

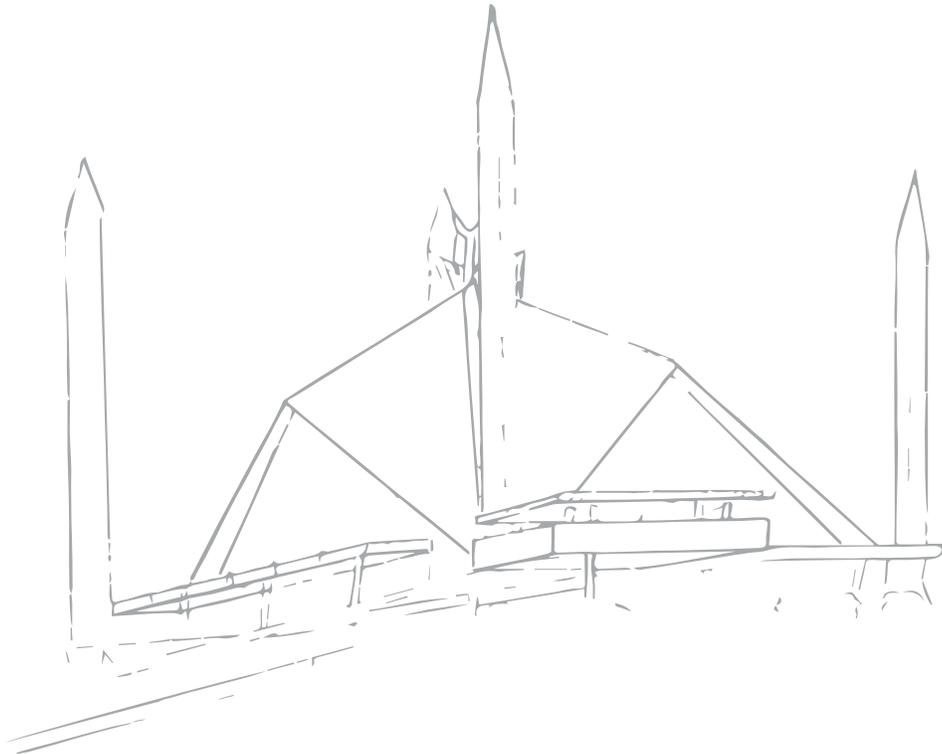


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Role of the Bar and Bench in the Development of Legal Education

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Abstract

The Bar and Bench are an integral part of 'administration of justice' and this noble cause can only be achieved with the harmony of each other. The Supreme Court of Pakistan in the case titled Pakistan Bar Council v Federal Government¹ emphasized the need for qualitative legal education in Pakistan, to ensure the delivery of justice. The Higher Judiciary is responsible for safeguarding the Fundamental Right of the citizens enshrined in the Constitution and to achieve this goal, a competent Bar is also necessary. In this scenario, the importance of quality legal education enabling to produce competent bar has become necessary at one hand. And on the other hand, the negative consequences of poor legal education are faced by the Bench and Bar, and ultimately hampering the administration of justice.² In this background, the 5 years BA-LLB (Hons) Law degree started in 2007 or so, will have a positive impact unless the methodology of teaching and examination is improved and minimize the role of memorization/rote.

Keywords: Legal education, modern techniques, interdisciplinary courses, competent, honest and professional Bar.

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¹ PLD 2007 SC 394.

² For a comprehensive overview on the legal education see: Osama Siddique, "Martial Law and Lawyers: The Crisis of Legal Education in Pakistan and Key Areas of Reform", *Regent Journal of International Law*, Vol. 5 (2007).

1. Introduction

Legal education plays an important role in the administration of justice and enforcement of fundamental rights enshrined in any Constitution.³ The Bar, Bench, and other stakeholders are responsible for this noble cause.⁴ The access to justice, which is a fundamental right⁵ of every citizen and sine qua non for the tranquility in the society, cannot be provided by the Courts in isolation.⁶ As the doctors are important to save the individual life, in the same way, the legal counsels are as important for the provisions of justice in society. The saying “a little knowledge is a dangerous thing” suits here because the life and death of a person whether by a doctor or counsel depend upon the competency and adequate skills of the concerned person dealing it.⁷ The Supreme Court in Pakistan Bar Council case rightly pointed out:

“The twin objectives of the 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.”⁸

After the independence 1947, Pakistan inherited from the British Empire, the Common Law legal system wherein Bar and Bench are both responsible for the administration of justice and the quality of the judgments depends not merely upon the judges but also reflect the competency and able assistance of the Bar.⁹ Since, the judges are appointed from the Bar, particularly after the separation of judiciary from the Executive,¹⁰ the quality of Bar is far more important in the dispensation of justice. “An

³ Imran Ahsan Khan Nyazee, “The Failure of Legal Education in Pakistan”, available at: <https://nyazee.org/2017/08/30/the-failure-of-legal-education-in-pakistan/>.

