

# ROLE OF BAR AND JUDICIARY IN PAKISTAN

*BY NAZAR AKBAR - ADVOCATE*

Role of the bar and the judiciary is generally a subject of discourse and discussion by jurists, scholars, thinkers and the judges of the superior courts. Research papers on various aspects of the subject are produced. Questions like fundamental rights, human rights, rule of law, and judicial review of administrative actions are examined. All these issues though very vital in their very nature have relevance only for men concerned with the state craft. A common man is more concerned with his ordinary civil rights and redress of his grievances at the lesser level of subordinate judiciary. The question, therefore, is as to how far the bar and the judiciary have lived upto and discharged the roles assigned to them respectively. If the two institutions have failed to come upto the expectations of the common man, then what are the causes of their failure.

It is common knowledge that the public at large has lost confidence in the advocates crowding the lower courts. It does not have much of a faith in the present day dispensation of justice by subordinate courts. But who is responsible for it ?. Have the institutions charged with the supervision and control of legal profession addressed themselves to the issue? And has the administration, apart from enforcing discipline, displayed even an iota of care and compassion for the subordinate judiciary?

The bar is not a heterogeneous body. It is a society of professional lawyers who have to subordinate their conduct to the dictates of professional ethics which demands a very exacting standard of calibre and character, so that they may be able to serve the role of an advisory medium between the litigant public and the courts in a manner befitting a civilized society. Here in Pakistan we have the Pakistan Bar Council and the Provincial Bar Councils to oversee and superintend the conduct of the Bar and to prepare conditions for the development and growth of a healthy bar.

Having conceded that the Bar at least at the level of subordinate courts has gone adrift from its role especially during the last two decades of general erosion of morals and values, one has to do a bit of heart searching. This leads to the inevitable conclusion that the Bar Councils have generally been indifferent to the task assigned to them.

Let us take a look at the Pakistan Bar Council Act, 1973. Section 13 of the Act, amongst other things, enjoins upon the Bar Council to :-



13. Functions of the Pakistan Bar Council.------(1)

- (a) to prepare and maintain a common roll of advocates;
- (b) .....
- (c) .....
- (d) .....
- (e) .....
- (f) to safeguard the rights, privileges and interests of advocates including initiation of measures for fair and inexpensive dispensation of justice by the subordinate Courts and Tribunals;
- (g) to promote and suggest law reform;
- (h) .....
- (i) .....
- (j) to promote legal education and prescribe standards of such education in consultation with the universities in Pakistan and the Provincial Bar Councils;
- (k) to recognize universities whose degree in law shall be qualification for enrolment as an advocate;

In furtherance of these provisions, the Pakistan Bar Council in exercise of the powers conferred on it under Section 55 of the Act promulgated PAKISTAN BAR COUNCIL LEGAL EDUCATION RULES, 1978 vide SRO 1319 (1)/78 which were subsequently amended twice vide SRO 739 (1)/79, Gaz.Pak. Extra Pt II, dated 16.4.1980. Rule 3(a), 4 and 10 (a) & (b) reproduced below are worth reading:-

## CHAPTER - II

# LEGAL EDUCATION

"3. (a) Graduates with law as optional subject will be preferred for admission to 1st year B.L. Course:

Provided that the University will introduce law as optional subject in B.A. Courses within two years of the promulgation of these rules:

Provided further that nothing herein above shall be applicable to admissions to 1st year B.L. Courses for four years from the promulgation of these rules."

"4. Number of Students.

A Section of a class in a law College and /or a Faculty of Law shall comprise not more than 100 students."



## " 10. Class Hours.

- (a) Education in Law College and /or Faculties of Law shall be imparted during day hours only and no shift shall be permissible.

Provided that existing arrangements for evening and /or afternoon classes may be permitted to continue for 3 years next following the promulgation of these rules.

- (b) No new Evening Law College or new Evening Class organised by a Law College or Faculty of Law shall be started."

