



# FEDERAL JUDICIAL ACADEMY BULLETIN

January - March, 2014



**Mr. Parvaiz Ali Chawla, Director General, Federal Judicial Academy presenting souvenir  
to Hon'ble Mr. Justice Mian Saqib Nisar , Judge , Supreme Court of Pakistan**

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# HON'BLE JUDGE OF APEX COURT UNDERSCORES IMPORTANCE OF TRAINING FOR JUDGES OF DISTRICT JUDICIARY

*Hon'ble Mr. Justice Mushir Alam*

Trainings offer an opportunity to eliminate inefficiencies, reform outdated processes and orient the organizations to focus even more sharply on their mission requirements and perform in a better manner. Mr. Justice Mushir Alam, Hon'ble Judge, Supreme Court of Pakistan, expressed these views in the inaugural ceremony of a one-week refresher course on "Sessions trial and Appreciation of Evidence" for Additional District and Sessions Judges hailing from all over Pakistan, Azad Jammu and Kashmir and Gilgit-Baltistan, on Monday 6<sup>th</sup> January, 2014.



*Hon'ble Mr. Justice Mushir Alam addressing the course participants*

He said, "Seek to

understand current challenges and needs. Let us not get carried away. A swift trial should not be at the cost of a fair trial. Rights of the accused in the case may not be compromised/violated. Let us not lose sight of the fact that a person is presumed innocent until proven guilty. Apply the law to the facts. Your conclusion should be the inevitable result of the application of law to the facts. When considering the facts and the law and the application of the facts to the law it is important to clarify in your own mind exactly what it is that you have to decide. This will save you a lot of time and energy."

He said, "Judges of district judiciary have no alternative but to improve their efficiency and effectiveness".

Earlier, Mr. Parvaiz Ali Chawla, DG of the Academy presented his welcome speech and said that he was certain that this weeklong training course would be truly and utterly beneficial for them.

The true teacher defends his pupils against his own personal influence. He inspires self-distrust. He guides their eyes from himself to the spirit that quickens him. He will have no disciple.

*Amos Bronson Alcott*



*Participants of the course in a group photo with Hon'ble Mr. Justice Mushir Alam and faculty of the Academy*



## **DG, FJA ASKS MEMBERS OF DISTRICT JUDICIARY TO ACHIEVE EXCELLENCE IN ADMINISTRATION OF JUSTICE**



*Mr. Parvaiz Ali Chawla, Director General addressing the course participants*

The objective behind this weeklong refresher course is to sharpen the skills, enrich knowledge, and develop work culture and attitude in a judicial officer with a view to improve the quality and quantity of his/her output in the field so that litigant people get an expeditious justice.

Mr. Parvaiz Ali Chawla, Director General of the Academy expressed these views at the certificate-awarding ceremony of a one-week refresher course on "Sessions trial and Appreciation of Evidence" for Additional District and Sessions Judges hailing from all over Pakistan, Azad Jammu and

Kashmir and Gilgit-Baltistan, on Friday, 10<sup>th</sup> January, 2014. The Director General congratulated the participant judges on the completion of their one-weeklong refresher course in the Academy.

He said, "It is a universally accepted truth that education has to perform two major functions: it must enlighten the understanding, and it must enrich the character. He said, "What we need today, more than anything else, is moral leadership based on courage, intellectual integrity and a sense of values. If you have been able to assimilate some of these attributes during the course of a weeklong refresher

training, only then I shall consider that this Academy has fulfilled its objective of imparting you proper education and the necessary training." He further said, "During this refresher course you must have been stuffed with lot of knowledge by the erudite resource persons and you would have shared your views and exchanged your knowledge with each other about the ambiguities of practical nature.



*One of the participants is presenting views on behalf of all the participants*



*Mr. Parvaiz Ali Chawla, Director General gives away certificate to a participant*

Therefore, I am not going to give you any such sermon today. You have to achieve excellence in the discharge of your duties. You have to restore the faith of people in the system". He also lauded the cooperation and efforts of the faculty and staff of the Academy to successfully accomplish such like refresher courses in the Academy. Twenty three additional district and sessions judges including two female judges, were given away certificates in the ceremony.



*Participants of the course in a group photo with faculty of the Academy*

## HON'BLE MR. JUSTICE ANWAR ZAHEER JAMALI ASKS SUPERINTENDENTS OF DISTRICT AND SESSIONS COURTS TO INSTITUTIONALIZE THEIR PRACTICAL KNOWLEDGE AND INFORMATION

Punctuality of time is a virtue, therefore, all key stakeholders of administration of justice system including judges and Superintendents who head the court personnel in the district courts, should be punctual for an effective administration of justice.

Mr. Justice Anwar Zaheer Jamali, Hon'ble Judge, supreme Court of Pakistan, expressed these views in the inaugural ceremony of a one-week refresher course on "How to be an effective Superintendent" for Superintendents of the Sessions Courts hailing from all over Pakistan, Azad Jammu and Kashmir and Gilgit-Baltistan, on Monday, 20<sup>th</sup> January, 2014.

He said, "Court administration



*Hon'ble Mr. Justice Anwar Zaheer Jamali addressing the course participants*

remains one of the greatest challenges in the effective administration of justice. It is also a known fact that the court management is a comprehensive procedure. Therefore, even the smallest aspect has significant impact on the effective administration of justice. It is this lack of managerial skills in the court administration, which contributes to the increase in pendency rates of both civil and criminal matters. Here the role of the Superintendents of the District and Sessions Courts who are considered as the backbone of administration of justice becomes utmost important for institutionalizing effective court management system."

He said, "Fortunate are those District and Sessions Judges who get competent, men of character and integrity as the Superintendents in their court office. In their domain resides the daunting task of administrating court affairs, skillfully distributing the workload to the juniors, which will aid in dispensing swift justice."

He said, "I have concluded that a Superintendent of District and Sessions Court can play a role of a teacher, both, for his subordinates, and junior lawyers who have understanding of law but not that of practicality of the court affairs. These Superintendents have to institutionalize this practical knowledge and information and transmit it to others for an effective administration of justice." Honorable Judge appreciated the content of the training course and hoped that this training which was practice-oriented with a focus on computer literacy, among others, would be very useful for them in their day to day affairs in the administration of court office.

Earlier, Mr. Parvaiz Ali Chawla, DG of the Academy presented his welcome speech and candid views about the practical utility of a weeklong training course for the Superintendents.



*Participants of the course in a group photo with Hon'ble Mr. Justice Anwar Zaheer Jamali and faculty of the Academy*

If a doctor, lawyer, or dentist had 40 people in his office at one time, all of whom had different needs, and some of whom didn't want to be there and were causing trouble, and the doctor, lawyer, or dentist, without assistance, had to treat them all with professional excellence for nine months, then he might have some conception of the classroom teacher's job.

*Donald D. Quinn*

## SUPERINTENDENTS OF DISTRICT AND SESSIONS COURTS ADVISED TO WORK WITH HONESTY, DEVOTION, DILIGENCE, TRANSPARENCY

Mr. Justice Mian Saqib Nisar, Hon'ble Judge, Supreme Court of Pakistan, has advised the Superintendents of District and Sessions Courts to perform their duties with honesty, devotion and transparency adding that "Integrity requires to perform your work with honesty, diligence, responsibility and make every possible effort to mitigate the miseries of poor litigant public who comes to the courts for seeking justice."



*Hon'ble Mr. Justice Mian Saqib Nisar presiding over the ceremony*



*Hon'ble Mr. Justice Mian Saqib Nisar addressing the course participants*

Hon'ble Judge of the Apex Court expressed these views at the certificate awarding ceremony of a one-week refresher course on "How to be an effective Superintendent" for Superintendents of the Sessions Courts hailing from all over Pakistan, Azad Jammu and Kashmir and Gilgit-Baltistan on Thursday, 23<sup>rd</sup> January, 2014.

He said, "Maintain absolute integrity; maintain devotion to duty; and do nothing which is unbecoming of court personnel. Promote honest and ethical conduct among court



personnel junior to you. Court personnel are expected to carry out their duties and responsibilities with due professional care and a genuine interest in serving legal fraternity, litigant public, among others. You are expected to provide quality services in a manner that demonstrates commitment to a level of professionalism."



*Hon'ble Mr. Justice Mian Saqib Nisar gives away certificate to a participant*

Presenting his welcome speech and an overview of the course Mr. Parvaiz Ali Chawla, DG of the Academy said that this weeklong training course was devised and developed to sharpen the skills of the Superintendents of Sessions Courts in subjects like financial management, etiquettes and manners, stress management, service rules and keep them abreast with the latest trends in the court office management and enhance their efficiency in the service.



*Participants of the course in a group photo with Hon'ble Mr. Justice Mian Saqib Nisar and faculty of the Academy*

# IMPROVEMENT IS ALWAYS REQUIRED TO ENHANCE CAPACITIES: HON'BLE CHIEF JUSTICE, ISLAMABAD HIGH COURT

The Judges in various courts of Islamabad and the lawyers practicing therein are delivering outstanding performance in their fields respectively. The improvement is always required to further enhance their capacities and make them an example to be followed.

