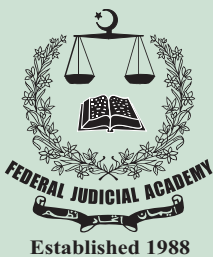




HON'BLE CHIEF JUSTICE OF PAKISTAN CALLS FOR CHARACTER BUILDING OF JUDICIAL OFFICERS



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Mr. Justice Iftikhar Muhammad Chaudhry,
Hon'ble Chief Justice of Pakistan

Hon'ble Chief Justice of Pakistan Mr. Justice Iftikhar Muhammad Chaudhry on Friday (8.7.2011) stressed that the Federal Judicial Academy (FJA) should primarily focus upon character building of the Judicial Officers.

He said that training should be directed for enhancing the speed and the quality of justice administered in the courts, besides, making it inexpensive.

He was addressing at a ceremony arranged in connection with laying of the foundation stone of the Federal Judicial Academy Phase-II.

The Hon'ble Chief Justice of Pakistan referring to the role of judicial officers said, "They should be instructed to use the force of law and the institution of the courts to uphold the Constitution, rule of law and dispense justice to all without fear or favour. In doing so, they must follow the due process of law to protect rights, restore entitlements and grant relief."

He said that judicial education and research in the field of administration of justice were the matters of prime importance.



Mr. Justice Iftikhar Muhammad Chaudhry, Hon'ble Chief Justice of Pakistan, offering "DUA" in stone laying ceremony, Mr. Justice Mian Shakirullah Jan, Mr. Justice Tassadduq Hussain Jillani, Hon'ble Judges of SCP and Mr. Justice Agha Rafique Ahmed Khan, Hon'ble Chief Justice of Federal Shariat Court of Pakistan are also seen in picture.

The quality of administration of justice and the structure of judicial system are based on the quality of education in professional training institutions, he added.

He said, "Unfortunately, judicial education has never been accorded priority or considered a specialized field in the minds of policymakers. This state of affair has impacted negatively and led to deterioration of legal and judicial education."

He said, "Such a Center must have a necessary physical base and an intellectual tradition. We are initiating the construction phase today while more important phase will begin once the men and women of intellect will assemble here to engage in study and research."

He said, "The professional judicial training academies have to fill up this gap more vibrantly to impart better judicial practices and legal education to the judges, court personnel, law officers and lawyers".

"The Federal Judicial Academy being the national institution has to shoulder this responsibility not only in terms of



Mr. Justice Iftikhar Muhammad Chaudhry, Hon'ble Chief Justice of Pakistan, Hon'ble Mr. Justice Mian Shakirullah Jan, Hon'ble Mr. Justice Tassadduq Hussain Jillani, Mr. Parvaiz Ali Chawla DG, FJA and Mr. Khalid Amin Tareen, Director, FJA in foundation stone laying ceremony of FJA Phase-II.

disseminating judicial education but also to develop the national cohesion”, he added.

Lauding the role of Federal Judicial Academy, the Chief Justice said that it had played a pivotal role in imparting judicial education.

Terming the district judiciary as the backbone of the judiciary, the Chief Justice of Pakistan also appreciated their role in the administration of speedy justice to the litigant public. “The entire judiciary depends on you and I appreciate your work and efforts to impart speedy justice to the litigant public” he remarked.

In the end of his address, he thanked the learned members of the Board of Governors of the Academy, for their efforts and enabling him to lay Foundation Stone of Phase –II of the Academy and also “the Access to Justice Program” (AJP) of Ministry of Law, Justice and Parliamentary Affairs, for their assistance.



Mr. Justice Iftikhar Muhammad Chaudhry, Hon'ble Chief Justice of Pakistan, addressing the participants



Mr. Justice Iftikhar Muhammad Chaudhry, Hon'ble Chief Justice of Pakistan, gives away shield to DG, FJA, symbolizing his affection for District Judiciary of Pakistan

Earlier, the Hon'ble Chief Justice of Pakistan laid the foundation stone of the Phase-II of the Academy in the adjacent plot, in the presence of Hon'ble judges of superior courts, judges of district judiciary, and members of legal fraternity, among others.

At the outset, Mr. Parvaiz Ali Chawla, Director General of the Academy presented his welcome speech. On the occasion, Chief Justice of Pakistan dedicated a shield, which was presented to his lordship during the first ever Pakistan Judicial Academies Summit in Karachi last month, as a gesture of his affection and appreciation for the district judiciary to the DG of the Academy.

Hon'ble Mr. Justice Mian Shakirullah Jan, Judge Incharge (Administration), FJA; Hon'ble Mr. Justice Tassadduq Hussain Jillani, Judge Incharge (Academics), FJA; Mr. Justice Agha Rafique Ahmad Khan, Hon'ble Chief Justice, Federal Shariat Court, Hon'ble Judge of Federal Shariat Court Mr. Justice Shahzado Shaikh, Hon'ble Chief Justices and Judges of High Courts; Federal Secretary for Law, Justice and Parliamentary Affairs, Attorney General for Pakistan, Dr. Faqir Hussain, Registrar, Supreme Court of Pakistan, members of district judiciary from Islamabad and Rawalpindi, representatives of Islamabad and Rawalpindi Bar Associations, senior management of Pakistan PWD, NESPAK and media men participated in this simple but impressive ceremony.

HON'BLE MR. JUSTICE MIAN SHAKIRULLAH JAN ASKS YOUNG JUDGES TO WORK WITH DEVOTION AND DEDICATION

The Judge Supreme Court of Pakistan, Hon'ble Mr. Justice Shakirullah Jan urged the young judges to work with outstanding devotion and dedication so that speedy and quality justice, as envisaged in the National Judicial Policy, could be provided to the litigant public.



Hon'ble Mr. Justice Mian Shakirullah Jan on the rostrum in the certificate awarding ceremony as chief guest.

He expressed these views in the certificate-awarding ceremony on the conclusion of one-week refresher course on "How to be an Effective Senior Civil Judge" for newly promoted Senior Civil Judges from all over Pakistan held in the Federal Judicial Academy (FJA), Islamabad, on Saturday. (02-07-2011)

Hon'ble Judge of the Apex Court said "We have to be objective in our approach for qualitative adjudication so that long avowed goals of National Judicial Policy can be achieved".

"Hon'ble Chief Justice of Pakistan is particular about speedy and quality justice to the litigant people. Hence, he expects from the young judges of district judiciary to work with devotion and dedication. Hard work always pays" he noted.

He said that the Hon'ble Chief Justice of Pakistan was also conscious of the fact that the district judiciary judges hailing from all over Pakistan should have uniform policy of perks and privileges. "However, pragmatic efforts are being made in this matter," he elucidated.

Lauding the role of Federal Judicial Academy he said that during the course of training in the Academy, the learned resource persons would share their rich experience, deliver lectures on elaborate topics and throw light as to how quality of adjudication can be improved with available resources.

"They would make the young judicial officers well acquainted with the latest trends in the judicial system. So, the young

judges should strive to achieve such a level of efficient working so as to create the necessary trust and confidence in the public," he maintained.



Participants of the course in group photo with Hon'ble Mr. Justice Mian Shakirullah Jan and faculty of the Academy.


Regarding the scope and importance of trainings, he said, "The trainings are vital for improvement of administration of justice. Trainings, like the present one, provide platform to share the ideas, knowledge, best practices and experiences in vogue in and around."

Showing his optimism he said that such trainings would produce fruitful results in the administration of justice and enhance knowledge of the judicial officers to face the new challenges in the contemporary scenario.

He also asked the participants of the training course to forward their feedbacks and suggestions in the wake of training so that the quality of training within available resources could be improved.

"Since you people are young judges, therefore, your feedback, your information in this matter will be our inspiration and will play an instrumental role in improving administration of justice in the country," he elaborated.

Earlier, DG of the Academy, Mr. Parvaiz Ali Chawla presented his welcome speech and an overview of the course. He advised the young judges to use and share the knowledge and skills imparted to them, with others for the betterment of judicial system and society.

