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THE PBC LEGAL EDUCATION RULES 2015 AND QUALITY LEGAL EDUCATION IN PAKISTAN

A CRITICAL APPRAISAL

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The PBC Legal Education Rules 2015 and Quality Legal Education in Pakistan – A Critical Appraisal

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Abstract

Since early 2000s, the Pakistan Bar Council (PBC) sought to regulate the mushroom growth of law colleges in Pakistan, which they believed was responsible for the decline in the quality of legal education. The PBC passed the 'Affiliation of Law Colleges Rules', later consolidated into 'Legal Education Rules' in 2015, in which they attempted to address the lack of facilities, qualified faculty, and set up a regulatory authority for legal education. However, their exercise of control eroded university autonomy, dictated syllabus, imposed orthodox ideas about outcomes, imposed hefty costs, and limited access to education. This paper explores how advancement of legal education has been compromised in favor of control, which is beyond not just the stated objectives of reform of legal education, but also beyond the role and scope of Pakistan Bar Council under the Legal Practitioners and Bar Council Act, 1973. In doing so, the paper also challenges the jurisprudence developed by the Supreme Court on this matter and urges all stakeholders to revisit the conundrum vis a vis legal education in Pakistan that has been created through the Legal Education Rules and the related judgements from the courts.

Keywords Pakistan Bar Council, Legal Education, Legal Education Rules,

Introduction

Since early 2000s, the Pakistan Bar Council (PBC) embarked upon an ambitious journey to regulate and control the mushroom growth of law colleges, which they held as the primary cause responsible for the steady decline in the quality of legal education in Pakistan. In order to address the growing concerns related to lack of adequate facilities on campuses for students, absence of qualified faculty and absence of regulatory authority to ensure 'certain qualitative standards' that ought to be adopted for imparting legal education, they passed the 'Affiliation of Law Colleges Rules' now consolidated into Legal Education Rules, 2015 and sought their implementation by involving the Supreme Court of Pakistan (SC) via Constitutional Petition No 9 of 2005 (PLD 2007 SC 394).

What started as an issue of oversight over administrative matters and compliance by colleges with requirements for basic facilities on campuses for students, which itself is questionable; gradually turned into an exercise of control, assumption of policing powers, dictation of syllabus,erosion of autonomy of universities vis a vis their academic direction, imposition of orthodox ideas about outcomes from an academic degree in law, hefty costs in name of applications for NoObjection Certificates (NOCs) and undue transgression from their role of promoting legal education and

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prescribing 'standards' of such education in consultation with universities and provincial bar councils, to one where the same were being dictated, accompanied by sanctions and threats for non-recognition, derecognition, disaffiliation and most draconically, of limiting access to education. They also ended up threatening the non-eligibility of acquiring practicing license to students, whilst seeking for themselves 'adequate representation on boards' as well as role and positions for retired judges in universities and colleges.[1]

In doing so, the concerned authorities ended up arresting the development of legal education as opposed to achieving their own stated goal of promoting legal education and have not been able to improve the quality of legal education as much as they have made its access more limited for students. In addition to that, they have turned what ought to have been a policy matter best left to policy makers and educational experts, a judicially backed prescription that does little to improve and access legal education in line with fundamental rights, global trends and social and digital realities of our world.

The Legal Education Rules, 2015 and in fact the entire saga of regulation of legal education through the Supreme Court therefore, has been nothing more than an eye wash for prescription and control of legal education by people who are not academicians, colored by populist slogans, normative statements and policing, and has been a prime example of misplaced expectations of outcomes from an academic degree that are better suited for a vocational one instead. As a result, neither vocational nor academic objectives are currently, being fully met from legal education avenues in Pakistan.

This paper explores how advancement of legal education has been compromised in favor of control, which is beyond not just the stated objectives of reform of legal education, but also beyond the role and scope of Pakistan Bar Council under the Legal Practitioners and Bar Council Act, 1973. In doing so, the paper also challenges the jurisprudence developed by the Supreme Court on this matter and urges all stakeholders to revisit the conundrum vis a vis legal education in Pakistan that has been created through the Legal Education Rules and the related judgements from the courts.

Legal Education – Preliminary Observations on the Role and Approach of Pakistan Bar Council towards Regulating Legal Education in Pakistan

Types, Role and Purpose of Different Forms of Legal Education

'Legal education' is an umbrella term encompassing different stages of learning and training associated with law and legal practice. These stages include:[2]

i. Academic
ii. Professional

[1] Rule 14 (2), Legal Education Rules, 2015
[2] Para 15, PLD 2007 SC 394.

iii. Continuing Legal Education

A bachelor's degree obtained upon graduation in any discipline is always an academic degree and is supposed to build the theoretical foundations and basic academic skills, such as critical analysis, research and reasoning. It is not to be confused with professional or vocational training,which is usually offered separately as a year-long course followed by a professional examinationas an entry point into the professional career stream, for example, the Bar-at-Law Programme in the UK.

In most countries, the bodies regulating the legal profession require students to sit for their own bar exams in order to qualify for the license to practice in their states, such as the New York Bar Exam. These professional courses and examinations, that serve as an entry into the professional practice, are taken in addition to the undergraduate degree in law, the LL.B degree and the role and purpose of these programmes is different from the nature of the academic degree that LL.B is. The LL.B degree, as the basic foundational academic degree, sets a student up for pursuing further studies or specialization in the field of law. It provides a base for students to choose whether they wish to proceed to the academic route and enroll in a Masters and thereafter a Doctorate programme, or whether they wish to change their course from academia to practice and would prefer to undergo the vocational training to be 'profession ready' for a career in activelegal practice by choosing to prepare and sit for the bar exam.

Each stage has its own learning objectives and outcomes, to meet which, different programmes have been established over the years in different jurisdictions. In the UK for example to cater to academic and research needs, the academic degrees in law at undergraduate and post graduate levels in shape of Bachelor of Laws (LL.B), Graduate Diploma in Law (GDL), Master of Laws (LL.M) or Doctorate in Laws (PHD) have been established by universities. Their main goal is to prepare the students for theoretical discourse, independent and original scholarly research, critical thinking and analysis of legal jurisprudence, processes and emerging principles. They also prepare students for a career in teaching and academia.

On the other hand, the Bar-at-Law, Solicitors Qualifying Examination (SQE) and other Legal Practice Courses have been designed and developed separately by the concerned regulatory authorities such as the Solicitors Regulation Authority (SRA) and the Bar Standards Board (BSB)to cater to vocational training needs before entry into the profession as solicitors or barristers. These courses and programmes are usually undertaken after obtaining an academic degree in law(LL.B), though that is not necessarily always the case. In particular, SQE assessments are open for students who may not have studied law but may nevertheless still sit and clear these exams as long as they have a degree in any subject equivalent to a level 6 qualification and can obtain theirlicense to practice as solicitors in England and Wales after clearing the SQE.[3] Likewise, for Bar-at-Law, any other undergraduate degree at level 6 followed by a law conversion course such as the Graduate Diploma in Law (GDL) can enable a student previously from a non-law backgroundto enroll for the

[3] 'Solicitors Qualifying Examination (SQE) route', Solicitors Regulation Authority, September 2021. Accessed February 22, 2023. Available at: https://www.sra.org.uk/become-solicitor/sqe/.

Bar at Law programme as well.[4]

This shows that an undergraduate degree in law (LL.B) is neither a pre-requisite nor the only route to acquire license to practice law in England and Wales and in this way, the undergraduateacademic degree of LL.B is neither pegged to nor gauged in terms of its quality and strength on the basis of how much it aids and prepares a student for 'active legal practice', for clearly, that isnot the objective of that degree.

