

PREVENTION OF UNFAIR MEANS IN EXAMINATION

The working paper on "Prevention of Unfair Means in Examinations", prepared by this Secretariat came for discussion before the Pakistan Law Commission in its meeting held in Lahore on December 26 - 31, 1992. The Commission, after thorough deliberations on various aspects of this issue made the following observations:

- 1- Students, particularly students groups/federations, affiliated to political parties, interfere in the management of the educational institutions. Such interference has of late increased, so much so, that the management has become subservient to the will of such groups/federations. Thus, students interfere in matters such as admission, examination and the appointment as well as promotion of staff etc. They influence the administration so as to have the staff of their choice appointed as paper setters, examiners and invigilators in the examinations.
- 2- In certain institutions, teachers are also alleged to have formed groups and indulge in the victimisation of staff and students in the opposite camps.
- 3- The practice of unfair means in examinations is highly organised and very widespread in certain areas, so much so, that the local communities have established funds for the purpose of facilitating the cheating pursuits of their co-communal students.
- 4- Various elements such as students, parents, teachers, examiners, invigilators, examination staff and outside elements indulge in various examination-related malpractices. In certain areas examination mafias have sprung up and indulge in various illicit practices.
- 5- The relevant (subordinate) legislation on the subject, such as departmental rules, regulations governing the conduct of examinations

have proved totally ineffective and inadequate to check the rising trend of resort to unfair means in examinations.

- 6- The Punjab (Universities and Boards of Intermediate & Secondary Education) Malpractices Act, 1950 has not helped either to control the menace of cheating in examination.
- 7- The malpractices in examinations have mainly contributed to the overall deterioration of the standard of education in the country.

Accordingly, the Commission decided to have a thorough review of the various issues/factors responsible for the increasing tendency towards the use of unfair means in examination, with a view to suggest a comprehensive legislation for putting an end to this illicit practice. The proposed law, the Commission suggested, should cover the whole gamut of examination and deal effectively with all elements who indulge in malpractices during examination. Such a law, the Commission directed, should entail appropriate penalties, including social disadvantages for the offenders. The trial procedure, the Commission observed, should be simple but effective. It should provide for a special procedure for collecting evidence so as to ensure expeditious disposal of cases under the proposed legislation. For this purpose the Commission constituted a special Committee, headed by Mr S.M.Zafar, Member, Pakistan Law Commission and including Raja Haq Nawaz, Chairman, Law Reforms Committee of the Pakistan Bar Council, Ch Mohammad Farooq, Member, Law Reforms Committee of the Pakistan Bar Council and Mr Mohammad Zaka Ullah, Secretary, Pakistan Law Commission to study the issue and prepare draft legislation for this purpose. The Committee was asked to present its report in a month's time so that it is considered by the Commission in its forthcoming meeting, scheduled for mid-February, 1993.

The Secretariat of the Commission meanwhile initiated a study of this issue and took the following steps:

- 1- Studying the reports and recommendations of various national and provincial commissions and committees on examination system.

- 2- Examining public complaints and suggestions published in various newspapers/journals on the system of examination.
- 3- Seeking views/comments of the Vice Chancellors of some universities [1] and Chairmen of a few Boards of Intermediate & Secondary Education [2] on this issue together with their recommendations for reforming the system of examination.
- 4- Conducting interviews with the Controller of Examination and Members of the Unfair Means Committee, University of Peshawar with a view to benefit from their professional knowledge and experience in the matter.
- 5- Examining the current Pakistani legislation "Punjab (Universities and Boards of Intermediate & Secondary Education) Malpractices Act, 1950" and the Indian law "U.P. Public Examination (Prevention of Unfair Means) Ordinance,1992" on the subject together with the subordinate legislation "Unfair Means Rules (1989) of the University of Peshawar" Unfair means Rules of the University of Karachi and Board of Intermediate and Secondary Education, Lahore.

The report that follows is based on the material studied and information obtained from the above mentioned sources.

Education System

The education system is the instrument a society uses to equip all its people to lead productive public lives and full personal lives according to their talent and interest. This system must be such that gifted individuals have full opportunity to develop their skills, it must give scope for the training of a leadership group and at the same time provide for the development of all the vocational abilities needed for the creation of a progressive and democratic society [3].