Mr. Justice Muhammad Anwar Khan Kasi, Hon'ble Chief Justice, Islamabad High Court, expressed these views at the inaugural ceremony of a two-day training for Judges and lawyers of Federal Capital Territory at the Federal Judicial Academy on Monday 3<sup>rd</sup> February, 2014.

Regarding the training he said, "The Academy is arranging short-term and long-term courses successfully. The present course is one which would definitely strengthen the capacities of the practicing lawyers. I, therefore, extend my thanks to the administration of the Academy for coordinating this vital course and engaging renowned guest speakers." About the Academy, he said, "The Academy is a great seat of learning. It enlightens the participants with different modern techniques and sources of knowledge as an *alma mater*. The present workshops are intended to provide a great opportunity to the stakeholders of legal and Justice system in Islamabad to interact and develop understanding with each other."

Advising the participants, the Hon'ble Chief Justice said, "Take active part in the discussion, never hesitate to ask questions and always share your knowledge with your fellow participants and faculty members. Utilize these two days for strengthening your career."



Participants of the course in a group photo with Hon'ble Mr. Justice Muhammad Anwar Khan Kasi and faculty of the Academy

Earlier, Mr. Parvaiz Ali Chawla, DG of the Academy, presented his welcome speech and sounded his optimism that such like training courses would go a long way to provide expeditious justice to the litigant public and enhance the quality of judgments.

## HON'BLE MR. JUSTICE MIAN SAQIB NISAR URGES JUDGES, LAWYERS TO ATTAIN COMMAND ON LAW



*Hon'ble Mr. Justice Mian Saqib Nisar gives away certificate to a participant*

Hon'ble Mr. Justice Mian Saqib Nisar, Judge Supreme Court of Pakistan has urged the young judicial officers and lawyers to have full knowledge of the law adding that "Since Judges and lawyers are experts of law, then, law should be at their fingertips. If you (Judges) are fully aware about the facts of the case and the law applicable, then you are in the proximity of doing justice as per law." He expressed these views in the certificate-awarding ceremony at the conclusion of a two -day training for judges and lawyers

of Federal Capital Territory at the Federal Judicial Academy, on Tuesday 4<sup>th</sup> February, 2014.

He said, "Judges and lawyers should be aware of the latest statutes and their provisions. They should also be aware of the standard text books and commentaries on such laws which are applied by them in every day work. All this would help them to perform their respective jobs more efficiently and effectively".

Advising the young judicial officers, the Hon'ble Judge said, "You must be free from prejudices of all kinds. Any bias, consideration, caprices, or whims must be shed completely, failing which your judicial acumen and judgment would be adversely affected. For this I would urge you to have a peep into your own inner self and ask whether you suffer from any such prejudices that are unbecoming of a Judge in terms of his/her oath. I am sure, through this simple exercise, you will experience at sub-conscious level a feeling of rejuvenating purity and piety."

Regarding relationship between the bar and bench, he said, "I consider them as two limbs of a single body. If one limb of the body is diseased, then, other parts of that body will also not work properly. There must be harmonious and healthy relations between the bar and the bench, lawyers and judges, as they both play very important roles in the administration of justice. Judges and lawyers must strive to maintain the dignity, appropriate to the profession. Only then, we would be able to usher in more efficient, judicious, fair and transparent justice delivery system."

About the present judiciary in Pakistan he said, "The judiciary in Pakistan has emerged bold, independent and strong. That's why it is respected nationally and internationally. It can't go back now but it will continue its endeavor to uphold the rule of law in the country."

Presenting his welcome speech, Mr. Parvaiz Ali Chawla, DG of the Academy said that efficiency and effectiveness of court system demanded that all key stakeholders including legal fraternity should also play their due role with honesty, devotion and transparency. In the end, the honorable Judge of the Apex Court gave away certificates to forty-two participants in the ceremony.



*Participants of the course in a group photo with Hon'ble Mr. Justice Mian Saqib Nisar and faculty of the Academy*



## **RULE OF LAW CREATES ORDER, HARMONY IN SOCIETY HON'BLE MR. JUSTICE EJAZ AFZAL KHAN**

Hon'ble Mr. Justice Ejaz Afzal Khan, Judge, Supreme Court of Pakistan, has said that every society needed the rule of law for its sustainable development including socio-economic, environmental and human development. He expressed these views in the inaugural ceremony of second batch of a two-day training for Judges and lawyers of Federal Capital Territory at the Federal Judicial Academy, on Monday 10<sup>th</sup> February, 2014.

He said, "It is the Rule of Law which creates rule, harmony, order, orderliness and peace in the society and fortunately this duty is performed both by the Judges and the lawyers. The Judges, the Bench, is entrusted with the task to administer justice, the



*Hon'ble Mr. Justice Ejaz Afzal Khan addressing the course participants*

rule of law and the lawyers, the Bar, are tasked with the responsibility to facilitate it."

Emphasizing the point regarding the relationship between the bench and the bar, he said, "A Judge, with all his abilities within and outside, all qualities and skills, inspiration and motivation, can't perform his judicial duties without an active assistance and facilitation of the bar. Director General of this Academy has very rightly quoted that the bench and bar are two wheels of the same chariot. They must help each other. Such like integrated trainings are arranged to grease their relationship for an effective dispensation of justice and also to create rule of law in the society." Highlighting the importance of relationship between the bench and bar, the Hon'ble Judge of the Apex Court narrated the case of stoning to Death of a Pregnant Woman. The case reads as: A pregnant woman who was accused of adultery was once brought to Hazrat Umar (R.A). When she was asked as to whether she had committed the crime and after she had confessed her crime she was ordered by Hazrat Umar (R.A) to be put to death by stoning. When she was being carried to be stoned to death, Hazrat Ali (R.A) arrived on the scene and enquired the people who were accompanying her as to what was the matter. The woman herself, to the query of Hazrat Ali (R.A), told him that she was being carried to be stoned to death. Hearing this Hazrat Ali (R.A) said to Hazrat Umar (R.A), "No doubt she has committed a crime, but what is the crime of the unborn child she is bearing?" Thereupon, Hazrat Umar (R.A) uttered the following words three times:

"Had not there been Ali, Umar must have gone to dust" and released the woman.

In the light of this cited judgment, the Hon'ble Judge of the Supreme Court said that an integral and indispensable role of bench and bar became obvious. Herein Hazrat Ali (Karam Allah Wajuhu) played the role of a guide, counsel, and advocate and saved human, a life of child, who was in the womb of her mother involved in the adultery case.

"There is a great moral lesson for all of us who belong to the bench and bar, in this judgment. It is an advice to the wise" he observed.

Hon'ble Judge also sensitized the participants of the training about the importance of time by saying, "Time is very important. If anyone lags one single moment behind in the race of life, then, he/she will be left far behind because there is cut-throat competition in the life today. Therefore, take care of time."



*Participants of the course in a group photo with Hon'ble Mr. Justice Ejaz Afzal Khan and faculty of the Academy*

Earlier, Mr. Parvaiz Ali Chawla, DG of the Academy, presented his welcome speech and said that Judicial and legal education and training was an essential element to promote the highest standards of integrity and professionalism among the two important players of administration of justice system and also promote deep understanding among them.

## HON'BLE MR. JUSTICE AMIR HANI MUSLIM ASKS YOUNG JUDGES ABOUT EFFECTIVE TIME MANAGEMENT



*Hon'ble Mr. Justice Amir Hani Muslim gives away certificate to a participant*



*Director General, FJA presenting souvenir to Hon'ble Mr. Justice Amir Hani Muslim*

Hon'ble Mr. Justice Amir Hani Muslim, Judge Supreme Court of Pakistan has said that effective time management was essential for swifter dispensation of justice. Hon'ble Judge of Apex Court expressed these views at the certificate awarding ceremony of a two-day combined training for Judges and lawyers of Federal Capital Territory, on Tuesday 11<sup>th</sup> February, 2014.



*Participants of the course in a group photo with Hon'ble Mr. Justice Amir Hani Muslim and faculty of the Academy*

Lamenting the poor time management in the courts, he said, "Time management is very important for justice efficiency but unfortunately we have no time management throughout our courts. In carrying out the judicial functions, young judicial officers, while fixing any case, must be more sensitive about the time management in their courts". Advising the young lawyers he said, "My advice to young lawyers is to gain more knowledge to enhance their ability. Grasp the Majors Acts. This should always be a handy book available with you. One has to master the facts of the case, not only the law, and then no one can defeat you."

Earlier, presenting his welcome speech, Mr. Parvaiz Ali Chawla, DG of the Academy said, "The most difficult part is to transform a culture accustomed to tolerating corruption, impunity and mediocrity. Along with institutional adjustments, the work of competent, courageous, progressive and independent judges and lawyers will go a long way to give Pakistan the legal and justice system it deserves and for this to achieve we all have to strive. The time has come to put our practical and pragmatic efforts in the right direction and this two-day training for, both, very important players of administration of justice system, I mean, bench and bar, is reflective to it."



