Address to the Azad Jammu & Kashmir High Court Bar Association on 20th October, 2014

Justice Mohammad Azam Khan

Chief Justice of Azad Jammu & Kashmir

بسم اللہ الرحمن الرحیم

My brother Judges of Supreme Court of Azad Jammu & Kashmir,

My brother Judges of the AJK High Court,

Learned Judges and the members of the District and Tehsil Judiciary,

Respected President, Sardar Mohammad Razzaq Khan,

Office bearers and the members of the AJ&K High Court Bar Association

The officer bearers and members of the Supreme Court Bar Association

Learned Office Bearers of the District and Sub-divisional Bar Associations and members of the legal fraternity

Ladies and Gentlemen

Aslaam O Alaikum

Thank you Mr. President, and the officer bearers of the High Court Bar Association.

It is, and always remains, a matter of immense pleasure for me to be with the legal fraternity of Azad Jammu &

Kashmir. It is also an honour for giving me an opportunity to address this gathering on the occasion of oath taking ceremony of the office bearers of newly established AJ&K High Court Bar Association. Such kinds of occasions afford the opportunity to the Bench and the Bar to strengthen the mutual relations and share the legal and constitutional issues and problems being posed to the system of administration of justice. The relation of the bench and bar is indivisible and vital for supremacy of the constitution and rule of law rather sustenance of judicial system and administration of justice. Surely, I would like to discuss here and share my thoughts with you, about the issues of mutual interest of the Bench and the Bar.

But before embarking further, I would like to congratulate the office bearers of the first body of the AJK High Court Bar Association. I hope that the officer bearers will strive hard for making this new-born organization successful. The freedom of forming associations has been guaranteed in our constitution. Under the article 24 of the 'United Nations Basic Principles on the Role of Lawyers, 1990'[1], it has been declared that , "Lawyers shall be entitled to form and join self-governing professional associations to represent their interest, promote their continuing education and training and protect their

[1] Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990.

professional integrity." Under rule 2 of the AJ&K Bar Council(Memorandum of Bar Associations) Rules, 2001, the bar associations can be formed at sub-divisional level, district level , at circuit Benches and principal seats of the High Court and the Supreme Court.

I expect this newly formed body of legal fraternity shall make its best in achieving the objects as provided under Rule 3 of the aforesaid Rules, i.e. protect and safeguard the rights, interest and privileges of its members; strive to remove any difficulty faced by the legal profession; struggle for the civic liberties, human rights and to take immediate action for upholding the rule of law; and carry out the provisions of the Bar Council Act and the different rules made thereunder.

The bench and the bar are two wheels of the same chariot the only destination of which is nothing else but justice. To achieve justice, up to the mark working of the judicial system is prerequisite. But to run this chariot smoothly and reach its true destination working in equilibrium of both of its wheels is essential. Non-coherence leads, first of all to chaos inside of the both and then becomes threat for sustainable development of the society. In this regard, being the trustees of the judicial system of the state the scope of the responsibility of the bench is somewhat narrow but of the bar is many-fold and broad.

The efficient and impartial judicial system and its sustenance are unalienable rights of the people of this state. It is the duty of the bench to dispense justice in accordance with the Constitution and the law while it is the duty of the bar to assist the bench in the attainment of said objective. Re-phrasing John Locke,[2] ["rule of law" cannot exist without independent and upright judges but " independent and upright judges" cannot exist without independent and upright legal profession.] Justice William O. Douglas of USA expressed that "Civil liberties survive when the Bar is alert to defend them – when the Bar is courageous, when the Bar is mindful of its responsibilities." Unless the legal profession has a clear vision of its role and demonstrates dedication to the values that emphasize it, forfeits its claim to independence. Bar Associations are like spinal cord of the judiciary, in absence of strong bars the concepts of independent and powerful judiciary remains far cry. The historic Pakistani lawyers movement for restoration of judiciary, is a prime example of the strong influence of the bar associations. The Bar Associations of Pakistan, the Bar associations of Azad Jammu & Kashmir with help of other segments of society, particularly with the active support of media successfully attained its goal. This gave birth to the sense of confidence to the legal fraternity and created a new vigor for having an independent judiciary. This evolution has enhanced the confidence of the masses in

[2] Treatise on Government (1690) ch IX, § 131

the courts of Pakistan and AJK. The confidence and expectations of the masses can only be sustained if both the wheels of the chariot have cordial relations and strive together for dispensation of justice, rule of law and the supremacy of the constitution. The present judicial opinions of the Bench are reflection of the extent of the excellence provided in assistance of the Bench by the Bar, whereas, the judiciary of a given time is outcome of the decades long evolution of the Bar in its independence in all aspects.

