



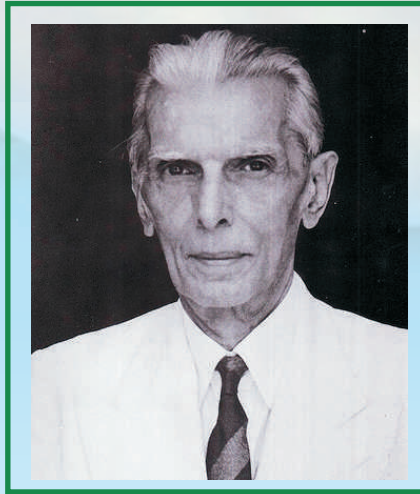
**Mr. Justice Anwar Zaheer Jamali**

The Honourable Chief Justice of Pakistan

**"Strengthening Rule of Law through Executive Oversight"**

14<sup>th</sup> Conference of the  
Ombudsmen from the Asian Continent  
Islamabad, Pakistan

25 November 2015



**"**Your conduct and dealing with people in various departments, in which you may be... Make the people feel that you are their servants and friends, maintain the highest standard of honour, integrity, justice and fair-play...If you will follow that rule believe me you will win the respect of the people.**"**

**Quaid-i-Azam Muhammad Ali Jinnah**

Address to the Gazetted Officers at Chittagong, 25 March 1948

**Striving for a rule of law based Pakistan**  
**[www.ljcp.gov.pk](http://www.ljcp.gov.pk)**



Law & Justice Commission  
of Pakistan

### **Our Goal**

Our Goal is a Pakistan based on a  
fair and substantive Rule of Law

### **Our Vision**

A fair, impartial, inclusive and substantive  
Rule of Law as the foundation of modern and  
dynamic Pakistan

### **Our Mission**

To lead the reform of law and justice institution to be fair and  
inclusive; strengthen organizational capacities and accountability to  
be effectively responsive to citizens' security and  
justice needs and well being; and empowering citizens to assert  
their rights and claim their entitlements, and exercise their duties and obligation.

Supported by:  
Enhanced Democratic Accountability and Civic Engagement  
EDACE



CHIEF JUSTICE OF PAKISTAN  
JUSTICE ANWAR ZAHEER JAMALI

CHAIRMAN  
LAW & JUSTICE COMMISSION *of* PAKISTAN  
GOVERNMENT *of* PAKISTAN

Mr. Mohammad Salman Faruqi, Federal Ombudsman  
Distinguished guests  
Ladies and Gentlemen

1. I am honoured to be invited as the Chief Guest at to the Dinner for the Delegates of 14th Conference of Ombudsmen from the Asian Continent.
2. I will focus on the role of the Ombudsman offices in strengthening the rule of law in our system of governance. As I mentioned in my address to the Senate of Pakistan on 3 November 2015, the rule of law, in its most simple formulation means that we are all ruled by law and not by the arbitrary will of men. In this rule of law context, the Ombudsman offices have a critical role as an external albeit executive oversight mechanism against the exercise of arbitrary power in the workings of our system of governance.
3. To ensure quality public administration and service delivery that is effectively responsive to citizens' needs and demands, the Federal and provincial governments created the statutory office of the ombudsman, specifically mandating it and later the information commissions, to monitor, rectify and address citizens' grievances against public agencies. As such, the ombudsman is a critical interface between the State and the citizen that can create an enabling environment for citizens to assert their rights and claim their entitlements with respect to the public sector, which essentially means access to basic goods and services guaranteed or promised by the State.
4. The ombudsman movement was initiated with the creation of the Federal Ombudsman office in 1983, which was subsequently strengthened by the creation of the respective provincial ombudsman offices with the mandate to address "mal-administration" in the public sector. Apart from it, today, we also have a number of specialised ombudsman offices for banking, tax, insurance, protection of women against harassment at the workplace.
5. In addition to many mal-administration related cases heard in the courts across the country, independent reports such as Transparency International – Pakistan's National Integrity System – Country Report 2014 and the like provide ample evidence of the need to strengthen public administration. Weak public administrative capacities and and transparency are key contributory factors in the weak implementation of laws including weak justice sector

performance that ultimately undermines the rule of law. Sadly, I must admit that a lot more needs to be done to improve the quality of public administration to ensure the effective enforcement of rule of law.

