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**Centre of Excellence for Law  
and Judicial Education**

# **FEDERAL JUDICIAL ACADEMY BULLETIN**

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Family Court Judges in a group photo with Hon'ble Mr. Justice Mushir Alam, Judge, Supreme Court of Pakistan and faculty members

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## HON'BLE MR. JUSTICE DOST MUHAMMAD KHAN ASKS DISTRICT JUDICIARY JUDGES TO IMPLEMENT/ENFORCE EXISTING, ENVIRONMENT, MUNICIPAL LAWS BOLDLY

Mr. Justice Dost Muhammad Khan, Hon'ble Judge, Supreme Court of Pakistan has urged the district judiciary judges to boldly and fearlessly implement and enforce applicable international and national laws to provide a healthy environment to the people of Pakistan, who also deserve a neat and clean environment, in and around, like other civilized and environment-friendly nations.

He expressed these views in the certificate awarding ceremony at the conclusion of a one-week course on “Orientation of New Laws” for Additional District and Sessions Judges from all over Pakistan at the Centre of Excellence for Law and Judicial Education / Federal Judicial Academy, Islamabad, on Saturday (20.9.2014).

He said, “The deplorable state of the environment in our country requires the judiciary, as the guardian of the Rule of Law, to implement all the existing environmental and municipal laws in letter and spirit. Unfortunately, lack of exposure to environmental law by members of the judiciary may hinder its implementation. Appropriate training of judges must focus, among others, on jurisdiction in environmental law, its special instruments and problems of enforcement, as well as related scientific knowledge which is necessary to sensitize judges for environmental



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

cases. I hope this one-week orientation on different new laws including the environmental law would have further sensitized you and helped you to better understand the crucial role of the judiciary to implement environmental law and thus conserve the environment.”

Lamenting the attitude of the people and others towards environment, he said, “The attitude of individuals and that of society as a whole is really painful. One can see heaps of garbage in those streets and parks, which used to be immaculate and environment-friendly in the past. Individuals and society must volunteer to this noble cause, protecting and conserving the environment. Our legislatures are under an obligation to legislate so that the right to healthy environment should be incorporated in our Constitution as one of the Fundamental Human Rights.”

In his chief guest address, the honourable Judge also dwelt at length on other different subjects and topics such as Cyber Crimes Law in Pakistan, Narcotics Laws, Anti-Money Laundering Act, Intellectual Property Rights laws in Pakistan, Juvenile Justice Laws, Alternative Dispute Resolution, Judgment Writing, etc. and asked the district judiciary judges to enhance their proficiency in all these areas to dispense expeditious justice to the litigant public.



*Hon'ble Mr. Justice Dost Muhammad Khan gives away certificate to a participant*

Dr. Faqir Hussain, Director General, CELJE/FJA in his welcome speech spoke about the person and momentous contribution of the chief guest during his tenure as Chief Justice, Peshawar High Court, for the professional development of judicial officers, and establishment of KP Judicial Academy etc.

He said, “We believe that a judge is judged not only by the quality of his judgments, but also by the quality and purity of his/her character.

Therefore, every possible effort is put in practice to design and develop such training courses for judges to make them enviable in their personal behavior and professional conduct. We are also aware of the fact that the district judiciary is the kingpin in the hierarchical system of administration of justice, so that they discharge their judicial duties effectively and efficiently.”

## **Importance of ADR Mechanisms highlighted HON'BLE MR. JUSTICE UMAR ATA BANDIAL UNDERScores IMPORTANCE OF ADMINISTERING FAIR, SPEEDY, QUALITY JUSTICE**

Mr. Justice Umar Ata Bandial, Hon'ble Judge, Supreme Court of Pakistan, has said that access to quick and quality justice was one of the aspects of rule of law and the application of Alternative Dispute Resolution (ADR) mechanisms was essential to alleviate courts' backlog and improve their effectiveness.

Recently–elevated Hon'ble Judge of the Apex Court expressed these views in the inaugural ceremony of a one-week training course on “Skilled Based ADR Training” for Civil Judges –cum-Magistrates from all over Pakistan, Azad Jammu and Kashmir and Gilgit-Baltistan, held here at the Federal Judicial Academy/ Centre of Excellence for Law and Judicial Education, Islamabad, on Monday (7. 7. 2014), in which he was the chief guest.

He said, “Our judicial system has been plagued by problems and those problems always hinder the speedy administration of justice. It appears that due to inadequate and delayed justice we are not addressing the problem properly. Our adversarial justice system is tampered with Islamic principles of justice and there are several Quranic injunctions on speedy and inexpensive dispensation of justice. In such a situation, when we have a slow dispensation of justice through our courts, we must recognize the utility of ADR techniques because I think better quality of court work is associated with more frequent use of ADR justice delivery mechanisms. This suggests that ADR should be



*Hon'ble Mr. Justice Umar Ata Bandial addressing the course participants*

developed alongside improvements in the traditional litigation processes.”

Advising the young judges of district judiciary he said, “For judges and judicial system, the most fundamental thing is to enjoy confidence of the people. Expeditious and quality justice based on application of law and facts achieves confidence of the people and other institutions. And I know quality justice requires application of mind, time and law. You must apply your mind, use your time and law, try to separate the grain from the chaff, to provide quality justice to the litigant public. Judiciary ranging from Civil Court to the Supreme Court is like one family and we have to strive to maintain and enhance that status of the judiciary which has risen in the aftermath of lawyers' momentous movement for the restoration of judges of superior judiciary.”

