the Appointment

After the appointment of the civil servant, before the confirmation of the appointment for the post for which they are appointed, these civil servants go through a compatibility check for these posts by way of a probation mechanism (PCSA 1974 sec. 5). During probation, these civil servants have to clear the prescribed "test, training, examination and qualification" (PCSA 1974 sec. 5) for that post and during the probation, there are two consequences for the civil servants; firstly, if they fail during probation, then they will be discharged from their post if it was an initial appointment. However, if the appointment was not initial, rather it was a transfer-based or promotional-based appointment to the post, in that case, he/she will be reverted back to his/her previous post. On the other hand, if he successfully completes the tenure of probation, then he will be considered to be eligible for confirmation (PCSA 1974 sec. 6) on completion of further procedure for the issuance of a certificate of satisfactory antecedents and character from the relevant authority. This procedure for probation underscores the fact that an appointment before confirmation does not hold a vested right for that post of appointment. In this

regard, if the civil servant is eligible for confirmation but retired before confirmation, in that case, he is entitled to receive the benefits which could possibly accrue from the post that he holds before confirmation.

In Islamic history, there seems to be no concept of probation but if anyone committed a wrong, then committee will decide matter and the majority decision was acceptable to everyone (Darwaish 2020). However, the concept of testing the candidates derives authenticity from Islamic history where the Holy Prophet PBUH examined the civil servants before appointment as He examined Abu Musa and Muaz, by drawing their attention to some important matters like expectations of good conduct and of the manner of performance of duties (Qadri 2016). Hazrat Umer (R.A.) laid down the criteria for the appointment of a civil servant that was very strict; he examined the civil servant before the appointment and during the appointment as well (Islamciv 2017). It has been reported that 'Umar once said to the people around him: 'Would you say that my duty would be filled if I appointed over you the best from amongst you and ordered him to be just?' They said, 'Yes.' He said, 'No. Not until I had checked his performance, and see whether or not he did what I had ordered him to do' (Alim F. 2020) but it is also learned from Islamic history that if any person gets majority votes of appointment committee, then his job will be confirmed (Jawad and Abbas 2010).

The Islamic rules of recruitment are based on morality and faith, and these are derived from the foundations of justice and fairness because the employer has to undergo this function as a duty and responsibility which should be devoid of any nepotism and favoritism (Darwaish 2020).

Islam stresses that the qualities of the right candidate should include piousness, good moral values, and professional competency. The candidate to be considered for any post must hold the qualities of Saleh Muslim. He must believe in integrity (Seidu 2009). It can be concluded that positive and encouraging interpersonal relationships and a good moral reputation within the community are Islamic considerations for proposing an appointment of a candidate (Qadri 1989).

Removal from Service

Other than the guideline for the appointments of the civil servant under PCSA, there are other provisions to deal with removal from service in different modes (PCSA 1974 sec. 10, 11 & 12), which include termination, reversion, removal and retirement. In this regard, if a civil servant is under

probation and in case of his initial appointment, he can be discharged from his office for non-completion of probation (PSCA 1974 sec. 5). However, in the case of the transfer and promotion-based appointment, he can be reverted to his earlier post (PSCA 1974 sec.2(1)(g-b) & 8). Moreover, in the case of an ad hoc appointment, the civil servant can be terminated by simple notice without information as to the termination (PSCA 1974 section 2(1)(a)). In the case of a civil servant who is promoted from his lower post to a higher post on a temporary and officiating basis, he can be reverted to his previous post and can be removed from office in the public interest by serving notice for this purpose (PSCA 1974 sec.2(1)(g-b) & 8). On the other hand, in the case of a civil servant who completes either his 20 years of service or attains 60 years of age, then the process of retirement is introduced (PSCA 1974 sec. 12). As a rule, PSCA provides that the civil servant are terminated by the Governor or the person to whom he delegates his power of termination. That is similar to Islamic injunctions and reported incidents from Islamic history where Governor terminates the civil servant at his discretion or on the advice of the regional assembly and he will remove such civil servant against whom the vote of no confidence was passed (Islamciv 2017). Hazrat Umer (R.A.) (Alim F. 2020) was very strict in laying down the criteria for the conduct of a civil servant. In one reported case, he removed the civil servant from his post in the event that he found any trace of misconduct or dishonesty without demanding conclusive evidence. When asked about the reason for this kind of removal from office, he replied, 'It is easy to swap an Ameer for another so as to amend the people's affairs' (Alim F. 2020). The removal of a civil servant on the ground of public interest finds examples in the incident reported that the Prophet Muhammad (PBUH) removed the Al-Ala' Ibnul-Hadhrami, governor of Bahrain because the tribe of Bahrain complained about him (Qadri 2016). In another incident, Hazrat Umer (R.A.) (Alim F. 2020) has also dismissed a Governor from his post if he found that his appointment was not good in the interest of the general public. Also, he dismissed the righteous companion Saad -ibn-Abi-Qaas because people complained about him. In another reported incident, once, Hazrat Umer (R.A.) canceled the appointment of his companion as governor because he solicited his appointment for the post (Massadeh 1992) (Qadri 1989).