**Ladies and Gentlemen:**

6. I will briefly describe the elaborate and robust framework provided by Legislature, which entrusts the ombudsman offices with a critical and a potentially transformative role in enforcing the rule of law in public administration and our system of governance.
7. As I mentioned earlier, as a critical interface between citizens and the State, the Ombudsman is responsible for addressing citizens' complaints against public agencies and addressing the root causes of systemic dysfunction that result in mal-administration in the public sector. By proactively enabling and facilitating citizens to ensure that their rights are not violated by administrative authorities and public agencies, providing an effective remedy as indeed the law does and citizens timely receiving their entitlements, there would be a much more constructive relationship between the State and citizens resulting in greater public confidence in State institutions and organisations. As such, the ombudsman offices have a critical role in maintaining the rule of law and promoting State legitimacy.

**Ladies and Gentlemen**

8. As per article 37(d) of the Constitution of the Islamic Republic of Pakistan 1973, it is a Constitutional responsibility of each organ and authority of the State (art. 29(1)) to provide "inexpensive and expeditious justice" in their respective areas of competence. This means that each organ and authority of the State must make effective provision for public grievance redress to ensure that citizens receive their entitlements as provided by the law. This is what we call department or internal executive oversight, sometimes described as inspections. Not entirely relying upon a "peer review" public grievance redress system, Legislature created a dedicated specialized office to provide external or independent albeit executive oversight to curb administrative excesses.

**Ladies and Gentlemen**

To highlight the scope and significance of the ombudsman office as an oversight mechanism, I will briefly set out their statutory mandate for your consideration.

9. The Federal Ombudsman/Wafaqi Mohtasib, established in 1983, is mandated to address individual complaints, and "to diagnose, investigate, redress and rectify an injustice done to a person through mal-administration" by a Federal "agency". Mal-administration is defined extensively to include "a decision, process, recommendation, act of omission or commission" that:
  - (a) is contrary to law, rules or regulation ...
  - (b) is perverse, arbitrary or unreasonable, unjust, biased, oppressive, or discriminatory, or
  - (c) is based on irrelevant grounds, or



- (d) involves an exercise of powers or the failure or refusal to so, for corrupt or improper motives, such as , bribery, jobbery, favouritism, nepotism and administrative excesses; and
- (e) neglect, inattention, delay, incompetence, inefficiency and ineptitude, in the administration or the discharge of duties and responsibilities.

10. At the provincial level, the earliest ombudsman office was created in 1992 and recent most in 2010, with similarly expansive mandates as the Federal Ombudsman. The Punjab Ombudsman expressly provides “for protection of the rights of people, ensuring adherence to the rule of law, diagnosing, redressing and rectifying any injustice done to a person through mal-administration and suppressing corrupt practices”. The definition of mal-administration is similar to the Federal law definition cited earlier but focusing on provincial agencies, which include their district departments.
11. The Khyber Pakhtunkhwa Provincial Ombudsman Act 2010 mandate makes special mention “to promote the rights, welfare and health care of women and children” and “take such ... steps as he [Ombudsman] considers necessary to preserve and promote the welfare of women and children”. Other Ombudsman offices have specific and dedicated mandates, for example, for the protection of child rights or to address harassment against women in the workplace.
12. Clearly, as per the mandate, the Ombudsman offices have a very significant responsibility in protecting Fundamental Rights, ensuring legality and fairness, and ensuring citizens' timely receive their entitlements to the standard provided by law. This the Ombudsman offices perform through its public grievance redress function that has become the primary or dominant function of the Ombudsman offices. Without imposing cumbersome processes and procedures, when examining “a decision, process, recommendation, act of omission or commission”, the ombudsman offices need to carefully test questions of Fundamental Rights, their legality, fairness, impartiality and inclusiveness.
13. I cannot overstate this, that Fundamental Rights informed by the Preamble and the Principles of Policy are the essential moral content of the Constitution and the rule of law. It has an over-riding effect that is mandatory and binding on all State institutions, organs and agencies including the ombudsman offices. Hence, in pursuance of articles 8 (1) and (2) of the Constitution, the ombudsman offices must ensure, that any intervention, instrument or policy effectively having the force of law if found to be inconsistent with Fundamental Rights is declared void to the extent of such inconsistency. Similarly, any decision, process, recommendation, act of commission or omission that effectively “takes away” or “abridges” a right shall to that extent be declared void. The Preamble, Fundamental Rights and the Principles of Policy must be understood to be incorporated in the statutory mandate and constituting an essential aspect of standards of good administration.
14. Similarly, relevant laws and legal rules may be translated into principles of good administration. For instance, where discretion is exercised without recording and providing reasons to those affected it may be deemed to be mal-administration and strictly enforced as a standard of good administration in pursuance of section 24A, General Clauses Act 1897. The ombudsman offices can then randomly monitor through a sample size that is statistically significant and report the application of discretion to ensure compliance with law and standards.

