



Obstacles in Obtaining Higher Courts License: Implications and Way Forward

Driving Questions:

- Is Pakistan's Process of Obtaining Licenses to Practice as Advocates Extra Cumbersome and Onerous as Compared to other Jurisdictions?
- If so, What Implications Does It Have on Advancement and Representation in the Justice Sector?
- What is the Way Forward for Reform?

1. Is Pakistan's Process of Obtaining Licenses to Practice as Advocates Extra Cumbersome and Onerous as Compared to other Jurisdictions?

Current Requirements
<p>Lower Courts of the Province:</p> <ol style="list-style-type: none"> 1. Degree from an Institution that is recognized by Pakistan Bar Council and has a NOC from Pakistan Bar Council. (NB: Private students whether local or foreign are not eligible to apply for license). 2. SEE Law (in case of foreign graduates) and Law Gat Examination (for all graduates). 3. Duly completed intimation period of six months. 4. Character Certificates from two advocates. 5. Undertaking to join a Bar Association within six months of enrolment. 6. Affidavit of no criminal or professional misconduct proceedings. 7. Six passport size photographs in professional dress with white background. 8. List of twenty cases on which assistance has been rendered to the senior. 9. Enrolment and verification fees.
<p>High Courts:</p> <ol style="list-style-type: none"> 1. Three photographs in professional dress. 2. Fitness certificates from two advocate high courts on their letterheads. 3. Filed copy of renewal license of current year. 4. Affidavit of no criminal or professional misconduct proceedings. 5. List of twenty cases conducted by the applicant in lower courts. 6. Applicable fees and charges. 7. Affidavit of duration of practice.
<p>Supreme Court:</p> <ol style="list-style-type: none"> 1. Two passport size photographs of the applicant attested by the President/Secretary of the Bar Association or Member of a Bar Council.

2. A fresh dated Certificate, in original, from the High Court as to applicant's being a fit and proper person for being enrolled and to appear and plead as an Advocate of the Supreme Court together with its photocopy. (In case there is gap between dates of issuance of the fitness Certificate and submission of enrolment application to the Pakistan Bar Council applicant has to explain reasons thereof separately through an Affidavit. If the explanation is not found satisfaction by Enrolment Committee, it may impose penalty ranging from Rs.5000/- to 20,000/-. In case delay exceeds one year the fitness Certificate needs to be revalidated by the High Court.)
3. An Affidavit of the applicant on stamp paper of Rs. 50/- (duly attested by Notary Public/Oath Commissioner) stating that contents of his application are true and correct and that he is eligible and not disqualified, in any manner, for enrolment and to practice as an Advocate of the Supreme Court and that neither he was ever found guilty of professional or other misconduct nor any such case is pending against him before any Bar Council.
4. A certificate from the Provincial/Islamabad Bar Council to the effect that:
 - a. **the applicant is an enrolled Advocate of the High Court having not less than seven years standing** as such and that his name is still borne on the Roll of Advocates of the High Court maintained by the Provincial Bar Council concerned or the Islamabad Bar Council;
 - b. the applicant is not in arrears of dues of the concerned Provincial Bar Council or the Islamabad Bar Council; and
 - c. neither proceedings for professional or other misconduct are pending against the applicant nor he has ever been found guilty of professional or other misconduct.
5. Certificate regarding clearance of dues from the Bar Association of which the applicant is a Member.
6. **A list of selected, pending and disposed of, cases independently conducted by the applicant in the High Court, duly signed by him, together with copies of detailed and final Judgments (reported or unreported) at least of his 15 cases so conducted.**
7. **In case an applicant has at least five (05) reported cases to his credit, in matters he has independently conducted in the High Court, he will be accorded preference, as per decision dated 20-05-2020 of Enrolment Committee of the PBC, in fixation of his application for interview before the Committee. He may therefore, furnish a complete list of his reported cases, if any, mentioning their citations together with copies of Judgments.**
8. Deposit slip of enrolment fee of Rs.50,000/- to be deposited in Collection Account of the Pakistan Bar Council with designated branch of the Habib Bank Limited on the prescribed deposit slips obtainable from the Habib Bank, Offices of the Pakistan Bar Council and Provincial/Islamabad Bar Councils or through Pay Order/Demand Draft of the like amount in the name of the Pakistan Bar Council drawn on Habib Bank Limited, Supreme Court Branch, Islamabad.
9. Complete bio-data of the applicant which should also indicate his special educational qualifications, experience, Legal Advisorships/offices and elected office held, if any, and the fact of his being an income tax assesses or otherwise mentioning also the latest and complete postal address, Tel/Cell, fax numbers and e-mail address.
10. In case the applicant had been in service, a Certificate from the competent authority indicating also the duration of service with exact dates of joining and leaving and reasons of leaving the service.
11. An undertaking that the applicant will become Member of the Supreme Court Bar Association of Pakistan within six months of his enrolment as an Advocate of the Supreme Court.
12. Certified copy of Computerized National Identity Card (CNIC)