⁴ *Pakistan Bar Council v. Federal Government* PLD 2007 SC 394, para 11.

⁵ Articles 10 and 10-A of the Constitution of Islamic Republic of Pakistan 1973.

⁶ PLD 2007 SC 394 and CP No.134 of 2012 CMA No.1864 of 2010.

⁷ Swami Vivekananda, “Challenges of Legal Education in 21st Century: Role of Legal Education in Changing Society” available at <https://www.legalbites.in/challenges-legal-education-21st-century/>.

⁸ PLD 2007 SC 394, Para 11.

⁹ Judgment in C.P No.134 of 2012, Para 14, and Osama Siddique, “Martial Law and Lawyers,” p.95.

¹⁰ *Sharaf Faridi v. Federation of Pakistan* PLD 1989 Kar 404.

independent, competent, honest and industrious Judicature requires an equally independently dynamic, honest and dedicated Bar in order to effectively provide justice in accordance with the law to all members of the Society.”¹¹ With the recognition to provide legal aid to the poor and observation of constitutional provisions of equality before the law, it emphasizes that the accused who cannot afford legal counsel against the State counsel or against another party in private case, defeats the equality clause “equal before the law”¹² unless he is provided an equally competent lawyer of his own choice, at the expense of State.¹³ The United Nations Human Rights, Office of the High Commissioner has made rules where Governments have to ensure that competency and ethical legal qualification of lawyers who are representing the clients.¹⁴ For the purpose of reference the relevant para No.9 is reproduced hereunder:

“Qualifications and training

9. Governments, professional associations of lawyers and educational institutions shall ensure that lawyers have appropriate education and training and be made aware of the ideals and ethical duties of the lawyer and of human rights and fundamental freedoms recognized by national and international law.”

To ensure social justice and the enforcement of fundamental rights in the country, a vibrant legal community is needed and for this purpose legal education needs special treatment. The judiciary when faces problem in receiving able assistance from the Bar pointed out the root causes of the poor legal education. In this backdrop, the Supreme Court of Pakistan pronounced foundational judgment to improve legal education¹⁵. At that time,

¹¹ CP No.134 of 2012, Para 14;

¹² Article 25 (1): All citizens are equal before law and are entitled to equal protection of law. (2) There shall be no discrimination on the basis of sex alone (3) Nothing in this Article shall prevent the State from making any special provision for the protection of women and children.”

¹³ Fazal Karim, “Judicial Review of Public Actions” (Islamabad : Pakistan Law House, 2018), 2nd volume.

¹⁴ “Basic Principles of Role of Lawyers” Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990. Available at <https://www.ohchr.org/en/professionalinterest/pages/roleoflawyers.aspx>

¹⁵ *Pakistan Bar Council v Federal Government* PLD 2007 SC 394.

there were no such criteria in practice for admission in law colleges and it was considered that the students who could not get admission in any other discipline enter into law and get LLB degree through get-through guides and guides of “Khurram Qureshi” are sold like hot-cakes in the market during the exam. The memorization skills i.e. Rota-ism is the trick to get passing marks and quickly evaporated after the exam and enemy of development of thoughts and independent thinking. The PBC judgment speaks loudly on this dismal condition of legal education:

“Courses of study prescribed by the University are paid lip service. Neither there is any in-depth study of the subjects included in the curriculum nor is any stress laid on moral issues and professional ethics. Such students have hardly any commitment to scholastic pursuits and when the exams approach, they prepare for the same through get-through guides. Law examinations held by universities are a mere test of memory and students manage to pass by cramming. Colleges mostly have become business centers and in the name of legal education, it is a profit making industry that they are running. It is these centers 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 lawmakers.”¹⁶

The late Mr. Ardeshir Cowasjee, a renowned columnist of daily Dawn while writing in Dawn on this judgment banked a lot of hope from the Supreme Court that it will continue to take appropriate measure for the improvement of legal education in the country.¹⁷ There are many instances where Article 184 (3) was invoked for the purpose of “public interest” viz; Shehla Zia case¹⁸ and once again, the Apex Court heard the petition of Pakistan Bar Council, in declining standards of legal education in the country, were raised by the Apex Court. This foundational judgment elaborated how to cope up with this problem and divided the strategy into three stages viz; i) the academic stage; ii) the professional stage comprising both institutional training and practical training and iii) continuing legal education.¹⁹

¹⁶ Ibid.,

¹⁷ Ardeshir Cowasjee, “Looking to the Future” *Dawn* Sunday, June 27, 2010.

¹⁸ Shehla Zia case, PLD 1994 SC 693.

