

Talk by Aitzaz Ahsan

Anita, distinguish panelists ladies and gentle men. It is a great privilege to be speaking to such a distinguish to gathering the this morning I congratulate Anita and her colleagues particularly the ones who put together this conference and we expect substantive things to come out of it particularly in the production of the papers and publication that will certainly follow the conference and follow upon it. I regret not having been able to join you and Anita for inaugural of the conference but I had a hearing in the Supreme Court a placing one and rushed from there to this hall. The legal system and what needs to be changed in the legal system is an issue that of course is older than mountains, the Himalaya and older society has been and there has always been a debate from Greek philosophers onward, and even before that, the Hindu philosophers in the subcontinent about what the law should be and what is the ideal state of law and legal norm, structure of legal norms in the society.

Pakistan as you know derives much of its legal structures and constitutional structures from the common wealth tradition of common law tradition. There is an application of custom also and doctrinal personal faith matter applies where Islam or the Hindu edicts apply to succession, inheritance, marriage. Other laws Christian precepts apply to Christians but by and large over all structure is derived from common law based on certain fundamentals principles of due process, the fundamental principles of independent judiciary, the fundamental principle of there being certain fundamental rights inherent in the citizenship of state, the State of Pakistan i.e. the fundamental rights, the fundamental principles that no one can be condemned unheard and everybody has a right to an audience in the court before a judgment is passed against that person. Therefore there are rules and processes in law

which determines how notices are to be issued in complicated matters and how a party has to be notified that there is a proceeding pending in a court and lot of time is wasted in that but that is necessary concomitant of justice. There is a fundamental principle of a fair trial which is now embodied in article 10-A pursuant to the 18th amendment-----but somebody more scholarly than myself will be talking about 18th amendment very soon-----so there are these fundamental principles which are enshrined in our legal system and our legal system is based on those concepts. How actually it works is probably another matter. How the laws are enforced and put in practice or applied maybe a different story. But the basic concepts are which shared and espoused and embraced by the Pakistani citizens from Khyber to Karachi, from Wahga to Quetta are these four or five fundamentals of principles. Independent judges, fair trial, right of hearing, equality before law, due process of law and the right to appeal in an original sentence and appellate forum. These broadly are the principles that are the foundations of our system, the citizenry embraces despite experiencing, the delays of law, the vagaries of law, the inconsistencies in the application of law, the corruption of law enforcers are the citizens and I would emphasize this to non-Pakistani scholars under this roof, our citizenry generally embrace these principles. They came out to fight for these principles. They expect of their judges to observe very high standards and the reason for that is that we are not an Arab Middle Eastern Muslim State. It is mischaracterization of the Pakistani state and society to style us and to characterize us as Arabs or Middle Eastern. The Arabs by and large, I can't think of a single country where they have judges what to talk of independent judges. Our people come out and have a history of coming out for, on behalf of judiciary and for the judicial process as they did between 2007 and 2009, when the present Chief justice of Pakistan was deposed by a military dictator.

People came out in millions for just the concept of the Justice. It was not a power struggle. It was not really parries square. It was parries square on every Thursday all over the country. Every Thursday, layers, civil society and political activist came out and marched in the summer months and winter months. Every Thursday for two years across the map of Pakistan, across the length and breath of this country. They came out in the pursuit of these concepts for no one of them was going to come into power necessarily. I was one the people in fore front; it was not being my objective to get grasp power or come into power or to get office. I was one who believed in the people of Pakistan and the dreams of the people of Pakistan and that was they wanted independent judges due process, rule of law, equality before law, fair trial. Now does that obtain, I feel is a different question. That is what primarily if you look at the subject of my paper or my talk I am supposed to aggress that is what I will take five to six minutes on and then I will conclude because there is time constraint. Does that obtain? The answer is no it does not. Last year I concluded a case in the supreme court of Pakistan, that had been initiated in 1946. I have another client. She is 96years old, petitioning for the last 48 years and now we are at the closure at the supreme court of Pakistan. There are delays. First of all the first and four most important impediment towards the citizens attaining justice and getting justice is the laws delayed. And now these laws delayed is proverbial. There is Dickens, calls them laws delayed infact. The laws delayed is proverbial. But off course we have an exhilarated reality in Pakistan. I give you a few examples but 10 to 20 years is not an abnormal situation for the final determination for a matter, even some simple matters. If you are lucky you will get it determined in five years. But we need to shot of that. So the first obvious flaw in our legal system which we have to aggress is delays because justice delayed is justice denied, which is a well known maximum. Now I could give proposals for addressing the issue, the grave

