

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

MR. JUSTICE TASSADUQ HUSSAIN JILLANI

MR. JUSTICE NASIR-UL-MULK

MR. JUSTICE SYED JAMSHED ALI

Constitution Petition No. 9 of 2005

Pakistan Bar Council

Petitioner

VERSUS

The Federal Government & others

Respondents

For the Petitioner:

*Mr. Rasheed A. Rizvi, ASC.
Mr. Muhammad Arshad, Secy,
Pakistan Bar Council.
Mr. M.A. Zaidi, A.O.R.*

For respondent No.1:

Ms. Nahida Mehboob Elahi, DAG.

For respondent No.2:

*Mr. Muhammad Javed Khan, D.G.
Higher Education Commission.*

For respondent No.3:

*Mr. Aftab Iqbal Ch, Advocate General
Punjab.
Ch Muhammad Hussain, Addl. A.G.
Punjab.
Raja Saeed Akram, AAG, Punjab.*

For Respondent No.4

Mr. Abbas Ali, Addl. A.G. Sindh.

For Respondent No.5

*Sardar Shoukat Hayat, Addl. A.G.
NWFP.*

For Respondent No.6

Mr. Mehmood Raza, AAG, Balochistan.

For Respondent No.7

Mr. M. Farooq Qureshi Chishti, ASC.

For Respondent No.8

*Mr. Muhammad Rafique Rajwara,
ASC.*

For Respondent No.9

Mr. Wasim ud Din Khattak, ASC.

For Respondent No.10-11

Nemo

For Supreme Court Bar Association:

Mr. Hashmat Ali Habib, ASC.

Date of hearing:

16.11.2006

JUDGMENT**Tassaduq Hussain Jillani, J.-**

Through this petition under Article 184 (3) of the Constitution of Islamic Republic of Pakistan, the Pakistan Bar Council has sought a direction that the respondents Federal Government, the Higher Education Commission, all the Provincial Governments and the universities be directed to adopt and implement the "Affiliation of Law Colleges Rules", framed by the Pakistan Bar Council and further that no Charter or N.O.C. be issued to any institution, college or individual to establish law college without compliance of the afore-referred Rules.

2. *The learned counsel for the petitioner, Mr. Rasheed A. Rizvi, who was the Vice Chairman of the Pakistan Bar Council when this petition was filed, in support of this petition, submitted that there has been a steady decline in the quality of legal education in Pakistan on account of mushroom growth of law colleges, lack of adequate facilities, absence of qualified faculty and absence of regulatory authority to ensure a certain qualitative standard. He contended that the goal of access to justice and its dispensation cannot be realized without a proper and organized legal education system. With a view to ensuring a quality legal education and to discourage the growth of substandard law colleges, the Pakistan Bar Council called upon its Legal Education Committee to draft Rules for granting recognition and affiliation to the law colleges by the universities. The Legal Education Committee, after thorough deliberations, submitted its recommendations which were approved by the Pakistan Bar Council*

in its 147th meeting held on 26.06.2004 a copy of which has been attached with this petition. Before approval by the Pakistan Bar Council, he added, the Legal Education Committee had a joint sitting with the representatives of the Provincial Bar Councils, several universities imparting legal education and the officials of the Higher Education Commission on 19.06.2004 who unanimously approved these rules. The elaborate exercise carried out for framing these Rules reflects a concerted effort of all the stakeholders of the legal education system to revamp the system to ensure qualitative improvement. The objective being onerous and the issue being of general public interest, he lastly submitted, warrants this Court's indulgence under Article 184(3) of the Constitution.