 **"As knowledge advances and fresh avenues of thought are opened, other views and probably sounder views than those set forth in these lectures are possible. Our duty is to carefully watch the progress of human thought and to maintain an independent critical attitude towards it".....**

Dr. Allama Muhammad Iqbal

WE NEED TO MAKE OUR LEGAL-JUDICIAL SYSTEM ROBUST, EFFECTIVE, COMPETENT Hon'ble Mr. Justice Mian Saqib Nisar

“We must look at how to make justice more affordable whether it is in terms of court fees or lawyer's fees. At the same time, we need to make our legal system robust, effective and competent”



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

Hon'ble Judge of the Supreme Court expressed, “The large number of cases pending at various levels of our judiciary in our country is an issue of concern. This has a cascading effect on people's expectations and impacts on their perception of the judiciary. A case not decided in time results in a situation of being "in limbo" for years together. In the event of criminal cases, it leaves many families worried and also results in increase of under-trial prisoners in jails. In civil matters it cripples the litigant ability to take important decisions in their lifetime. Hence, timely dispensation of justice is a cardinal principle of justice”.




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

He said: “Lack of opportunities for equitable access to justice may create a division in society of those who "have" and those who "do-not-have" access to justice. Litigation is not an inexpensive option. For the poor and disadvantaged sections of society approaching courts without legal aid is not possible. Low levels of legal awareness also impede access. We must strive for some practical solutions for these issues”.

Hon'ble Judge advised the young judicial officers to read the books on professional ethics authored by leading judges and jurists.

He underlined the need for the young judicial officers to engage in regular study to remain updated on latest developments related to the judicial and legal profession. He said that efforts should be made to utilize the potential of information and communication technology to improve the efficiency of the courts.

 **“A man's education is greatly improved by traveling in quest of knowledge and meeting the 'authoritative teachers' of his time”**
Ibne Khaldun.

YOUNG JUDGES ASKED TO FULFILL EXPECTATIONS OF PEOPLE Hon'ble Mr. Justice Nasir-ul-Mulk

Judge Supreme Court of Pakistan, Hon'ble Mr. Justice Nasir-ul-Mulk urged the young judicial officers to fulfill the expectations of the people, particularly, the poor litigants.

He expressed these views in the certificate-awarding ceremony on the conclusion of one-week orientation/ refresher course on “Management of Criminal Trials Before Judicial Magistrate and Intellectual Property Law Rights (IPRs) Law” for Civil Judges –cum-Judicial Magistrates from all over Pakistan including Azad Jammu and Kashmir and Gilgit–Baltistan held in the Federal Judicial Academy (FJA), Islamabad, on Saturday. (23-07-2011)

Appreciating the approach and commitment of young judicial

officers towards their work he said, “I appreciate the commitment and dedication with which the young judicial officers approach their work and they are trying to achieve the goals of the National Judicial Policy.”

Lamenting upon the prevalent judicial system in the country he said that it had not been able to meet the expectations of the people.

“Our judicial system is slow. Its delays and costs are frustrating the litigant public. You are young judicial officers and with your dedication, while giving speedy relief to the public, you can make a better image of entire judiciary. It



Hon'ble Mr. Justice Nasir-ul-Mulk sharing Judicial Wisdom with participants. DG of the Academy also seen in the picture.

depends upon you, how you manage your court work and how you behave with the advocates and litigant public. However, make all humanly possible efforts within the defined parameters of law to protect the interests of the ordinary litigant public," he emphasized.

He also urged the young members of district judiciary to



Participants of the course in group photo with Hon'ble Mr. Justice Nasir-ul-Mulk and faculty of the Academy.

update their knowledge of various conventional and emerging subjects and trends in the judiciary and share that gained knowledge with others so that it might be used to provide speedy justice to the litigant public.

Earlier, DG of the Academy presented his welcome speech and advised the judicial officers to apply their skills and information, which they had gained from the Academy, so that people might get speedy and easy access to justice.

Twenty one Judicial Officers, three of them women judicial officers-two from Sindh Judiciary and one from Punjab judiciary, were awarded the certificates in the ceremony.

ONE MUST LIVE TO LEARN, SHARE, CARE Mr. Parvaiz Ali Chawla, DG, FJA

Mr. Parvaiz Ali Chawla, Director General, Federal Judicial Academy (FJA), Islamabad urged the law officers and prosecutors to keep on learning and updating their knowledge so as to play their effective role in the administration of justice. He expressed these views in the inaugural ceremony of one week refresher course on "Role of Law



Mr. Parvaiz Ali Chawla, DG of the Academy, addressing the course participants.

Officers Viz-a-Viz Quick Disposal of Cases" for Law Officers (Prosecutors) from all over Pakistan including Azad Jammu & Kashmir and Gilgit-Baltistan held in the FJA on Monday. (25-07-2011)

DG of the Academy said that learning was a continuous process and one must keep on learning from cradle to grave. "One must live to learn and share and not live to eat and waste time," he opined.

About the course he said, "We have designed this course, keeping in view the duties and job requirements of senior law officers and prosecutors. I am sanguine that this course will prove to be very useful for your professional skills, which you will use for acquiring the objectives of early and timely disposal of criminal cases to minimize the agonies of litigant public and particularly of those who are languishing in Jails waiting for conclusion of their trials." DG maintained.

Who is wise? He that learns from every One.
Who Is powerful? He that governs his Passions.
Who is rich? He that is content. Who is that?
Nobody.....

Benjamin Franklin

MASSES EXPECT A LOT FROM JUDICIARY Hon'ble Mr. Justice Muhammad Anwar Khan Kasi

Hon'ble Judge Islamabad High Court, Mr. Justice Muhammad Anwar Khan Kasi asked the law officers, district attorneys and prosecutors to play a more proactive role in the administration of justice. He expressed these views in a certificate awarding ceremony on the conclusion of one week refresher course on the "Role of Law Officers Vis-a-Vis quick Disposal of Cases" for Law Officers (Prosecutors) from all over Pakistan including Azad Jammu and Kashmir and Gilgit-Baltistan held in the Federal Judicial Academy on Saturday (30-07-2011) in which Hon'ble Judge was the chief guest.



Hon'ble Mr. Justice Muhammad Anwar Khan Kasi, Judge Islamabad High Court, Islamabad addressing the course participants.

Explaining the meaning and message of Gladstone's famous legal maxim, which reads as "Justice delayed is justice denied," the Hon'ble Judge said "the meaning and message of this maxim is loud and clear but even then let me explain it to you."



Hon'ble Mr. Justice Anwar Khan Kasi, Judge Islamabad High Court, Islamabad gives away certificate to course participant. Mr. Parvaiz Ali Chawla, DG of the Academy also seen in the picture.

"The meaning of the maxim is, if legal redress is available for a party that has suffered some injury but is not forthcoming in a timely fashion, it is effectively the same as having no redress at all. Justice is something meant to be handled at the present moment," he elucidated.

Regarding public expectation from the independent judiciary he said, "People have great expectations from judiciary; therefore, every effort should be put in practice to provide speedy justice to the litigant. Since the law officers including district attorneys and public prosecutors are the "Custodians of law", hence, they need to assist the courts in every possible manner to dispose of cases and impart speedy justice to the litigant public. Remember, respect can be gained only by imparting speedy justice to the society".



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

The Hon'ble Judge also appreciated the role of the FJA for imparting futuristic training and orientation to the judicial officers and law officers so as to make them well-equipped and well-groomed officers.

Earlier, DG of the Academy Mr. Parvaiz Ali Chawla presented his welcome speech and an overview of the course. He said, "The Academy has taken a proactive approach to training in essential subjects and emerging trends in the judiciary. We make every effort to provide quality training to the judicial officers so they use their acquired skills and provide speedy justice to the people."



**"Ignorantia legis neminem excusat"
(Ignorance of law is no excuse.)**

DISTRICT COURT SUPERINTENDENTS ASKED TO BECOME 'ROLE MODELS'

Syed Musadiq Hussain Gilani, Registrar, Peshawar High Court, Peshawar, said, "The Superintendents of district courts must be role models, for other court personnel to emulate & follow."



Syed Musadiq Hussain Gilani, Registrar, Peshawar High Court, Peshawar addressing the course participants

He expressed these views in the inaugural ceremony of one-week program on "How to be an Effective Superintendent" for Superintendents of the District and Sessions Judges office from all over Pakistan including Azad Jammu and Kashmir and Gilgit-Baltistan in the Federal Judicial Academy, Islamabad on Monday. (8.8.2011)



Participants of the course in group photo with Syed Musadiq Hussain Gilani and faculty of the Academy.

He said that the men would be judged by the content of their character, competence and contribution.