Earlier, Dr. Faqir Hussain, DG, CELJE/FJA, presented a brief profile of the honourable chief guest and shed light on his professional milestone achievements both as Chief Justice of Lahore High Court and as practicing lawyer before his elevation to the bench.

'The Hon'ble chief guest in his capacity as the Chief Justice of Lahore High Court introduced enormous initiatives to change the culture of district judiciary so as to provide speedy and quality justice to the litigant public,' he concluded.



*Participants of the Course with Hon'ble Mr. Justice Umar Ata Bandial and faculty of the Academy*

## **JUDICIARY ALIVE TO CARRY OUT RESPONSIBILITIES** **Dr. Faqir Hussain, Director General, CELJE/FJA**

“Our judiciary is fully alive to the enormous responsibilities it bears on its shoulders to promote and protect legal/constitutional rights, to consolidate institutions and democratic culture, to promote good governance & the rule of law.”

Dr. Faqir Hussain, Director General, expressed

these views in the informal interactive session of the faculty members and resource persons with participants of a one-week course on “Orientation of New Laws” for Additional District and Sessions Judges from all over Pakistan at the Centre of Excellence for Law and Judicial Education/ Federal Judicial Academy, Islamabad, on Friday night (19.9.2014).



*DG, CELJE/FJA, Faculty members and Resource Persons sharing experiences and discussing issues with participants at the interactive session*

He said, “Our courts are the guardians of the Constitution and they always do their job without fear, favour or prejudice. They observe and promote the rule of law. Our courts have earned lot of respect in recent years and all of us have to strive to uphold that respect in the society.”

The participants actively participated in this informal session and spoke from their heart about a variety of personal and professional issues. The faculty members, resource persons and officers of the Academy also participated in this session.

## **SENSITIZATION OF FAMILY COURT JUDGES ESSENTIAL Hon'ble Mr. Justice Mushir Alam**

Hon'ble Mr. Justice Mushir Alam, Judge Supreme Court of Pakistan has said that Family Court Judges were performing the role of a 'social reformer' and that also of a “peace broker” between the estranged spouses, despite having a plethora of problems of a variety of nature; they all deserve a special commendation for their hard work, judicial acumen and sensitivity to resolve these complex cases expeditiously.



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

He expressed these views in the certificate awarding ceremony at the conclusion of a one-week training course on “Management of Family Cases” for the Judges of Family Courts from all over Pakistan at the Centre of Excellence for Law and Judicial Education / Federal Judicial Academy, Islamabad, on Saturday (6.9.2014), in which he was the chief guest.

Regarding the institution of family, he said, 'It is the basic unit of a human society. The family

unit must be educated the rules of sanctity. The integrity of the family bond must be constantly considered, however, the rights of the individual members must not be transgressed at any cost.”

Lamenting unfair customary practices and draconian traditions against womenfolk in the society, he said, “Most customary practices and traditions in certain parts of the country are incredibly discriminatory against women. In our society it is observed that cruelty coupled with social and cultural compulsions, increasing intolerance, lack of mutual respect, among others, form a few common grounds for seeking divorce or separation. In such a scenario, it is required from our Family Court Judges to step away from conservatism, shed off their prejudices on any ground, and realize the sensitivity of the matter before them, and to protect not the rights of victims but also the institution of family.”



*Hon'ble Mr. Justice Mushir Alam, gives away certificate to a participant*

He said, “An effective revamping of the Family Law, building the capacity and infrastructure of family court judges and family courts was imperative to promote accessible, effective and timely justice to the estranged spouses who appear to be on the verge of a breakup once and for all. Every possible effort should be made to prevent them from break up and reconcile for a better future of children.”

Presenting his welcome speech and overview of the training course, Dr. Faqir Hussain,

Director General, CELJE/FJA said, “Discrimination against gender has no place in our modern day society. All civil and criminal issues in family cases require careful handling and expeditious resolution.

He also urged the Family Court Judges to be conversant with new amendments, the best global practices in the amicable settlement of estranged spouses and technological developments.

## **An efficient, independent justice system contributes to trust, stability COURT PERSONNEL CAN PLAY A CRUCIAL ROLE IN IMPROVING ADMINISTRATION OF JUSTICE Hon'ble Mr. Justice Athar Minallah**

Mr. Justice Athar Minallah, Hon'ble Judge, Islamabad High Court, has said that an efficient and independent justice system not only contributes to trust and stability but also ensures the rule of law in the country.

He expressed these views in the certificate awarding ceremony at the conclusion of a one-week training course on “How to be an Effective Superintendent” for Superintendents of the Sessions Courts from all over Pakistan at the Centre of Excellence for Law and Judicial Education/ Federal Judicial Academy, Islamabad, on Saturday (16. 8. 2014), in which he was the chief guest.

He said, “Access to an effective justice system is a fundamental human right and enshrined in our Constitution. The court personnel, especially, the Superintendents of Sessions Court play a crucial role in the administration of justice. We know that the machinery of justice and the law itself forms the basis for the dispensation of justice; when the machinery is faulty, the dispensation of justice itself will not be entirely free from fault. Failure of the machinery of justice, therefore, shatters people's trust in the system. You are under an



*Hon'ble Mr. Justice Athar Minallah addressing the course participants*

obligation to create such an environment with your litigant –public –friendly dealing and effective administration of justice, because public first of all at the court comes in your contact, not the judge, which builds an image of independent court system.”