By contrast in Pakistan however, no equivalent professional vocational training programme has officially been developed or established by the Pakistan Bar Council and instead, interference with existing academic degree programmes of universities has been preferred on the misplaced expectation of trying to achieve vocational outcomes from a degree that is suited to cater to academic needs instead; and this is exactly where the issue essentially lies, for why is an academic degree a sufficient academic qualification for entering the bar in Pakistan?[5]

If the bar truly wished to improve the quality of advocates entering the legal profession for active legal practice and thereby wished to contribute towards creating a strong and independent bar, that is able to render quality assistance to court, it ought to have worked on developing its own legal practice training leading to a bar entry examination as opposed to the current approach thatthey have taken in shape of introducing different entry tests unsupported by any formal training programme that precedes these examinations in a formal and structured fashion. For instance, they have introduced several standardized tests through the National Testing Service (NTS) andHigher Education Commission (HEC) including:

i. Law Admissions Tests (LAT)
ii. Special Equivalence Examination – Law (SEE Law)
iii. Law Graduate Assessment Test (Law-Gat)

However, they have not taken it as their responsibility to develop a formal route for students to enroll for a training programme that precedes these examinations and prepares the candidates for them in the vocational and practical skills as a SQE or a Bar-at-Law Programme in UK does.

Another important distinction between the qualifying tests in UK and in Pakistan lies in the fact that in the UK there are skills based and procedural modules that have to be cleared via mock trials for instance to establish competence in key skills of negotiation, arguments in court etc however, in Pakistan, all three examinations mentioned above continue the patterns of assessmenton paper via multiple choice questions (MCQs) without any practical components leaving muchto be desired in terms of gauging the competency of a candidate as far as practical skills are concerned.

In addition to this obvious omission on their part, Pakistan Bar Council, through the Supreme Court sought a greater than envisaged role for themselves in the determination of the syllabus to be taught

[4] 'Becoming a Barrister: An Overview', Bar Standards Board. Accessed February 22, 2023. Available at: https://www.barstandardsboard.org.uk/training-qualification/becoming-a-barrister.html.
[5] Para 11, PLD 2007 SC 394.

by universities inPakistan and their affiliated colleges. They have tried to monetize, control and influence their version and vision of legal education upon universities in Pakistan that ought to have been autonomous and independent bodies determining their own academic directionincluding but not limited to core components like it is done in universities elsewhere in the world.

Universities ought to be autonomous and independent bodies determining their own academic direction.

For instance, legally, universities in England and Wales have been, autonomous bodies. With their own legal personality, individual universities are free, within the limits of the law, to choosewhat they do. The legal status of universities and academics suggests that control of university legal education rests with universities and, perhaps, their individual academic staff.[6]

The Russell Group which represents 24 leading UK universities states that,

> We believe a quality education, student choice, institutional diversity, competition, collaboration and international competitiveness are built on a foundation of institutional autonomy – the freedomof universities to manage, teach, choose their staff and students, and that they are able to speak freely. The importance of that autonomy was recognized by the Government's inclusion of it in theHigher Education and Research Act 2017. Autonomy is also critical in enabling our universities to deliver for students across the Office for Student's fundamental objectives on access, quality, consumer law and value for money. Our universities are leading innovators, and an overly interventionist regulatory approach would stifle their ability to adapt in a fast-moving environment.[7]

Although, this is not to suggest that there is no regulation of universities in the UK at all or that they do not have to comply with any regulations. In fact, universities in UK are overseen by multiple regulators and professional bodies across the United Kingdom, including the Devolved Administrations, however, the nature of those regulations pertains to standards and quality of research and teaching as opposed to a dictation of how, when and what to teach. Internal questionsof administrative nature such as pertaining to timetable, number of students, class schedule, number of classrooms, number of books in libraries etc are not the concern of regulatory authorities dealing with ensuring the quality of output, the ethics around research or quality of service delivery of education for students. In UK, the Office for Students (OfS) which regulatesuniversities instead, aims to ensure amongst other things, that students get good value, high teaching standards and that universities are making efforts to widen participation. In addition tothat, the Research Excellence Framework, Quality Assurance Agency for Higher Education, Research England, the Office of the Independent Adjudicator, the Competition and Markets Authority, UK Visas and Immigration (part of the Home Office) and the Advertising Standards Authority are all part of the landscape for contemporary universities in England and Wales.[8] Theonly requirement from the law degree the comes from the bar in England and Wales is that it must be a 'qualifying law degree' to entitle the

[6] Anthony Bradney, 'Who Controls University Legal Education? The Case of England and Wales', Keele University, 2. Accessed February 21, 2023. Available at: https://eprints.keele.ac.uk/id/eprint/9435/1/A%20Bradney%20%20Who%20controls%20university%20legal%20education.pdf

[7] 'Regulation', Russel Group. Accessed February 20, 2023. Available at: https://russellgroup.ac.uk/policy/policy-areas/regulation/

[8] Bradney, 3-4, supra note 6.

student to enroll for the Bar-at-Law programme in England and Wales, which means that a student must have studied and passed seven core modules including, Law of Obligations (contract and tort), Equity and Trusts, Property Law, Public Law (administrative and constitutional law), Criminal Law and European Union Law etcto be able to enroll for the Bar-at-Law programme.[9]

Beyond these core subjects, academic degrees in law across England can and do differ in their content, which is what sets them apart and establishes their expertise and niche in a given area. In addition to that, students who do not wish to practice law, may well be able to acquire a non-qualifying degree in law (without studying one or more of the core subjects) and still be able to proceed with their academic or research pursuits without the regulatory authorities policing their academic choices.

At the professional stage however, the authorities in UK require a conversion course or clearanceof their own examination as mentioned before, but there is no interference on their part in the internal administrative matters of individual universities nor with the syllabus beyond the need for enlisting the core modules that would make an undergraduate degree in law a qualifying lawdegree for enrollment in a legal practice training course.

In Pakistan, you will often hear lawyers proclaim that law is a 'professional degree' and it is with the same narrow and largely incorrect lens that they approach the realm of legal education. As a result of this sense of 'professional dominance', the stream of academia has largely remained undermined and underutilized as far as any legal or policy matters are concerned, pertaining to legal education — its role, purpose, future and advancement in Pakistan.

It appears the idea of academic qualification in law has been conflated with the concept of vocational training in legal practice when, in fact, these are two separate streams and require a different lens, response and regulation from the authorities. A singular structure that looks at academic degrees from the lens of vocational training is like expecting a fish to climb a tree. Until the lens is corrected, academic degrees and outputs will continue to be demonized andundermined. In Pakistan there is a general disdain towards fields of research and academia. But in the legal field even more so, where academics are not even counted as members of the 'fraternity', and they usually work in silos and echo chambers. The profession and policy leaders within the profession seldom try to benefit from research, analysis and comparative work put in by researchers. Members of the academia often have no stakes in these domains, where 'active legal practice' dominates as a criterion for advancement in law, such as being considered for appointment as a judge. Thus, when members from such a 'fraternity' are called upon to deliberate on "improving legal education" it is no surprise that they gauge it from the same lens of vocational superiority over academic excellence.

"A singular structure that looks at academic degrees from the lens of vocational training is like expecting a fish to climb a tree. Until the lens is corrected, academic degrees and outputs will continue to be demonized and undermined."

