

**CULTURAL AND RELIGIOUS  
FREEDOM, BILL OF RIGHTS AND THE  
ROLE OF JUDICIARY.**

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## ***Cultural & Religious Freedom, Bill of Rights and the Role of Judiciary***

by

***Mr. Justice Tassaduq Hussain Jilani***

I am delighted and honoured to be here; honoured to be part of this distinguished assemblage of people from various countries, regions, races, religions and diverse backgrounds. It is a living testimony to the multicultural and cosmopolitan character of your nation and a befitting retort to Rudyard Kipling's rather cynical view of the world when he said:

*"Oh, East is East and West is West, and never the twain shall meet  
Till Earth and Sky stand presently at God's great Judgment Seat;"* (F.N.1)

But I have yet another reason to be happy to be here; I am speaking to you from the platform of one of the most outstanding universities of this country. A university is a seat of learning, enquiry and research. It shapes young men and women both intellectually and morally. In imparting wisdom and vision, it sheds off their baggage of prejudices and prepares them to enter the brave new world with a potential to change it and define its cultural identity. This spirited class of youth is our future hope, and our future dream to realize the mission that has brought us here for a dialogue. Thank you for making me part of this enterprise.

Religion has played an important role in human history. Be it Judaism, Christianity, Islam, Confucianism, Buddhism or Hinduism, faith has influenced the minds and actions of individuals, societies and nations down the ages. "To the unhappy, the suffering, the bereaved, the old, it has brought supernatural comforts valued by millions of souls as more precious than any natural aid. It has helped parents and teachers to discipline the young. It has conferred meaning and dignity upon the lowliest existence, and through its sacraments has made for stability by transforming human covenants into solemn relationships with God. It has kept the poor (said Napoleon) from murdering the rich. For, since the natural inequality of men dooms many of us to poverty or defeat, some supernatural hope may be the sole alternative to despair. Destroy that hope, and class war is intensified". (F.N.2) (Will Durrant)

A religion is a set of beliefs which in the perception of those who profess it are a source of spiritual satisfaction. It has two dimensions: (i) spiritual (ii) external or political. The latter dimension is replete with conflicts, extremism and a claim of monopoly of truth which historically has not been without its toll in terms of human suffering. These abuses of faith have varied in time and space. *"In the twentieth century alone, by some estimates, as many as 170 million human beings were the innocent victims of ethnic cleansing. The majority of these episodes of annihilation were religiously motivated. One atrocity begets another in an endless cycle of violence that*

*emanates from humankind's most deeply held convictions -----*  
*clearly religious persecution remains part of daily life in all regions of*  
*the world.”(F.N.3) This human degradation in the name of religion led in*  
the West to separation of the Church and the State and ultimately to  
Renaissance; ushering in an era of objective reasoning, of liberal  
democracy, freedom and secularism. This was a turning point towards  
the evolution of civil society as we see in the West today. Some  
thought that religion was no longer relevant in the public sphere. This,  
however, proved to be a myopic view and religion continues to play a  
role; sometimes to restore peace and harmony and sometimes in  
causing violence and pain. In the preceding century, the world  
witnessed the worst examples of religious and cultural intolerance  
leading to genocide during the Third Reich. Only a decade ago, there  
was a blood bath in Yugoslavia in the name of ethnic cleansing and  
such episodes of barbarity are being replicated in some other regions  
of the world as well. According to the report of the U.N. Special  
Rapporteur for the year 2000 in the 56<sup>th</sup> Session of the U.N.  
Commission on Human Rights, *“these forms of extremism very often*  
*originate with non-governmental bodies, sometimes with a group*  
*acting out of pure fanaticism related to ignorance and obscurantism,*  
*sometimes with extremist communities deliberately aiming to use*  
*politics in order to impose their religious views on society, but also and*  
*above all with ‘professionals’ of extremism exploiting religion for*

*political ends. It is worth remaining aware and vigilant, however, regarding the passive active complicity of state entities in most of those cases.” (F.N.4)*

