

FULL COURT REFERENCE ON THE EVE OF RETIREMENT OF MR. JUSTICE TARIQ PARVEZ JUDGE, SUPREME COURT OF PAKISTAN

Address by

MR. JUSTICE IFTIKHAR MUHAMMAD CHAUDHRY

Chief Justice of Pakistan

My Learned brethren;

Attorney General for Pakistan;

Vice Chairman Pakistan Bar Council;

President, Supreme Court Bar Association;

Advocates General of the Provinces;

Members of the Bar; Ladies and Gentlemen,

Assalam-o-Alaikum!

We have assembled here today to bid farewell to our brother, Mr. Justice Tariq Parvez on the eve of his retirement from this Court on attaining the age of superannuation prescribed in the Constitution.

I should not repeat the details of the illustrious career of Justice Tariq Parvez in the profession of law, starting with his obtaining the law degree, entering the legal practice *en route* and leading up to his elevation to the bench of the Peshawar High Court, which is a unique honour and prestige, rather a life time achievement. Before I go ahead, let me pause here to point out that this honour and prestige casts a corresponding responsibility of high degree that one is called upon to discharge while occupying the position of judgeship, and to fulfil his commitment and discharge his burden. This one does, firstly by seeking Allah's help and guidance, and secondly by putting in incessant hard work, by burning his midnight oil and by utilizing all his mental faculties and physical capabilities. Be that as it may, all of it is a source of great satisfaction and happiness, and everyone in the profession would certainly long to reach up to the heights Justice Tariq Parvez was destined to attain by the grace of Allah Almighty.

Justice Tariq possesses sterling qualities of head and heart and has always made use of his sharp faculties of wit in discharging the onerous function of doing justice in the cases brought before him. We all found him always eager to do substantial justice to the oppressed and deserving and never allowed technicalities to overshadow the purpose of the law. A litigant might have felt disappointed upon losing a case but no litigant would have returned from his Court feeling he was not fully heard.

Justice Tariq has rendered, and been a party to a number of remarkable judgments both as a Judge of the Peshawar High Court and later in the Supreme Court, which will continue to serve as tangible guidelines for all of us in the legal and the judicial fraternities as well as for times to come. Here, I would not go into details of those judgments and it would suffice to allude to some of the landmark decisions. He was a party to the recent opinion tendered by this Court in the Presidential Reference^[1] concerning the appointment of Judges of the Superior Courts, wherein this Court has opined that the Constitution has not empowered the Prime Minister or the President of Pakistan to interfere with the nominations made by the Judicial Commission of Pakistan duly confirmed by the Parliamentary Committee in terms of Article 175A of the Constitution.

The 18th Constitutional Amendment, *inter alia*, introduced wide ranging changes in the mode and method of appointment of Judges of the Superior Courts. It formed the subject-matter of lengthy debates in the hearing of the Constitutional Petitions filed to challenge the validity of the new provisions. While the main case is yet to be finally disposed of, a short order was passed and certain observations made in pursuance whereof, the Parliament further dilated upon the issue and came up with the 19th Constitutional Amendment bringing about certain changes and addressing the issues referred in the Court order. The

