

## Journal of Peace, Development and Communication



Volume 04, Issue 2, July-September 2020  
 pISSN: 2663-7898, eISSN: 2663-7901  
 Article DOI: <https://doi.org/10.36968/JPDC-V04-I02-12>  
 Homepage: <https://pdfpk.net/pdf/>  
 Email: [se.jpdc@pdfpk.net](mailto:se.jpdc@pdfpk.net)

<b>Article:</b>	<b>Amendments Required to Regulate Conduct of Advocates in Pakistan: A Proposal for Reforms</b>
<b>Author(s):</b>	Dr. Usman Quddus Assistant Professor Law, University of Swabi, Swabi, KPK
	Muhammad Arif Khan Assistant Professor Law, Hazara University, Mansehra, KPK
	Adnan Khan Assistant Professor Law, Bahria University, Islamabad
<b>Published:</b>	30 <sup>th</sup> September 2020
<b>Publisher Information:</b>	Journal of Peace, Development and Communication (JPDC)
<b>To Cite this Article:</b>	Quddus, Usman, et al. (2020). "Amendments Required to Regulate Conduct of Advocates in Pakistan: A Proposal for Reforms." <i>Journal of Peace, Development and Communication</i> , vol. 04, no. 02, 2020, pp. 217–229, <a href="https://doi.org/10.36968/JPDC-V04-I02-12">https://doi.org/10.36968/JPDC-V04-I02-12</a> .
<b>Author(s) Note:</b>	Dr. Usman Quddus is serving as Assistant Professor Law at University of Swabi, Swabi, KPK Email: <a href="mailto:usmanquddus1980@gmail.com">usmanquddus1980@gmail.com</a>
	Muhammad Arif Khan is serving as Assistant Professor Law at Hazara University, Mansehra, KPK
	Adnan Khan is serving as Assistant Professor Law at Bahria University, Islamabad

### **Abstract**

The article in hand proposes reforms for regulating the lawyers' community in interest of people of Pakistan, fundamental rights and justice. The methodology adopted is critical analysis of the provisions of law and conduct of advocates. The findings mandate reforms in relevant laws to regulate the conduct of advocates. The limitations of the study are of obtaining statistical data and comparison with the outer world due to restricted scale of the research. The topic has huge ramification for the justice sector in Pakistan in delivering fundamental rights to people. Such a research to authors' knowledge has not been undertaken before.

### **Key Words**

Advocates, Reforms, Legal Practitioners Act, Bar, Judiciary

## **Introduction**

Amendments to regulate conduct of advocates is the need of the hour as people in Pakistan have seen extreme lows in the profession of advocacy and even an attack on a hospital by lawyers community which was never heard of even in times of war. Lawyers' vandalism reached to a point after this incident which was too unbearable for people at large. All this mandates for reforms to regulate conduct of advocate so that they cannot interfere with legal rights of masses and remain within the ambit of law. The article in hand proposes such reforms to regulate the lawyers' community. The new research will benefit people in enforcing of their due rights and will be a step forward for facilitating the enshrined fundamental right of due process of law as people rights will be safeguarded if the proposed amendments are considered for legislation by the appropriate legislatures.

## **Analysis**

Lawyers in Pakistan are known to take undue advantage of their influence within the courts and elsewhere outside. Numerous video clips have surfaced up where advocates are seen in Pakistan of creating hooliganism in courts etc. The latest PIC incident in Lahore shocked the conscience of people at large in Pakistan and around the world where doctors and patients were attacked in hospital compound by large throngs of advocates on being mocked by a serving doctor at PIC (Zaman, 2019). This incident of lawyers' hooliganism prompted the legislature in Pakistan to move for amendments to regulate the conduct of the advocates. The amendments were brought about in the premiere law that governs the advocates i.e. The Legal Practitioners and Bar Councils Act, 1973. The requisite amendment provides for cancellation of license of advocates for life, indulging in physical violence and fraud, forgery etc (Legal Practitioners and Bar Council Act, 2019). This amendment though promulgated in good faith however, will not