## HON'BLE MR. JUSTICE IJAZ AHMED CHAUDHRY ASKS FAMILY COURT JUDGES TO SAVE ESTRANGED FAMILIES FROM BREAK UP

Hon'ble Mr. Justice Ijaz Ahmad Chaudhry, Judge Supreme Court of Pakistan has urged the Family Court Judges to make every possible effort to save the estranged families involved in Family cases from break up through reconciliation. He expressed these views at the inaugural ceremony of a one week orientation course on "Management of Family cases inclusive of a two-day workshop on challenges being faced by Female Judges" for Family Court Judges from all over Pakistan, on Monday 17<sup>th</sup> February, 2014.

He said, "Family is an important institution of the



*Hon'ble Mr. Justice Ijaz Ahmad Chaudhry addressing the course participants*

society, therefore, Family Court Judges should try to save such a fundamental institution because its integration and disintegration directly affects the very fabric of the society. Save families involved in the family cases in the courts from break up through reconciliation and your judicial acumen and wisdom. This judicial act on your part will have positive impact on society and by saving families from disintegration you can earn the pleasure of Allah."

He said, "Ours is a male-dominated society, therefore, social injustices, excesses and violations do take place against women folk, both, in the families and also in the society. As Family Court Judges you people being women better understand family matters, you also better understand the feelings and emotions of women victims in the family cases before you than your male counter parts. Women victims also feel comfortable with your presence in the Family Courts. I will ask you people not to be hasty in your judgments while dealing with the family matters because it is a question of a family; it is question of the future of children. Even if it becomes a time-consuming activity make all humanly possible efforts to convince the parties involved in the case to reconcile. People out of ego use all ways and means to tease women but you people are asked to read and reflect on the injunctions of Allah regarding women in the Surah Nisa in the Holy Quran and decide the cases accordingly."

Advising the Family Court Judges regarding the welfare of the children he said, "Always keep welfare of the child throughout his life supreme. Fix a reasonable amount for the expenses and maintenance of a child in view of surging inflation in the society. At any cost the welfare of the victim in these agonizing circumstances, the child, should not be underestimated."

Regarding females as Family Court Judges, the honorbale Judge of the Apex Court remarked, "I strongly believe that female Family Court Judges have made a difference and they will continue to do so."

Earlier, Mr. Parvaiz Ali Chawla, DG of the Academy presenting his welcome speech said, "Family is the fundamental brick unit of any society and families make nations, good families' good nations, integrated families make integrated nations and broken families make broken nations. Therefore, I will call upon you to take all these side effects, after effects, ramifications into account while dealing with the family matters if you fall short of justice in any case or tried to defeat the spirit of the Family Laws then, this miscarriage of justice will have disastrous consequences not only for the victim families but also the society as a whole."



*Participants of the course in a group photo with Hon'ble Mr. Justice Ijaz Ahmad Chaudhry and faculty of the Academy*



## FAMILY COURT JUDGES ASKED FOR SPEEDY SETTLEMENT OF FAMILY DISPUTES

### *Hon'ble Mr. Justice Riaz Ahmad Khan*

Lauding the role of Family Courts Judges in the dispensation of justice in family related cases, Hon'ble Mr. Justice Riaz Ahmad Khan, Judge, Islamabad High Court, has asked the Family Court Judges to promote conciliation and secure speedy settlement of disputes relating to marriage and family affairs and for matters connected therewith.

He expressed these views at the certificate awarding ceremony of a one-week orientation course on "Management of Family cases inclusive of a two-day workshop on challenges being faced by Female Judges" for Family Court Judges from all over Pakistan, on Friday, 21<sup>st</sup> February, 2014.



*Hon'ble Mr. Justice Riaz Ahmad Khan presiding over the ceremony*



*Hon'ble Mr. Justice Riaz Ahmad Khan gives away certificate to a participant*



*Participants of the course in a group photo with Hon'ble Mr. Justice Riaz Ahmad Khan and faculty of the Academy*

He said, "While hearing family matters try to conciliate between parties. Make every possible effort in the interest of protecting the marriage and family. Try to counsel the parties in the case. The handling of custody matters is another problem which requires a human touch."

Earlier, Mr. Parvaiz Ali Chawla, DG of the Academy presented his welcome speech and said, "In my personal view, a woman's place is where she is most effective, where she is most needed. It is a woman's decision where she wants to be, not a man's. Women have a lot more to offer than just being at home. I believe that men and women are equal. Women may even be better, and as Family Court Judges they have proved their mettle."

"Let me remind these Family Court Judges from the nook and corner of Pakistan that if we really care about making women equal partners in this patriarchal society, then, we all must do everything in our power to fight violence and violations, injustice and excesses, against women, whether it is a hidden crime of domestic abuse or a blatant tactic of war," he concluded.



## ENRICH KNOWLEDGE OF LAW, INTERPRET, APPLY AND IMPLEMENT IT WITH HIGHEST DEGREE OF ACCURACY

*Hon'ble Mr. Justice Dost Muhammad Khan*



*Hon'ble Mr. Justice Dost Muhammad Khan addressing the course participants*

Hon'ble Mr. Justice Dost Muhammad Khan, Judge, Supreme Court of Pakistan, has urged young judicial officers to enrich their knowledge of law, interpret, apply and implement it with the highest degree of accuracy for the acquisition of the people's trust in the judicial system. He expressed these views in the inaugural ceremony of a one week training course on "New Laws" for Civil Judges-cum-Magistrates from all

over Pakistan, Azad Jammu and Kashmir and Gilgit-Baltistan, here at the Federal Judicial Academy (FJA), Islamabad, on Monday 03<sup>rd</sup> March, 2014.

Regarding the knowledge of New Laws, he said, "A Judge should enhance his/her knowledge as much as possible, because he/she cannot understand the difficulties of his/her society and solve his/her problems if his/her knowledge horizon is not wide. Knowledge is essential to improve judicial performance."

He said, "The judge should not exercise any kind of selectivity in his/her decision-making. He/she has no right to choose what he/she likes, or to make the choice according to the wish of the ones who are close to him/her, the powerful people, the seekers, beneficiaries or the party he may see winning and who is in reality a loser. He said, "Acting with honesty, dignity, confidence, sincerity, and uprightness involves the richest meanings and makes from the judge, the people's center of focus and from the judiciary the center of hopes." He also emphasized on making collective efforts for bringing peace on the globe, tranquility and welfare of the people.

Presenting his welcome speech, Mr. Parvaiz Ali Chawla, DG of the Academy advised the young judicial officers, "Increasing your knowledge can help you to become a more humble individual because you will find, as you increase in knowledge, how ignorant you really are. Now, you may not think humility is a good quality to possess, but the fact of the matter is that you can't go up until you come down".



Participants of the course in a group photo with Hon'ble Mr. Justice Dost Muhammad Khan and faculty of the Academy

There is no better way to learn than to teach.

*Benjamin Whichcote, Moral and Religious Aphorisms*

Everything good that I know was taught to me by great teachers and I feel like giving back and sharing the technique is the thing to do.

*Betty Buckley*

# PASSION ESSENTIAL FOR ACHIEVING EXCELLENCE JUDGES CAN PLAY THEIR ROLE TO REFORM SOCIETY

## *Hon'ble Mr. Justice Ejaz Afzal Khan*

Terming the role of judges as "Balancer in the society," Hon'ble Mr. Justice Ejaz Afzal Khan, Judge Supreme Court of Pakistan has advised the young judicial officers to work with passion and professionalism to reform the society. He expressed these views at the certificate awarding ceremony of a one-week training course on "New Laws" for Civil Judges-cum-Magistrates from all over Pakistan, Azad Jammu and Kashmir and Gilgit-Baltistan, on Friday 07<sup>th</sup> March, 2014.



*Hon'ble Mr. Justice Ejaz Afzal Khan gives away certificate to a participant*



*Director General, FJA presenting souvenir to Hon'ble Mr. Justice Ejaz Afzal Khan*

He said, "It is my firm belief that profession blended with passion works wonders. One can achieve miracles. I will ask you to work with passion wherever you are. Apply your knowledge and information with passion and professionalism and dispense justice to the litigant public." He said, "Thinking is the essence of wisdom. Always try to think over the mysteries of universe. Always try to reflect on the verses, the message and meaning of the holy Quran, it is the book of pondering and thinking, and it is only thinking and pondering which will enhance your knowledge, information and wisdom."

Hon'ble Judge also quoted a few verses from the Holy Quran highlighting the importance of thinking and sensitized the participants. Regarding the importance of acquisition of knowledge, He said, "The first few verses of holy Quran that were revealed to our Holy Prophet Mohammad (S. A. W) indeed, an uncommon intellectual, mention the importance of reading, pen, and teaching for human beings, and the Holy Prophet always used to pray like this: (Rabbey zidni ilma) which means: "O my Lord! Increase me in knowledge. We must utilize every moment, every minute in such a manner which may add to our knowledge".

Hon'ble Judge also shed light on the importance of encounter, interaction and association and said these are considered as effective means of increasing knowledge. This Academy provides you a unique opportunity and platform in the form of these training courses where you encounter, interact and associate with each other and quench your thirst for knowledge.

