

PAPERS PRESENTED BY MR. JUSTICE CH. IJAZ AHMED
ON THE EVE OF HIS LORDSHIP'S RETIREMENT ON
04.05.2010.

From the cradle to the grave one leads through different stages and channels. And while I review phases of my education, my otherwise illiterate father stands as a citadel or beacon of light. His simple and down to earth teacher-parent cooperation cum coordination set the goals for me. Shifting me from the village school to 'city of colleges' Lahore at the tender age of 11 years was a mile stone in my educational career. My educational journey remained tainted due to aptitude dilemma of science vs arts. After my law graduation my apprenticeship and junior partnership with citadel of law, Mr. S.M. Zafar and that also purely on merit will remain my personal pride. I had sleepless days and nights to learn and assist. I had acquaintance with Mr. Hayat Dar (late), the then Estate Officer, Board of Intermediate and Secondary Education, Lahore, through late Khawaja Asad ullah. On elevation of Mr. Justice Manzoor Hussain Sial to Lahore High Court, on the advice of Mr. Dar Khawaja Ghulam Sadiq (the then Chairman of the Board) approved my assignment as the legal adviser. While issuing the appointment letter the Chairman smilingly congratulated me on my future elevation to the High Court. I do not know it was his vision, experience or the precedence observed. During these proceedings I discussed it with Babu Ji, my spiritual guide who said that this would be divine decision and that we should only knock His door and avoid material support. Needless to mention I was also assigned to Punjab Text Book Board, and later Punjab University as their legal adviser. Despite, political wranglings and bureaucratic high ups, I served as the Board of Intermediate and Secon Education, Lahore, legal adviser for a long time and the assignment terminated only on my elevation to the bench as predicted by late Khawaja Ghulam Sadiq. During all this period I kept on

diligently and effectively assisting Mr. S.M. Zafar too, but some how I was not deservingly rewarded. My spiritual guide, Babu Ji, had refrained me from knocking any door for any help. One day I was conveyed from the provincial Governor for my suggested nomination to the erstwhile Martial Law era Majlas-e-Shura which I declined with all humility. It was later revealed that this was due to covert efforts of my brother-in-law (the then Col. Hasan Akhter) A turning point came in my legal career when I participated in presentation of Mustafa Khar's case in Lahore High Court. In fact Ch. Aitzaz Ahsan advised his old class fellow, Mr. Arif Noor, to ensure my active participation in preparing this case. Since Mr. Zafar was to proceed to USA, he therefore planned a panel consisting of Mr. Fakhar-ud-Din G. Ibrahim, Mr. Ali Zafar and my self to prepare the case. On arrival in Pakistan Mr. Khar was arrested and brought to Faisalabad Jail. Mr. Arif Noor asked me to prepare a writ petition on behalf of Mrs. Tehmina Khar. The case was presented in the Lahore High Court, DB headed by Justice Ijaz Nisar. After an hour long presentation Ali Ahmed Fazeel, AG was given a notice for representation. At this point of time while appreciating my case presentation Mr. Pervez Akhtar, Senior Advocate said "Take it from me, you are the next DAG"! And this really proved to be a turning point in my professional career. In one of the Full Court proceedings when Mr. S.M. Zafar finished his presentation, Justice Afzal Lone said "Mr.Zafar, you are lucky to have Ch. Ijaz behind you. He has prepared the case so thoroughly from all angles". That was a tribute to my hard work and professional competence. During the hearing of the same case in the apex court Justice Dr. Nasim Hasan Shah remarked, "Mr. Zafar, Don't worry, Ch. Ijaz is behind you. He will bring another point for you." Mr. Ali Ahmed Fazeel after having convinced the President and PM, advised the Law Secretary to prepare summary for my appointment as DAG. This summary was in process when the assemblies were