Lauding the training course and its content, the honourable Judge said, “Training is an important element to improve the quality and effectiveness. I have gone through the content of the course and I have found it very productive and it will definitely increase the quality and effectiveness of justice in the district judiciary.”

Presenting his welcome speech and an overview of the course, Dr. Faqir Hussain, Director General of the CELJE/FJA said that this course was designed to provide the participants of the course, whom I often call as

'the real face' of the district judiciary, a comprehensive understanding of the conventional and non-conventional subjects so that they can play an effective and efficient role on their part in the dispensation of justice.



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

## **A ONE-WEEK TRAINING FOR SESSIONS COURT PERSONNEL**

A one-week training course on “How to be effective Superintendent” for Superintendents of the Sessions Courts from all over Pakistan, Azad Jammu and Kashmir and Gilgit-Baltistan kicked off at the Centre of Excellence for Law and Judicial Education / Federal Judicial Academy, Islamabad, on Monday (11. 8. 2014)

Besides faculty members, a number of noted capacity building experts were to impart training to the course participants and enrich their knowledge and information on very important conventional and non-conventional subjects such as “Etiquettes and Mannerism”, “Senior –Junior Relationship”, “Self, Stress and

Time Management,” “Noting, Drafting and Correspondence”, “ Overview of Budget/ T.A/ Pension/ Leave Rules”, “Transparency through Public Procurement Rules”, “ Public Sector Financial Management Reform: The Case of PIFRA ,” “Role of Superintendents in Criminal Matters including issuing of warrants and Release Orders”, “ Duties of Superintendent viz-a-viz Copying Agency,” “ Overview of Government Servant Conduct Rules”, “ Service Laws: Efficiency and Discipline Rules,” etc.

Twenty Superintendents from all over Pakistan attended this one-week training at the Academy.

**“Indeed God commands Justice and good conduct...”  
(Holy Quran: An-Nahl, 16:90)**



## HON'BLE MR. JUSTICE DOST MUHAMMAD KHAN LAMENTS LOOPHOLES IN EXISTING LAWS

Lamenting loopholes in the existing laws, Judge Supreme Court of Pakistan, Hon'ble Mr. Justice Dost Muhammad Khan has said that instead of enacting and enforcing harsh laws, our legislatures should critically examine all the existing laws and they should try to do away with all the anomalies that could possibly decelerate the ratio of convictions and pester the victim anywhere during the process of seeking justice.

He expressed these views in the certificate awarding ceremony at the conclusion of a one-week refresher course on “Role of Prosecutors in quick disposal of cases” for Prosecutors hailing from all over Pakistan here at the Centre of Excellence for Law and Judicial Education/ Federal Judicial Academy, Islamabad, on Saturday (19.7.2014)

He said, “We have several laws replete with flaws. Our entire structure of dispensation of justice needs overhauling, revamping and reinvigoration. A 'Task Force' consisting of all sectors of legal and judicial system including the parliamentarians should be created to reflect upon the loopholes, lacunas and flaws in them and those be removed through a proper legislation for effective implementation of laws.”

He said, “Harsher legislation is generally not well placed to reduce crime. Our judicial system and other sectors of legal system such as investigating and prosecuting agencies should be modernized. Modernization of the system for the desired results is the need of the hour. Proper infrastructure, adequate allocation of budget, enhancing their capacity, their knowledge, sharpening their expertise and equipping them with modern means and skills especially those of investigating and prosecuting agencies are essential. Without proper infrastructure, skilled manpower, modern technological tools and career



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

incentives they would not be in a better position to deliver. It is suggested that one state of the art training institute for prosecutors should also be established where they may be imparted training as per modern best practices. More Forensic Science laboratories should also be setup in the country. Courts will not let loose the criminals if proper modern means are provided to key players of the system.”

Advising the prosecutors, he said, “Prosecution is one of the important limbs of the justice sector. You have a unique role to play. You have to represent the State. Always be fair and honest to play your role within the available resources. One wrong conviction of an innocent person will be a stigma that you will have to carry throughout your entire career. Our society has gone wild. Crimes are of complex nature nowadays. Get yourselves prepared to play your requisite role in the wake of new law called Pakistan Protection Act which is very delicate and demanding.”

Earlier, Dr. Faqir Hussain, Director General, CELJE/ FJA presented an overview of the refresher course and enlightened and sensitized the prosecutors about the role and importance of an independent prosecution agency in the modern rapidly changing world.



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

## **EXTRAORDINARY SITUATION CALLS FOR EXTRAORDINARY MEASURES**

**Dr. Faqir Hussain**

Extraordinary circumstances always warrant for extraordinary measures and this brand new law called “Pakistan Protection Act” which has recently come into force is one such remedial measure to effectively cope with the menace of terrorism, militancy and growing insurgency in the country. The law has flaws too, especially some of the harsh and stringent provisions, which are apparently not in harmony with the established legal norms and constitutional principles.

