

ELIMINATION OF FALSE EVIDENCE FROM THE JUDICIAL SYSTEM IN PAKISTAN

PART-1 GENERAL

As desired by the President in a meeting presided over by him on the 26th of January, 1983, the Pakistan Law Commission has examined, in detail, the question of eradication of the elements of false evidence and perjury from the judicial system in the country in order to suggest to the Federal Government the ways and means to achieve this object.

2. Since the creation of mankind, in every society, large or small, rich or poor, advanced or backward, there have always been disputes among the individuals requiring determination and decision by a third person after weighing and examining the claims of the contesting parties. This exercise on the part of the third person is legitimately considered to be the most elementary stage of administration of justice. This concept of administration of justice, of which evidence is an integral part, has all along been intimately connected with the social aspect of human life which, by a process of evolution, has now developed into the present day intricate and complex system of administration of civil and criminal justice requiring equally clear cut and exhaustive Rules of Evidence. We find a reference to the rules of evidence in the Holy Quran also, which were followed by the ancient generations, e.g., in Sura-e-Yusaf, it has been stated that when Hazrat Yusaf was falsely accused by Zulekha of immodest conduct and no ocular evidence was available, except the contradictory assertions of the two parties, it was suggested that Yusaf's shirt may be examined and if it was found to be torn in front Zulekha's allegation was correct but in case the shirt was torn from the back, Yusaf was innocent and

Zulekha was guilty of false accusation. The elementary rules of evidence were also followed in the early Roman Society, the pre-Islamic Society of Arabia, Persia, India etc.

3. The sole object of production of evidence in the Law Courts has all along been to enable the Judges to do justice after correct appreciation of the pros and cons of the matter in dispute before them by holding the scale of evaluation evenly between the contesting parties. It would be difficult, if not impossible, for a Court to do so unless and until the evidence produced before it is true, untainted and free from all kinds of bias. In Islam every great stress has been laid on the importance of true evidence. Addressing the believers, Allah the Almighty says:-

"And cover not truth with false-hood-Nor conceal the Truth, when you know"(2/42).

"And thus have We made of you an Ummat justly balanced that you might be witnesses over the nations, and the apostle a witness over yourselves"(2/143).

"Conceal not evidence; For whoever conceals it; his heart is tainted with sin. And Allah knoweth all that you do"(2/283).

"O'ye who believe; Stand out firmly for justice, as witnesses to Allah; even as against yourself or your parents or your kin; and whether it be (against) rich or poor; for Allah can best protect both"(4/135)

"Whenever you speak, speak justly, even if a near relative is concerned; and fulfil the Covenant of Allah; thus doth He command you; That you may remember" (6/152).

4. The main causes for giving false evidence are:-

- (a) the desire of causing harm to a party in a civil or a criminal case either on account of inducement or pressure from the opposite party or due to the witness's own personal vendetta; or

- (b) in order to help the accused in a criminal case or a defendant in a civil proceedings either under a threat, coercion or inducement; or
- (c) in order to avoid incurring the wrath of the party against whom the witness has to depose in the event of his giving true evidence.

In a number of cases witnesses avoid appearing before the Court to give evidence and express ignorance about the matter in dispute to avoid the harassment which they usually face while appearing in the Law Courts, from time to time, which they consider as wastage of their time and also an unnecessary inconvenience. It has also been noted in a number of criminal cases that while on the one hand there are witnesses who give false evidence at the instance of the Police to make the prosecution a success, there are other witnesses who, in spite of being inclined to give true evidence, refrain from doing so out of fear of retribution either on the part of the Police or the accused party.

5. The most important question at present before the Government is to find out ways and means to end the evil of false evidence and in order to get rid of it fully two kinds of measures can normally be adopted, i.e.:-

- (A) Persuasive and
- (B) Preventive.

The former include various steps to be taken by the Administration to persuade the witnesses to come forward and give true evidence and refrain from giving false evidence either under temptation or coercion, while the object of the latter should be to discourage and

prevent the professional touts and false witnesses from giving false evidence in the Law Courts and also to act as a deterrent factor for the other like minded persons.

A- PERSUASIVE MEASURES

- (i) Since, by the grace of Allah, the foundation of Pakistan has been based on Islam and an overwhelming majority in the country is that of Muslims it should not be difficult to educate the masses, inter-alia, in this respect also. If they are made fully aware of the importance and sanctity attached by Quran and Sunnah to giving true and honest evidence they will, in a majority of cases, refrain from giving false evidence fearing that in the event of their giving false evidence they shall be incurring the wrath of Allah Almighty and, besides legal punishment, will also become liable to punishment in the hereafter. This ideal should also be fully projected on the official media, i.e., Radio and Television in the form of talks and lectures etc.
- (ii) It is suggested that at the time of recording evidence witnesses should be suitably warned by the Presiding Officers of the Courts that in the event of their testifying falsely they would be proceeded against under the Law. This procedure, if followed meticulously by the Courts, will go a long way in dissuading the witnesses from deposing falsely.
- (iii) Every effort should be made by the Administration to see that the witnesses are duly protected from harassment and wastage of time while appearing in the Law Courts to give evidence and they should also be immune from the fear of retribution on the part of the party against whom they correctly depose so that inducement to give false evidence, either in the form of monetary or other benefits or fear of vengeance and

intimidation, is minimised. It should, consequently, be the duty of the Police to see that the witnesses deposing truly in criminal proceedings are given due and proper protection against harassment by the party against whom they depose. The Provincial Governments should issue necessary instructions to their Police Department in this respect.