Presenting his welcome speech, Mr. Parvaiz Ali Chawla, Director General of the Academy said, "I believe in continuing Judicial Education and in this noble wisdom that learning is a life-long process. However, one of the main ways of being diligent is to pay particular attention to the pursuit of knowledge. Be it about the law in vogue, be it about the new laws or be it about the emerging trends and skills."



*Participants of the course in a group photo with Hon'ble Mr. Justice Ejaz Afzal Khan and faculty of the Academy*

## HON'BLE MR. JUSTICE MUHAMMAD ANWAR KHAN KASI ASKS LAW OFFICERS NOT TO SEEK UNNECESSARY ADJOURNMENTS IN CRIMINAL CASES



*Hon'ble Mr. Justice Muhammad Anwar Khan Kasi presiding over the ceremony*

Hon'ble Mr. Justice Muhammad Anwar Khan Kasi, Chief Justice, Islamabad High Court, has urged the law officers not to seek unnecessary adjournments in criminal cases because such practice leads to create people's mistrust in the institution of judiciary. He expressed these views in the inaugural ceremony of a one week refresher course on "Role of law Officers viz a viz quick disposal of criminal cases" for law officers from all over Pakistan, Azad Jammu and Kashmir and Gilgit-Baltistan, on Monday 17<sup>th</sup> March, 2014.

He said, "Law Officers- prosecutors play a crucial role in the administration of criminal justice system, hence, it is essential to arrange this like professional trainings and refresher courses to improve and enhance their efficiency and also their performance." Appreciating the content of the refresher course, he said, "I have gone through the program. It is very useful and extensive course and I hope that such endeavors will raise the quality of justice in the country."

Advising the participants, he said, "Carry out your duties and functions impartially and avoid all political, social, religious, racial, cultural, or any other kind of discrimination. Protect the public interest and act with objectivity."

Earlier, presenting his welcome speech Mr. Parvaiz Ali Chawla, DG of the Academy said, "Being a career Judge who journeyed from Civil Court to Hon'ble High Court, I do not mince my words to describe what is at stake in our society where crime and corruption is the order of the day, nothing is hidden from all of us. But I firmly believe that together we can work wonders, we can shape a better future with a quick disposal of criminal cases in the country. I also strongly believe that everything that takes place in this prestigious *alma mater* goes out somewhere to strike a human heart."



Participants of the course in a group photo with Hon'ble Mr. Justice Muhammad Anwar Khan Kasi and faculty of the Academy



The mediocre teacher tells. The good teacher explains. The superior teacher demonstrates. the great teacher inspires.

*William Arthur Ward*

# JOB OF A PROSECUTOR IS MORE CHALLENGING, MORE ONEROUS, MORE RESPONSIBLE

## HON'BLE MR. JUSTICE EJAZ AFZAL KHAN

Hon'ble Mr. Justice Ejaz Afzal, Judge, Supreme Court of Pakistan has asked the prosecutors that their job was to prosecute, not persecute. He expressed these views at the certificate-awarding ceremony of a one-week refresher course on " Role of Law Officers viz a viz Quick Disposal of Criminal Cases" for law officers (prosecutors) from all over Pakistan, Azad Jammu and Kashmir and Gilgit-Baltistan, on Friday 21<sup>st</sup> March, 2014.

Lamenting the loopholes, lacunas, intricacies and complications in the criminal justice system, Hon'ble Judge of the Apex Court said "The intricacies, complications, loopholes, lacunas and losses which we have in our criminal justice system should not obstruct the prosecutors to perform their duties remarkably well. The prosecutors should understand the requirements of their job and perform it in a befitting manner."

Terming the profession of prosecutors as challenging and onerous, he said, "Your job is most exciting and challenging. Every case is a test of your mettle. Every case is a test of your ability and ingenuity. Hence,



*Hon'ble Mr. Justice Ejaz Afzal Khan gives away certificate to a participant*



*Hon'ble Mr. Justice Ejaz Afzal Khan gives away certificate to a participant*

apply your mind in every case. Try to understand deficiencies. It is only by this way, our criminal justice system can be brought on a proper track."

Presenting his welcome speech and an overview of the refresher course Mr. Parvaiz Ali Chawla, DG of the Academy said, "The duty of the prosecutor is to seek justice, not merely to seek conviction. When injustices in the substantive or procedural law come to the prosecutor's notice, he should stimulate efforts for remedial action. It is the duty of the prosecutor to know and be guided by the standards of professional conduct as defined by applicable professional traditions, ethical codes, and law in the prosecutor's jurisdiction," he concluded.



*Participants of the course in a group photo with Hon'ble Mr. Justice Ejaz Afzal Khan and faculty of the Academy*

## NEWS IN BRIEF

### ANF ACADEMY TRAINEES VISIT FEDERAL JUDICIAL ACADEMY

A group of 35 newly-inducted Deputy Directors, Assistant Directors and Inspectors (Legal) from Anti-Narcotics Force Academy, Narcotics Control Division, as a part of curriculum-study visit to the Federal Judicial Academy, visited the FJA on January 21, 2014.

The trainees visited various sections of the Academy such as library, lecture room, syndicate rooms and computer lab etc. They were given briefing on the functioning of the Academy with special reference to its curriculum and training of the Judges. Three instructors of the ANF Academy also accompanied the group of the trainees.

### UN-CTED TEAM VISIT FJA

Ms Adria De Landri of Counter Terrorism Committee Executive Directorate United Nations (CTED) and Ms Melissa Lefas of the Center of Global Counter Terrorism Cooperation visited the Federal Judicial Academy, Islamabad in the month of March, 2014.

A host of issues of mutual concern, in particular, the potential for Counter Terrorism Committee Executive Directorate (CTED) to cooperate with the Academy on relevant counter terrorism matters including developing a bench book was discussed at length with the Director General, FJA during the meeting.





*Delegation in a meeting with the Director General in his chamber*

## POSITION HOLDERS

Mr. Mehmood-ul-Hassan, Additional District & Sessions Judge, Bannu, secured first position and Mr. Muhammad Akmal Khan, Additional District & Sessions Judge, Lahore, clinched second position in the essay competition on the topic "Admissibility of evidence of a hostile witness in a criminal trial" during one week refresher course on "Sessions Trial and appreciation of evidence" for Additional District & Sessions Judges from all over Pakistan, Azad Jammu & Kashmir and Gilgit-Baltistan (06<sup>th</sup> to 11<sup>th</sup> January, 2014).

### ADMISSIBILITY OF EVIDENCE OF A HOSTILE WITNESS

#### IN A CRIMINAL TRIAL

By

**Mehmood-ul-Hassan**

**Additional District & Sessions Judge, Bannu**



In the Qanun-e-Shahadat Order, nowhere the term hostile is used or described in respect of hostility. Literally, the word hostile means, according to the British Law, adverse in a criminal trial when a prosecution witness is summoned to lead evidence and he appears before the court, but does not confirm his previous evidence/statement recorded during the course of investigation, such witness is declared with permission of the court as hostile and the person, who called him to support his version is allowed to cross examine him like opposite party.

So such hostile witness does not deserve to be trusted, but if the testimony of hostile witness inspires confidence or evolves presumption to the guilt of accused, then conviction may be awarded by the court, as it

averted by Supreme Court. It is misconceived notion, that merely because of a witness is declared hostile, his entire evidence should be excluded of consideration.

In criminal trial, where a Prosecution witness is declared hostile and is cross examined with the permission of the court cannot as a matter of general rule be treated, as washed off the whole case altogether. It is for the court to consider in each case whether as a result of such cross examination and contradictions, the witness stands discredited or can still be believed in regard to any testimony of such witness, if that part of his evidence is found credit worthy.

Courts are generally under legal obligation to exercise the discretion vested in them in a judicious manner by proper application of mind and keeping in view the attending circumstances, that whether evidence of a hostile witness in a criminal case is admissible or not, because it would depend upon facts and circumstances of the case. The judicial considerations are only to be invoked, when the court feels that the attitude disclosed by the witness is destructive of his duty to speak the truth. If during the course of the trial a witness turns hostile and ultimately, the prosecution gets the right to cross examine him, then the credit worthiness of that witness is impeached and so the prosecution loses the evidence, which may be crucial to construct its version of the story, therefore, in most of the cases of hostile witnesses, the prosecution is unable to prove its case beyond reasonable doubts, as required by the law.

Supreme court in its various judgments has held that declaration of a witness to be hostile does not *ipso facto* reject the whole evidence and it is now settled principle that the portion of evidence, being advantageous to both the parties may be deemed admissible, but the court before whom such a reliance is placed shall have to be extremely cautious in such acceptance. It is also held by the apex court, that the evidence of a hostile witness would not be totally rejected, if spoken in favour of the accused, but it can be subjected to close scrutiny and that portion of the evidence which is consistent with the case of prosecution or of the defence side may be accepted and relied upon in the light of other evidence on record after due caution and care.

In our criminal justice system, witnesses are unduly harassed, that's why such witnesses are dealt with a subject of criticism, and when a witness does not appear in the court for giving evidence, then he is subjected to cross examination.

A lot of witnesses do turn hostile, because of threats by the powerful opponents, for all these reasons, a person abhors from becoming a witness the successful working of the criminal justice system depends critically on the willingness of individual to furnish information and tender evidence without being intimidated or brought.