The untold misery caused by misuse of political power in the name of faith led humankind to realize that unless this inhumanity is reined in and certain rights are recognized as fundamental, to be respected by all, injustices would continue unabated. The concept of Bill of Rights underpins this bitter realization both at the domestic and International level. At the International level it culminated in the adoption of the Universal Declaration of Human Rights, Article 18 of which mandates *“Everyone has the right to freedom of thought, conscience and religion; this right includes --- freedom, either alone or in community with others and in public or private to manifest his religion or belief in teaching, practice, worship and observance”*. This declaration was followed by two other important international covenants on human rights, these are (i) International Covenant on Civil and Political Rights (ICCPR) and (ii) the International Covenant on Economic, Social and Cultural Rights (ICESCR). Article 18 of ICCPR specifically pertains to freedom of thought, conscience and religion. In the face of growing intolerance and discriminatory laws in various regions of the world, the UN General Assembly passed yet another Declaration on the Elimination of All Forms of Intolerance and of Discrimination based on religion or belief. (1981).

These Declarations & Covenants primarily are principles and standards of behaviour which the UN enjoins the Member states to follow but are not accompanied by an effective mechanism for their enforcement. They serve as moral checks on States. Efforts are being made to make these rights as part of the domestic law. However, till this goal is achieved, they are giving birth to a new jurisprudence within the States i.e. the domestic application of International Human Rights norms. *“International Human Rights Law, can enter the domestic sphere in a variety of ways. Most bluntly, advocates have suggested that domestic courts should apply international human rights law directly, overriding domestic law in cases where the two conflict. Second, international human rights law can override domestic law indirectly by being used as a rule of construction in determining the constitutions and statutes. Finally, the authority of international human rights law can be used to justify changes in domestic law enacted through the ordinary legislative process.”* (F.N.5) The Pakistan Supreme Court in several cases has invoked the International Human Rights Norms. In a case [Sardar Farooq Ahmed Khan Leghari v. Federation of Pakistan (PLD 1999 SC 57 at Page 191)], the issues mooted before the Court were, inter alia, whether the President’s power to promulgate State of Emergency under Article 232 of the Constitution was amenable to judicial review, and whether conditions existed to warrant suspension of fundamental rights during the said period. The Court

held the fundamental rights guaranteed under the Constitution were in consonance with International Human Rights norms and those could only be suspended proportionate to the exigencies of the situation.

This view was reiterated in a later judgment (reported at PLD 1997 SC 84 (F.N.6)).

The protection of fundamental rights through a bill of rights has become a popular pursuit in democratic systems. A bill of rights is a formal declaration of the fundamental rights of individuals in a country. It can either be an Act of the Parliament or it can be part of the Constitution. The object is to guard these rights against Executive or Legislative encroachment. In England, which does not have a written constitution, these rights emanated either from the Common Law or the Magna Carta. But such instruments were not found to be sufficient safeguards against arbitrary actions of the rulers. Thus even U.K. had to enact a Human Rights Act. Learning from its colonial past, the United States, after attaining independence decided to make Bill of Rights as part of their Constitution. This led to the first ten amendments in the U.S. Constitution. Today, in most of the countries fundamental rights are part of the Constitution. In Australia Section 116 of the Constitution was inserted to ensure religious freedom. In Canada, Charter of Rights is Part-I of the Constitution, in India and in Pakistan, a full chapter in the Constitution is devoted to the fundamental rights. In Pakistan, the Preamble of the Constitution holds

out a commitment to establish, “*an order.....wherein shall be guaranteed fundamental rights, including equality of status, of opportunity and before law, social, economic and political justice, and freedom of thought, expression, belief, faith, worship and association, subject to law and public morality.*” This is reiterated in Article 20 of the Constitution which lays down that, “**(a)** every citizen shall have the right to profess, practise and propagate his religion; and **(b)** every religious denomination and every sect thereof shall have the right to establish, maintain and manage its religious institutions.”

But what is religious freedom? What are its limits? What is its relationship with other human rights? What is discrimination and its various facets? How best to ensure the enforcement of these rights? What remedies citizens have in a State where there is a wide dichotomy between the declarations made in the constitution and empirical realities? What is the role of judiciary in protecting religious freedom and defining its limits? These are some of the questions that confront us while dealing with this issue.

