



LEGAL PRACTITIONERS AND BAR COUNCILS (AMENDMENT) ORDINANCE, 2008.

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LEGAL PRACTITIONERS AND BAR COUNCILS (AMENDMENT) ORDINANCE, 2008.

ORDINANCE VIII OF 2008

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ORDINANCE

An Ordinance further to amend the Legal Practitioners and Bar Councils Act, 1973

[Gazette of Pakistan Extraordinary, Part-I, 3rd November, 2008]

WHEREAS it is expedient further to amend the Legal Practitioners and Bar Councils Act, 1973 (XXXV of 1973), for the purposes hereinafter appearing;

AND, WHEREAS, the National Assembly is not in session and the President is satisfied that circumstances exist which render it necessary to take immediate action:-

NOW, THEREFORE, in exercise of the powers conferred by clause (1) of Article 89 of the Constitution of the Islamic Republic of Pakistan, the President is pleased to make and promulgate the following Ordinance:-

1. Short title and commencement.- (1) This Ordinance may be called the Legal Practitioners and Bar Councils (Amendment) Ordinance, 2008.

(2) It shall come into force at once.

2. Amendment of section 9, Act XXXV of 1973.- In the Legal Practitioners and Bar Councils Act, 1973 (XXXV of 1973), hereinafter referred to as the said Act, in section 9, in subsection (1), in clause (a), after the words "district" the words "and to remove advocates from such roll" shall be inserted.

3. Amendment of section 10, Act XXXV of 1973.- In the said Act, in section 10, in subsection (1), after sub-clause (a), the following new clause shall be inserted, namely:-

"(aa) a disciplinary committee consisting of not more than five members to be elected by the Council from amongst its members; and".

4. Amendment of section 13, Act XXXV of 1973.--In the said Act, in section 13,-

(i) in subsection (1), after clause (b), the following new clause shall be inserted, namely:-

"(c) to entertain and determine cases of misconduct against advocates of the Supreme Court and to award punishment in such cases;"

(ii) for subsection (2), the following shall be substituted, namely:--

"(2) Any person aggrieved by an order or decision of a Provincial Bar Council, the Supreme Court Bar Association or a Bar Association at the national level may, within thirty days of such order or decision, prefer an appeal to the Pakistan Bar Council, whose decision in such appeal shall be final."

5. Amendment of section 15, Act XXXV of 1973.--In the said Act, in section 15, in subsection (1), before clause (b), the following new clause shall be inserted, namely:-

(a) a disciplinary committee consisting of a Judge of the Supreme Court nominated by the Chief Justice of Pakistan, who shall be its Chairman, and four other members elected by the Council from amongst its members:

Provided that the Attorney-General for Pakistan shall not be a member of the disciplinary committee;"

6. Substitution of section 41, Act XXXV of 1973.- In the said Act, for section 41, the following shall be substituted, namely:-

"41. Punishment of advocates for misconduct.--(1) An advocate may, in the manner hereinafter provided, be reprimanded, suspended, removed from practice or be made to pay such amount of compensation, fine or penalty as may be ordered, if he is found guilty of professional or other misconduct.

(2) A complaint that an advocate has been guilty of misconduct may be made by any court or person-

- (a) in the case of an advocate of the Supreme Court, to the Pakistan Bar Council; and
- (b) in any other case, to the Provincial Bar Council.

(3) Every complaint against an advocate made under sub-section (2), except where the complaint has been made by a court, shall be accompanied by such fee as may be prescribed by the Pakistan Bar Council from time to time.

(4) Upon receipt of a complaint under subsection (2) against any advocate, the disciplinary committee of the Bar Council may, unless it summarily rejects the complaint, after making such enquiry and giving the parties such opportunity of being heard as it may consider necessary, either reject the complaint or refer the same to a Tribunal for decision:

Provided that the disciplinary committee shall not summarily reject a complaint made by the Supreme Court or a High Court.

(5) If a Bar Council has reasons to believe that an advocate has been guilty of professional or other misconduct, it may of its own motion refer the case to its disciplinary committee.

(6) Any person whose complaint is rejected by the disciplinary committee under subsection (4) may, within thirty days of the day on which the order of the committee is communicated to him, prefer an appeal to the Tribunal, whose decision in such appeal~ shall be final.

7. Substitution of section 42, Act XXXV of 1973.- In the said Act, for section 42, the following shall be substituted, namely:-

"42. Tribunals of Bar Councils.--(1) The Pakistan Bar Council may constitute one or more Tribunals each consisting of two of its members elected by it for the purpose and a Judge of the Supreme Court nominated by the Chief Justice of Pakistan, who shall be the Chairman.

(2) A Provincial Bar Council may constitute one or more Tribunals each consisting of two of its members, elected by it for the purpose and a Judge of the High Court nominated by the Chief Justice of that Court, who shall be the Chairman."

