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LAW REFORMS

President
ZULFIKAR ALI BHUTTO'S
Address to the Nation

APRIL 13, 1972

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Citizens and Friends,

There are two fundamental functions of government in every state that hopes to survive. The first of these functions is the preservation of the state and its citizens from external dangers. The second fundamental function of every state is to preserve itself and its citizens from internal dangers. The state must protect itself from internal breaches of peace ranging from simple assault and other private wrongs to treason. It must also prevent any undermining of the social order and at the same time it must keep open the avenues

*Fundamental
functions of
government*

of social progress including the adjudication of disputes between citizens.

In the process of preserving the state internally, the courts play a vital part. They provide the instrumentality for the trial of disputes between individuals for the protection of human beings living in organized society. This makes the administration of justice an inescapable concomitant of a civilized society. This is part of the basic creed of a Muslim. It is repeatedly emphasised in the Holy Quran as one of the highest attributes of man. So it is said in Al-Nisa : "Ye who believe ? Stand out firmly for justice, as witnesses to God, even as against yourself." The Holy Prophet (peace be upon him) is reported to have once equated an hour of justice with forty years of prayers. Nevertheless, for a variety of reasons no attention worth the name had been paid to it so far in Pakistan. A Family Law Commission was set up in 1955 and a Law Reforms Commission in 1958. Some half-hearted action was taken on the reports of these two Commissions but it was found to be inadequate. Some of the changes in the law made after the report of the Law Commission were not in consonance with its report. Later on they had to be retracted.

Importance of courts

'Justice delayed is justice denied' is an ancient adage. In truth a provision which may well be decisive for or against a party may dwell in the intricacies of procedure. With a view to these factors we have now proclaimed law reforms which in the main follow the recommendations of the Law Commission set up in 1967. The details of the law ordinance will be explained by the Law Minister at a press conference shortly to be convened by him. I may briefly recapitulate some of the salient features of this reform.

In the field of criminal procedure, the commitment proceedings have been abolished, the summons-case trial

Criminal Procedure

procedure is made the rule in the Magisterial Courts, while the warrant-case trial procedure will continue in the High Courts and the Courts of Session. Categories of offences which may be compounded have been enlarged, the jurisdiction of the Courts of Session widened and courts in general empowered to punish a person who swears false testimony.

In the field of civil procedure, a sharp departure from old practice is the conferment of revisional jurisdiction on District Judges and the limiting of right of second appeal in certain cases. The letters patent appeals in the High Courts have been abolished, so also the appeals in suits in which the value of the property is less than Rs. 2,000—they merely added one more tier to courts of appeal. Provisions have also been made for speedy service of the parties and their witnesses which more than anything else was the prime cause of delay. It is hoped all these measures will lead to speedier disposal of cases than hitherto.

A recurrent demand of the people since the days of the British in the Indo-Pakistan subcontinent has been the separation of judiciary from the executive. This was introduced by administrative order at one time in the province of West Pakistan. Soon enough it was found that a half-way house has no benefits, and the *status quo* was resumed. Things were not allowed to rest at that. So there came a time when a previous regime only took administrative steps to tighten the executive power over subordinate criminal judiciary but actually pushed the clock of progress back by the endorsement of the West Pakistan Criminal Law (Amendment) Act which introduced the jirga system which was the very travesty of justice. The dispensation of justice became the hand-maiden of the rulers. Before the Law Reforms Commission, 1967, an argument was sought to be made for

Civil Procedure

Separation of
judiciary from
the executive

retention of special tribunals. The Commission, after full consideration, rejected this view, and accepted the popular demand that judiciary be separated from the executive. During the last two years, however, no action was taken on this report and matter, as it often happens, lay in cold storage.

The Law Reforms Ordinance, 1972, which is being promulgated today fulfils a long cherished desire of the people. Justice henceforth will be completely independent of the executive, and independence is a basic requirement for impartiality. However, as the separation would involve a huge dislocation of machinery, the Provincial Governments have been empowered to enforce this part at any time upto the 1st January next year. If a Provincial Government is able to do so earlier, it is permissible to enforce this provision forthwith. There would be no hurdle in its way towards the acceptance of the demand. Once accepted and written into law, it would be impossible for any subsequent Government to go back upon it. It will become a part of our way of life. The golden principle that justice is not only to be done but also must be seen to be done has now been implemented. There will be a separation of powers in as much as the prosecutors and the judges will henceforth be completely separate. We trust that the stories of police high-handedness and of the perversion of justice will become tales of the past.

*Law Reforms
Ordinance, 1972*

We are setting up a Permanent Law Commission with a jurist who is or has been a judge of the Supreme Court to be its Chairman. The members will be experts in different branches of law—civil, criminal, commercial, etc. Modern concept of welfare state has led to enormous legislation in variety of subjects to deal with situations and contingencies that had never arisen before. It also requires scrutiny of the

*Permanent
Law Commission*

existing laws which, under modern conditions, is as necessary as repairs are necessary to a railway, if it has to continue as a going concern. All this requires expert advice and, therefore, the necessity of a Permanent Law Commission.

In certain respects the ordinance goes beyond the recommendations of the Law Reforms Commission. The law of evidence in relation to the trial of civil and criminal cases arising out of statements which are defamatory is being amended so that complaint of the plaintiff is not subjected to scandalous question in cross examination at the initial stage of the proceedings when the question before the court will be whether the defamatory statement was made and if so whether it was true.

The Law of Evidence

The Legal Practitioners and Bar Council Act, 1965, is also being amended to require counsel appearing in any case whether civil, criminal, or otherwise to fill up a power of attorney signifying his acceptance of brief by him with a certificate separately signed by him indicating fees settled and paid with balance, if any, remaining payable.

The Legal Practitioners and Bar Council Act, 1965

Provisions with regard to grant of bail of under-trials and convicts whose appeals are pending have been liberalised in more than one respect. For example, every accused person must be brought to trial within 6 months of his arrest failing which he shall be entitled to be released on bail, however serious the charge against him may be.

Grant of bail

We have played our part. It is now for the judges to fulfil their function. However perfect the law, however high the ideals, it will come to nothing if those who administer it do not perform their best. Integrity of character in judges is a paramount requirement. But integrity ought not to degenerate into licence, impartiality cannot be allowed to

Integrity of judges

mean perverseness. I attach the highest importance to the selection of judges. It goes without saying that judges must be well qualified. But that is never enough.

It has been said that there is a difficulty in measuring judicial attributes objectively and that in our search for selection of the best judges we are driven inevitably to the best method of selection. More than that we cannot do.

Good law administered by good judges and judicial powers available to the rich and the poor alike, these are the dreams of everyone. The vista is pleasant and I have no doubt that judges will rise to the occasion. We Muslims have a glorious heritage. The people of Pakistan are equally determined to have a glorious future.

Syed Muzafar Ali Shah

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