By freedom of religion and belief is meant the right of a person to follow a doctrine or belief system which in the view of those who profess it, provide spiritual satisfaction. In every constitutional democracy this is a right regulated by law and sustained by socio-political values. No one has an unfettered right to practise one’s faith which may outrage feelings of another class. (F.N.7)

In most of the countries, there is no declared State religion but in some countries, we do have a declared State religion. The extent and limits of the right to cultural and religious freedom as provided in their respective laws or constitutional provisions may vary in these classes of countries. However, empirically violations of such rights are not confined to countries which have a declared State religion. Violations do occur in countries where the constitutions do not provide for a State religion. The extent of these violations ordinarily depends on the socio-political conditions and the political system of a country. If such rights and freedoms are the result of a broad consensus then the Courts would find it easier to ensure their enforcement. In such situations even the passions of the day or parliamentary majorities would not be able to deprive the minorities of those rights. The gap between the declarations made and the realities on ground can be abridged through judicial interventions. The Courts can also strike a balance between the enjoyment of the right of freedom of religion and other fundamental rights and values in a society.

In U.S., the right to freedom of religion or belief is derived from the first amendment to the Constitution. In Davis Vs. Beacon, the U.S. Supreme Court, was called upon to decide about the parameters of religious freedom and its relationship with other human rights and values. The Court held that the exercise of this right cannot override

the peace, order or morals of the society and to that extent the freedom of religion is subject to the laws of the State. (F.N.8) In a case from South African jurisdiction, the conflict between religious freedom and other fundamental rights was the moot point. In 1996, by an Act of the Parliament corporal punishment was banned in schools. The constitutionality of this statute was challenged by an association committed to the promotion of Christian education values. The body controlled about 200 schools in South Africa. The ground urged before the court was that the ban was violative of Biblical tenets and therefore, the statute infringed their right to freedom of religion. The petition was dismissed both by the High Court and the Constitutional Court. The Court found that “a multiplicity of intersecting constitutional values and interests are involved in the present matter --- some overlapping, some competing, including the right of the child to human dignity, to freedom and security of the person, and to be protected from maltreatment, neglect, abuse, or degradation. In terms of the South African Constitution, [a] child’s best interests are of paramount importance in every matter concerning the child.” (F.N.9)

The Bill of Rights or constitutional provisions relating to fundamental rights would remain pious hopes or “paper barriers” to harmful arbitrary acts of legislative or executive authorities unless there is the rule of law and canons of substantive democracy are followed.

For a proper observance of the rule of law, the law has to be fair. It has to be certain and brought into being by a democratic process. It has to be applied equally to all and has to be buttressed by some, if not complete, separation of powers between the executive, the legislature and the judiciary. (F.N.10)

What is democracy? Is it rule by majority and holding of periodical elections? According to Professor Ronald Dworkin of Yale University Law School,

*“True democracy is not just statistical democracy....but communal democracy in which majority decision is legitimate only if it is a majority within a community of equals. This means not only that everyone must be allowed to participate in politics as an equal through the vote....but that political decisions must treat everyone equal with legal concern and respect, that each individual person must be guaranteed fundamental civil and political rights which no combination of other citizens can take away, no matter how numerous they are or how much they despise his or her race or morals or way of life.”* (F.N.11)

Democracy without fundamental rights and the rule of law to ensure their enjoyment may be reduced to mobocracy. Hitler was voted into power through a democratic process. But once in power, he destroyed the said process in a manner that even the judiciary became party to it. Several judges were tried in ‘Nuremberg Trials’ after the Second World War on charges of genocide by twisting the law. There is no shortage of similar political parties even in contemporary Europe,

*“Parties with dubious democratic pedigree have done well in recent years. Jorg Haider in Austria, Christopher Blocher in Switzerland, Umberto Bossi in Italy, Jean-Marie LePen in France.....the list is long.”* (F.N.12) In recent history the leaders of a party which won majority in the Serbian Parliament faced trial and were convicted for human rights abuses by the Special Tribunal in Hague.

