



Administration of Justice:

75 Years - Reflecting on the Past & Looking Towards the Future

9th International Judicial Conference

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Islamabad



Law and Justice Commission of Pakistan

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I am also grateful to the Hon'ble Judges of the Organizing Committee: Mr. Justice Amin-ud-Din Khan; Mr. Justice Muhammad Ali Mazhar; and Mrs. Justice Ayesha A. Malik for their visionary leadership which ensured the Conference was a resounding success.

I would also like to acknowledge the Hon'ble Chief Justice of Pakistan and Chairman, Law and Justice Commission of Pakistan, Mr. Justice Umar Ata Bandial, for his constant guidance and patronage. Without his support, the Judicial Conference would not have been possible.

My heartfelt appreciation also for the administration and staff of the Law and Justice Commission of Pakistan and the Supreme Court of Pakistan for their dedication and unwavering support throughout the planning and execution of the Judicial Conference. In particular, I am obliged to the Law Clerks at the Supreme Court of Pakistan, namely, Ms. Faaiza Haroon Qazi, Ms. Rida Tariq, Ms. Sameen Qureshi, Bibi Tayabba Kakar, Ms. Meher Jamy and Ms. Sana Taha Gondal for their contribution in documenting the Conference and preparing its report.

I sincerely thank everyone who contributed in any capacity for making both the Judicial Conference and this report an informative resource for the people of Pakistan.

Riffat Inam Butt
Secretary, Law and Justice Commission of Pakistan

FOREWORD

The LJCP, under the auspices of the National Judicial (Policy Making) Committee (NJPMC), organized the 9th International Judicial Conference to be held on 23rd and 24th of September 2022 at the Supreme Court of Pakistan. The theme of the Conference centred around 75 years of Independence of Pakistan and focused on *Administration of Justice: 75 Years-Reflecting on the past and Looking Towards the Future*. The Conference was attended by the Hon'ble Chief Justices and Judges of the Superior Courts, the learned Additional Attorney General for Pakistan, learned law officers, jurists, scholars, intellectuals and lawyers from Pakistan and abroad alike.

The Conference witnessed prominent scholars and experts from around the world who exchanged their views on critical issues and provided valuable insights on how to face the emerging challenges. The five themes selected for deliberations were:

- (1) Role of the Judiciary in maintaining the Rule of Law and upholding the supremacy of the Constitution.
- (2) Role of Police, Prosecution, Lawyers and Academia in Administration of Justice.
- (3) Current Global Challenges and the Response of the Judiciary.
- (4) Economic Challenges and Disputes Settlement Mechanisms: Legislative Response and the Roadmap for the Future.
- (5) Justice and Digital Advancement: What Lies Ahead?

Day 1

Inaugural Session

Welcome Note

Ms. Riffat Inam Butt, Secretary, Law and Justice Commission of Pakistan



Ms. Riffat Inam Butt commenced her speech by welcoming the Speakers and the distinguished guests to the Conference. She observed that the aim of the Conference is two-fold: to identify the contemporary challenges facing Pakistan and to devise purposive and result-oriented solutions. She noted that whilst many problems plague the country such as climate change and water scarcity; the resilience, strength, unity, and generosity of

the people can help overcome these issues. She ended her comments by expressing her gratitude to Mr. Justice Umar Ata Bandial, the Hon'ble Chief Justice of Pakistan/Chairman LJCP; the Hon'ble Members of the Organizing Committee; the Hon'ble Judges of the Supreme Court who would be chairing the Sessions and the Speakers for giving their time to the Conference.

Introductory Remarks

*Hon'ble Justice Amin-Ud-Din Khan, Judge Supreme Court of Pakistan
Chairman, Organizing Committee*



Mr. Justice Amin-ud-Din Khan in his remarks provided an overview of the five Sessions of the Conference. In particular he emphasised that the other stakeholders in the justice system, namely, the Police, Investigating Officers, Prosecution, Lawyers should effectively perform their duties to bring about fairness and efficiency in the dispensation of justice; that commercial ADR should be encouraged and developed to bolster

domestic and foreign investment in the country; and that the Judiciary should embrace digitalization to increase not only litigants access to justice but also to improve the efficacy of the courts. He concluded with the hope that the solutions suggested in the Conference will be adopted and implemented in letter and spirit to create a meaningful and positive change in society.













Documentary

عدلیہ کا سفر - 75 سال

The documentary prepared by the LJCP provided an outline of the development of the Judiciary from 1857 to its present day structure under the 1973 Constitution. The contributions of female and minority Judges to the jurisprudence of the country were recognised. Progressive decisions of the Supreme Court in relation to the rights of women, minorities, overseas Pakistanis and prisoners and in respect of the issues of education, increasing population and climate change were also highlighted. Lastly, the role of the LJCP and the NJPMC in increasing awareness about laws amongst the general populace and improving litigants access to inexpensive and expeditious justice was underscored.



<http://ljcp.gov.pk/njc/9njc/video.html>



Session 1

*Role of Judiciary in Maintaining rule of law and
upholding the supremacy of the Constitution*

Islamabad High Court

Hon'ble Justice Athar Minallah, Chief Justice, Islamabad High Court

Hon'ble Chief Justice Athar Minallah commenced his speech stating that the present session's topic required the Judiciary to evaluate its performance in upholding the Rule of Law and supremacy of the Constitution from the perspective of a bystander. He acknowledged that although the Superior Courts in the past have delivered judgments which have undermined the Constitution they have also given decisions expounding the foundational scheme of our Constitution, namely, representative democracy. He noted that the Judiciary must not deny its history but learn from it to avoid repeating the same institutional mistakes.

Justice Minallah further observed that although the independence of the Judiciary is for the benefit of the average citizen, many in the country regard the Judiciary as part of the power elite. Therefore, when the Judiciary exercises public authority to uphold its dignity it must remember that this power is meant to serve only the public interest. Additionally, he stated that in today's polarized society the Judiciary should conduct itself in a manner that does not bring into question its moral, sociological and legal legitimacy.

Justice Minallah further submitted that the Judiciary must not refuse to adjudicate legal disputes merely because of their political consequences since the same constitute an extraneous consideration that Judges have sworn an oath to not bear in mind. He also acknowledged that the Judiciary is an unrepresentative institution but by design to ensure that its interpretation of the Constitution and the law is not influenced by the transient emotions of the day. He expressed confidence that if the Judiciary abides by its oath remains faithful to the Constitution, the reasoning of its judgments will sustain their moral, sociological and legal legitimacy in the long-term. Justice Minallah also noted that unlike Parliament and Executive the Judiciary cannot afford to be polarized since its loyalty is only to the Constitution.



Justice Minallah recognised that the performance of the Judiciary is wanting with a sizeable pendency of cases presently in the courts and judicial decisions sometimes displaying inadequate legal reasoning. Therefore, in his considered view to improve the governance of the court system and to address the needs and concerns of the litigants, all the stakeholders in the justice sector such as the Executive and the Bar need to be engaged. Justice Minallah, however, dispelled the notion that the rising pendency is the fault of Judges who are unwilling to put in the effort as he noted that the work that an average Civil Judge in Pakistan completes in a day is undertaken by a Judge in a developed democracy over a fortnight.

Justice Minallah added that he welcomed constructive criticism of the Judiciary's performance. He accepted that Pakistan ranks low in the Global Rule of Law Index but stated that most of the factors that determine the ranking are not directly connected with the Judiciary. In this respect, he urged the Executive to administer good governance to address the grievances of the ordinary citizens and the Parliament to enact good laws that create the incentive to initiate litigation. His Lordship concluded by observing that fixing the justice system is not the duty of one single institution but instead a collective effort of all which must be undertaken promptly to rise up to the expectations of the citizens.

Balochistan High Court

Hon'ble Justice Naeem Akhtar Afghan, Chief Justice, Balochistan High Court

Hon'ble Chief Justice Naeem Akhtar Afghan commenced his speech by tracing the development of the justice and legal system in the Province of Balochistan from 1947 to present day.

Justice Afghan also listed certain important cases decided by the High Court of Balochistan, namely, Muhammad Ishaque Khosti vs. Government of Balochistan in which the Frontier Crimes Regulation, 1901 was struck down for being contrary to the injunctions of Islam, and Muhammad Anwar Durrani vs. Province of Balochistan in which the dissolution of the Provincial Assembly by the then Governor was declared unconstitutional and the Assembly was ordered to be restored.

Justice Afghan then submitted that through public interest litigation the High Court of Balochistan has ensured the execution of various development projects for the benefit of the people. He further noted that Balochistan is facing the critical issue of missing persons and the High Court of Balochistan is actively adjudicating on this matter but there is a reluctance of recovered persons to appear before the court for recording their statements. He urged State institutions to play their role in resolving this issue.

Justice Afghan next noted that the High Court of Balochistan is implementing the concept of 'justice at the door' by establishing courts in all



corners of Balochistan. He appreciated the High Court of Balochistan for its achievements in adopting information technology for the administration of justice. In particular, he noted that the High Court of Balochistan has provided E-Library facilities to the legal fraternity in all of the Sessions Divisions. Additionally, the High Court of Balochistan has set up a Judicial Academy where relevant training is imparted to Presiding Officers of the District Judiciary, Prosecutors, Investigating Officers and Lawyers.

Justice Afghan also stated that in both the District Judiciary and the High Court of Balochistan the monthly institution rate is lower than the monthly disposal rate. His Lordship then ended by lauding the High Court of Balochistan and the lawyers for their success in administering justice, maintaining the Rule of Law and upholding the supremacy of the Constitution.

Federal Shariat Court

Hon'ble Justice Dr. Syed Muhammad Anwer, Acting Chief Justice, Federal Shariat Court

Hon'ble Acting Chief Justice Dr. Syed Muhammad Anwer commenced his speech by submitting that there is no conflict between the concepts of constitutionalism and democracy and the two complement each other in any polity. He observed that the Judiciary is the custodian of the Constitution and hence it ensures democratic values in a society, maintains a check and balance on the use of power and guarantees access to justice.



His Lordship noted that the rights of minorities in every democracy are protected in the Constitution, therefore, the supremacy of the Constitution is necessary to protect the rights of the people. This direction is also given in the Holy Quran in Surah Sad, Verse 26: 'so judge between men with justice.'

Justice Anwer also highlighted the different terms used in the Holy Quran for the word 'justice' such as 'Qist', 'Adal' and 'Hakam' all of which signify the concepts of distributive justice, equitable or corrective justice and procedural justice. He further observed that the word 'Al-Haqq' used in Surah Sad highlights the importance of constitutionalism in a society because its literal meaning is conformity to justice.

His Lordship next gave a brief overview of the Federal Shariat Court and stated that the disposal rate of the Federal Shariat Court is 99% as a result of which it has zero pendency. He then listed some of the landmark judgments delivered by the Federal Shariat Court:

- i. In Sakina Bibi vs. Government of Pakistan the inhuman and un-Islamic customs of 'Swara' and 'Vani' under which girls from the families of perpetrating parties were forcibly given in marriage to the victim family for the settlement of disputes were declared to be against the injunctions of

Holy Quran and Sunnah.

- ii. In Ansar Burney vs. Federation of Pakistan it was held that under Islamic principles women can be appointed as Judges.
- iii. In M/s Farooq Brothers vs. United Bank Limited interest-based banking system was declared to be against the injunctions of Holy Quran and Sunnah.
- iv. In Pakistan Armed Forces Nursing Services Act, 1952 the absence of a right of appeal provided to accused triable by Military Courts was declared to be against the injunctions of Holy Quran and Sunnah. As a result, the relevant laws pertaining to the Armed Forces were amended and a right of appeal was available to military personnel in a forum separate from the military courts.

Justice Anwer concluded his speech by observing that the Federal Shariat Court, like all other constitutional courts, has duly upheld the Constitution with its true Islamic essence.

Supreme Court of Azad Jammu & Kashmir (AJK)

Hon'ble Justice Raja Akram Saeed Khan, Chief Justice, Supreme Court of AJK

Hon'ble Chief Justice Raja Akram Saeed Khan began his speech by giving a brief survey of the constitutional and judicial history of AJK.