8. Insertion of certain sections, Act XXXV of 1973.-In the said Act, after section 42, substituted as aforesaid, the following new sections shall be inserted, namely:-

"43. Procedure in inquiries.--(1) In inquiries relating to conduct of advocates, the Tribunal shall, except as hereinafter provided, follow such procedure as may be prescribed.

(2) The Tribunal shall fix a date for the hearing of the case and shall cause notice of the day so fixed to be given to the complainant, to the advocate concerned and to the Advocate-General of the Province and shall afford to the complainant the advocate concerned and the Advocate-General an opportunity of leading evidence, if any, and of being heard before orders are passed in the case.

(3) The Chairman of the Tribunal may empower one of the members of the Tribunal to consider and decide preliminary issues and to record evidence.

(4) The Tribunal may, where it considers it necessary so to do, require the person making a complaint, except where the complaint has been made by a court, to deposit with the Tribunal, as security for costs, such sum as it may specify.

(5) On completion of the inquiry, the Tribunal may either dismiss the complaint or, where the complaint referred to the Tribunal was made at the motion of a Bar Council, direct that the proceedings be filed; or it may make an order imposing any of the penalties referred to in subsection (1) of section 41.

(6) Where the Tribunal makes an order for the suspension of an advocate from practice, it shall specify the period of suspension, and for that period the advocate shall be debarred from practicing in any

court or before any authority or person in Pakistan.

(7) The Tribunal may, of its own motion or on application made to it in this behalf, review any order passed under subsection (5) and maintain, vary or rescind the same, as it thinks fit.

(8) When any advocate is punished under section 41 the same shall be entered against his name in the Provincial roll or, as the case may be, the roll of advocates of the Supreme Court maintained by the Pakistan Bar Council, and the common roll, and when an advocate is removed from practice his name shall forthwith be struck off the roll; and the certificate of any advocate so suspended or removed shall be recalled.

44. Order as to costs.--(1) A disciplinary committee and a Tribunal may make such order as to costs of proceedings before it as it may deem fit; and where the committee or, as the case may be, the Tribunal is of the opinion that a complaint made against an advocate is false and vexatious, it may, without prejudice to any other remedy available to the advocate, impose upon the complainant such compensatory costs as may be deemed reasonable:

Provided that no order under this subsection shall be made against a court or presiding officer of a court or a Bar Council.

(2) The Tribunal may, on an application made to it in this behalf within the prescribed period, revise any order passed by a disciplinary committee under subsection (1) or, of its own motion or on application so made, review any order passed by the Tribunal under that subsection and may, in either case, maintain, vary or rescind the same, as it thinks fit.

(3) Subject to subsection (2), every order of the disciplinary committee or the Tribunal under subsection (1) shall be executable-

(a) if the committee is appointed, or the Tribunal is constituted, by the Pakistan Bar Council, as if it were an order of the Supreme Court; and

(b) if the committee is appointed, or the Tribunal is constituted, by a Provincial Bar Council, as if it were an order of the High Court.

45. Powers of the Tribunal and disciplinary committee in inquiries.--(1) For the purposes of any such inquiry as aforesaid, a disciplinary committee and a Tribunal shall have the same powers as are vested in a court under the Code of Civil Procedure, 1908, in respect of the following matters, namely:-

(a) enforcing the attendance of any person;

(b) compelling the production of documents; and

(c) issuing commissions for the examination of witnesses:

Provided that the disciplinary committee, or the Tribunal shall not have power to require the attendance of the presiding officer of any civil or criminal court save with the previous sanction of the High Court or, in the case of the presiding officer of a Revenue Court, of the Provincial Government.

(2) Every such inquiry shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 of the Pakistan Penal Code and a disciplinary committee and a Tribunal shall be deemed to be a civil court for the purpose of sections 480 and 482 of the Code of Criminal Procedure, 1898.

(3) For the purpose of enforcing the attendance of any person or of compelling the production of documents or issuing commissions,-

(a) the local limits of the jurisdiction of a disciplinary committee and a Tribunal shall be those of the jurisdiction of the Bar Council by which the committee has been appointed or, as the case may be, the Tribunal has been constituted; and

(b) a disciplinary committee and a Tribunal may send to any civil court having jurisdiction in the place where the committee or, as the case may be, the Tribunal is sitting, any summons or other process for the attendance of a witness or the production of a document required by the committee or Tribunal, or any commission which it desires to issue, and the civil court shall serve such process or issue such commission, as the case may be, and may enforce any such process as if it were a process for attendance or production before itself.

(4) Proceedings before a disciplinary committee or a Tribunal in any such inquiry shall be deemed to be civil proceedings for the purposes of Article 15 of the Qanun-e-Shahadat, 1984 and the provisions of that Article shall apply accordingly.