"But I say it is up to the individual to put some content in his character. Otherwise a man will be judged by whatever traits are perceived by others. Corruption in the activities of a person is a sign of a lack of proper content. If there are numerous individuals, especially in high places, involved in crime and corruption, so goes the character and reputation of the institution and the country," he opined.

He said that the real happiness and prosperity of any nation was directly proportional to the number of men of character it had produced.

"Be men of character and make every effort to mitigate the miseries of litigant public" he urged the participants.

SESSIONS JUDGE COURT OFFICE SUPERINTENDENTS ASKED TO STRIVE TO CHANGE 'COURT CULTURE' DG, Human Rights Cell Supreme Court of Pakistan.

Mr. Saif-ur-Rehman, Director General, Human Rights Cell, Supreme Court of Pakistan, asked the Superintendents of District and Sessions Judge Court Office to play their effective and efficient role to change the 'Court Culture' so that litigant public may get expeditious and inexpensive justice.

He expressed these views in the certificate-awarding ceremony on the conclusion of one-week training course titled "How to be an Effective Superintendent" for Superintendents of the District and Sessions Court Judge office from all over Pakistan including Azad Jammu and Kashmir and Gilgit-Baltistan in the Federal Judicial Academy (FJA), Islamabad, on Saturday. (13-08-2011)

Lamenting upon the "Court Culture" he said that in the prevalent "Court Culture," corruption and abuse of court processes were rampant, adding that there was wastage of



Mr. Saif-ur-Rehman, Director General, Human Rights Cell, Supreme Court of Pakistan addressing the course participants.



Mr. Saif-ur-Rehman, DG, Human Rights Cell, Supreme Court of Pakistan gives away certificate to a course participant.
Mr. Parvaiz Ali Chawla, DG of the Academy also seen in the picture.

human resource and material resources of the litigant public that must be obviated.

Showing his disgust and concern over the growing menace of corruption in the “Court Culture” he quoted the observation of one of his acquaintances who once said to him, “Judge Sahib, whenever I go to the court katchery in search of justice, I feel every brick of the court complex comes out to ask, for hush money/bribe.”

“Since the superintendents perform a wide-range of tasks, they manage and control the District and Sessions Judge Court office, thus, by virtue of their position and responsibilities, they become the leaders of the group what we call the court supporting staff. If the superintendents are determined, then, they can change the “Court Culture” which has got a bad press and they can regain the lost glory which we used to have in the past,” he maintained.

Speaking about the leadership qualities and their relevance with the Superintendents he said that more or less all the

qualities such as management, control and others were usually found among the Superintendents of the courts and if those leadership qualities were put in use then litigant public would not get delayed justice from the courts.

Advising the Superintendents he said, “Obtain unparalleled access to and knowledge about the judicial process. Don't waste time of the court and those of justice seekers. Don't waste time in gossips and gimmickry. Maintain the files and keep each and everything well-organized. Issue the summons timely and get strict compliance of the court orders.”

He concluded his speech with these words: “The more active the courts, the more stable the State. Judicial activism ensures the Rule of Law and stability of the State.”

Earlier, Mr. Parvaiz Ali Chawla, DG of the Academy presented his welcome speech and shed light on the illustrious judicial career of the chief guest. He asked the Superintendents to become role models for other court personnel and make sincere and honest efforts so that poor litigants get inexpensive and speedy justice.



Participants of the course in group photo with Mr. Saif-ur-Rehman and faculty of the Academy.

KNOWLEDGE GIVES CONFIDENCE Hon'ble Mr. Justice Ghulam Rabbani

Judge Supreme Court of Pakistan, Hon'ble Mr. Justice Ghulam Rabbani asked the Judicial Officers to acquire more knowledge and skills so as to meet the emerging challenges to our judicial system in a befitting manner. (22-08-2011)

Delivering his inaugural address in a ceremony of one week orientation course on “How to be effective Senior Civil Judge” for Senior Civil Judges from all over Pakistan including Azad Jammu and Kashmir and Gilgit-Baltistan, Hon'ble Judge of the Apex Court said that with the changing perceptions of human rights and growing importance of sustainable development and democracy in economic sense, the role of judiciary was becoming more crucial.

He said that it was increasingly being recognized that the



Hon'ble Mr. Justice Ghulam Rabbani, Judge, Supreme Court of Pakistan on rostrum.

judiciary was not only the dispenser of justice but also an important contributor in fashioning new rights and obligations.

He also enlightened the participants of the rights and legal heirship of eunuchs in Pakistani society. He interpreted various laws to enrich the knowledge of the judges.

“Knowledge is power. Knowledge gives confidence. Every moment, every day acquire more and more knowledge so you are known as knowledgeable persons and judges in the society and use that gained knowledge to preserve order and stability and for the creation of a just society. Impart speedy and impartial justice to the litigant public,” he maintained.

About the content of the course, he said that it was an expertly and professionally designed course.

“Being the senior Civil Judges all of you are well aware of your basic duties, however, the learned resource persons here in the Academy will open up your mind to new ideas and thoughts and those would be highly beneficial to make you



Course participants in group photo with Hon'ble Mr. Justice Ghulam Rabbani, and FJA Faculty.

effective Senior Civil Judges,” he concluded.

Earlier, DG of the Academy, Mr. Parvaiz Ali Chawla, presented his welcome speech and a detailed profile of Hon'ble chief guest. He advised the participants to have judicious use of time and intellect so that they might learn something and pass on to others for their benefit.

JUDGES ASKED TO SHARE KNOWLEDGE, EXPERIENCE Hon'ble Mr. Justice Mian Shakirullah Jan

The senior most Judge of Supreme Court of Pakistan, Mr. Justice Mian Shakirullah Jan asked the young judicial officers to give their feedback about the continuing judicial education so that their feedback could be reflected in the future training courses.

He expressed these views in the certificate-awarding ceremony on the conclusion of one-week training course titled “How to be an Effective Senior Civil Judge” for Senior Civil Judges from all over Pakistan including Azad Jammu and Kashmir and Gilgit-Baltistan in the Federal Judicial Academy (FJA), Islamabad, on Saturday. (27.8.2011)



Hon'ble Mr. Justice Mian Shakirullah Jan, the senior most Puisne Judge, SCP, addressing the course participants



Hon'ble Mr. Justice Mian Shakirullah Jan, Judge Incharge FJA (Admin) gives away certificate to course participant, DG FJA also seen in the picture.

He said that trainings were crucial to enhance efficiency of the judicial officers, adding that since training programs were permanently evolving programs, hence, we would like to invite you to participate and give your constructive comments and input on how we would design and develop future programs.

Regarding the training at the FJA he opined: “Those who have an opportunity for training in the Academy are truly lucky because this opportunity provides them a golden chance to give information as well as receive information from the learned resource persons and also from their course colleagues who come from diverse backgrounds and with a variety of experiences. Utilize the knowledge and experience



Course participants in group photo with Hon'ble Mr. Justice Mian Shakirullah Jan and FJA Faculty.

of each other for effective and efficient administration of justice.”

To this Hon'ble Judge of the Apex Court said that all the suggested subjects and topical issues were very apt and innovative, hence, all those would be made part and parcel of the future training courses.

Earlier, Mr. Parvaiz Ali Chawla, DG of the Academy presented his welcome speech and shed light on the illustrious judicial career of the chief guest. He asked the senior civil judges to protect the interests of the poor litigant public by providing inexpensive and speedy justice to them.

COOPERATIVE EFFORTS NECESSARY TO PROVIDE SPEEDY JUSTICE Hon'ble Mr. Justice Ghulam Rabbani

When a person approaches the court with a grievance, he is in the expectation that the matter will be dealt within a reasonable period of time. When this does not happen, legal disputes are passed on from one generation to another, people get frustrated. Hon'ble Mr. Justice Ghulam Rabbani expressed these views in the inaugural ceremony of one week-orientation course on “Management of Family Cases” for Judges of the Family Courts from all over Pakistan including Azad Jammu and Kashmir and Gilgit-Baltistan held in the Academy on Monday 19.09.2011.

He opined: “Cooperative efforts at all levels of the judiciary



Course participants in group photo with Hon'ble Mr. Justice Ghulam Rabbani and FJA Faculty.