The Courts have an onerous role to play. They serve as the primary guardians of individual rights and the absence of independent tribunals has indeed permitted tyrannical invasions of human liberty. (F.N.13) Each Judge in the judicial hierarchy in one form or the other, has to decide matters which impinge on the enjoyment of the fundamental rights. James Madison, the principal author of the U.S. Bill of Rights rightly remarked, *“independent tribunals of justice will consider themselves in a peculiar manner the guardians of those rights.....[and] resist every encroachment upon rights expressly stipulated.....by the declaration of rights.”* (F.N.14)

*Courts must conceptualize the values that ensure and enhance democracy and prevent the opposite trend. They must read within the given words and between the lines of the Constitution and provide strength to the rule of values as without substantive democracy, formal democracy can lead to autocratic rule by the majority and degenerate into intolerance. This is an area where the Courts are best qualified to determine the extent and importance of*

*those values. The Courts provide a national forum where substantive aspect of democracy can be debated and actualized. (F.N.15)*

The Supreme Court being the apex court in a liberal democracy is mandated to protect and defend the Constitution which embodies the fundamental rights.. It is better suited than Legislature or Executive Body to insist that the Constitution be followed --- particularly in an instance where doing so is politically unpopular (F.N.16) Its opinions and judgments could have seminal effect in promotion of cultural or religious freedom. I would like to dilate on this with reference to three judgments of the U.S Supreme Court.

(i) Dred Scott Vs. Sand ford (1857)

(ii) Oregon Vs. Smith (1990)

(iii) Brown Vs. Board of Education (1954)

(i) Dred Scott Vs. Sand ford. Discrimination on the basis of colour or creed is a serious clog on cultural freedom. The role of courts in the evolution of liberal democracy in U.S. is an interesting study. In the Dred Scot v. Sand ford, the U.S. Supreme Court held that no African–American could be a citizen entitled to sue in a Federal Court and no African-American could become free simply because he was taken into a free State by his owner. Speaking for the Court, Chief Justice Taney while dismissing the petition, made a rather cold remark about the petitioner and said “*he was bought and sold, and treated as an ordinary article of merchandise and traffic, whenever a profit could*

*be made by it.....This opinion was at that time fixed and universal in the civilized portion of the white race.” (F.N.17)* This however, was factually incorrect because *in his influential “Commentaries on the Laws of England”, which the U.S. Supreme Court had often cited with respect, Sir William Blackstone wrote that “a slave or negro, the instant he lands in England, becomes a freeman,” with all the rights of English citizenship.(F.N.18)* Justice Curtis was the lone dissent and he was so dismayed by the judgment that he resigned. It was described by one of the former U.S. Chief Justice Charles Evans Hughes as a *“self inflicted wound that almost destroyed the Supreme Court”*. According to some historians, it energized the anti-slavery movement in U.S. and led to civil war. (F.N.19)

The American history and cultural heritage is a mix of varying shades. It commenced its life of independence by declaring that *“all men are created equal, that they are endowed by the creator with certain inalienable rights.” (F.N.20)* It had to wade through difficult times and confront moral and existential issues. There have been issues of the natives, the issues of slavery over which the nation was divided resulting in the Civil War. But despite the abolition of slavery, discrimination continued in various facets. Dr. Martin Luther King was shot dead when he dreamt of an inspirational dream that *“One day this nation will rise up and live out the true meaning of its creed: “We hold these truths to be self-evident: that all men are created equal.”” (F.N.21)*

Barack Obama felt slighted as a child to discover that being dark coloured carried a social stigma and a cost. In his book, “*Dreams from my Father*” he describes how terrible he felt about being black when as child he saw an advertisement in the Life Magazine about a chemical treatment to lighten the complexion. He says:

*“I felt my face and neck get hot. My stomach knotted; the type began to blur on the page. Did my mother know about this? What about her boss---why was he so calm, reading through his reports a few feet down the hall? I had a desperate urge to jump out of my seat, to show them what I had learned, to demand some explanation or assurance. But something held me back. As in a dream, I had no voice for my newfound fear.” (F.N.22)*

But the Americans have come a long way. They have a remarkable quality of self accountability and rectification. Alex De Tocqueville, a French aristocrat who visited U.S. in the 18<sup>th</sup> century admired this quality and remarked,

*“.....the greatness of America lies not in being more enlightened than any other nation, but rather in her ability to repair her faults.....America has succeeded brilliantly in repairing the ancestral fault of racism.” (F.N.23)*

The U.S. Supreme Court repaired its error committed in Dred Scott case subsequently in the case of Brown v. Board of Education wherein it outlawed racial segregation in educational institutions. In the domestic political scene, it is a tribute to the American People that they rose above the barriers of colour, caste and

creed by electing Barack Obama as their President. But they should not be complacent, as the attainment of the values reflected in their Declaration of Independence and the vision of the founding fathers could still be a long drawn struggle. This is evident from a recent episode of a black Harvard Professor's arrest at the door of his own house by a white policeman under the impression that it was a case of burglary. President Obama's reaction to that is rather instructive. He said, "Race is still a troubling issue of our Society" and that it is "teachable moment" (F.N.24)

