

Keynote address delivered at the Mediation Seminar organized by IBA CEE at Karachi on May 3, 2024

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Honourable Judges of the High Court, Retired Judges of the Supreme and High Court, Distinguished Ladies and Gentlemen,

First of all, let me welcome all of you who have graced this occasion by your presence. In this galaxy of distinguished judges, Jurists, lawyers and experts I feel very diffident in offering my remarks. However, as a student of development and governance I would like to set the broader context in which today's discussion can take place.

One of the pillars of good governance is the rule of law and administration of Justice. The main plank of market economy is property rights and enforcement of contracts. Among several determinants of Foreign Direct Investment and International Trade flows the mechanisms by which disputes are resolved among the contracting parties features prominently. Inclusive development in which the majority of the population shares the benefits also requires Financial inclusion i.e access to capital.

I would like to begin with Article 37 (d) of the constitution i.e provide inexpensive and expeditious justice. This in turn implies Affordability and Access. The world justice project report ranks Pakistan quite low based on a survey . The report opined that the poor and lower classes do not have access to justice in the formal justice system. We do not have dedicated legal aid societies in large numbers that can assist the poor and the district law empowerment committee constituted by the Law and Justice Commission JCP in 2011 are non-functional.

I would humbly submit that In my view, there are four areas that need reforms to make our judicial system work efficiently and expeditiously.

First, there is a shortage of judges specially in High courts and Supreme courts. Disposal lags behind fresh institution and backlog keeps piling up. Accordingly, the courts all over Pakistan are overloaded with 2.4 million cases. The monitoring , supervision , performance and accountability of lower judiciary therefore relegate to the background because of the paucity of time and become perfunctory and superficial .The entry into and standards of legal

education, in general, have to be raised to the same level as other professions to ensure induction of high quality judges. Systematic training of the judges in the lower cadres has to be geared at various points in the career towards substantive upgradation of skills and knowledge. The current internal management system of our courts has outlived its utility and has to be completely replaced by a technology driven modern management system with new business processes.

Second, another main reason for the delays in the disposal of cases in the archaic court procedures and case load management system that have remained intact over a century. They are overly technical, allow for rounds of appeals, reviews and revisions and generally tilt towards sacrificing efficiency at the altar of thoroughness. Frivolous litigation, fabricated testimony by professional witnesses, incomplete investigations in connivance between the officials and the interested parties have congested the courts as the penalties for doing so are insignificant.

We are still stuck with the 19th Century Police order, Civil and Criminal Procedure codes, Law of evidence while the British from whom we inherited these have gone ahead and simplified and modernized these laws with the passage of time. There have been no serious attempt here to recast these laws to meet the exigencies and demands of the 21st century.

The 2009 National judicial policy had pronounced the rule that cases relating to banking and different taxes such as income tax, property tax should be decided within six months. All stay of judges should be decided within 15 days of the grant of an interim injunction . However, these rules have not been enforced even after passage of 15 years. Even the execution of the decree takes a long time. Conviction rates for insider trading, tax evasion, loan defaults and other economics trims are quite low. As a consequence, the deterrent effects of the laws on the book is virtually absent and behavioral change towards better observance and compliance is almost non-existent.

Third, there is a mismatch between the current content of education and training of the lawyers and judges and the complex nature of the disputes that arise in the area of Commerce, contracts, foreign investment, international trade, banking, taxation, competition and many other specialized areas. Pakistan does not have dedicated commercial courts headed by individuals

competent in that field.. The capacity of the judges of specialized courts to deal with the substance and content of economic related processes and that of the lawyers engaged in this line of specialization should be continually upskilled. A large number of defective decisions are delivered because of the inability of judges and lawyers to grasp the intricacies of the principles underpinning a transaction. Thus they are unable to dispose of these cases quickly and expeditiously. 2.7 trillion rupees of tax arrears are pending for recovery because of stay orders and adjournments. Similar is the case of banking loan arrears . Competition Commission of Pakistan cannot realize the fines and penalties it has imposed upon those had violated the law and rules and indulged in collusive practices . Building apartments and other construction projects remain incomplete , savings get stuck and cost overruns are incurred because of the litigations and disputes. Development projects get delayed with consequential uptick in costs as land acquisition disputes linger on for years altogether.

Fourth, the use of IT tools in case load management, administration, monitoring and supervision of lower courts , admissibility of evidence through video conferencing, recording on mobile phones and cross examination, uploading of documents through websites has remained minimal even at the higher courts. Case management system can be automated and placed in public domain. Information about court services can be made accessible through the websites. Instant messaging to the lawyers and litigants through their smart phones should be the normal means of communication. The Data repository would keep a track of the number of adjournments sought by the lawyers.

Until these reforms are put in place we have to pay attention to Alternative Dispute Resolution Mechanism . We have been talking about alternative disputes resolutions mechanism such as arbitration, mediation and negotiated settlements outside the court system for a long time . Laws, rules and regulations have been formulated but the actual results are disappointing. The Local Government Ordinance 2001 had the provision for Maslahati committees at the union Council level. FBR has been experimenting with such committees for over a decade but here hasn't been much head way. Companies Act also has stipulation for ADR. IBA is making this attempt to set up the International Centre for Alternate dispute Resolution Centre (IBA ICADR) for filling in the gap of training, skills to a panel of qualified mediators and arbitrators to resolve disputes effectively . In this endeavour, the Centre would be supported by

Singapore, New York and UK. , In the initial stage, the Centre would mainly focus on Mediation. It is our expectation that such centers would then be replicated by other Business and Law schools across the country to produce a critical mass of qualified and trained mediators. These centres can free up court resources for more complex matters ultimately strengthening the overall legal system in Pakistan.

Mediation allows parties to reach solution that both can agree to, potentially leading to a more satisfying outcome and a more amicable post-dispute resolution. Unlike public court proceedings, mediation is confidential. This can be particularly appealing for businesses and individuals who want to avoid sensitive details of their disputes becoming public knowledge mediation also allows businesses to preserve their ongoing relationship with their partners or clients while resolving specific disputes, fostering long term stability collaboration.

I look forward to listening to the experts who would be participating in the next two panel discussions. Thank you