He expressed these views in his research presentation on the topic “Testing vires of Protection of Pakistan Act on the Touchstone of Constitution” given to the Persecutors hailing from all over Pakistan, Azad Jammu and Kashmir and Gilgit-Baltistan here at the Federal Judicial Academy/ Centre of Excellence for Law and Judicial Education, Islamabad, on Monday (14. 7. 2014)

Shedding light on various aspects of the Act in his insightful and thoughtful presentation he



*Dr. Faqir Hussain, Director General, CELJE/FJA addressing the course participants*

said, “Since country is now confronted with such an extraordinary situation, the government of the day feels morally and constitutionally compelled to take certain steps and measures which can improve the situation and at any rate at least arrest the spate of subversive and anti-state activities which threaten the very existence of the country.”

Answering a volley of questions asked by the course participants he said, “Seemingly, offensive provision, this law has just been passed and this is the time that the anomalies can be remedied quickly by appropriate means without having any effect on the legislative efficacy of the Act of 2014.

Seventeen Prosecutors underwent this one weeklong training course on “Role of Prosecutors in quick disposal of cases” here in the Academy/CELJE. The training was inaugurated by the Director General of the Academy/CELJE.



*Participants of the course in a group photo with Dr. Faqir Hussain, Director General, CELJE/FJA and faculty of the Academy*

## **COLLECTIVE, COORDINATED EFFORTS NEEDED TO ACHIEVE BETTER RESULTS THROUGH ADR MECHANISM**

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

Hon'ble Mr. Justice Ejaz Afzal Khan, Judge, Supreme Court of Pakistan, has said that justice was the foundation and object of any civilized society and nothing could be honourable in any society where there was an absence of justice.

Hon'ble Judge of the Apex Court expressed these views in the certificate awarding ceremony of a one-week training course on “Skilled Based ADR Training” for Civil Judges –cum-Magistrates from all over Pakistan, Azad Jammu and Kashmir and Gilgit-Baltistan, held here at the Federal Judicial Academy/ Centre of Excellence for Law and Judicial Education, Islamabad, on Friday(11. 7. 2014), in which he was the chief guest.

He said, “The greatest challenge that the justice delivery system faces today is the delay in the



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

disposal of cases and prohibitive cost of litigation. Alternative Dispute Resolution is thought of as a weapon to meet this challenge.



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

ADR system is not only grounded in our culture and civilization but also it is enjoined in our Holy Book. It is one of the most attractive options for collective and coordinated efforts of all main stakeholders of the administration of

justice system coupled with evolving the ADR system in accordance with our indigenous conditions, essential for an effective and swift justice delivery to the litigant public.

Presenting his welcome speech and an overview of the course Dr. Faqir Hussain, DG, FJA/CELJE said that the ADR system was an indigenous one and efforts towards ADR would meet with considerable success and good results in this country also if those obstacles which hindered its effective implementation were addressed systemically. He also expressed his profound gratitude for the management and resource persons of the Karachi

Centre for Dispute Resolution (KCDR) who had come to pass on their practical ADR system experience to the trainees during this weeklong course.



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

*"Justice is conscience, not a personal conscience but the conscience of the whole of humanity."  
Alexander Solzhenitsyn*

## SPECIALISED COURSES UPDATE JUDICIAL OFFICERS ABOUT CHANGES IN LAWS: Dr. Faqir Hussain

Judges and all others connected with the justice delivery system need regular updating of their knowledge and information to keep pace with new emerging laws, changes in society, innovations in science and technology, for an effective dispensation of justice.

Dr. Faqir Hussain, Director General, CELJE/FJA expressed these views in the inaugural ceremony of a one-week course on “Orientation of New Laws” for Additional District and Sessions Judges from all over Pakistan at the Centre of Excellence for Law and Judicial Education/ Federal Judicial Academy, Islamabad, on Monday (15.9.2014).

Regarding continued judicial education, he said, “There is a dire need for continued judicial education and orientation trainings for different functionaries concerned with administration of justice. With this object in our mind we have arranged this one-week training course for you on new laws, some of these are brand new laws, and others are revised and amended ones. We know that laws do not remain static and they change with the passage of time. Society always requires new laws and new laws respond to its needs. I strongly believe that



*Dr. Faqir Hussain, Director General, CELJE/FJA addressing the course participants*

judicial education makes judicial officers professionals and it helps render justice faster to the litigant public. Always keep this thing in your mind that sharing knowledge is also gaining knowledge, therefore, try to give your input during lectures and orientations on different subjects such as Cyber Crimes Law, Environmental Laws, Anti-money Laundering Act, Intellectual Property Rights Laws in Pakistan and others in this weeklong course.”



*Participants of the course in a group photo with Dr. Faqir Hussain, Director General, CELJE/FJA and faculty of the Academy*

## HON'BLE MR. JUSTICE ATHAR MINALLAH LAUDS COMMITMENT OF YOUNG JUDICIAL OFFICERS TO DISPENSE SPEEDY JUSTICE

Mr. Justice Athar Minallah, Hon'ble Judge, Islamabad High Court, has said that despite a plethora of problems being faced by the young judicial officers, their unflinching commitment to administer expeditious justice to the deprived and denied people was highly appreciable.

Hon'ble Judge expressed these views in a social gathering with the trainee judges called the "Socialization Night" here at the Federal Judicial Academy/ Centre of Excellence for Law and Judicial Education, Islamabad, on Tuesday (8. 7. 2014), in which he was the chief guest.