Hon'ble Mr. Justice Ghulam Rabbani on the rostrum

are necessary to provide easy and speedy justice to the litigant public. Lawyers should avoid adjournments as much as possible and Judges should not grant adjournments mechanically. Lawyers should aim to be counselors in the true sense of the word. Disputes are inevitable, but litigation is not. Many a time people initiate legal proceedings on account of misunderstandings and once in Court, the parties take adversarial positions, the legal battle begins. We need to move away from confrontational attitudes to more consensual approaches. Moreover, resolution of disputes can be done in diverse ways. Apart from the formal Court structure, a number of alternate dispute resolution mechanisms, such as arbitration, conciliation, judicial settlement and mediation have been established. These options should also help in decongesting courts and bringing down the high volume of litigation in the country.”

With malice toward none; with charity for all; with firmness in the right as God gives us to see the right let us strive on to finish the work we are in.....

Abraham Lincoln

HON'BLE MR. JUSTICE TARIQ PARVEZ ADVISES FAMILY COURT JUDGES TO RENDER VERDICT AS PER LAW, FACTS, CONSCIENCE

Mr. Justice Tariq Parvez, Hon'ble Judge, Supreme Court of Pakistan, asked the young judicial officers to apply judicial and legal knowledge, and keep the facts of the case in mind and render their verdict according to law, facts and conscience.



Hon'ble Mr. Justice Tariq Parvez giving away a certificate to a course participant. DG FJA also seen in the picture

He expressed these views in the certificate - awarding ceremony on the conclusion of one-week orientation course on "Management of Family Cases" for Judges of the Family Courts from all over Pakistan including Azad Jammu and Kashmir and Gilgit-Baltistan in the Federal Judicial Academy (FJA), Islamabad, on Saturday (24.09.2011)

Hon'ble judge of the Apex Court said that a judge should not be biased or prejudiced to a case or against any party, which had come for justice to the court: similarly a judge should not have fear or favour for anyone and a judge should keep the record of the case and the facts of the case in his mind while



Course participants in group photo with Hon'ble Mr. Justice Tariq Parvez and FJA Faculty.

deciding the case."

Regarding the importance and scope of learning, Hon'ble Judge opined: "Learning is a perpetual process. Hence, one must keep on learning till his last breath. It is an established truth that there is no substitute of knowledge and experience and there is no short-cut to gain experience."

"Whatever knowledge and information you people have acquired here during the training must have added to your knowledge and information. You must apply that gained knowledge and information in the administration of justice so as to provide expeditious justice to the litigant public," he exhorted.

Earlier, Mr. Parvaiz Ali Chawla, Director General of the Academy, presented an overview of the course and a detailed profile including academic and professional achievements of the chief guest. Advising the young Family Court Judges he said: "God is the perfect and righteous Judge. Men may escape human justice but they will never escape divine justice. God's judgment is inescapable. God punishes those who do evil and rewards those who do good. Always keep this guiding principle in mind and do justice."

IT INCREASES EFFICIENCY, COURT PERFORMANCE Additional Registrar Supreme Court

Mr. Sajid Mehmood Qazi, Additional Registrar, Supreme Court of Pakistan, said that the Information Technology clearly could improve justice system and court performance, hence, the court staff including 'Nazirs/ Accountants' must take the maximum benefit of it so as to have efficient and effective administration of justice in the subordinate courts of the country.

He expressed these views in the inaugural ceremony of one-week training course on "How to be an Effective Nazir/ Accountant" for Nazirs/ Accountants from all over Pakistan including Azad Jammu and Kashmir and Gilgit-Baltistan in the Federal Judicial Academy (FJA), Islamabad, on Monday (26.9.2011).

Speaking about the importance and scope of the "Information Technology (IT)" in the office administration, court and case management he said: "This wonderful device called "computer" should not be regarded only as typing machine for typing official letters and court orders but it may be used for other purposes, such as budgeting, accounts, maintenance of court record and court staff must use its various software in their daily work. Information technology enables better use of court resources and equipment. But these and other equally significant benefits are not guaranteed, unless the user has full command over the technology and its day-to-day management, maintenance, and upgradation."

"Since learning is a continuous process, hence, age should not



Mr. Sajid Mehmood Qazi, Additional Registrar Supreme Court of Pakistan addressing to course participants

be a barrier in it. This training is a brilliant opportunity and the Academy has provided you the best platform to improve your proficiency. I insist you to have the best possible use of time and learn computer and other professional skills, while being in the Academy and use those skills and information in your day to day work," he maintained.

Regarding the role of District Judiciary he opined: "Almost ninety five percent cases come to the district judiciary and if the district judiciary plays its effective and efficient role in the

administration of justice, it will not only curb the frivolous litigations but also it will go a long way to lessen the burden of litigation in the superior courts"

He advised the trainee court personnel to adopt the habit of book reading in order to enhance their vision, information and knowledge, especially of legendary writers like Quadratullah Shuhab and Ashfaq Ahmed etc.

Earlier, Mr. Parvaiz Ali, Chawla, Director General of Academy presented his welcome and brief profile of the chief guest. Advised the Nazirs / Accountants of the courts he said: "The office of court personnel is indispensable in our Judicial System and they should uphold the integrity and independence of the Judiciary. They must play this role in mitigating the miseries of the litigant public rather than enhancing."



Course participants in a group photo with Mr. Sajid Mehmood Qazi and faculty of FJA.

POSITION HOLDERS OF ONE WEEK ORIENTATION/REFRESHER COURSE ON "MANAGEMENT OF CRIMINAL TRIALS BEFORE JUDICIAL MAGISTRATE AND INTELLECTUAL PROPERTY RIGHTS (IPRS)" FOR CIVIL JUDGES-CUM-JUDICIAL MAGISTRATES FROM ALL OVER PAKISTAN INCLUDING AZAD JAMMU & KASHMIR AND GILGIT-BALTISTAN HELD ON 18TH TO 23RD JULY, 2011.

Mr. Mushtaq Hussain Janjua, Civil Judge-cum-Judicial Magistrate, Gujrat, clinched the first position in the Essay Writing Competition on the topic, "How far a Judicial Training is useful? How and Why?", whereas Mr. Muhammad Masood Asghar, Civil Judge-cum-Judicial Magistrate, Chiniot, stood second in the competition. The topic was given by Hon'ble Mr. Justice Mian Saqib Nisar, Judge Supreme Court of Pakistan whereas the intellectual input of the participant trainee judges was examined and evaluated by Hon'ble Mr. Justice Sarmad Jalal Osmany Judge, Supreme Court of Pakistan.

The intellectual input of the first position holder is reproduced as under:

HOW FAR A JUDICIAL TRAINING IS USEFUL? HOW AND WHY?

"The viewpoint of a jurist is determined by his practical background and training." (Joseph Dinnen)

"On the mountains of truth you can never climb in vain: either you will reach a point higher up today, or you will be training

your powers so that you will be able to climb higher tomorrow." (Friedrich Nietzsche).

Judicial training plays a pivotal role in the efficient working of the administration and dispensation of justice. It not only enhances the technical skills of the judicial officers but also makes them dynamic and versatile in the implementation of law. It develops the personal efficacy of the judges and outlines the ways and means for how to be effective in judicial proceedings. It encourages professional integrity, legal expertise, communication skills, judicial temperament, administrative performance and service to the legal profession and the public.

The judicial training is about the transmission of distinctive legal knowledge and the transmission of unique skills. The product of judicial education, the trained judge, the judge who decides according to the law, is a judge in the service of the rule of law. The trained judge, the judge who delivers prompt and effective justice, is a judge in the service of the rule of law.

A lot of attention is being paid to the training of the judicial officers particularly newly appointed ones to keep them abreast of the modern knowledge and discoveries in the vast

field of law. The need for the training even becomes pertinent in countries where crime ratio is at alarming level. Pakistan is also going through its worst patch facing innumerable problems. To cope with this situation, judicial skills have to be promoted and made part of the judicial policy. The judicial training is one way of creating awareness among the judges as to make them more competent and durable. Social context now constitutes an important part of judicial training. The result of this is that trained judge who is aware of social context, the trained judge who is responsive to difference, is a judge in the service of society and to the profession of law.