3. *Mrs. Nahida Mehboob Elahi, Deputy Attorney General, submitted on behalf of learned Attorney General for Pakistan that the Federal Government has examined the Rules framed by the Pakistan Bar Council and is of the view that those are beneficial and have been framed with a view to improving the standards of legal education. In these circumstances, the Federal Government not only supports the petition but would ensure that universities and its affiliated colleges falling within the domain of the Federal Government adhere to these Rules while granting recognition to law colleges.*

4. *The learned Advocate General Punjab also supported the petition and submitted that all the universities should bring their Affiliation Rules in conformity with these Rules. He stated that the Government of Punjab would ensure that the universities, while dealing with law colleges, strictly adhere to these Rules.*

5. *The learned Additional Advocates General N.W.F.P., Sindh and Balochistan also supported the petition.*

6. *The learned counsel appearing for the University of Punjab submitted that the Affiliation Rules of the University of Punjab are similar to the one framed by the Pakistan Bar Council. He added that the University shall adopt these Rules in addition to the existing Affiliation Rules insofar as law colleges are concerned.*

7. *The Additional Registrar appearing for the University of Balochistan submitted that the University has no objection if this petition is allowed. The Bahauddin Zikriya University, Multan also filed a conceding statement and did not join issue to the acceptance of this petition.*

8. *We have heard the learned counsel for the parties and have given anxious consideration to the submissions made.*

9. *Pakistan Bar Council, the petitioner, is the apex professional elected body of lawyers established under the Legal Practitioners & Bar Councils Act, 1973 [hereinafter referred to as "Act"]. One of its primary functions under this Act is "to promote legal education and prescribe standards of such education in consultation with the universities in Pakistan and the Provincial Bar Councils". [Section 13(j)] It has been empowered to make rules to carry out its functions which include rules to provide for, "the standards of legal education to be observed by the universities in Pakistan and the inspection of universities for that purpose." [Section 55(q)]. In the exercise of its function, the Pakistan Bar Council did frame the Bar Council Legal Education Rules, 1978, wherein it issued guidelines to*

law universities and law colleges for admission in LL.B course, for student-teacher ratio in law colleges, for duration of the LL.B. courses, for qualification of a part time teacher, for provision of library in a law college, the criterion of pass percentage in the law examination, for adequate representation of the Pakistan Bar Council on the Board of Studies, Faculties of Law, Board of Governors and other organizations set up for governing the law colleges and other institutions of law and for a provision of inspection of law colleges by a team to be appointed by the Pakistan Bar Council. The framing of "Affiliation of Law Colleges Rules" and the prayer that the respondents be directed to adhere to those rules is an exercise of a similar kind.

10. *The concern expressed by the Pakistan Bar Council about the declining standards of legal education is a matter of serious consideration. The petitioner-Council laments that, "there is no check either from the Government or HEC to put restraint on the growth of substandard law colleges with no facilities of good Lecturers, Professors and Libraries. It has been noted with serious concern that for the last 4/5 years, respondent No.1, the Federal Government as well as Provincial Governments have granted Charters to individuals for establishing colleges and Universities, in private sector, who have also entered in the field of legal education with no experience of legal education." Contending that the issue mooted in the petition is "a question of public importance", the petitioner implored this Court to intervene as according to it, "this is causing deterioration in the legal profession and at the same time adversely affecting Judicial System*

of this country, it will be in the public interest that a guideline should be provided by this Hon'ble Court to various institutions including Universities imparting legal education in the country to improve their system and to put restraint on establishing law colleges without proper infrastructure."

11. The twin objectives of dispensation of justice and enforcement of fundamental rights enshrined in the Constitution cannot be achieved without a strong and conscientious judiciary and independent and competent Bar. No wonder the United Nations Instrument on Legal Profession stipulates that, "independent legal profession is a sine qua non for any system of protection of human rights and fundamental freedoms." The Bar brings issues to the Court and the quality of justice delivered partly depends upon the quality of assistance rendered. Besides that while rendering advice to his client, a lawyer has not only to keep the relevant law in mind but also other considerations such as moral, economic, social or political, as the case may be, and then it is from the Bar that the Bench is constituted. The Bar and the process of dispensation of justice have a symbiotic relationship. Justice V.R. Krishna Iyer aptly observed while speaking on the responsibility of the Bar that,

'Lawyering like justicing rises and falls in reputation and esteem according as they serve the great purpose of delivering justice to the people. When they fail what befalls them i.e. best expressed in Shakespeare's words 'Dick, the first thing we do. Let's kill all the lawyers.'

The quality of the Bar and the assistance it renders to the courts to a great extent depends on the legal education. The Bar in general and the Pakistan Bar Council in particular therefore have awesome

responsibility to improve the quality of legal education because it is the possession of a degree of law which is a sufficient academic qualification for entering the Bar. The petition in hand therefore raises a question of public importance which has a great bearing on the justice system and the enforcement of fundamental rights in the country.