46. Disciplinary powers of the Pakistan Bar Council.--(1) Notwithstanding anything contained in this Chapter, the disciplinary committee of the Pakistan Bar Council may, of its own motion, withdraw for inquiry before itself any proceedings for disciplinary action against any advocate pending before a Provincial Bar Council or a disciplinary committee thereof and dispose of the same.

(2) In disposing of any case under this section the disciplinary committee of the Pakistan Bar Council shall observe, so far as may be, the procedure laid down in section 43, the reference to the "Advocate-General" in that section being construed as reference to the "Attorney-General for Pakistan".

(3) In disposing of any case under this section, the disciplinary

committee of the Pakistan Bar Council may make any order which the Tribunal can make under section 43, and the Tribunal shall give effect to any such order:

Provided that every order passed hereinabove shall be subject to the approval of the Pakistan Bar Council.

47. Appeal to the Pakistan Bar Council.--(1) Any person aggrieved by an order of a Provincial Tribunal under section 43 may, within sixty days from the date on which the order is communicated to him, prefer an appeal to the Pakistan Bar Council.
 - (2) Every such appeal shall be heard by the disciplinary committee of the Pakistan Bar Council which may pass such order thereon as it may deem fit.
 48. Appeal to the Supreme Court.--Any person aggrieved by an order made by the disciplinary committee of the Pakistan Bar Council under subsection (3) of section 46 or subsection (2) of section 47 or a final order of a Tribunal of the Pakistan Bar Council may, within sixty days from the date on which the order is communicated to him, prefer an appeal to the Supreme Court which may pass such order thereon as it may deem fit.
 49. Application of sections 5 and 12 of the Limitation Act, 1908.--The provisions of sections 5 and 12 of the Limitation Act, 1908 shall, so far as may be, apply to appeals made under section 47 or section 48.
 50. Stay of order.--An appeal made under section 47 or section 48 shall not operate as a stay of the order appealed against but the disciplinary committee of the Pakistan Bar Council or the Supreme Court, as the case may be, may, for sufficient cause, direct the stay of such order on such terms and conditions as it may deem fit.
 51. Powers of the disciplinary committee.--The disciplinary committee of the Pakistan Bar Council shall have the same powers as are vested in a Tribunal by section 45 and that section shall apply to the disciplinary committee, the reference to the "Tribunal" in that section being construed as a reference to the "disciplinary committee of the Pakistan Bar Council".
 52. Execution of an order of a Bar Council, a Committee or a Tribunal.--Subject to the provisions of this Act and the Rules made thereunder every order of a Bar Council, a Committee or a Tribunal shall be executable,-
 - (a) in case of Pakistan Bar Council, its Committee or Tribunal as if it were an order of the Supreme Court; and
 - (b) in case of a Provincial Bar Council, its Committee or
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Tribunal as if it were an order of a High Court.

- 53.** Review of order by disciplinary committee.--The disciplinary committee of the Pakistan Bar Council may of its own motion or otherwise review any order passed by it under this Chapter.
- 54.** Power of Supreme Court and High Court to suspend advocates from practice.- (1) The Supreme Court or a High Court may, while making a complaint under subsection (2) of section 41 against an Advocate, make an order for the suspension of the advocate from practice if, after hearing such advocate, the Court is of the opinion that he has committed an act of grave indiscipline in the view of the Court or grave professional misconduct in relation to any proceeding before it, and his immediate suspension is expedient or necessary in the interest of administration of justice.
- (2) On a complaint made to it against an advocate by a court subordinate to it, the High Court may:-
- (a) make an order under sub-section (1) in respect of such advocate if, after hearing him, it is of the opinion that he has committed grave professional or other misconduct in relation to any proceeding before such sub-ordinate Court and his immediate suspension, pending the proceedings before the Bar Council, is expedient or necessary in the public interest and forward the complaint to the Provincial Bar Council for action in accordance with section 41; or
 - (b) without making any Order under sub-section (1), forward the complaint to the Provincial Bar Council for action in accordance with section 41; or
 - (c) direct that no further action need be taken in respect of the complaint."

9. Amendment of section 55, Act XXXV of 1973.--In the said Act, in section 55, after clause (r), the following new clause shall be inserted, namely:--

"(s) the procedure to be followed by Tribunals constituted by the Pakistan Bar Council in inquiries relating to the conduct of an advocate;"

10. Amendment of section 56, Act XXXV of 1973.- In the said Act, in section 56, after clause (k), the following new clause shall be inserted, namely:--

"(l) the procedure to be followed by a Tribunal constituted by the Bar Council in inquiries relating to the conduct of an advocate;"

11. Amendment of section 59B, Act XXXV of 1973.--In the said Act, in section 59B, in subsection (1), in the second proviso, the words "and except with the prior approval of the Chairman of the Pakistan Bar Council" shall be omitted.