serve the purpose as the acts sought to be restrained were already prohibited by the Legal Practitioners and Bar Council Act, 1973 through provisions of misconduct of advocates (Practitioners and Bar Council Act, 2019). The relevant section 41 of the said act made professional or other misconduct subject to punishments ranging from suspension to fine etc. It is averred that the new amendments to Bar Councils Act, 1973 will not be a deterrent for advocates like old provisions unless the tribunal set up for trying such offences is revised in its composition which consists of brethren colleagues of the advocates (Legal Practitioners and Bar Council (Amendment) Act, 2019). Islamic Republic of Pakistan has seen a gradual erosion in its institutions due to people with negative mind set ruling the roost. There is no dearth of cases in every institution where individuals have been victimized by the ruling authority for personal reasons. All this has to do with lack of independent tribunals to decide such matters of personal confrontation with subordinates and increasing discretionary powers with the head of institutions of hiring and firing. But the primary reason remains to be independent tribunals and the reason cited is independence of institutions. By citing reason of independence of institutions the principles of checks and balances is completely forgotten. We have the example of judiciary where judges are accountable to brother judges only and this has resulted in extremely few cases of conviction of judges and that too on flimsy grounds cited by the dictators (Usman Quddus, *Judicial Immunity or Judicial Impunity: Judicial Immunity of Superior Courts Judges in Pakistan with Special Reference to Islamic Law* 2018). The dictates of section 42 of the Bar Council Act, 1973 provide for two members advocates of relevant provincial bar council with one judge of respective high court in case of provincial tribunal to try advocates and the appellate tribunal thereto shall consist of two member advocates of Pakistan Bar Council with one judge of the Supreme Court of Pakistan (Legal Practitioners and Bar Council (Amendment) Act, 2019).

Islamic Republic of Pakistan is not known for people with integrity at the helm most of the times and carry their prejudices which reflect in their decisions. The members of bar councils are elected by advocates in Pakistan and have affiliations with the advocates groups which elect them. Accountability by peers of profession is against the principle of checks and balances. In USA where institutions claim to be fairly independent, all the three branches of government exercise a counter check on one another. Legislative branch sometimes appoints judges and may impeach them (Nyazee, *The Constitution of the United States of America* 2017). Judicial branch determines whether a law is constitutional (Nyazee, *The Constitution of the United States of America* 2017). Legislative branch can override executive veto and may impeach the president while executive branch may veto laws passed by legislature (Nyazee, *The Constitution of the United States of America* 2017). Similarly judicial branch may declare presidential acts unconstitutional while the President has the power to nominate judges (Nyazee, *The Constitution of the United States of America* 2017). Thus institutional independence in no way implies in the US evasion of accountability by an independent tribunal on pretext of institutional independence. However, in the context of Pakistan institutional independence has been understood to mean complete independence from everything at the cost of accountability which is an incorrect assumption. It is averred that no new amendment for advocates will have an impact unless its jurisdiction is granted to an independent tribunals which consists of members other than from the profession of advocacy and judicial branch. This will make the lawyers wary and they will fear the clutches of law otherwise lawyers misconduct and then going away with it will remain a routine affair. Junior advocates are favorites of contending members being their voters and senior lawyers are nearly in all cases friends of courts. So there misdemeanors are mostly ignored. In this regard, it is therefore proposed that appropriate amendments may be carried out in the Legal

Practitioners and Bar Councils Act, 1973 for nomination of judges to disciplinary tribunals with unimpeachable integrity from other walks of life that are well conversant with the law e.g. law professors and bureaucrats etc. This will be a welcoming step as most of the seats in special tribunals have been reserved by judges for themselves and senior advocates.

It is also no hidden secret that the courts in Pakistan are confronted with the menace of tout advocates in courts with judicature granting reliefs even where the case is not made out to their favorite blue eyed advocates. All this said, there are also advocates that utilize their position political or otherwise to coerce courts. In this regard, the relevant rule of the Pakistan Legal Practitioners and Bar Council Rules, 1976 prescribes that advocates shall maintain a respectful attitude towards courts and pursue their remedy legally (Pakistan Legal Practitioners and Bar Council Rules, 1976). It is averred that the words ‘respectful attitude toward courts’ be suitably amended with ‘upright attitude’ towards the bench. This will discourage touts advocate and remove the impression of courts being colonial masters. It is also proposed that use of epithets like ‘my lord’ and ‘lordships’ by advocates which is very common today in courts and bowing before the court by the advocates another colonial relic be altogether done away with by carrying out amendments in the Legal Practitioners and Bar Councils Act, 1973. This would be a single step in removing the impression of courts being the continuation of rule of the colonial masters with their draconian laws as pointed out by Saadat Hassan Manto the famous story teller in his famous fiction story ‘ Naya Qanoon or the New Constitution’. The courts in Pakistan are also faced with the menace of lawyers taking undue advantage of their position e.g. of seniority and political influence etc. and dictating to courts. This practice of dictating to courts may be included in the definition of misconduct by amendment in relevant rules and punishment of

temporary suspension of license associated with it and in case of deliberate continuation with the practice of dictation to courts life ban may be imposed.

