

**FULL COURT REFERENCE ON THE RETIREMENT
OF MR. JUSTICE IFTIKHAR MUHAMMAD CHAUDHRY, HON'BLE CHIEF
JUSTICE OF PAKISTAN HELD ON 11-12-2013 AT ISLAMABAD.**

Address by
SYED QALB-I-HASSAN,
Vice Chairman, Pakistan Bar Council,

- Mr. Lord the Chief Justice of Pakistan,
Mr. Justice Iftikhar Muhammad Chaudhry;
- Hon'ble Mr. Justice Tassaduq Hussain Jilani,
The Chief Justice-designate;
- Hon'ble Judges of the Supreme Court;
- Mr. Munir A. Malik, Attorney-General for Pakistan & Chairman, Pakistan Bar Council;
- Mr. Kamran Murtaza,
President, Supreme Court Bar Association;
- Malik Zahoor Shehwani,
President, Balochistan High Court Bar Association
- Distinguished Members of Bar Councils & Office bearers of Bar Associations;
- Learned Members of the Bar;
- Ladies and Gentlemen.

Assalam-o-Alaikum,

1. My Lords and colleagues, this is indeed a historic day. His lordship leaves after serving a vastly long term as Chief Justice of Pakistan. His tenure saw many ups and downs which produced both positive and negative trends in the jurisprudence of Pakistan.

2. My Lord the Chief Justice having joined the legal profession as an Advocate in 1974, actively practiced law and remained, throughout, one of the busiest and prominent lawyers of Balochistan. His popularity amongst Bar Members reflects from the fact that he was elected as President, Balochistan Bar Association, Quetta in the year 1986 and also twice elected as Member of the Balochistan Bar Council. During the tenure of his practice as legal practitioner, he practiced law in the fields of Constitutional, Criminal, Civil, Tax and Revenue Laws. He was appointed as Advocate-General, Balochistan in the year 1989 and held that post till 1990.

3. My Lord's illustrious judicial career started in November, 1990 when he was elevated as Additional Judge of the High Court of Balochistan. He was appointed as permanent Judge of the High Court in 1993 and then its Chief Justice on 22-04-1999 which position he held till his elevation as Judge of the Supreme Court of Pakistan on 04-02-2000.

4. His Lordship assumed the exalted Office of Chief Justice of Pakistan on 30-06-2005. Soon after assuming the office of Chief Justice of Pakistan My Lord, in addition of doing normal Court work of the Supreme Court, also started giving priority to cases of public importance and enforcement of fundamental rights within the framework of the Constitution and thus promoted "Judicial Activism" in the larger public interest.

5. The judicial history of Pakistan witnessed a significant change when your lordship flatly refused to accede to dictation of a military dictator. Resultantly your lordship had to face certain consequences which were beyond the said norms of law and justice and were utterly unconstitutional. The ouster of your

lordship along with over 100 honourable judges triggered mass movement mainly led by legal fraternity and was backed by civil society & media. This struggle finally bore fruits and culminated in restoration of Honourable Chief Justice and other judges.

6. The hallmark of Chief Justice Choudhry's tenure will be his illegal ouster by a dictator and subsequent reinstatement after the lawyers took the lead and refused to accept the dictatorial and arbitrary act of a dictator. The legal fraternity in Pakistan has been consistent in its struggle to strengthen democratic values and to aspire for a judiciary that remains independent of the executive. In both fields, they have made gains. For the first time there has been a transfer of power from one elected government to another. After the restoration of his lordships Chief Justice Iftikhar Muhammad Choudhry, the judiciary has distanced itself from the Executive and we remain hopeful that this tradition will continue.

7. The Bar also appreciates cases taken up by the Supreme Court that directly violates the fundamental rights of the citizens especially where the perpetrators are State agents. In this regard the cases of missing persons symbolized the commitment of the Supreme Court and the honourable Chief Justice in addressing the basic human rights of the people. This is an abhorrent practice which should never be tolerated by any society.

8. Some lessons have to be learnt from these incidents. First, the courts must act swiftly after such grave human rights violations occur. By 2005, it was widely reported that individuals, particularly Baloch nationalists and suspected militants were being picked up by unknown armed persons. Relatives and eyewitnesses had accused paramilitary and secret services to be involved. Unfortunately, this matter has dragged till now and judicial notice was not taken promptly and effectively in the first instance. Nevertheless, the honourable Chief Justice did at the tail end of his career exhibited the power of an independent court. We appreciate this bold and just position taken by the Bench headed by his lordship Chief Justice Iftikhar Muhammad Chaudhry. It was a matter that was both, urgent and sensitive. Chief Justice Iftikhar Muhammad Choudhry will be remembered for upholding the rights of those who have disappeared and suffered immensely.