dissolved. Later when he appeared in the famous Haji Saif Ullah case, he asked for my CV and said that he had only one regret that he could not do anything for me. He added that whatever the result of the election on 16 October I would be ready to even beg for you. Then during General Fazal Haq's case Mr. Asif Jan (the then Special Prosecutor) got my summary for DAG assignment and what a coincidence this summary was still in process that the assemblies were dissolved once again. In another important case Ch. Aitzaz Ahsan filed a petition in Lahore High Court regarding identity card which was accepted. In the appeal in Supreme Court Aziz Munshi, the then AG engaged me as his associate in the case. My father, 130 years old, woke up at 2 a.m. and loudly said, "I have given good education to my son but neither Bhutto's daughter or Nawaz Sharif has done anything for him. In these last days I wanted to see a flag on his car." Next morning I repeated his words to Justice Aslam Mian (late), who said that these two would soon be on road (out of power) and you would be on a responsible position. And Lo and behold ! Just 15 days after at 11 p.m. on 6th August, 1990 I declined Mr. Aziz Munshi's offer. Next morning Justice (R) Aslam Mian congratulated me but slapped me when I narrated the last nights dialogue. It was then that I decided that if the offer to take on as DAG is repeated, I would accept it. I was notified as DAG on 26 August, 1990. Later after change of government on enquiry from my father I told him about my plan to resign. He advised me not to resign. I retained this assignment for 5-1/2 months after the death of my great father.

2. When I was elevated to the bench I was neither holding any Bar office nor I was a law officer of any sort. I had no special or intimate acquaintance with the then Lahore High Court, CJ, Mr. Justice Ijaz Nisar. When he asked for my bio-data I told him that I have gone through this exercise a number of times and have no more interest in elevation. However on his instructions I left my CV

with his Secretary. On inquiry later from Dr A R Khalid and Dr. Sohail Akhtar (late) CJ said that no one ever recommended Ch. Ijaz for elevation and it was in response to his inner voice.

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In Apa Ji Akhtar (late)'s drawing room while sitting with Dr. Sahib along with my relative Arif (!) We heard a voice (from no-where). Dr. Sahib spontaneously said, "Ab to who be keh rahe hain K judge ban jao" (Even they are telling you to accept the elevation offer). Shah Sahib had also ordered in the same tone. And in consequence here I was the judge of Lahore High Court in May, 1997.

3. Later when I became the senior pusine judge I did not involve myself in any conspiracy or leg pulling to become the CJ. I feel honoured in narrating that the then CJ of Pakistan, Mr. Justice Nazim Hussain Siddiqui, recommended me to be the CJ Lahore High Court more than once but interestingly he did not know me personally. Government however did not want me to be the CJ because of my 'manufacturing defects' (No contact/No liaison with the authorities, No sifarish ever) and then resultantly I was elevated to the Supreme Court in 2005. Few days in Supreme Court and I was the junior judge of 3 member bench; where according to my two senior brothers the case was not maintainable but I ventured to differ. The head of the bench said, "I advise you to sign." I, however, added my dissenting judgment setting an independent role for me from the very outset. Then dawned the fateful day of 9th March 2007 when the order of Supreme Judicial Council was challenged in the Supreme Court. Acting CJ in consequence convened a three member bench consisting judges Sardar Muhammad Raza Khan, Hamid Ali Mirza and myself. I told my brothers that had it been Lahore High Court I would have heard the case as single bench, so now we three should decide it. Justice Sardar Muhammad Raza Khan however did not agree and forwarded the file to the Acting Chief Justice to either order a