His Lordship then noted that the role of the Judicial system is to interpret and protect the guarantees provided by the Constitution. Therefore, Rule of Law cannot be achieved or maintained without an independent, impartial and effective Judiciary. This entails that Judges be allowed to do their work without any pressure, influence, interference or restriction of any kind or from any source because any impediment to the exercise of their functions would obstruct the application of law and the maintenance of a peaceful and just society. He also emphasised the role of law enforcement agencies in upholding the Rule of Law and termed their capacity building to be of pivotal importance. He further stressed upon legal education and creation of awareness amongst general public through print and social media for strengthening the Rule of Law.

Justice Khan next lauded the Superior Judiciary of AJK for protecting the Constitution by setting aside *ultra vires* acts. He also appreciated the subordinate courts, the High Court and the



Supreme Court of AJK for their high disposal rates. In particular, he noted that the Supreme Court of AJK presently has zero pendency.

Justice Khan ended his speech by highlighting the plight of Muslim Kashmiris living in Indian Occupied Kashmir. He observed that despite the right of self-determination being granted to the Kashmiris by the United Nations Security Council Resolution No.47 of 1948, the same had not yet been implemented. He, therefore, urged the participants of the Conference to convey a message to the international jurists to play their role in resolving the issue of Kashmir.



Supreme Appellate Court of Gilgit-Baltistan (GB)

Hon'ble Justice Wazir Shakeel Ahmed, Acting Chief Judge, Supreme Appellate Court of GB

Hon'ble Acting Chief Judge Wazir Shakeel Ahmed forewent part of his speech due to paucity of time. However, in the interests of fair reporting, a summary of his complete speech is being shared below.

Justice Ahmed underlined that the main challenge facing Pakistan after gaining independence was securing the Rule of Law i.e., the empowerment and efficacy of the law. In this regard, he noted that the Judiciary in Pakistan has two primary duties: to check that no organ of the State transgresses its prescribed constitutional limits; and to ensure that the law of the land is applied equally to all citizens regardless of any difference in class.

Justice Ahmed observed that only if the Judiciary successfully discharges its two essential functions can the supremacy of the Constitution be upheld and the Rule of Law be maintained in society. He also commented that the main challenge confronting the Judiciary since getting full independence has been its own accountability. The solution, according to him, is the Rule of Law, namely, that the Judiciary is not above the law. He stated that in modern times four universal principles guide the rule of law; accountability; just law; open government; and accessible and impartial justice. However, Pakistan unfortunately has ranked poorly in the Global Rule of Law Index and therefore on its part the Judiciary should improve its performance in dispensing civil and criminal justice by making both accessible and impartial.

His Lordship expressed concern over the state of the Judiciary in GB. He revealed that as the region lacks a Constitution there is no guarantee of an independent Judiciary on which the supremacy of the Constitution and the Rule of Law are dependent. He highlighted that at present he is the only Judge in the Supreme Appellate Court, GB because of which disposal of cases is adversely affected. He noted that despite authoritative judgments of the Supreme Court of Pakistan on setting up an independent judicial appointments mechanism, these judgments have not



yet been implemented resulting in a Superior Judiciary controlled exclusively by the Executive. His Lordship stated that until an independent Judiciary is set up in GB, no significant contribution can be made by the Judiciary in strengthening the Rule of Law and upholding the supremacy of the Constitution.

Justice Ahmed concluded by giving his suggestions for improving the justice sector, including the establishment of committees at the Supreme Court and the High Court level to identify contradictory judgments; regular cost imposition on litigants who engage in frivolous litigation, and where they are not awarded reasons should be recorded for the same; providing suo motu powers to Magistrates to hold the powerful accountable under the law; utilisation of technology for the filing of cases and the recording of evidence; and establishment of Rules Committees in the High Courts and Supreme Courts to ensure timely updates to the Rules of Procedure.

With regard to GB in particular, Justice Ahmed suggested that vacant posts in the Superior Judiciary of GB should be filled timely with minimal involvement of the Executive; the terms and conditions of service of the Superior Judiciary of GB should be identical to those fixed for the Superior Judiciary of Pakistan; and lastly that the principle of seniority should be adhered to while appointing the Chief Judge and Judges of the Supreme Appellate Court, GB.

High Court of Sindh

Hon'ble Justice Ahmed Ali M. Shaikh, Chief Justice, High Court of Sindh

Hon'ble Chief Justice Ahmed Ali M. Shaikh commenced his speech by explaining the term 'Rule of Law' and its importance to a society. Relying on Sir Thomas Bingham's book 'The Rule of Law', he stated that the Rule of Law provides that the law must be accessible and as far as possible intelligible, clear and predictable; the law of the land should apply equally to all; and the law must afford adequate protection of Fundamental Rights.

He noted that in the absence of the Rule of Law citizens would feel not only insecure and fearful but also become vulnerable to human rights violations. He observed that of all the branches of the State the Judiciary is cast with the heaviest burden for maintaining the Rule of Law and has the fundamental responsibility of upholding Article 4 of the Constitution which guarantees due process to the people. Justice Shaikh further stated that after the 18th Amendment to the Constitution in 2010, the observance of due process in the resolution of civil and criminal disputes was exclusively inserted in the Constitution as a Fundamental Right.

Justice Shaikh next emphasized the core responsibility of the Judiciary, i.e., to ensure that violation of due process rights by State actors do not escape scrutiny. However, he cautioned that the Rule of Law and due process cannot be safeguarded unless all persons are treated equally before the law. Therefore, the Judiciary should ensure that there is no discrimination prevalent between the people. To perform the crucial functions of maintaining the Rule of Law; defending the rights of citizens; keeping a check on the Executive's powers; and upholding the supremacy of the Constitution, his Lordship stressed the importance of an independent Judiciary. For this purpose, he urged strict adherence to the principle of separation of powers



which necessitates that the Executive and the Legislature must not unduly interfere in or influence the Judiciary; the process of appointment and removal of Judges should be consistent with the principle of judicial independence; and Judges must not engage in political controversies and must restrain themselves from publicly airing their views on political matters.

Justice Shaikh also acknowledged the power of judicial review available to the Superior Judiciary which allows it to examine and decide the constitutional validity of laws and executive action. However, he stated that in deference to the principle of separation of powers judicial review should be exercised with a degree of judicial restraint. This obligates the Superior Courts to not assume the role of the Executive and the Legislature, give due weight to the presumption of constitutionality attached to executive and legislative acts, and declare laws unconstitutional on the narrowest grounds possible.

Justice Shaikh ended his speech by observing that although Pakistan has a written Constitution, its provisions should not be applied in a mechanical manner. Instead the Constitution must be viewed as an organic document that is alive to the unfolding future.

Peshawar High Court

Hon'ble Justice Qaiser Rashid Khan, Chief Justice, Peshawar High Court

Hon'ble Chief Justice Qaiser Rashid Khan began his speech by revealing that the cherished rights of being dealt with in accordance with the law; security of person; human dignity; equality before the law and equal protection of the law are all reflected in various provisions of the Constitution.

He cited judgments of the Peshawar High Court wherein the Fundamental Rights of the people were safeguarded. Some of these are:

- i. Khan Abdul Akbar Khan vs. Deputy Commissioner of Peshawar where certain provisions of the Frontier Crimes Regulation, 1901 (FCR) were struck down for being discriminatory in their application to only Baluchis and Pathans. Likewise, in Ali Azeem Afridi vs. Federation of Pakistan, the FATA Interim Governance Regulation, 2018, being substantially similar to the FCR which had by then been repealed, was also struck down.
- ii. In Foundation for Fundamental Rights vs. Federation of Pakistan the practice of carrying out US drone strikes against alleged militants who were not engaged in combat with the US authorities or Forces was declared to be a blatant violation of human rights and a breach of international law.
- iii. In Kausar Ali vs. Government of NWFP it was held that to curtail the liberty of a person under the West Pakistan Maintenance of Public Order Ordinance, 1960 as a preventive measure the authority passing the order of detention must justify the same on the ground of objective satisfaction.

Justice Khan then praised the establishment of the Human Rights Cell in the Peshawar High Court. He



noted that since its inception in 2009, the Cell has received numerous complaints regarding police excesses and enforced disappearances. Of these complaints, 679 were converted into writ petitions of which 427 were writs of *habeas corpus*. Additionally, the Cell has also addressed the concerns of marginalised groups such as women and children.

Justice Khan next touched upon the Tribal Areas that were merged into the Province of Khyber Pakhtunkhwa after the 25th Amendment to the Constitution in 2018. He stated that, despite the unavailability of any supporting infrastructure or staff, courts equipped with modern technology and staffed with permanent employees have been set up in all of the newly merged Districts. He further noted that the Peshawar High Court has also expended its efforts on capacity building with the Khyber Pakhtunkhwa Judicial Academy routinely training lawyers on legal procedures and the socio-political dynamics of the Province.

Justice Khan concluded his speech by assuring the participants at the Conference of Peshawar High Court's commitment to upholding the supremacy and spirit of the Constitution by ensuring adherence to its core values.

Lahore High Court

Hon'ble Justice Muhammad Ameer Bhatti, Chief Justice, Lahore High Court

Hon'ble Chief Justice Muhammad Ameer Bhatti commenced his speech with the acknowledgment that a heavy responsibility has been placed on the Judiciary in maintaining the Rule of Law and upholding the supremacy of the Constitution. He noted that Pakistan, like many other nations, faces the challenge of timely dispensation of justice.

To address this concern the Lahore High Court has taken many initiatives, including the establishment of ADR Centers in all the District Courts of Punjab. Further, a Directorate of Judicial and Case Management has been established with the mandate of devising a policy for impartial fixation and speedy disposal of cases. As a result of the Directorate's efforts the pendency of cases in the Lahore High Court has decreased by 14,522 since 19.07.2021. A case flow management system has also been set up providing litigants with the facility of e-filing of cases. Additionally, human bias in the allotment of cases to Judges has been eliminated as this exercise is now undertaken on the basis of an algorithm.

Justice Bhatti next emphasised the importance of legal research in developing the justice system. He appreciated the Research Center at the Lahore High Court for their efforts in publishing fortnightly case summaries of significant judgments delivered by the Supreme Court and the Lahore High Court. He expressed the hope that in the coming time judgments of other Provincial High Courts as well international case-law will also be covered by the Research Center. His Lordship further observed that to increase the use of technology within the Judiciary, Additional District & Sessions Judges are now offered e-training modules.

Justice Bhatti then stated that for the dispensation of expeditious justice the Lahore High Court has taken various steps:



- i. Commercial courts dedicated solely to deciding business and investment cases have been set up in various Districts;
- ii. An Overseas Pakistani Cell has been established in the Lahore High Court for supervising the cases of Overseas Pakistanis pending in various Districts; and
- iii. Gender-Based Violence Courts have been made operational in all Districts of Punjab. These courts have a victim centric approach and are sensitive to the needs of victims and their families.

His Lordship also lauded the efforts of the Lahore High Court for protecting the supremacy of the Constitution through its decisions. In particular, he noted the positive role played by the Court in resolving the political crisis prevailing in Punjab in respect of the Chief Minister's election and subsequent administration of oath. He ended his speech by reminding the institution of the Judiciary that it has the responsibility of upholding the Constitution so it must always abide by it. He acknowledged that the justice sector is facing challenges but assured that the Lahore High Court is committed to overcoming these issues to create a trustworthy system for citizens.

Additional Attorney General for Pakistan

Mr. Amir Rehman

Mr. Amir Rehman began his speech by stressing that the Rule of Law is the crucial difference between a prosperous and participative democracy and an authoritarian system. This distinction was made clear after the events of 2007 when the legal fraternity ushered in a new era where the relationship between the State, the citizen and the Constitution was declared sacred.