Along with the changing nature of the affairs of the world, the judge has also to be aware of the modern knowledge in the concerned field. He has to remain in constant contact with the new methods and developments happening in the field of law which ultimately gives him benefit in the dispensation of justice. Training at federal and judicial level provides this opportunity to know the new trends and methodologies. The current knowledge not only is beneficial in the dispensation of justice but it also provides the map to deal in emergency and exceptional cases; this spirit is the need of the hour. Buddha, the great thinker, once said, "Ignorance is a sin" but the ignorance in law is no excuse and it is an unpardonable sin.

One of the purposes of the judicial training is transmission of knowledge and information. The judges are required to understand the law in a comprehensive way. Although the experience as practicing lawyer is necessary to be appointed as judge, yet the training courses should be mandatory to know the purposes and designs of the enacted laws and gain mastery of complex processes and skills. As mentioned earlier that with the changing conditions of the world, judges can be called upon to play new roles, roles such as mediation and dispute resolution, and those that rest upon proper training and judicial education. A properly trained judge can write more effectively, and be more responsive to the needs of litigants in the delivery of reasons for judgment. We can say that being a judge is not the same as being a lawyer.

The institutional value of the training is enormous. The judicial training is provided to develop an ethic of independence from political powers, and provide judges with the courage and resources to exercise the authority that is theirs under the rule of law. It should provide them with a clear sense of their distinctive role as guardians of the rule of law, and impartial and objective decision makers, wielding an authority that is different from that of other branches of government. And for this reason, judicial education should be under the control of the judiciary, and funded independently.

Judicial education not only makes the judges aware of the legal questions but it also helps in the character building of the judicial officers. At the training institutions, the judges are made knowledgeable of the fact that how to deal in certain situations. They are trained to show forbearance and tolerance in stressful situations. A well-trained judge knows how to come out of the undesirable situations and put off the pressure. He works more efficiently in this regard.

Preparing the newly appointed judges for their duty is the guaranteeing of greater uniformity and predictability of

decisions. Judicial training is a vehicle of updating the judges with new methods, laws and related areas of knowledge required in their work.

The reformative aim of the training cannot be ignored in any way. Training heralds new reforms in the mental attitude of the judge as well as in the external matters related with individuals at large. The psychological impact in the determining of the crimes and gaining proof is a major factor. On the other hand it also controls the resistance to reforms.

Training is also a source of creating new vistas in the concerned field. It grants chance or I would say the blessing in disguise for judicial officers to develop interaction between different people of the profession. The cross-cultural awareness is a great help in understanding the general nature of the law. The Federal Judicial Academy of Pakistan is a kind of 'melting-pot' where people from various federating units join together. This comparative method of learning is very interesting and valuable. That the workshops like the workshop on the Magisterial Trial in which Magistrates from all over the Pakistan are called upon, there is a greater room for exchange of ideas and knowledge.

Generally the training of the judicial officers helps in the upholding of the Constitution, rule of law. The function of judiciary is to implement law in its letter and spirit. The practical knowledge is required in this regard. The trained judges follow the due process of law to protect rights, restore entitlements and grant relieves.

The job of judicial officer turns into cumbersome and becomes difficult if he is not aware of his job and denied of necessary training to mete out the situation. On the other hand, a judicial officer derives pleasure out of his job, how difficult his job would be.

Training provides the officer a respite from the busy hours of court and he can utilize them in understanding the law. While living an environment conducive to learning he can better facilitate in making himself more up to date.

I would like to conclude this essay by quoting the Hon'ble Chief Justice of Supreme Court of Pakistan, Mr. Justice Iftikhar Muhammad Chaudhry when he says in his speech that: "the efficacy of the administration of the justice and the structure of the judicial system stands firm on the quality of education in the professional training institution." It is an acknowledged fact that training makes a judge more competent and effective. It is need of the hour to acquaint the upholders of law with the proper working of the judicial proceedings. It is source of interaction between the lower and the higher judiciary. In a nutshell, judicial training is the backbone of judicial system.

Mushtaq Hussain Janjua
(Civil Judge-cum-Judicial Magistrate)
GUJRAT



**POSITION HOLDERS OF ONE WEEK ORIENTATION COURSE ON “MANAGEMENT OF FAMILY CASES”
FOR JUDGES OF THE FAMILY COURTS FROM ALL OVER PAKISTAN INCLUDING AZAD JAMMU
& KASHMIR AND GILGIT-BALTISTAN HELD ON 19TH TO 24TH SEPTEMBER, 2011.**

Mr. Syed Ahmed Yousuf, Civil Judge and Judicial Magistrate-VIII, Karachi West and Irum Nosheen, Civil Judge/Judge Family Court, Peshawar both stood first in the Essay Writing Competition on the topic, “**What do you know about divorce by way of judicial decree and state on what grounds the marriage can be dissolved by way of judicial decree particularly referring relevant provisions of law**”, whereas Ms. Mehar-un-Nisa, Civil Judge-cum-Judicial Magistrate, Gujranwala and Ms. Munazza Shahzadi, Civil Judge-cum-Judicial Magistrate, Kasur both clinched the second in the competition. The topic was given by Hon'ble Mr. Justice Ghulam Rabbani, Judge Supreme Court of Pakistan whereas the intellectual input of the participant trainee judges was examined and evaluated by Hon'ble Mr. Justice Anwar Zaheer Jamali, Judge, Supreme Court of Pakistan.

The intellectual input of the first position holders are reproduced as under:

What do you know about divorce by way of judicial decree and state on what grounds marriage can be dissolved by way of judicial decree particularly referring to the relevant provisions of law?

DIVORCE BY WAY OF JUDICIAL DECREE

One of the ways of dissolution of marriage is by way of divorce. Under Muslim law the divorce may take place by the act of the parties themselves or by a decree of the court of law. However in whatever manner the divorce is defected it has not been regarded as a rule of life. In Islam, divorce is considered as an exception to the status of marriage. The Prophet (S.A.W) declared that among the things which have been permitted by law, divorce is the worst. Divorce being an evil, must be avoided as far as possible. But in some occasions this evil becomes a necessity, because when it is impossible for the parties to the marriage to carry on their union with mutual affection and love then it is better to allow them to get separated than compel them to live together in an atmosphere of hatred and disaffection. The basis of divorce in Islamic law is the inability of the spouses to live together rather than any specific cause (or guilt of a party) on account of which the parties cannot live together. A divorce may be either by the act of the husband or by the act of the wife. There are several modes of divorce under the Muslim law, which will be discussed hereafter.

Modes of Divorce: A husband may divorce his wife by repudiating the marriage without giving any reason. Pronouncement of such words which signify his intention to disown the wife is sufficient. Generally, this is done by 'talaq'. But he may also divorce by 'Ila', and 'Zihar' which differ from talaq only in form, not in substance. A wife cannot divorce her husband of her own accord. She can divorce the husband only when the husband has delegated such a right to her or under an agreement. Under an agreement the wife may divorce her husband either by Khula or Mubarat. Before 1939, a Muslim wife has no right to seek divorce except on the

ground of false charges of adultery, insanity or impotency of the husband. But the Dissolution of Muslim Marriages Act 1939 lays down several other grounds on the basis of which a Muslim wife may get her divorce decree passed by the order of the court.

There are two categories

1. Extra judicial divorce, and
2. Judicial divorce.

The category of extra judicial divorce can be further subdivided into three types, namely,

1. By husband-talaaq, illa, and zihar.
2. By wife-talaq-i-tafweez, lian.
3. By mutual agreement-khula and mubarat.

The second category is the right of the wife to give divorce under the Dissolution of Muslim Marriages Act 1939.

Talaaq: Talaaq in its primitive sense means dismissal. In its literal meaning, it means “setting free”, letting loose, or taking of any “ties or restraint”. In Muslim Law it means freedom from the bondage of marriage by husband using appropriate words. In other words talaaq is repudiation of marriage by the husband in accordance with the procedure laid down by the law. When the husband exercises his right to pronounce divorce, technically this is known as talaaq.

Among the Sunnis, talaaq may be express, implied, contingent constructive or even delegated. The Shias recognize only the express and the delegated form of talaaq.

Conditions for a valid talaaq:

- 1) **Capacity:** Every Muslim husband of sound mind, who has attained the age of puberty, is competent to pronounce talaaq.
- 2) **Free Consent:** Except under Hanafi law, the consent of the husband in pronouncing talaaq must be free consent. Under Hanafi law, a talaaq, pronounced under compulsion, coercion, undue influence, fraud and voluntary intoxication etc. is valid and dissolves the marriage.

