



Mr. Justice Anwar Zaheer Jamali  
The Honourable Chief Justice of Pakistan

Address to the  
Senate of Pakistan  
3 November 2015



“ If we want to make this great State of Pakistan happy and prosperous, we should concentrate on the well being of the people, and especially of the masses and the poor. Everyone of you, no matter what his colour, caste or creed, is first, second or last a citizen of this State with equal rights, privileges and obligations. ”

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

Address, Constituent Assembly of Pakistan, 11 August 1947



### **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.

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Law & Justice Commission  
of Pakistan

CHIEF JUSTICE OF PAKISTAN  
JUSTICE ANWAR ZAHEER JAMALI

CHAIRMAN  
LAW & JUSTICE COMMISSION of PAKISTAN  
GOVERNMENT of PAKISTAN

Chairman Senate of Pakistan, Mr. Mian Raza Rabbani  
Members of the Senate of Pakistan  
Ladies and Gentleman

**Aslama –u-alaikum**

1. I am indeed honoured to accept the invitation of the Honourable Chairman of the Senate to address this august body. It follows from an equally historical moment when the Chairman of the Senate graciously accepted our invitation to speak on the importance of institutions, in particular, on the subject of the rule of law. We all appreciated the frankness and openness with which the Chairman spoke. It was a positive and constructive step to enhance understanding between State institutions, which is essential for us to move forward in concert as mandated by the Constitution of the Islamic Republic of Pakistan 1973.
2. It is pertinent that I should mention here, that on 5 September 2015, the former Chief Justice of Pakistan, Mr. Justice Jawwad S. Khawaja, spoke on this subject in some detail and objectively. My address today is an elaboration of the same.
3. Since the Law & Justice Commission of Pakistan has already submitted detailed recommendations for improving the provision of inexpensive and expeditious justice as promised by art. 37(d) of the Constitution, I will therefore, focus on the overall development of institutions, in particular, the necessity of and challenges for strengthening of rule of law for ensuring stability for State and society, which is crucial for development, growth and the wellbeing of the people of Pakistan.

**Ladies and Gentlemen:**

4. The State is essentially founded on a socio-political understanding variously described as a “contract”, “settlement” or a “trust” that is articulated as the Constitution. This observation highlights the pre-eminence of the Constitution in the formation of State and society and the nature and scope of our ambitions for Pakistan. I will therefore begin with a brief deliberation on the Constitution itself before moving onto to discuss institutions and the rule of law.
5. The Preamble to the Constitution is instructive in terms of the State and society that is envisaged. It provides “that it is the will of the people to establish an order ...”, namely, the

State of Pakistan and then goes on to elaborate that “new order” in some detail. Accordingly, the Preamble concludes: “Now, therefore, we, the people of Pakistan ... Do hereby, through our representatives in the National Assembly, adopt, enact and give to ourselves, this Constitutions”.

6. By implication, the beneficiaries and the guarantors of the State are the “people of Pakistan” who have been “Inspired by the resolve to protect our national and political unity and solidarity”. In our Constitutional scheme, power is thereby dispersed widely in society amongst “the people of Pakistan” as the source of authority and legitimacy. The State-society connection is thus clearly stated. The State is founded on society's demand that is elaborated in the Constitution. Thereafter, the people of Pakistan delegate their powers and authority to be exercised “through the chosen representatives of the people” – namely, Parliament. This is the first indication that chosen representatives and by extension the entire State apparatus are responsible to the people of Pakistan. Since legitimacy is granted by society, it also highlights that State apparatus and actors must ensure public confidence in State institutions and policies by continuously narrowing the State-citizen gap through more responsive service delivery. The baseline and test for our performance is citizens' expectations and needs.
7. Structurally, State power and authority are organized and distributed within the limits of ultimate or moral sovereignty that “belongs to Allah Almighty alone” and vests delegated political sovereignty to “the people of Pakistan” that is exercised by elected representatives. The same Preamble provides that “the independence of the judiciary shall be fully secured” to do “complete justice” (Art. 187(1)), for which, “All executive and judicial authorities throughout Pakistan shall act in aid of the Supreme Court of Pakistan” (Art. 190). Our Constitution thus sets out a fine balance between the different State institutions and the organization and distribution of State power and authority that must be observed by all State actors (Art. 5(2)). In implementing our respective Constitutional mandates, it implies that State actors need to cooperate and, at the same, exercise restraint to enable the other to perform their responsibilities.
8. Substantively, it is crucial to appreciate that our Constitution is transformative. It sets out a vision for the State that constitutes the normative State and mandates a path for development that is variously described by the Preamble, the Objectives Resolution, Fundamental Rights and the Principles of Policy. In short, it sets out what makes Pakistan, the ambition that is Pakistan, and mandates the State apparatus and institutions to aspire and realize that ambition. We must continue to deliberately and rigorously evaluate our performance as State and society against the said Constitutional imperative.
9. As per the Preamble, the “new order” that we have all promised to aspire for is based on creating an “egalitarian society” that “shall ... [guarantee] fundamental rights, including equality of status, of opportunity and before law, social, economic and political justice, and freedom of thought, expression, belief, worship and association, ... “. That informs our Constitutional conception of the just State and society that we have chosen as our goal. In my view, it is an enlightened, progressive and inclusive mandate. But sadly, we must admit, it's a mandate that we are all failing to deliver and around which we must urgently focus our efforts.
10. As such, we all need to make a greater effort to strengthen constitutionalism in our State and