In a criminal case, a witness turning hostile has become due to extraneous considerations and how to turn around and punish the guilty, who escapes the arm of law is the question and it has become a moot point and has been debated now and then fundamentalists, militants and extremists escape gallows, because they exterminate the witnesses, if they have the audacity to speak in the court of law and hence they are afraid to witness much less to speak about the incidents that happen day to day. When a witness has turned hostile, then he may be confronted with their statements under section 162 Cr.P.C recorded before the police during the course of investigation and follow it up by proving what he said before the court with the assistance of other witnesses, so that the court may know the truth about the witness.

Very rarely witness turning hostile are proceeded in law for perjury and this must be resorted to often, so that the witness may know the consequences and deter them from doing so. Whoever corruptly uses or attempts to use as true or genuine evidence, which he knows to be false or fabricated, should be punished in the same manner, as if he gave fabricated false evidence.

The present judicial system has taken the witness completely for granted, because our country is facing problems regarding convictions of criminals due to non-availability of witnesses as witnesses are still threatened by the accused and witnesses mostly turn hostile on account of hostile animus exhibited by criminals justice system towards them. In several decisions, it was considered to be more or less an unqualified proposition that where a party calling a witness asked the court to declare him hostile and to give leave to cross

examine that witness, such witness thus discredited and his evidence could not be used for or against any party or any particular fact, but this view was not accepted and held that a fact, the witness is dealt with under section 154 of the Qanun-e-Shahadat Order, even when the witness is cross examined as to credit, in no way warrants a discretion to a jury that they are bound in law to place no reliance on his evidence, or that the party who called and cross examined him can take no advantage from any part of his evidence. The evidence of such hostile witness is not to be rejected either in whole or in part. It is also not to be rejected so far as it is in favour of the party calling the witness, nor it is to be rejected so far as it is in favour of the opposite party. There is no rule of law that if the court thinks that a witness has been discredited on one point, the court must not give credit to him on another point. The rule of law is that it is for the court to hold his position. It is of the judge of fact to consider in each case, whether as a result of cross examination and contradiction, the witness stands thoroughly, discredited or can still be believed in regard to part of his testimony. If a judge finds that in the process, the credit of a witness has not been completely shaken, he may after reading and considering the evidence of such witness, as a whole with due caution and care, accept in the light of other evidence on the record that part of his testimony, which he finds to be credit worthy and act upon it, however, if in a given case, the whole testimony of the witness is impugned and in the process, the witness stands squarely and totally discredited, then the judge should as a matter of prudence discard his evidence in toto.

A hostile witness may not be rejected outrightly but the court has at least to be aware that prima facie, the witness, who makes different statements at different times has no regard for truth. The court should therefore, be slow to act on the testimony of such a witness and normally, it should look for corroboration to his evidence. The courts have to see the relative effect of the testimony of hostile witness in the case. If it upsets the balance of the prosecution case, then it may be a fact in favour of defence/accused. On the other hand if the rest of the prosecution evidence is balanced, natural and believable, the withdrawal of support of witness should not materially effect the merits of the remaining evidence, while it is true that merely because a witness is declared hostile, his evidence cannot be rejected on that ground alone, it is equally well settled that once the prosecution declares a witness to be hostile, it clearly exhibits its intention of not relying on the evidence of that witness and hence his version cannot be treated to be the version of prosecution.



Ms. Ayesha Alamgeer, Civil Judge-cum-Magistrate, Ferozewala, secured first position and Syeda Tahreema Sabahat, Civil Judge/Judge Family Court Abbottabad, clinched second position in the essay competition on the topic "My Ideal Judge" during one week orientation course on "Management of family cases inclusive of a two-day workshop on challenges being faced by the female judges" for female judges of the Family Courts from all over Pakistan, Azad Jammu & Kashmir and Gilgit-Baltistan (17th to 22nd February, 2014).

## **MY IDEAL JUDGE**

**By**

**Ms. Ayesha Alamgeer**

**Civil Judge-cum-Magistrate, Ferozewala**



*To start with, as a general dissemination; He/she, whoever, works & performs best, in the relevant areas of their respective profession/jobs, are known as ideal worker/the performers, whether in the capacity of an owner, employee, businessman or a JUDGE. This is why, herein, it is safe to speak that idealism of the JUDGE too, is subject to its best work performance, towards its obligations, pursuant to the requisition of law.*

1. With utmost respect; before flowing with any words to the assigned topic, I, as ever intended to become the student of law; whether had been when practiced as an advocate, and now as a judge; at the very outset, do hereby deems it just appropriate to refer to the definition of JUDGE, having been defined in THE PAKISTAN PENAL CODE 1860, ACT NO. XLV OF 1860, which flows as under;

➤ **19. "JUDGE".** *The word "Judge" does not only denote every person, who is officially designated as a judge, but also every person;*

*who is empowered by law to give, in any legal proceeding, civil or criminal, a definitive judgment, or a judgment which, if not appealed against, would be definitive, or a judgment which, if confirmed by some other authority, would be definitive; or*

*who is one of a body of persons, which body of persons is empowered by law to give such a judgment. ,*

#### **Illustrations**

(a) [Omitted by Ord. XXVII of 1981].

(b) *A Magistrate exercising jurisdiction in respect of a charge on which he has power to sentence to fine or imprisonment with or without appeal, is a judge.*

(c) [Omitted by Act 26 of 1951].

(d) [Omitted by Ord. XXVII of 1981].

[Notes: 'Judge' and 'Court': The terms 'Judge' and 'Court' are often used interchangeably as synonymous. Generally speaking a Judge is properly identified with the Court, in relation to something done in exercise of the jurisdiction of the Court. Otherwise his personality remains distinct and separate from the Court. As individual, he remains subject to the laws of the land like the rest of the citizenry, save when expressly exempted. **PLD 1976 S.C. 315.**]

➤ Under **THE CODE OF CIVIL PROCEDURE, ACT NO. V OF 1908 [21st March 1908]**. [An Act to consolidate and amend the laws relating to the Procedure of the Courts of Civil Judicature], Judge has been defined as under

**S. 2(8) "Judge"** means the presiding officer of a civil Court:

2. While preparing assigned essay, to the best of my research, I have also taken the support of INTERNET, whereby vide [en.wikipedia.org/wiki/Judge?](http://en.wikipedia.org/wiki/Judge), the definition of judge has been found as follow;

*A judge is an official person who presides over court proceedings, either alone or as a part of a panel of judges.*

**At Dictionary.com** ([dictionary.reference.com/browse/judge](http://dictionary.reference.com/browse/judge)), the judge has been defined as;

*a public officer authorized to hear and decide cases in a court of law; a magistrate charged with the administration of justice.*

**Vide Free Online Dictionary**, judge (j?'j)-v. **judged, judging, judg**·es-v.tr.

1. *To form an opinion or estimation of after careful consideration: judge heights; judging character.*

2. a. *Law To hear and decide on in a court of law; try: judge a case.*

b. *Obsolete To pass sentence on; condemn.*

c. *To act as one appointed to decide the winners of: judge an essay contest.*

3. *To determine or declare after consideration or deliberation.*

4. *Informal To have as an opinion or assumption; suppose: I judge you're right.*

5. *Bible To govern; rule. Used of an ancient Israelite leader.*

1. *To form an opinion or evaluation.*

2. *To act or decide as a judge.*

1. One who judges, especially:

- a. One who makes estimates as to worth, quality, or fitness: a good judge of used cars; a poor judge of character.
- b. Abbr. **J.** Law A public official who hears and decides cases brought before a court of law.
- c. Law A bankruptcy referee.
- d. One appointed to decide the winners of a contest or competition.

2. Bible

- a. A leader of the Israelites during a period of about 400 years between the death of Joshua and the accession of Saul.
- b. Judges (used with a sing. verb) Abbr. **Judg.** or **Jgs** or **Jg** See Table at Bible.

[Middle English *jugen*, from Anglo-Norman *juger*, from Latin *i?dic?re*, from *i?dex*, *i?dic-*, judge; see *deik-* in Indo-European roots.]

**Synonyms: judge, arbitrator, arbiter, referee, umpire**

These nouns denote persons who make decisions that determine or settle points at issue. A judge is one capable of making rational, dispassionate, and wise decisions: In this case, the jury members are the judges of the truth.

An arbitrator is either appointed or derives authority from the consent of the disputants: An experienced arbitrator mediated the contract dispute.

An arbiter is one whose opinion or judgment is recognized as being unassailable or binding: The critic considered himself an arbiter of fine literature.

A referee is an attorney appointed by a court to investigate and report on a case: The referee handled many bankruptcy cases each month.

An umpire is a person appointed to settle an issue that arbitrators are unable to resolve: The umpire studied complex tax cases.

In sports referee and umpire refer to officials who enforce the rules and settle points at issue.