Security Funds

On the retirement from his post or service, under PSCA, the civil servant has two options, firstly, re-

employment, and secondly, receiving security funds (PSCA 1974 sec. 12). In a normal course of action, a retired civil servant is not entitled to re-employment in the government sector, but such re-employment is not barred in the private sector. But PSCA provides that retired civil servants can be re-employed if that is necessary for the public interest (PSCA 1974 sec. 13). However, before that employment, the approval from a senior or competent authority or the appointing authority is required, and if he is not re-employed, then he is entitled to receive the security funds after retirement, which include pension, gratuity, provident fund, Benevolent fund (PSCA 1974 sec. 18, 19, 20). In the case of pension and gratuity under PSCA (PSCA 1974 sec. 18), the civil servant is entitled to get these monetary benefits after retirement and in case of the death of the civil servant, then his/her family members are entitled to receive such benefits except if a civil servant is dismissed from his post on the ground of disciplinary action against him. In such circumstances, the Government may provide him/her "compassionate allowance " (PSCA 1974 sec. 18(3)), but that is a discretionary matter. However, in the case of a provident fund, it is saved by a civil servant for his security after retirement, and it is added after subscription to the provident scheme fund. The accounts of subscription to such funds are managed and prepared by the accounts officer in the organization or by any other officer appointed for that purpose in the employee organization (PSCA 1974 sec. 19).

Retirement

There is no mention in the Quran of the concept of retirement, but Islam supports the concept of retirement funds that must be given to those who can't do anything to earn their means and fulfill their needs. In one incident, a Christian man worked hard during his whole life, but in his extreme old age, he lost his eyesight and he had no son to look after. Due to these circumstances, he had no option for a living except to start begging and people felt pity for him and gave him something so that he could continue to meet his needs. One day Hazrat Ali (R.A.) noticed him and discovered him. Hazrat Ali (R.A.) said, "Strange! Till he had the strength, you extracted work from him and now you have left him on his own". After that, he fixed a monthly stipend and a home for him (Mutahhari 2020). The retirement age is a set limit under PSCA while Islam does not set any work limit and to do retirement. In that sense, if the retired civil servant is re-employed, that is not contrary to Islam. Even Islam urges that man can work until his death. It is with reference to the verse in Qura'an that says "and serve your Lord

until there comes to you that which is certain" [Al Qur'an Hajar 99]. In this verse, certain means death and Lord means Allah Almighty and the verse also negates that man cannot work until his death. Under PCSA, after retirement the civil servant is entitled to different security funds including pension, gratuity, provident fund, benevolent fund (PSCA 1974 sec. 18, 19, 20). In this regard, in Islam, there are two perspectives. Firstly, if it is the policy of service and a mandatory condition for employment that some amount should be deducted from the pay of a civil servant, and after his retirement the same amount shall return back to him in the form of profit. In that case, the civil servant is entitled to receive this and it is halal for him due to the presence of the element of "gazb" (DarulUloomDeoband 2020). In another viewpoint, these security funds, if deposited voluntarily, in a way that if deposited some amount on the expectation to receive it back with the profit of this amount in future then that profit turns out to be haram and not permissible due to the element of "riba" (Al-Munjid 2008). Therefore, it appears from the provisions of this law that the security funds of a civil servant in the form of pension, gratuity and benevolent funds are permissible because that is the policy of employment but not the provident funds because that civil servant voluntarily opted for a subscription.

Disciplinary Actions

In addition, PCSA provides for dealing with disciplinary actions and in that case, the PCSA provides some safety zone to the civil servant in that he has the right to appeal and review against the order of an authority which is passed against him about the terms and conditions of his services, and that appeal and review can be preferred within the 60 days of such grievance order except an order of Governor (PSCA 1974 sec. 14, 15, 21). In case an appeal is filed, then the Governor can sort out this matter with the just and equitable ground if an order passed under PCSA does not support a just decision. The conduct of civil servants (PSCA 1974 sec. 14), which is determined under PCSA and the rules under PCSA, namely Punjab civil servant rules 1975, are designed on the same framework which is suggested in Islam. The law provides that civil servants should not be corrupt, not use their office for their own benefit, should not indulge in immoral acts, nepotism, not earn a bad reputation, and keep good attributes. Islam also supports the same perspective about the conduct of civil servants during his service. In terms of the Qur'an, "those when given authority in the land, establish a system of Salah, give zakat and enjoin what is good and forbid what is wrong" (Quran Al-Hajj

22.4). In light of Hadith, "the Holy Prophet (PBUH) cursed those who offer bribes and accept bribes in judgments" (Sunan-tarmazi 1336). Once HazratUmerFarooq (R.A.) was worried about the appointment of Kufa Governor because if he appointed a softhearted person, then people get advantage of his leniency and if appointed a strict one then people will fear him (Jawad and Abbas 2010).