[9]'Part 2, Academic Component of Bar Training, 2A Foundations of Legal Knowledge', Bar Qualification Manual. Accessed February 23, 2023. Available at: https://www.barstandardsboard.org.uk/training-qualification/bar-qualification-manual-new.html?part=CC6E51DC-0FF4-45C8-A0CE31EA825C4692&q=

This is evidenced by the assumption of an overriding and overarching monitoring, inspection and dictatorial role of a regulatory body fixated with active legal practiceover universities when an academic institution's mandate is far wider than preparing students merely for 'active legal practice'.[10]

In fact, that should not be their job at all. Training for active legal practice ought to fall within the purview of the regulatory body and not the universities. Universities should have the responsibility to develop academic and research skills, including critical thinking and analysis for advancement of theoretical and scholarly contributions in the field of law and preparing the students for a career in research and teaching. Controlling their operations and prescribing a standardized syllabus based on no matter how wide a consensus and consultation, would never be able to allow the universities the freedom to do justice to their role for advancement of theoretical legal inquiry. These, however, are not the only challenges that emerge out of Pakistan Bar Council's transgression into the field of legal education. We now turn to examine their foray in detail.

Legal Education Rules 2015 – A Critical Appraisal

What Does 'Prescribing Standards of Legal Education' Mean?

The Pakistan Bar Council (PBC) promulgated the Legal Education Rules via notification in 2015 to consolidate PakistanBar Council Legal Education Rules, 1978, the Affiliation of Law Colleges Rules and the PakistanBar Council (Recognition of Universities) Rules, 2005 in one set of uniform Rules.[11] They did this on the basis of the exercise of their [perceived] powers under the Sections 13 (j) – (k), 26 (c)and 55 (q) of Legal Practitioners and Bar Councils Act, 1973.

According to these sections, the PBC has the function to 'promote legal education' and 'prescribe standards of such education in consultation with universities and provincial bar councils' and the power to make rules, amongst other things, for the 'standards of legal education' to be observedby universities in Pakistan and the 'inspection' of universities for that purpose. However, what does 'prescribing standards of legal education to be observed by universities' really mean here? Does it mean that it entitles the PBC to assume police powers and dictate internal functioning ofthe universities or does it imply that PBC would be able to set broader principles and learning outcomes from a university programme in law as the qualifying requirements to enroll in the bar?

The general definition of 'standards' translates as 'a required or agreed level of quality or attainment'.[12] One would think this would be in terms of setting out general principles as benchmarks for quality assurance of level of research, assessments and outcomes produced by the

[10] See Legal Education Rules 2015, Pakistan Bar Council. Available at: http://pakistanbarcouncil.org/wp-content/uploads/2020/12/144-172-...-Legal-Education-Rules.pdf

[11] (S.R.O. 1265(1)/2015) Legal Education Rules 2015, Pakistan Bar Council. Available at: http://pakistanbarcouncil.org/wp-content/uploads/2020/12/144-172-...-Legal-Education-Rules.pdf

[12] Meaning od 'Standard', Cambridge dictionary, Accessed 21 February, 2023. Available at: https://dictionary.cambridge.org/dictionary/english/standard

students as opposed to a means of assuming wide ranging police powers over internal workings of universities.

For instance, Section 8 of UK's Higher Education and Research Act, 2017 protects institutional autonomy of English higher education providers and states that,

> "the institutional autonomy of English higher education providers" means— (a) the freedom of English higher education providers within the law to conduct their day to day management in an effective and competent way, (b) the freedom of English higher education providers— (i) to determine the content of particular courses and the manner in which they are taught, supervised andassessed, (ii) to determine the criteria for the selection, appointment and dismissal of academic staffand apply those criteria in particular cases, and (iii) to determine the criteria for the admission of students and apply those criteria in particular cases…"[13]

Accordingly, the Subject Benchmark Statement for law by Quality Assurance Agency in UK reiterates that,

> 'Subject Benchmark Statements provide general guidance for articulating the learning outcomes associated with the course but are not intended to represent a national curriculum in a subject or to prescribe set approaches to teaching, learning or assessment. Instead, they allow for flexibility and innovation in course design within a framework agreed by the subject community.'[14]

In Pakistan, PBC and HEC yield a lot of say in not only prescribing and modifying the subjects that ought to be included in the syllabus for the LL. B programme by universities but also that the subjects must be duly approved by the PBC and HEC.[15] In addition to that, the Rules get prescriptive to the extent of determining the number of students in a class, the timing of classes, the number of books in a library, the number of classrooms in a campus and so on and so forth which are questions of internal policy and management and not questions of standards of output with which the bar should be concerned.

The bar is not comprised of professionals and experts suited to determine academic direction or administrative measures of universities. Its own composition and process of election is questionable in terms of fair representation of practitioners in the profession let alone those in academia so on what grounds and basis has PBC been allowed to claim for itself a central role in dictating the academic direction for which it neither has the ability nor the capacity and expertise and not even the mandate as per the parent Act of 1973. The1973 Act appears to restrict PBC to prescribing standards of legal education in substance. It doesnot appear to suggest that PBC could take control of administrative measures of universities andcolleges. On the contrary, it expects the PBC to 'promote legal

"The bar is not comprised of professionals and experts suited to determine academic direction or administrative measures of universities."

[13] Section 8, Higher Education and Research Act, 2017. Available at: https://www.legislation.gov.uk/ukpga/2017/29/contents/enacted

[14] 14 'Subject benchmark Statement – Law', Quality Assurance Agency for UK Higher Education, November 2019. Available at: https://www.qaa.ac.uk/docs/qaa/subject-benchmark-statements/subject-benchmark-statement-law.pdf?sfvrsn=b939c881_16.

[15] Rule 7, Legal Education Rules, 2015

education' which the council appears to have made more inaccessible due to its intervention.

Accordingly, it must also be questioned whether non-compliance with such 'standards' should automatically lead to non-recognition and disaffiliation or should a university be able to proceed with their programme in line with their academic direction with the limitation that their degree would not qualify their students directly for legal practice but may nevertheless enable them to access other fields such as in higher education, academia, research, teaching or other multidisciplinary fields, like in the UK? Perhaps, a conversion course for such students as an alternative route should also be envisaged to enable access. Currently, the rules only recognize a 'Bachelor's Degree in Law' and a degree with any other name such as a 'Graduate Diploma in Law' is not recognized as a valid degree in Pakistan; even though such a degree comprises of the core elements sufficient for enrolling for the UK Bar training, but in Pakistan, it won't be recognized as so, not so much because of its content or substance, butmore likely because of its title.[16] This causes challenges and hinders access for students who haveobtained such degrees from abroad but who may wish to come back to Pakistan and contribute to legal practice in their country. However, enabling access and 'promoting legal education' does not appear to be a priority of the PBC whose entire focus has been on control, monetization and discouraging access instead.

Under the garb of 'prescribing standards' the PBC appears to have assumed an overarching role placing itself at the heart of university admissions requiring that a complete list of students should not just be shared with the PBC by the universities, but also that a separate registration fee of Rs 3000 per student be accompanied for purposes of registration of students with the PBC upon admission in a university.[17] This not only adds a needless financial obligation upon the students but also that it inherently and fundamentally assumes that active legal practice upon graduation would be the only career choice of these students after studying law. This excessive oversight is completely unnecessary at this stage given that not all who graduate end up vying for active legal practice but would rather take up unconventional or alternative career paths post their degree in law. What business does then PBC have in seeking their registration at point of admission in a university?