12. *It is a matter of common knowledge that there has been a mushroom growth of substandard law colleges lacking in infrastructural facilities and quality legal education. There is no eligibility criteria for admission and any person having done his graduation with minimum marks required for passing can get admission in those colleges. Dropouts from other courses find it easier to join a law course. The quality of faculty in most of the law colleges leaves much to be desired. These colleges have only part time lecturers and barring a few honourable exceptions, most of them do not have any commitment to the cause of legal education. Without a proper faculty, quality legal education is not possible. The law teachers should be well-trained, well-paid and committed to the cause. It has also been noted that colleges enroll students in great numbers but do not provide for adequate class rooms and even the student-teacher ratio tends to be imbalanced. This is so because the colleges are established more for commercial considerations rather than academic or to impart genuine legal education. The lack of commitment, loose administration and lack of requisite facilities has led to absenteeism in law colleges. Students get themselves enrolled, do not attend classes, at times they live or work at miles away from*

their respective colleges where they are formally enrolled. They get themselves marked present through proxies. The colleges do not discourage this because it brings them money. Courses of study prescribed by the university are paid lip service. Neither there is any indepth study of the subjects included in the curriculum nor any stress is laid on moral issues and professional ethics. Such students have hardly any commitment to scholaristic pursuits and when the exams approach, they prepare for the same through get-through guides. Law examinations held by universities are mere test of memory and students manage to pass by cramming. Colleges mostly have become business centres and in the name of legal education, it is a profit making industry that they are running. It is these centres which produce law graduates, who are called to the Bar, some practice, some join judiciary at the district level, some adorn the constitutional courts and some become law-makers.

13. *The poor quality of legal education in the country is taking its toll on the Bench, the Bar and ultimately the quality of justice. The Provincial Public Service Commissions, while engaged in recruitment to the posts of civil judges have frequently regretted the deteriorating academic standards of law graduates competing for the posts. Every year thousands of law graduates are getting added to the Bar. Some are products of colleges, having a certain credibility of imparting quality education whereas many come from colleges where the standard is below average. The products of the latter kind neither have the requisite knowledge of law nor any commitment to professional ethics. The apprenticeship training, prescribed under the*

Bar Council Rules is taken as a formality. The good old tradition of a senior training the junior in court room skills and ethics has given way to a new culture, where a young entrant is on his own sooner than is appropriate i.e. before he has legal skills or is fully equipped to properly advice the client and assist the Court. This results in situations which do not bring good name to the profession. There is a tendency to get engaged in non-professional pursuits. Bar has a proud legacy of promoting rule of law, fundamental rights, democracy and of standing up for just causes. But sometimes local Bars go on strike over issues which are hardly institutional. This disturbs the working of courts and adversely affects the administration of justice. Courts cannot function, cases are adjourned to dates which are fixed after months and the clients go back home frustrated. Taking a collective stand over just causes is one thing but going on a strike is something else. The latter course paralyzes the administration of justice. Bar is a global fraternity. There is no concept of self employed professionals going on strike in most countries of the world.

14. *Legal education should not only cater for those students who study to pursue law as a career but should also provide instructional and research facilities to those who aim at becoming researchers, academicians or critics in domain of law. The discipline of law encompasses almost every dimension of social life. Before students join a professional law course, they need to have a multidisciplinary academic base. They got to have sound language skills for reading, writing and communication. The study of English language is of particular importance. Because it is predominantly the*

court language in the country and is the most widely spoken language in the world. Being rich in content, it determines the frontiers of one's knowledge. Unfortunately over the last few decades the quality of education in colleges has also declined. To strengthen the academic base of a potential law graduate, there is a dire need to improve the standard and quality of the qualifying degree for admission in the Bachelor's law course. The scheme to make the law degree a five year course after intermediate is step in the right direction. Those entrusted with framing the law degree course may examine its desirability.