3. Performance of the duties in true perspective, by a JUDGE, renders to the **idealism of a JUDGE**, wherefore, in the relevant context, herein I, deem it just appropriate to refer to the enshrined principles, by the superior courts, which flow as;

➤ *Judge to maintain dignity of court. A Common man always looks upon judge as an impartial, unruffled emblem of justice. If a judge loses his temper indulgence in improper language or becomes excitable, then impersonal concept of the seat of justice gets a rude shock. Hence a judge who adorns the seat of justice should always be careful to maintain the dignity of his office. (PLD 1961 SC 237)*

➤ *Law of land must be in sleeves of the **Judge**. 2010 SCMR 1778. Judge to wear laws on sleeves of robes. A judge must wear all laws of the country on sleeve of his robes. Failure of counsel to properly advise him is not complete excuse in matter. Court obliged to apply correct law, failure of party assistance is no excuse. (NLR 1992 SCJ 497, NLR 2004 Civil 614, 2001 PLC 124, 2002 MLD 1860, 2003 YLR 2760, NLR 2001 Civil 57, 2005 MLD 1165, NLR 1994 Civil 28, PLD 1961 SC 13).*

➤ *Court duly apply correct law whether litigant point out or not. (2003 YLR 2208, 2004 YLR 2040)*

➤ *It is only in a very extreme case that a judge can be permitted the liberty of questioning the wisdom of legislation. His duty is to apply law as he finds it. (PLD 1965 SC 13)*

- *Most daunting task of judge is to weigh the evidence procured. (2002 YLR 3855)*
- *Judge to administer justice without fear or favour. To hold scales evenly between the parties upto the end of the case is indeed a delicate task, but in it lies the strength of judicial balance without public confidence put in the scales, the slightest impairment of which would weaken and spoil the balance of the scales. It is not the business of the judicial officer to act as advisers to the executive authorities and to suggest course of action to them. The sole task of judge is to administer justice between the parties, according to the best of their abilities, on the facts revealed to them and to interpret the law as it stands without fear or favour, malice or ill-will. (PLD 1962 Peshawar 1920)*
- *Judge Sublime, duty of-Judge to administer law and not to make it---Maxim: Judicis est jus dicere, non dare (it is not the function of a Judge to make law but to administer it). (PLD 1972 SC (AJK) 26)*
- *Judges of superior courts are not civil servants; their terms and conditions are provided in fifth schedule of constitution. NLR 1990 CLJ 19*
- *---Integrity and character of Judicial Officers---Principles---Although all civil servants are bound to be honest having unblemished integrity, the Judicial Officers are supposed to excel in this trait of character in view of the sacred and sensitive nature of their duties and the pivotal position which justice occupies in Islam---Islam also enjoins that those who perform the function of Judges must not only possess profound knowledge and deep insight but also be men of integrity and capable of holding the scales of justice even under all circumstances---Judicial Officers are expected to guard their reputation jealously and Reporting Officers/Countersigning Officers are obliged to assess their conduct after careful consideration and without being led away by any prejudice or bias. (PLD 2004 SC 191)*
- *----Superior judiciary---Senior and junior Judges---Scope---No concept of junior Judges in Superior Courts being treated as subordinate or subservient to senior Judges. (2007 SCMR 1786)*
- *Judge ----Expected to be careful to maintain dignity of Court-Loss of temper, improper language, or being excitable-Gives a shock to impersonal concept of seat of justice. (PLD 1961 SC 237)*
- *Judge -Expressing strong views in strong language in regard to persons neither parties nor witnesses in case-Disapproved. Judge -Not to play role of moral or political reformer Judge laying down moral or political standards for choice of a Prime Minister travels beyond his functions. (PLD 1958 SC 333)*
- *Judge, the final authority as to what takes place before him at a trial---Statement of the Judge should be regarded as conclusive---Statement of the Judge must be considered as absolute verity and the same ought to be taken precisely as a record and must be acted upon in the same manner as on a record of Court, which by itself imports absolute verity---Law has made the Judge the final authority as to what takes place before him at a trial, and that authority must be recognized. (2008 PCrLJ 126 Lahore)*

4. Besides supra idealism vide enshrined principles by the superior courts, following maxims are also of much avail in the relevant parameters;

- **Actus Curiae Neminem Gravabit**  
*An act of the Court shall prejudice no man*

➤ **Fiat Justitia, Ruat Coelum**

*Let Justice be done, though heavens should fall*

➤ **Nemo Debet Esse Judex in Propria Sua Causa**

*No man to be his own Judge and litigant*

5. In furtherance of supra principles, the maxims of law, being an ideal JUDGE, to the best of my understandings, AN IDEAL JUDGE should have full expertise like;

➤ **EXCELLENT MANAGERIAL SKILLS**

*i-e, The Court Management*

- (a) Superintendence towards its all subordinate staff
- (b) Control &
- (c) Timely Inspection of all relevant records and to get those all updated pursuant to Bench Books, the HIGH COURT RULES AND ORDERS

- CASES FLOW MANAGEMENT;
- TIME AND STRESS MANAGEMENT;
- COMMUNICATION SKILLS (Oral & Written);
- JUDICIAL SKILLS;
- BAR AND BENCH RELATIONS (ever to have smooth and congenial)
- NOTING, DRAFTING AND CORRESPONDENCE;
- MEDIATION SKILLS;
- UPDATED SKILLS; (with reference to all kinds of laws and time to time enshrined principles & practices by the superior courts & to keep in touch qua updation of Bench Book, High Court Rules and Orders);

6. Apart from supra idealism, A JUDGE is not only required to have its focus on application of laws but essentially is required, simultaneously to remain focused to the;

- Impartial attitude and behavior;
- Must ever have judicial ethics and conduct;
- Only speaks through its orders/judgments
- Judicial independence;
- Must be aware of contemporary social issues;
- Senior Junior relationships;
- Etiquettes and mannerism;
- Self Management;
- Character Building;
- Awareness of Gender, ethnic and other disadvantaged groups
- Competence
- Clear perception about the social, moral, economic and political values of culture.
- To remain precluded and ever to avoid corruption in any manners whatsoever.
- Must be independent and trained to safeguard the basic value of judgeship, not only from the outwardly stimuli, but also from inside, because Khauf, Muffad, Maslahat, partiality and dishonesty are the vices that

come from inner-self. However, with the passion to do justice, those can easily be overcome.

- Ever be composed, sober, firm, resolute, tolerant, courteous, polite and decent. Never to loose patience, or be rude while addressing to the counsel, the party or a witness appearing before.
- Always to avoid extraneous talk during the proceedings of the case or any altercation with anyone.
- To give a witness proper respect and, if requested, provide him the protection while coming to the court for giving evidence, and leaving thereafter. To save witness from harassment and scandalous questions by the opposite side.
- No urge for publicity and popularity.
- Judgment in the case should be precise and pithy, it should not be verbose and burdened with rhetoric.
- Full expertise to the maintenance of dignified orderly,
- Efficient pace of proceedings,
- Legal and litigants skills.
- Judicial decisions making skills; communication skills in the court room with stakeholders and the community at large.

7. In furtherance of assigned topic, I would like to refer to the Idealism of a JUDGE, the material thereof has been taken from [www.sabar.co.za/law-journals/.../1994-october-vol007-no2-p110.pdf?](http://www.sabar.co.za/law-journals/.../1994-october-vol007-no2-p110.pdf?)

*The following extract from the Report of the Commission of Inquiry into the granting of certain powers to legal practitioners and related matters (the Milne Commission) is illuminating: It is perhaps appropriate here to say something about the qualities which a 'judge should have. Mr Mandela described these as follows: "Certain minimum technical skills are essential for appointment to the bench. Women and men of integrity, experience, able to understand people and legal principle, deal with arguments advanced to them and write judgments that can be understood, should be sought for appointment." The Chief Justice in a recent address expressed himself on the subject as follows: "If I were to attempt to sum up in half-a-dozen words the qualities which ideally a judge should have, I would say knowledge, experience, judgement, independence, character, and industry. It goes almost without saying that the ideal judge should have a sound knowledge of the law and the practice of the courts. And under our system of very limited specialisation a judge in a trial division may in the course of a single term sit in criminal sessions, in motion court, and in a civil division where the cases coming before him may involve any of the aspects of private law, administrative law or complex commercial topics such as bills of exchange, insolvency, company law and intellectual property; and he may also be called upon to sit in one of the specialist courts dealing with matters such as patents, income tax, water law and admiralty law.*

*He elucidated the quality which he described as "judgement" as follows: "It relates to both the fact-finding and to the application of the law to the facts. A judge must have the skill to arrive at the truth, for many more cases are decided on the facts than on the law. He must have the capacity to sum up witnesses and discern their creditworthiness; he must have the knowledge and experience of the world and its way to make a good assessment of the probabilities and to weigh them correctly; he must be endowed with common sense." Under "independence" the Chief Justice referred to the fact that the judge must be " ... not only willing but also unflinching in his resolve to decide cases in whatever way his professional skills and his conscience direct him, whatever the consequences and however unpopular his decision may be in certain quarters or indeed generally. He must be objective, unbiased, unattached to any preconceived notions or philosophy which would tend to make him take sides, to take an unduly severe or an unduly lenient view of certain types of conduct. He must in a sense stand aloof from the society in which he lives, while at the same time being acutely aware of the*



realities of that society, of its moods, its values, its mores." In dealing with the quality of "character", "The Judge must have the personality to maintain order and dignity in court proceedings. He must run the Court. It must be clear that he is in charge. But he must do so without descending into the arena, without unduly interfering or hampering the parties in the presentation of their cases, without being discourteous to anyone. He must be patient." Under the heading of "industry" the Chief Justice referred to the need for all judges "... to be extremely industrious. They have to not only work for long hours, often in the evenings and over weekends, but they have to see to it that they produce with minimum delay what the parties have come to court for, i.e. a judgment." To these qualities I would add only humility and the ability to express himself with reasonable clarity and perhaps a breadth of education so that he has sufficient reading to make what Francis Bacon called "a full man". These characteristics are not, of course, possessed in equal degree nor are they possessed by all members of the Bench but they are, and should be, the ideal.