However, he noted that 15 years later the Rule of Law has withered and Pakistan finds itself in a precarious position with shrinking freedoms and tolerance. He observed that whilst the battle for constitutionalism has witnessed highs and lows, the state of access to justice has consistently been flatlining since the creation of Pakistan.

Mr. Amir Rehman cautioned against excessive judicial intervention in the realm of international economic matters contrary to the settled principle of trichotomy of powers. He instead urged that the emphasis on Rule of Law should be strongly geared towards the courts of first instance where the situation is not only dire but where the vast majority of litigation, mostly pertaining to land, also starts and ends. In this respect, he recommended the Executive to computerize land records, the Judiciary to impose costs and the legal fraternity to end the culture of adjournments that has considerably weakened our legal system. He also underscored the necessity of according due weight to the judgments of the High Courts to secure finality of litigation and to ensure that the Supreme Court tends only to pressing matters of constitutional importance.



Relying on the views of the founding fathers, Mr. Amir Rehman stated that the Constitution is a creature of Parliament and Parliament is not a creature of the Constitution. He therefore commended the recent judgment of the Supreme Court delivered in Pakistan People's Party Parliamentarians vs. Federation for resurrecting this principle from the past by prioritizing the sovereignty of Parliament over the supremacy of the Constitution.

Mr. Amir Rehman concluded his speech by observing that the progress made by the Supreme Court must now be sustained and parliamentarians should be allowed the complete right to present their views, to represent their constituents and to vote according to their conscience. If Pakistan is to indeed become a free parliamentary democracy then it is essential that the status of Parliament be restored to its rightful place, i.e., as the preeminent institution of the State.

Keynote Address

*Mr. Justice Umar Ata Bandial, Hon'ble Chief Justice of Pakistan
Chairman, Law and Justice Commission of Pakistan*



Hon'ble Chief Justice of Pakistan, Justice Umar Ata Bandial, commenced his speech by expressing the hope that the Conference will help the relevant stakeholders in the justice sector to develop a more efficient, effective and rights based justice system that dispenses inexpensive and expeditious justice to the people.

His Lordship noted that while the topic at hand suggests that the courts are the principal agents for preserving the Rule of Law and defending the Constitution in the country, for the Judiciary to be truly successful in performing this role it requires the active support of the constitutional organs of the State, the stakeholders in the justice sector and the people of Pakistan. He further observed that in countries governed by a written Constitution the content and substance of Rule of Law is derived from such a Constitution. Therefore, in Pakistan the Rule of Law is infused with the values of Democracy, Fundamental Rights and the Independence of the Judiciary which are the salient features of Pakistan's Constitution.

Justice Bandial then highlighted the role of the Supreme Court in establishing the Rule of Law in Pakistan. He appreciated the Supreme Court for interpreting Fundamental Rights, in particular the right to life enshrined in Article 9 of the Constitution, in a dynamic and progressive manner thereby binding the State to not only assure civil and political rights (such as the right to due process and freedom of speech etc.) to the people but also to secure social and economic rights (such as the right to education and employment etc.) for them. To demonstrate the commitment of the Court in maintaining a robust Rule of Law in the country, his Lordship quoted from certain landmark judgments. Some of these are:

- i. Salman Akram Raja vs. Government of Punjab in which the Supreme Court issued wide-ranging guidelines for the proper investigation and prosecution of rape matters whilst also declaring rape to be a non-compoundable offence.
- ii. Suo Motu Case No.1 of 2014 in which the Supreme Court took notice of the suffering of religious minorities and directed the Federal Government to constitute a Task Force for developing a strategy of religious tolerance in the country.
- iii. Sindh High Court Bar Association vs. Federation of Pakistan in which the Supreme Court buried the doctrine of necessity which in the past had been resorted to justify martial law.
- iv. D.G. Khan Cement Co. Ltd. vs. Government of Punjab in which the Supreme Court categorically recognised climate justice as an essential facet of Rule of Law.

v. Hadayat Ullah vs. Federation of Pakistan in which the Supreme Court reiterated adherence to the principles of merit, non-discrimination, transparency and fairness for appointments to posts in the Service of Pakistan.

vi. Suo Motu Action Regarding Maintaining of Foreign Currency Accounts in which the Supreme Court identified lacunas in the financial laws which allowed the unregulated outflow of foreign exchange from Pakistan.

His Lordship, however, reiterated that apart from the Supreme Court, the Executive and the Legislature must also ensure that their actions advance, rather than negate, the ideals and aspirations of the Constitution. He urged the Executive to be diligent in promptly implementing the decisions of the courts, particularly in matters of constitutional importance, for the benefit of the people. He also requested the Bar to perform its part by improving the poor, marginalised and illiterate peoples' accessibility to the courts and by curtailing frivolous litigation.

His Lordship then highlighted some of the

initiatives taken by the Supreme Court to deliver inexpensive and expeditious justice, namely encouraging litigants to make use of ADR mechanisms to amicably resolve their legal disputes; frequently hearing cases through video link; prioritising early release of cause lists; and giving priority to hearing regular matters.

He advised the High Courts to devise strategies for equipping the District Judiciary with the necessary tools to ensure swift justice to the people as the vast majority of the pendency lies with them and urged the Legislature to amend laws for reducing the available *foras* of appeal to shorten litigation timeframes. He also recognised the Supreme Court's duty to interpret laws purposively to accomplish the objective of administering substantive justice in both civil and criminal matters.

Justice Bandial ended his speech by reminding the participants of the Conference that the Judiciary in Pakistan will only succeed in dispensing justice based on the principles of Rule of Law if the Constitution is consistently afforded sanctity and respect by all. He expressed the hope that the day is not far when Pakistan will be a prosperous and progressive country providing inexpensive and expeditious justice to its people.



Day 2
Session II

Role of Police, Prosecution Lawyers and Academia in Administration of Justice

Remarks by the Chair

Hon'ble Justice Yahya Afridi, Judge Supreme Court of Pakistan

Mr. Justice Yahya Afridi commenced the second Session by welcoming the participants at the Conference. He stated that in his considered opinion the discussion on the administration of criminal justice would have greatly benefitted from the viewpoint of two other stakeholders, namely the Trial Judges and their allied staff, and the complainant and the accused. He therefore suggested that in a future conference representatives of these stakeholders should also be included.

Justice Afridi then introduced the distinguished speakers giving a brief overview of their profiles:

- i. Mr. Abdul Khaliq Shaikh, a Chevening Scholar who holds an LLM in Criminal Justice from the UK and is also a Barrister. He is presently Inspector General, Balochistan.
- ii. Barrister Khaliq-uz- Zaman Chaudhary who was a District & Sessions Judge in Punjab and thereafter joined the National Accountability Bureau as a Prosecutor. He is presently Prosecutor General, Punjab.
- iii. Barrister Salahuddin Ahmed, an eminent lawyer from Karachi who has always been at the forefront of defending the Constitution, Rule of Law and the independence of the Judiciary. He has previously served as the President of the Karachi Bar Association, the Sindh High Court Bar Association and as the Vice Chairman of the Sindh Bar Council.
- iv. Dr. Hadia Awan has completed her LLM from the University of London and has finished her PhD in 'Peace and Conflict Studies' from National Defence University. She is presently the Dean of Faculty of Law, University of Central Punjab, Lahore.
- v. Mr. Ejaz Ahmad Qureshi was previously the Chief Secretary of Khyber Pakhtunkhwa and Sindh and the Federal Secretary Railways. He is presently the Federal Ombudsman.



Role of Police in Administration of Justice & Promoting Rule of Law

Mr. Abdul Khalique Shaikh, IG Balochistan

Mr. Abdul Khalique Shaikh began his speech by stating that the police force in Pakistan are the most visible representatives of the civil authority of the Government and that at present more than 480,000 officers are serving the over 220 million citizens of the country. He stated that to safeguard the rights of citizens and ensure Rule of Law in the country the police perform the following vital functions:

- i. Register and investigate criminal cases (roughly around 800,000 cases/year);
- ii. Provide emergency and rescue services;
- iii. Investigate gender-based violence crimes;
- iv. Protect vulnerable segments of society, including victims and witnesses;
- v. Encourage conflict resolution; and
- vi. Introduction of community-oriented policing initiatives.

He noted that the police force's journey over the last 75 years has seen both successes and failures. Some of the positives that have emerged are the general improvement in recruitment and training standards and curriculum; the successful fight against terrorism in which more than 7500 police officers have sacrificed their lives; and the establishment of the Motorway Police. On the other hand, the two main failings of the police force have been the subpar quality of investigations which have resulted in low conviction rates and the highhanded behaviour of the police with ordinary citizens. However, he stated that to improve the standard of investigation initiatives such as increased use of forensic evidence and technology; conducting training courses in collaboration with Federal and



Provincial Judicial Academies; and establishment of Gender Based Violence units can be undertaken.

Mr. Abdul Khalique ended his speech with recommendations for refining the criminal justice system. These included:

- i. Summary trials for minor offences to ensure speedy justice;
- ii. Integrating the databases of the Police, Prosecution, Judiciary and Prisons;
- iii. Increasing use of video link for recording testimony;
- iv. Setting up of protective shields for victims and witnesses in courtrooms to foster a sense of security and reduce reluctance to appear in court;
- v. Establishing Criminal Justice Coordination Committees at the District and Provincial levels; and
- vi. Enacting a uniform Police Law for all the Provinces in accordance with the judgments of the Hon'ble Supreme Court of Pakistan.

Role of Prosecution in Administration of Justice & Promoting Rule of Law

Barrister Khaliq-uz-Zaman Chaudhary, Prosecutor General Punjab

Barrister Khaliq-uz-Zaman Chaudhary emphasised that for effective administration of criminal justice system there is a need for close liaison amongst all the stakeholders, i.e., police, prosecution and lawyers. To this end he suggested that joint training sessions and workshops be held regularly along with monthly reviews of the systems in place to ensure close coordination between the prosecution and the police.

He stated that the primary duties of the prosecution are to scrutinise police investigations and ensure these comply with the legal requirements; ensure the fair trial of an accused; and issue lines of inquiry to investigative agencies for collection of evidence.

He further added that a duty is owed to all the concerned persons involved in a criminal case, namely, the accused, the complainant, the victim and the witnesses and that, in the prosecution of a case, the Fundamental Rights of both the accused and the victim have to be considered.



Barrister Khaliq-uz-Zaman finally submitted that in Punjab the Punjab Criminal Prosecution Agency was created in 2006 to 'establish an independent, effective and efficient service for prosecution of criminal cases, to ensure prosecutorial independence, for better coordination in the criminal justice system of the Province and matters incidental.'



Role & Contributions of Lawyers in the Administration of Justice & Future Prospects

Barrister Salahuddin Ahmed

Barrister Salahuddin Ahmed at the outset noted that justice is administered not in a vacuum, but within an ecosystem comprised of different components. One such component is the Bar which performs five essential functions, namely advancing the interests of its constituents; training, regulating and improving the delivery of professional services by its constituents; acting as a medium of communication between Judges and the public; upholding and defending the Constitution, the Rule of Law and democratic values and, on that touchstone, vigorously appraising and critiquing the performance of those who make, interpret and administer the law i.e., Parliament, Judiciary and Government; and working with all the other actors within the justice ecosystem to improve the delivery of justice to the litigants.

In terms of the Bar's first function, Barrister Ahmed stated that the Bar, like all other collective bodies, seeks to use its power of collectivity to promote and protect the interests of its constituents. He added that although this power is sometimes abused and exploited for personal advantage, it is necessary for the Bar to perform its other four functions. However, he cautioned that the Bar's focus on this first function should not be at the expense of its other more important functions.

Barrister Ahmed then noted that in its duty of training and regulating lawyers, the Bar has underperformed. He stated that the quality of LLB programmes in the country is variable and often law graduates are woefully unequipped to deal with the rigours of practice. To overcome these lapses in legal training he suggested a vocational training programme on similar lines as the Bar Professional Training Course in the UK and a Continuing Professional Development Programme for practising lawyers at the five, ten and fifteen years mark after enrolment.