Having framed and published these rules way back in 1979 and 1980, the Bar Councils have been sitting quiet as if their task was over. Things are what they were. It appears the lack of communication and coordination between the Bar Council and the Universities, has resulted in keeping these rules consigned to record. Two to three years time was provided in these rules for convenience of university and law college to adopt and implement the scheme of legal education as envisaged in the rules. Nothing of the sort has been done. The limit of maximum 100 students in each class has been completely ignored, till today in one college in Karachi we have as many as 800 students in a class. Switching over to day hours for imparting education of law is no where in sight either. Rule 10 (b) which forbade holding of new classes in the evening was complied by introducing course of study leading to Masters degree in evening hours in two of the leading law colleges in Karachi.

One cannot brook the deterioration in education of law under the cover of general deterioration in all fields. The bar has a role to check the ever falling standard in education of law. Being fully conscious of the poor standard of education of law, the cheating rampant in examinations and the lavish marking by the examiners, the Bar Councils ought to be more strict in enrolling advocates instead of granting licences by way of charity to whoever comes their way on the day of interview for enrolment before the enrolment Committee.

But the experience is to the contrary. Learned Members of the Bar Councils sitting on the enrolment Sub-Committee, appear to be completely oblivious to the task assigned to them. Candidates seeking enrolment as advocates are cleared in no time. No effort is made to determine suitability of a candidate for the profession with reference to his expression, demeanour, acumen, temperament, intelligence, and general knowledge. The table below, will show the time and energy applied in clearing the candidates:-



Date & time of Interview	Enrolment Committee	Candidates of Karachi Division	Other Districts	Absent and or deferred	Total Qualified.
1. 31.01.1988 at 11 a.m.	M. Suleman Memon Ismail Redhani	36	28	3-absent	61
2. 16.04.1988 Mushtaq H. Shah	Mubrak M. Siddiqui	32	21	9-absent	44
3. 31.07.1988 M. Yusuf Leghari	Iqtadar Ali Hashmi	81	55	18-absent	118
4. 10.09.1988 K.B. Bhutto	Ali Ahmed Qureshi	32	21	3-absent	50
5. 12.11.1988 Imdad Ali Awan	F.H. Naek	42	18	9-absent	51
6. 31.12.1988 Ali Mukhtar Naqvi	Imdad Ali Memon	65	29	18-absent	76

**TOTAL 400**

1. 01.04.1989 Yasin Khan E. Babar	Ibrar Hasan	57	45	12-absent	90
2. 02.07.1989 Ismail Padhar	M.Ashraf Khan	18	11	10-absent	30
3. 22.07.1989 Abdul H. Bajrani	Yusuf Rafi	58	16	12-absent	62
4. 09.09.1989 Qazi M. Saleh	Fazal Ghani Khan	41	23	6-absent	58

**TOTAL 240**

Date & time of Interview	Enrolment Committee	Candidates of Karachi Division	Other Districts	Absent and or deferred	Total Qualified.
1. 17.02.1990 Rashid A. Rizvi	Abdul Hakeem Bajrani	87	74	35-absent	126
2. 25.03.1990 Anwar Zaheer Jamali	F.H. Naek	66	57	15-absent	108
3. 14.07.1990 M. Bachal Tunio	Imdad Ali Awan	63	45	19-absent	89
4. 22.09.1990 Abdul Sattar Kazi	M.M. Pirzada	58	36	13-absent	81
5. 01.12.1990 F.M. Parachi	Mustafa Lakhani	34	17	6-absent	42

**TOTAL 446**



1.	19.01.1991	Yasin Khan E. Bakar Khalid Hameed	40	16	1-absent	55
2.	09.03.1991	Imdad Ali Awan Mohammad Rauf	33	21	5-absent	48
3.	15.06.1991	M. Amin Lakhani Raja Qureshi	48	48	8-absent	88
4.	11.08.1991	Abul Inam Abrar Hasan	68	36	14-absent	90
5.	05.10.1991	Ismail Padhar Shamshad Alam Lari	40	33	2-absent	61
<b>TOTAL</b>						<b>342</b>
1.	18.01.1992	M. Yasin Azad Mohammad Amin Lakhani	54	46	26-absent	74
2.	29.02.1992	M. Yusuf Khan Imam Bux Babh	22	41	6-absent	57
3.	25.04.1992	Ali Ahmed Patoli Abdul Latif Qureshi	28	33	16-absent	45
4.	06.06.1992	F.M. Paracha : Ali Ahmed Patoli	67	51	4-absent	114
5.	27.08.1992	Rasheed A. Rizvi Anwar Zaheer Jamali	90	37	22-absent	105
6.	26.09.1992	F.M. Naek Anwar Zaheer Jamali	32	14	4-absent	42
<b>TOTAL</b>		<b>437</b>				