Terming the court of civil judge as the pillar of institution of administration of justice, he said, "Civil Court Judges play a pivotal part in the administration of justice because poor and helpless people who even can't hire an advocate come to their courts for seeking justice. Impartiality, honesty, knowledge and sincerity are the basic and inherent qualities which a Judge must possess in the discharge of his duty as a judicial officer."

Twenty Judges who underwent one-week training on "Skilled Based ADR Training" from all over Pakistan, Azad Jammu and Kashmir



and Gilgit-Baltistan exchanged their ideas with the honourable judge. In response to a question from the honourable Judge what motivated them to opt for judiciary, all the trainees expressed their candid views about the question and showed determination to impart expeditious justice to the people. On the occasion, they also advocated a substantial change in the procedure to provide speedy justice to the litigant because according to them inherent procedural complications hinder the speedy delivery of justice.

Dr. Faqir Hussain, DG of the CELJE/FJA delineated the rationale behind such get-togethers and discussions.

## NEWS IN BRIEF

**Hon'ble Two-Member Committee:** The Hon'ble Chief Justice of Pakistan/ Chairman, CELJE/ FJA, Board of Governors, has been pleased to constitute a two-member Committee comprising Hon'ble Mr. Justice Jawwad S. Khawaja and Hon'ble Mr. Justice Asif Saeed Khan Khosa to assist him with regard to all affairs of the Centre of Excellence for Law and Judicial Education/ Federal Judicial Academy.

**Mutual Understanding:** Training Needs Assessment Report –April 2014 was discussed

by Director General CELJE/FJA through video conference on 19<sup>th</sup> August, 2014 with Sheriff Alistair Duff, Director of the Judicial Institute for Scotland. Mr. Fakhur Hayat, Director, Academics, FJA and Sheriff A Cubie, Deputy Director also attended the video conference. The TNA Report was prepared following discussions during the visit of Sheriff Thomas Welsh, former Director, Judicial Institute of Scotland, visit to the FJA in April 2014.

**Enhancing Leadership Skills:** The National Centre for State Courts (NCSC) has offered to enhance Leadership Skills of the Court Administrators in Pakistan. A meeting in this connection was held in the CELJE/FJA on Friday, 22<sup>nd</sup> August, 2014. Mr. Charles L. Jenkins, Resident Legal Advisor, US Department of Justice, US Embassy, Ms Karen Norris and Mr. Fakhar Hayat, Director (Academics), CELJE/FJA discussed various issues of mutual interest.

**Presentation on Migration:** A presentation of International Centre for Migration Policy Development (ICMPD) activities in the areas of migration in Pakistan came under discussion on Monday, 8<sup>th</sup> September, 2014. Ms Sedaf Dearing, Senior Advisor, Silk Routes, ICMPD and Ms Hina Maqsood discussed a host of

issues during the meeting with the DG, CELJE/FJA.

**Improving CELJE/FJA website:** A meeting on the sole agenda, “How to improve CELJE/FJA Official website Usability and its Revamping” was held with DG, CELJE/FJA in the chair on Tuesday, 23<sup>rd</sup> September, 2014 in which Mr. Parvaiz Ali Chawla, Senior Director, Mr. Khalid Ameen, Director (Admin.), Mr. Fakhar Hayat Director (Academics), Ms Jazeela Aslam, Additional Director, Mr. Hashim Abro, CPMO, Mr. Salahuddin, Accounts Officer, Mr. Tahir Iqbal, Warden, Mr. Tariq Aziz, Computer Programmer-I and Mr. Asif Majeed, Computer Programmer-II suggested ways and means to improve the official website of the CELJE/FJA.

*Treat people as if they were what they should be, and you help  
them become what they are capable of becoming.*

*-Goethe*

# HAS THE EXISTING NARCOTICS LAW IN PAKISTAN ACHIEVED ITS OBJECTIVES? PROPOSE CHANGES IF ANY.

By  
**Muhammad Aslam<sup>1</sup>**  
**Additional District and Sessions Judge**  
**Jaranwala, Faisalabad**



## Quranic Injunctions Regarding Intoxicants

"O ye who believe! Intoxicants and games of chance and idols and divining arrows are only infamy of Satan's handiwork. So leave it aside in order that you may succeed.

'Satan seeketh only to cast among you enmity and hatred by means of intoxicants and games of chance, and to turn you away from the remembrance of Allah, and from prayers. Will you then desist?'"(Chapter V: Verse: 90-91).

## Hadith

"All intoxicants are forbidden" (Hadith of Bukhari and Muslim, quoted in Husain 1967, 109)  
Imam Al-Shatibi in his famous book AI-

Mawafiqat had enumerated objectives of Shariah which are five in number.

- 1) Preservation of Deen
- 2) Preservation of Life
- 3) Preservation of Progeny
- 4) Preservation of Intellect
- 5) Preservation of Property

So, preservation of Intellect is amongst the objectives of Shariah which is required to be preserved at every cost. Anything that disturbs the same is prohibited.

## Introduction

Mankind with its inception required a set of principles to ensure peaceful coexistence in a communal life. Almighty gave a symbolic set of rules and principles to Adam after creating him which since then is a fundamental to human life. The Natural law and Canonical law in scriptures were the first laws to govern humans before evolution of man-made laws.