Barrister Ahmed then noted that the Bar has a critical role in explaining the Constitution, the law and the judgments of the Superior Courts to the public at large. Likewise, the Bar also has the onerous duty of providing feedback to Superior Court Judges who are not subject to any systematic performance evaluation.

Barrister Ahmed praised the Bar for its consistent pro-democratic stance, in particular for struggling against military dictatorships, for restoring democracy and for securing the independence of the Judiciary. He noted that even today the Bar continues to speak up against suppression of civil liberties whether that be the issue of missing persons or the fetters placed on the media. He stated that to uphold constitutionalism in the country the Bar must not shirk away from the burden of critically evaluating the performance of the Superior Judiciary and for their part Judges should become more receptive to criticisms.

Finally, Barrister Ahmed stated that the performance of the Bar has been exceedingly weak when it comes to working with other stakeholders in the justice ecosystem to improve the delivery of justice to ordinary litigants. He noted that the performance of the Bar and the Judiciary will all be in vain if the people have no confidence in the judicial system.

Legal Education: Need for Reforms in the 21st Century to Improve the Quality of Justice Delivery

Dr. Hadia Awan, Dean (Faculty of Law), University of Central Punjab, Lahore

Dr. Hadia Awan commenced her speech by acknowledging the recent efforts of the Hon'ble Supreme Court of Pakistan, the Pakistan Bar Council, the Higher Education Commission and law academia for improving the state of legal education in the country.

She stated that several steps have been taken in the last seven years towards this noble goal, including the conversion of three year law programmes into five year programmes; the introduction of a Law Admission Test for assessing the merit of law candidates; reduction of seats in law schools to a total of 100 students per batch to facilitate learning; and fixation of qualifications for teachers, principals and deans of law schools.

However, Dr. Hadia noted that two aspects in the legal education sector still require attention. The first is aligning the five-year Annual LLB Programme with the five-year Semester LLB Programme because in the former, the areas of research skills, internship, dissertation, moot cases, legislative drafting, and contemporary law courses of prime importance are missing. Further, she stated that there is a need to focus on outcome-based education to ensure that the courses taught meet the learning objectives set out for each specific subject. She also emphasised on incorporating clinical learning in legal teaching to better equip students with practical skills in the form of litigation and alternate dispute resolution.



Dr. Hadia then highlighted the second issue, namely, the need to phase in IT in legal education. She listed the nine areas in which IT is performing a critical role in the provision of legal services. Some of these areas are legal research; online dispute resolution; data security technology. She did, however, note that no standardized content for teaching IT yet exists but that keeping in view international trends law schools in Pakistan should be prepared to ultimately introduce the subject in legal studies.

Dr. Hadia ended her speech by submitting that only students who receive a modern legal

Institution of Ombudsman and Administrative Justice

Mr. Ejaz Ahmad Qureshi, Federal Ombudsman

Mr. Ejaz Ahmad Qureshi began his speech by explaining that the office of Federal Ombudsman was established to diagnose, investigate, redress and rectify any injustice done to a person through mal-administration by any Federal Agency.

Mr. Qureshi noted that since its inception more than 1.8 million households in Pakistan have benefitted from the services of the office of Federal Ombudsman and that in the years 2021 and 2022 the office of Federal Ombudsman has disposed of 106,808 and 110,398 complaints respectively. He submitted that it was reassuring that, of the matters decided, less than 1% are challenged either in review or in a representation before the President.

Mr. Qureshi stated that the office of Federal Ombudsman has also adapted its manner and mode of dispensing speedy justice by changing its reactive approach to a proactive and interactive one. Further, there has been a shift from resolving individual complaints to addressing the root causes of persistent complaints. He also informed that the following new programmes have been started by the office of Federal Ombudsman:

- i. Outreach Complaint Resolution under which investigation officers resolve public complaints whilst conducting field visits of various areas. A total of 43,542 complaints have been decided under this initiative;
- ii. Khuli katcheris;



- iii. Inspections of offices mostly engaged in public dealing (such as NADRA, BISP, PIMS etc.). Copies of the inspection reports are sent to the concerned agencies for implementation to address the systemic issues and to improve service delivery; and
- iv. A National Committee for Children which coordinates with Provincial authorities and other stakeholders for monitoring the status of the rights of children; ascertaining the root causes of corrupt practices and injustices against children; and recommending appropriate steps for the eradication of such corrupt practices and injustices.

Lastly, Mr. Qureshi submitted that the office of Federal Ombudsman has embarked upon an awareness campaign in the print and electronic media to apprise the general public about the availability of this easily accessible and inexpensive forum for speedy redressal of their grievances against maladministration of

Session III

Current Global Challenges and Response of the Judiciary

Remarks by the Chair

Hon'ble Justice Qazi Faez Isa, Senior Puisne Judge Supreme Court of Pakistan

Hon'ble Justice Qazi Faez Isa welcomed the guests at the Conference and stated that he was tasked with chairing a complicated session dealing with issues like the phenomenal population growth in Pakistan, water scarcity and excess, climate change, the Financial Action Task Force and gender. He observed that neglecting the teachings of the Holy Quran and the examples of the Holy Prophet (PBUH) have caused these immense problems in our country, therefore, to mitigate and to resolve these issues we need to discover the lost path of Sharia.

Justice Isa then addressed the topics of water and climate change. He noted that of the approximately 6000 Verses in the Holy Quran, 750 pertain to the environment, whilst, of the 114 Chapters, 28 chapters are on the environment. He stated that first and foremost we must attend to the needs of the desperate poor, the dying and the starving. His Lordship urged the people take simple measures to reduce the impact of climate change, by walking, cycling and using public transportation rather than private vehicles; planting trees; and conserving water.

Justice Isa then touched upon population growth, stating that between 1972 and 2022 the population of Pakistan increased by 3.8 times, whereas the population of Bangladesh increased by 2.3 times. According to his Lordship one reason for the difference was that Pakistan spurned family planning whereas Bangladesh embraced it. He noted that family planning has become a taboo in Pakistan because of a lack of knowledge regarding Islam and for political reasons even though the theological view of classical *ulema* (Islamic scholars) was that 'what is not prohibited is permissible'.



Justice Isa then noted that both the right to life enshrined in Article 9 of the Constitution and the right to compulsory education for boys and girls guaranteed by Article 25A of the Constitution came under threat in Pakistan with 1000 attacks taking place on educational institutions between 1970 and 2019. On the other hand, he noted that the first command of the Holy Quran to believers is '*Iqra*', i.e., the command to read.

Justice Isa also strongly condemned the horrific crime of honour killing. He stated that Islam teaches believers to respect women and is filled with examples of strong women such as Hazrat Khadija (RA) and Hazrat Aisha (RA). His Lordship concluded by quoting from Maulana Jalal ud Din Rumi: 'ignorant men dominate women' and by acknowledging the efforts of the women who were indispensable in creating Pakistan.

Water Scarcity and its Impacts on Future Generations: Legislative Framework and Institutional Obligations

Dr. Erum Sattar, Program Director, Sustainable Water Management Program, Tufts University, Massachusetts

Dr. Erum Sattar began her speech by observing that there is increasing water vulnerability in Pakistan with quality, quantity and timing issues emerging. She noted that whilst floods and their effects are viscerally visible, long-term heatwaves and droughts are also extremely disruptive as these can have human health impacts, lead to relocation and lower crop yields. She further stated that climate vulnerability affects vulnerable segments the worst.

Dr. Sattar stated that the role of the Judiciary in tackling with the water crisis is three-fold, and requires the Judiciary to: (i) build its capacity and interpret existing laws on the subject matter to devise solutions for present-day water problems; (ii) develop norms through consensus, especially by including the voices of the persons affected by water vulnerability (the unheard) on account of their vast knowledge and information; and (iii) take guidance from principles of international water law for national use. Two such principles are: equitable and reasonable use of water and the principle of no significant harm.

Dr. Sattar also noted that the precautionary principle is a good model for Pakistan to adopt,



that is, to focus on developing but with the goal of minimizing environmental harm. She concluded her presentation by stating that further delay by Pakistan in putting in place mitigation and adaption measures will result in increased costs to fix these problems later in time as the underlying resources will have deteriorated, the risks will have risen and the borrowing cost of developing will have increased due to rising interest rates. She said that while the Judiciary and the legal system lack the sophistication to deal with these challenges, they can point the nation in the right direction by getting expert knowledge and information.



Population Growth in Pakistan: Legislative Framework, Demographic Analysis, Implication & the Way Forward

Dr. Bakhtiyor Kadyrov, Country Representative, United Nations Population Fund (UNFPA)

Dr. Bakhtiyor Kadyrov commenced his speech stating that Pakistan is the fifth most populous country in the world and is projected to reach a population of 338 million by 2050 based on the current growth rate. He submitted that due to the unmanaged population, certain worrying demographic trends have emerged in the country, with Pakistan ranking at 145 out of 146 countries on the Global Gender Gap Index.

He added that 32% of married women between the ages of 15 and 49 face gender-based violence. He highlighted the prevalence of child marriage, stating that 18% of girls get married before the age of 18, and 3.6% before the age of 15. Pakistan also faces low female labour force participation, with a mere 20.3% representation of females in the labour force. These issues are further exacerbated due to low spending on education, with only 1.5 - 2.5% of the current GDP, compared to a global average of 4%, being spent on education.

However, he stated that in 2018 the Supreme Court *suo motu* took up the matter of 'alarming high population growth rate' in Pakistan, which led to the identification and prioritization of three thematic areas for managing population growth, namely universal access to reproductive health and family planning; contraceptive commodities security; and advocacy and communication.

Dr. Kadyrov also highlighted notable initiatives taken by the Government in the field of population management, including the setting-up of Federal and Provincial Task Forces for the above purpose under the chairmanship of the President and respective Chief Ministers; the creation of a National Population Action Plan with clear goals and objectives for 2025 and 2030 such as reducing the present fertility rate from 3.6 births per woman to 2.8 by 2025 and 2.2 by 2030; and settling the National perspective on the



interlinked principles of rights, responsibilities and resources.

Dr. Kadyrov concluded by suggesting recommendations for managing the population, dividing these into two categories as depicted:

I. High-level engagement, financing and partnerships

- i. Ensuring high level oversight of the National Population Action Plan;
- ii. Dedicating financial resources to be made available for the National Population Action Plan;
- iii. Introducing tax exemptions on imports and on local production of contraceptives; and
- iv. Encouraging public-private sector partnerships and partnerships with international financial institutions to scale up reproductive health/family planning programmes.

II. Building human capital to create and realize a demographic dividend

Increasing investments in federal and provincial programmes focusing on:

- a. Skills and opportunities for young people, including reliable health information, quality education and decent employment;
- b. Strengthening maternal, newborn and child health services;
- c. Universal access to rights-based family planning services including through either functional or structural integration of health and population welfare services;
- d. Elimination of gender-based violence and harmful practices such as child marriage; and
- e. Ensuring the availability of disaggregated data to inform national social and health policies/programmes and monitor progress of social and health indicators.



Emerging Issues & Innovations in Climate Justice & Governance to Implement the United Nations Convention on Climate Change

Mr. Ali Tauqeer Sheikh, Climate Change Specialist

Mr. Ali Tauqeer commenced his speech by setting out the genesis of climate change, tracing it back to 1972 with the adoption of the Stockholm Declaration. He stated that Pakistan is a signatory to at least 14 Multilateral Environmental Agreements, all of which are based on the Stockholm Declaration. He further observed that in the 50 years that have followed since the inception of climate change, the focus has been on Judicial challenges to planning, licensing and permit decisions; Constitutional and Human Rights, with most of Pakistan's jurisprudence being developed in this domain; and Company Laws and Private Laws.

Mr. Tauqeer then noted that the case of Shehla Zia vs. WAPDA triggered environmental public interest litigation in Pakistan. However, he said that, despite the Superior Courts delivering good judgments in the area of environment, the Policy & Regulatory Compliance Green Benches and Tribunals need to be revived to effectively deal with compliance issues. He also stated that Article 9 of the Constitution (Right to Life) has been the most important intervention of Superior Courts in the realm of environmental law and has been interpreted broadly to encompass inter-generational rights, rights of other species and climate democracy. He listed some of the international principles that have found mention in Pakistani jurisprudence, namely, the precautionary principle, *indubio pro natura* (when



in doubt, favour nature), and environmental justice.