(ii) Oregon Vs. Smith (1990). This was a case in which two drug rehabilitation Counsellors who were members of the Native American Church were fired from their jobs because they had ingested peyote—a hallucinogenic drug, for sacramental purposes at a ceremony of the church. The Oregon Court of Appeals set aside the order of the Appellate Board which had refused to reinstate the counsellors. The Court held that this was an unjustified burden on the right of free exercise of religion. The Supreme Court of Oregon affirmed the judgment. The U.S. Supreme Court, however, reversed this judgment holding that the free exercise of religion clause permits a State to include religiously inspired use of pyote within the reach of State's criminal prohibition on use of that drug. It restored the order of the Appellate Board not to reinstate the counsellors or to pay compensation. This judgment has been a subject of critical comment.

According to DEREK DAVIS, *“the Court’s decision in Oregon v. Smith (1990), the adverse impact of which Congress through RFRA sought to counteract, essentially removed the free exercise of religion from the ambit of universally protected freedoms, transferring it to the vagaries of the legislative process. As Justice Sandra Day O’Connor complained, citing West Virginia Vs. Barnett (1943), “the very purpose of a Bill of Rights was to withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities and officials and to establish them as legal principles to be applied by the Courts. Our right to ... freedom of worship ... may not be submitted to vote; [it] depend[s] on the outcome of no election.” (F.N.25)*

In the context of our country, the Supreme Court is under a constitutional mandate to ensure that no organ of the State, be it executive or legislative, interferes with the fundamental rights guaranteed under the Constitution. Article 8(2) of the Constitution specifically lays down that, *“the State shall not make any law which takes away or abridges the rights so conferred and any law made in contravention of this clause shall, to the extent of such contravention, be void.”* The Constitution empowers the Supreme Court to entertain petitions raising issues of *“public importance”* with reference to the enforcement of any fundamental right conferred by Chapter-I of Part-II and Article 190 of the Constitution ordains that all executive and

judicial authorities throughout Pakistan shall act in aid of Supreme Court.

In not very distant past, the Court was called upon to decide a case which raised issues of the limits of religious freedom, relationship of freedom of religion and other fundamental rights under the Constitution i.e. due process of law, etc., and the Supreme Court rendered a rather detailed but instructive judgment in its advisory jurisdiction. (F.N.26). To appreciate the real import of the case, a brief background would be in order. Pakistan comprises four federating units or Provinces (Punjab, Sind, Baluchistan and N.W.F.P. now proposed to be named as Pakhtoonkhwah). The Province of N.W.F.P borders Afghanistan. It is a porous border. The populations freely cross frontier and the language is common. In the General Elections held in 2002, a coalition of political parties having professed religious manifestos and sympathies towards Taliban formed a government in the said province. Immediately after 9/11 the Taliban Government had already been overthrown in Afghanistan. The regime left behind a legacy which was described by human rights activists as reflective of serious human rights violations. Some of those were as follows:-

- “(i) Schools and colleges for women were closed down;*
- (ii) no woman was allowed to step out of her house without the Burqa or a peculiar Hijab;*
- (iii) no woman was allowed to drive any vehicle;*

- (iv) *music was banned;*
- (v) *even watching television or keeping television and photography were regarded as unIslamic;*
- (vi) *making of portrait, sculpture or statues was prohibited;*
- (vii) *and the height of the atrocity was the destruction of the statues of Buddha at Bamian which were part of the world heritage;*
- (viii) *What to talk of women, even the members of a football team from Pakistan wearing half pants showing legs below their knees were attacked and their heads shaved while playing a football match in Afghanistan;*
- (ix) *Execution of barbaric, inhuman sentences of “sangsar” (stoning to death) as well as flogging in public places, was allowed with pride;*
- (x) *Non-Muslims were forced to wear a yellow band on their wrists to distinguish them from Muslims;*
- (xi) *All adult men were forced to keep a long bushy beard and any adult without it was punished by the Taliban.” (F.N. 27)*