Wages

Basically, the concept of wages was firstly introduced by the HazratUmer(R.A.) and also revised the system of salary, so after that, in the modern era, we are able to make such type of acts to determine the pay and wages for civil servants (Ahmad and Jameel 2019). The scheme of pay which is given under PCSA is in line with Islamic rules of wages as the law refers to the pay of civil servant to be paid according to his post/status, and for additional work, wages must be paid, and the pay of a civil servant must be fixed (PSCA 1974 sec. 16). Prophet Mohammed (Peace be upon him) said: "Employer must declare the wages to a worker before the worker embarks on the required work" (Baihaqi). It is also reported that Prophet (PBUH) said that "Allah would be the enemy of three persons on the day of Resurrection and one of them would be the one who hired somebody for some stipulated wage, took full advantage of his labor and then did not give him his due" (Qadri 2016). At the time of Hazrat Umer (R.A.), the civil servants received the pay according to their post, and that was determined based on the following factors, including the length of service, performance capability, and knowledge (Ahmad and Jameel 2019).

Immunity

In PCSA, the law declares that it is not allowed to institute any case or start any proceedings against a civil servant if he has acted under his official capacity and acted in good faith (PSCA 1974). But if an act of a civil servant is malafide, and he/she misuses their authority, then defiantly they will not enjoy immunity, and that concept is also supported by Islam (Qadri 1989). In addition, the law provides a bar for the courts that none of the courts can grant an injunction and start a trial on the matter on which order is passed under this Act or rules made under this Act. As long as the law and procedure are followed according to this Act, the Courts are barred from taking jurisdiction (PSCA 1974). Conversely, in case of excess of power, lack of jurisdiction, or in case of procedural or substantive ultra vires, the courts can hear the dispute. It could be related there what is laid down

in Qura'an" and so judge among them by what Allah has revealed and follow not their vain desires" (Quran 5:49). Prophet Mohammed (PBUH) said: "One who exercises his authority and powers unjust way will not enter Paradise" (Ahmed, Ibn Majah, Tirmidi). The practice of civil servants exercising their duty fearfully under the protection of the immunity of the official capacity is clearly manifest in the caliphate region, where the Qazi could also pass the judgement against the *Khalifa*. In a reported incident, a dispute arose between Hazrat ALI (R.A.) and a Christian and Hazrat Ali(R.A.) filed a suit against him in the court of Kufa. The judge rejected the claim of Hazrat Ali(R.A.) on the ground that testimony of son and slave is not acceptable in Islam in favor of father and master, respectively. Hazrat Ali(R.A.) respected the integrity of the judiciary. The Christian got impressed by the beauty of Islam and embraced Islam(Qadri 1989).

It is to note from the above that the whole scheme of PCSA providing law for appointment, removal, pay, leave, retirement, and benefits at the time of retirement, etc. is undoubted designed in line with the principles of Islam (Massadeh 1992).

Conclusion

The study above has attempted to develop an understanding and evaluating the provisions of law with reference to Islamic injunctions and tenets of Islam as reported under Islamic

injunctions and history. However, the question arises if the working mechanisms for the civil servants are similar in both the Islamic and modern eras, then why is there a wide difference in experiencing the public administration system as was in the time of early history of Islam and the public administration system that runs now-a-day? Why public has distrust the appointment system of a civil servant, for it is alleged that most appointments are not made on merit? Why, once an appointment is made, an appointed civil servant fails to accomplish his duty? Why do we witness corruption? Why our country faces a poor public administration system and country experiences a low progress rate in return.

It is to argue that it is vital to rethink the mode of understanding and application of legal provisions with an aim not to miss but to incorporate the principles of Islamic Work Ethics (Binti Mustafa Kamil et al. 2019) and principles of Public Service Motivation(Hassan and Ahmad 2021) into the process of internalization and discussion of legal provisions. The administrative law underpins the intersection of individuals' rights from a huge segment of the public and the civil servants' obligation to perform duty. If the discourse about administration and administrative law focuses on legal provisions as well as on the principles of Islamic Work Ethics and Public Service Motivation in it, the drawback in the system can be avoided to the satisfaction of both the civil servant and the public at large.

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