society, to raise public awareness about the promise of Pakistan and the basic transformative elements of the Constitution that define the relationship between State and society and our ambition for Pakistan, citizens' entitlements, obligations and expectations. It is the essential core or meaning of what constitutes "Pakistan" –the just State and society- that we as public and civil servants must own and promote to the best of our abilities. For my part, I have directed the Law & Justice Commission of Pakistan to focus on raising public awareness to strengthen constitutionalism including rule of law and fundamental rights.

#### Ladies and Gentlemen:

11. A State rests on a very fragile edifice, namely, public trust in institutions. As such, the rule of law is a key institution in the life and health of both State and society ensuring that State power and authority is exercised within limits and for the purposes set by the Constitution and law; it regulates the relationship between the State and citizens including businesses, and resolves disputes between private parties.
12. In its most simple formulation, it means that we all are ruled by law and not by the arbitrary will of men. In addition to what I stated earlier about our Constitutional imperatives, this is expressly provided by article 25, equality of citizens that reads: "All citizens are equal before the law and are entitled to the equal protection of the law" and the right to be dealt in accordance with the law as an inalienable right of every citizen" (art. 4). Indeed, as Francis Fukayama notes, the rule of law is in origin a religious concept that is confirmed by our Constitutional notion that ultimate or moral sovereignty "belongs to Allah Almighty alone" and as Allama Sir Muhammad Iqbal put it so poetically in his *Shikwa* (1909):

In the midst of raging battle if the time came to pray,  
Hejazis turned to Mecca, kissed the earth and ceased from fray,  
Sultan and slave in a single file stood side by side,  
Then no servant was nor master, nothing did them divide.  
Between serf and lord, needy and rich, difference there was none.  
When they appeared in Your court, they came as equals and one.

آگیا عین لڑائی میں اگر وقتِ نماز  
قبلہ رو ہو کے زمیں بوس ہوئی قوم حجاز  
نہ کوئی بندہ رہا اور نہ کوئی بندہ نواز  
بندہ و صاحب و محتاج و غنی ایک ہوئے!  
تیری سرکاری میں پہنچے تو سبھی ایک ہوئے!

13. The Constitutional aspiration of an egalitarian society is not just formal and legal, a matter of legality. It has a strong religio-moral motivation that still inspires society. Indeed, as an aspiration as for their just society, it binds and holds society as their moral-political ideal. It is still our vision of and ambition for Pakistan that must inform our policy-making and legislation as a State goal, moving from mere formal legality to committed legitimacy.
14. It implies that our State institutions must be representative, neutral and impartial in the manner in which we constitute them and implement our laws and policies. These are not

mere pious aspirations, they are Constitutional and legal requirements that make the rule of law for an “egalitarian society” and touch upon State institutional composition, implementation and performance. Citizens must be able to witness that no one is above the law and policies are made for the benefit of all.

### **Ladies and Gentlemen**

**Next, I will briefly discuss the centrality of the rule of law.**

15. The rule of law is central to daily life, the working of the State, businesses and the manner in which citizens deal with each other. Whilst the global community has included rule of law as part of the Sustainable Development Goals relating to access to justice, the Government of Pakistan's Vision 2025: One Nation-One Vision policy identifies the rule of law as a “necessary condition” (p. 30) and makes the observation that “[t]here is a growing consensus that the future of the country is linked to the upholding of the principles of the rule of law, independence of the judiciary and constitutionalism” (p. 5). The Vision promises to prioritise “legal ... infrastructure needed to empower people and ensure that they live with dignity, and that human rights are protected, lives are secure ... “ (p. 8). It is pertinent that I read the commitment in extenso:

“Sustained growth and development does not take place in an environment that is not characterized by the supremacy of the rule of law. Therefore, the application of the rule of law ... which includes but is not limited to: enforcing contracts, regulating the market, breaking barriers to competition and the protection of the fundamental rights of every Pakistani citizen, is a necessary condition for the realization of the Vision. The government will ensure to create conditions that enable strict enforcement of the rule of law – by strengthening the judicial system, revamping the police and criminal justice system, reviewing the rules and regulations and reinforcing formal and informal channels of dispute resolution. The focus will be on ensuring equal application of the law and order on all segments of society” (p. 30).