**Ladies and Gentlemen:**

15. Complementing and reinforcing external executive oversight, our system of governance draws on civic oversight, which Legislature has provided by enacting a Constitutional right to information. Governments have accordingly enacted or revised their freedom or right to information laws providing legal rights to access to information and ensure transparency, which is essential for a system of governance that is open and accountable.
16. Due to the lack of accessible information made available by the State machinery, including laws, citizens are unable to assert their rights and claim their entitlements resulting in needless suffering and anguish. Complementing the mal-administration mandate and in furtherance of article 19A of the Constitution, the Pakistan Right to Information Act 2013, seeks “to promote the right to know” and “disclosure”. The Federal, Balochistan and Sindh ombudsman offices are also responsible for hearing complaints against public officials' refusals to provide access to “public records”.
17. Khyber Pakhtunkhwa and Punjab right to information laws however provide for separate dedicated information commissions. The Punjab law seeks to provide for “transparency and freedom of access to ensure that citizens have improved access to public information; to make the Government more accountable to citizens; to enforce the fundamental rights of access to information in matters of public interest ... “. As well as hearing complaints, the Information Commission is empowered to hold inquiries, determine the public interest, “issue directives to public bodies for preservation, management, publication, publicity and access to information”, issue guidelines, and undertake trainings and mass awareness raising. Similarly, the Khyber Pakhtunkhwa Information Commission is empowered to “set rules and minimum standards” and monitor compliance with the law.
18. The Punjab and Khyber Pakhtunkhwa freedom of information laws also provide for “proactive disclosure” of “record or public record”, whereby, “public bodies” (that have a similar scope as agencies) must disclose specified information and “any other information that the Government may notify in the official Gazette” or “as may be prescribed” under the rules. For this purpose, we believe that the transparency standards have been notified for prisons and a similar exercise is in process for the police forces. But essentially standards need to be formulated and notified for each agency or public body to ensure a minimum level of transparency.
19. Whilst the principle of civic oversight has been accepted with the enactment of article 19A, the practice of civic oversight needs to be effectively implemented. Unfortunately, to date, there is limited evidence of the effective implementation of the right to information obligation. For this purpose, Information Commissions need to formulate specific transparency standards, ensure the appointment of “public information officers” or “designated officers” and providing trainings and conduct mass awareness raising campaigns. They need to proactively engage with the community and citizens to ensure that they are informed about their right to information and ensure that their information needs are adequately met. Governments also need to put in place the necessary information technology to effectively implement the Constitutional obligation to ensure access to information.