¹⁹ PLD 2007 SC 394, Para 15.

The courts when invokes its original jurisdiction face challenges and responsibility lies on the shoulders of Bench, Bar and also on academia alike to produce such lawyers who can handle the challenges with a strong base of legal education. The Supreme Court astutely posed questions on the competency and capacity of the law colleges whether they are offering the cross-listed courses enabling law graduates to cope with the rapid development in socio-economic fields and not merely in this field area but also posed question whether in this complex world wherein Islamic law needs to find out new ways and means to for emergent issues. The law should not be taught in isolation where only Bare Acts are taught and lawyers are prepared for a limited purpose rather they should be taught interdisciplinary subjects of socio-economic.²⁰ The aim to pose these questions was described by the Apex Court, is to devise legal education curriculum in such a way that the law graduates can handle the challenges at domestic and international level.²¹

“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 LL.B. levels. The issues confronting the people at the 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 a course 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 development in International Law of Arbitration, Alternate Dispute Resolution Mechanisms, Intellectual Property, and computer technology? Has the concept of sustainable development based on the intra-generational, intergenerational and inter-species justice spelt out in the "Earth Chapter", been introduced in courses on environmental law? In a world divided by

²⁰ LUMS Official Website at:

<https://lums.edu.pk/books/undergraduate-student-handbook>.

²¹ Jon Mills and Timothy McLendon, “Law School as Agents of Changes and Justice Reform in the America” and Para 19 of PLD 2007 SC 394 and Warkey, A. M, “Learning Objectives of Legal Education in India: A Critique” *Cochin University Law Review* Vol. XV, 1991.

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 the 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 accords with our domestic requirements and international obligations."²²

In this brief article, I would like to discuss about the Supreme Court judgment in *Pakistan Bar Council v Federal Government*²³ and directions made in that the judgment and the Legal Education Rules 2015 notified by the Pakistan Bar Council, to implement the directions given by the Supreme Court of Pakistan in the year 2007. I will also discuss briefly the practices being adopted by India, the US, and the UK to tackle legal education. Then I will through light on the recommendations given by the Special Committee on the Structural Reform in Legal Education constituted by the honorable Supreme Court - this I will couple with available literature local and international. Then, in conclusion, I will give some of the recommendations.

2. Regulatory Bodies for Legal Education

The legal education regulation is almost done on the same footing in the US, UK, India, and Pakistan. In the beginning, American legal education was conducted by the US State Department of Education and subsequently, this function was delegated to the American Bar Association. In 1952 and onwards, the American Bar Association has been delegated the task of accreditation of law schools in the United States of America and to make the rule and standard for legal education. The US State Department of Education every five years renews the accreditation authority to the American Bar Association.²⁴

In 1992, the American Bar Association published an exhaustive Report of the American Bar Associations' Task Force

²² PLD 2007 SC 394, Para 19.

²³ Ibid.,

²⁴ Margaret Martin, Jon C Dubin and Peter A Joy, "Legal Education: Best Practices Report United States", PILNet, available at: <https://www.coursehero.com/file/32704861/The-Development-of-Legal-Education-in-the-United-Statesdoc/>.

on law schools and the profession, also known as the MacCrate Report²⁵ which among others identified ten lawyering skills and four professional values for all members of the legal profession. Ten fundamental lawyering skills are mentioned here:

1. Problem-solving
2. Legal analysis
3. Legal research
4. Factual investigation
5. Communication
6. Counseling
7. Negotiation
8. Legal Litigation and alternative dispute resolution
9. Organizational, administrative and time management skills.
10. Recognizing and resolving ethical dilemmas

The four fundamental values of the legal profession are as below:

1. Competent representation;
2. Striving for justice
3. Striving to improve the profession; and
4. Professional self-development

In the same report, it was emphasized that students should be prepared in such a way that they get skills and professional training apart from legal research, legal analysis, and problem-solving instructions. The other main findings were assurance of clinical legal education during the student-ship and then afterward continuing legal education as a lifelong toolkit.²⁶

The primary goal of legal education in the US is to prepare the graduate for the practice of law and it is the responsibility of the

²⁵ Robert MacCrate, "Legal Education and Professional Development: An Educational Continuum." Report of the Task Force on Law Schools and the Profession: Narrowing the Gap". American Bar Association, Section of Legal Education and Admissions to the Bar, July 1992. The Mac Crate Report is named after Robert MacCrate, Esq., Chairman of the Task Force.

[https://www.americanbar.org/content/dam/aba/publications/misc/legal_education/2013_legal_education_and_professional_development_maccrate_report\).authcheckdam.pdf](https://www.americanbar.org/content/dam/aba/publications/misc/legal_education/2013_legal_education_and_professional_development_maccrate_report).authcheckdam.pdf).