Constitution of the Judicial Commission was completed with the nominations of representatives of the Pakistan Bar Council and the Provincial Bar Councils for a two-year term and the new appointment mechanism came into effect accordingly. The Judicial Commission, in its combined session, unanimously framed rules of procedure and both the constitutional bodies, namely, the Judicial Commission and the Parliamentary Committee took in hand the most sensitive work of appointments in the superior judiciary. Such rules of procedure have been in the field for a considerable time now. On completion of the tenure of representatives of some Bar Councils in the recent past, unfortunately, new nominations have not been received so far despite various letters and reminders issued by the office of the Judicial Commission. A meeting of the commission was held last month to consider the cases of confirmation of certain Judges whose tenure as Additional Judges was nearing completion, but the proceedings were not held, firstly to await the nominations of the bar councils, and secondly, the Attorney General for Pakistan and the Federal/Provincial Law Ministers were also not present. The meeting was postponed to enable the aforesaid functionaries to attend it as well as the bar councils to make their nominations. However, by the next meeting, neither any nominations were received from the Pakistan Bar Council and the Punjab Bar Council nor did the said functionaries participate in the meeting. Nonetheless, considering the urgency of the matter, the Judicial Commission by majority finalized the nominations and forwarded the same to the Parliamentary Committee for further action in accordance with the Constitution. The non-participation by any of the members of the Commission deprives this body of valuable input in selecting the best and brightest to adorn the benches; therefore, all the concerned stakeholders are expected to fulfil their constitutional obligation in the public interest. One vacancy already exists in the Supreme Court against which nomination has already been made. Yet another is occurring now with the retirement of Justice Tariq Parvez. The High Courts throughout the country are already facing severe shortage of Judges, where additional appointments are required to be made to complete the strength of the benches. The process of the appointment of suitable candidates for filling the vacancies in the Superior Courts must be expedited so that the fruits of the sure administration of justice are delivered to the general public, who have been long awaiting the results of their pending litigation before various legal fora. The low strength of the judges in the Superior and subordinate judiciary ultimately causes great discomfort and inconvenience to the litigant public seeking justice and redressal of their grievances in accordance with the law, as it has an effect of increasing case load and delaying the dispensation of relief. The members of the bar are saddled with the responsibility of making substantial contribution in the process of judicial reforms, particularly in the context of making access to justice for all a reality. Ladies and Gentlemen!

Justice Tariq Parvez was among that majority of the Judges of the Superior Courts who refused to make oath before the military dictator in November 2007 and was made dysfunctional. After restoration of the judiciary, he was appointed as Judge of the Supreme Court of Pakistan in 2009. Ever since taking oath as a Judge on October 20, 2009, Justice Tariq has worked tirelessly to restore the rightful dignity and credibility of the Supreme Court.

The present-day judiciary made a clean break from the illegalities associated with the institution in the past and struck down the unconstitutional acts and actions of a usurper. This was indeed a turning point in the Constitutional history of our country as the restraint order of 3rd November, 2007 coupled with Parliament's refusal to endorse unconstitutional action laid groundwork to build a strong and invincible democratic structure upon it. This new dawn of democracy - with governance based on the rule of law and wherein the Supreme Court is fully geared to enforce fundamental rights enshrined in the Constitution - was only made possible by a bold and unprecedented stance taken by my brother judges in the wake of a patently unjust and unconstitutional order of a dictator. Most importantly, the journey which we started first in 2007 and then in 2009 still continues without any fear or favour to any class.

There is no denying the fact that each generation must of course respond to the particular social, economic and political challenges faced by it. In keeping with the vision and foresight of the framers of our Constitution, we must do our best to respond to the problems faced by society in our own times. There is also no doubt that democratic values can only be strengthened if we ensure that all our citizens have access

to basic entitlements guaranteed under the law. Therefore, this Court, in the discharge of its constitutional mandate, has always endeavoured to protect the rights of the people and upheld democracy and rule of law throughout the country. While recalling history, one finds that this Court has considerably strengthened the democratic and pluralistic foundations and commitment to the rule of law through landmark decisions and its liberal jurisprudence. Indeed, this contribution resulted in the strengthening of our national unity and fostered a distinct sense of constitutional patriotism.

It is important to remember that the Judiciary has to be resolute in upholding the rule of law and the canons of justice in accordance with constitutional norms. Let me make clear that the role of the Judiciary is not that of an opposition to the other two organs of State. Rather, it merely places a check on the arbitrary exercise of power by any institution or functionary of the Government or executive. Otherwise, all the three organs of State pursue the same objectives of ensuring constitutional supremacy, establishment of the rule of law, good governance and protection of the rights of the people.