The quality of education that we impart to our youth and the priority at which we rate it contribute largely to the formation of the attitudes they carry over into public life. So whatever kind of seed we sow in the classroom, the manner in which we nurture it and the strength which it imbibes in its various stages of growth will all determine the harvest that the nation will reap in the form of its educated youth coming out of the schools, colleges and universities. The imprints of these institutions of learning will become indelible marks clearly visible in all fields of our national life; be it a clerk in an office, a soldier in the battle field, a school master in a village school, a University Professor, a bureaucrat running the administration in a seat of power. This great impact of education on the national character is understandable once we recognise both the short term as well as long term power education wields over all who go through its process. Historical evidence proves that nations were made or unmade, battles lost and won, revolution wrought, so much so that entire empires collapsed or emerged due to the educational systems of various peoples of the World. Ancient Greece and Rome at the peak of their political glory, were also the seats of learning and a source of intellectual guidance and inspiration for the entire known world, but when intellectual decadence struck, it attacked the very fabric of society and Greece and Rome were no more [4]

Examination System

Examination is the pivotal point around which the whole system of education revolves and the success or failure of the system of examination is indeed an indicator of the success or failure of that particular system of education [5]. It would be pertinent to examine the present system of examination with a view to determine as to whether it actually serves the purposes it purports to serve. The two basic assumptions of any examination worth the name are that (a) it should be valid and (b) it should be reliable. The two are distinct concepts. An examination is said to be valid if it performs the functions which it is designed to perform [6]. The concept of reliability, of course, refers to consistency of measurement. In actual fact, the prevailing system of

examination and its mode of conduct defy both these assumptions. The system has degenerated to an extent that its validity and reliability are questionable. Examination is no longer regarded as a test for evaluating the performance or judging the scholastic attainment of students. The reason being that there is a complete breakdown of the whole system of examination, almost all over the country, and at all level of education. The system of examination needs review and reformation. We are, however, not the appropriate forum to delve into the issue of evaluating the system of examination, with a view to identify its drawbacks and suggest remedial measures. This is not an area of concern for the Commission. We are, however, concerned, and are indeed alarmed, by the rising crescendo of continuing corruption and malpractices in examinations. We should, therefore, review the current legislation and by-laws of the concerned institutions to find out as to why such laws have failed to cope with the situation, and suggest accordingly remedial measures.

The use of unfair means in examination has assumed a plaguesome proportion. Barring a few institutions, elsewhere in the country, the educational establishments are experiencing an ever increasing trend towards the use of unfair means in examinations. Such establishments are unable to stop this drive. The concerned governments -- Federal as well as Provincial -- though fully aware of the problem, have failed to take effective steps towards eradicating this evil. The intensity and pervasiveness of this problem can be gauged from the fact that apart from the students, some parents too positively intervene and help and facilitate their children in their cheating adventures. The use of unfair means in examinations in certain areas has indeed become a thriving business for the examination mafia, who operate underground and provide illicit services such as leaking papers, arranging for the use of unfair means in examination, manipulating marks and supplying fake certificates/degrees. Such illicit practice, it is alleged, is perpetrated with the connivance of the supervisory staff, examiners and the staff of examination department.

The educational institutions have quite elaborate rules/ regulations which provide for appropriate penalties to deal with malpractices in examinations. The penalties range from cancellation of all the papers in the examination, and in more serious cases, disqualification of the candidate from appearing in examination for certain terms/years. In the Province of Punjab, there has been in operation, since 1950,

the "Punjab (Universities and Boards of Intermediate & Secondary Education) Malpractices Act". This Act contains stringent provisions and provides appropriate penalties for violation of this law. However, in practice, such laws/rules are seldom invoked and the stipulated penalties rarely imposed. The primary reason for this inaction on the part of administration is the defective procedure for bringing charges against the accused person and the lack of will to enforce the provisions of law. Yet another reason contributing to such inaction is the abdication of authority by the educational administration in favour of the student groups/federations. Furthermore, the Act does not prescribe any penalty for the use of unfair means, hence no action may be taken against those who cheat in examination. This apparently is a flaw in the Act and a major reason for its failure. The successive governments too, have through their criminal neglect in the matter, contributed to the present crisis.

The resort to copying and use of other unfair means/ malpractices in examinations is a serious problem. This problem is symptomatic of a disease in our educational system which is eating into the vitals of our society. This malaise is harmful for the moral and intellectual development of our youth. It is afflicting the ethical and social fabric of our society. This state of affairs must not last for long. There is a dire need for taking measures to put an end to this evil. One way of dealing with the problem is to introduce effective and comprehensive legislation, providing for stringent penalties against the use of unfair means in examinations. This step was taken recently in our neighboring country India, where in the State of U.P., an Act, called the "UP Public Examination (Prevention of Unfair Means) Act, 1992 was promulgated to deal with the rising menace of cheating in examinations. This law, though very sketchy and restricted in application, has according to press reports, been very effective and successful in eliminating unfair means in examinations, and is widely acclaimed. However, before preparing the draft legislation on the subject, it would be pertinent to explain the procedure for conducting the present (conventional) system of examination; identify the various malpractices in such examination; and enumerate the elements who may indulge in such malpractices. The conduct of examination involves the following stages and procedure:

- 1- Submission of admission forms by candidates and their scrutiny by the examination department.