issue, the gravest issue of delays. If it were a layers forum or a bar association forum I could quote from chapters and words from Criminal procedures code, from the civil procedure court order 12, rule 21, sub rule 5 maybe amended or changed etc. I am speaking from a general plate form to a more journalist sort of an audients so I will no go into a detail there has to be a restriction definitely on to matters. One the facility with a lawyer, any lawyer to obtain and adjournment and the facility should be restricted in two respects particularly one in respect to the period of the adjournment and to for every stage of a proceeding the number of the adjournments that he can obtain one lawyer one party can obtain and then there should be a closure. Secondly heavy costs should accompany delays and adjournments. But delays and adjournments will no be really addressed unless we invest more in the legal system, we have more judicial officer, we have better trained judicial officers which means judges at the lowest subordinate court level. We have more modern technological aids available to judges like computers. We have provided some under the Access to justice program by the Asians development bank but it is necessary to have a lot more judges. But if you increase the number of judges, the recruit numbers the quality does definitely fall and you get nowhere. So you need to educate and train them and have training programs. You need police reforms. Police is the prosecution arm of the legal process of the criminal process at least of the criminal justice system. You need police reforms, police accountability, being subordinated in accountable to judges before which trials are being conducted. In the 18th amendment there have been two major developments as for as legal system is concerned. One is article 10-A and the other is article 19-A. 10-A provides as a fundamental right for a fair trial. It does nothing new. That right was enshrined and implicit in article 4 of the constitution which said no one shall be dealt with except in accordance with law. So a fair trial was implicit in that. However Raza Rabbani 18th amendment has

brought in more expressly and it is a reassurance. 19-A gives access to information. This should be available to both parties in a suit the government as well as the plaintiff or the complainant and therefore levels the playing field to some extent and contributes to the ultimate outcome of better justice. But the problem with the 18th amendment is something on a broader scale. The problem is it was passed without a debate. It was a unanimous amendment. It was factored by 29 very wise and enlightened MNA's and senators, members of the parliament in camera proceedings over a period of 2-3 months in exclusively in camera proceedings. Then whatever they decided was brought on to the floor of the house and within half a day it was adopted by the national assembly unanimously. Within half a day it was adopted by the senate unanimously. Then there were celebrations all over the country that we had unanimously adopted 18th amendment and what a good thing unanimity was. But without debate there are so many lacunas, and so many corners and edges that need to be rounded off and so many matters like federal employs where do they go when the departments are devolved. Where do you get budget for them etc? These matters will go to court hundreds and thousands of matters, petitions will go in next ten years to courts. And when they go to courts then the executive will complain that the courts are transgressing on our territory. Why are the courts activists? But these will go to courts to be resolved. Finally, in conclusion let me just say that you may reform the laws how so ever much, you maybe in pristine principles of fair play justice speedy proceedings in courts and I have not mentioned duality which I should have, but there is duality in our system also which hampers justice and you know there is the common law system, there is shariah law system. Principles of evidence are different, the principles of proof are different and there is lot of confusion and contention in these two systems also, sometimes as opposite, sometimes as kind of a regular neighbour. But I will not go into

the details of that. The point is to my mind the enforcement of the law, the law you may bring in the best laws in civilizations, history and set them into the legal system of Pakistan, but the issue will remain enforcement. And issue will remain not just enforcement but most importantly uniform enforcement. Unless the laws are uniformly enforced, there will be no respect for the law. As long as a VIP culture of exemptions and as long as impunity and immunity survive be it rested to a selected and restricted to a certain elite, there will be no real implementation of law. As long as certain people will be able to walk through necessarily without being frisked in airports because they are the elite, they are the military officers, they are the members of the parliament or senior bureaucrats without being frisked they are taken to the planes. We and others will be watching in line. There will always be a premium on avoiding the law. There will always be benefit in avoiding the law. There has to be a strict application of law and application of all. And I must end on a note and a positive note and hope and think it can be done if we deny ourselves a culture of impunity and immunity, this nation can work wonders. And I take normally a sample of three hundred. I call it the sample of three hundred or three hundred samples. The three hundred samples are the people going five times a day to Lahore airport and I believe three times to Islamabad Rawalpindi airport. Five times a day three hundred people go to Lahore airport. They chuck their trolleys, they throw their bags around, they try to get over on each others shoulders to get boarding passes, better seats. They throw their children in front to get in front. They are jostling with each others shoulders, jostling to get on to the flight. Three hours later, these three hundred people land in Abu Dhabi or Dubai and they are all in straight line. They are the same people, the same people. Five times a day, three hundred into five, fifteen hundred people a day, and they are a random sample. They are not if they are elite they are not as if they are all

commoners they are not as if they are all policemen, they are not if they are all farmers, they are not if they are all in industrial workers, they are not if they are all industrial elite, they are not if they are all land lords, they are not if they are all urbanites, they are not if they are all rural people. But three hundred people at a random sample. The system determines there responses. We need a system bereft of impunity, bereft of immunity. All the indemnity laws we have brought including the NRO are really queer the pitch in socio political sense. It is not just political, its socio political impact of these laws and the VIP culture, you just go on to the motorway, you find no VIP culture and nobody is changing lanes without actually indicating through the indicators, motor vehicles indicators while changing lanes. Everybody is following the rules and the laws of the traffic and the roads. What we need is a systemic change and enforcement of law equal, uniform enforcement on everyone and then all the concepts I have mentioned of equality before law, rule of law, independent judges, fair trial, right of hearing and all these principles and wonderful concepts are very embedded in our legal system will come into proper play. We do not need to restructure the laws as much as to restructure our society. Thank you very much