²⁶ Ibid.

law schools to ensure that the law students enter the profession of lawyering with effectiveness and responsible participation. Unfortunately, the most of law schools are merely preparing students to pass Bar Exam and the most important part of the legal education to prepare the students professionalism and ethical is missing, ultimately hampering effective dispensation of justice.²⁷ In England, The Bar and the Law Society evaluate curriculum and effectiveness, and the teaching method is strict oversight.²⁸

In Pakistan, Pakistan Bar Council in coordination with the Higher Education Commission of Pakistan regulates the legal education. The Legal education committee of the PBC time to time revises its Rules for legal education. In the year 2015, on the recommendations of National Curriculum Revision Committee of HECP²⁹, the PBC revised Legal Education Rules 2015, wherein inter alia, five years law degree has been made mandatory in the country and 3 years law degree was abolished from Fall Semester 2018.³⁰ The confusion of jurisdiction continues to exist because of dual supervision by HECP and PBC. These discrepancies have been pointed out by two research articles and more interestingly, the solution to this problem more or less is the same, recommended by the scholars.³¹

²⁷ Ibid.

²⁸ Sandra R. Klein, "Legal Education in the US and England: A Comparative Analysis", *Loy. L.A. Int'l. & Comp L.J.* Vol. 13 (1991), p. 601.

²⁹ National Curriculum Revision Committee (NCRC), revised Curriculum of LL.B 5 Years and submitted recommendation to Pakistan Bar Council. Higher Education Commission of Pakistan Revised Edition 2015, HEC, Islamabad. Available at: <http://hec.gov.pk/english/services/universities/RevisedCurricula/Documents/2014-15/Final%20Curriculum%20%20LLB.pdf>.

³⁰ PBC Notification No.SRO 1265/(1)/2015 dated December 19, 2015 vide Section 13 (j & k) 26 (c) (iii) and 55 (q) of the Legal Practitioners & Bar Councils Act, 1973. Available at: <http://pakistanbarcouncil.org/pakistan-bar-council-recognition-of-universities-rules-2005/>.

³¹ Osama Siddique, "Martial Law and Lawyers", and Ahmed Ali Khan, Challenges of Legal Education in Pakistan: A Review.

In India, Bar Council of India (BCI) which was established under Advocate Acts 1961³², regulates the legal education and law colleges/schools. One of the main responsibilities of BCI is to keep close vigilance for standards of legal education and law colleges/schools. The enrollment in Bar for becoming as an Advocate is only allowed for those law colleges/schools which are recognized by the Bar Council of India³³. The clauses are as below:

“6. [T]o promote legal education and to lay down standards of legal education. This is done in consultation with the Universities in India imparting legal education and the State Bar Councils.

7. To recognize Universities whose degree in law shall be a qualification for enrolment as an Advocate? The Bar Council of India visits and inspects Universities, or directs the State Bar Councils to visit and inspect Universities for this purpose.”

3. Criteria for Admission in Law Colleges

The admission criteria in law colleges have been a non-serious issue and no proper test used to be taken for admission in law colleges except a few, in Pakistan. The Lahore University of Management Sciences (LUMS) is the only private university in the country which conducts a comprehensive test of international level for the admission in the university. Initially, the university used to conduct LCAT (LUMS Common Admission Test) but afterward, it has started to take the SAT, which is on the pattern of USA, for university-wide admission.³⁴ Recently the Supreme

³² Bar Council of India under the tab About BCI available at <http://www.barcouncilofindia.org/about/about-the-bar-council-of-india/>

³³ “Rules of Legal Education”: Chapter II, Standard of Professional Legal Education under Sub-Title “Recognition Universities”, “Bar Council of India,” Part IV: Rules on standards of legal education and recognition of degrees in law for the purpose of enrolment as advocate and inspection of Universities for recognizing its degree in law under Sections 7(1)(h) and (i), 24(1)(c)(iii), and (iiia), 49(1)(af), (ag), and (d) of the Advocates Act, 1961 made by the Bar Council of India in consultation with Universities and State Bar Councils. Available at: <http://www.barcouncilofindia.org/wp-content/uploads/2010/05/BCIRulesPartIV.pdf>.

³⁴ Ahmad Ali Khan, “Legal Education in Pakistan: A Review”. Ahmad Ali Khan was then Dean Faculty of Social Sciences, University of Peshawar and he has been attached with the HEC for curriculum development committee. See also Nyazee.

Court of Pakistan has made mandatory that every student who wants to take admission in law must pass LAT (Law Admission Test) and the Higher Education Commission of Pakistan has been entrusted the task to conduct Law Admission Test all over Pakistan³⁵.