In that geo-political and cultural milieu the Provincial Government introduced a legislative bill in the provincial assembly with a declared objective of enforcing a code of ethics which in its view was based on Islamic tenets not through the existing administrative and judicial hierarchy but by creating a parallel administrative structure. The Bill was called the “*Hisba Bill*”. ‘*Hisba*’ is an Arabic word which stands for “*to Count*” or “*Accountability*” or “*to prohibit from evil things*”. The salient features of the law were as follows:-

- (1) *There was to be appointed a moral guardian called the “Mohtasib” at the district level and there are 33 Districts in the Province. The Mohtasib’s mandate was as follows:-*
  - (i) *to protect the Islamic values and etiquettes;*
  - (ii) *to ensure that government publications are useful for the purposes of upholding Islamic values;*
  - (iii) *to forbid government servants from acting against Sharia (Sharia was not defined in the proposed Bill and there are more than 70 sects in Islam).*
- (2) *The Mohtasib could exercise other functions as well which he deemed necessary to enforce the Islamic Sharia.*
- (3) *The Mohtasib was also given powers to mediate in murder cases.*
- (4) *The proposed law was to override any existing law.”*

Although the Federal and Provincial Governments enjoyed excellent equation when the Bill was tabled in the Provincial Assembly, yet the Federal Government did not dissuade the Provincial Government to pass such a law and allowed the Bill not only to be

tabled but also to be passed by the Legislature. Instead it filed a Reference before the Supreme Court and sought its opinion. The Court heard the Advocate Generals of all the four Provinces and the Attorney General for Pakistan. After exhaustive arguments, a full Bench of the Court (Hon'ble Chief Justice Iftikhar Muhammad Chaudhry authored the judgment) declared certain offending provisions of the proposed Bill to be ultra vires of the fundamental rights provisions of the Constitution and directed the Governor of the said province not to grant assent to the said Bill. It was described by many as an act of judicial activism. The judgment is important for more than one reasons: first it laid down that religious freedom is not absolute and it has to conform to other laws and the Constitution; second that in the event of a conflict between a law which is being projected as religious and the fundamental right provisions of the Constitution, the latter shall prevail; third it was a case in which political issues were brought to the Court because the political leadership was shy of the extreme right. It could not resolve the issue in the political domain fearing backlash from fundamentalist lobby and brought the issue to the Court. The Apex Court vindicated itself as custodian of the Constitution and as an arbiter to define the limits of religious freedom as also its relationship with fundamental rights under the Constitution and international human rights norms.

While deciding such cases entailing inter-faith or intra faith conflicts, the Courts should keep in view the fact that there are some in every faith who seek to interpret religion in myopic terms. In evangelistic exuberance, they tend to forget that the message of all faiths is common and for the benefit of the entire humanity. So they have to co-exist and provide space to each other. This spirit of pluralism is reflected in the Holy Quran *“Constantly the Quran points out that Muhammad (P.B.U.H) had not come to cancel the older religions, to contradict their prophets or to start a new faith.” To the contrary, “[h]is message is the same as that of Abraham, Moses, David, Solomon, or Jesus. “In fact, the Holy Quran ordains that a Muslim is he or she who believes in all of the revealed books the Taurat, the Zaboor, the Injeel and the Holy Quran and their Prophets”* (F.N.28)

In the 21<sup>st</sup> century, the cherished goal of creating a more pluralistic society where fundamental rights are respected would continue to elude us unless we realize that we are living in a world of globalized interdependence, a world of interconnectivity, of cyber space, of shrunken distances, of macroeconomics, of cross border migration; of transnational marital bonds; of ever increasing wealth of inventions and discoveries of weapons, of mass destructions, of global recession, of climate change and a world of rapidly changing cultural identities. We must know that as human beings we all are members of one race of humans; the

challenges that we face are common and more important than the differences, which divide us, which debase us, which demean us and which bleed us. We cannot confront these challenges unless we forge a common bond and a common alliance. This paradigm shifts in vision of the world around us, can be achieved through a shared resolve and action plans at all levels; International and domestic both. At international level, we have to strengthen the U.N and its various institutions particularly those entrusted with promotion of education and dispensing justice. International Criminal Court deserves a special focus. At the domestic level there has to be a multipronged strategy encompassing educational, social, political and religious institutions. Special courses need to be designed in schools, colleges and universities aimed at inculcating and promoting these values. History of comparative religions should be introduced at school level. Sectarian, racial and ethnic politics which is violative of the shared values and fundamental rights should be discouraged. This would promote a broad consensus which would then be reflected in legislation. While selecting judges and designing courses in judicial education and training, such ideas and values should be kept in view. This is imperative because judges are mandated by virtue of their calling to ensure enforcements of such rights and values. In any system of governance people of all shades look upto this institution for relief, succour and justice. I attempted to pen down the role of judiciary in this world of conflicting

faiths in a poem which was sung as the inaugural song at the International Jurists Conference held in Islamabad sometimes back. I may share it with you: -