Mr. Tauqeer concluded his speech by setting out his recommendations for how Pakistan can chart its course in addressing climate change. He stated that there is a need for consistency in the judgments of the courts since some of them have been random and contrary. Further, Courts need to effectively ensure compliance of their judgments and need to fix languishing Tribunals such as Green Benches. Moreover, he added that there was a need to ensure that those who are presently affected by climate change are not on the receiving end again when transition to climate friendly initiatives take place – the burden cannot be placed solely on them. Lastly, he stated that there is a need to ensure that climate justice is considered equally as a domestic agenda and as an international agenda.

Financial Action Task Force Concerns about Pakistan: Adherence to Global Best Practices, Judicial Response and Strengthening the Legislative Framework

Mr. Mohammad Iqbal, Director General, Designated Non-Financial Business and Profession Financial Action Task Force

Mr. Mohammad Iqbal began his speech by stating that Pakistan is a unique country as it has undergone two Financial Action Task force (FATF) assessments concurrently: one in 2018 in which Pakistan was placed in the Grey List and given 27 Actions to complete against several timelines; and the second in 2019 in which Pakistan performed very poorly leading to a large number of recommended actions.

Mr. Iqbal then gave an overview of the FATF, noting that it is a 39 member inter-governmental body that develops and promotes policies to prevent and protect the International Financial System from money-laundering, terrorist financing and proliferation financing. He stated that the FATF recommendations known as Global Best Practices comprise of 40 recommendations (FATF benchmarks of technical compliance for legal, policy and institutional frameworks) and 11 immediate outcomes (FATF benchmarks for enforcement measures with tangible enforcement outcomes on the recommendations).

Mr. Iqbal also addressed the challenges faced by Pakistan in the past few years. He stated that the 27 step Action Plan given to Pakistan in 2018 was focused on combatting terrorist financing. In June 2021, a 7 step Action Plan was devised for Pakistan which dealt solely with money-laundering. As a result, Pakistan had to complete a total of 34 actions against several timelines. Mr. Iqbal highlighted the steps taken by Pakistan for implementing the two Action Plans, stating that as



a result of these efforts Pakistan has now become compliant/largely compliant with 38 of the 40 FATF Global Best Practices:

- i. The first stand-alone terrorist financing risk assessment for identifying and assessing how terrorist organizations generate or move money for acts of terrorism in Pakistan was undertaken. This was followed by a more comprehensive national risk assessment on money-laundering and terrorist financing;
- ii. An intelligence agency coordination mechanism for law enforcement agencies, both Federal and Provincial, was established;
- iii. A stand-alone policy for financial investigation of terrorism cases was enacted. This has resulted in a significant number of convictions;
- iv. A significant number of money-

laundering investigations have been carried out and proceeds of crimes continue to be confiscated; and

- v. 14 different Federal and Provincial laws have been amended, including the Anti-Money Laundering Act, 2010 and the Anti-Terrorism Act, 1997.

Moving on to the response of the Judiciary in dealing with terrorist financing and money-laundering cases, Mr. Iqbal stated that the Judiciary very expeditiously undertook its own capacity building and enhanced its own understanding of the 'combatting financing of terrorism' regime prevalent in the country. Further, the Judiciary adopted the path of proportionality and dissuasiveness in awarding sentences to the accused.

Mr. Iqbal concluded by stating that the FATF's process and evaluation for Pakistan was unprecedented, but so was Pakistan's and the Judiciary's response, particularly with respect to Anti-Terrorism Courts. Consequently, Pakistan has completed all 34 steps outlined in the two Action Plans and is expecting a formal exit from the Grey List in the near future. To sustain this success he stated that Pakistan should continue preventing, investigating and prosecuting money-laundering and terrorist financing for which purpose it needs to carry on with the capacity building of its investigators, prosecutors and Judiciary.



Inculcating a Gender Responsive Approach in the Judicial System

Ms. Fauzia Viqar, CEO of Rah Center for Management & Development

Ms. Viqar commenced her speech stating that, although the topic of gender is important, it is often difficult to address as it generally elicits two reactions: either disbelief that one-half of the population is in dire conditions, or anger that focus on gender issues will detract from more important socio-economic challenges facing the nation. However, she asserted that presently half of the population of Pakistan needs equality of opportunity, equality of access and equality of outcome. She observed that despite women being constitutionally entitled to access rights, resources and entitlements, there is widespread discrimination against them and poorer outcomes for them in terms of their education, employment, health, representation, ownership and control over resources, including the right to inheritance. Relying on data points to support her view, she stated that the current literacy rate in Pakistan is 70% for males, and a mere 49% for females. Similarly the percentage of out of school children is 27% for males and 37% for females; and labour force participation is 81.1% for males and 22.8% for females. The economic inequality between genders is also exemplified by the quotient of house ownership with 72% of males owning houses, as compared to a meagre 3% of females.

Ms. Viqar stated that these statistics demonstrate that the work being done for women's empowerment is not necessarily resulting into equality of outcome. Therefore, the challenges encountered by women in the Judiciary, Legislature and Executive must be confronted.

Ms. Viqar also observed that whilst both men and women face barriers in accessing justice, women experience different and additional barriers due to a lack of funds and resources, stigmas related to women asserting their rights, restrictions on mobility, time constraints, limited education, and limited access to information and social networks. She noted that while the overall representation of women in the Civil Judiciary had improved considerably, with around 25% of civil judges being women, representation in the



Superior Courts was severely lacking and needed to be addressed in order to bring about a gender sensitive response and approach in the Judiciary. She highlighted certain judgments of the Superior Judiciary in which harmful social norms were perpetuated by resorting to victim blaming to minimise violence against them. However, she also appreciated the Superior Judiciary for their recent progressive judgments on the dignity and rights of women. Ms. Viqar stated that while effective laws are in place, dedicated women's machinery also needs to be made functional. She acknowledged the measures taken by the State to improve the physical environments of the police, medico-legal services and courts for women, and stated that many of the problems faced in the reporting of gender-based violence crimes will be resolved if the measures set out in the Anti-Rape (Investigation and Trial Act), 2021 are adopted. Ms. Viqar concluded by sharing her recommendations for improving the position of women in society, in relation to environment, by providing dedicated facilities for women, along with functional gender-based violence courts. With regard to the process of the Courts, Ms. Viqar suggested measures to ensure faster trials and improved conviction rates, such as through the use of digital technology, along with dedicated legal aid facilities. She also highlighted the need for increased representation of women on the Bench and in Administrative positions, and the need to change mind-sets by linking gender equality outcomes with appraisal of judgments.

Session IV

Economic Challenges and Disputes Settlement Mechanisms: Legislative Response and the Roadmap for the Future

Remarks by the Chair

Hon'ble Justice Ijaz ul Ahsan, Judge Supreme Court of Pakistan

Hon'ble Justice Ijaz ul Ahsan began his discourse by quoting Justice Sandra Day O'Connor of the US Supreme Court who emphasized that courts should not initiate disputes but instead offer resolutions after exploring alternative methods. Justice Ahsan highlighted that disputes are inherent in society, providing platforms for discussion that prevent stagnation and drive societal progress. However, an excess of unresolved disputes can severely affect a nation's functioning, leading to social, political, and economic challenges. Thus, establishing effective Alternative Dispute Resolution (ADR) mechanisms becomes crucial, particularly in developing countries with limited fiscal resources.

The evolution of ADR methods has introduced dynamic, cost-efficient, and expedited resolutions for modern disputes, effectively complementing traditional court systems. Especially in times of economic uncertainty, ADR options like arbitration and mediation are favoured for efficiently resolving commercial disputes, contributing to economic stability. Developed nations possess resilient legal systems to address challenges, while developing nations heavily rely on accessible, informal dispute resolution mechanisms.

Pakistan holds a historical connection to ADR, with cultural practices like *jirgas* and *panchayats* existing since time immemorial, albeit without the element of parity. Establishing an effective arbitration framework remains pivotal. While Pakistan has adequate legislation, implementing foreign arbitral awards remains challenging due to procedural regulations that often hinder flexibility. Recent Supreme Court rulings, like *Orient v. Sui Northern Gas Pipelines Ltd.* (2021 SCMR 1728), signify Pakistan's transition into a modern era of arbitration jurisprudence.

Creating an arbitration-friendly environment in Pakistan is vital for attracting foreign investments,



including the China-Pakistan Economic Corridor. With a rising caseload in courts and substantial pending cases, ADR can alleviate the backlog. Mediation and conciliation provide expedited remedies while preserving privacy and relationships. Legislative efforts have also been made on a Provincial level, demonstrating commitment to promoting ADR. Moreover, the unique provision allowing compoundable criminal offences to be referred to ADR further differentiates the Pakistani legal landscape.

Justice Ahsan concluded that the path ahead involves empowering courts to assess ADR's appropriateness and encouraging disputing parties to opt for ADR mechanisms. Establishing ADR centers, awareness campaigns, and comprehensive training for mediators, arbitrators, and negotiators are crucial steps. Necessary legal amendments aligned with cost-effective justice and modernization of colonial-era laws in line with international ADR standards are essential. Additionally, the legal fraternity's role is critical, not only in discouraging frivolous claims but also in proactively suggesting ADR as an avenue for

Global developments & Legal Framework in ADR Mechanisms

*Hon'ble Lady Justice Abha Patel, S.C. FCI Arb & Judge-In-Charge (Commercial Division),
Kitwe High Court, Republic of Zambia*

Hon'ble Justice Abha Patel began her address by conveying warm greetings from the Chief Justice of the Republic of Zambia to the Chief Justice of Pakistan and the esteemed audience. Justice Patel stated from the outset that, although her focus would be on Zambia's judicial challenges and development, the perennial problems of backlog of civil cases and congested dockets affected Courts worldwide, including in Zambia. She discussed the evolution of Alternative Dispute Resolution (ADR) in Zambia, highlighting its role in enhancing access to justice and reducing backlog. She further highlighted that there is an overriding public policy element to this issue.

Delving into the history of ADR in Zambia, Justice Patel stated that in 1997, the Zambian Judiciary, with support from the United States Agency for International Development (USAID), initiated the ADR project to promote good governance, access to justice, and efficient resolution of commercial matters. This led to law reforms in 1997, amending court rules to introduce court-annexed mediation.

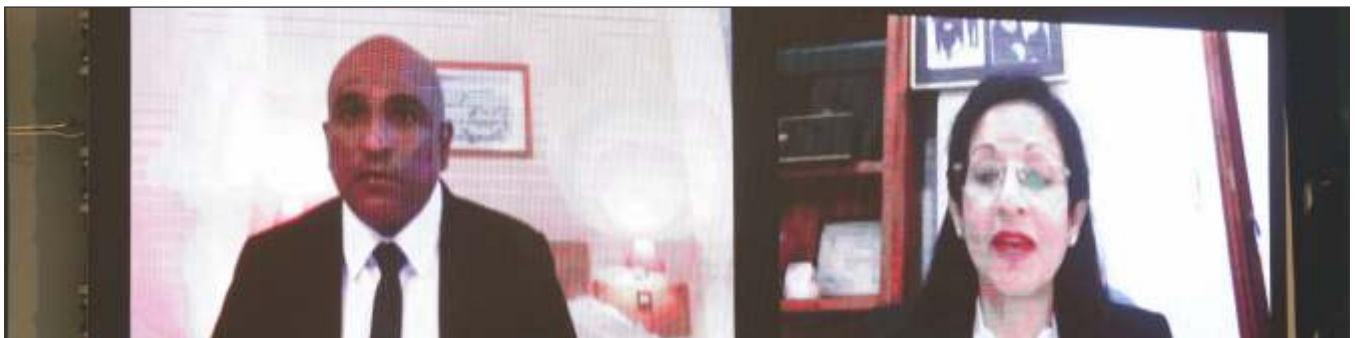
The essence of classical mediation—voluntary participation, neutral mediators, informal proceedings, privacy, reduced costs, and timely resolution—remains integral. Notably, mediation's growth led to the 2000 Arbitration Act, superseding the 1933 Act. Amendments allowing cost imposition on non-attending parties

were introduced, and cases were mandatorily referred to mediation before trial, except for non-amenable cases. A 2016 Supreme Court decision solidified the finality of mediated settlements, discouraging post-mediation litigation.