Number of Students in a Class and Wider Questions of Access to Education

Rule 5 of the 2015 Rules breaks down the number of students a university/law college could havein a class and restricts that to 50, as well as the total number of students a university or a collegecan admit in the first year in their institution. This is capped at 100 with the exception for it to extend up to 150 in a main campus of a University depending upon the infrastructure and facilitiesavailable in main campus of the concerned University.[18]

Likewise, for the LL.M Programme, the Rules require permission of PBC on application accompanied by a fee of 1.5 million and limits the number of students to twenty students in a given

[16] Rule 3, (vi), Legal Education Rules, 2015.
[17] Rule 4, (v), Legal Education Rules, 2015.
[18] Rule 5, Legal Education Rules, 2015.

academic year accompanied by Rs 2000 registration fee of every student with PBC.[19] It extends the duration of LL.M to a period of two years and prescribes that permission to teach LL.M would only be given to those who are eligible to award LL.B degrees.[20]

The question however that arises is, whether prescribing the number of students in a class come under the ambit of prescribing standards for legal education or whether this is an interference with internal working of the universities?

Prescribing standards of legal education ought to be a substantive exercise of determining scope of learning outcomes and core components for a qualifying law degree as opposed to an assumption of a policing role dictating the number of students in a class which ought to be a purely administrative exercise and decision not subject to determination or dictation by Pakistan Bar Council (PBC) or the Supreme Court for that matter.

How a university or college prepares its students is a matter of internal functioning of the universities and colleges and PBC should have no role in interfering in that process save only to the extent of defining core components and general learning outcomes. The bar should gauge and assess the candidates at the time when they apply for their practicing license through their own prior training and examination instead, but should they be allowed to dictate purely administrative matters for the universities and colleges teaching law that might have different goals and approaches towards enabling access to education and towards teaching in line with global and digital developments?

Another implication of the intervention in legal education is making admission practically compulsory in a university or college, which is not in line with changing needs of the time, particularly, post covid19 that saw a surge in digital tools enabling access to remote learning more popular and possible.[21] In addition to making access easier for previously excluded classesand marginalized persons, digital tools and resources have been more interactive for students to benefit from and the need to integrate them in learning even in traditional settings has been an increasing trend post covid.

Universities abroad, particularly, of the UK have invested heavily in digitalizing access to their programmes for students the world over including for their coveted Bar-at-Law course by introducing the new Bar Transfer Course in local colleges. In Pakistan however, the provincial bars have implied that Pakistani universities should not even do that for their students within their own jurisdiction. For instance, the Punjab Bar Council insists that students who do not register and enroll themselves with a 'recognized university' or affiliated college will not be eligible to apply for the practicing license; never mind their ability, preparation, aptitude and desire to pursue active legal practice.[22] This came to fore when a post on social media by an official of the Punjab Bar

[19] Rule 13, Legal Education Rules, 2015.
[20] Ibid.
[21] Muhammad Ahmad Qayyum, Member Punjab Bar Council's post on his Facebook Profile, June 24, 2022. Available at: https://web.facebook.com/profile/501792425/search/?q=avoid%20private&_rdc=1&_rdr
[22] Ibid.

Council regarding inability of 'private' students preparing for University of London (UoL) external LL.B examinations to apply for and acquire the license to practice law after their degrees was put up,[23]despite it being a 'recognized' international programme in Pakistan.

A 'private' external student would be someone who is duly registered as a student with Universityof London offering its degree programme via distance learning inside Pakistan. Such programmes are offered after approval and recognition from the Pakistan Bar Council. As far as University of London is concerned, students need not necessarily be registered with a local teaching center and is well within their rules to prepare fortheir degree and its examinations howsoever they may choose, whether at home, individually, with private support or by enrolling themselves in any local teaching center whether or not recognized by the university abroad. This is how they operate in other jurisdictions as well but for Pakistan, they can no longer offer this flexible accessibility due to PBC's intervention.

The University of London LL.B degree programme is popular, not just in Pakistan, but in over 190 different countries across the globe. Their objective essentially being to promote access to quality education without the traditional boundaries and limitations of enrollment in a brick-and-mortar building. Back then, this may have been revolutionary, but post-Covid and now vast accumulated experience of rolling out these programmes shows that flexible access to educationthrough remote and digital or distance learning is very well a need.

It comes as part of a right to access education, with 'access' being a more fluid concept than the traditional understanding of attendance in a concrete building designated as a school or college. These archaic concepts towards learning need to be retired just as much as there is a need to retire those who desire to 'gatekeep' access to legal education in Pakistan, jeopardizing the future of hundreds of forthcoming graduates.

The Legal Education Rules 2015 by the PBC were aimed to regulate law colleges and universities and it would appear that they were not meant to be applicable to 'private students' as they only address and regulate colleges and universities providing legal education in Pakistan and/or their students. The said rules are silent on the status of 'private students' that, while may be duly registered with the approved university abroad, may not be enrolled in any teaching institution/registered law school in Pakistan. If one is to believe that there is indeed an inability for such students to apply for a practicing license post their graduation simply because they completed their degree privately, then it shows that there is an attempt to eliminate the possibilityof studying the external programme independently which is not even a requirement of the approved external university itself.

The bar, it seems is desirous of making admission in an approved brick-and-mortar college practically mandatory by suggesting their non-eligibility for a license. This appears to be a stretch in the interpretation of the rules, beyond their scope.

[23] Ibid.

However, even for students who are enrolled in local colleges offering an external programme, Rule 40 of the 2015 rules states that,

> 'In case a College/Institution imparting legal education under international/external/ distance learning programme of a foreign University/Degree Awarding Institution fails to comply with theseRules, the Pakistan Bar Council shall recommend its deaffiliation/ derecognition to the concerned foreign University/Degree Awarding Institution beside asking the Provincial/Islamabad Bar Councilto refrain from issuing practicing license to their students after they obtain LL.B. degree.'[24]

This appears to suggest that students enrolled in such colleges will not be able to apply for their license to practice unless the students can show that their local teaching center complied with all rules of the PBC. In this way, the rules penalize and jeopardize the future of these students and place the burden on the students to put pressure on their colleges to ensure compliance with the rules when students may not always be in a position of knowing or being fully aware of the statusof compliance with the bar rules. Even if they are, why should they be penalized for any lackof compliance on part of the institution they are enrolled in? This is not only onerous but also extremely unfair. It is like using students as a weapon against the institutions to seek compliance and thereby jeopardizing the future of potential graduates by withholding their license even though they may be in a position to clear all recognized external examinations and other examinations such as the 'Law GAT' and 'SEE Law' by the bar.

These rules were promulgated subsequent to the decision of the honorable Supreme Court on the issue of improving standards of legal education in Pakistan on a petition filed by the Pakistan Bar Council in 2005. This happened while it really shouldn't even have been up to the courts to determine questions of policy related to legal education. All questions of policy should be addressed in more participatory and democratic spaces and must be adopted after a consultative process leading to consensus. The Pakistan Bar Council, however, chose to take a more assertive route via the courts by filing another petition in 2012 seeking enforcement of the 2007 judgment instead, which is regrettable. This was not an issue of enforcement of fundamental rights that petition under Article 184 (3) of the Constitution of Pakistan 1973 was resorted to; in fact, this issue involved questions of policy and should have remained in that space.