Involuntary intoxication: Talaaq pronounced under forced or involuntary intoxication is void even under the Hanafi law.

Shia Law: Under the Shia law (and also under other schools of Sunnis) a talaaq pronounced under compulsion, coercion, undue influence, fraud or voluntary intoxication is void and ineffective.

- 3) **Formalities:** According to Sunni law, a talaaq, may be oral or in writing. It may be simply uttered by the husband or he may write a Talaqnama. No specific formula or use of any particular word is required to constitute a valid talaaq.

Any expression which clearly indicates the husband's desire to break the marriage is sufficient. It needs not be made in the presence of the witnesses.

According to Shias, talaq, must be pronounced orally, except where the husband is unable to speak. If the husband can speak but gives it in writing, the talaq, is void under Shia law. Here talaq must be pronounced in the presence of two witnesses.

4.) **Express words:** The words of talaq must clearly indicate the husband's intention to dissolve the marriage. If the pronouncement is not express and is ambiguous then it is absolutely necessary to prove that the husband clearly intends to dissolve the marriage.

Express Talaq (by husband):

When clear and unequivocal words, such as "I have divorced thee" are uttered, the divorce is express. The express talaq, falls into two categories:

- Talaq-i-sunnat,
- Talaq-i-biddat.

Talaq-i-sunnat has two forms

- Talaq-i-ahsan (Most approved)
- Talaq-i-ahsan (Less approved)

Ila: Besides talaq, a Muslim husband can repudiate his marriage by two other modes, tha tare, Ila and Zihar. They are called constructive divorce. In Ila, the husband takes an oath not to have sexual intercourse with his wife. Followed by this oath, there is no consummation for a period of four months. After the expiry of the fourth month, the marriage dissolves irrevocably. But if the husband resumes cohabitation within four months, Ila is cancelled and the marriage does not dissolve. Under Ithna Asharia (Shia) School, Ila, does not operate as divorce without order of the court of law. After the expiry of the fourth month, the wife is simply entitled for a judicial divorce. If there is no cohabitation, even after expiry of four months, the wife may file a suit for restitution of conjugal rights against the husband.

Zihar: In this mode the husband compares his wife with a woman within his prohibited relationship e.g, mother or sister etc. The husband would say that from today the wife is like his mother or sister. After such a comparison the husband does not cohabit with his wife for a period of four months. Upon the expiry of the said period Zihar is complete. After the expiry of fourth month the wife has following rights:

- (i) She may go to the court to get a decree of judicial divorce.
- (ii) She may ask the court to grant the decree of restitution of conjugal rights.

Where the husband wants to revoke Zihar by resuming cohabitation within the said period, the wife cannot seek judicial divorce. It can be revoked if:

- (i) The husband observes fast for a period of two months, or,
- (ii) He provides food at least sixty people, or,

- (iii) He frees a slave.

According to Shia law Zihar must be performed in the presence of two witnesses.

Divorce by mutual agreement:

Khula and Mubarat: There are two forms of divorce by mutual consent but in either of them, the wife has to part with her dower or a part of some other property. A verse in the Holy Quran runs as: "And it not lawful for you that ye take from women out of that which ye have given them: except (in the case) when both fear that they may not be able to keep within the limits (imposed by Allah), in that case it is no sin for either of them if the woman ransom herself". The word khula, in its original sense means "to draw" or "dig up" or "to take off" such as taking off one's clothes or garments. It is said that the spouses are like clothes to each other and when they take khula each takes off his or her clothes, i.e., they get rid of each other. In law it is said to signify an agreement between the spouses for dissolving a connubial union in lieu of compensation paid by the wife to her husband out of her property. Although consideration for Khula is essential, the actual release of the dower or delivery of property constituting the consideration is not a condition precedent for the validity of the khula. Once the husband gives his consent, it results in an irrevocable divorce. The husband has no power of canceling the "khula" on the ground that the consideration has not been paid. The consideration can be anything, usually it is Haq mehr, the whole or part of it. But it may be any property though not illusory. In Mubarat, the outstanding feature is that both the parties desire divorce. This, the proposal may emanate from either side. In Mubarat both, the husband and the wife, are happy to get rid of each other. Among the Sunnis when the parties to marriage enter into a Mubarat all mutual rights and obligations come to an end. The Shia law is stringent though. It requires that both the parties must bona fide find the marital relationship to be irksome and cumbersome. Among the Sunnis no specific form is laid down, but the Shias insist on a proper form. The Shias insist that the word mubarat should be followed by the word talaq, otherwise no divorce would result. They also insist that the pronouncement must be in Arabic unless the parties are incapable of pronouncing the Arabic words. Intention to dissolve the marriage should be clearly expressed. Among both, Shias and Sunnis, mubarat is irrevocable. Other requirements are the same as in khula and the wife must undergo the period of iddat and in both the divorce is essentially an act of the parties, and no intervention by the court is required.

However, the will of a woman has attained considerable significance after addition of provision in section 10 (4) of the Muslim Family Court Act, 1964, a family court shall issue a decree for dissolution of marriage forthwith and also restore the husband the Haq mehr received by the wife in consideration of marriage notwithstanding non-availability of any other grounds specified below.

Divorce by wife:

The divorce by wife can be categorized under three categories:

- (i) Talaq-i-tafweez
- (ii) Lian
- (iii) By Dissolution of Muslim Marriages Act 1939.

Talaq-i-tafweez or delegated divorce is recognized among both, the Shias and the Sunnis. The Muslim husband is free to delegate his power of pronouncing divorce to his wife or any other person. He may delegate the power absolutely or conditionally, temporarily or permanently. A permanent delegation of power is revocable but a temporary delegation of power is not. This delegation must be made distinctly in favour of the person to whom the power is delegation must be clearly stated.

Lian: If the husband levels false charges of unchastity or adultery against his wife then this amounts to character assassination and the wife has got the right to ask for divorce on these grounds. Such a mode of divorce is called Lian. However, it is only a voluntary and aggressive charge of adultery made by the husband which, if false, would entitle the wife to get the decree of divorce on the ground of Lian.

GROUNDS FOR DISSOLUTION OF MARRIAGE

The grounds for dissolution of marriage have been spelled out in section 2 of the Dissolution of Muslim Marriages Act, 1939 which reads as under:-

A woman married under Muslim law shall be entitled to obtain a decree for divorce for the dissolution of her marriage on any one or more of the following grounds, namely:-

- i. That the whereabouts of the husband have not been known for a period of four years;
- ii. That the husband has neglected or has failed to provide for her maintenance for a period of two years;
- iii. That the husband has been sentenced to imprisonment for a period of seven years or upwards;
- iv. That the husband has failed to perform, without reasonable cause, his marital obligations for a period of three years;
- v. That the husband was impotent at the time of marriage and continues to be so;
- vi. That the husband has been insane for a period of two years or is suffering from leprosy or a virulent venereal disease;
- vii. That she, having been given in marriage by her father or other guardian before she attained the age of fifteen years, repudiated the marriage before attaining the age of eighteen years;
- viii. That the husband treats her with cruelty, by habitually assaulting her or makes her life miserable by cruelty of conduct even if such conduct does not amount to physical ill-treatment,
- ix. That her husband associates with the women of evil repute or leads an infamous life,
- x. That her husband attempts to force her to lead an immoral life,
- xi. That her husband disposes of her property or prevents her from exercising her legal rights over it,
- xii. That her husband obstructs her in the observance of her religious profession or practice,
- xiii. That if her husband has more wives than one, does not

treat her equitably in accordance with the injunctions of the Quran.

- xv. On any other ground which is recognized as valid as for the dissolution of marriages under Muslim Law;

Provided that:-

- a. No decree shall be passed on the ground (iii) until the sentence has become final;
- b. A decree passed on ground (i) shall not take effect for a period of six months from the date of such decree, and if the husband appears either in person or through an authorized agent within that period and satisfies the Court that he is prepared to perform his conjugal duties, the Court set aside the said decree, and

Before passing a decree on ground (v) the Court shall, on application by the husband, make an order requiring the husband to satisfy the Court within a period of one year from date of such order that he has ceased to be impotent, and if the husband so satisfies the Court within such period, no decree shall be passed on that ground.

(Syed Ahmed Yousuf)

Civil Judge and Judicial Magistrate-VIII, Karachi West



What do you know about divorce by way of judicial decree and state on what grounds marriage can be dissolved by way of judicial decree particularly referring to the relevant provisions of law?



