

**FULL COURT REFERENCE
ADDRESS**

By:

**THE HONORABLE
MR. JUSTICE NASIR-UL-MULK**

**ON THE EVE OF RETIREMENT OF HONORBLE THE CHIEF JUSTICE OF PAKISTAN, MR.
TASSADDUQ HUSSAIN JILLANI**

On 4.7.2014

Hon'ble the Chief Justice of Pakistan, Mr. Justice Tasadduq Hussain Jillani,

My brother Judges of the Supreme Court,

Mr. Salman Aslam Butt, Attorney General for Pakistan,

Mr. Kamran Murtaza, President Supreme Court Bar Association,

Mr. Muhammad Ramzan Chaudhary, Vice Chairman Pakistan Bar Council,

Learned Office Bearers of the Bar Councils, Bar Associations and Members of the Bar,

Ladies and Gentlemen!

We have assembled here today to pay tribute to our illustrious colleague Mr. Justice Tasadduq Hussain Jillani on the eve of his retirement as Chief Justice of Pakistan. He shall be remembered as a jurist, a poet, an author and above all a humble and polite gentleman judge, a stalwart of Constitutionalism in Pakistan.

Justice Jillani was elevated to the Bench after practising at the Bar for almost two decades. He was elected to the prestigious office of the Secretary General of the District Bar Association Multan and appointed as Assistant Advocate General Punjab, Additional Advocate General and then as the Advocate General Punjab before he was elevated as the Judge of the Lahore High Court in 1994. Having rendered ten years of meritorious judicial service in the High Court he was elevated to the Supreme Court in the year 2004.

The core of his jurisprudence and judgments throughout the years has remained a strict reference to the text and spirit of the constitution, where he has staunchly preserved and furthered Rule of Law and dispensation of justice. His bravery and candor in standing by the principles of Rule of Law shall be remembered in history as the resolve of a judge who refused to bow down before the injustices committed by the socially powerful.

His judgments shall remain the beacon of light for the Bar and the Bench in the years to come. Flawlessly argued, they exhibit the remarkable characteristics of a sharp legal mind, well versed with sophisticated legal details yet adorned with cultured literary references from sages of the past. Justice Jillani embodies the brilliance of ages when through references to literature and culture he poignantly reminds us of what human civilization has lost and gained over time. In a recent judgment on the rights of minorities.fg His Lordship warned the people of Pakistan about the dangers of sectarian discord by referring to Shakespere's prophecy of war and destruction due to such sectarian divisions in Ireland.

Justice Jillani, the gentleman judge, will be remembered in the corridors of the Supreme Court for his pleasant manners, immaculate legal knowledge and insight. His legal genius was complimented by a model judicial temperament and unmatched integrity. In Court he conducted himself with dignity, friendly to the Bar and open to conciliation and new ideas. The charm of his personality is reflected in his smile, the warmth of which invigorated even the lawyer losing a case. It was a British Humanist by the name of

William Hazlitt, who writing in the 18th Century, aptly described the demeanor and philosophy of Justice Jillani's life in these words:

"A gentle word, a kind look, a good-natured smile can work wonders and accomplish miracles."

Mr. Justice Jillani's passion for humanities and literature emerges from his deep and unwavering commitment towards improving the human plight in the modern age of social apathy. His words and thoughts have remained his arsenal against social injustice where he has not only furthered the rights of the marginalized through his interpretation of law but also opened discourses on topics over which silence has been maintained for years.

A refined literary critic who proudly bases his philosophy of life and justice in the egalitarian spirit of Islam and humanist literature, his primary desire has always remained the elimination of human suffering in all forms and guise. It was Shakespeare who in his play "Measure for Measure" retorted with angst and sorrow that:

"The law hath not been dead, though it hath slept"

Minorities in Pakistan are one such class of people, whose rights have escaped the concerns of policy makers for years, the area where the law proverbially slept. Justice Jillani, through judicial review of the structural violence broached this silence. In *Suo Moto* Case No. 1 of 2014, originally taken in the wake of a suicide attack on a Church in Peshawar, Justice Jillani authored a judgment with features of the best of Greek rhetoric, discussing the philosophy of religious harmony, tolerance and freedom in Pakistan. This judgment shall be a watershed moment in the history of religious freedom, as it has holistically addressed the issues and problems confronting the minorities in Pakistan and given directions for not only protection but also furtherance of their rights. In his judgment he has also attempted to promote inter-religious harmony in Pakistan by safeguarding individual right to freedom of religion. Justice Jillani writes:

"In the subcontinent, the individual right of freedom to religion has occasionally been trumped by the right of the community... It is imperative that the right to freedom of religion be restored as an individual and indefeasible right, while concurrently preserving and protecting this right at a communal level, where the latter does not infringe on the former."