Notwithstanding this, it is important to understand that neither the Supreme Court judgment nor the 2015 rules relate to or deal with the case of 'private' students – so hampering their eligibilityto apply for the license to practice, seems unjustified. They stand as a separate class of students and their ability to access legal education and sit for exams and apply for a license should not be hindered or restricted, especially in a post-Covid world which has amplified the importance and need for digital access to education.

In times when access to education is being revolutionized and digitized in more ways than one, access to legal education and subsequently, the profession should not be subjected to conventional

[24] Rule 40, Legal Education Rules, 2015.

route of studying formally at aphysical campus. As long as a student is able to clear the bar exam and establishes proficiency inthe core skills and components, it should not matter how the student acquired or developed that proficiency, i.e. whether it was through a university/college, home schooling, distance learning or self-taught. They should have an equal chance at attempting to appear for their bar exam and pursue legal practice, even if they may have privately sat for the university or other qualifying exam. This flexibility is particularly important for women and those at margins of society for whom physical access to a college and university may not always be possible or plausible due tomobility, poverty, gender or other factors. Most woman who may be unable to join an institution, for instance because of care work at home or other mobility issues, may find these options accessible and useful as a means to complete their education. There may also be people who cannotafford to pay additional charges of the local teaching institution and find studying independentlya suitable option. The same perhaps may be the case for those who are working and looking to study as well, in their own time and space, to continue their education; why should they be boundto brick and mortar? If they have the option to prepare for examinations in remote settings, it willbe an affirmative action that will contribute to fair access to legal education and if they are able to clear all relevant examinations, they should have the right to access the profession and obtainthe license.

"Access to legal education and subsequently the profession, should not be subjected to conventional route of studying formally at a physical campus. As long as a student is able to clear the bar exam and establishes proficiency inthe core skills and components, it should not matter how the student acquired or developed that proficiency."

Duration of the Course, Resulting Discrimination and SEE-Law as a Delaying Tactic

In many countries, including most commonwealth countries, the principal law degree is an undergraduate degree, usually known as a Bachelor of Laws (LLB). Graduates of such a program are eligible to become lawyers by passing the country's equivalent of a bar exam. In these countries, post graduate law programs are advanced academic degrees which allow for more in-depth study or specialization.

By contrast, in the United States and Canada, the primary law degree is a graduate degree knownas the Juris Doctor (JD). Students may pursue such a degree only after completing a prior undergraduate degree, usually a bachelor's degree. The undergraduate degree can be in any field.

In Pakistan, Rule 6 of the 2015 Rules extends the duration of the LL.B degree programme to a five year programme thereby putting a ban on the three year LL.B programmes that were previously being conducted. The official reason for extending the local programme from a threeyear degree to a five year is based on the need for a law student to have a well-rounded exposureto related fields and subjects in social sciences other than law because law is also a social scienceand the result is that essentially for all practical purposes the BA has been combined with Law tocreate a five-year programme in the hope to 'improve the quality' of students graduating from law colleges and universities and to 'standardize' the duration of legal education in Pakistan to the extent of local legal programmes being offered by different universities such as the Lahore University of Management Sciences, Kinnaird College University, University of Management Sciences and Technology, University of Punjab and the like.

Unmistakably, this appears to be influenced more by American way of legal education as opposedto the commonwealth approach, even though Pakistan is amongst commonwealth countries. It is however, not the duration of the course that can improve the quality but the quality of content and assessments as well as of teaching, resource materials and books that will improve the quality. Additionally, the assumption that quality will improve with a ban on evening programmes is equally misplaced because it is not the time at which a course is taught that affects the quality, but the substance of the course, its teaching and assessment that determines the quality.[25] What is acceptable to teach in day cannot automatically be deemed unacceptable simply because it is taught in evening – a time which can enable more professionals or people dependent upon a day income, to access legal education.

"What is acceptable to teach in day cannot automatically be deemed unacceptable simply because it is taught in evening – a time which can enable more professionals or people dependent upon a day income, to access legal education."

Not only has the ban on evening programmes hindered access to education but the increase in duration of local programmes from three to five years have had a discriminatory impact on students enrolled in local programmes because the affiliated and recognized teaching centers conducting the University of London's three year LL.B (Hons) programme in Pakistan are still able to continue to offer the same three year programme after acquiring the NOC and payment ofcharges worth Rs 2 Million to Pakistan Bar Council.[26]

As a result, locally trained foreign graduates have a higherchance of accessing legal profession sooner than their local counterparts, aiding their 'seniority' in the profession which is a stepping-stone and crucial basis for advancement in the legal profession as a whole. Already, allegations of class and privilege have marred this profession especially when it comes to appointments of judges or other official appointments and the criticism that the elite favour their kith and kin in such instances has led many from underprivileged and underrepresented classes to assert that the profession is under elite capture leading to divisions, disconnect and growing distrust and loss of confidence in the justice sector.

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To cover for this 'time advantage', a Special Equivalence Examination titled SEE LAW was introduced for foreign graduates that they must sit for and clear prior to their LAW GAT exam.[27] This additional exam mirrors Law-Gat and is very similar in its content and substance to Law- Gat which *all* graduates (local and foreign) desirous of entering legal practice must sit for. In terms of adding value, therefore, SEE LAW appears to be completely unnecessary save as a tacticdelaying access of foreign graduates to legal profession and of a means of earning for authorities by monetizing this additional examination.

What in fact was required was not to police the duration of the course that should have been an

[25] Direction No 10, Const. P. No. 134/2012. Available at: https://zafarkalanauri.com/wp- content/uploads/2020/05/SC-JUDGMENT-ON-LEGAL-EDUCATION.pdf
[26] Chapter VII, Legal Education Rules, 2015.
[27] Direction 11, Const. P. No. 134/2012, supra note 25.

internal policy decision of every university concerned depending upon their own academic direction and objectives, but a formal bar training course should have been institutionalized as an additional year long course comprising basic substantive but primarily vocational components leading to an official bar entrance exam so that both objectives i.e. university freedom for academic direction and qualified bar candidates could have been achieved without muddling them both.

Revisiting the Supreme Court Judgements

i. Pakistan Bar Council v Federal Government and others (PLD 2007 SC 394)

In Constitutional Petition No 9 of 2005, the Pakistan Bar Council under Article 184(3) of the Constitution of Pakistan 1973 sought direction from the Supreme Court of Pakistan that the respondents including the Federal Government, HEC, provincial governments and universities, be directed to adopt the then 'Affiliation of Law Colleges Rules' recommended by the Legal Education Committee of PBC as approved in the 147th meeting of the Council on 26 June, 2004.

These were promulgated and thought necessary to curb the 'steady decline in quality of legal education because 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' however, as we saw in our review of the Rules above, what eventually transpired were quantitative prescriptions controlling internal operations as opposed to qualitative standards ensuring quality in substance.

The petitioners asserted that before approval, a meeting with provincial bars, several universities and officials of HEC took place on 19 June 2004 that 'reflects a concerted effort of *all*stakeholders' in this regard. This claim loses its veracity when one takes a closer look at the composition of bodies referred to as 'stakeholders' in this instance and shows that perspectives of marginalized legal community members, particularly of law students, academics and women found little or no scope in the debate and discussions revolving these matters even though they were significant rights holder and would be directly impacted by the decisions taken without theirfair representation.