A similar test is conducted for the admission in National Law Schools all over India namely Common Law Admission Test (CLAT). The Bar Council of India (BCI) tried to impose age limit 20 years for CLAT but the Supreme Court of India in 2015 scrapped this restriction of age imposed by BCI³⁶. The BCI again imposed a ban of age in 2016 by invoking Rule 28 of Legal Education Rules, 2008 but Supreme Court of India stayed and the case is still pending for adjudication. The Common Law Admission Test (CLAT) is conducted all over India except a few law colleges like Jindal Global Law School gives admission through LSAT and National Law School, New Delhi, through AILET. Contrarily, in England, the student has to do Advanced Level (A-Level) for entering into law or any other degree, and a student has to start law school from the age of 18/19 years.³⁷

4. Supreme Court Judgment in C.P No.134 of 2012 on the recommendations on the Report of Special Committee on Structural Reform in Legal Education

To implement the directions given in the Pakistan Bar Council v Federation Government³⁸, the Supreme Court constituted a Committee known as Special Committee on Structural Reform in legal education, which submitted a detailed report wherein almost all the stakeholders were taken on board except few but important. The committee in its introduction has highlighted the importance of apex court for taking notice in improving the

³⁵ Judgment decided by the Full Bench of Supreme Court of Pakistan in CP No.134 of 2012 and CMA No.1864 of 2010 available at the website of Supreme Court of Pakistan at:

http://www.supremecourt.gov.pk/web/user_files/File/Const.P._134_2012_21012019.pdf. Since the judgment is "Not Approved for Reporting", official citation is not available.

³⁶ Mayank Shekhar, "Challenges of Legal Education in 21st Century" available at: <https://www.legalbites.in/challenges-legal-education-21st-century/>.

³⁷ Klein.

³⁸ PLD 2007 SC 394.

standard of legal education. The Committee has expanded the stakeholders and did rightly so to have included Bar, Bench, HEC, law colleges, professional etc. The Higher Education Commission of Pakistan is governing and regulatory body for overall education in Pakistan for public and private universities.³⁹ The Special Committee highlighted the following types of legal education being imparted in Pakistan are as under:⁴⁰

1. 3 year LLB by Punjab University and other provincial universities (which is now stopped). The admission in the program is allowed after two years of graduation (BA);
2. 3 years LLB (Hons) External Degree. The London degree is awarded in Pakistan. The admission in this program is allowed after A-Level, FA/FSc (Intermediate); and
3. 5 years of BA/LLB. The admission in the program is allowed after A-Level, FA/FSc (Intermediate)

A question may arise in one's mind that why it was felt necessary to start 5 years LLB program? The short answer to this question is because of the continuous deterioration in the standard of legal education.⁴¹ The answer is that in the first two years of BA phase of this program, plenty of cross-listed courses are taught: ranging from sociology, anthropology, communication skill, political sciences and many more.⁴²

The number of the year was not mentioned in the Pakistan Bar Council Case⁴³, in that judgment, only policy matter was discussed and rest of the issues were entrusted to a Commission constituted under the Chairmanship of Justice (Retd) Nasir Aslam Zahid. Historically, in Pakistan, the five years LLB was in practice in International Islamic University Islamabad and in 2003, Lahore University of Management Sciences (LUMS) started its five year BA/LLB program in Department of Law & Policy, now a full-fledged school i.e. Shaikh Ahmad Hassan School of Law

³⁹ Press Release of Pakistan Bar Council of 21th January 2018. Available at <https://www.dawn.com/news/1428432>.

⁴⁰ Special Committee for Structural Reforms in Legal Education.

⁴¹ The Report of the Special Committee.

⁴² See detailed revised "Revised Curriculum of LLB (5 years) HEC, Islamabad. Available at: <http://hec.gov.pk/english/services/universities/RevisedCurricula/Documents/2014-15/Final%20Curriculum%20%20LLB.pdf>.

⁴³ PLD 2007 SC 394.

(SAHSOL).⁴⁴ The purpose to start this kind of LLB in Pakistan was to create not-only-an-isolated-lawyer but also prepare such law graduates who can meet the modern-day requirement of domestic and International level.⁴⁵ In connection with five year BA/LLB program, the Commission for Law College Reform, Punjab, in its 18-page report gave its recommendation to the Lahore High Court stating that five years law degree is not workable and even the commission told the High Court that five years law degree program is spoiling the future of law students. The reason seems behind this report that the commission realized the incapacity of the universities and affiliated law colleges for teaching five years law course.⁴⁶ It is worth mentioning here that when LUMS was going to start 5 years BA/LL.B (Hons), similar views were expressed by one of the leading lawyers who has been and is still associated with legal education regulation in the country, but the advocate-cum-professor corrected himself after having interaction with the graduates of LUMS Law School and not only corrected himself but also praised the law program being offered at LUMS Department of Law & Policy (now SAHSOL). The research, writing, case study methods, preparing the brief and the initiative of Clerkship at the Supreme Court of Pakistan was taken by SAHSOL law graduates under the supervision and guidance of Mr. Justice Jawad S. Khawaja⁴⁷ and now the clerkship has become an institutional part of the Apex Court of Pakistan,⁴⁸ made up the mind of praise the program.