8. Here, I would like to mention and refer to the basic principles about the institution of "judiciary" and its system in an Islamic State, as has been summarized by HAZRAT ALI' in his letter to MALIK-E-ASHTAR, giving instructions on the qualifications and the appointment of Judges and their conduct, which read as;

*"So far as dispensing of justice is concerned, you have to be very careful in selecting Judges for the same. You must select people of excellent character and high caliber and with meritorious record. They must possess the following qualifications: -*

- (i) Abundance of litigations and complexity of cases should not make them lose their temper;*
- (ii) When they realize that they have committed a mistake in judgment they should not insist on it by trying to justify it;*
- (iii) When truth is made clear to them or when right path opens up before them, they should not consider it below their dignity to correct the mistake made or to undo the wrong done by them;*
- (iv) They should not be corrupt, covetous or greedy;*
- (v) They should not be satisfied with ordinary enquiry or scrutiny of a case, but should scrupulously go through all the pros and cons, they must examine every aspect of the problem carefully, and whenever and wherever they find doubtful and ambiguous points, they must stop, go through further details, clear the points, and only then proceed with their decision;*
- (vi) They must attach greatest importance to reasonings, arguments and proof;*
- (vii) They should not get tired of lengthy discussions and argument;*
- (viii) They must exhibit patience and perseverance in scanning the details, in testing the points presented as true, in sifting facts from fiction and when truth is revealed to them they must pass their judgments without fear, favour or prejudice;*
- (ix) They should not develop vanity and conceit when compliments and praises are showered upon them;*
- (x) They should not be misled by flattery and cajolery.*

*He further asked in his letter: "But there are a few persons having such characteristics. After you have selected such men to act as your judges, make it a point to go through some of their judgments and to check their proceedings and:*

- (i) Pay them handsomely so that their needs are fully satisfied and they are not required to beg or borrow or resort to corruption;*
- (ii) Give them such a prestige and position in your State that none of your courtiers or officers can overawe or harm them;*

(iii) Let judiciary be above every kind of executive pressure or influence, above fear or favour, intrigue or corruption.

9. This is known to all concerned in any literate systems, that LEARNING PROCESS, does never come to any ends and this is as to why while running to the modern ages, as the new situations are rendering to new kinds of lis, the **idealism of the JUDGE**, is ever subject to UPDATION qua all kinds of laws, for which such a trainings, having been introduced by the FEDERAL JUDICIAL ACADAMY are the excellent keys, for their improvement, capacity building etc, so that where maximum of the false, frivolous lis should be culminated at the receipt of inceptions, there merit base lis may also be decided within the stipulated times, under the requisitions of relevant laws. And of course, such a trainings enable the JUDGEs to achieve their respective goals by learning methodical planning and development and of course, too, is considerably more practical rather than theoretical and active rather than passive.

“ Herein, I would like to flow to the definition of JUSTICE; ***"JUSTICE" quality of being just; just treatment; fairness; fairplay; even handedness and propriety.*** And the JUDGE is a person, who is ever assigned, every cases whether criminal or civil, but to make JUSTICE and JUSTICE only, and JUSTICE is ever requisition of LAW, and the LAW is collection of rules and regulations, which are binding and enforceable through the machinery of the state, in cases the breach thereof, comes to surface. And it in itself, goes on saying that **idealism of A JUDGE**, is **IDEALISM OF WHOLE JUDICIARY**, because all the JUDICIARY is on compatible unit, and JUDICIARY may be said in a way the COLLECTION OF JUDGES, hence to safe the honour, respect, dignity of the JUDICIAL SYSTEM/JUDICIARY, which is one of the three organs of the STATE, **and it are the JUDGES, who are ever prime, required ever to be IDEAL.**

➤ ***Parting With The Essay:*** with utmost respect, that all those judges are ideal, who, whether have worked, or are working or will work in future, but ***PURELY PURSUANT TO THE INJUNCTIONS OF ISLAM***, without any kind of favour and fear, while working gracefully and maintaining integrity; ***& WITHIN THE PARAMETERS OF ACTUAL SPIRIT OF LAWS***, because to make justice, is a DIVINE QUALITY, is one of the traits of ALLAH ALMIGHTY, and whosoever, intends to pollute the stream of justice, sets himself at war with the ALLAH ALMIGHTY. Thus such a person is an enemy of Allah, who can never succeed. Even otherwise, to make JUSTICE, by a person (human) can never be met in a true way, but can be best tried with great cautions, care & honesty etc, subsequent to which the ULTIMATE JUDGMENT DAY, will actually result out and JUSTICE SHALL DO.



Ms. Nasira Parveen, Civil Judge-cum-Magistrate, Gujrat, secured first position and Ms. Ayesha Shabbir, Civil Judge-cum-Magistrate, Islamabad (West), clinched second position in the essay competition on the topic "Domestic Application of International Environmental Law" during one week training course on "New Laws" for Civil Judge-cum-Magistrates from all over Pakistan, Azad Jammu & Kashmir and Gilgit-Baltistan (03<sup>rd</sup> to 8<sup>th</sup> March, 2014).

**DOMESTIC APPLICATION OF  
INTERNATIONAL  
ENVIRONMENTAL LAWS  
By  
NASIRA PARVEEN  
Civil Judge-cum-Magistrate, Gujrat**

With the civilization growing from the nomadic life to modern day civilization a new dimension of environment crept into the legislative history compelling the framers of law to ponder upon the borderless common



problem of deteriorating natural environment. The polity of nations joined their hands to resolve the matters pertaining to issues of modernization and greater weaponization. The brief history shows on the following matters the committee of states joined to reach the solutions of environmental issues with the passage of time covering following aspects:

Air quality, Clean tech, Drainage, Energy, Waste, Water quality, Fisheries, illegal, Forests, logging, Game, Poaching, Land, Mining, Ocean, Property, Water, Earth jurisprudence, Environmental crime, Environmental engineering law, Environmental impact assessment, Environmental justice, Intergenerational equity, Land use, Market-based instruments, Eco taxes, Polluter pays principle, Public trust doctrine, Warimpact, Administrative law, Bankruptcy law, Customary law, Environmental protocol, Insurance law, International law, Legal pluralism, Multilateral environmental agreement.

The above said problems gave birth to International conventions which were later on transformed into international protocols.

### **FOLLOWING ARE SOME OF IMPORTANT INTERNATIONAL TREATIES, ONVENTIONS, PROTOCOLS ETC. ON THE SUBJECT OF ENVIRONMENTAL PROTECTION.**

1. International Plant Protection Convention, Rome, 1951
2. Plant Protection Agreement for the South-East Asia and Pacific Region (as amended), Rome 1956
3. Agreement for the Establishment of a Commission for Controlling the Desert Locust in the Eastern Region of its Distribution Area in South-West Asia (as amended), Rome, 1963
4. Convention on Wetlands of International Importance Especially as Waterfowl Habitat, Ramsar, 1971 and its amending Protocol, Paris, 1982.
5. Convention Concerning the Protection of World Cultural and Natural Heritage (World Heritage Convention), Paris, 1972.
6. Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), Washington, 1973.
7. Convention on the Conservation of Migratory Species of Wild Animals, Bonn, 1979.
8. Convention on the Law of the Sea, Montego Bay, 1982.
9. Vienna Convention for the Protection of the Ozone Layer, Vienna, 1985.
10. Montreal Protocol on Substances that Deplete the Ozone Layer, Montreal, 1987 and amendments thereto.
11. Agreement on the Network of Aquaculture Centers in Asia and the Pacific, Bangkok, 1988.
12. Convention on the control of Transboundary Movements of Hazardous Waste and their Disposal, Basel, 1989.
13. Convvention on Biological Diversity, Rio De Janiero, 1992.
14. United Nations Framework Convention on Climate Change, Rio De Janiero, 1992

### **Development in environmental laws in Pakistan in conformity to international protocols.**

Pakistan being responsible state has adopted and ratified some major international protocols and participated in conventions. Pakistan has always endeavored to frame the local environmental laws by making legislation in this regard. Here are some of the laws enlisted to encompass the environmental laws in Pakistan.