The spring of the bench emanates from the excellence of the Bar in all aspects. The excellence of the bar is upshot of the continuous learning, hard work, strict adherence to the cannons of conduct, legal and professional ethics. Individuals are always there but sustained positive changes in broader horizon may only be achieved on the strength of the institutions in all characteristics.

It is the duty of the representatives of the bar, not only to protect the collective interests of the members of the bar and the legal profession but also to take steps, practically in attaining the rule of law. The public interest litigation is not only a curative legal method but also creates deterrence against the wrongs of the executive. In this regard, lawyers as individuals and on organizational basis may make substantial and more effective contribution. Further, the

legal fraternity may be supportive for making improvements in the system of administration of justice.

Azad Jammu and Kashmir is an Islamic state, where sovereignty vests in Allah Almighty. The rulers have to exercise the powers bestowed upon them by Allah, in interest of the masses. It is the duty of Government that it shall take the measures to protect the fundamental rights of the state subjects, which are frequently violated by the ruling classes.

The Constitution is social contract of a state with its citizens. It promises with the masses of the state the fundamental rights and guarantees civil liberties. The knowledge of the ideas imbedded in the constitution does not pass down to generations through genes. It must by learnt anew by each generation not simply by memorizing its provisions rather ideas giving life to it. The concept of “judicial review” is cornerstone of our judicial system but as it is usually considered that the courts are the first and the last interpreter of the constitution. The judicial branch of the trichotomy, is only intermediate of continuity of our constitution work. It is the legislature and the executive to decide first, what laws they made and action take are constitutional or otherwise. This responsibility does not fall only on the judiciary but upon trichotomy of the power. More provisions of the constitution have been addressed to the legislature and the executive than to judiciary.

Let me make it reaffirm and recall that the courts have always been supportive to the democratic institutions, elected representatives and public functionaries in performance of their respective legal and constitutional functions. The courts firmly believe that the concept of rule of law rests upon trichotomy of the powers: the role of the legislature is to promulgate the laws; the role of the executive is to implement the laws; and the sovereignty of the courts is interpreting and applying the laws. The courts have never wished or transgressed in the domains of the other organs of the state. The responsibilities of the trichotomy have been determined in the constitution. It is the responsibility of the apex judiciary to reaffirm the principle that no organ of the state has unbridled powers. This is fundamental to achieve the rule of law, the supremacy of the constitution, prosperity and peace. The rule of law is not a concept conceived and owned by the judiciary and the legal fraternity or the legal or social scientists rather it is essential part of our social infrastructure in essence. It is essential for good governance and in interest of all the members of our society and collective good lies therein.

To meet the future needs and challenges and to get familiarize with modern legal skills and knowledge we need to upgrade our existing and establish new institutions. There is dire need of establishment of Judicial Academy in AJK so that the judges of the lower courts, the supporting staff and

the lawyers may be trained at local levels. But there is gloomy situation in provision of finance to the judicial bodies. Hindrance in provision of finance by the Government to the judicial bodies may be regarded as to undermine the independence of the judiciary.

I hope that the lawyers will do their level best in furtherance of the true demands of the society such as expeditious disposal of the case, dispensation of justice, good governance and rule of law. All of these, requisite mutual cooperation between the bench and the bar. Hard labour and the self-regulation at individual level and organizational level result into enhanced esteem of the inseparable parts of the judicial system. The esteemed profession of lawyers requires its practitioners to hold its dignity at all times whether in court or while moving around the society. The lawyers are expected to fulfill diverse responsibilities. The desires of the society are conveyed by the lawyers through lis, formally and through spoken words , informally, such as like this. As I have mentioned earlier in one of such event that the judges only speak through their judgments, the lawyers are the ears and the mouth of the judiciary. The events like this provide opportunities for all of us to share mutual considerations good for whole judicial system and also remind us all our responsibilities.

Before parting with, I once again thank the president, other officer bearers and the members of the AJK High Court Bar

Association, for providing me an opportunity to attend this event and address the legal fraternity of AJK and Pakistan.

Thanks all of you.

Allah Hafiz.