In the Pakistan Bar Council Legal Education Rules 2015, no meritorious criteria was introduced for entrance into law colleges and it was felt necessary to induct student into law degree

⁴⁴ <https://sahsol.lums.edu.pk/>.

⁴⁵ Osama Siddique, "Martial Law and Lawyers".

⁴⁶ "5-year LLB program not workable, court told: Commission on law education and colleges says course dangerous for future of next generation". *The News*, Saturday July 1, 2017. Available at: <https://www.thenews.com.pk/print/213660-5-year-LLB-programme-not-workable-court-told>.

⁴⁷ Before elevation to Supreme Court, he remained Head of the Department of Law & Policy and retired as Chief Justice of Pakistan.

⁴⁸ Official Website of Supreme Court of Pakistan at: http://www.supremecourt.gov.pk/web/user_files/File/Selected_Candidates_Clerkship_Programme_2018_19.pdf.

through proper entrance exam, hence on the recommendations of Special Committee, the Supreme Court made it mandatory for all aspiring student to pass Law Admission Test (LAT) and restored Law-GAT for the enrolment into Bar and the HECP has been entrusted the task to conduct these tests.⁴⁹ The Ph. D along with others has been made mandatory qualification to become Dean/Head of Department/Principal of Law College.⁵⁰ The relevant portion of the said report is as under:

“(i) The Dean Law Faculty/Head of Law Department/ Principal of law college shall be Ph.D. in law with 8 years law teaching experience/ practice experience in High Court or Master’s Degree in Law with 15 years law teaching experience/ practice experience in High Court or a retired Judge of the Supreme Court or a High Court or a retired District & Sessions Judge having 5 years of judicial service to his credit”⁵¹

The Supreme Court, on the recommendations of the Special Committee, 3 year LLB and evening classes have stopped.⁵² In England, LLB degree holder is not allowed to practice in the courts without doing Bar Practical Courses whereas in Pakistan LL.B (Hons) External degree holder used to enroll in the Bar without studying procedural courses even without Bar Entrance Test.⁵³ But now in Pakistan, this practice has been changed and external degree holders stopped to take Law GAT without passing some of the procedural courses which are mandatory syllabus by PBC-HECP in Pakistan for 3-year LL.B and 5-year LL.B alike. As per the decision of the Apex Court, every external graduate has to pass five procedural courses which include (1) Constitution of Pakistan; (2) Civil Procedure Code; (3) Criminal Procedure Code; (4) Qanoon-e-Shahadat Order and (5) Specific Relief Act.⁵⁴ For

⁴⁹ Short Order on 31st August 2018, Paras No.1 and 2.

⁵⁰ Ibid., Para 7.

⁵¹ Ibid., Para 7 (i).

⁵² Ibid., Paras 9 & 10.

⁵³ Honorable Mr. Justice Syed Mansoor Ali Shah, the then Chief Justice of Lahore High Court now Judge of the Supreme Court of Pakistan. Sheraz, Zaka, “Exemptions for Foreign Law Graduate set aside by the Lahore High Court” Available at: <http://courtingthelaw.com/2016/01/04/commentary/exemptions-for-foreign-law-graduates-set-aside-by-lahore-high-court/>.

⁵⁴ Ibid., para 11.

this, students have to take extra tuition for passing these courses for which HECP will take the exam as per the Supreme Court Judgment. The Supreme Court Order also directed the PBC and Provincial Bar Councils to convince Federal and Provincial Governments for the allocation of budget for the betterment of legal education and law reform in the country.⁵⁵ So now, the ball is in the court of federal and provincial government whether they want to bring a drastic change in the justice system of Pakistan or not, there should also always hope for positive aspect.

One of the major causes in declining the standards in legal education; is teaching method and assessment/evaluation of examination. The one-way teaching style which produces merely memorization/Rota-ism ultimately discourages the debate culture in the society. The method of teaching adopted through Socrates and Dialogue, help in producing intellectualism and independent-minded peoples whereas memorization merely helps to pass the exam for getting a degree. The Special Committee devoid of any such recommendations and did not discuss the teaching techniques and methodology, though it briefly discussed the evaluation of exam and assessment.⁵⁶ The LUMS adopted the teaching method on the pattern of Harvard Law School i.e. casebook and Socrates dialogue method, this is applauded because it opens the minds of the society and generate a healthy debate which ultimately broadens the horizon of the knowledge.⁵⁷

To ensure continuous monitoring and implementation of the judgments and recommendations of Specials Committee, a separate Directorate of Legal Education within Pakistan Bar Council has been directed to establish.⁵⁸ A similar Directorate of Legal Education is already working under the Bar Council of India⁵⁹ to improve and promote legal education, to ensure justice system reform for achieving the goal to enforce fundamental rights guaranteed in the Constitution. The honorable Court

⁵⁵ Ibid., para 13.