full Bench or a larger bench. Justice Rana Bhagwan Das in the meantime had assumed the charge of Acting Chief Justice. He ordered a five member bench replacing Sardar Muhammad Raza Khan with Justice Javed Buttar, Nasirul Mulk and Raja Fayyaz. While before the 3 member bench Ch. Aitzaz Ahsan was requesting for full court and the government was asking for larger bench. When a 5 member larger bench was ordered both parties interestingly changed their respective stances and adopted the other. In the history of Pakistan this was first case against a dictator while still in power. Finally the request of the government was accepted and full court was ordered but proceedings of the supreme judicial council were stayed. Had this not been ordered most probably the present CJ would not have been leading the court as today. I was part of 13 member bench which gave the land mark judgment of 20 July, 2007. I was also the member of the bench which heard Justice (R) Wajhiuddin's petition challenging General Musharaf's nomination for presidential election. During these proceedings on 2 November, 2007 one counsel remarked that he was expecting a PCO wherein some of the judges might have to leave. I ventured out rightly giving my observation on these remarks, "meri judgi ki hafazat mera Rab Kare ga (My Allah will take care of my assignment as a judge)". During that fateful period (of about 1-1/2 years) when were laid off I neither met a lawyer, nor any judge and even media of any sort. On that day of 3 November, 2007 I was most probably financially the poorest judge. The responsibility of marriage and education of children was still over my head. I am a very weak person and could not have withstood this difficult period but for my faith in the Almighty and support of my spiritual guides. Allah says it is up to Him whom he honours or dishonours. And I bow before Him for all this! According to my vision Supreme Court is like a flowing river and I pray with all humility that this flowing water should remain clean ever and provide righteous justice to all without slight

discrimination while feeling the miseries around. I have been working as a member of this august team headed by the present CJ and of course tomorrow I shall be in a different category but praying for this team. I am whole heartedly grateful to the lawyer community for their affection for a humble person like me. I also feel indebted to the Supreme Court staff for their affection and diligent cooperation particularly Mr. Abdul Rehman (Secretary), Mr. Muhammad Ilyas (PA), Mr. Akhtar (Qasid), Mr. Rasheed (Driver) and Hafeez (Gunman). I very sincerely and humbly request for your continued prayers. I shall be failing in my duty if I don't pay rightful tribute to Justice Jawwad S. Khawaja (the first rain drop) to sacrifice for the judiciary. Behold! We cannot forget Justice Iqbal, Hamood-ur-Rehman who stood for the right cause, only and I repeat only a day after his confirmation as judge of the Lahore High Court. We the whole judiciary owe it to these stalwarts and those 60 deposed judges, the lawyer community, media and civil society who heralded the flag of justice against all odds.

4. This country came into being to lead the world and Insha Aallah it will in the coming days.

5. The funeral in a way is a day of accountability for the dead in the form of remarks of those attending the final rites. Similarly the day of retirement of a man in service of the people (and especially a judge) is also a day of accountability. I pray I get acquitted in the eyes of all concerned. I don't think I match the words showered on me as in the words of Sheikh Saadi:-

"من آختم که من دانم"

But still

"مانا کہ اس زمین کو نہ گلزار کر سکے
کچھ خار کم تو کر گئے گزرے جہاں سے ہم"

I wish I come up to your expectations even hereafter. While entering practical life I resolved on 5 basic guiding pillars for me. I knew well these are all under divine orchestration:-

- a. Which form your spirit (Rooh) adopts when entering this universe!
- b. Who are your comrades in school
- c. How the child grown up or brought up
- d. How intelligent or brainy the child is!
- e. With whom later he is married to!

6. The citadel of knowledge (Bab-ul-Ilm) Hazrat Ali had said that society could withstand infidels but not injustice. Similarly, Hazrat Fatima, advocated justice because it unfolds a chain of unity in the society. Provision of justice mainly depends upon those who administer justice i.e. the judges. The selection of judges is crux of this diagnosis and I have explained this aspect in my book “Separation and Independent Judiciary” and Article authored by me under the topic “Judicial Independence” (PLJ 2007 Magazine 162). I once again quote from Hazrat Ali ‘Those in authority if do not manage justice for the aggrieved, Allah shall deprive them of authority and power’. In number of cases my own family members were effected but cases remained in abeyance for years but I did not speak to any concerned official, even when in a dacoity my nephew’s son was critically injured and the culprits have not been arrested till date.

7. A judge should not only work as per his conscience but also should not bother about public relationing and response. Honesty, integrity and merit are the hall mark of a judge’s duties.

