

## **FULL COURT REFERENCE FAREWELL ADDRESS**

*By*  
**THE HONORABLE MR. JUSTICE TASSADUQ HUSSAIN JILLANI CHIEF JUSTICE  
OF PAKISTAN**

On 22.7.2014

The Hon'ble Chief Justice (Designate)

My Brother Judges of the Supreme Court,

Mr. Kamran Murtaza, President of the Supreme Court Bar Association

Mr. Ramzan Chaudhry, Vice-Chairman of the Pakistan Bar Council

Mr. Salman Aslam Butt, Attorney General for Pakistan

Ladies & Gentlemen!

I am most grateful to you all for having assembled here this morning to bid me farewell. It has been a long time that I served as a Judge i.e. ten years as a Judge of High Court and for a similar period as Judge of the Supreme Court and as Chief Justice of Pakistan.

2. Parting may be an anxious moment but it is as natural as appointment itself, it is part of life. It marks the beginning of a new chapter in one's life and provides an opportunity to put one's experiences to some meaningful cause.

3. The generous manner in which the members of the Bar and the Hon'ble Chief Justice (Designate) have expressed their views about me has been gratifying and source of immense satisfaction. I am grateful to each one of them for having found me worthy of the high office which Allah Almighty has been gracious to bestow. Let me however add that this Court and my colleagues equally share this credit and appreciation for deciding cases, settling disputes and expanding the scope of the fundamental values enshrined in the Constitution. It has been my privilege and honour to be a member of this Court, each member of which has to his credit the unique distinction of being a thoughtful person of immense intellectual depth and vision.

4. My term as Judge of this Court has been challenging and beset with dramatic socio-political upheavals and events which included an assault on judicial independence. While these events sparked of a popular movement spearheaded by the lawyers, civil society and media, it vindicated judiciary's strong resolve to courageously live by the terms of its Oath to defend and protect the Constitution, the Rule of Law and judicial independence.

5. The Constitution of a country is a living organism which constantly grows and evolves to meet the new challenges and social dynamics. It is the function of the Court to interpret the document in a manner which sustains its relevance and takes the nation forward on its march towards progress and development. Good governance and constitutional rule can be maintained and strengthened only when there is respect for the rule of law and the legal institutions are strong and functioning well.

6. During my short stint as the Chief Justice of Pakistan, there were certain matters which I considered, required judicial indulgence. Whether it was the case of the challenge thrown to the 31st of July 2009 judgment<sup>[1]</sup> in review jurisdiction or the anomaly of not providing timeline within which the Governor was bound by the advice of the Chief Minister<sup>[2]</sup> or the case where the Court directed to revamp legal education to improve the quality of justice<sup>[3]</sup> or the concern expressed about the quality of medical education<sup>[4]</sup> or the case where the Court gave judicial recognition to the concept of sustainable development<sup>[5]</sup>, the Court has been resolute in protecting constitutional values, responding to social dynamics, expanding the scope of judicial review and thereby acting as a catalyst of social change.

7. In the domain of Human Rights Jurisdiction, the Court took notice of the issue of Overseas Pakistanis. The law permits a Pakistani citizen to have dual nationality, though he may not be qualified to contest for a representative office in view of Article 63(1)(c) of the Constitution. There are more than 5.9 million overseas Pakistanis most of whom have acquired dual nationality who are significantly contributing to the economic and socio-political uplift of the country. They send billions of foreign exchange every year. According to an estimate they send \$ 14.3 billion in 2012-13. They are as patriotic as anyone else living within the country. However, notwithstanding the mandate of Article 25 of the Constitution which provides for equality of rights and equal protection of law, these expatriates felt alienated and their rights to access to justice have sometimes been thwarted by various bureaucratic and procedural impediments. One of the first things that I did after assumption of office was to open Overseas Cell in the Human Rights Directorate of the Supreme Court which promptly attends to their complaints with a view to provide speedy justice. The Cell has facilitated the exercise of fundamental right of access to justice by the expatriates and they view it as window of hope and relief.

8. The Constitution of Pakistan provides for a parliamentary democracy where the government is run by the chosen representatives of the people. To ensure that genuine representatives of the people are elected there is an institution of the Election Commission of Pakistan which erstwhile conducted elections to the National and Provincial Assemblies and that of the Senate. For the first time, the Constitution makers through the 18th Amendment conferred the power to hold elections to the local governments to the Election Commission of Pakistan. However there was an anomaly i.e. the corresponding power of law making and delimitation of constituencies of the local governments was not given. This issue was initially dealt with by the respective High Courts and then brought before this Court. A Full Bench of this Court in a judgment authored by me inter alia held that delimitation of constituencies is one of the foundational steps towards fair elections; that since under Article 140A of the Constitution, the Election Commission of Pakistan has been conferred the power to conduct local government elections, the delimitation of constituencies for conducting the local government elections has to be carried out by the Election Commission of Pakistan<sup>[6]</sup>.