Other Countries

United Kingdom

Relevant Law:

- *Legal Services Act 2007*

Barristers with full practicing certificate have rights of audience to practice in all courts.

For full practicing license:

- (1) the individual must have been called to the Bar of England and Wales by an Inn of Court;
- (2) the individual must have completed a further period of pupillage satisfactory to the Bar Standards Board (usually a period of 12 months; and
- (3) pay such fee or fees as may be prescribed.

The difference with the system in Pakistan is that once an individual has completed the education aspect (the Bar) and the training period (the pupillage), they can obtain a full practicing certificate and appear **in all courts** in relation to all proceedings. There is no restriction based on the hierarchy of the Court once you have obtained a full practicing certificate.

Singapore

Relevant Laws:

- *Legal Profession Act 1966*
- *Legal Profession (Qualified Persons) Rules 2001 as revised in 2002*
- *Legal Profession (Admission) Rules 2011*

After graduating with a law degree from recognized university an individual must both:

- (i) Attend the preparatory course leading to Part B of the Singapore Bar Examinations, and pass Part B of the Singapore Bar Examinations
- (ii) Serve the applicable practice training period (PTP). The PTP refers to a period of supervised training in relation to the practice of Singapore law, which can be achieved:

<ul style="list-style-type: none"> • under a practice training contract with a Singapore law practice (generally six months); • through working as a Legal Service Officer (36 months); or • under the supervision of a qualifying relevant legal officer. <p>In addition to the requirements set out above the person must:</p> <ol style="list-style-type: none"> (i) Have attained the age of 21 years. (ii) Be of good character. (iii) Have made the required written declarations under section 25 of the Legal Profession Act which are that they have: <ul style="list-style-type: none"> • taken out the necessary professional indemnity insurance; • paid all subscriptions and levies, and all contributions which are due to the Law Society of Singapore; and • obtained the necessary continuing professional development (CPD) points under the Legal Profession (Continuing Development) Rules 2012. In particular, the requisite CPD activities under rule 9 and the First Schedule of the Legal Profession (Continuing Development) Rules 2012 must be completed. <p>The legal profession in Singapore is a fused profession. Each lawyer who is admitted to the Singapore Bar is an Advocate and Solicitor of the Supreme Court of Singapore and has the right of audience in any court of justice in Singapore. A lawyer in Singapore can act as both:</p> <ul style="list-style-type: none"> • An advocate (undertaking litigation work in the courts). • A solicitor (undertaking advisory, corporate and conveyancing work). <p>Even in Singapore, once an advocate has finished the educational and practical training components and has demonstrated that they have the personal attributes required, they can practice as an advocate in any court in Singapore.</p>
<h3>South Africa</h3> <p>Relevant Law:</p> <ul style="list-style-type: none"> • <i>Legal Practice Act 28 of 2014</i> <p>Under section 25(3), an attorney who wishes to appear in the High Court, the Supreme Court of Appeal or the Constitutional Court must apply to the registrar of the division of the High Court in which he or she is admitted and enroll as an attorney for a prescribed certificate. The registrar must issue the certificate if satisfied that the attorney:</p> <ol style="list-style-type: none"> (1) Has been practising as an attorney for a continuous period of not less than three years; (2) Has gained an LLB degree; and (3) Has not had his or her name struck off the Roll of legal practitioners or has not been suspended from practice (or there are no proceedings pending to strike the applicant's name from the Roll or to suspend him/her). <p>The difference with the system in Pakistan is that although there is a minimum practicing period of only three years before an advocate can appear in the High Court, the Supreme Court and Constitutional Court there are no rigid requirements about the number of reported judgments one must have to their name.</p>
<p>In other countries, it is observed that majority of the requirements are applied at entry stage whereas in Pakistan, lawyers with several years into practice are still made to substantiate their practice for progression and provide lists of final judgements. The requirements continue to be progressively applied even after years of practice.</p>

