

FULL COURT REFERENCE IN MEMORY OF THE LATE CHIEF JUSTICE OF PAKISTAN CH: MUHAMMAD YAQOOB ALI KHAN

Address by

Mr. Justice Irshad Hasan Khan, Acting Chief Justice, Lahore High Court

My learned brothers and sisters, learned Advocate-General Punjab, Mr. President High Court Bar Association, Lahore, learned Deputy Attorney-General, Vice-Chairman, Punjab Bar Council, Vice-Chairman, Pakistan Bar Council, President Supreme Court Bar Association, learned Members of the legal profession, Ladies and gentlemen!

We have assembled here to pay homage to the revered memory of the former Chief Justice of Pakistan, Chaudhry Muhammad Yaqoob Ali Khan, who breathed his last on August 5, 1994.

The late Chief Justice, Chaudhry Muhammad Yaqoob Ali Khan, had joined the profession of Law, at least a decade before the partition of this sub-continent, in Jullundur city. He had the unique distinction of belonging to that category of people, who had actively participated in the organization of the Muslim League and taken concrete steps to further the cause of Muslim living in this part of the world. He was General Secretary of the City and District Muslim League and had his presence felt in that capacity, by earning commendations from the Quaid-e-Azam Muhammad Ali Jinnah, himself. With the partitioning of the sub-continent, he shifted the venue of his profession and calling to Lahore as a practitioner of law in the High Court and the then Federal Court of Pakistan. After partition, the count- was to he governed, as an interim measure, under the Indian Independence Act, 1947. The period between 1947 to 1955 had, within the wake, all the chances made available to the citizens of Pakistan for making/framing a Constitution for the newly-created "dominion of Pakistan" as also the laws for the country to encompass the entire State craft. It was during this period that Chaudhry Muhammad Yaqoob Ali Khan made great strides in his calling and came to be revered by his peers. In recognition of the over all traits of his personality, including his distinguished career at the Bar, that he was elevated to the High Court Bench, in 1955.

It was in 1955 that the then Federal Court of Pakistan decided "Governor General's Reference under section 213, Government of India Act, 1935" PLD 1955 FC 435 as also the cases reported as Federation of Pakistan and others v. Maulvi Tamizuddin Khan PLD 1955 FC 240 and Usif Patel and 2 others v. The Crown PLD 1955 FC 387 which paved the way for the Constitution of Islamic Republic of Pakistan, 1956. The era commencing with the Constitution of 1956 and ending with the proclamation of 1977 Martial Law was spent by the late Chaudhry Muhammad Yaqoob Ali Khan in his capacity as a Member of the Superior Judiciary of Pakistan, including being the Chief Justice of the country. The imposition of Martial Law in 1958 had the effect of, among others, putting an end to the governance of the country under the Constitutions of 1956 and of 1962, respectively. Parliamentary Form of Government remained in vogue in the country under the Constitution of 1956 and the further experience of Presidential Form of Government remained in force under the Constitution of 1962. With the imposition of Martial Law of 1958, the former Constitution ceased to have effect and the country came to be governed under the Laws (Continuance in Force) Order, 1958. The Constitution of 1962 was also put an end to in

1969 and the Provisional Constitution Order of that year remained in force up to the promulgation of the Interim Constitution of the Islamic Republic of Pakistan, 1972, which was succeeded by the Constitution of 1973. The Law reports of the country are replete with the judgments delivered by Chaudhry Muhammad Yaqoob Ali Khan, They will serve as beacon light for the succeeding generations of Judges of Superior Courts in the country. Some of the judgments of Chaudhry Muhammad Yaqoob Ali Khan may be recounted at this juncture:

- (1) Muhammad Iqbal v. The State PLD 1957 (W . P.) Lahore 31
- (2) Insaf Soap Factory v. Lever Brothers Port Sunlight Ltd. PLD 1959 (W.P.) Lahore 381.
- (3) The Sargodha-Bhera Bus Service and 37 others v. The Province of the West Pakistan PLD 1958 (W.P.) Lahore 77.
- (4) Nadara v. Jamaat Khan PLD 1968 SC 310.
- (5) Gul Hasan and others v. The State PLD 1969 SC 89.
- (6) Ghulam Muhammad v. Muhammad Sharif PLD 1969 SC 398.
- (7) Government of West Pakistan v. Begum Agha Karim Shorish Kashmiri PLD 1969 SC 14.
- (8) Muhammad Yousuf v. Government of the West Pakistan PLD 1970 SC 219.
- (9) Miss Asma Jilani v. The Government of Punjab PLD 1972 SC 139.
- (10) The State v. Zia-ur-Rehman and others PLD 1973 SC 49.
- (11) Ch. Zahur Elahi, M.N.A. v. The State PLD 1977 SC 273.