16. We will partner with the relevant authorities to realize our national commitments on Sustainable Development Goals and the Vision 2025. I am therefore directing the Law & Justice Commission of Pakistan to directly engage with the relevant stakeholders, and as Chairman of the Commission, I shall personally maintain a watch on progress. That is my commitment to this national cause.

### **Ladies and Gentlemen**

**We can probably all agree on the critical role of the rule of law but what is the quality of our service delivery?**

17. We have an abundance of laws, perhaps we are even over-legislated in some areas but there is a crisis of implementation that we must address as a matter of priority. There is little point in having fine laws when the organisations responsible for implementation are essentially dysfunctional.
18. Lack of administrative and technical capacities, lack of functional specialization, mis-allocation of scarce resources and mal-administration including corruption and criminality are undermining the quality of justice services and Constitutional fabric and values. There are no

standards of good administration, transparency and integrity. It is a matter of considerable concern that there is no quality assurance of the justice service provision, there is no monitoring and evaluation of what we are delivering and there is no determination of justice needs and levels of satisfaction.

19. Whilst we recognize that implementation is primarily an executive function, it becomes a matter for judicial consideration when rights are denied or violated, at which point, the judiciary is compelled to order organizational reforms. It is more appropriate that governments lead this effort but due to the often grave consequences of poor implementation and weak administration, the Court have been compelled to delve into organizational matters. Indeed, the Law & Justice Commission of Pakistan has been engaged to support the Supreme Court of Pakistan to examine such matters, negotiate organizational reforms and ensure compliance.
20. One consequence of weak implementation is legal exclusion. It has been estimated that the State justice sector only caters for about 20% of disputes and that 80% are dealt with by an unregulated informal justice sector such as jirgas and panchayats. This may be interpreted as evidence of massive legal exclusion – a widening of an increasing distance between State, society and citizens. The State's failure to provide for the vast majority of citizens' justice needs, which undermines the legitimacy of State institutions, and weakens the State's writ and authority resulting in law and order situations, ungoverned or ungovernable spaces, and instability.
21. We cannot assume or take for granted society's endorsement for State action or lack thereof. Society has its legitimate expectations, demands and needs that need to be timely addressed to maintain public confidence and legitimacy in State institutions. There has to be a conscious investment in society in terms of their justice, security and development needs to ensure social cohesion and harmony, which is foundational for a stable State. Indeed, the Constitution recognizes the need to strengthen the “local State” and local governance (arts. 32, 140A) as foundational for a more inclusive State and essential for resolving political contests. These wider policy matters are for Parliament and the respective governments to deliberate upon and address.
22. To ensure social cohesion, we need to proactively ensure that justice and security protection reaches out to the poor and most vulnerable, our approach has to be output-based, focusing on impact. Legal inclusion must therefore be a national target that we will try to pursue as part of the Sustainable Development Goal relating to access to justice but Parliament and the governments must proactively move to address such systemic dysfunction.
23. The Law & Justice Commission of Pakistan has been directed to conduct a justice needs assessment, strengthen the information base and monitoring and evaluation of the justice services to ensure timely, effective and fair justice provision responsive to citizens' needs.

#### **Ladies and Gentlemen**

#### **The next question, what is quality of our laws?**

24. As I indicated earlier, an unjust State and society is an unstable State and society, it cannot sustain in the long-term. We need to appreciate the rule of law as a value and that laws have

a distributive effect. Do they meet the Constitutional imperative of creating an egalitarian society? Hence, legal policy needs to be studied rigorously to inform law-making so that we understand their probable and actual impact and to ensure that laws are fair and impartial to maintain their acceptability and legitimacy. And of course, ensuring that laws are impartially enforced.