Mr. Jillani's untiring efforts, as a judge of the Superior Court and during his brief term as the Chief Justice of Pakistan, have been motivated by a desire to grant to the people of Pakistan, dignity and justice through Rule of Law. The subject of Mr. Jillani's judgments have always remained the marginalized, the silent voices whose persecution is erased from social cognizance.

Justice Jillani has remained firm on the need to eliminate the scourge of crimes in the name of honor from our society. His Lordship's condemnation of such acts of violence is a progressive step in our march towards equality and respect for all in the country. In *Muhammad Siddique v. The State* (PLD 2002 Lahore 444 at 457) decrying the heinous traditions of female subjugation he wrote that:

"A murder in the name of honour is not merely the physical elimination of a man or a woman. It is at a socio-political plane, a blow to the concept of a free dynamic and an egalitarian society... No tradition is sacred, no convention is indispensable and no precedent worth emulation if it does not stand the test of the fundamentals of a civil society generally expressed through law and the Constitution."

Justice Jillani's deep understanding of the philosophy of Ethics and Justice has always inspired him to think of justice beyond the borders for the global comity. It will only be in a world rid of violence and oppression that we can eventually march towards the dream of a free and unchained human civilization. This thought of Justice Jillani is evident in his writings, where he has called for envisioning a world without borders, where the only subject of love and respect is "human being", the subject of all religions and ethical

systems. His Lordship, in his article titled "Creating a World without Walls", has called for Global Peace as a justice based approach towards countering the menace of unrestrained hatred. It is only when we move towards global justice and equality for all, that we can achieve global peace and security.

Constitution is a living document which must grow and develop organically to keep up with the challenges of time. Constitution is not a collection of words but a nation's collective will at creating a social contract, where life, liberty and justice will not only be guarded but also promoted.

Justice Jilani has remained critically aware of these ideas. His jurisprudence is one where the institutional boundaries are respected as will of the people. However, this should not be misunderstood as judicial complacency because Justice Jilani has vigorously used the Constitutional Jurisdiction vested in the Courts in instances of grave violations of human rights. His judgment in the suo moto case of Cutting of Trees for Canal widening project, Lahore explicitly describes his belief in strengthening constitutionalism through the separation of powers, when he wrote that:

"Many a time, policies/actions of executive authorities are challenged and issues are brought before the Courts which have socio-political or economic dimensions, issues of lopsided policies being pursued.... It is painful to sit back and watch the successive marches of folly. However, the constitutional constraints reflected in the trichotomy of powers obliges the Court to judicial restraint. It intervenes only when the policy/action of the State Authority reflects violation of any law or a constitutional provision or enforcement of a fundamental right..."

The primary responsibility to "preserve, protect and defend the Constitution" rests upon the judiciary under the Constitutional Oath of Office. Rule of law can only emerge and be consolidated in a polity where judiciary is cognizant of its responsibilities.

The task of the judiciary is a dispassionate reading of the law unaffected by personal biases. The trust placed upon the judiciary by the Constitution and people of Pakistan is sacred and judiciary ought to exercise prudence in exercising its powers under the Constitution. Considerations of Constitution and the laws alone should guide the judge and personal sense of justice must be strictly curtailed. Personal perceptions of justice when not reigned in, disturb the trust that people have in the integrity and predictability of law in administration of their affairs. The task of the Court is to bring about equilibrium in the society by laying down rules of interpreting law, which can serve as unambiguous precedents for future determination of problems. We need to remind ourselves that judges have to administer justice in accordance with law and not according to the personal sense of justice, as predictability and certainty are defining features of a sound judicial system.

Our Constitution provides for separation of powers, where each pillar of state has been given particular functions and responsibilities. This separation of power creates adequate checks and balances wherein Courts may undertake judicial review and step in when the executive and legislature acts *ultra-vires* of the Constitution.