Legal reforms is a comprehensive subject and this article pertains to reforms in lawyers fraternity however, it is correspondingly proposed that appropriate reforms be brought in judicial structure to hold accountable those judges which are intellectually and morally corrupt and are responsible for various vices within advocates e.g. the judges are responsible for perpetrating the submissive behavior in lawyers by accommodating them in reliefs. The practice of unnecessary submissiveness and flattery to get relief is in profusion in Pakistan and judges don't discourage it which should have been the case in interest of legal fraternity. It is inter-alia proposed that judges should be directed by High courts by promulgation of necessary rules in this regard to discourage such practice in its rule making jurisdiction under Article 202 of the Constitution of Islamic Republic of Pakistan (**Constitution of Islamic Republic of Pakistan**). It is also averred that High Courts which are not active in Pakistan in relation to their rule making powers should make necessary amendments in order 7 rule 11 of the code of civil procedure, 1908. The said order prescribes for rejection of suit on the basis of plaint submitted by the plaintiff that is on the behest of initiating party at the first instance if no case is made out (Code of Civil Procedure 1908) The relevant amendment in the said order to include written statement for consideration of rejection of suits will have a more beneficial effect as complete picture would come before court after hearing both the advocates from each side. It is also solicited that amendment to the effect in the said order be made of summary judgment if the court comes to the conclusion that there is sufficient material available for decision of suit. This will save a lot of time of parties and agony of undergoing many years in litigation. The Peshawar High Court along-with Lahore High Court have provided for summary judgments by way of amendment in order XV to civil procedure

code of 1908 and if the same put into regular effect will benefit the right holders greatly in quest for justice (Peshawar High Court). The other high courts should also follow suit the example of Peshawar and Lahore High Courts by providing for summary judgment in their laws to curtail litigation and benefit the legitimate right holders.

Most of the brilliant young lawyers run away from the profession and seek employment elsewhere due to diverse factors. Sometimes the senior members of bar discourage the young lawyers. It should be prescribed as a malpractice in code of conduct for advocates to discourage young minds through various means. At other times, young lawyers leave the profession due to monetary constraints. It is proposed that it be mandatorily provided in the relevant laws that each new registering company or NGO shall hire two young lawyers below the age of 35 years on their panel as advocates and pay them remuneration in regard to their work. This will encourage brilliant upright minds to the profession of Bar as advocates and the prevailing abundance of advocates that seem to know all the underhand techniques studying mostly from below par institutions, the majority of which have been banned by the Supreme Court of Pakistan will lessen, encouraging quality in the legal profession. It is also proposed that recognition of law universities, a function currently delegated to the advocates be taken from them and handed over to HEC or for that matter superior court judges so that those remain apprised of the standard of education being imparted and any favoritism in grant of recognition to universities is removed. Judges though like other sections of society are not above board but will be more sensitive in award of recognition as their reputation will be at stake being serving on a prestigious post which in no way can be equalized with bar council members which are mostly involved in taking undue advantage of their position by indulging in blackmailing and other tactics in derogation of fundamental rights of citizens. It has been seen in recent times that elected members of bar are



from outside legal fraternity being non practicing and even recommend High Court judges. They are elected by showering of money for election purposes. It is recommended that to discourage such practice, a minimum no of power of attorney for advocates in a single year are made mandatory to be filed with nomination of candidacy. This will discourage non practicing members from being elected. Nowadays, power of attorneys is a precondition for selection as district and session judges so in the same vein power of attorney can be made a precondition for election to coveted Bar Council positions.

A major cause of delayed justice in Pakistan is advocates. They remain absent from court when the case is called for hearing and cases linger on for years. The poor litigants are at the mercy of advocates with fundamental precious rights at stake. To remedy the problem it is proposed that requisite amendments should be brought in the legal practitioners act and adjournment should be given subject to mandatory nominal cost being paid by advocate which may gradually increase with time over subsequent adjournments. This will have a far reaching effect on the justice system and lingering on of cases for years will come to end instantly. People come from far flung areas to courts and bring their witnesses only to know that their cases have been adjourned on the request of advocate on one pretext or other. Imposing costs on advocates will end the plight of litigants who sometimes have to wait for years for litigation to come to an end even in the case of writs effecting fundamental rights which take two to three hearing to decide. Writs presently in high courts are pending for years without any outcome and cases are adjourned by the courts on request of advocates on one pretext or another.