15. *There is by now a broad consensus among those concerned with legal education around the world that the issue needs to be tackled at three stages. Those are:-*

- (i) The academic stage.*
- (ii) The professional stage comprising both institutional training and practical training.*
- (iii) Continuing legal education.*

16. *While dilating on the academic stage in the legal education, law as subject has to be comprehended in proper perspective with particular reference to socio-economic and political dynamics which play a role in the evolution of law. Law is not merely a set of enactments churned out by the Legislature or study of a professional skills limited to courts and lawyers. Law is a social science of a wider canvas. It is a study of the relationship between the individual and society, between the individual and an institution, between the State and the institution, the interaction between the*

institutions and the State and at a global level inter se relationship between the States. The discipline of law reflects the societal conflicts, the societal hopes and the social ethos. Law is a social organism which has to keep pace with the socio-economic, political and technological changes. The contemporary age has witnessed unprecedented advancement in science and technology which has affected human lives at individual, national and transnational domains. We live in an age of globalization---an age where distances have shrunk, International trade has multiplied manifold, multinationals impinge on state sovereignty, wonders of information technology have engendered hypes and hope, pleasure and pain, where on account of the paradoxical potential of nuclear technology, the non-State actors are brandishing weapons of mass destruction and the humankind is threatened by the use of some of its own inventions. The ever-increasing global warming poses a serious threat to ecosystem. These concerns among others call for a deeper, compassionate and purposive study of the charter and the law which regulate the affairs of the individuals and the institutions and the States inter se.

17. *At the national level, the country has waded through vicissitudes---the geographical contours are no longer the ones that were carved out in 1947. We have had periods of constitutional deviation and more than one constitutional dispensations. These developments have affected the institutional growth and the constitutional law in the country. The year 2006 has been the 50th anniversary year of the Supreme Court of Pakistan. The Court*

including the High Courts have contributed their bit towards the promotion of fundamental rights through the exercise of constitutional jurisdiction. The Supreme Court in its attempt to ensure substantive justice have given an extended meaning to the fundamental right of right to life (Article 9 of the Constitution). The Court held that 'life has a larger concept which includes the right of enjoyment of life, maintaining adequate level of living for full enjoyment of freedom and rights.' [The Employees of the Pakistan Law Commission Islamabad v. Ministry of Works (1994 SCMR 1548)]. To ensure pollution free environment, the court declared that any action which may create hazards of life will be encroachment on personal rights to enjoy the life according to law. [Ms. Shehla Zia v. WAPDA (PLD 1994 SC 693)]. The conviction by a military court not empowered to try under the law was held to be violative of Article 9 of the Constitution. [Sh Liaquat Hussain v. Federation of Pakistan (PLD 1999 SC 504)]. The Court annulled the privatization of Pakistan Steel Mills Corporation as the process lacked transparency and was found to be against public policy and national interest. [Watan Party v. Federation of Pakistan (PLD 2006 SC 697)]. In yet another case, the Court upheld the institutional authority, ".....Because institutions play a vital role in civilizing a people and in their onward march towards socio-economic and political progress. In the comity of nations the credibility and progress of a country is measured by the strength of its institutions. A nation which fails to respect the institutions falls in grace, decays, splits and is condemned in history. A society bereft of stable institutions would be at odds with itself."

[Pakistan Medical & Dental Council v. Ziauddin Medical University & others (Civil Appeal No. 2206/2005).

18. *The Court by invoking the concept of public interest litigation has brought solace to the under privileged strata of the society. Reiterating the concept of the basic structure doctrine, it attempted to lay down foundations of constitutional and political stability. While some of the judgments have been landmarks, others have been subject of critical comment. The courts after all are man made institutions and are therefore fallible. The constitutional challenges faced by the country, the issues brought before the courts and judicial activism reflected in the judgments have increased the challenge both of the Bench and the Bar manifolds. The challenges are both moral and intellectual. They call for a deeper study of the issues, various dimensions, able assistance by the Bar and qualitative and bold handling by the Bench. These objectives can only be achieved if the study of law at our law schools is rich in content, more ethical and purposive in approach and caters for providing institutional and practical training as well.*