It was claimed that the goal of access to justice and its dispensation cannot be realized without a proper and organized legal education system therefore, with a view to ensuring quality legal education and to discourage growth of substandard law colleges, the Pakistan Bar Council made rules for recognition and affiliation of law colleges which it sought to enforce through the Supreme Courtby means of its constitutional petition. Strangely, the veracity of these claims were also not investigated with the kind of intellectual honesty that was expected given that organized legal education system or lack thereof has never been the reason for access or denial of justice. In fact,in many jurisdictions, legal education did not exist formally and evolved as a matter of apprenticeship and trainings. In Germany, for instance, law degrees historically did not exist and were unnecessary for legal practice, likewise in England, legal education emerged in the late thirteenth century through apprenticeships. English universities had taught Roman and canon lawfor some time, but formal degrees focused on the native common law did not emerge until the 1800s. That did not preclude those societies from access to justice or its dissemination.

The Federal government through the then Deputy Attorney-General Mrs Nahida Mehboob Elahi, submitted that they had examined the rules and supported the petition without a satisfactory

explanation of why they considered the said rules as beneficial for improving the standards of legal education when what the rules attempted to achieve were standards of buildings and campuses in which legal education was being imparted. These were two separate and distinct issues but unfortunately, neither the court nor the respondents drew any attention to that fact.

A similar acquiescing response came from provincial advocate generals, the counsels and registrars of some of the universities that had been made respondents who put up little to no resistance to the adoption of these rules citing their similarity with their existing internal rules.

In absence of any real challenge to the views and position of the bar, the Supreme Court proceeded to declare its judgement on the matter. The Supreme Court does not appear to have been assisted in the way it should have been. One agrees with the court to the extent when they saythat, 'the quality of justice delivered partly depends upon quality of assistance rendered'.[28]

In the next few paragraphs of the judgement, the court spend some time in justifying how this was a matter of public importance sufficient for justiciability under 184 (3) of the constitution but unfortunately what followed was a series of populist validation of 'concerns' of Pakistan Bar Council and statements of opinion, not law based on which the Supreme Court proceeded to put itself in a position better suited for policy makers and concluded that it would be in public interest that a guideline shouldbe provided by this hon'ble court to improve the system and put restrain on establishing law colleges without proper infrastructure.[29]

Article 184(3) of the Constitution of Pakistan states that, without prejudice to the provisions of Article 199, the Supreme Court shall, if it considers that a question of public importance *with reference to the enforcement of any of the Fundamental Rights* conferred by Chapter I of Part II is involved have the power to make an order of the nature mentioned in the said Article. The power under Article 184(3) can only be exercised if element of "public importance" is involved in the enforcement of "fundamental rights". As Umar Ziauddin explains,

> "The jurisdiction under Article 184(3) is remedial in character and exercise of the jurisdiction is conditioned by three pre-requisites: there is a question of public importance; such question involves enforcement of the fundamental rights; and fundamental rights to be enforced are conferred by Chapter 1, Part II of the Constitution."[30]

One wonders how the enforcement of rules regarding affiliation of law colleges and universities a matter of enforcement of fundamental rights conferred by Chapter I, Part II of the Constitution?This is purely an internal regulatory matter, not a question of denial of fundamental rights. On the contrary, limiting academic freedom and controlling academic direction of universities is a bigger question of public importance that this series of litigation and regulation has given rise to.

"Limiting academic freedom and controlling academic direction of universities is a bigger question of public importance that this series of litigation and regulation has given rise to."

Two other amusing observations were made in the judgement. The first in Para 11 in which the court stated that while rendering

[28] Para 11, PLD 2007 SC 394.
[29] Para 10, PLD 2007 SC 394.
[30] Ummar Ziauddin, 'Judicialization of Politics', Human Rights Review Pakistan, Vol 1. Available at: https://humanrightsreviewpakistan.wordpress.com/home/volume-i/judicialisation-of-politics-1843-constitution-of-pakistan/#:~:text=It%20settled%20the%20debate%2C%20inter,for%20redressal%20against%20the%20wrongdoer

advice, a lawyer is not only to keep the relevant law in mind but also considerations such as moral, economic, social and political.[31] However, can a legal practitioner be expected to tender commercial advice and how often do lawyers do that in practice? Moreover, that morality, justice and law are separate things is amongst the firstfew lectures that are taught in law. A lawyer should only be expected to tender legal advice based on legal position and judicial precedents on what the likely legal outcome of the case before them would be. They are trained to tender advice on legal rights and procedures for their clients withinthe framework of the law.[32]

The second observation, also from Para 11 of the judgement is where the court recognized that itis from the bar that the bench is constituted. This is another problematic convention in our judicial system that establishes the primacy of litigating lawyers over academics for instance. In many jurisdictions, the judicial appointments have been opened to include representation of legal professionals from diverse backgrounds, such as academia[33] while Pakistan continues to gatekeep these positions at the cost of fair representation of under-represented classes and groups of persons. This has an impact on the way legal education is perceived as well because in this context it assumes that the only legal education worth pursuing is perhaps the one that prepares for active legal practice. In doing so it undermines the goals of education for other career paths and academic pursuits and hints at channelizing the direction of legal education that is imparted in universities and colleges towards preparation for active legal practice and not for academic and/or research and scholarly excellence.

The misplaced expectation for deriving vocational skills from an academic degree compel the court to equate the quality of assistance rendered by bar to court with the quality of legal education[34] not realizing that legal education is an encompassing term and is broader in its scope than vocational training for the bar. This misplaced nexus between quality of legal education andquality of assistance rendered to court was then used to 'recognize' the *'awesome responsibilityof the bar to improve the quality of legal education because it is the possession of a degree of lawwhich is a sufficient academic qualification for entering the bar,'* when this should not really be the case. The bar should in fact have established its own official training programme and entranceexam for this purpose rather than meddling into the affairs of universities and colleges, but that has not been done despite being suggested by the Supreme Court to do so in the 2018 judgement save at the level of one provincial bar, the Punjab Bar Council which is two week course that cannot be considered equivalent to any formal bar vocational training programmes conducted abroad such as in UK.

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Pegging the role of legal education with quality of assistance rendered to court was used as a basis to conclude that the petition in hand raises a question of public importance which has a great

[31] Para 11, PLD 2007 SC 394.
[32] 156, Cannons of Professional Conduct, Legal Practitioners and Bar Council Rules, 1976.
[33] For instance, Lady Hale in UK and Ruth Bader Ginsburg in the US who have had an academic career prior to their appointment as Justices. See also Judicial Appointments in South Africa.
[34] Para 11, PLD 2007 SC 394.

bearing on the justice system and the enforcement of fundamental rights in the country'[35]in utter disregard of the impact this would have on academic freedom and direction of universities as well as on students who need not necessarily wish to pursue litigation.

Para 12 of the judgement summarized the challenges associated with several law colleges and universities that can be classified as governance matters. These pertain to absenteeism, imbalanced student-teacher ratio, lack of infrastructural facilities, lack of trained faculty etc.[36]

While these are important issues, it is not for the Supreme Court to issue directions on. Comments of the Supreme Court in this para show that it is delving into policy domain of what 'should' and 'should not' happen and is imposing its own view of what all legal education should entail, which is not for them to deliberate or direct. These issues are questions of internal governance for which the regulatory body – the Higher Education Commission (HEC) is the concerned body which should take up these issues with universities as opposed to the court issuing directions on such matters.[37]

Ultimately, the entry into bar should not come from the academic degree alone but must be earned through the vocational training after graduation. The HEC and more importantly, the governmentat the time of granting the charter to anyone wishing to establish a university are best placed to require compliance with minimum standards in relation to qualification of faculty, number of disciplines and fields of study to be offered to be classified as a university etc. however, space foracademic freedom and direction especially pertaining to, curriculum, syllabus, books and methodof teaching, whether remote, digital or in-person are questions best left for each university to determine itself.