- 2- Allotment of roll numbers and allocation of examination centers.
- 3- Appointment of paper setters/examiners.
- 4- Setting of question papers and their moderation by the concerned staff.
- 5- Custody of such question papers by the examination department.
- 6- Printing of question papers and their despatch to examination centers.
- 7- Custody of question papers during examination in banks/other institutions or with Superintendents of examination centers.
- 8- Appointment of Superintendents, Invigilators, Inspectors and other auxiliary staff (watchman, chowkidar etc) for the conduct of examination.
- 9- Establishment of examination centers and making security arrangements for such centers.
- 10- Conduct of examination, collection of answer books, their despatch to Controller of Examination and onward to examiner.
- 11- Evaluation of answer books.
- 12- Despatch of answer books together with award list to Controller of Examination.
- 13- Scrutiny of answer books and award list by the examination department.
- 14- Tabulation and compilation of result.
- 15- Re-evaluation of answer books.

16- Conduct of viva voce and practical examination.

17- Award of certificate/degree.

The malpractices that are commonly committed in examination (at the pre-conduct, conduct and evaluation stages) range from leakage of question papers to copying, changing answer books, impersonation, misconduct in examination centre, approaching invigilators/examiners, making false entries in award list/ examination registers and issuing fake certificate/degrees etc.

Such acts may be broadly categorised as follows:

1- Allotment of choice examination centre.

2- Appointment of choice invigilating staff.

3- Leaking information about question papers, identification of invigilating staff and paper setters/examiners.

4- Bribing/influencing/terrorising examination staff, invigilators and paper setters/examiners.

5- Possessing cheating material (written/printed/electronic device etc) or copying from such material.

6- Giving/receiving assistance to copy in examination centre.

7- Mis-representation/impersonation.

8- Changing/replacing roll numbers and answer books.

9- Disclosing candidates' identity in answer books.

- 10- **Misconduct, carrying offensive weapons, refusing/resisting the lawful orders of supervisory staff, creating disturbance, instigating other candidates, threatening or assaulting the invigilating staff, impeding the progress of examination, in or outside the examination.**
- 11- **Smuggling answer books in or outside the examination centre.**
- 12- **Addition to answer books after examination.**
- 13- **Manipulating marks through fictitious entries in award list/examination register.**
- 14- **Sale of examination centre to organised gangs where cheating/unfair means are arranged.**
- 15- **Helping the candidates to use unfair means in any form and by any one in or outside the examination centre.**
- 16- **Helping the candidates in viva voce, practical examination.**
- 17- **Attempting or abetting the commission of any of the afore-said acts.**
- 18- **Any other act considered dishonest, unfair, corrupt etc.**

The above mentioned malpractices and acts of misconduct in examination also give an indication of the persons and class/category of examination staff who may possibly indulge in the commission of such acts before, during or after examination. Such persons/staff may be categorised as follows:

- 1- **Candidates**

- 2- Employees of examination department and auxiliary staff such as checkers, scrutineers, tabulators etc responsible for the conduct of examination.
- 3- Paper setters, moderators and examiners.
- 4- Invigilators, inspectors and other auxiliary staff such as chowkidar, peon, watchman etc deputed in examination centre.
- 5- Persons/staff responsible for transportation or safe custody of examination-related material.
- 6- Outside persons/elements including relations, friends, helpers of candidates and groups/gangs/mafia indulging in illicit practices in examination.

Now that we have identified the various acts of cheating/ malpractices in examination and listed the categories of persons, staff, groups (potential offenders), we should find it easier to device a law which is both comprehensive and effective to check such malpractices. Since education is a provincial subject hence the proposed law must be enacted by the provincial legislature. However, since the Federal Government is also running several educational institutions and examination bodies (Quaid-e-Azam University, Allama Iqbal Open University, Federal Government Schools/Colleges, Federal Board of Intermediate & Secondary Education), a similar law may also be enacted for the federation. The proposed Federal Act should be adopted which should also serve as a model for the Provincial Governments.

References

- 1- **Vice Chancellors of University of Peshawar, Quaid-e-Azam University, Islamabad, Punjab University, Lahore, Karachi University and Baluchistan University, Quetta.**
- 2- **Chairmen of Board of Intermediate & Secondary Education, Peshawar, Lahore, Karachi and Federal Board of Intermediate & Secondary Education, Islamabad.**
- 3- **Report of the Commission on National Education, 1959, pp 10, 11**
- 4- **Report on "Legal Education--Problems and Prospects" published in the Journal of Law and Society, Faculty of Laws, University of Peshawar, 1987.**
- 5- **Ibid, p 1**
- 6- **Report of the Commission on National Education, 1959, p 30**

Examination (Prevention of Unfair Means) Act, 1993

An Act to prohibit the use of malpractices in examinations.