(Irum Nosheen)

Civil Judge/Judge Family Court Peshawar

Firm union of the husband and wife is a necessary condition for a happy life. Islam therefore insists upon the subsistence of a marriage and prescribes that breach of marriage contract should be avoided. Initially no marriage is contracted to be dissolved but in unfortunate circumstances the matrimonial contact is broken.

Literal Meaning of the word "Talaq":- The literal meaning of the word "Talaq" is to "Snap off" or "to repeat"

Imam Sarakhsi's view:- Imam Sarakhsi has given its literal meaning as 'izalatul qayd' freedom from bondage. Its root is "talqun" from which the word "itlaq" meaning freed has been derived.

Meaning of talaq in Shariah:- Talaq (Divorce) in Shariah means terminating with explicit or implied words the bond created by marriage contract.

Definition of Divorce in Hanafi Fiqh:- In Fath al Qadir divorce is defined as “An act of terminating the bond created by marriage contract by express or implied words or by any other means for instance Qazi's decree”.

Other Definitions of Divorce:-

1. A legal dissolution of the marriage contract by a court or any other body having competent authority.
2. The legal dissolution of marriage.
3. The complete or radical source of closely connected things.

The terms divorce and talaq are often treated as synonymous. The term talaq is also sometimes used in the more comprehensive sense comprising all separations of the wife from husband for causes originating in the husband but it is also used in the restricted sense of talaq. However some of the writers have taken the view that divorce is a broad term while talaq is only one of its forms

Divorce under Muslim Law:-

Under Muslim law the divorce may take place by the act of the parties themselves or by a decree of a court of law.

Different kinds of “Firkat”:-

There are different kinds of firkat or separation of married parties under the Muslim law by which some require a judicial decree and some do not. In other words it can be said that there are two categories of divorce under Muslim law.

1. Extra - Judicial Divorce.
2. Judicial Divorce.

Extra-Judicial Divorce:-

A divorce which does not require a judicial decree and becomes effective without the intervention of the court.

This category can be further sub-divided into following categories.

1. By husband
2. By wife
3. By mutual consent.

Judicial Divorce:-

A judicial divorce is that kind of a divorce which requires a court decree and is obtained through the process of court.

Different forms of divorce as prescribed in Section 307 of Mohammedan Law:-

The contract of marriage under the Mohammedan law may be dissolved in any one of the following ways.

1. By the husband at his will, without the introduction of the Court.
2. By mutual consent of the husband and wife without the intervention of the court.
3. By a judicial decree at the suit of the husband or wife.

Divorce without proceeding in court or Extra-Judicial Divorce:-

A marriage may be dissolved by divorce in any of the following ways by the parties themselves otherwise then through court.

1. **By The Husband:-**

a. **Talaq:-**

Repudiation of marriage by the husband is called Talaq.

Modes of Talaq:- (Section 311 of Mohammedan Law):-

It is pronounced in three ways.

1. **Talaq-i-ahsan:-** A single pronouncement with abstinence from sexual intercourse during iddat.
2. **Talaq-i-hasan:-** Three pronouncements one during each successive tube in the case of a menstruating (and each lunar month in the case of non menstruating) wife followed by abstinence from intercourse during those tubes or periods.
3. **Talaq-ul-bidaat:-** Three pronouncements during a single tube or a single pronouncement indicating clear intervention to effect an irrevocable divorce.
 - b. **Ila** (Section 317 of Mohammedan Law):- By abstinence from intercourse for not less than four months in pursuance of a vow.
 - c. **Zihar** (Section 318 of Mohammedan Law):- By likening the wife to a prohibited relation. The husband must perform a penance or give a regular divorce.

2. **By wife:**

Talaq-e-Tafweez (Section 314 of Mohammedan Law):-

The meaning of “Delegation of the Right of Divorce” is the entrustment with the wife by the husband of the rights to act as her husband's delegate in effecting divorce to herself.

Classification of Talaq-e-Tafweez:-

The Muslim jurists have classified the delegation by the husband of the power to divorce thus

1. Tafwid - that is delegation
2. Tawkil – agency
3. Risalah – Messengership .
4. **By Mutual Consent:-**

a. **Khula:-** (Section 319 of Mohammedan Law):-

The release secured by the wife from the husband from the marriage tie, at her instance, on paying or consenting to pay compensation to him is called Khula.

b. **Mubarat:-** (Section 319 of Mohammedan law):-

By mutual agreement when both the parties desire it.

Dissolution Through Court OR A Judicial Divorce:-

A Marriage may be dissolved through court as follows.

1. **By Either Party:-**
Option of Puberty:

Section 273 of Mohammedan Law and Section 2 (vii) of Dissolution of Muslim Marriages Act 1939

The right of a minor boy or girl, on attaining puberty of repudiating their marriage got contracted by their guardians during their minority is called the "option of puberty" or "Khiyar-al-Balugh".

Legal Requirements for Option of Puberty:

The legal requirements for exercising right of option of puberty are:

1. The performance of marriage during minority with the consent of the guardian.
2. Non-Consummation of marriage and
3. Repudiation between the age of 16/18 years.

Decree of Court essential:-

There are different rulings respecting the emolument of marriage contracts by the exercise of the option of puberty.

Mr Justice B.Z Kaikus in the cases titled as **Mst Muri Vs Habib Khan** reported as **PLD 1956 Lah 403** held that "such repudiation puts an end to the marriage without the aid of any court and when the matter comes to court, the court does not dissolve the marriage by its own act but recognizes the termination of marriage".

In **PLD 1981 Lah. 68, PLD 1965 Pesh. 5 and PLD 1969 Lah. 458** it was held that "it is not necessary for her to approach the court for exercise of such option, she can exercise such option otherwise and if the other party challenges her such position of having exercised her option then on account of accrual of cause of action in her favour she may approach the court for declaration".

Option of Puberty under Dissolution of Muslim Marriages Act:

Section 2 (vii) of the Dissolution of Muslim Marriages Act provides that a minor girl can exercise her right of option of puberty by bringing a suite before attaining the age of 18 years.

2. **By the wife:**

A wife can seek dissolution of her marriage on the grounds expressly mentioned in the dissolution of Muslim Marriages Act, 1939. Section 323 of the Mohammedan law provides that the dissolution of Muslim Marriages Act was passed in order to consolidate and clarify the provisions of Muslim Law relating to suits for dissolution of marriage by woman.

Wife's Right to Sue for Divorce Law Before Act VIII of 1939:

When a wife is given the right to effect a talaq on the happening of any contingency she can exercise that right without resort to court by an exercise of her authority (Tafweez), a divorce will be effective without the

interment of the court. This however, seems to be the only case where the wife is authorized to exercise such a right. There are, however some cases in which the wife cannot herself exercise the right to divorce but can file a suit against the husband for a divorce and thus secure a judicial divorce.

Prior to Act VIII of 1939, there was some doubt as to the grounds on which the wife had the right to obtain a divorce through court.

Wife's Right to Sue for Divorce - Law after Act VIII of 1939:

It recognizes a number of grounds which were hitherto not considered to be grounds on which the wife could sue for divorce. A considerable change has been introduced by the Act.

Grounds of Divorce under Dissolution of Muslim Marriage Act 1939:

Section 2 of the Dissolution of Muslim Marriages Act provides that a married woman can sue for dissolution of her marriage on the following grounds:

1. Missing Husband – Section 2 (i) of Dissolution of Muslim Marriages Act and Section 324 of the Mohammedan Law:-

There was a difference among the schools with respect to the right of a missing inalqood-ul-khabar husband's wife to remarry. According to Hanafi Law a judge was not empowered to effect a separation between a missing person and his wife. Abnormally long period was prescribed for presuming as to when the missing person may be deemed to be dead. According to Maliki Law the judge could pronounce a separation at the expiration of four years and the wife was then at liberty to re-marry after observing iddat of death.

According to Shia law, the wife was to bring the matter before the judge who was to postpone the consideration of the subject for four years and then direct the wife to keep iddat for death. The wife could re-marry after that.

Shafei during the first period held that a missing husband's wife may marry after observing iddat of death at the end of four years but during the later period he adopted the doctrine that even a judicial authorization would not, in such case render a marriage valid unless it subsequently appears that the husband was dead before the marriage.