From 1999 to 2002, intensive mediator training occurred, forming a diverse mediator pool. Justice Patel, a pioneer trainee, became a trainer herself. This coincided with outreach efforts, workshops for legal practitioners, public awareness campaigns, and gazetted mediation weeks. Despite progress, the Judiciary initiated further targeted training post-2020, including virtual mediation which was introduced during the COVID-19 pandemic.

Justice Patel added that Zambia has seen the usual resistance from the legal fraternity who see ADR as an acronym for **A Drastic loss in Revenue**. This mirrors global challenges of caseloads. She emphasized that universal justice requires ongoing change and dialogue to promote ADR. Zambia and Pakistan share this imperative.

In conclusion, Justice Patel recognized the need for collective effort beyond the Judiciary's scope. While judges and staff can be trained to support ADR, broader stakeholder participation, including from organizations like the Chartered Institute of Arbitrators (CI Arb) is crucial.



Compliance of Environmental, Social & Governance (ESG) Standards to Boost Investor Confidence: Evolving Legal & Regulatory Landscape in the Region

Mr. Ravi Madasamy, Advocate on ESG Compliance and Regulations, Singapore

Mr. Ravi Madasamy commenced his discussion by emphasizing his extensive involvement in advocating for Environmental, Social & Governance (ESG) standards, particularly in Asia, going beyond mere compliance. Fresh from a recent UN conference on Responsible Business and Human Rights, he shared key takeaways from the event. He highlighted the urgency of addressing climate-related calamities, using the example of the 2022 Pakistan floods, and urged all individuals to adopt roles as climate-conscious citizens and advocates.

Diving into the global significance of 'ESG,' Mr. Madasamy elucidated its impact on foreign direct investment (FDI) and investor confidence. Beyond financial benefits, he detailed the multifaceted advantages of incorporating ESG principles into business operations. However, he stressed that mitigation against ESG-related litigation, maintaining reputational integrity, and enhancing foreign investment attractiveness are of paramount importance.

Reflecting on an earlier presentation regarding judicial activism, he praised Pakistan's commitment to championing human rights through the Judiciary. He drew parallels between ESG standards and human rights, suggesting that collaboration between human rights lawyers and corporate lawyers is crucial for effective ESG implementation, given the former's community-grounded perspective.

Transitioning to Pakistan's ESG journey, Mr. Madasamy spotlighted the country's proactive National Action Plan, positioning it prominently alongside Japan and Thailand in terms of dedication. He elaborated on Pakistan's legal and environmental advancements, citing examples of



judicial decisions in favour of environmental protection. He cited the 2019 case of DG Khan Cement Company v. The Govt. of Punjab where the Supreme Court of Pakistan upheld a Notification by the Provincial Government of Punjab barring the construction of new cement plants or the expansion of existing cement plants in environmentally fragile zones called 'Negative Areas.' The petitioner, a cement company owner, challenged the Notification on the grounds that it violated their constitutional right to freedom of trade, business, and profession under Article 18 of the Constitution, and that the Government acted in undue haste by issuing the regulation without full consideration of scientific impacts. The Court dismissed the challenge and emphasized the need to for the Government to uphold the precautionary principle in protecting the rights to life, sustainability, and dignity of communities surrounding the project areas.

In the realm of governance within ESG, Mr. Madasamy referenced Pakistan's 2017 Green Banking Guidelines by the State Bank of Pakistan. He highlighted the significance of these guidelines, which acknowledge the financial sector's role in promoting economic transformation, reducing carbon footprint, and

enhancing climate resilience. He stressed the importance of infusing environmental awareness into organizational culture through green banking initiatives and the like.

Moving on, Mr. Madasamy delved into the recent developments related to sustainability and business and human rights in Pakistan. He mentioned the inaugural National Action Plan on business and human rights, published by the Ministry of Human Rights in 2021. While still in its infancy, this plan is expected to reshape the business landscape in Pakistan. Additionally, he noted the country's signing of the Multi-Annual Indicative Program (MIP) with the EU, which presents an opportunity to align Pakistan's economic goals with the seventeen Sustainable Development Goals (SDGs).

Highlighting the necessity of human rights due diligence (HRD) legislation, Mr. Madasamy stressed its role in enhancing investor confidence and foreign direct investment, especially in the context of the Free Trade Agreement with the EU. He underscored the urgent need for political will

to advance HRD laws, drawing from a consensus among Asia Pacific countries at a recent UN meeting.

Turning to the climate aspect of ESG, he explained how businesses' very existence could be jeopardized by climate-related challenges. He referred to the Global Climate Change Vulnerability Index, ranking Pakistan as the 16th most vulnerable country. Mr. Madasamy emphasized the potential of ESG standards to mitigate this climate vulnerability.

Concluding with a thought-provoking idea, he explored the intersection of block-chain technology and ESG standards. He noted Pakistan's significant cryptocurrency user base and suggested that aligning cryptocurrency regulation with ESG standards could offer economic opportunities. He envisioned a digital assets arena, potentially involving cryptocurrency, and proposed tokenizing the seventeen SDGs. This could enable individuals to purchase or exchange tokens for supporting specific SDG goals, promoting financial literacy, especially among women and rural communities, and contributing to a circular economy aligned with SDGs.



Legal & Structural Reforms to Address the Regional & Global Economic, Trade & Investment Challenges: Efforts of the Judiciary & Way Forward

Ms. Leonora Riesenburger, Barrister, International Arbitrator, Commercial Mediator & NTADR DMCC, Dubai, UAE

Ms. Leonora Riesenburger initiated her speech by emphasizing the necessity of exchanging intellectual intelligence concerning ADR, the Judiciary, and practices. She transitioned into her presentation by highlighting her focus on investor confidence. She referred to a chart showcasing successful ADR jurisdictions such as Hong Kong and Singapore and noted Pakistan's potential for ADR growth.

Investor confidence plays a pivotal role in ADR's success, necessitating a solid framework to attract investors to Pakistan for dispute resolution. This dynamic often presents a challenge, akin to a chicken and egg scenario. Illustrating with the White & Case International Arbitration Survey, she discussed its examination of evolving commercial needs and various arbitration/mediation seats globally. She acknowledged the fluid nature of this landscape and the potential for improvement over time. Ms. Riesenburger addressed outstanding issues, including the regulation of arbitrators and guidelines for less experienced arbitral secretaries entering the ADR field. She also highlighted the importance of third-party funding and the need for top-down regulation to safeguard funders. She underscored the impact of the COVID-19 pandemic, acknowledging its challenges while also recognizing the opportunities it created for technology adoption. The pandemic accelerated the integration of modern techniques, enhancing efficiency and accessibility to justice. The global shift towards technology-driven practices required legal and procedural adjustments for virtual proceedings.

While some hesitated to fully embrace virtual proceedings, a trend of hybrid meetings emerged as a viable compromise. Ms. Riesenburger acknowledged logistical challenges but remained optimistic due to the precedent set by surviving the pandemic.



Balancing cost, time, and integrity in ADR processes was highlighted. Preserving a fair trial while embracing new practices like hybrid meetings was crucial. Technology introduced security risks, necessitating protocols and safeguards to protect confidentiality. Guidance from international bodies like the Chartered Institute of Arbitrators (CIArb) and the International Chamber of Commerce (ICC) was deemed invaluable.

Discussing arbitration in the UAE, Ms. Riesenburger noted its unique combination of civil and common law courts, boosting investor confidence by offering forum choice. The Dubai International Financial Center (DIFC) further possesses conduit jurisdiction, further supporting investor trust. Further, legal amendments in the UAE legal changes effectively allowed those with arbitral awards to go directly to the court of appeal and have the award implemented within 60 days. Moreover, where a party wants to set aside the award, it is on the disgruntled party to go to Court and file an application to this end within 30 days, thereby creating certainty for both parties.

In conclusion, Ms. Riesenburger emphasized the importance of seeking guidance from both local and international communities. She stressed the need for continuous improvement through collaboration between the Judiciary, Government, and the ADR community to establish a robust framework.

Emerging Business Environment in the Region: Need for Expert, Efficient & Enforceable Dispute Settlement Mechanisms

Mr. Mian Sheraz Javaid, Barrister & Founding Chair of Pakistan Chapter for the Chartered Institute for Arbitrators (CI Arb)

Mr. Mian Sheraz Javaid began by emphasizing the CI Arb's commitment to enhancing Pakistan's dispute resolution mechanism in line with global best practices. Expressing gratitude for judicial support, he recounted the inauguration of an independent CI Arb branch in Pakistan, graced by the Chief Justice of Pakistan and the Chief Justice of the Lahore High Court, amongst others. He found comfort in Hon'ble Justice Ahsan's session remarks, reflecting Judges' favourable disposition toward ADR.



Beyond conventional courts, ADR embodies a pursuit of justice and societal transformation. At its core, Dispute Settlement Mechanisms (DSMs) are structured processes mediating disputes in various relationships – be it societal, business, or legal. In a world of increasing globalization and digitization, transactions transcend borders, necessitating adaptable governing laws and legal services. Within this context, DSMs function as the bedrock of secure trade, commerce, and investments, offering standardized rules that breed predictability and confidence, thus fostering an environment conducive to investment and economic growth.

Transitioning to Pakistan's economic landscape, Mr. Javaid acknowledged challenges beyond the immediate crises like COVID-19 and floods. He highlighted endemic issues such as delays, cost overruns, and disputes that have plagued various sectors. A pivotal point he raised was the imperative for contract enforcement certainty – a factor that directly influences the attractiveness of investment. He illuminated the complexities posed by major projects such as the China-Pakistan Economic Corridor projects, emphasizing

the necessity of a robust legal framework and effective DSMs to navigate the intricacies of complex business operations. In this light, the existing DSMs, hinging on sovereign guarantees, were identified as impediments to national economic growth and barriers to foreign investors.

Delving into the heart of solutions, Mr. Javaid outlined the essence of understanding the root causes of disputes through comprehensive surveys. The outcome of one such survey, published in the Pakistan Construction Disputes Report 2022 (PCDR), transcends its titular reference to construction by encapsulating insights from diverse industries. This repository of data, segmented by sectors, causations, and regions, offers a strategic foundation for identifying, mitigating, and pre-empting disputes. With a focus on early intervention, PCDR equips various industries with techniques to manage conflicts. He mentioned that this comprehensive resource is available through the PCDR website, which includes an interactive dashboard for easy navigation.

Pinpointing the core triggers of disputes that hinder foreign investment, Mr. Javaid spotlighted payment delays, programmatic setbacks, and the behavioral and competency dimensions in Pakistan. At this juncture, he underscored the importance of skillfully drafted contracts that incorporate dispute avoidance mechanisms. Drawing from global best practices, he advocated for the establishment of arbitration centers adhering to international standards. In his view, the bridge to investor confidence lies in legislative backing. He proposed a triad of legislations for domestic arbitration, international arbitration, and mediation. He added that the evolving trend toward mandatory mediation, with cost repercussions for non-cooperation, needs consideration.

With legislative frameworks in place, Mr. Javaid

transitioned to the architecture of the ADR centers themselves. Here, the spectrum spans International Arbitration Centers (IACs) and International Courts of Arbitration (ICAs), potentially falling under private or government ownership. However, he stressed the indispensable role of courts in supervision over intervention, coupled with the creation of a local pool of experts to ensure swift, enforceable awards. Such mechanisms, he noted, could drastically expedite dispute resolution compared to the conventional trial court route.