Whereas it is expedient to prevent the leakage of question papers, use of unfair means, acts of indiscipline and other illicit practices in examination and to provide for matters connected therewith or incidental thereto;

It is hereby enacted as follows:

- 1. Short title, extent and commencement.- (1) This Act may be called the Examination (Prevention of Unfair Means) Act, 1993.**
 - (2) It shall extend to the whole of Pakistan.**
 - (3) It shall come into force at once.**
- 2. Definition.- In this Act, unless there is anything repugnant in the subject or context:**
 - (a) "abetment" shall have the same meaning as assigned to it in the Pakistan Penal Code, 1860;**
 - (b) "answer book" means the document containing answers to questions contained in a question paper and includes a part of an answer book;**
 - (c) "Board" means a Board of Intermediate and Secondary Education, established under a federal law for the time being in force in Pakistan;**
 - (d) "candidate" means a person who has applied for admission to an examination or has appeared as an examinee in such examination;**

- (e) "examination" means an examination, written, oral or practical held by a University or Board for the purpose of examining candidates for the award of degree, certificate or diploma;
- (f) "Examination Centre" means any room, hall, residence, institution or any other place declared to be examination centre for holding of examination and includes the entire premises attached thereto;
- (g) "examination material" means question paper, answer book, information relating to fictitious roll numbers, examination result or identity of examination staff;
- (h) "examination record" means any register or document maintained for the purpose of maintaining the record of marks, grade, division obtained in an examination;
- (i) "examination staff" means a person employed, appointed or deputed by a University or Board in connection with the conduct of examination and includes a paper setter, moderator, examiner, invigilator, inspector, tabulator and scrutineer;
- (j) "misconduct" means and includes any reprehensible behaviour such as refusing to obey any lawful order of the examination staff, carrying weapons in the examination centre, abusing, threatening, assaulting or unlawfully detaining any member of the examination staff, disturbing or impeding the progress of any examination or inciting or instigating others so as to disturb or impede the progress of any examination;
- (k) "question paper" means a document containing the questions to be put at an examination for being answered by the candidates;
- (l) "unfair means" means-

- (i) the unauthorised help from any person, source or material written, printed or recorded, in any form whatsoever; or**
 - (ii) the use of any unauthorised telephone, wireless, computer or electronic or other instrument or gadget; or**
 - (iii) making any misrepresentation or impersonation in examination; or**
 - (iv) approaching or influencing any member of the examination staff or any person responsible for the transportation or safe custody of examination material to act dishonestly or corruptly in the conduct of any examination with a view to changing, replacing or making addition to any answer book, marking of answer book, recording marks in any register, result card, certificate or obtaining secret information relating to any examination staff or examination material; and**
- (m) "University" means a University established under a federal law for the time being in force in Pakistan.**

3- Penalty of unfair means.- Whoever uses, or attempts or abets to use unfair means in an examination shall be punished with imprisonment for a term which may extend to two years or with fine which may extend to five thousand rupees or with both.

4- Penalty for misconduct.- Whoever commits, or attempts or abets to commit an act of misconduct in an examination centre shall be punished with imprisonment for a term which may extend to three years or with fine which may extend to eight thousand rupees or with both

- 5- **Penalty for leaking confidential information-** Whoever, not lawfully authorised by virtue of his duties so to do, divulges or cause to be divulged or procures or attempts to procure any secret or confidential information relating to examination staff or examination material shall be punished with imprisonment for a term which may extend to three years or with fine which may extend to ten thousand rupees or with both.
- 6- **Penalty for forgery etc.-** Whoever forges or falsifies or tampers with any examination record or result card or certificate or degree shall be punished with imprisonment for a term which may extend to five years or with fine which may extend to twenty five thousand rupees or with both.
- 7- **Procedure for arrest, bail and trial.-** An offence punishable under this Act shall be-
- (a) cognizable and non-bailable; and
- (b) tried summarily by a Magistrate of the first class and the provisions of sub-section (1) of section 262, section 264 and section 265 of the Code of Criminal Procedure, 1898, shall mutatis mutandis apply to such trial.
- 8- **Protection of action taken in good faith.-** No suit, prosecution or other legal proceeding shall lie against the Federal Government or any person for any thing which is in good faith done or intended to be done under this Act or the rules made thereunder.
- 9- **Power to make Rules.-** The Federal Government may by notification, make rules for carrying out the purposes for this Act.

Statement of Objects and Reasons

This bill seeks to enact a new law, Examination (Prevention of Unfair Means) Act, 1993 as per recommendations of the Pakistan Law Commission to check unfair means, misconduct and prevent the leakage of confidential information relating to examination and forgery in record/degrees etc in examination.