**Ladies and Gentlemen:**

20. A critical challenge for the effective enforcement of the rule of law is the weak implementation of laws. In fact, the consequent failure of the State to effectively protect and secure citizens' lives, property and livelihoods has reached such alarming proportions that in instances where rights are being violated, the Court has been compelled to prompt organizational reforms, which, in our view, and as I will explain, should properly be led by the ombudsman offices. The most affected by this failure are the poor and vulnerable who are least protected.
21. Unlike the Courts of law, the ombudsman offices and the information commissions, can, of their motion, conduct inquiries, investigations, and "arrange for studies to be made or research to be conducted [to] ... recommend appropriate steps for [the] eradication" [of mal-administration]. For this purpose, the Ombudsman offices can form inspection teams, standing committees and engage advisers or experts so that the offices have the necessary technical and analytic capacities. If the findings so warrant, they can "modify or cancel [a] decision, process, recommendation, act or omission" or recommend "any other step" as the Supreme Court of Pakistan is empowered to ensure "complete justice".
22. Similarly, in addition to monitoring compliance, which can establish an evidence base for reforms, the Khyber Pakhtunkhwa Information Commission may "take such general measures as may be required to address systemic failures" and make recommendations for reforms to the Government generally and/or in respect of specific bodies and "set rules and minimum standards". The Punjab Information Commission can provide technical and other support to the public bodies for the effective enforcement of right to information as well as issue "directives" in relation to disclosure/transparency.
23. The information gained from individuals' complaints provide a compelling evidence base and understanding of the systemic failures, which can inform and enable the ombudsman offices "to diagnose, investigate, redress and rectify" the systemic dysfunction that is the root cause or causes of mal-administration.
24. Whilst this is the most transformative part of the ombudsman offices and information commissioners' mandates, arguably the most important, this aspect of the mandate has been the most neglected. Consequently, there has been a significant failure to monitor the quality of administration, formulate standards for transparency and good administration against which performance may be evaluated and reported to address and rectify systemic failures that result in mal-administration and ultimately the weak enforcement of laws.

**Ladies and Gentlemen:**

I would like to conclude by submitting a few suggestions for your consideration.

25. Effective ombudsman offices and information commissioners can potentially transform our system of governance and ensure the implementation of rule of law in public administration, which would be a very significant contribution to the lives and well-being of citizens of Pakistan. It would also transform the essential relationship between the State and citizens by

enhancing public confidence in public agencies, which is crucial for maintaining State legitimacy and stability. For this purpose, a qualitative shift is required in how the ombudsman offices and information commissioners construe, prioritise and implement their respective mandates.

26. Moreover, an effective administrative justice sector can promote “inexpensive and expeditious justice” by translating and enforcing relevant Constitutional and legal principles and obligation into principles of good administration to effectively implement its mandate. A breach of such a principle may be deemed as a matter of strict liability to be “mal-administration” or a “refusal” to provide information. This would serve to ensure that citizens do not have to needlessly suffer the expense of lengthy procedures and litigation and, at the same, only “hard cases” appear before the Court thus reducing pressure on judicial time.
27. The Ombudsman offices and information commissions need to move from being reactive, responding to complaints, to being proactive and preventive by setting and enforcing standards of good administration and transparency. Such a qualitatively shift would require enhancing the focus from simple complaint redressal to including the more analytical functions, namely, addressing the root causes of systemic failures that result in such complaints. Ombudsman offices and information commissioners need to align their technical and analytical capacities for lesson learning, conducting regular and rigorous institutional, organizational and impact assessments to monitor and report on the quality of administration and transparency in the public administration.
28. To improve the quality of public administration and service delivery, the Ombudsman offices and information commissioners must have the necessary capacity to ensure that local service delivery units are adequately quality assuring, including monitoring and evaluating, their service delivery against suitable quantitative and qualitative indicators that factor in reaching out to the poor and vulnerable.
29. At the same, the ombudsman offices and information commissions need to network with and train civil society and other local organisations as outreach, to engage and mobilise social capital to improve the quality of service delivery, and strengthen civic oversight.

**Ladies and Gentlemen:**

30. For the establishment of an effective rule of law-based system of governance that is inclusive, fair and responsive to citizens' needs, we need a public administration that is effectively implementing laws, which is essentially an Executive function. In view of the ombudsman offices and information commissioners critical oversight function that is primarily responsible for ensuring the quality of administration, I hope that they will take and will prioritise the effective enforcement laws to maintain a vibrant rule of law as envisaged in the Constitution of the Islamic Republic of Pakistan 1973.
31. I thank you for your kind invitation and offering me this opportunity to share my thoughts with this august body. I hope that I have, through my exploration of the Pakistan experience of the ombudsman movement, contributed in some small way to strengthening the ombudsman functions. Once again, thank you.



Law & Justice Commission  
*of Pakistan*

**[www.ljcp.gov.pk](http://www.ljcp.gov.pk)**