**Rage of Caliban**

BY A D E E L W A H I D 2021-02-27

THE lawyers in Pakistan have gone rogue; that much is undisputed. Unless obviously one asks a lawyer, especially a proud member of a bar council or an officer bearer of a bar association, who feels that the ground is being pulled away from under the lawyers` feet. There is rage in lawyers that the chambers constructed in Islamabad, on land not their own, but, at times, passed on from lawyer to lawyer for consideration, were dismantled; there is rage that the act was done in the wee hours of the night, when there was not enough lawyer manpower to safeguard the chambers, and there is rage that no notice was given before the demolition took place.

Lawyers, who considered themselves bona fide purchasers of the chambers, on a basis of an ownership right created out of thin air by the local bar association, were lef t holding the bag.

And now there is rage emanating out of lawyers from all corners of Pakistan. It got manifested in the form of a rampage on the Islamabad High Court. The fraternity of lawyers clubbed in the echo-chambers of councils and associations, has repeatedly shown that the fraternity strictly abides by tribalistic values: you mess with one or a few, you mess with all. In fact, even when a member of the fraternity is called out for his illegality, the others barge in, full of rage,toprovide cover.

The rage that the lawyers experience, however, is like the rage, as Oscar Wilde put it, of Caliban not seeing his own f ace in a glass.

It is not, obviously, that there is something wrong in the South Asian gene of lawyers that makes them myopically self-centred, and perpetually angry. The system seems to be structured in a way, where there is a greater tendency for the members of bar councils and office-bearers of the associations to remain populists, often employing Schmittian friend-enemy dichotomy, to keep the internal cohesion of lawyers alive.

Under the Legal Practitioners and Bar Councils Act, 1973, the elected provincial, Islamabad and Pakistan bar councils, have been granted the function, among others, of conducting elections of the bar councils.

They have also been tasked with admitting advocates on a roll, or in other words granting the permission to individuals to appear before the courts on behalf of htigants.

Third, they have been assigned the role of entertaining and determining cases of misconduct against lawyers.

Elected bodies, such as the bar councils and associations, have been granted the power under the 1973 act to determine the size of their electorate. As a result, there isan incentive for the elected members to increase the number of individuals admitted as advocates on the roll, since that determines the number of votes that the incumbent individual members, and their af filiated group of lawyers, would be able to muster in the future. There have been complaints that individuals have been enrolled even when they did not fulfil the basic criteria, and, at times, did not even possess a law degree.

Second, an elected body of members has been granted the power to discipline advocates, on whom the elected body of members, and their affiliated group of lawyers, are dependent for votes. In such a situation it is often best for the council members to look the other way, even when gross improprieties are brought to their attention.

After all, factions competing for votes and power, are unlikely to ruffle any feathers.

There is a reason why the legislature does not also occupy the role of the judiciary.

Once, there is an incentive to increasethe number of advocates who can vote, coupled with the incentive to not discipline advocates for misconduct, tribalism only intensifies.

The numbers increase, and the mantra takes shape that lawyers can do no wrong. The lawyers blatantlyattacked the Islamabad High Court, and yet did not find themselves at fault. In fact, they pinned the fault on the high court for occupying the land earmarked for district courts; on Islamabad`s master plan, and on the district courts for being where they are in fact, anyone and everything, but the lawyers. Just like the doctors were at fault, whenlawyers,inavenging their besmirched honour, broke into a hospital and caused havoc.

It, therefore, has become imperative to rethink the entire concept of bar councils and associations. There are two ways to go about it. One, it needs to be re-evaluated whether having an elected body of lawyers is essential for overseeing the interests of a professional community. Second, it needs to be reassessed whether such extensive powers need to be vested in a single elected body, such as the bar council.

If the lawyers are to feel any rage, it needs to be like the rage of Caliban on finally seeing his face in a glass.  The writer is a litigator based in Islamabad.

awahid@umich.edu