As a conclusion, Mr. Javaid reiterated the CIArb's unwavering commitment to creating an integrated dispute resolution mechanism for Pakistan, rooted in its cumulative efforts and future endeavours.



Abstract to the Concrete: The Need to Institutionalize Alternate Dispute Resolution (ADR) to Promote Economic & Trade Opportunities in Pakistan

Hon'ble Justice Jawad Hassan, Judge Lahore High Court

Hon'ble Justice Jawad Hassan opened his address by stating that he would be narrowing his focus to the positive aspects, exclusively highlighting the rule of law, affordability of justice, and the concept of ADR in Pakistan. Commending the Lahore High Court's ground-breaking initiatives, i.e., the establishment of commercial courts and an overseas cell, he highlighted how these endeavours enhance investor confidence and provide improved access to justice for foreign entities.

Comparative analysis between the Lahore High Court's efforts and global developments ensued, as Justice Hassan discussed the achievements of international commercial courts, including the esteemed London commercial courts. Moreover, he emphasized how guidance from renowned international courts in Singapore, Germany, France, and others influenced the formulation of Punjab's commercial courts. Providing a historical perspective, he recounted the collaborative efforts initiated by the Chief Justice of Pakistan and Justice Ahsan, ultimately leading to the current positive trajectory. Vital to Justice Hassan's discourse was the pivotal role of a robust Dispute Settlement System, particularly pertinent to foreign parties. He accentuated that the Lahore High Court's Overseas Pakistanis Cell and Commercial Courts, through their effective dispute resolution, have magnetized foreign investment by fostering a dependable environment. This progression aligns harmoniously with recommendations from the World Bank Report, poised to elevate Pakistan's global business ease ranking.

Justice Hassan extended a warm invitation to other Provinces, urging them to replicate the Lahore High Court's initiatives, and in a benevolent gesture, pledged unwavering assistance and knowledge sharing. He strongly underscored the vitality of a well-structured ecosystem to bolster investor confidence, elucidating how corporate law firms serve as barometers to gauge the Judiciary's safeguarding of



foreign investors. This assertion was substantiated by reference to a momentous judgment aligning with the New York Convention, which elegantly addressed frequent inquiries from the international community.

Delving into mechanisms to provide access to justice for foreign investors, Justice Hassan detailed various avenues, including Early Neutral-Party Evaluation (ENE) and specialized courts, highlighting their efficiency. Globally, he noted, commercial matters typically reach resolution within 120 days—a standard that resonates with relevant judgments from the Lahore High Court. Intriguingly, he highlighted the Lahore High Court's active participation in the inauguration of Pakistan's inaugural CIArb branch, elucidating how this alliance resulted in fruitful collaborations, particularly in mediation training. Further exemplifying international collaboration, he shared insights from a recent seminar at King's College London that he attended with Hon'ble Supreme Court Justice Mansoor Ali Shah, which spotlighted the pivotal role of ADR in Pakistan's judicial reform.

Concluding on a high note, Justice Hassan reaffirmed his earnest support for other High Courts aspiring to mirror Lahore's triumphs. His conclusive message was a sincere offer of guidance and encouragement, underscoring that the Lahore High Court's door is perennially open to kindred judicial institutions.

Session V

Justice and Digital Advancement: What Lies Ahead?

Remarks by the Chair

Hon'ble Justice Jamal Khan Mandokhail, Judge Supreme Court of Pakistan

Hon'ble Justice Jamal Khan Mandokhail initiated his address by underlining the significance of the judicial conference. He noted that this gathering offers a platform to shed light on the current challenges faced by the Judiciary, such as case backlog, trial delays and the absence of digitalization within the system. He expressed optimism that through the sharing of experiences the Conference could pave the way for the advancement of the judicial system.

Justice Mandokhail delved into the concept of justice, asserting that it should extend beyond the confines of the Judiciary. He emphasized that every individual bears the responsibility of upholding justice in various aspects of their lives, ranging from personal matters to interactions with their family and the broader community. The role of the Judiciary comes into play when addressing societal injustices.

Addressing the need for digital transformation, Justice Mandokhail stressed the pivotal role of digitalization in ensuring efficient dispensation of justice. He argued that incorporating digital processes would lead to a more streamlined and cost-effective system that is accessible to all ultimately facilitating quicker case resolutions. The pressing issue of case backlog was acknowledged with the hope that viable solutions could emerge from the Conference discussions.

Justice Mandokhail drew attention to a significant contributor to the case backlog: property-related disputes arising from the lack of digitized revenue records and the reliance on manual investigation



methods. He provided instances from Balochistan and KPK where substantial portions of land lack proper documentation resulting in litigation and a backlog of cases. He stressed the urgent need for the digitization of land records and the evidence-gathering processes in the realm of criminal justice.

Highlighting technological strides, Justice Mandokhail mentioned actions taken by the Supreme Court to enhance accessibility. For instance, litigants are now allowed to participate in cases through video-links from various registries across Pakistan. However, he indicated that further efforts are required to improve accessibility and efficiency within the judicial system. He concluded his remarks, welcoming the esteemed speakers in the hopes of discovering a sustainable pathway.

Justice in the New Digital Era: Digitalization of the Courts & its Challenges

Hon'ble Judge Paul Quan, Executive Director, Singapore Judicial College

Hon'ble Judge Paul Quan delved into the transformative impact of technology on the justice system, with a particular focus on the post-pandemic era. He emphasized the importance of considering the broader context rather than viewing the question of 'what's next' in isolation, stating that to envision the future, it's essential to reflect on the past, consolidate knowledge, and then proceed forward. He drew parallels between this approach and the theme of the conference urging attendees to retrospect before looking ahead.

The Judge highlighted how technology's role evolved dramatically during the pandemic. He described its initial auxiliary function, which swiftly transformed into a fundamental necessity. He referred to this shift as technology moving from playing a 'handmaiden's role' to becoming a 'must-have overnight,' primarily driven by the urgency imposed by the pandemic. With this background, Judge Quan posed the question of whether the justice system can revert to its pre-pandemic state or if a fundamental change has occurred.

Judge Quan introduced the concept of the 'justice gap' and identified three key dimensions—physical, literacy and resource—where technology has made a substantial impact. He explained that technology has brought court interactions closer to individuals familiar spaces, bridging the physical gap. He also noted how the internet has democratized access to legal knowledge reducing the literacy gap. Additionally, he acknowledged the emergence of alternative legal service providers facilitated by technology which addresses resource-based disparities.

Sharing Singapore's experience Judge Quan



asserted that the integration of technology in the justice system has been largely positive. He emphasized two critical principles observed in this integration: maintaining the process's integrity and ensuring effective evidence assessment even in remote proceedings. Remote hearings have become an integral part of Singapore's legal landscape, significantly reducing the justice gap. Judge Quan stressed the importance of fairness and access to justice in the use of technology.

In his presentation, due to time constraints, Judge Quan highlighted two successful initiatives from Singapore's court system. The first was the Asynchronous Hearings i.e., conducting hearings without the immediate physical presence of parties. In this mode, parties submit written materials without needing to attend in person and hearings are conducted using electronic messages exchanged between the parties and the court. Judge Quan likens this to an enhanced version of WhatsApp, integrated into the court's electronic filing system. This approach is particularly efficient because it eliminates the need for everyone to be available simultaneously, as is the case in traditional synchronous hearings. Consequently, time can be divided more effectively, resulting in a more efficient use of

resources.

The second initiative was the Online Dispute Resolution (ODR). These processes operate independently of the traditional court system. Parties engage in administrative procedures, primarily negotiations and mediations, without involving the formal court process. The parties are free to make offers and counteroffers electronically, aiming to resolve the dispute through digital negotiations. Should these negotiations fail, the parties can enter a virtual chat room and, if necessary, call upon a Judge to facilitate mediation through e-mediation modules. The technology utilized in this initiative is modeled after everyday text messaging, ensuring a familiar and user-friendly experience. Judge Quan reflected on the dual nature of technology, highlighting that it can either bring people together or scatter them apart.

By outlining these two successful Singaporean initiatives, Judge Quan illustrated how technology can be harnessed to enhance efficiency, flexibility, and accessibility in the justice system. These approaches not only optimize the use of time and resources but also embrace technology's potential to streamline dispute resolution processes. In conclusion, Judge Quan advocated for a user-centric approach to technology adoption in the justice system. He emphasized the need for fairness, accessibility, and positive gap-bridging. By recounting Singapore's experiences and successful initiatives, he encouraged attendees to embrace technology as a tool for progress and transformation while ensuring that core principles of justice are upheld.



Use of Technology in Courts & the Legal Profession: Lawyers' Perspective

*Dr. Francisco de Elizalde, Professor of Law & Founding Director of Legal Clinic, IE University,
Spain*

Dr. Francisco de Elizalde commenced his discourse by delving into the intriguing realm of transitioning towards digitization and the subsequent stages of automation within the legal sector. He astutely directed the participants attention towards the imminent possibility of automating judicial decisions, framing this in the context of the intricate interplay between automation and established legal statutes.

Dr. Elizalde revealed the crux of their ongoing efforts: to unravel the driving forces that could potentially catalyze the transition towards automation of specific legal claims. Anchoring his statements with a palpable sense of purpose, he shared the findings from a comprehensive survey conducted by his department. The survey encompassed a diverse spectrum of legal companies immersed in litigation across the vast expanse of the European legal market. Through this survey, the nuanced landscape of legal automation was unveiled showcasing how it is presently being embraced and harnessed.

While the prevalent assumption is that digital transformation best suits smaller value claims, Dr. Elizalde expertly navigated through this notion. He candidly acknowledged the advantages attributed to digitization in such cases, but also deftly unveiled the criticism stemming from the lens of justice administration and equality. A fundamental cornerstone of Dr. Elizalde's discourse was the exploration of the legislative underpinnings that facilitate automation. In this endeavour, he introduced a concept of paramount importance – 'Technological Efficiency.' This novel concept underscores the harmonious interaction between laws and sophisticated IT systems, minimizing, or ideally eliminating, the need for human intervention. With a clarion conviction, Dr.



Elizalde highlighted that the very potential of automation hinges on the contours of relevant statutes.

Turning our attention to an interesting point, Dr. Elizalde highlighted the rise of private companies that have smartly filled the gap caused by the lack of technological progress in courts. These companies have effectively adopted automated systems to handle legal claims, efficiently dealing with a wide range of cases beyond the usual court procedures. This showcases the power of AI-driven solutions.

A critical part of Dr. Elizalde's talk was when he discussed the connection between existing laws and the new area of automated claims. He explained that while spending a lot of money often leads to better automation results, it is not always a straightforward path. There can be small differences that lead to different outcomes. This underscores the need for well-designed legal rules that support automation. Interestingly, the speech then moved on to a practical examination of legal situations that work well with automated decision-making. This examination was supported by experiments backed by the EU, which carefully looked at how laws are written to

help or hinder automation. Drawing a comparison to how automation developed in other fields over time, Dr. Elizalde suggested that having standardized legal frameworks could make the process of automation smoother.

Dr. Elizalde's talk also posed some thought-provoking questions to the participants. He asked about the importance of making laws consistent and how this relates to the ongoing push for automation. He drew parallels with how things

like transportation gradually became automated. To wrap up, Dr. Elizalde summarized the viewpoints of legal professionals and the courts themselves. He looked at it from two angles: first, how lawyers might lose their roles due to more automation. He cautioned against blindly embracing automation without considering the full rights of those involved in legal cases. Second, he saw automation as a logical step forward after digitization, suggesting a careful exploration of its impacts.



Global Best Practices for Case Management & Tackling the Backlog

Mr. Jeffery Apperson, Vice President (International Relations), National Center for State Courts (NCSC)

Mr. Jeffery Apperson initiated his speech with gratitude and optimism for Pakistan's highest judicial body and its efforts in arranging the conference. He emphasized that the participants are all serving one common component of their courts – jurisdiction. He stressed that a strong jurisdiction depends on effective coordination of its various components, including the adoption of modern techniques and trends for efficient court management.