S.No.	LAWS
01	Agreement For The Establishment Of A Commission For Controlling The Desert Locust In The Eastern Region Of Its Distribution Area In South-West Asia
02	Balochistan Forest Regulation, 1890
03	BASEL Convention On Control Of Transboundary Movements Of Hazardous Wastes And Their Disposal 1989
04	Convention For The Protection Of The World Cultural And Natural Heritage
05	Convention On Biological Diversity 1992
06	Convention on the Conservation of Migratory Species of Wild Animals 1979
07	Environmental Samples Rules, 2001
08	Environmental Tribunal Rules, 1999
09	Hazardous Substances Rules, 2003
10	National Environment Policy, 2005
11	National Environmental Quality Standards (Certification of Environmental Laboratories) Regulations, 2000
12	Pakistan Environmental Protection Act, 1997
13	Pakistan Environmental Protection Council (Procedure) Rules, 1993
14	Pakistan Nuclear Safety and Radiation Protection Ordinance, 1984
15	Prohibition of Smoking and Protection of Non-Smokers Health Ordinance, 2002
16	Protocol on Substances that Deplete the Ozone Layer (Montreal, dated 26th September 1987)
17	Provincial Sustainable Development Fund (Utilization) Rules, 2003
18	Provincial Sustainable Development Fund Board (Procedure) Rules, 2002
19	Punjab Forest Act, 1999
20	Vienna Convention For The Protection Of The Ozone Layer 1985

## Superior Courts of Pakistan in respect of Environmental matters

Initially, the superior courts of Pakistan assumed their jurisdiction which ultimately resulted in development of environmental laws in Pakistan. The superior courts of Pakistan have played a vital and major role in this respect.

Following are the important cases in the legal history of environmental laws:

(1) In 1990, the First Public Interest Litigation in the field of environment in the country was Roedad Khan vs. Federation of Pakistan and 41 Others, Writ Petition No. 642 of 1990 filed by the Margallah Hills Society in the Lahore High Court, Rawalpindi bench through Dr. Parvez Hassan, counsel. The complainant was that the construction of the ISI Complex, the Quarrying activities carried out by Facto Cement Limited and the stone crushing activities in the Margallah Hill National Park involved breaking up and clearing of land, falling of trees and discharge of effluents which pollute the environment of National Park and poses a serious health hazard to the residents of Islamabad. It was contended that this would result in a depletion of the natural

habitats, dislocating the wildlife of the area and causing ecological imbalance and degradation. Although no specific orders were passed in this writ petition: Dr. Nasim Hassan Shah, Chief justice Of Pakistan, acknowledged that:

*"In the well-known case relating to Margallah Hill, the complainant was that the stone crushing plants established there were not only destroying these lovely Hills but also posing a serious health hazard to the people living all round. The approach of the Lahore High Court Bench seized of this matter has been very positive and attendant publicity to the proceedings of the court has resulted in the initiation of remedial action by the government itself in this matter."*

(2) A year after in 1991, Writ Petition No. 9297 of 1991, was filed in the Lahore High Court, by United Welfare Association, Lahore against Lahore Development Authority and the proprietors of some asphalt plants. The intervention of the court was sought for getting certain asphalt plants. As a result of this, the Director General, LDA Passed order for the shifting of the asphalt plants.

(3) In June 1991, a Constitutional Petitions under Article 199 of the Constitution was filed by Society for Conservation and Protection of Environment, (SCOPE) an environmental NGO in Karachi, praying for an issuance of a writ to stop the construction of a highway through the Kirthar National Park (KNP).

(4) In 1992, a welfare society, Karachi Administration Women's Welfare Society (KAWWS) wrote a letter to the Supreme Court stating that the health hazards in the use of open storm water drains for the disposal of sewerage and the contamination of water from sewerage resulting from damaged adjoining water and sewerage pipes are a violation of the fundamental rights of the people living in the area. The Supreme Court converted the letter into a Human Right Case, the Human Right case No. 9-k/1992. KAWWS requested the court to appoint an independent expert on water and sewerage to survey the area, recommend solution and monitor the work done. The Supreme Court constituted a Commission, which reported that the complainants in the petitions were correct. The court directed the remedial measures including the repair of the water and sewerage pipes.

(5) In 1992 re: Pollution of Environment Caused by Smoke, Emitting Vehicle, Traffic Muddle H.R. No. 4-k Of 1992, 1996 SCMR 543, the Supreme Court passed interim order for taking effective and remedial measures in order to streamline the process of checking as a first step in eliminating the air and noise pollution from Karachi.

(6) In 1994, in the Human Rights Case (Environment Pollution in Balochistan), PLD 1994 SC 102, the Supreme Court of Pakistan moved suo moto to prevent the dumping of imported industrial and nuclear wastes in Pakistan.

(7) In Ms. Shehla Zia and Others vs. WAPDA, PLD 1994 SC 693, Four citizens protested to WAPDA against the construction of grid station with high voltage transmission lines in the Green-belt of a residential locality in Islamabad.

The Supreme Court also accepted the importance of the Rio Declaration on Environment and Development and the Precautionary Principle included in its Principle 15.

The Supreme Court prevented the establishment of the high voltage grid station.

The real problem not being with the law itself, rather the problem being more of implementation and execution of the law.

### **Role of district judiciary in environmental matters**

Through the subsequent legislation a special environmental magistrates of 1st class is empowered in respect of the matters of environmental nature. The appeal against orders of special environmental magistrate is entrusted to the court of Sessions. This is the assigned role of the district judiciary. After the 18th amendment the legislation with regard to environmental issues has become a provincial subject.

Under section 8 of PEPA "Provincial Agencies" are envisaged to be established and their powers and functions have been enumerated. The Federal Agency and the Provincial Agencies have the powers to control

the environment from any violations. Section-16 of PEPA has enumerated in detail as to what measures the respective Agencies can take in given situations. The Penalties which the respective Agencies can impose have been enumerated in section 17 18 & 19 of PEPA. With regard to curbing vehicular pollution, generally keeping in view the provisions of Provincial Motor Vehicle's Rules, 1969 and particularly Rule 163, the state functionaries are bound by contractual obligations under International Treaties to take effective measures for elimination of vehicular pollution. Interestingly, nuisance caused through air pollution is also punishable under sections 266 & 278 of Pakistan Penal Code. Furthermore, Article-9, 14& 38 (a) of the Constitution of Islamic Republic of Pakistan, 1973 also ensure that no person shall be deprived of life or liberty save in accordance with law. The term "Life" as used in Article-9 of the Constitution of Islamic Republic of Pakistan has to be given an extended meaning and could not be restricted to vegetative life. It has been held by the superior courts that, "Fundamental right to preserve and protect the dignity of man under Art.14 of Constitution was unparalleled and could be found only in few Constitutions of the world---Constitution of Pakistan, had guaranteed dignity of man also as the right to life under Art. 9 of the Constitution---Authorities constituted under Pakistan Environmental Protection Act, 1997 were equally responsible to prosecute concerned Industries for willfully violating provisions of the said Act. Under provisions of Art.38(d) of the Constitution, it was the primary duty of Government to provide people basic necessities of life which included unpolluted water for their consumption."

Under Section 20, the Federal Government may establish "ENVIRONMENTAL TRIBUNALS" determining their territorial jurisdictions. The powers of the Environmental Tribunals have been enumerated under section 21 of PEPA. All the proceedings before the Tribunals shall be judicial proceedings within the meaning of sections 193 & 228 of Pakistan Penal Code and tribunal shall be deemed to be a court for the purposes of sections 480 & 482 of Criminal Procedure Code, 1898 and the Tribunals shall have the criminal powers as vested in the court of Session under the Code of Criminal Procedure, 1898 and shall also have the powers provided under the Civil Procedure Code, 1908. It is pertinent to note that in the exercise of appellate jurisdiction under section 22 of PEPA, the tribunal shall also have the appellate powers as provided in the Code of Civil Procedure, 1908.

Although the environmental issues have become a provincial subject but no significant role assigned to the district judiciary as discussed above. There is a need to define the role of district judiciary in respect of the environmental matters so that the measures should be taken in respect of fast implementation of the environmental laws be ensured. Mostly the matters relating to the implementation of environmental laws are lingered on through the injunctive orders of the courts. There is a need to make legislation in this respect. There is need to enhance the role of district judiciary in matters of environmental issues. There is also a great need that the Ministry of Environment, provincial environment departments, environmental protection agencies, district and tehsil governments and other relevant government and non-government institutions and organizations at all level must be strengthened by provision of adequate manpower, equipment, infrastructure and financial resources. A comprehensive training of personnel of relevant institutions at the federal, provincial, district and tehsil level must be conducted. Training institutions must be established for them. Regarding the national research the priority areas should be identified and adequate funding should be made available. There is a need to strengthen the relevant research and research related institutions. It is also required to build partnerships between government and NGOs for effective environmental management. Development of Environmental Institutions and Laws in Pakistan. The courts should strictly follow the prevailing environmental laws so that above said objectives and goals be achieved. After going through the historical development of environmental laws one hopes that environmental condition of Pakistan will be good, but actual situation on ground is much different and environment is continuously deteriorating in the country. Many points emerged after analyzing the development situation and implementation of the environmental legal framework. The main points emerged from the above analysis of the environmental legal framework are: (a) lack of comprehensive set of environmental laws, (b) lack of adequate formal enforcement procedures and non-availability of the tools of implementation, (c) lack of awareness, (d) lack of respect for the law, and (e) lack of economic incentives.





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