9. In a recent judgment, the Court took up the issue of violence against and denial of minority rights. Notwithstanding the vision of the Founder of the Nation, that *"You are free; you are free to go to your temples. You are free to go to your mosques or to any other place of worship in this State of Pakistan"*<sup>[7]</sup> and the constitutional pledges of equal rights to the minorities, the dreams have not been fully realized. The proceedings were initiated, *suo moto*, under Article 184(3) of the Constitution, on receipt of a letter from an NGO, inviting Court's attention to an attack on the places of worship of minorities. The news item reports on killing of members of Hazara community, the threats being faced by people of Kalash in the tribal belt and the dismal failure of the State to protect them. The Court carried out an exhaustive survey of the protection accorded and benefits conferred on humans by the various human rights instruments as well as the tenets of Islam on the protection of minorities, the safeguards enshrined in the Constitution of Pakistan and the vision of the Father of the Nation, Quaid-i-Azam and held that the Supreme Court, being the Apex Court in a liberal democracy, has to play its role in extending the benefits of legal and constitutional safeguards to all its citizens. It observed:--

"It needs to be reiterated that under the Constitution minorities have a special status. This constitutional status has a historical background. It would be counter intuitive if the right to freedom of religion enshrined in Article 20 is interpreted in the manner which has the effect of encroaching upon religious freedoms of minority religions in Pakistan<sup>[8]</sup>."

10. The Court further observed :--

"The spirit of pluralism reflected in the Holy Quran constantly points out that Muhammad (PBUH) had not come to cancel the older religions, to contradict their Prophets or to start a new faith. To the contrary, His message is the same as that of Abraham, Moses, David, Solomon or Jesus. The cherished goal of creating a more pluralistic society where fundamental rights are respected would continue to elude us unless we realize that we are living in a world of globalized interdependence, a world inter connectivity, of cyber space, of shrunken distances, of across border migration, and a

world of rapidly changing cultural identities. We are all members of one race of humans with common challenges, and we cannot confront these challenges without forging a common alliance. This paradigm shift in the world around us can be achieved at the international and domestic levels only by discouraging sectarian, racial and ethnic biases which are violative of shared values and fundamental rights, and by the promotion of and strict compliance with these values and rights.<sup>[9]</sup>"

11. Our Constitution envisions the Apex Court as the Court which renders complete justice in terms of Article 187 of the Constitution. The Supreme Court in exercise of its jurisdiction under Article 184(3) read with Article 187 of the Constitution has been conscious of this seminal role. Over the last couple of years there has been, in public interest litigation, a massive expansion of fundamental rights jurisprudence through an expansive judicial review doctrine.

12. The constitutional pledges and values which I consider to be "conscience of the Court" would have remained hollow promises signifying nothing to the people if the Court had not made those provisions relevant for the socio-economic development of the people.

13. This expansion of Fundamental Rights jurisprudence has transformed the Supreme Court from a formal constitutional Court to a Court with a human rights face in which the essence of constitutional interpretation is people oriented leading to a reconstruction of judicial power. There are some who describe it as judicial activism. But this new people oriented profile of judicial power that has begun to emerge is not unique to our Court. There has been a global trend in most of the democracies where judiciary has adopted a more people oriented approach and thereby expanded the frontiers of its judicial authority. Tom Ginsburg<sup>[10]</sup> while describing this phenomenon said:--

"We are in the midst of a "global expansion of judicial power," and the most visible and important power of judges is that of judicial review."

14. Guarnieri and Pderzoli express similar views about European countries:--

"The social and political significance of the judiciary has become a common trait of contemporary democracies: a phenomenon described as the 'judicialization of politics' ..... Judges have therefore become almost daily participants in the political process: from the elaboration of public policies as a result of the interpretation of laws and the review of their constitutionality, to their implementation by means of the judiciary's overview of administrative agencies."