⁵⁶ Short Order C.P No.134, para 15.

⁵⁷ Klein.

⁵⁸ C.P No.134 of 2012, Para 16.

⁵⁹ Directorate of Legal Education, Bar Council of India. Available at <http://www.barcouncilofindia.org/about/about-the-bar-council-of-india/directorate-of-legal-education/>.

expected from the senior members of the Bar to contribute for the quality control in legal education and legal profession because academic qualification alone cannot fulfill all the requirement of the standard of legal education.⁶⁰

The libraries in universities play an important role in the development of knowledge and the importance of libraries in law colleges become more important and without proper law library⁶¹, life in law school is almost impossible. In this modern age, merely printed material is insufficient electronic sources, for example, Pakistan Law Site, JSTOR, Lexis Nexis etc. must be part of the law library.⁶² It would be appropriate to mention here that the law library of Shaikh Ahmad Hassan School of Law (SAHSOL) of LUMS is one of the best libraries in the country.⁶³ The Supreme Court in CP No.134 para 10, emphasized to conduct a mooted, mock trial for instilling trial skills in the law students, to engage them in clinic law where students can handle real-life cases in the court. Apart from this, the honorable Court also directed law colleges to provide such atmosphere to the law students where they can get negotiation skills, interviewing skill and mediation skills enabling them to excel in the diversified legal field. The Court further said:

“ . . . [l]eading law schools in the world that offer multifaceted curricula inclusive of clinical legal education, mooted, mock trial, client interviewing, negotiation and mediation to provide students with an insight into the practical requirement of law practice.”⁶⁴

The Supreme Court directed law schools to include interdisciplinary courses so that law graduates become versatile and they could be avoided intellectual starvation in this technologically advanced age. It is the prime responsibility of the law colleges/schools to prepare competent lawyers because all other stakeholders receive lawyers so the first responsibility lies on the shoulders of law colleges/schools hence they have to make such arrangements to create such atmosphere where competent,

⁶⁰ CP No.134 of 2012 Para 14.

⁶¹ CP No.134 of 2012

⁶² Ibid., Para 13.

⁶³ Osama Siddique, “Martial Law and Lawyers”.

⁶⁴ CP No.134 of 2012, Para 10.

dynamic, honest lawyers are prepared.⁶⁵ Osama Siddique explained reasons in his monumental research article on legal education, as to why Lahore University of Management Sciences (LUMS) started five years BA/LL.B in the country.⁶⁶

It is highly expected that a public and private sector law college at-least one in each category, become a Center of Excellence in Legal Education in the country and for the purpose of establishing such Center of Excellence, we can learn from the Indian experience of National Law School of India University⁶⁷ (NLSIU)⁶⁸. In the private sector of Pakistan, the LUMS Law School – Shaikh Ahmad Hassan School of Law (SAHSOL) has tremendous potential to become Center of Excellence in Legal Education.⁶⁹ The author further said:

“The Lahore University of Management Sciences (LUMS)—a private, nonprofit university established in 1985—also agreed to lend assistance as a possible role model since it had recently introduced a new and much improved legal curriculum for a five-year B.A.-LL.B. degree. Further, the university had demonstrated an initial commitment to develop a full-time research faculty, improve pedagogical and examination approaches, and create an institutional structure for legal education in line with international best practices.”⁷⁰

The LUMS leadership is committed and striving to make it so. In such centers, the legal graduates could be prepared and it would be helpful in instilling research culture in the country, for producing literature of international standard and Islamic Research Institute, International Islamic University Islamabad is

⁶⁵ CP No.134 of 2012, Para 11.

⁶⁶ Osama Siddique, “Martial Law and Lawyers” .

⁶⁷ Ibid.

⁶⁸ Official Website:

https://www.nls.ac.in/index.php?option=com_content&view=article&id=40&Itemid=25.

⁶⁹ Osama Siddique, "Legal Education in Pakistan: The Domination of Practitioners and the “Critically Endangered” Academic." *Journal of Legal Education* 63: 3 (2014).

⁷⁰ Ibid., p.507.

already contributing quality work.⁷¹ It would be helpful to learn from their experience.