Other Challenges in Pakistan

a. *Getting your name and attendance marked in court for it to appear in the orders/judgements*

- For women, there is additional challenge of ensuring that the law firms they work for, give them equal opportunities to assist with litigation. Without this, no matter how long they work, they will not be able to fulfil the requirements of number of cases/judgements to progress on to higher courts.
- Ensuring that your name appears in the plaint itself is important for it to be recorded and appear on the orders/judgements later.
- As Advocate high Court, ensuring that you get a Computerised CC Number and PLH Number (fill a form, give copy of CNIC, High Court License Number, two pictures and fee) allotted to you so that your name can appear in the orders/judgements.
- Be sure to mention your case number and correctly spelled name on coloured paper chits available inside the courts and hand them to the reader – this is a key part in getting your name in the order/judgement.

“Firm practice can set you up for a delayed entry into advocacy of supreme court as you are secondary to a main counsel and not likely aware that despite that, you can still give your name as counsel for it to be recorded and appear in the orders and judgements related to the cases you work on or assist with.”

– AHC Hafsa S. Ahmad

b. Knowing what counts as an 'order' or 'judgement' for enrolment purposes

- Essentially, bail petitions or mere applications etc do not count towards judgement or order for requirements of enrolment, however, appeals, writ petitions, cases that are decided on merit can count towards 'orders' or 'judgements' that enable an applicant to meet the requirements for enrolment for higher licenses.

c. Interview dates are discretionary

- There is no clarity, policy or certainty as to when the interviews for licenses would be scheduled. It depends on the availability of and burden on judges at any given point. Despite meeting requisite time of prior practice, the interviews for progression may be significantly delayed causing loss of standing by up to several years.

d. Lack of clear policy and responsibility in degree verification process that can lead to applicants significantly losing out on their time and standing, in some cases by up to four years or more

- There is lack of clear policy and responsibility for degree verification by administration. Applications for degree verifications have been mishandled causing significant processing delays. At times, insistence on verification from HEC is recommended to foreign graduates even though HEC is not their degree verification body. At other times, incorrect Inns have been emailed for verification of those with Bar at Laws leading to delay in their applications and in extreme cases, the emails to verify degrees to foreign universities had not been sent when asked to recheck.

"I lost four years of my standing because of lack of clear policy and mishandling of my application on part of bar administration. Even though my application clearly stated that my Inn was Middle Temple, they had emailed Inner Temple instead."

-Barrister Mehrunissa Sajjad

e. Redundancy and futility of exemption for holders of Bar at Law from two-year lower court practice due to arbitrary schedule of interviews or other delays on part of processing of the application by the Bar

- Lack of transparency and absolute discretion of judges/interview/enrolment committee (usually consisting of two to three judges) in conducting and calling for interviews, As a result, despite payment of exemption fee to avail the opportunity provided by the rules, the interviews are usually not scheduled efficaciously for them to make any practical sense for the applicant as the period being requested for waiver (two years practice in lower courts) is likely over or almost over in any event by the time the interview is called.

"My two-year exemption period had already lapsed when the time for my interview for exemption came. The exemption was developed to facilitate and if you have obtained the requisite qualifications, you should be eligible to become advocate high courts and assist. However, because of all of these unwritten policies and discretions, the facility has largely become redundant."

- Barrister Ali Zain Raza Naqvi

f. Bias and change in attitude towards foreign degree holders and more so towards female foreign degree holders

"I had a horrendous experience, not only because public dealing is primarily dominated by men but also because of how there is a marked shift in the attitude if there is a foreign and particularly, where a foreign female graduate is in question. Nine to ten months of my time were wasted as a result with no privacy or protection of sensitive data such as contact numbers. Many women could easily end up feeling that it isn't worth it and may start exploring other career options in law that do not require a license. It is the profession's loss."

- AHC Atira Ikram

g. No retirement age of lawyers.

- There is no retirement age for lawyers leaving little room and scope for younger lawyers to attain senior positions.

h. Court staff comprising of mostly males.

- There are hardly any female court staff which makes it more difficult for them to approach the male readers and develop a rapport with them and be known to them as counsels in a given case.

