

KEYNOTE ADDRESS

BY

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PAKISTAN

AT

THE INAUGURAL SESSION OF  
THE NATIONAL JUDICIAL CONFERENCE 2010

HELD AT

THE SUPREME COURT AUDITORIUM ISLAMABAD  
[16-18 APRIL 2010]

My brother Judges of the Supreme Court;  
Hon'ble Chief Justices and Judges of the Federal Shariat Court and  
High Courts;  
Distinguished members of the District Judiciary;  
Learned members of the bar;  
Ladies and Gentlemen:  
Assalam-o-Alaikum!

Let me say, at the outset, that I am pleased to be among the judicial and legal luminaries of our times. I thank you for taking time out to travel from every nook and corner of the country to participate in the National Judicial Conference, 2010. I appreciate the enthusiasm, commitment and dedication that the participants have shown for the cause of judicial profession and justice system. Each of the two components of the profession of law, i.e., the judges and the lawyers is a very busy community. The cycle of their engagements goes on and on. Both the professions are noble and respectable. All the judges, and all the lawyers, who work with a passion for justice; who work with a passion to ameliorate the sufferings of the litigant public; who work to ameliorate the suffering of women, the juveniles and other prisoners in jails; who work to ameliorate the suffering of the litigants whose cases linger on for generations; who work to ameliorate the suffering of the litigants who travel from far off distances to reach courts; who work to ameliorate the suffering of the litigants whose, may be, lifetime earnings are at stake on account of scrupulous manoeuvrings of their opponents; and who work to ameliorate the suffering of the families of the poor litigants – all such judges and lawyers earn for themselves a reward in this world, and still a greater reward in the world hereafter. So, I am happy that all of you have

found time to attend this Conference. The event provides a unique opportunity to the participants of sharing their experiences and knowledge with each other so as to be able to bring about the much needed further improvement in the system of administration of justice, bring relief to the litigant public and enable the judiciary to play its role in the good governance of the country as an arbiter of disputes in accordance with the Constitution and the law. There is a need to work for an environment of peace, amity, tolerance and unity, so that the national issues and the problems of common man receive immediate attention and the differences of opinion do not hinder their resolution – the people of Pakistan already having willed through the Objectives Resolution, now substantive part of the Constitution by means of Article 2A thereof, to establish an order wherein the principles of democracy, freedom, equality, tolerance and social justice, as enunciated by Islam shall be fully observed.

Reform and innovation, though always required, have never come the easy way. They break the status quo and stir up the calm. Thus, there is always opposition or reaction to the same. This is quite natural. It has happened in the past, and will occur in future also, but societies, which are able to debate and discuss contentious issues with a view to finding a solution thereto, are successful and progress. Consensus and agreement after debate and discussion is the hallmark of progressive and developing nations. The National Judicial Conference is an effort to take the wisdom and sagacity of learned and experienced minds, such as you, present today in this Conference. I do hope that your sincere efforts will bear fruits.

Almost in every society, the litigation keeps on increasing on account of various factors, which keeps alive the challenge to find out ways and means for the expeditious decision of cases. The difference would be only of pace at different points of times. In the developed countries, however, on account of resources and stability of system of governance, the increase becomes manageable as compared to the less developed societies like ours. Unfortunately, in Pakistan, the system has been interrupted more often than not. In June 2005, we worked out an ambitious plan for expeditious disposal of cases in the Supreme Court and worked hard to achieve the target. Soon the

results started showing. With great commitment and dedication on the part of the bench and the bar, by March 2007 the pendency was brought down to a manageable size. However, with the events of 9<sup>th</sup> March and 3<sup>rd</sup> November 2007, the system received an unprecedented setback, which landed not only the judicial organ of the State, but the other branches of the government as well into a crisis that ate up two precious years of this nation. Despite that, the figures of disposal of cases are equally impressive, as indeed are flashed fortnightly in the national media. The achievements are on account of the extremely hard work and late sitting of benches to decide cases. The members of the bar also actively contributed to the process and facilitated the courts in reaching a just and fair decision within shortest possible timeframe.

Lack of courtrooms and staff, non-application of mandatory provisions of law, delaying tactics and the non-compliance with procedure are the factors that affect the timely disposal of cases. The ultimate sufferers are the litigants whose interests are put at stake through protracted litigation. Delay affects costs and is viewed by some as the most important factor in driving up the cost of civil litigation. Delay in the disposal of a case has many ill-effects upon the fate of that case. The establishment of facts becomes more difficult with the passage of time; memories fade or become less reliable; witnesses die; litigants die and their legal heirs become untraceable; records are lost or become inaccessible; property in dispute loses its character and so on and so forth. The condition of jails is far from being satisfactory. The prisoners are living in miserable conditions. The courts should try their utmost to decide the cases within the time frame set out in the legal provisions, case-law and the National Judicial Policy. The lawyers, police and prosecution are also expected to come forward to the rescue of litigants, by fully cooperating with the courts.