Law is a term which does not have a universally accepted definition, but one definition is that law is a system of rules and guidelines which are enforced through social institutions to govern behavior. Laws can be made by legislatures through legislation (resulting in statutes), the executive through decrees and regulations, or judges through binding precedents (normally in common law jurisdictions). The law shapes politics, economics, and society in various ways and

serves as a mediator of relations and norm of conduct between people.

The law is important because it acts as guideline as to what is accepted in society. Without it there would be conflicts between social groups and communities. It is pivotal that we follow them. The law allows for easy adoption to changes that occur in the society. As time changes so will a law. Laws are constantly being amended when needed. People may not agree with a certain law but that is just the way society works. This principle is also recognized in Islam by virtue of Legal maxim

Change in laws is not prohibited with the changing circumstances. However, there is an exception to this general rule i-e Nalus and the matters illat of which is known are also absolute and not open to any change.



Since 19th century the international community jointly endorsed a set of rules and laws to check trans-border criminal offences. The common examples of trans-border criminal activity are human trafficking, child smuggling, drug smuggling, illegal immigration and a recently developed issue of cross-border terrorism.

Narcotic drugs are universally accepted as being the gravest dilemmas facing the world today. Pakistan's predicament in this regard is

that it continues to be used as a transit country for illicit trafficking of drugs. Narcotic offences are constantly on the rise. The government of Pakistan has enforced numerous administrative and legislative measures to control the drug menace.

Pakistan in the face of drug smuggling into its borders from Afghanistan in, 80s has developed Anti-Narcotics Force (ANF) and drug control policies.

## Origin of drugs problem in Pakistan

Pakistan's geographic location next to Afghanistan, the world's largest producer of illicit opium, places the country in a vulnerable position in terms of drug trafficking as well as drug abuse. Patterns of illicit drug production, distribution and abuse change as a result of social, economic and political developments. Pakistan is one of the primary transit countries for drugs from Afghanistan. The history of Afghanistan and what now constitutes Pakistan has been intertwined for centuries. The last three decades bear testimony to this, as three successive wars in Afghanistan have each had distinct impacts on Pakistan, ranging from increased drug abuse and proliferation of illegal arms, to a growing militant movement that draws inspiration from the Afghan Taliban.

Afghanistan is the lead producer for these drugs, while Pakistan is a key transit country, as well as an end-use destination, in their trafficking. The bulk of opium produced in Afghanistan is cultivated in the southern provinces of Kandahar and Helmand, and enters Pakistan through the Federally Administrated Tribal Areas (FATA) and Balochistan. Once the drugs enter Pakistan, they are typically stored in small amounts in

private homes, often in remote villages.

In 1947, Pakistan was deficient in opium. It could not meet the requirements of its own opium addicts, whose number at that time was fairly limited. Till 1956, the country imported opium from India. Thereafter, only the production of licensed Opium for medical needs was permissible under strict control in selected areas of North West Frontier Province. The production of licensed opium continued till 1979 when two important developments took place. These were:

1) The Islamic Revolution in Iran, February 1979.

2) Promulgation of the Prohibition Enforcement of Hadd Order 1979 in Pakistan, which led to a total ban on opium production. This left the farmers with huge stockpiles (approximately 800 tons) of poppy. They did not know what to do with it. In the meantime, some western experts taught Pakistani farmers the technique of converting poppy into heroin. This is how heroin, which was produced in Europe for the first time in 1898, was introduced to this part of the world in the 1980s.

*Overcoming poverty is not a gesture of charity. It is an act of justice.*

*- Nelson Mandela, July 1, 2005*

## Extradition treaties and International obligations

Two kinds of agreements may be made for mutual administrative assistance in narcotics related matters. These are: Every country has its own legal system that determines the provision of mutual assistance to combat transnational crimes. Such help is generally referred to as mutual administrative assistance. The term legal assistance, on the other hand, is used when information is required in evidential form for use in court proceedings.

- *Legally binding agreements known as treaties, conventions and protocols.* Such agreements are concluded among member states under the United Nations Charter to create rights and obligations of international law.
- *Non-Legally binding agreements referred to as Memoranda of Understanding (MoUs).* Such agreements are concluded among states to record international commitments in a language that expresses recognition of the fact that the agreements are not legally binding.

Hence, MoUs are usually signed between states that prefer to avoid the formalities of legally binding agreements on cooperation in the fight against drug trafficking.

Pakistan has ratified the following United Nations conventions, regional bilateral MoUs and extradition treaties:

- Single Convention on Narcotic Drugs 1961 as amended by the 1972 Protocol.
- United Nations Convention on Psychotropic Substances 1971.
- United Nations Convention against Illicit Trafficking in Narcotic Drugs and Psychotropic Substances 1988 and subsequent United Nations resolutions, in Particular the United Nations General Assembly are, 20th Special Resolution S-20/4B.
- SAARC Convention on Narcotic Drugs and Psychotropic Substances 1990 Protocol on Drugs Matters with ECO Countries.