“Justice for All

The toil, the sweat, the tears and the blood,  
 Make up the labour for the land begot.  
 The freedom is won, but the chains are clung,  
 There are miles to cover,  
 The voyage is tough and the weather is rough,  
 The odyssey begins; The Founder declares his vision  
 Of Democracy, Faith, Tolerance and Compassion.  
 Discriminate the State shall not  
 Thou may belong to any religion, creed or caste. (F.N.29)  
 Oh! The vision is distorted, the march is thwarted,  
 Castles in the sand, babes in the woods,  
 Recipes of fall abound in the books.  
 The nation is cut, the land is bled  
 When the message is lost, a die is cast,  
 The wages are loud, Beware of the clouds.  
 Long live the message, the Lamp and the rays  
 That glow The Temple, which holds the scales,  
 Pinning the dreams, the hopes and the oath  
 Of Justice for All” (F.N.30)

- (1) Rudyard Kipling (1833-1908) 19<sup>th</sup> Century English Poet.
- (2) “Toleration and religious tradition” The lessons of History by Will Durant
- (3) “The evolution of Religious Freedom as a universal Human right by Derek H. Davis”.
- (4) ‘The Violence of religious intolerance’ by Rt. Rev. Samuel Azariah (<http://www.wcc-coe.org/wcc/what/jpc/echoes/echoes-18-06.html>).
- (5) Democracy and International Human Rights Law by John O’ Mc Ginnis
- (6) Al-Jehad Trust Vs. Federation of Pakistan (PLD 1997 SC 84)
- (7) Ramjilal v. U.P. (AIR 1957 SC 620).
- (8) Davis v. Blaton (133 US 333)
- (9) The Relationship of Religion or Belief Norms to other Human Rights by Johan D. Van Der Vyver.
- (10) Preface by Lord Hacking in “The International Lawyer” Journal of the American Bar Association, Spring 2009.
- (11) Freedom’s Law: The Moral Reading of the American Constitution by Ronald Dworkin (Pages 364-365)
- (12) Article published in Daily Times, January 18<sup>th</sup>, 2004 by Ralf Dahrendorf.
- (13) Bik, Stephen on Bill of Rights
- (14) Annals of Congress 1789, 457
- (15) Freedom’s Law: The Moral Reading of the American Constitution by Ronald Dworkin (Pages 364-365)
- (16) Alexandor Hamilton as quoted by Justice Stephen Breyer’s Address to the American Academy in Berlin, December15, 2008.
- (17) A People’s History of the Supreme Court by Peter Irons (page 173)
- (18) A Peoples History of the Supreme Court by Peter Irons.
- (19) Justice Stephen Breyer’s Address to the American Academy in Berlin, December 15, 2008.
- (20) The Declaration of Independence of U.S.
- (21) I have a Dream by Dr. Marten Luther King
- (22) Barack Obama: Dreams From my Father (Page. 30)
- (23) Economist July 4, 2009.
- (24) The Daily Dawn, July 27<sup>th</sup> 2009
- (25) Thoughts on Religious Persecution Around the Globe: Problems and Solutions by Derek Davis published in Journal of Church and State Volume 40 Issue 2 Page 279.
- (26) PLD 2005 SC 873 (Opinion of Supreme Court in Reference No. 2 of 2005 on Hasba Bill Case)
- (27) Life Under the Hasba Law by Iqbal Haider (Daily Dawn Islamabad dated 30.07.2005)
- (28) “Democracy and Islam: An Odyssey in Braving the Twenty-First Century” by Justice Tassaduq Hussain Jillani.(Brigham Young University Law Review, 2006)
- (29) Quaid’s Speech.
- (30) Pakistan Supreme Court Anthem ([www.youtube.com](http://www.youtube.com))