Bulk of the litigation generates and ends up at the town and the district level. The problem of pendency of cases is thus more acute at those levels of the judicial hierarchy. Cases would linger for ages and would be pursued generation after generation. Poor litigants would reach the court houses having travelled far off distances, but would find their cases adjourned on one or the other pretext. It would not

take a Plato and a Socrates to gauge their ordeal, suffering, despair and dejection. The people sitting in the capital and the cosmopolitan cities must try to visualize and feel the agony of the man with no or meagre resources, who lives in places with 40 – 50 degree centigrade temperature, places without electricity, and places, though provided with electricity, but not finding a semblance of it because of the prolonged durations of load-shedding. The National Judicial (Policymaking) Committee, taking stock of the situation, issued instructions and guidelines for quick disposal of cases in particular by the district judiciary. We are aware that the judicial officers and the lawyers alike came under pressure. They had to work hard to achieve the difficult targets set in the National Judicial Policy. However, in the process, some tried to do the needful banking upon technicalities. A large number of cases were decided on merit, but at the same time many were dismissed for non-prosecution or were disposed of grounded upon some other technicality. That could hardly be appreciated. What was called for in the Judicial Policy was to make a whole-hearted and a genuine effort to enhance input so as to achieve the fulfillment of the State's obligation of providing inexpensive and expeditious justice, and not a mere number game. Thus, an exclusive session of the Conference is dedicated to discussing and deliberating upon the implementation of the Judicial Policy, bottlenecks in its way, achievements and failures. I am sure, the participants will come up with valuable suggestions to plug the loopholes and make visible progress.

The purpose of convening the National Judicial Conference is to provide a platform to all the stakeholders of the system of administration of justice to present their views so that new ways should be devised for resolving legal and judicial problems. The emphasis of this Conference would be on the following themes: -

- 1- Ways to improve the implementation of the National Judicial Policy.
- 2- Alternate dispute resolution.
- 3- Legal education.
- 4- Use of information technology in courts.
- 5- Expeditious disposal of cases: Obstacles and remedial measures.
- 6- Elimination of corruption in the Judiciary: Measures for effective supervision and accountability.
- 7- Simplification of exhaustive and cumbersome procedures.

- 8- Responsibilities of Judges, lawyers, police, prosecution and litigant public in dispensation of justice.

In the National Judicial Conference of 2009, it was recommended that computerization and networking should be introduced at all levels of judicial hierarchy, for monitoring the case flow and measuring the qualitative and quantitative output of the judicial officers. Installation of video conferencing facility in the courts and jails was also recommended. However, the successful adoption and implementation of all these measures require a qualified and well trained staff, which is not available in all the districts. There is a need for properly training the staff in terms of using the computer hardware and software. Similarly, the staff should be made conversant with the computer programming, internet browsing and video conferencing techniques. Mere installation of computers in the courtrooms and the court offices without proper training of the court personnel including the Presiding Officers will serve no purpose. In fact, the need is to look at the problem from different angles and utilize all the available means.

Legal education shapes the behaviour of lawyers as well as judges. Legal education for the students, in accord with contemporary legal standards of the developed countries can make them better advocates and competent judges. Many good law colleges and universities are imparting quality legal education to the students. However, there are some institutions that do not meet the criteria of the quality legal education. Steps, therefore, are required to be taken to formulate a general policy applicable to all the law colleges and universities to improve the standards of legal education. At the professional level, pre-service and in-service training courses and workshops enhance the professional legal skills of lawyers as well as judges.

Corrupt practices on the part of the judicial officers and the Court staff lower the confidence of litigant public in the judicial system. For the eradication of this evil, the Supreme Court and the Lahore High Court have already raised the salaries of its officials. It is expected that similar measures will be taken in the other Provinces as well. The National Judicial Policy emphasized strict adherence to the code of conduct by all the judicial officers and the courts staff and initiation of disciplinary action against the corrupt ones.

The aim of formulating a National Judicial Policy is to ensure adherence to the Constitutional principles of equality before law and equal protection of law. It also aims at strengthening the role of Judiciary as an organ independent of the Executive and Legislature.

In a democratic system, the separation of powers fosters the system of checks and balances. Every institution has to work within the scope of its powers and any move beyond that scope can be checked. In any constitutional democracy, a system of checks and balances is inherently implicit, and that is why powers are meant to be separated. The Legislature has to make laws within the parameters set out by the Constitution. In case of transgression by any organ into the domain of the other, the Judiciary is meant to remedy the situation. It has to prevent the arbitrary or illegal exercise of authority.

Article 2-A of the Constitution of Pakistan envisages that the independence of the judiciary shall be fully secured. It also speaks of a democratic form of Government guaranteeing all the freedoms, equality, tolerance and social justice in lines with the Islamic tenets. The superior courts under the Constitutional powers may strike down any law inconsistent with the Injunctions of Islam as laid down in the Holy Quran and the Sunnah and the fundamental rights as enshrined in the Constitution. The Constitution invests the superior courts with the power of judicial review and inherent powers that may be exercised to smooth away the inter-institutional/ governmental irritants.