In this regard an onerous responsibility has been placed on the judiciary which has to tread carefully while exercising the powers of judicial review. The powers of judicial review can be potentially used by the Courts as a tool to intervene into the domain of other institutions; however, this power simultaneously provides hope for the indignant by vesting Courts with the power to protect their rights. It is in such situations that Courts have to walk a tightrope as they not only have the constitutional responsibility of protecting and promoting the rights of the people but also have the duty of respecting the constitutionally created trichotomy of power.

Governance Structure in Pakistan can only be strengthened when all the institutions of the state work in accordance with law and cautiously exercise the power held by them for betterment of the people. Institutions need to work in harmony with one another and it is their constitutional duty to desist from undue interference in the functioning of other pillars of state. In case, institutions do not respect the trichotomy of power, we fear that the rights of the people will be violated and disregarded.

For protecting the rights of the people, we require a seamless system of justice, free from delays, affordable and within the reach of the people. This can only be achieved by the joint efforts of both the Bench and the Bar. They form inter-linked parts of the system in which one can not function properly without the other. They are both guided by similar values of providing justice without any inordinate delay to the people. Ordinary litigants look up to both the Bar and the Bench for alleviating their miseries. Their relationship must be founded on mutual respect and in case it is threatened the entire fabric of law is adversely affected.

The relationship between both of them has strengthened over the time. The dream of "Justice for All" can only be achieved if the Bar and the Bench compliment each other through their respective roles. It is expected from the Bar to uphold the dignity and honor of the Bench and also assist it to the best of their abilities, while the Bench has to endeavor to minimize the agonies of the ordinary litigants by curbing undue delays.

I may take this opportunity to reassure you that the objectives set by us for the Courts shall be pursued with greater vigor and commitment. Such objectives include continued commitment to independence of the judiciary and Rule of Law, dispensation of justice in a fair, transparent and expeditious manner, ensuring legality, propriety and integrity of the exercise of state power, enforcement of the fundamental rights guaranteed by the Constitution and promoting constitutionalism and democracy as a way of life.

An effort in this regards to eliminate the backlog of cases is already underway in this Court and the said efforts shall be pursued in future with greater energy and dynamism. In the last about six months we have already decided more than half of the criminal cases pending before this Court and we hope that by the summer of 2015 such backlog of criminal cases would be completely wiped out. A similar sustained and concentrated effort is being planned for tackling the backlog of constitutional, civil, service, revenue and other cases and results in that regard would soon become apparent in the coming months. With the assistance of the representatives of the Bar we expect to arrive at a workable solution for resolving the perennial problem of delayed communication of the cause-lists and timely fixation of cases for hearing.

The issue of unnecessary and avoidable adjournments shall be attended to and I would expect the members of the Bar to appreciate the importance of appearance before Courts over and above all other personal, social and professional engagements. A cooperative Bar in this regards would not only assist the Courts immensely but would also be appreciated by the people. On the other hand seeking unnecessary adjournments would not only overburden the Courts but also increase despair among the litigants. On all these and other related issues, I would expect the members of the Bar to cooperate with the Court and on behalf of the Court I assure them of my fullest cooperation and complete understanding.

Justice Jilani's brief tenure as the Chief Justice will always be remembered for his unmatched legal acumen and admirable record for promoting human rights through a strict emphasis on Rule of law. His jurisprudence and intellectual contributions will continue to guide not just the judiciary but the people of Pakistan for years to come. I hope that his message of universal love and cosmopolitan harmony guides us in the critical times of today when Pakistan requires a popular propagation of all the values of rationalist thinking.

The contributions by His Lordship for the freedom of judiciary and Rule of Law in Pakistan shall be remembered in the verses of our Judicial Anthem, titled "Justice for All". Every verse of his poetry reflects the determination of a brave man who fought against injustice throughout his life with strength and vigor and also evinces the tender heart of a poet which grieves at the suffering of humanity.

I would like to congratulate Mr. Justice Jilani on behalf of my brother judges for having completed his tenure with integrity, impartiality, honesty and honor.

As we pay homage to him and bid him farewell, I read from Kahlil Gibran:

"Let not the waves of the sea separate us now, and the years you have spent in our midst become a memory.

You have walked among us a spirit, and your shadow has been a light upon our faces."