These judgments among others, are a permanent reminder to the people of Pakistan respectively engaged in the making of laws, exercise of executive powers and administration of justice in Pakistan that the late Chief Justice Chaudhry Muhammad Yaqoob Ali Khan had left no stone unturned to see to it that the rule of law triumphs in the country and the rights of the people are given a practical meaning by safeguarding the same whether a grievance is made by an aggrieved person against a co-citizen or against the might of the State, through its functionaries. The services rendered by the late Chief Justice as a practitioner of law as also as a Judge of the Superior Courts and further as Chief Justice of Pakistan, are not the end of the tale.

Most of us this side of the Bar have had the pleasure of appearing before the Chief Justice when he adorned the Bench of this Court as also the Supreme Court of Pakistan. The manner of dealing with the causes by him as a Judge and Chief- Justice endeared himself with his colleagues on the Bench and also the Members of the Bar. I recall, a personal experience of appearing before Ch. Yaqoob Ali Khan for the first time in this Court in the year 1962. I had, as expected of a beginner in the profession, prepared my brief thoroughly which continued until early hours of the preceding morning. He made me very comfortable in his Court by guiding the junior-most

member of the black-coated fraternity in presenting a brief before a Judge who was already well known in preservice of calmness and extending due courtesies and patient hearing to all the members of the Bar. He was God-fearing and blameless. He never raised his voice in the Court. He was an embodiment of humility. His courage and conduct during the Martial Law period will go-down in history. He maintained judicial qualities, ideal behaviour and courage throughout his life, that its, even after his retirement as Chief Justice of Pakistan as a result of 5th Amendment of the Constitution of Islamic Republic of Pakistan, 1973. He richly deserves to be remembered as 'MR LAW' -- a great champion of human rights and civil liberties.

There yeas not a branch of law in which the later Chief Justice did not deliver judgments and-that too during the most eventful period during which he was called upon to administer justice in this country. The valuable assistance that the late Chief Justice received from the members of the Bar was also recalled by him on various occasions arising in that behalf during almost a quarter of a century that he remained on the Bench. It is for the judiciary as well as the Bar to follow the standards set by the late Chief Justice as also his illustrious predecessors and the senior Members of the Bar.

While replying to the Farewell Address on the eve of his retirement as Chief Justice of Pakistan on 3rd October, 1977, the late Chief Justice had the following reminiscences to be given a formal shape in the third paragraph of his Reply:

"Recalling so many pleasant years of our association I say without arty exaggeration that the term "brother Judge" which we use for each other had for me not only its formal dictionary meaning but was a term of, much deeper connotation. It betokened nearness of our minds which with full independence of thinking by every Judge sitting on the Bench blended into a happy sense of belonging to a family of Judges. "

After his retirement, the late Chief Justice Chaudhry Muhammad Yaqoob Ali Khan had devoted, himself completely to the cause of education: He had in fact shown his interest in the cause much before his retirement. He was the Chairman of the Crescent Educational Trust for over 25 years and saw to it that the Crescent Model School and College at Lahore come up to his expectations to deliver the goods in this noble cause. He also involved himself in the field of higher education in his capacity as the Chairman of the Board of Governors of the Lahore School of Economics. His devotion to this cause further indicates and confirms the nobility of his mind. I am reminded of a couplet which best describes this quality in the late Chief Justice Chaudhry Muhammad Yaqoob Ali Khan.

In his passing away, we have truly lost a great man amongst us.

However, all that we can do for him now is to pray to Almighty Allah to grant him special place in the Heavens and give to the bereaved family courage and forbearance to bear the colossal loss! (Aamin). I have no doubt in my mind that Barrister Muhammad Yawar Ali Khan, son of the late Chief Justice, will follow the footsteps of his illustrious father, who was indeed a great Jurist and a gentleman of the highest excellence.

Let us now offer Fateha for the salvation of late Chief Justice Chaudhry Muhammad Yaqoob Ali Khan's soul.