9. The restoration of Chief Justice Iftikhar Muhammad Chaudhry also gave new energy to the Supreme Court. It exelerated its activist role. In a few cases that directly dealt with addressing enforcement of fundamental rights in matters of public importance, which the honourable Chief Justice heard under his jurisdiction of 184(3) of the Constitution are also worthy of applause. Others will sadly, remain a controversial legacy of the honourable Chief Justice.

10. Similarly the human rights cell, where millions of applications are received remains non-transparent, though it could have become a useful tool for granting relief to millions of suffering people. It remains an innovative creation of his lordship the Chief Justice of Pakistan. If used in a non-selective manner and under some guiding principles, the human rights cell can strengthen the concept of rule of law. It enlarges access of the marginalized to the highest court of the country and promotes confidence in the system of justice. Honourable Chief Justice Chaudhry remains a man of ideas. He, however, remains short in the application of these in a manner that is consistent non-selective, non-discriminatory, fair and transparent. Had his lordship pursued bright ideas in a spirit of impartiality the legal system would have seen a marked improvement.

11. Another contribution of his lordship Chief Justice Iftikhar Muhammad Choudhry was his judicial policy. It lays down some important bench marks for improving the administration of justice. However, its application too remained a matter of debate in the bar. Some of its lofty principles have, unfortunately, not been strictly adhered to especially by retired judges, who continue to accept posts and assignments that fall far below their former status as honourable judges. His method of disposal of cases has multiplied litigation rather than reduce it.

12. His lordship, Chief Justice Iftikhar Muhammad Choudhry has also been an exceptional leader at the Bench. He had undiluted authority and loyalty from his peers. This can be a double edged weapon. It builds a collective spirit of responsibility and accountability. Team spirit in any judiciary will only enhance the institutions' capacity and save it from falling prey to intrigues. At the same time, judicial independence requires each judge to be as independent as the institution ought to be in its collective character.

13. The downside is where diversity of the bench is lost to a single point of view. Alas, many judgments delivered by the honourable Chief Justice remain controversial and contain contradictions. Again, these were unanimous judgments. We know that it was not a case where nothing grew under a huge banyan tree. We also know that it was not a case where nothing else could breathe under the thickness of banyan tree. It was, my lord the Chief Justice, a mark of respect for your strategic planning during the lawyers' movement and a shared history that your lordships cherished.

14. In (PLD 2009 SC 879) The Sindh High Court bar Association judgment your lordship with one sweep declared a large number of judges as unconstitutional. Some, who like your lordships, had taken an oath under a PCO and others as they had taken an oath from a Chief Justice declared illegal by your lordships. Today is your time of departure my lord, therefore we must bid your farewell softly and pleasantly but two questions will remain unanswered: how is one PCO judge different from another? If a Chief Justice is even declared illegal, all his actions judgments, oaths and appointments should then not be struck down -?

15. Justice Hasnat Ahmed Khan's case (PLD 2011 SC 680) authored by his lordship Chief Justice Iftikhar Chaudhry received unanimous support from all the judges on the Bench. My Lord, Chief Justice I envy your charm. A judgment that in the long-term cuts the very branch on which one sits could leave behind a precarious situation for judges. It opens in my humble view the inappropriateness of accusing sitting judges of contempt of court. I am aware that eventually the judges after having served under you for a long time were declared as holding the office illegally all the while. May I then ask why they were being accepted as judges till this case came up? These, my lord the Chief Justice are haunting judgments for me.

16. Very recently, his lordship Chief Justice authored the Raja Zafar-ul-Haq judgment (2013 SCMR 1480), which was promptly criticized in the Bar and in the Parliament. I trace these three judgments because your lordship may have noticed that these depict your lordship's career post reinstatement. The Sindh High Court judgment was widely acclaimed as historic despite the stigmatization it carried. The Hasant Ahmed judgment was accepted grudgingly but by Zafar-ul-Haq the reaction of denouncement was quick and loud. This is how, my lord the Chief Justice, your post - restoration image can best be traced from historic to unacceptable.

17. My lord Chief Justice Iftikhar Muhammad Choudhry was also the head of the Judicial Commission. He has had the privilege and honour of recommending elevation of a large number of judges. He leaves behind a legacy which is still to be tested. The Bar has its own reservations on the method and quality of judges so far appointed. These reservations will either die down if judicial performance begins to improve or it will deepen if they face daily challenges in the performance of their duties and if their expectations are not met in the least.

18. Finally, let me congratulate his lordship the Chief Justice for his eventful period on the Bench. Your lordship was indeed, the most powerful Chief Justice in Pakistan's history. Though I believe that power is not always a constructive attribute for a judge. A judge must remain strong, independent and fiercely fair. May Allah grant you those attributes in your years to come and may your lordship have a very long and fruitful life. We wish you an even more eventful life than the one you experienced as Chief Justice and more loyalty than you had while on the Bench.