15. The challenges faced by the judiciary during the last few years has recharged the judiciary and it has emerged as an active pillar of the State. It marked the beginning of a new constitutional jurisprudence. It has put an end to constitutional deviations, social role of the rule of law which led to greater awareness amongst the people of their fundamental rights and the values of democracy. This change has six distinct facets: first, that mere formal constitutional legitimacy based on constitutional textual protections cannot protect judicial independence and power. It is, in fact the legitimacy of the Supreme Court in the eyes of the public as the guardian of the values of justice that guarantees its true independence and sustained prestige. Second that the Supreme Court is not merely mandated by the Constitution, but in fact bound by the spirit of its office, to exercise its independence in order to provide a much necessary check on the actions of the legislature and the executive. In the words of the renowned Constitutional scholar, Brian Tamanaha, "The judiciary is the point of most direct confrontation between the government, law and the individual and it can therefore serve as the best barrier against lawless governmental actions'. The Supreme Court is fulfilling this role with an appropriate zeal and enthusiasm but not without regard to the importance of upholding and respecting the independence of the other pillars of the State in keeping with the principle of trichotomy of powers. Third the law may not keep pace with the changing times and may not cater for every situation. The Court has to bridge the gap between the law and social dynamics. Fourth, that the Supreme Court may exert its Constitutional authority to bolster and sustain constitutional democracy and to guard against subversion of constitutional values while avoiding not only a constitutional breakdown but also an unseemly clash between institutions. Fifth that it is not sufficient for a Supreme Court of a complex

country such as Pakistan to merely implement the law. It is, in fact, important for the Court to display initiative and courage in the face of challenges to constitutional values from fluctuating majorities or passions of the day. Sixth in a society afflicted with education deficit, steeped in a myopic view of faith, stricken by ethnic and sectarian divide and agonized by terror, the Apex Court not only has to enforce the constitutional values, while striking a balance between liberty and security but also act as a pedagogical institution participating in a national seminar, disseminating the constitutional values and thereby educating the people through its judgments. No democracy can endure if such constitutional pledges and values do not bring about a positive change in the lives of the people and a constitutional culture is not nurtured. Such enforcement of laws and verdicts can promote values of trust and tolerance and thereby affect the human behavior patterns. As aptly remarked by Martin Luther King Jr.:

"Morality cannot be legislated but behavior can be regulated. Judicial decrees may not change the heart, but they can restrain the heartless."

خواتین و حضرات سپریم کورٹ کی وہ **jurisdiction** ہے جس کی تعمیر اور نشوونما کا میں حصہ رہا ہوں۔ آج جب میں اپنا مقدس فریضہ مکمل کرنے کے بعد اس عدالت سے رخصت ہو رہا ہوں تو میرے جذبات اور خیالت بہ زبان شاعر کچھ یوں ہیں۔

مانا کہ اس جہاں کو گلستان نہ کر سکے  
کاتھے تو کچھ ہٹا دیے گزرے تھے ہم جہاں سے

16. Before parting I may add that I would be remiss if I do not place on record my appreciation for the Hon'ble Chief Justice (Designate) Mr. Justice Nasir-ul-Mulk for his competence, balanced approach and profound knowledge of law. I trust he along with other worthy colleagues would continue to uphold the mandate of their Oath with equal courage, zeal and determination.

17. The Court is much more than its Judges. Without the assistance of our Court Staff, tip staves, Registrar, administrative staff and Court officers, we Judges would be quite incapable of administering justice. I wish to record my deep appreciation for their work and assistance. They have done so much to help me particularly in the final months. I thank my Registrar Tahir Shahbaz, Secretary Muhammad Hamid Ali who have been with me though for a short stint but would always value their hard work and conscientious assistance. I also thank my Private Secretaries, Khurram Anees and Khurram Shahzad who have worked with me the longest than any other member of my staff. I commend their integrity, dedication and commitment to their job.

18. My family is the most important thing in my life. My wife, my children Muhammad Saqib Jillani, Muhammad Adil Jillani, Muhammad Ali Jillani, my daughter and my son in law Zibber Mohyuddin gave me great satisfaction. I saw my children maturing, coming of age and making their contribution in the respective fields. I would particularly thank my wife for her warmth and for enabling me to attend to my professional duties unhindered, sometimes at her expense, for her deep sense of compassion and concern for others.

Thank you again. Long live Pakistan.

[1]. *General (R) Pervez Musharraf v. Nadeem Ahmed Advocate* (2014 SCMR 665).

[2]. 2012 SCMR 6.

[3]. PLD 2007 SC 394.

[4]. PLD 2007 SC 323.

- [\[5\]](#). Cutting of Trees for Canal Widening Project 2011 SCMR 1743.
- [\[6\]](#). Civil Appeals No. 38 to 45 of 2014.
- [\[7\]](#). Presidential Address of Quaid-i-Azam Muhammad Ali Jinnah to the Constituent Assembly of Pakistan at Karachi, 11 August 1948.
- [\[8\]](#). S.M.C. No. 1 of 2014 (*Suo moto* actions regarding suicide bomb attack of 22.9.2013 on the Church in Peshawar and regarding threats being given to Kalash tribe and Ismailies in Chitral).
- [\[9\]](#). Ibid 1.
- [\[10\]](#). Tom Ginsburg, *Judicial Review in New Democracies: Constitutional Courts in Asian Cases*, Cambridge University Press, 2003, P.3.