The result is population explosion in the ranks of advocates having little or no calibre. It appears that members of the Bar Councils are more interested in enrolling every one who comes their way so that they may have a sizable following to stand them in good stead in the next election.

It appears that the Bar Councils and the Bar Associations have lost sight of the obligations and duties cast upon them under the Pakistan Bar Council Act, 1973. Ever since the repeal of Section 59-A of the Act, which prohibited indulgence in political activity, the Bar Councils and the Bar Associations take pride in passing resolutions on the issues like apartheid in South Africa, the Gulf War, the Kashmir issue, the collapse of Communism, the Afghanistan issue, the atrocities being perpetrated on muslims of Bosnia and so on. While all this may get some publicity to both the Bar Councils and the Bar Associations in the national press, it does not advance the cause for which they are designed. The question is would it restore the confidence of common man in the system? Can he feel assured that the advocates would get him the desired relief from courts?

The subordinate judiciary plays a major role in controlling the law and order but in discharging such an important function, the lower court cannot work in vaccum. They cannot act honestly and diligently unless the Officers of the Court attired in official dress of lawyers are genuinely equipped with the know how of their preffession and are both able and willing to assist the courts.



Handicapped by want of proper assistance and guidance from lawyers, the subordinate judiciary finds itself under considerable strain in adjudicating on the causes before it. The judge has to search for the causes before it. The judge has to search for the case law, scrutinise the record, and assess the merits of the evidence laid before him all by himself. His ordeal is further enhanced when at the end of the month, he finds that his disposal of cases is below the figure laid down for him by the administration.

Perhaps, by experience one may overcome the situation. But there is yet another aspect. The Bar not only does not cooperate in the dispensation of justice, it creates hurdles in the way. Unnecessary adjournments are sought and all sorts of frivolous applications are made to impede the trial. Whenever a judge adopts a strict attitude, he becomes unpopular with the Bar and is made target of all sorts of complaints. He is even bullied and insulted. While no action is taken on complaints of misbehaviour on the part of lawyers, applications against the judges are accepted and enquiries are held. Pendency of enquiry results in the concerned judge being dropped from consideration for promotion by the Departmental Promotion Committee. More often such enquiries culminate in exonerating the judge, but this happens after the mischief has been done. Equity demands that in such cases the complainant should also be taken to task.

This may appear to be a vague or sweeping statement *ex facie*. But the fact of the matter is very much so. There is no dearth of data on the subject. Suffice it to say that cases of manhandling of civil judges and their staff have often appeared in the press as well. Here in Karachi several incidents took place in which court staff was abused and beaten up in front of the judges who could do no more but be dumb and silent spectators for though these did come to notice of the administration but nothing turned thereafter.

There is yet another aspect of the case. In these days of sky rocketting prices and rampant corruption when common man thinks that like every other commodity justice can also be purchased, it is becoming increasingly difficult for the subordinate judges to spurn the temptations. The only factor or consideration that beckons them to continue in service is the dignity attached to the office, or, if one can say so, the satisfaction of their ego.

In the circumstances, it is all the more imperative that subordinate judges be treated with compassion and not suspicion so that they may keep their chin up and discharge their duties with dignity and without fear. It need hardly be said that suspicion drives an honest man into frustration which in turn affects both his integrity and efficiency. Unless conditions are made conducive, many a competent judge who are not willing to barter their self respect and integrity would resign in sheer frustration. Some have already done so.

The crux of the discussion is that unless the Bar Councils wake up to their duties without any loss of time, the real role of the Bar and the judiciary will remain in jeopardy. It would become all the more difficult to stem the rot resulting in collapse of the entire system.