B- PREVENTIVE MEASURES

6. The Commission is of the view that in order to discourage and prevent the practice of giving false evidence in the Law Courts necessary measures should be adopted to make it certain that the witnesses who perjure themselves in the Law Courts are given expeditious and exemplary punishment. In this connection the Commission recommends as under:-

(i) Steps should be taken to simplify the procedure of investigation which should be completed expeditiously. It is a common experience that chances of perjury are far greater in those cases in which investigation has taken a long time and the post investigation proceedings are inordinately delayed, thus giving a chance to the interested parties to temper with the evidence or to win over the witnesses. The Provincial Governments should adopt suitable measures in this respect and issue necessary instructions to the Investigating Agencies under their control. They should also see that the Investigating Officers found guilty of negligence in this regard are proceeded against under the disciplinary rules and suitably punished.

(ii) Under Section 250 of the Criminal Procedure Code, in a case instituted on a complaint or information given to a Police Officer or to a Magistrate, any person or persons, who are tried for the alleged offence are ultimately acquitted by the Court, which is also of the opinion that the accusation against the accused was false and either

frivolous or vexatious, the Court can, in its order of acquittal, direct that the complainant shall pay suitable compensation to the acquitted accused to be determined by the Court. There is a provision in Section 211 of the Pakistan Penal Code for the prosecution of a complainant who brings a false complaint against any person with the intent to injure him. There is another provision in Section 182 of the Pakistan Penal Code according to which, whoever gives to a public servant any information which he knows or believes to be false with the intention of causing such a public servant to do or omit any thing which such public servant ought not to do or omit or use the lawful power of such public servant in order to injure or annoy any person, shall be punished with imprisonment upto six months or with a fine upto Rs.1,000/- or with both. The Commission is of the view that the provisions of the former section, i.e., Section 211 should frequently be invoked by the Trial Courts against the false complainants and those of the latter section, i.e., 182 by the Police Officers investigating offences, who should file a complaint in the Court concerned against a person lodging a false FIR. Both the sections should suitably be amended, enhancing the sentences involved, in order to dissuade people from filing false complaints or lodging false FIRs.

- (iii) It is an every day observation that the Trial Courts are usually reluctant to prosecute and punish false witnesses even though they can do so under the provisions of the amended Section 476 of the Criminal Procedure Code. The Commission is of the view that these provisions, if resorted to by the Subordinate Courts meticulously and frequently, are sufficient to combat the menace of perjury. The Chief Justices of the High Courts, who are Members of the Commission, will, on their own, issue directions to all the Subordinate Courts under their jurisdiction in this regard, who would be required to submit to the High Courts periodical statements about the cases in which the

provisions of Section 476 of the Criminal Procedure Code have been invoked and the persons convicted thereunder for perjury.

(iv) The maximum punishment in the Pakistan Penal Code for the offence of giving or fabricating false evidence, which is seven years' imprisonment of either description and fine in other cases, is, in the opinion of the Commission, sufficient. Since, however, the malady of perjury and existence of professional witnesses in the Law Courts has now assumed the form of an epidemic, it appears necessary that the offence of perjury is not overlooked by the Courts. The question of the sentence of fine has, no doubt, been left to the discretion of the Courts, but the Commission is of the view that while awarding a sentence of imprisonment or fine under this Section the Courts should keep in mind that this sentence should, besides punishing the guilty person suitably, act as a deterrent factor for the other like minded persons also.

(v) It is generally observed that in quite a number of criminal cases the complainants try to rope in more persons than the actual culprits in order to satisfy their personal vendetta. Some times it is also done by the investigating officers with the intention of helping the accused, as by involving innocent persons, who are ultimately acquitted at the trial, the benefit of doubt becomes available to the actual offenders as well. Steps should be taken to discourage this practice and the investigating officers, who are guilty of recording the FIR incorrectly or allowing false evidence to creep into the case, should be proceeded against legally as well as administratively.

(vi) Steps should also be taken to have the criminal cases examined thoroughly by some independent agency before their submission to the Courts for trial in order to

provide a check against irregularities in the investigation and also to minimise the chances of false implication of persons or exclusion of the real culprits. This work can conveniently be entrusted to the District Public Prosecutors, who being under the control of the Provincial Law Departments should be free from all kinds of pressure, inducement and temptations.

The provisions of law referred to in the Report are in force since long, but in vain. The existing law has failed to remedy the evil. I, therefore, sincerely believe that the problem of eradication of the elements of false evidence and perjury from the judicial system can be effectively solved by (1) reviving the Islamic institution of Tazkiyatul Shuhud, and (2) resorting to the provisions of Islamic law relating to perjury. (For detail, please see my book "Islami Nizam-i-Adalat).

For this view, I am supported by late Mr Justice Hamoodur Rahman, former Chief Justice of Pakistan and Chairman of the Council of Islamic Ideology, who stated in one of his lectures that -

"The main change required is to find a way for ending the curse of false evidence. ... I suggest that to put a stop to this, the Islamic rule should be adopted and a person who gives false evidence should be declared to be incompetent to give evidence in any other case and a register should be maintained of such witnesses. ... If this is done we shall get rid of stock witnesses and such witnesses should also be administered the oath on the Qur'an instead of the present practice making only a solemn affirmation. The defendant in a civil case and an accused in a criminal case should also be required to take the oath. The office of Muzakki should be re-introduced for keeping a record of

the witnesses called before Court and to make local enquiries as to their character and reputation. This will enable judges to make proper appreciation of their evidence. The accused should be cross-examined as is the practice even in the United Kingdom. The law of evidence will also be required to be brought in line with the Islamic rules of evidence. With these changes our existing court system will be able to satisfactorily administer Shari'at Law if the Judges make themselves familiar with the Fiqah and Usul-ul-Fiqah or Islamic Jurisprudence".