The law as laid down in Act VIII of 1939:

The Act now gives the right to obtain a decree, if the husband is missing for four years and a further period of six months is to be allowed for the decree.

Notices to Legal Heirs of The Husband:

Under Section 3 of the Act, notices have to be sent to all legal heirs of the husband and to his paternal uncle and brother even if they are not heirs and they have a right to be heard.

2. Failure to Maintain:- Section 2 (ii) of the Dissolution of Muslim Marriages Act and Section 325 of the Mohammedan Law:-

Clause (ii) of section 2 of the Act gives right for dissolution of marriage to a wife where her husband has neglected or has failed to provide for her maintenance for a period of two years.

Conditions for Right of Maintenance:-

Right of maintenance of the wife is subject to the following conditions.

1. She must be faithful to the husband and obey his reasonable order, if she refuses herself to him, he is not bound to maintain her.
2. Wife is not entitled to maintenance when she lives apart from the husband except non-payment of dower in which case her right of maintenance continues even though she is living apart from him.

3. Taking of Additional wife: - Section 2 (ii) (a) of the Dissolution of Muslim Marriages Act:

Taking of second wife without the consent of the first wife is a good ground for dissolution of marriage. The mere fact that the husband has taken a second wife would not be sufficient to prove cruelty towards the first wife because the Mohammedan law allows the husband to have four wives at the same time. However, if the husband does not treat all the wives equally, the disgruntled wife may be entitled to seek divorce.

4. Imprisonment of Husband: Section 2 (iii) of the dissolution of Muslim Marriages Act and Section 326 of the Mohammedan Law:

Difference of the opinion of the Imams:-

There is difference of opinion in the question whether the wife has the right of demanding separation from the husband on account of his being imprisoned. In fact the basis of this right is the right of demanding separation by the wife on the ground of her husband's absence. The Hanafis, Shafeis and Zahiris are not convinced of the right of separation of the wife on the ground of her husband's absence (whose whereabouts are known).

According to Malikis and Hambalis, however the wife has such right.

Purpose of this Right:-

The purpose of the right of the wife of demanding separation on the ground of her husband's absence is to save her from injury.

Legislation in Pakistan:-

The wife has been given the right of demanding separation under section 2 (iii) of the Dissolution of Muslim Marriages Act, 1939 in the event of her husband having been sentenced to imprisonment for seven years or more.

5. Desertion: Section 2 (iv) of the Dissolution of Muslim

Marriages Act and Section 327 of the Mohammedan Law:-

If the husband has failed to perform his marital obligations without any reasonable cause for a period of 03 YEARS, the wife can seek dissolution of marriage.

In ordinary desertion the factum is simple, it is the act of the absconding party in leaving the matrimonial home however if the wife being the first to leave the matrimonial home, she has to prove constructive desertion in order to succeed in getting a decree for dissolution of marriage.

6. Impotency – Section 2 (v) of dissolution of Muslim Marriages Act and section 328 of the Mohammedan Law:-

This had been recognized to be a ground for suing for divorce even before the dissolution of Muslim marriages Act

Conditions for obtaining decree on the ground of impotency:

It had been held before the dissolution of Muslim Marriages Act that the wife could obtain a divorce on the ground of impotency of the husband provided that:

1. The husband was impotent at the time of marriage.
2. Such impotency continued since then, and was present and not merely temporary and curable.
3. The marriage was not consummated even by a single act of cohabitation.
4. The wife has no knowledge of the fact at the time of marriage.

Conditions under the Act VIII of 1939:

The section 2 of dissolution of Muslim Marriages Act, 1939 recognizes the first three conditions but does not mention the fourth. The wife is not required to prove her ignorance of husband's impotency.

Evidence and Proof of impotency:-

The mere fact that since the marriage, the husband has had no intercourse with her and therefore she is still a virgin would not ipso facto entitle her to divorce unless it is proved that the husband is incapable of cohabitation with her.

Adjournment of the case for one year:

The dissolution of Muslim Marriages Act, 1939 now requires an adjournment for one year, only if the husband makes an application. The husband must now satisfy the court that he has ceased to be impotent.

7. Insanity or Divorce of the husband: Section 2 (VI) of the dissolution of Muslim marriages Act and section 329 of the Mohammedan Law:

The wife is entitled by virtue of Section 2 (VI) of the dissolution of Muslim Marriages Act, 1939 to demand dissolution of marriage on the ground of her husband being

mad for a period of two years. She is also entitled to demand separation in case her husband suffers from leprosy or some venereal disease.

8. Lian – Section 2 (VII) (a) of the dissolution of Muslim Marriages Act and Section 333 of the Mohammedan Law:-

Lian was not a ground for dissolution of marriage specifically mentioned in section 2 of the dissolution of Muslim Marriages Act, 1939. It has been added as a ground for dissolution of marriage by protection of women Act, 2006. The wife can claim dissolution of marriage on the ground of lian.

Literal meaning of Lian:-

This word is derived from La'n, the literal meaning whereof is "to put away".

Definition of Lian:-

Making by the husband and denial by the wife of charge of adultery both on oath and invoking the curse and wrath of God by each on oneself if swearing falsely is called Lian.

9. Cruelty: Section 2 (VIII) of the Dissolution of Muslim Marriages Act and Section 331 of the Mohammedan Law:-

The wife under the dissolution of Muslim Marriages act, 1939 can seek dissolution of her marriage on the basis of cruelty. Section 2 (VIII) provides that the following acts of the husband amounts to cruelty.

1. If the husband assaults her or makes her life miserable by cruelty of conduct, even if such conduct does not amount to physical ill-treatment.
2. Associates with women of evil repute or leads an infamous life.
3. Attempts to force her to lead an immoral life.
4. Disposes of her property or prevents her exercising her legal right over it.
5. Obstructs her in the observance of her religious profession or practice.
6. If he has more than one wives, does not treat her equitably in accordance with the injunctions of Islam

10. Any other Ground:- Section 2 (ix) of the Dissolution of Muslim Marriages Act:-

The word Khula has now been included in Part I of Schedule to the West Pakistan Family Court Act 1964 and the wife can come to the court for dissolution of her marriage on the ground of Khula, and the marriage between the spouses can be dissolved by way of judicial decree.

Meaning of Khula:-

Khula is derived from the word "(Khal'un)" which literally means extracting out one thing from another.

Definition of Khula:-

In Fath-al-Qadir the term Khula is defined as "the husband's relinquishment, with the word Khula of his title and rights

under marriage contract in lieu of consideration is called Khula.

Khula – Husband's Consent and the Qazi's Authority:

The question whether the husband's consent is a condition precedent to the dissolution of marriage by Khula, or has the Qazi the power to separate the parties even against the wishes of the husband assumed great importance. The courts in their early decisions, generally expressed the view that a Qazi was not competent to do so.

In case titled as **Syeda Khanum Vs Mohammad Sami (PLD 1952 Lah 113)**, a full bench of the Lahore High Court held that incompatibility of temperament, dislike or aversion of the wife to her husband cannot, under the Islamic law, form a valid ground for affecting divorce unless the husband agrees to it." **Bilqees Fatima Vs Najmul Ekram (PLD 1959 Lah. 566)**

This is the leading case on the point that the court could grant Khula without the consent of husband. In this case it was held that "if the court arrived at the conclusion that the couple would not be able to maintain the limits set by God, it could then get Khula affecting without the consent of the husband by ordering the wife to pay a reasonable compensation to the husband.

The Supreme Court of Pakistan in the case of **Khurshid Begum (PLD 1967)** held that the wife is entitled to claim Khula as of right.

Effects of Dissolution of Marriage by way of a Judicial Decree:

The effects of a divorce through court on any grounds would be the same as those of a single irrevocable Talaq.

Procedure after Decree for Divorce is passed:-

Section 08 of the Muslim Family Law Ordinance deals with the procedure after passing of decree for dissolution of marriage. The family court is required under the law to send a copy of the decree to the chairman of the Union Council concerned. The wife in whose favour the decree is passed is also supposed to inform the chairman of the concerned Union Council and also to send a notice to the husband in a formal manner. The chairman after receiving the notice is bound to follow the procedure laid down in section 07 sub-section 4 of the Muslim Family Laws Ordinance and the Talaq/divorce shall be effective after expiry of ninety days.

**"Law is order in liberty and
without order liberty is Social Chaos."**