Likewise, in a highly digitalized world, access to resources has also become digital and so the notion of e-libraries is gaining momentum. A university and college should not be bound to necessarily physically possess a prescribed number of books if access to the same can be ensured via digital and more environment friendly manner.

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[35] Ibid.

[36] Para 12, PLD 2007 SC 394 reads as: It is a matter of common knowledge that there has been a mushroom growth of substandard law colleges lacking in infra-structural facilities and qualify 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 classrooms 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 in-depth 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 mange 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 law makers.

[37] Section 10, Higher Education Commission Ordinance 2002.

The Pakistan Bar Council may have the mandate to recognize universities teaching law and prescribe standards of legal education, but to conclude that it also has the mandate to dictate standards of buildings and internal functioning of institutions where legal education is provided appears to be a stretch.

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It needs to be said that some of these issues that have been identified in Para 12 arise because of resistance to open learning to more modern and independent approaches via for instance digital and distance learning means. It is also interesting to note how the blame is entirely placed on centers that produce law graduates who are called to bar and no responsibility is placed on the bar itself that has till date failed to come up with its own official vocational training programme and an effective bar exam. Instead of trying to find ways to control how universities and colleges operate on ground, the Pakistan Bar Council and HEC would do better to improve their own standards of assessment and entry into the legal profession leaving it to the universities and colleges to ensure that their teaching and courses enable their students to do well in the training and assessments of the bar and all other career pursuits of their choice.

Para 13 of the judgement laments the erosion of apprenticeship model and finds that younger lawyers pursuing legal practice sooner than "appropriate" causes them to be ill-equipped to advice their clients or assist the court. It is interesting to note that Para 13 is also contradictory because on the one hand the young entrants commencing their own practice as self-employed professionals is lamented, on the other, while discussing the strike culture – which mainly from bar leadership and veterans as opposed to from young lawyers - the court says that *'bar is a global fraternity and that there is no concept of "self-employed professionals" going on strike.'*[38] Secondly, 'appropriate' here is a relative term and reflects the subjective opinion of the judge as opposed to any legal rule. Thirdly, how is erosion of apprenticeship culture a reason or basis to find fault with legal education in universities which is meant for academic pursuits? If apprenticeship model is failing, it is the failure of the bar, not of the universities imparting legal education. Why should they be held responsible for this? Fourthly, apprenticeship model in any case was never best suited to fairly train all entrants. In particular, women have been discouraged from active legal practice and have suffered from the exclusion from the profession as a result of these tactics that has hindered and hampered their chances of advancement in the profession as a whole, for instance as judges etc. Reminiscing apprenticeship model without acknowledging its implications for women and other marginalized persons who do not have similar access to a mentor is therefore another misplaced expectation. To address these concerns, it would be more appropriate for the bar to create an alternative model for training which is accessible equally and fairly by all rightsholders and stakeholders therefore, a need to shift from an "apprenticeship model" to a "formal training-oriented

"If apprenticeship model is failing, it is the failure of the bar, not of the universities imparting legal education."

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[38] Para 13, PLD 2007 SC 394.

model" has never before beenmore pressing; and the onus for establishing such vocational training on equal and fair access terms also rests with the bar and not with the universities.

Para 14 starts on a hopeful note as it acknowledges that, legal education should notonly 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; but then almost immediately indulges in policy issues again, such as importance of English language, need for a multidisciplinary base, and need for improving the standard and quality of qualifying degree for admission in bachelor of law course.[39] The issue here again is that these are questions best left to universities and that the Supreme Court should not be settingthese out in their judgements. However, rather than exercising restraint, the Supreme Court went on to proclaim that the scheme to make the law degree a five-year course a step in the right direction and proceeded to set up a five member *primarily all male* committee headed by Justice (r) Nasir Aslam Zahid, former judge of the Supreme Court and including VC PBC ex officio, Prof Ghafoor Ahmed former VC Peshawar University, Humayun Ehsan, Dean Pakistan College of Law, Mansoor AliShah, the then advocate of Supreme Court and Two members to be nominated by the Chairman Higher Education Commission having the requisite academic background, to improve and update the syllabus prescribed for a professional degree in law, 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 the Court.

The court further directed that, the then 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" without any consideration of implications of this on the freedom of universities to chalk out their own academic direction.

ii. Pakistan Bar Council through its Chairman v. Federal Government through Establishment Division and others (Constitutional Petition No 134 of 2012), 2018

In 2012, the Pakistan Bar Council filed another petition under Article 184(3) of the Constitutionof Pakistan, this time seeking enforcement of the 2007 judgement of the SC wherein the court had directed the respondents including the universities to comply with the then Affiliation of Law Colleges Rules. The petitioner stated that the private colleges and universities had not complied with the 2007 judgement.

On 21st January 2018, the court constituted an all-male special committee for structural reforms in legal education. Four provincial commissions and one for Islamabad Capital Territory (ICT) were also formed by the Supreme Court to oversee implementation of their decision. The work of the SpecialCommittee involved deliberations on the matter in issue from the following perspectives: (i) Eligibility for entry into law colleges (ii) Preparation of uniform Syllabi of LL.B. courses and their duration (iii) Permanent and visiting faculties at Law Colleges (iv) Assessment/ evaluationof examination and (v) Eligibility of entry to the bar. Like the previous case, this case pinned thecause

[39] Ibid, Para 14.

of decline in quality of legal education on mushroom growth of substandard law degree awarding institutions and insisted in Para 7 that the bar in its stimulative capacity, must make a conscientious effort to "standardize" law degree awarding institutions. In this way, this opportunity to reflect on the implications of their decision on academic direction of universities and need for universities to cater to broader needs was lost once again as the Supreme Court ended up handingdown more prescriptions to cement Pakistan Bar Council's role in the academic sphere under guise of prescribing standards of legal education.

"No evidence has been mentioned in the judgement to suggest that those who do not practice do not make for competent faculty."

Despite noting in Para 5 and 6 that legal profession was evolving and that diverse legal services needed corresponding breath and quality of education, as well as acknowledging that the stage of apprenticeship itself was in need of reform, the court proceeded to conflate the components suited for a vocational degree such as clinical legal education, mock trials and mooting, with that of the academic degree in law. Ironically, they cited an example from the UK Bar-at-Law course that made professional ethics a compulsory subject as part of bar training, not realizing that the Bar-at-Law was not the same as the bachelor's in law in UK. One being vocational while the other, academic.[40]

In lending support to the five-year programme, which as discussed earlier, has led to discriminatory and systemic disparities between local and foreign graduates, the judgement alsoencouraged hiring of practicing lawyers and retired judges as teachers and considered them *"bestplaced to provide students with a realistic view of the practice of law"*, as if that is the only careerpath available after a degree in law. In doing so, the judgement reinforced the stereotypical notions about legal education being the means only for legal practice as the goal and underminedalternative career options in law. Likewise, under direction number 14, the Supreme Court reinforced the same stereotypical notions about purpose of legal education as being preparation for active legalpractice when it stressed on "non-practicing allowance" of qualified law teachers indicating thatthose who practice law would make for "competent permanent faculty" and so they should be compensated for their ability to not practice whilst they are in service of the university. They consider this necessary for enhancing and maintaining the standard and quality of legal instruction.[41] However, no evidence has been mentioned in the judgement to suggest that those who do not practice do not make for competent faculty. Teaching is a specialized field of its own that requires a particular aptitude and skill as well as post graduate qualifications at Masters or Doctorate levels in most countries. It appears to be a stretch to assume that those who are good legal practitioners would also, for this reason alone, make for good faculty as well.