2. What Implications Does It Have on Advancement and Representation in the Justice Sector?

An extra cumbersome, arbitrary, hierarchical and non-transparent system of obtaining licenses to practice as advocates in Pakistan has the following implications:

- i. On seniority and standing as advocates whose interviews or applications are delayed may be significantly lose out on the number of years of their standing.
- ii. On less representation of women, minorities and less historically represented groups because of gatekeeping tactics, it is so much harder for them to fulfil these requirements and make to being advocates of the supreme court.
- iii. Advocates supreme court elect and/or can stand as candidates for Pakistan Bar Council, Judicial Commission of Pakistan or be members of Supreme Court Bar Association so it is not just about the individual growth and progress of applicants but also about the opportunity to make these apex forums more diverse and inclusive, which is lost when such technicalities are introduced disproportionately.
- iv. May lead to able candidates, both male and female dropping out of the process due to its hostile, misguided, and arbitrary processes as a result of which the profession, the justice sector and the country stand to lose.
- v. Where there is discretion, there is discrimination whether it is on basis of political affiliation, chambers, gender, class, degree or other factors.
- vi. At Supreme Court level 'final and detailed' judgements are expected to be submitted with a preference based purely on chance and luck that should an applicant have five or more 'reported' cases independently conducted at high court then 'he' will be accorded preference, as per decision dated 20-05-2020 of Enrolment Committee of the PBC, in fixation of his application for interview before the Committee.
- vii. Those with greater practice in lower courts or trial courts also suffer from implications of inability to complete their list of requisite high court cases which in turn delays their license for Supreme Court and may push them down the line of seniority for any chances of being considered for appointment as a judge in case and if seniority is entrenched.

3. What is the Way Forward for Reform?

- The individual progression has implications for representation in these other forums therefore, it is very important to address these gaps and challenges and make the process of licenses more accessible, clear and streamlined.
- Decisions should not be made behind closed doors and there must be certainty in the process. Transparency is therefore a key factor for reform.
- There should be less focus on technicalities like judgements but until then there should be more awareness and training on how to get your name to appear in the order sheets and judgements.
- There should be more female court staff.
- There also needs to be a change in the culture of the legal industry and more encouragement for younger lawyers to take on cases through support, referrals etc.
- More use of digital technology should be made to streamline and expedite the process, especially in terms of tracking applications and providing information on status of application etc.
- Regulate entry better but make progression and advancement more in line with global trends.
- Refund 50% exemption fee if exemption interview is delayed by one year. Refund 75% of the exemption fee, if interview is delayed by over twelve months.

- The goals for any reforms must be to make the system more accessible and equal in terms of access to opportunities for all stakeholders.
- Need for a paradigm shift from gatekeeping to inclusion and equitable access and advancement.

Conclusion

The system of obtaining license to practice as advocates in various tiers is extra cumbersome and onerous in Pakistan. It is marred with lack of transparency and arbitrary powers and has layers of needless bureaucratic technicalities that have implications on advancement & representation in justice sector not just at personal level, but at an institutional level for instance in composition of Pakistan Bar Council etc.

In other jurisdictions, including the UK, Singapore and South Africa, entry stage has higher regulations and once past those, a lawyer usually has rights of audience in all tiers of courts including apex courts.

In Pakistan, there is undue gatekeeping and burden on judges and committees responsible for interviews at every stage of progression and such systems have implications for those with more practice at trial courts, lower courts and those who may be held back due to other systemic, social and institutional factors, such as not having equal opportunities to have their name on 'countable' judgements/orders as counsels, inefficient degree verification processes and court staff comprising mainly of a single gender. There is, therefore, an urgent need of holistic reform in this area.

This brief is based on the twitter space conducted by Women in Law Initiative Pakistan on 17 October 2022 and on research conducted by Women in Law Member Barrister Rida Hosain. The speakers who contributed in the space and shared their experiences included:

- 1) Barrister Maryam Salman
- 2) Barrister Aneesa Agha
- 3) Barrister Mehrunissa Sajjad
- 4) AHC Hafsa S. Ahmad
- 5) Barrister Jugnoo Kazmi
- 6) Barrister Rida Hosain
- 7) Barrister Ali Zain Raza Naqvi
- 8) AHC Atira Ikram
- 9) AHC Nida Usman Chaudhary

The recording of the space can be accessed here: <https://twitter.com/i/spaces/1OyKAVXwpkqGb> (starts after 1 minute 16 seconds).