19. *A graduate joining the law professional course should have an objective world view which can only be realized if the course content is revamped both at the graduate and L.L.B levels. The issues confronting the people at national level and the humankind at large warrant serious thought on what to study to attain a dignified place in the comity of nations, to develop and to live in peace in a world characterized by multifaceted diversities. Towards that end many questions need to be addressed. Some of those could be: are the*

colleges offering courses to prepare the Graduates to comprehend, confront and resolve the issues of contemporary age? Is the course content wide enough to include the social sciences which have a bearing on the socio-political dynamics or have the courses been suitably amended in response to the growing interdependence of States in the wake of globalization? Does it include the recent developments in International Law of Arbitration, Alternate Dispute Resolution Mechanisms, Intellectual Property and computer technology? Has the concept of sustainable development based on the intragenerational, intergenerational and inter-species justice spelt out in the "Earth Chapter", been introduced in courses on environmental law? In a world divided by faiths and in the wake of growing misconception of Islam, does the study of Islamic Law include its pluralistic dimension? Has the institution of "Ijtihad" been accorded a dynamic construction to play its role in the evolution of law in modern age? Has the study of law been made as comprehensive and multi-disciplinary as has been done in some of the renowned universities and law schools abroad? These questions may not be exhaustive. The aim should be to revise the courses in accord with our domestic requirements and international obligations.

20. *The need for professional and continuing legal education cannot be over-emphasized. Lawyers' education is a continuing process. Be it through law colleges, academic pursuits, trial practice/clinical courts, training for young lawyers through apprenticeship or other modes adopted in this regard. The Chief Justice of U.S.A. was highlighting this aspect of the legal education*

when while addressing the American College of Trial Lawyers, District of Columbia, he said, ".....in some jurisdictions up to half of the lawyers who appear in courts are so poorly trained that they are not properly performing their job and that their manners and their professional performance, their professional ethics offend a great many people. They are engaging in on-the-job training at the expense of their clients' interests and the public."

21. For what has been discussed above and on account of the fair stand taken by the respondents, we are persuaded to allow this petition and direct as under:-

(i) The Pakistan Bar Council, is the apex professional elected body of lawyers established under the Legal Practitioner & Bar Councils Act, 1973. One of its primary functions under this Act is "to promote legal education and prescribe standards of such education in consultation with the universities in Pakistan and the Provincial Bar Councils". [Section 13(j)] It has been empowered to make rules to carry out its functions which include rules to provide for, "the standards of legal education to be observed by the universities in Pakistan and the inspection of universities for that purpose."

(ii) The Affiliation of Law Colleges Rules framed by the Pakistan Bar Council and any rule added or amended from time to time by it are essential to

ensure that the law schools/colleges impart uniform quality legal education.

(iii) The rules framed by the Pakistan Bar Council shall be read into the rules framed by any Pakistani university and in case of conflict former rules shall have primacy.

(iv) The rules do not envisage any concept of provisional affiliation. However, if any enactment, rules or regulation made thereunder provide for provisional affiliation, the same shall not extend beyond the period of one year and thereafter the said college shall stop admitting students for a law degree.

(v) With a view to improve and update the syllabus prescribed for a professional degree in law, we are persuaded to appoint a 5-Member Committee to be headed by Justice (R) Nasir Aslam Zahid, former Judge of the Supreme Court of Pakistan to examine the existing courses of law prescribed by the universities for obtaining the professional degree and to suggest suitable proposals, inter alia, in the light of the observations made by this Court. The Committee shall submit its report within six months to the Pakistan Law Commission for consideration. The other members of the Committee shall be as under:-

- (a) *The Vice Chairman, Pakistan Bar Council (Ex officio).*
- (b) *Prof. Ghafoor Ahmad, former Vice Chancellor Peshawar University and Principal Khyber Medical College.*
- (c) *Mr. Hamayun Ehsan, Principal Pakistan Law College, Lahore.*
- (d) *Mr. Mansoor Ali Shah, Advocate Supreme Court of Pakistan.*
- (e) *Two members to be nominated by the Chairman Higher Education Commission having the requisite academic background.*
- (vi) *A copy of this judgment shall be sent to all the Vice Chancellors of the universities in Pakistan, Chairman Higher Education Commission, the Federal Law Secretary and to the Secretary Pakistan Law Commission, Islamabad for information and necessary compliance.*

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ISLAMABAD, THE
November 16, 2006
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