Delivering justice is a responsibility of all participants of a judicial system. The bench, bar, litigants and investigating agencies, all have a role to play to ensure that justice is dispensed in a timely and inexpensive manner, which at the same time is fair. This imposes an obligation on each stakeholder to conduct himself in a manner that builds faith and confidence in the system, and contributes to national stability.

There is no doubt that delayed justice poses a serious threat and challenge to the civil and criminal justice system in Pakistan. The expeditious disposal of cases is a constitutional obligation and a laudable objective. It is also of utmost necessity to augment the confidence of the people in the judicial system which is essential to its successful working. I hope that all of us, irrespective of our institutional and personal preferences, rise to the occasion and take the opportunity made available to us and earnestly strive to strengthen Constitutional governance and build a strong, prosperous and vibrant Pakistan. I feel confident in saying that the message of supremacy of the Constitution and rule of law has been fully spread by the judicial organ of the country at every level and the other institutions of the State are also being strengthened by this transformation. I hope that this new found optimism based upon Constitutional pluralism and deliverance of fundamental rights for all, irrespective of caste, colour or creed will redeem us as a successful nation.

As you are well aware, Pakistan is passing through a critical phase of its history wherein the daily events of kidnapping for ransom, abduction, target killing, forced disappearances, energy crises, corruption and nepotism have crippled socio-economic development and shattered the confidence of the public in the concerned state functionaries. It is the need of the hour that authorities should work hard to rescue the democratic setup from being distorted in the backdrop of these social evils. Therefore, they should devise workable mechanisms and adopt high ideals of democracy in order to bring peace and harmony in the country. I hope that all state institutions and civil society join hands for achieving the common goal of transforming Pakistan into a true welfare State by following principles of rule of law, fairness, accountability, transparency and constitutional supremacy.

In such a scenario, Justice Tariq Parvez has rendered his great services to the judicial institution through his extraordinary abilities, legal acumen, in-depth understanding of law, patience, wisdom, incorruptibility and impartial judgments. Justice Tariq endeavoured to serve the cause of independence of judiciary and rule of law throughout his legal and judicial career. As a judge of the Superior Courts, he adorned the exalted office in keeping with the lofty tradition of the judiciary and discharged his onerous responsibilities with great credit. The highest degree of impartiality, absolute integrity and independence have been the hallmarks and independence of his character as a man and a judge alike and this he has amply displayed during his celebrated tenure. His contribution to the field of jurisprudence is enormous. His decisions covered almost every conceivable subject of law. He gave new dimensions and meanings to the law and constitutional provisions through an interpretative process.

Justice Tariq Parvez, possessing an unassuming and affectionate nature, and devoted to a simply and austere way of life, his modesty and sense of absolute integrity have endeared him to the members of the bench and the bar and we shall certainly miss him in our midst. With his departure, we shall be deprived not only of his valuable contribution on the bench, but also of his affectionate association outside the Court. However, it is inherent in all institutions invariably that retirement and departures do take place from time to time. What is important is that one should leave behind a fair name and pleasant memories of one's tenure. Justice Tariq Parvez indeed succeeded in doing this by virtue of his inherent qualities and excellence of character, which have impressed everyone with whom he came into contact during his long and celebrated career in the judiciary.

The purpose of the law is to offer solutions to social problems, not opportunities for creative manipulation. Its only legitimate goal is to serve the people, the society and the State. Lord Mansfield was not a "mere lawyer", said Dr. Johnson, "he made law serve life". This is a philosophy which Justice Tariq Parvez has been sharing as a personified example.

On behalf of my colleagues and myself, I wish him long years of fruitful work in the service of the nation. Although our official association comes to an end today, I am confident that our personal association and friendship will continue, wherever he may choose to reside after his retirement.

I pray to Allah Almighty to bless him with a healthy, happy, long and rewarding life ahead. Ameen!

^[1] Reference No. 01/2012.