The speaker acknowledged that a significant global challenge is the backlog of cases and delays in judicial proceedings. He highlighted the burden of heavy court workloads as a pressing issue. Mr. Apperson emphasized that all elements of the jurisdiction must collaborate to fulfill the collective mission successfully. Sharing his personal experience of transitioning from paper to digital processes, especially during the COVID-19 pandemic, Mr. Apperson identified common challenges faced by courts worldwide. Accessing records and issues related to virtual proceedings were notable hurdles faced by the staff when continuing their work from remote areas. He underlined the importance of strategic planning for administrative excellence, sustainable operational practices and using technology to manage court performance. The speaker advocated for resources and facilities to ensure timely case resolution, with the support of judicial officers.

Mr. Apperson emphasized the need to modernize budgetary and civil service practices to achieve goals. He viewed technology as a tool for productivity enhancement, working alongside traditional paper operations. He claimed that authentication of electronic records efficiently became a goal, requiring strengthening of

technical, budgetary, and human resource aspects. Urging that education institutions should offer contemporary engineering and programming curricula for management and development capabilities, Mr. Apperson recommended that uniform electronic practices, replacing paper practices must be adopted. Cybersecurity protocols for internal users were also highlighted.

Discussing case management systems, Mr. Apperson noted differences in development approaches at State and Federal levels. He stressed collaborative development based on open source opportunities to maintain consistency across states. He cited examples from the USA and Argentina, where co-development efforts improved national and local systems. Regarding case management, Apperson highlighted that 40% of US cases are resolved without mediation, making process-oriented considerations crucial. He linked Alternative Dispute Resolution (ADR) to fixed trial dates, neutralizing any party's incentive to prolong trials. Mr. Apperson concluded his speech by emphasizing on the importance of case management systems in monitoring and executing deadlines, particularly in inventory management as a vital effort to address the issue of backlog and trial delays.

Cyber Crimes in Pakistan: Challenges & Way Forward

Mr. Muhammad Jaffar, Director (Cybercrimes), Federal Investigation Agency (FIA)

Mr. Muhammad Jaffar commenced his speech by providing a comprehensive overview of the cybercrime landscape in Pakistan and globally. He highlighted a concerning trend over the past two decades where traditional crime has seamlessly merged with information technology, resulting in cybercrime becoming a regular offense. Instances of credit and debit card scams, data breaches, and online fraud have become commonplace, demanding the attention of law enforcement agencies worldwide.

Mr. Jaffar drew attention to the fact that high tele-density populations across the world are contributing to the rapid growth of internet users. In Pakistan, the tele-density stands impressively at approximately 88.21%, boasting a staggering 195 million cellular subscribers, 122 million users of 3G and 4G technology, and 123 million broadband users. This remarkable expansion in the user base, while facilitating connectivity, concurrently escalates the risk of cyberattacks. This reality, he emphasized, is not confined to Pakistan alone; rather, it is a global phenomenon. This exponential growth in internet usage has consequently led to an increase in cybercrime incidents, evident from the growing number of complaints received by the FIA cybercrime wing. Mr. Jaffar underscored this point by sharing that the previous year witnessed over 100,000 complaints and the current year's count has already exceeded 85,000. This surge in complaints underscores the pressing need for effective cybersecurity measures.

Transitioning to the legislative domain, Mr. Jaffar highlighted Pakistan's ongoing efforts to establish a comprehensive national cybersecurity framework. He discussed the existence of two critical pillars in this endeavour: the Pakistan Electronic Crimes Act, 2016 and the National Cyber Security Policy, 2021. While these initiatives mark significant progress, he stressed the need for well-defined social media regulations, especially as these platforms generate substantial volumes of data. The challenge lies in identifying specific users and preserving electronic evidence that



can be easily altered or erased. Delving into the complexities of cybercrime investigations, Mr. Jaffar illuminated the obstacles posed by encryption and cryptocurrency. Criminals exploit these technologies to shield their activities, resulting in delayed or stalled investigations. Furthermore, due to the transnational nature of cybercrime, evidence often resides in different jurisdictions necessitating cross-border cooperation among law enforcement agencies. The lack of a common legal framework across countries hampers international collaboration, particularly for large-scale cybercrime cases spanning multiple continents.

In conclusion, Mr. Jaffar proposed a set of recommendations to address these challenges. He stressed the importance of enhancing community awareness about cybersecurity, particularly among vulnerable groups. He advocated for increased research and development efforts to create secure in-house software and hardware solutions. Collaboration between public and private sectors was emphasized for optimal resource utilization and support to the economy. Continuous funding for electronic equipment upgrades was deemed crucial. Additionally, he advocated for the establishment of a global cyber law that harmonizes legal standards across nations and facilitates international cooperation. Lastly, Mr. Jaffar underscored the significance of capacity building for law enforcement agencies and the establishment of agreements and Memoranda of Understanding (MOUs) among countries hosting social media platforms to facilitate swift information exchange.

Free Speech on Social Media: Filtering Methods, Rights & Future Prospects

Hon'ble Justice Babar Sattar, Judge Islamabad High Court

Hon'ble Justice Babar Sattar began his talk by asking a crucial question: What are we trying to control on social media and what problem are we trying to solve? The only coherent answer he got was that fake news is a concern. He then discussed the broader constitutional framework and the freedom of speech. He believes that the Government should have less control over regular people's lives. The question arises: Who should control social media? How can we hold big tech companies accountable, especially when these companies are not based in Pakistan?

He explained Pakistan's constitutional framework where the State can only interfere if there is a legal basis for it. Citizens on the other hand, Justice Sattar affirmed, have more freedom. He mentioned different rights such as liberty, dignity, freedom of speech, and right to information. He expounded how the right to free speech is important because it enables citizens to claim other rights. However, there are limits on free speech outlined in Article 19 of the Constitution. Many laws restrict speech, criminalizing it even, such as the Pakistan Penal Code, 1860 and the Prevention of Electronic Crimes Act, 2016. He then talked about how limitations on Fundamental Rights should be minimal according to legal precedents. He referred to U.S. cases that set tests for regulating speech: clear and present danger test and countering bad speech with good speech. He continued by acknowledging that there are differing views on free speech – some say it is absolute while others suggest restrictions for various reasons like preventing harm, either to reputation, privacy, security, and even democratic equality. Justice Sattar articulated that the developed jurisprudential idea is to only limit speech when it harms others.

Justice Sattar criticized the idea of treating adults as children who need paternalistic guidance. He argued that people can choose what they want to hear or see. He questioned how society can regulate morality and decency. He suggested that it's not the Judges' role but rather the Parliament's job, considering the



subjectivity involved. He delved into regulating social media. He acknowledged the challenge due to the sheer volume of speech and anonymity and emphasized the need for policies, disclosure of social media companies content rules, and mechanisms for grievance redressal. He stated that individuals should have more control over the content they consume. He discussed that thickening our skin against offensive speech is important in a democratic setting. He compared social media to unfiltered media without editorial control, making addressing genuine threats like terrorism a challenge. He seconded the idea of using artificial intelligence to regulate content emerged, whereby meta data can be thoroughly analyzed and determination could be made as per settled standards. He noted the debate about whether the prerogative to regulate content should vest with the tech companies or the elected representatives. He stressed the need for balanced regulations that protect both security and privacy, avoiding overregulation that harms platforms like TikTok, Facebook, and YouTube.

His suggestions included making policy choices through Parliament, equipping agencies to handle data, avoiding censorship based on viewpoints, and promoting liberty and agency. He also highlighted the need for a coherent approach from State institutions, especially when dealing with foreign social media companies. In conclusion, Justice Sattar called for focusing on liberty and individual agency while addressing concerns related to social media content.

Concluding Session

Vote of Thanks

Secretary, Law and Justice Commission of Pakistan



The Secretary, LJCP began her closing speech by expressing her gratitude to Hon'ble Chief Justice Umar Ata Bandial, the Chairman of LJCP for his supervision in organizing the Conference and for his commitment to maintaining the Rule of Law in Pakistan. She then thanked the Hon'ble Judges of the Supreme Court who chaired the various thematic Sessions and acknowledged the Members of the Organizing Committee for their guidance and input to ensure that the Conference is well-managed. She also commended the organizing teams of the Supreme Court and the LJCP for devoting their time and energies to making the Conference a success.

The Secretary, LJCP further appreciated the presence of the Hon'ble Chief Justices and Judges of the Superior Courts as well as judicial officers from the District Judiciary; the representatives of the learned Attorney General's Office; Police Force; Civil Service; Press; and the distinguished speakers who joined from within and outside Pakistan.

The Secretary, LJCP ended her speech by urging the participants to contribute in their individual capacities to strengthen the justice system of Pakistan to meet the expectations of the people.

Concluding Remarks

Hon'ble Chief Justice of Pakistan & Chairman of Law and Justice Commission of Pakistan



The Hon'ble Chief Justice of Pakistan, Mr. Umar Ata Bandial, commenced his concluding remarks by congratulating the participants on a productive Conference which identified not only the challenges plaguing the justice system, but also highlighted innovative solutions to address these. Thereafter Justice Bandial shared his vision for a prosperous and progressive Pakistan where the rule of law reigns supreme. He stressed the importance of ensuring that courts are made equally accessible to all the citizens of Pakistan, irrespective of their gender, religion, race and economic status.

The Judiciary and Legislature were encouraged to develop ADR facilities and procedures, and to promote their use amongst litigants to ensure the inexpensive and expeditious dispensation of justice. The use of technological advancements was also emphasized in streamlining litigation. In this regard the Chief Justice also informed the

participants of the setting up of a National Judicial Automation Unit, approved by the National Judicial (Policy Making) Committee, to help develop a National Online Dashboard for creating an integrated information system for the Judiciary. The first phase of this project is expected to be up and running soon and will centralise the data/record of cases pending in all courts on one website. The second phase of this initiative seeks to implement data sharing with other stakeholders in the justice sector. He also referred to the Federal Judicial Academy's initiative of launching an e-campus by the end of this year to conduct training workshops and certification courses online for all stakeholders in the justice sector.

Justice Bandial further emphasized the need for stakeholders in the criminal justice system, namely the Police and Prosecution, to improve their performance, and coordination with each

other to reduce the incidences of crimes. Members of the Judiciary and legal community were also urged to make efforts to enhance their capacity, legal knowledge and performance.

The various organs of the State were also prompted to ensure the involvement of women, who form 50% of our population, in decision-making processes. Justice Bandial also urged that efforts be made to effectively eradicate gender-based violence, along with other formal and informal biases that women face, both in the workplace and at home. The need to counter problems relating to population growth and climate change on a priority basis was also stressed as these issues are ravaging Pakistan at present.

Justice Bandial placed great emphasis on the need for all stakeholders in the justice sector to come together to improve the quality of justice dispensed by the courts. He encouraged the use of training sessions for the police and prosecution to increase conviction rates and reduce crime. Justice Bandial also suggested that District Judges partake in training sessions to learn about amendments and developments in the law and

suggested that performance audits be made mandatory in all levels of the Judiciary to assess gaps in legal knowledge so that steps may be taken to remedy them. Bar Councils and Associations were also told to take on a more proactive role in the enhancing the legal knowledge of advocates to improve their quality of work.

The issues of increasing population, worsening climate change and pervasive gender inequality were said to be hindering effective administration of Justice. In this respect Justice Bandial said that the Supreme Court of Pakistan is committed to protecting the marginalised groups directly affected but the legislature and executive must also do their bit.

Justice Bandial concluded his speech observing that, whilst the Supreme Court is committed to playing its part in building a Pakistan which is equal for all, such an idea can only become reality if all State institutions and the people have regard for the Constitution and the law. He ended his speech by reciting a verse from the Holy Quran (Surah An-Nahl (16:90)):



Event Highlights







Certificate Distribution Ceremony





















Law & Justice Commission of Pakistan
Supreme Court of Pakistan Building
Constitution Avenue, Islamabad