25. We must be clear about the “ends” that we expect the rule of law to deliver. Fortunately, on the normative side, our Constitution provides a certain transformative mandate for a “new order” based on an “egalitarian society” detailed in the Objectives Resolution, Fundamental Rights and Principles of Policy. We also need clarity on precisely what the laws aim to achieve and their consequent distributive impact against the said Constitutional imperatives.
26. Unfortunately, since we have not developed legislative drafting into a specialized skill, the incorporation of Constitutional policy and objectives in State policy and legislation remains problematic and weak.
27. Critically, the rule of law derives its moral content and social legitimacy by being responsive to citizens' sense of justice and fairness. The Constitution provides “[w]herein shall be guaranteed fundamental rights ... social, economic and political justice” (Preamble), which is further elaborated by the Principles of Policy that mandate the promotion of social justice (art. 37) and wellbeing (art. 38) amongst other related goods. At the very least, these are citizens' legitimate expectations from the State.
28. We are fortunate to have a bill of rights embedded in our Constitution that sets clear minimum standards for acceptable conduct. Given article 8, any law, policy or action that is “inconsistent”, “takes away” or “abridges” a Fundamental Right is to that extent void. Rights thus trump public policy. We have cases before us testing public policy against settled Fundamental Rights that consume precious judicial time. To avoid such litigation, public policies and conduct must be formulated and kept within the limits set by Fundamental Rights. Legislators and legislative drafters must ensure that laws drafted are consistent with Fundamental Rights and serve to promote Principles of Policy, which is an essential ingredient of our rule of law.
29. Indeed, an important element of the promised egalitarian society, including fairness and justice, is equality which is guaranteed by article 25, which reads: “All citizens are equal before law and are entitled to equal protection of the law”. It means that there can be no difference between the rich and poor, between an official and a lay person, privileges and immunities are exceptions that must therefore be few and justified. Laws and policies that are “unfair”, that do not meet the essential standards of Fundamental Rights and citizens' sense of fairness and justice result in alienation, the weakening of the State institutions and social fragmentation that we are sadly witnessing increasingly. Laws and institutions need to be representative, neutral and impartial in content and application.
30. The prevailing culture of impunity and lawlessness evidenced by corruption and crime has serious consequences for State stability, public confidence in and legitimacy of State institutions, and ultimately social cohesion. As I mentioned earlier, unjust State and society are inherently unstable, they cannot sustain in the long-term and provide for the needs of our growing and young population, challenges posed by urbanization and globalisation. Moreover, when citizens' stake in State and society is reduced to the point that they no



longer perceive themselves to be equal citizens, a part of society, it threatens the fragmentation of State and society that is evidenced by the political, economic and legal exclusion. It is therefore essential to progressively extend the political settlement or contract to ensure greater inclusion in terms of development, public goods and essential services including legal protection and justice.

31. As the Constitution provides, it is the primary responsibility of “the chosen representatives of the people” to ensure that the Constitutional mandate is effectively implemented and citizens' lives and interests protected and promoted effectively in line with public welfare and the common good. This brings me to talk about the need to strengthen oversight to ensure that the Constitution and the rule of law are effectively enforced.

### **Ladies and Gentlemen**

32. As I mentioned earlier, the State rests on a fragile edifice, namely, trust in institutions. We need to develop a shared commitment to address the various crises of value and direction, and implementation of institutions and laws that I have described above. A Constitution that suffers from weak State enforcement, ultimately, loses its legitimacy that threatens the fragmentation of society, which is foundational for the State. We therefore need to develop a national narrative for strengthening the rule of law.
33. At this critical juncture in our history, we need to critically and honestly reflect on how the stability and effectiveness of State and society are challenged and compromised, and how they may be strengthened. We need to heed the lessons set out by the likes of Daren Acemoglu and James A. Robinson who highlighted the role of institutions including the rule of law in their aptly titled publication, *Why Nations Fail: The Origins of Power, Prosperity and Poverty* (2012). And more recent publications like Robert Putnam's *Our Kids: The American Dream in Crisis* (2015) who examines the consequences of inequality of opportunity and social cohesion.
34. When we talk about the rule of law, it is ultimately about the right to life, wellbeing and the dignity of citizens, which our Constitution recognises as inviolable rights (art. 14(1)) that are at stake. The Supreme Court has already pronounced on what right to life means in the Shehla Zia case<sup>1</sup> but the due diligence of life approach is rarely found in workings of the criminal justice system. Despite the establishment of the ombudsman office since 1983, there are no standards for good administration or a national strategy to curb mal-administration that is daily violating citizens' rights. Despite the provision of article 10A and the creation of information commissions there are no standards for transparency thereby enabling corruption and crime to go unchecked behind closed doors of various types.
35. Judicial oversight and review alone are insufficient and may be inappropriate to deal with these matters effectively. It is primarily for Parliament to examine, invest and innovate to improve the quality and reach of justice services based on its oversight functions, representativeness, to legislate and budget for change. It is for Parliament to check the

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<sup>1</sup> Ms. Shehla Zia v WAPDA PLD 1994 SC 693

quality of rule of law and justice services and take necessary steps to ensure the enforcement of Constitutional imperatives and ideals supported by the Judicial branch that is independent and objective in its examinations, interpretations and findings.

36. As I have indicated earlier, we are committed to working with all State institutions to strengthen the rule of law as the foundation of a modern and progressive Pakistan as envisaged by the Constitution. The Law & Justice Commission of Pakistan has been tasked to focus on developing a national narrative on strengthening the rule of law as a public good that is critical for the realization of the ambition that is Pakistan.
37. Finally, I thank you for the honour to address this august House. I hope I have in some small way contributed to the effort to strengthen the rule of law in Pakistan, which is our shared obligation. I hope that you will receive the judiciary as a partner in this endeavour.