## Drug legislation in Pakistan National Anti-Narcotics Policy 2010

### Policy objectives

Anti-Narcotics Policy of 2010 was formulated to improve coordination amongst the various agencies responsible for drug control. It was under this policy that an Inter-Agency Task Force (IATF) for Narcotics Control was established under the overall supervision of the ANF. In general, the policy aims to strengthen and build the capacities of existing national law enforcement institutions, develop an effective coordination and control mechanism, increase inter-agency and international cooperation and mobilize the people of Pakistan to refuse the use of drugs. The policy talks about both supply and demand side drug control measures, and recognizes that international cooperation is fundamental if Pakistan's drug control efforts are to be successful.

### The Control of Narcotics Substance Act, 1997

The Control of Narcotic Substances Act (CNSA), 1997 is the secular legislation on narcotics. It was introduced in order to:

- Control production, processing and trafficking of narcotics and;
- Regulate treatment and rehabilitation of drug users

The Act prohibits the cultivation, production, manufacturing, extraction, preparation, transportation, possession, trade, financing and trafficking of narcotics and psychotropic or controlled substances except for scientific, industrial or medical purposes. It is the key legislation used against drug trafficking, and is a comprehensive legislation.

It also lays progressive punishments for narcotic offences. It provides for the constitution of Special Courts having exclusive jurisdiction to try narcotic offences, appointment of special prosecutors and provision for undercover and controlled delivery operations (CDOP).

In addition it regulates the treatment and rehabilitation of narcotic addicts and matters connected therewith. CNS Act, 1997 allows constitution of national funds for control of drug abuse in addition to, international co-operation and mutual legal assistance in narcotic offences. The Act disallowed bail to be granted in respect of narcotics offences except in some extraordinary circumstances and all offences of prohibition and punishment were to be deemed to be extraditable offences.

The Act prohibits the acquisition and possession of assets derived from narcotic offences, in addition to prohibition on aiding, abetment or association and alienation of frozen property.

#### **Anti-Narcotics force (A.N.F) Act, 1997**

The Anti-Narcotics Force (ANF) Act, 1997 supplements the CNSA by providing for the establishment of a force for undertaking and overseeing investigation of narcotics crime. The Control of Narcotic Substances (Regulations of Drugs of Abuse, Controlled Chemicals, Equipment and Material) and Disposal of Vehicles involved in Narcotic Cases Rules were introduced in 2001 to give effect to regulatory provisions under the CNSA.

#### **Effects of implementation of Control of Narcotic Substances Act (CNSA), 1997**

The promulgation of the CNS Act, 1997, played a vital role in disposing of high profile cases by the Judiciary. It also created deterrence amongst the drug barons as it also helped in forfeiture of their assets derived from the narcotics trade. The CNS Act, 1997 is a very comprehensive law and, owing to its enforcement, ANF registered 6413 cases out of which conviction was made in 3556 cases and 516 resulted in acquittals. 2341 cases are under

trial in different courts.

Importantly, use or consumption of narcotics and/or psychotropic drugs is not an offence under the CNSA. Possession of prohibited substances, which is another activity that drug users may be arrested for, is, however, punishable. Judicial interpretation suggests that possession has been used in a wider sense so as to include transport, dispatch and delivery thereby implying that the offence is targeted primarily at traffickers and not drug users.

Penalties for the above offences depend only on the quantity found. Broadly, there are three levels of penalties. Firstly, if the quantity of illicit substance found is less than 100 grams, the maximum punishment is 2 years imprisonment or fine or both. Users found with lesser quantities for personal consumption would be liable under this provision. A second category of penal measures is imprisonment extending up to seven years and fine for quantities above hundred grams but not exceeding one kilogram. The death penalty or life imprisonment in addition to fine up to one million rupees can be imposed in case the quantities involved exceed the above.

There is no distinction in penalties for soft and hard drugs. A person found with 100 grams of ganja will be awarded the same punishment as someone carrying 100 grams of heroin, even though heroin is far more hazardous than cannabis.

The following acts if committed in relation to any of the offences delineated under the Act, within or outside Pakistan are also punishable with the same punishment as that provided for commission of the offence:

- . Participation in
- . Association with
- . Conspiracy to commit
- . Attempt to commit
- . Aid
- . Abetment
- . Facilitation
- . Incitement

## Powers and procedures under CNSA

The CNSA directs search, investigation and arrests to be made with a warrant issued by a Special Court or without a warrant in exceptional situations after recording reasons. In exercise of powers conferred under the Act, investigating officers can:

- . Enter buildings or premises
- . Seize illicit substances
- . Confiscate materials, articles and documents,

which may furnish evidence of commission of offence

- . Detain, search and arrest persons suspected of committing an offence

Similar powers can be exercised with respect to offences committed in public places including shops and hotels and in conveyances.

Additionally, enforcement officials are authorized to call for information, summon any documents and examine any person for inquiry. Notwithstanding immunity afforded to government officers under the good faith provision, officers guilty of conducting illegal searches and arrest without reasonable grounds are liable to prosecution and punishment. The provision serves as a check on the otherwise unbridled powers conferred on law enforcement officials. However, the use of such safeguards is not known.

With respect to evidentiary requirements in

trials, the CNSA creates a presumption of offence against a person, who fails to account satisfactorily for possession of:

- (1) Illicit substances
- (2) Equipment adapted for the manufacture of drugs
- (3) Any materials undergoing transformation and residue left of materials from which prohibited substances are prepared.

Documentary evidence standards have also been relaxed to some extent.