To keep pace with the new developments in modern technology and in the legal field, the Continuing Legal Education (CLE) has become imperative. In the United States and the United Kingdom, the continuing legal education is mandatory and lawyers are provided continuous legal training. In Pakistani scenario, the continuous legal training is far more necessary owing to the poor legal education at law colleges. It is worth mentioning here that most of the new lawyers learn basic legal skills when they join the profession.⁷² The continuous legal training phenomenon is not and should not confine to the Bar only but judges also need Continuing Legal Education during their judge-ship particularly for the District Judiciary. In Pakistan, to some extent, the Federal and Provincial Judiciary Academies are providing training to the newly inducted and existing judges.⁷³ The honorable Justice Umar Ata Bandial, while writing for the Court in C.P No.134 of 2012, quoted a Canadian Supreme Court case to highlight the importance of continuing legal education and said:⁷⁴

“A lawyer’s professional education is a lifelong process. The legislation is amended, the common law evolves, and practice standards change as a result of technological advances and other developments. Lawyers must be vigilant in order to update their knowledge, strengthen their skills, and ensure that they adhere to accepted ethical and professional standards in their practices.”⁷⁵

The Law and Justice Commission of Pakistan, Pakistan Bar Council, and all Provincial Bar Councils need to undertake a comprehensive study to review legal education syllabus and devise the ways and means to improve the legal education ⁷⁶ so

⁷¹ Official Website available at: <https://iri.iiu.edu.pk/>.

⁷² Osama Siddique, "Legal Education in Pakistan: The Domination of Practitioners and the "Critically Endangered" Academic."

⁷³ Ziaullah Ranjha, "Legal Education" *Dawn*, October 2, 2015 available at: <https://www.dawn.com/news/1210297>, and also directed by the honorable Supreme Court in CP No.134 at para 14.

⁷⁴ CP No.134 of 2012, para 14.

⁷⁵ *Sidney Green v. the Law Society of Manitoba* – 2017 SCC 20, p. 1.

⁷⁶ *Ibid.*

that fake apprenticeship and substandard law colleges could get rid-off. The reasons to make CLE mandatory in the USA was necessitated, shared by Chief Justice of United States of America while addressing the American College of Trial Lawyers District Columbia, he told that the performance of the lawyer appearing before the court are very poor and they are not properly doing their job. They are getting on-the-job training at the expense of their client. In his own words:

“ . . . [i]n 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' interest and the public.”⁷⁷

5. Conclusion

It has been more than a decade, since Supreme Court had pronounced the Pakistan Bar Council judgment wherein it directed all stakeholders, particularly, Pakistan Bar Council to take appropriate measures for ensuring that law colleges provide quality legal education so that competent lawyers can join Bar for able assistance to the Courts. The PBC Judgment⁷⁸ and the research article highlighted the substandard in legal education in 2007, still haunting legal education. In 2018, after a decade, again the Supreme Court, on the detailed recommendations by the Special Committee on Structural Reforms in Legal Education, has directed the Pakistan Bar Council and HECP to ensure qualitatively legal education and it is highly hoped that this time these directions will be implemented seriously by the PBC, HECP and Law Colleges.

The fundamental rights guaranteed in the Constitution of the Islamic Republic of Pakistan 1973, ensure rule of law, access to justice, assurance to provide the accused with counsel of his own choice, cannot be achieved without a robust and competent Bar and the Bar will remain barren without a qualitative and meaningful legal education. To provide practical exposure to the law students, the resources of District Judiciary should be utilized

⁷⁷ PLD 2007 SC 394, Para 20.

⁷⁸ PLD 2007 SC 394.

for clinical law and law students should include in this Clinic Law Program. This process has tremendous potential to prepare competently and committed lawyers. Therefore, more than anybody else, the first responsibility lies on the shoulders of law colleges to prepare competent lawyers and secondly, Bar Councils' responsibility starts to filter at the time of induction of competent lawyer into Bar. The Bar Councils and Bar Associations have to implement the directions at the cost of their vote bank, for the sole purpose of preparation of competent lawyers so that the Bench can have able assistance from the Bar.

This time, we should have strong hope that PBC and HECP in close coordination with law colleges will implement the directions given by the honorable Supreme Court of Pakistan. I here quote from a research article that is still relevant, on legal education which was written in the year 2007 when the Supreme Court, PBC case, gave directions for improving the legal education in the country. The author concluded his article in the following words:

“The creation of an academic culture is a long-term process resting on sustained financial support and the creation and sustenance of research grants, augmentation of faculty salaries, and the establishment of research infrastructure. It is also dependent on strong formalized assurances and protections for freedom of speech because legal academics are most likely to venture into controversial and heavily debated areas and cannot carry on independent and intellectually honest research unless they are confident that they will not become victims of conscience. The creation of tenure-track systems in colleges/universities can contribute to the development of an academic culture as well as providing safeguards for freedom of speech.”⁷⁹

⁷⁹ Osama Siddique, “Martial Law and Lawyers”.