"The judgement reinforced the stereotypical notions about legal education being the means only for legal practice as the goal and undermined alternative career options in law."

Para 15 of the judgement ends up becoming the source of most of the rules that were later consolidated and passed as Legal Education Rules 2015 including but not limited to, Restorationof Bar Entrance Examination - Law Graduate Assessment Test (LAW-GAT), Test for Entry to Law College (Law Admission

[40] Para 11, Constitutional Petition No 134 of 2012.
[41] Direction 14, Constitutional Petition No 134 of 2012.

Test) (LAT) and its components, Introduction of Special Equivalence Examination for Law Graduates of foreign universities (by HEC) along with its components that is to be taken prior to Law-Gat exam, ban against conducting LL.M. and Ph.D. in law classes by the Universities/ Colleges / institutions that are not allowed to hold LL.B. classes, Limit on admission to LL.M. and Ph.D. programmes in law and ban on mushroom admissions to these programmes as per criteria of HEC, directing the HEC, National CurriculumReview Committee and PBC sub-committee for designing of curriculum for five year LL.B. Programme – annual and semester, setting the qualification of faculty (permanent and visiting) at law colleges, ban on admission to 3 year LL.B. programme and ban on evening classes. Majority of these questions were questions of academic direction, policy and internal operations which the Supreme Court should have declined to entertain.

Interestingly, the court also stated that the Provincial/Islamabad Bar Councils *may* introduce *"Two Weeks Bar Vocational Course"* during the six months training/pupillage period that a lawgraduate intending to join the legal profession must undergo for being enrolled as an Advocate for practicing law and that they *may*, consider and decide modalities for introducing the said course through respective Federal/ Provincial Judicial Academies, which is completely unlike theapproach they have adopted towards the universities and colleges. The court steered clear from entering into the policy domain of the Councils as it declared it to be the prerogative of the bar councils to consider doing so, unlike their hardline approach towards universities and colleges. Only Punjab Bar Council has made an effort towards this direction but as mentioned earlier, this course cannot be considered as an equivalent of a formal bar training programme as it is conducted in other countries, such as in UK.

Majority of these directions by Supreme Court straddle into the sphere of policy and/or internal governance and administrative matters that should have been outside the purview of the Supreme Court. The focus shouldhave been on academic standards, integrity, teaching and research quality and more substance related and service delivery standards as opposed to administrative decision making for universities and colleges. The stifling approach does more to introduce attempts to control universities and develop grounds backed by judicial prescription to micro-manage the affairs of universities and colleges. It also creates for Pakistan Bar Coucil an overarching role beyond its mandate and enhances its power dynamics vis a vis the universities, thereby dampening the autonomy of universities for academic, policy and administrative freedom and direction. As a result, the Rules have only paved way for more ways to monetize legal education for the benefit of Pakistan Bar Council, limiting its provision to those who can afford to pay hefty NOC fees and making access to education both difficult and more expensive for students.

It is for these reasons the stakeholders and concerned persons should revisit this conundrum, restore the freedom for academic direction and management to the universities and enable greateraccess to legal education to students from different backgrounds and circumstances.

Conclusion

The Pakistan Bar Council promulgated Legal Education Rules 2015 and involved the Supreme Court in a bidto seek prescriptive directions to control legal education providers on pretext of improving standards. For this reason, multiple, overlapping but ineffective professional entry exams in shapeof Law Gat and SEE Law were also promulgated.

The regulatory authorities however failed to develop an effective official professional course that caters to the vocational training needs of students and the profession at par with global standards. Instead, they sought to control the academic stream by regulating the academic programmes in law and in schools, colleges and universities offering these degrees, which are likely to be outside their scope of expertise — since they are practitioners and not academics or educationists.

The two judgements of the Supreme Court on the issue of improving standards of legal education bring out the misconceptions towards the role of LL.B among the authorities. For instance, the Supreme Court observed in their decision (on Const. P. No. 134/2012) that lack of training and interest of senior advocates was leading to a loss in learning of new entrants. This focus on training by senior advocates shows that they are viewing the role of education as one that caters only to a graduate's eventual success as a litigator and do not fathom the plethora of fields in legal research and other non-traditional careers in law — for which senior advocate may not always be the more appropriate teacher.

They further stated that the bar as an institution has an important role in improving the quality of legal education, without appreciating that legal academic education may be different from vocational skills more suited for the bar. In that sense, the bar's role should be to structure the bar examination and its preparation, course and curriculum, as is the case in other countries. Purely academic matters related to the LL.B degree might benefit more from expertise and experience of academics in research, teaching and/or managing educational institutions or programmes. A large number of such professionals include women, but their voices and expertisehave been largely missing from decisions on legal education over the years.

The desire to reform the curriculum and infuse in it a multidisciplinary approach by introducing vocational elements such as 'clinical legal education, mooting, mock trials, client interviewing, negotiation and mediation to provide students with an insight into the practical requirements of law practice' appears to expect an academic degree to produce an outcome suited for a vocational course. But this was actually used as a basis to eliminate a three-year LL.B degree programmes and replace it with a five-year programme, to build a base in multidisciplinary fields. This led to an anomaly — because the external degree programme continued to be of a three-year duration, providing an edge to students enrolled in those programmes over their local counterparts.

A multidisciplinary education along with practical skills training might not be a bad idea and may even be considered important, but an attempt to achieve all types of outcomes from the same degree programme appears to have been made through the Supreme Court without understandingthat the

professional bar vocational course ought to commence after the initial academic degree has been acquired. This academic degree is usually a taught programme covering theory and questions of academic nature as opposed to practical skills and exposure. Even if legal clinics and mooting etc. are offered, they are not a major component of the degree — because it is expected that it comes in the domain of vocational training imparted after academic qualification,as support or co-curricular activities to provide additional opportunity to students interested in pursuing practice later on. However, since not all graduates pursue litigation, the academic qualification prepares for a career in academia and sets up students for advanced research and writing, independent coursework as well as wide reading of legal scholarship to meet eligibility for advanced academic degrees, like the LL.M, SJD and PHDs.

In addition to that, evening classes were viewed negatively by the Bench and Bar as contributingto lowering the standards of education. While compliance with a code of conduct or basic standards of education being delivered in a college or university is not per se a problem and mighteven be a necessary way to improve the standards of law colleges and schools, it certainly was not enough to improve the standards of legal education for which a more substantial progress inthe curriculum, quality of content in textbooks, research culture and effective examinations testing skills and analytical abilities is required. For this reason, evening programmes are not problematic and in fact may even enhance access to education for those who may have day jobsand need those jobs to support their homes and education.

Thus, the lens through which the Bar Council and the Honorable Supreme Court approached legal education needs an immediate change. Limiting freedom for academic direction as well as limiting access to legal education is a bigger issue of public importance than quest to micro manage universities and law colleges. What is more important to realize is that it is not the business of the courts to determine questions of policy related to legal education. All questions of policy should be addressed in more participatory and democratic spaces. Regrettably, the Pakistan Bar Council chose to take a more assertive route via the courts. This was not an issue ofenforcement of fundamental rights that Article 184 (3) was resorted to, in fact this was a questionof policy — and should have remained in that space.

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