While the provisions appear to dilute standards of proof by shifting the burden of proof on to the accused, Courts have held that section 29 does not absolve the prosecution of its primary duty to prove its case beyond reasonable doubt.

Offences under the CNSA are non-bailable i.e. bail is at the sole discretion of the court and is ordinarily refused unless the court opines that the case is fit and against a substantial amount of security. Also, bail cannot be granted for offences punishable with death under the CNSA or any other narcotics law.

Section 9 of Control of Narcotics Substances Act (CNSA) 1997, Sections 13 and 14 of Dangerous Drugs Act 1930, Pakistan retains the death penalty for, over two dozen offences but has kept an informal moratorium on executions since December 2008. However, the courts continue to sentence people to death.

## Proposed Amendments in CNS Act, 1997

Due to the common use of synthetic drugs, semi synthetic drugs and cocaine in Pakistan and destructive effects of such drugs for human beings, some amendments are being proposed in the relevant sections of the CNS Act, 1997.

- In the CNS Act, 1997, there is no time limit for the finalization of inquiries and investigations by the Investigating Officers (IOs) in neither the asset cases nor the courts are bound to complete the trial of assets cases in a stipulated period and hence conviction often takes

years. Therefore, certain amendments in CNS Act, 1997 to the extent of assets matters having some embargo on the IOs and Special Courts have been proposed. To make the provisions of the Act, relating to assets freezing/forfeiture more effective, operational and punitive Sections must be added in connection with the limitation of period of inquiries and investigations by the IOs, Trial Courts and filing appeals before the Appellate Courts.

- Drug cases involving juveniles are not properly prosecuted because public prosecutors have no experience of narcotics cases. Therefore, amendments are being proposed in the CNS Act 1997 for empowering ANF Special Courts to try juvenile drug cases.

### **Reasons for failure in curbing drugs in Pakistan**

The drug money is so powerful that it has left no institution untouched. Drug money is used to bribe the police and other drug enforcement agencies not to conduct raids or to make arrests. Drug money is donated to political parties and politicians, so that they are not very sincere in controlling drug trafficking, if not protecting it.

In Pakistan, the drug money starts from the local police. The police force is involved. If the police is not involved, drug trafficking cannot take place. The best example of drug money being used to bribe PNCB and other related agencies can be seen in Dalbandin raid. During December 1990 the Frontier Constabulary of Pakistan seized 1800 kg of fine heroine, the biggest haul in drug history. Pakistan Narcotics Control Board (PNCB) in Quetta refused to file an FIR at first; later, due to pressure, an FIR was filed after 12 days. The three people who were named in the FIR were never arrested. All the PNCB officials in Quetta refused to investigate the case, and instead sent four-month leave applications to the PNCB headquarters in Islamabad. The Inspector General of the FC, who seized the heroin, was transferred. The narcotics politics and narcotics-Army linkages in Pakistan have been already seen.

### **Recommendations for Change in Drug Policy of Pakistan**

1. The drug policy should focus on treatment rather than criminal punishment. Different treatment options should be advised

to the drug users instead of custodial sentences. The drug users can be given choice between treatment and imprisonment. The drug users should be treated as patient rather than a criminal.

2. The arrested drug users should be referred to some treatment Centre provided there is no other criminal offence done by him. This can be done even after some initial imprisonment for the offence.

3. The quantity for personal use should be redefined in the light of the best practices of the world. Small quantity possession of drugs should be completely decriminalized this will lessen the burden on courts and the law enforcement agencies will get more time to control other criminal issues rather than dealing with drug users.

4. The term "drugs" should not be used in a generic way but there is a need to make the policy according to the characteristics of each substance.

5. Effective Specialized Drug Courts should be introduced to deal with the drug related crimes, which can differentiate the drug use cases from drug trafficking.

6. Drug Policy should address the "Harassment of Drug User by Police".

7. The Control of Narcotic Substances Act (CNSA), 1997 concerns about drug trafficking have overshadowed domestic problems of drug use, treatment and rehabilitation of users. The Drug policy should be focused on the control of drug trafficking and the drug addiction cases should be referred to the public health system for rehabilitation.

8. The CNSA does not criminalize drug users. Instead, the Act obligates the government to identify, register, treat and restore drug users back to the community.

***"Think 100 times before you take a decision, but once that decision is taken, stand by it as one man.  
(Quaid-e-Azam)***

## Conclusion

CNSA despite a small success with the objectives is a good law because the failures are due to the implementation gap on the part of government, police and anti Narcotics force. The fight against drugs is an international phenomenon but the drug barons are powerful people with vast reserves of money and are armed to the teeth. They control mafias and the governments.

Each enactment is meant to bring the criminals to justice and penalize. However the effectiveness is measured even when a small percentage of success is achieved in eradicating crime. The laws against drugs trafficking are obstructed in implementation due to multiple factors and influential people.

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1. The writer secured first position in the Essay Competition on the topic “Has the existing Narcotics law in Pakistan achieved its objectives? Propose changes if any,” during a one week orientation on “New Laws' for Additional District and Sessions Judges from all over Pakistan, Azad Kashmir and Gilgit-Balitistan in the CELJE/FJA( 15th to 20th September, 2014).

*Where justice is denied, where poverty is enforced, neither persons nor property will be safe."*  
*Frederick Douglass*



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