In 2009, the NJPMC took certain measures in order to strengthen the role of judicial institution and to keep its independence secure and intact. It was decided that no chief justice or judge of the superior court should be appointed as an Acting Governor of a Province. That the serving judges should not be posted against the executive posts on deputation basis in Federal and Provincial Government Departments. That all the special courts under the administrative control of Executive must be placed under the control and supervision of the judiciary and their appointments and postings should be made on the recommendation of the Chief Justice of the concerned High Court. It was further decided that the Judiciary would avoid involvement in the

conduct of elections, so that Judges may concentrate on their professional duties and avoid inter-mixing with political elements and maintain a clean and impartial image of the judiciary.

All these measures were adopted and implemented, in pursuance of the National Judicial Policy 2009. All those judicial officers who were working on executive posts in the Federal or Provincial Government departments were repatriated to their parent departments. Due to the return of so many judicial officers to their parent departments, the number of functional courts increased in every district and the backlog of cases was reduced to a great extent. The implementation of these measures was made possible by the bench with full cooperation of the bar. The adoption of these measures restored the confidence of the litigant public in the courts and also helped restore the image of judiciary as an independent and impartial institution.

The role of Judiciary is not that of an opposition to the Legislature and the Executive but that of a custodian and a bastion of the Constitutional rights and liberties of the citizens. An independent judiciary sets and declares the constitutional limits on the powers of the State organs including the executive, legislature and the courts. It supervises a regime of the rule of law and not the rule of men. The judiciary acts as a guardian of the Constitution, therefore, it is described as a citadel of justice. In a democratic system, none of the three organs i.e. the Executive, Legislature and the Judiciary is empowered to assume/exercise unbridled powers. An independent judicial system is a pre-requisite of a democratic society. The independence of judiciary guarantees improved law and order standards, strengthened national security, better economic development and social well being of the people.

Provision of adequate infrastructure in terms of building, office equipment, strength of judges and staff, better pay packages, no doubt is the basic need of the system of administration of justice. But let me make it clear to the judges and the lawyers alike that mere provision of facilities will not do. What is needed is a commitment and a passion for work. We need absolute commitment and total dedication. Without it, nothing will work. So, let us pray to Allah

Almighty to help and guide us in our efforts to bring about an efficient judicial system in the country. At the same time, let us resolve that we will leave no stone unturned in achieving this objective. Let us reiterate our resolve to serve the nation. We come from different professions, hence the forms of service are different. We are accountable before Allah Almighty and before the nation. Let us inculcate in ourselves a sense of self-accountability. Let us work for the improvement and uplift of the judicial system.

In the recent times, I and other constitutional functionaries made our best efforts to appoint competent, honest and professional Judges. The newly appointed Judges in the High Courts of the Provinces and the Supreme Court of Pakistan must justify their selection through an exemplary performance, both quality-wise and quantity-wise. Our search for the best talent continues. We shall make every effort to bring on the bench the best of the best. It is indeed encouraging to note that all concerned are imbued with the national spirit to provide inexpensive and speedy justice to the masses and thereby restore confidence of the general public in the judiciary. I am proud to say that in this endeavour, I have had the support of able and committed brother Judges and co-operation of the Bar.

At this juncture, I would call upon the members of the Bar to ensure a competent, honest and a professional bar. In turn, I would assure the nation a competent, honest and professional judiciary. The Quaid-e-Azam, the father of the nation laid great stress on competence, honesty and professionalism. Let us re-determine and re-locate our path. Once we are able to do this, nothing can prevent us from reaching our destination – the destination of peace, progress, prosperity, glory and success.

The lawyers' community has already earned a name and distinction for their profession. They are role model not only for their counterparts but also the other communities. They have taken stand on principles and have exhibited exemplary conduct in the pursuit of the goal of securing of independence of the judiciary. Again, they stood with us in our efforts to rehabilitate the system and accelerate the pace of disposal of cases. Their zealous support made the Judicial Policy 2009

a success. They deserve my heartiest congratulations and appreciation on this score too. As a matter of fact, the legal profession is so high and so noble that it hardly leaves any room for anything unbecoming. I am sure that while the lawyers will always stand for the rule of law, they will be more responsive to the calls of their profession as well. Aware as they are of the miseries of the poor litigants, they are required to concentrate more and more upon the goal of inexpensive and expeditious justice. No doubt, protests and strikes are universally resorted to for raising of just demands, but their impact on the miseries and sufferings of the litigant public is always to be kept into view and a balance struck for the sake of the good name of their profession.

In the end, I would call upon all the stakeholders of the justice system to focus their attention on the cases of weaker segments of the society, i.e. women, widows, orphans, children, condemned prisoners, and other deserving persons. In the process, priority should be given to the old cases. Only through hard work and with a sincerity of purpose we can overcome the hurdles in the way of the achievement of our noble cause of quick dispensation of justice, and thereby minimize the sufferings of the litigant public.

With this, I conclude. But before that, I must thank the audience for a patient hearing. Thank you very much. I once again thank you for your participation in the conference. I wish you Godspeed in your deliberations during the course of the Conference and your endeavours thereafter in addressing the challenges facing the system of administration of justice in Pakistan.

Pakistan Pains'bad!