8. When I was first recommended to be the Chief Justice of Lahore High Court, by the then Chief Justice of Pakistan Justice Nazim Hussain Siddiqui and in consequence the then Chief Justice Lahore High Court was recommended to be elevated to Supreme Court. According to Justice Siddiqui, President Musharraf disregarded his recommendation. Justice Siddiqui yet another time recommended me as Chief Justice and the incumbent Chief Justice was to move to Supreme Court but this summary too was ignored. However, when I was

finally elevated to Supreme Court, I was Acting Chief Justice Lahore High Court and the Chief Justice (Acting Governor then) tried his best to postpone my oath ceremony to ensure that I would not take this oath as Acting Chief Justice but he some how failed. Here comes a vital question for next generations that a judge who is not considered fit to be Chief Justice has no right to be retained as a judge. The case of these summaries and their fate should be reopened/re-examined to set a path to ensure no such wrongs and I recommend it not for my personal gain but for the next generations and also upholding of Constitution. I was not the first victim of such injustice, we have another example where Justice Abu Saleh had to resign when a British judge was preferred over him despite clear recommendation of Chief Justice Mian Abdur Rashid. Summaries regarding my elevation as Chief Justice were to be rejected with definite reasons duly recorded but these were just ignored without assigning any reason against rules, traditions and constitution.

9. Now that by the grace of God, I am retiring honourably from the Supreme Court of Pakistan, I admit that all this is mainly due to my training by Apa Ji Akhtar's table and spiritual guidance of Dr.Sahib, Babu Ji and Shah Sahib. I owe it to all three!!

10. After the fateful events of 3 November, 2007, I remained contended (of course isolated) and I owe it to the affection/ kindness of Apa Ji Akhtar. In this period of mental, physical and financial turmoil there have been kind people to offer their assistance but by the grace of Allah, I declined these kind offers with all humility and determination. While I recount all this let me acknowledge the kindness of Dr. Sahib, Dr. Pervaiz Hassan, late Chief Justice Sardar M. Iqbal, my oversea friend Masud, my friend Mr. Muhammad Hussain Goraya, my brothers in law Brig. Hassan, Ch. Zafar Ullah, Ch. Tufail and of course my nephew

Khalid. I profusely and humbly thanked them all professing my faith in Allah alone.

11. I salute my wife for respectfully looking after my very old father, single handedly training my children and supporting me solidly in my decision not to join Dogar Court. But for the support of the family, my resolve might have been affected! And while I part I share few incidents with you. On 2nd November, 2007 I was judge of the apex court but on 3rd November, 2007 the police guard at my gate told me just not to get out of my house. The present Chief Justice went to Army House on 9th March, 2007 but came out without Supreme Court flag. Then as a result of lawyer's movement duly supported by media and civil society humbled and even dishonoured the same dictator reminding us about a divine narration about '*Ishabilfeel*'. Why I narrated these two incidents is to bring home a lesson.

“One can retire from service but never from life, a gift of God.”

12. In simple words, I described myself, according to the sayings of Mian Muhammad Bukhsh Khari Sharif, as under:

خش خش جنا قدر نہ میرا اُس نون سب وڑیاں
میں گلیاں دا روڑا مکوڑا محل چڑیا سائیاں

13. According to my personal view, I consider the duty of a judge, as per sayings of Baba Buley Shah & Maulana Muhammad Ali Johar, respectively, as under:-

فقیرا فقیری بڑی دور اے اُچی لی کجھور اے
چڑھ جائیں تے رس پریم دا اے ڈگ جائیں تے چکنا چور اے

توحید تو یہ ہے کہ خدا حشر میں کہہ دے
یہ بندہ دو عالم سے خفا میرے لیے ہے

14. The retirement, in terms of Maulana Room, is as under:

ترا غروب نماید ولی شروق بود
 لحد چوبیس نماید خلاصی جان باشد
 [جو تہیں غروب نظر آتا ہے وہ تو طلوع ہے۔ قبر جو بظاہر قید ہے (در اصل) روح کی آزادی ہے]

15. I conclude as per following sayings of Qateel Shafai:-

دنیا میں احترام کے قائل ہیں جتنے لوگ
 میں سب کو مانتا ہوں مگر مصطفیٰ ﷺ کے بعد

(JUSTICE CH. IJAZ AHMED)