Finally it is proposed that public prosecutors and government pleaders i.e. government counsels, may be brought under the ambit of legal practitioner and bar council legislations so that their misdemeanors do not go unhindered. Many cases in courts are frustrated and meet no result

due to negligent and lax attitude of the government counsels affecting precious rights of individuals. The same being taken to task under council act for any misconduct will make government counsels vigilant towards their duties and reduce the incidence of corruption and winning over in them. Similarly the practice of government councils and advocates meeting judges in chambers should be brought to a halt through a notification in this regard by High Courts as it impinges upon the fair administration of justice. The practice of visiting of advocates to revenue offices and police stations may also be included in deprecated conduct of advocates as most of these visits are for the purpose of influencing cases and soliciting clients.

The proposal for bringing reforms in the advocates' community maybe summarized as thus:

1. Setting up of independent tribunals consisting of members of unimpeachable integrity and conversant with basics of law from all walks of life other than legal fraternity for disciplinary proceedings against advocates.
2. The words 'respectful attitude toward courts' should be suitably amended with 'upright attitude' towards the bench in Pakistan Bar Council Rules of 1976 to discourage the practice of touts.
3. Use of epithets like 'my lord' and 'lordships' by advocates which is very common today in courts and bowing before the court by the advocates another colonial relic be altogether done away with by carrying out relevant amendments in the Legal Practitioners and Bar Councils Act, 1973.
4. The practice of dictating to courts may be included in the definition of misconduct by amendment in relevant rules and punishment of temporary suspension of license

- associated with it and in case of deliberate continuation with the practice of dictation to courts life ban may be imposed.
5. It is also inter-alia proposed that judges should be directed by High courts by promulgation of necessary rules in this regard to discourage practice of unnecessary flattery and submissiveness by advocates in its rule making jurisdiction under Article 202 of the Constitution of Islamic Republic of Pakistan.
  6. It is proposed that it be mandatorily provided in the relevant laws that each new registering company or NGO shall hire two young lawyers below the age of 35 years on their panel as advocates and pay them remuneration in regard to their work.
  7. It is proposed that requisite amendments should be brought in the legal practitioners act and adjournment should be only given subject to mandatory nominal cost being paid by advocate which may gradually increase with time over subsequent adjournments.
  8. It is proposed that public prosecutors and government pleaders i.e. government counsels, may be brought under the ambit of legal practitioner and bar council legislations so that their misdemeanors do not go unhindered.

## **Conclusion**

Legal fraternity or bar is an important ingredient in the dispensation of justice. So far reforms for the legal fraternity have not been forthcoming due to the emerging of lawyers as a powerful pressure group which comes to streets to thwart anything that tries to mess with it and resorts to strikes. However, the dream of enforcing of fundamental rights by the founding fathers will never see the light of the day unless the lawyers' community is properly regulated and reforms as stated in this regard brought into effect. The governing party in today's' time has

come to power citing the pretext of enforcement of fundamental rights and rights to justice of people as its name suggest. It is therefore averred that appropriate amendments may be brought to regulate the Bar so that the desired goal of justice to people may be met. Such amendments may be carried into effect without being blackmailed from any quarter and government should not succumb to pressures as seen in the case of amendments brought for medical professionals. The government while carrying amendments should keep in mind only the interest of the people at large which are to date waiting for the cherished dream of fundamental rights being enforced in this land of the pure.

## References

Article 202 of Constitution of Islamic Republic of Pakistan. Rules of procedure.-Subject to the Constitution and law, a High Court may make rules regulating the practice and procedure of the Court or of any Court subordinate to it.

Legal Practitioners and Bar Council (Amendment) Act, 2019.

Nyazee, I. A. (n.d.). The Salient Features of the US Constitution. In *The Constitution of the United States of America* (p. 55). Lahore: Federal Law House.

Order 7 Rule 11, Code of Civil Procedure 1908.

Peshawar High Court Notification no 15-J/2018 dated:23/01/2018.

Previous Issues Journals. (n.d.). Retrieved September 20, 2020, from <http://hazaraislamicus.hu.edu.pk/prev-journals/13>

Rule 159, Pakistan Legal Practitioners and Bar Council Rules, 1976.

Section 41, Legal Practitioners and Bar Council (Amendment) Act, 2019.

Section 42, Legal Practitioners and Bar Council (Amendment) Act, 2019.

Section 42 & 47, Legal Practitioners and Bar Council (Amendment) Act, 2019.

Zaman, F. (2019, December 12). Untouchables - Lawyers and the writ of law. Retrieved September 20, 2020, from <https://www.globalvillagespace.com/untouchables-lawyers-and-the-writ-of-law/>.