



# Khyber Pakhtunkhwa Judicial Academy

## REPORT

### 02-Day Workshop on Working of NMDs' Courts: Challenges & Solutions

July 2nd-3rd, 2019



#### KHYBER PAKHTUNKHWA JUDICIAL ACADEMY

*02-Day Workshop on Working of Newly Merged District Courts:  
Challenges and Solutions Dated: 2nd & 3rd July, 2019.*



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## 1.0 Introduction

1.1 KPJA is statutorily mandated to provide training to all justice sector stakeholders, to hold conferences, seminars, lectures, workshops and symposia in matters relating to court management, administration of justice, law and development of skills in legislative drafting and to establish liaison with research institutions, universities and other bodies including the Federal Judicial Academy, towards the cause of administration of justice. (Section 4 of the Academy Act).

1.2 Peshawar High Court desired that the Academy should conduct 02-Day Workshop on working of Courts established in Newly Merged Districts of Khyber Pakhtunkhwa for ascertaining the challenges being faced by them with a view to finding out practicable solutions. In a bid to comply with direction of the Hon'ble Peshawar High Court, the Academy accordingly held the workshop on the aforementioned dates.

1.3 Before undertaking the activity, Dean Faculty and Director Instruction-II held meeting with worthy Member Inspection Team, Peshawar High Court, and Peshawar to discuss ways and means to do the needful. It was agreed that relevant data should be obtained from Judicial Officers performing duties in connection with NMDs. MIT had had feedback from Judges of NMDs and those of Anti-Terrorism Courts. The Academy, in collaboration with MIT, chalked out schedule of activities on the basis of feedback thus collected. It was 2-Day Workshop. The first day focused on interaction with Judges to diagnose and specifically identify the problems being faced by them on legal, legal-cum-administrative and purely administrative matters. The workshop, after formulating legal issues, proceeded to resolve the same on the first day. The legal-cum-administrative and purely administrative issues identified and formulated on the first day were placed before the Officers of Government and Officers of JAG Branch during the second day activity for the purpose of resolving them. Schedule of activities may be seen at the end of report.

## 2.0 Purpose of the report

2.1 This report aims at ascertaining the impact of the workshop held on 2nd & 3rd July, 2019.

2.2 The report begins with information about the participant Judges, Officers of Government of Khyber Pakhtunkhwa, Officers of JAG branch of Pakistan Army, followed by summary of the sessions and views of the participants & Officers noted above. It records the recommendations made on legal matters on the first day and those made on legal-cum-administrative issues and purely administrative problems in the concluding session on the second day.

## 3.0 Participants

3.1 Participants of the first day activity were: 7 District & Sessions Judges, 2 Additional District & Sessions Judges, 2 Senior Civil Judges of NMDs and 7 Judges of Anti-Terrorism Courts. Officers of Government of Khyber Pakhtunkhwa and JAG Branch, Pakistan Army took part in the second day activity. The Judicial Officers taking part in the first day activity were also part of second day event. The media men also attended the activity. The worthy MIT presided over the workshop. Dean Faculty with able assistance of Director Instruction-II moderated the whole workshop.

Table below, describes in detail, the names of participants.

S. No	Name	Designation
1	Mr. Tariq Yousafzai	Judge, Anti-Terrorism Court
2	Mr. Baber Ali Khan	Judge, Anti-Terrorism Court
3	Mr. Inamullah Khan	Judge, Anti-Terrorism Court
4	Mr. Khalid Khan	Judge, Anti-Terrorism Court
5	Mr. Abdul Baseer	Judge, Anti-Terrorism Court
6	Mr. Mehmood-ul-Hassan	Judge, Anti-Terrorism Court
7	Mr. Fazal Sattar	Judge, Anti-Terrorism Court

8	Mr. Salahuddin	District & Sessions Judge
9	Mr. Kalim Arshad Khan	District & Sessions Judge
10	Mr. Asghar Shah	District & Sessions Judge
11	Mr. Shahid Khan	District & Sessions Judge
12	Mr. Asad Hameed Khan	District & Sessions Judge
13	Mr. Mamrez Khan Khalil	District & Sessions Judge
14	Mr. Nasullah Khan Gandapur	District & Sessions Judge
15	Mr. Muhammad Shaukat Ahmad Khan	Additional District & Sessions Judge
16	Mr. Wali Muhammad Khan	Additional District & Sessions Judge
17	Mr. Zafarullah	Senior Civil Judge
18	Mr. Issa Khan Afridi	Senior Civil Judge
19	Major Dillawar	Grad-II Operations, 11 Corps
20	Mr. Muhammad Arif	Dy. Director Prisons
21	Mr. Bilal Mohiuddin	Director Admin Prosecution
22	Mr. Irshadullah	Director Legal, Prisons
23	Mr. Qasim Ali	SSP, Special Branch, Police
24	Mr. Muhammad Ayaz	Senior Civil Judge, Orakzai
25	Mr. Muhammad Zubair Khan	MIT, PHC
26	Qazi Jamil-ur-Rehman	DIG, Special Branch, Police
27	Col. Taj Sultan	Additional IG, Prison
28	Lt. Col. Rizwan Akram	AJAG, HQ, 11 Corps
29	Mr. Kamranullah	SO (Judicial), Home Department, KP

#### 4.0 Summary of First Day Activity

4.1 The workshop began with the recitation of Holy Quran. DG KPJA welcomed the participants. The worthy MIT, in his address, gave opening remarks on the workshop. Dean Faculty spoke on objectives of the workshop. He apprised the house that the session would comprise 3 activities, viz, analysis and resolution of legal issues; analysis of legal-cum-

administrative issues; and analysis of purely administrative issues. He said that legal-cum-administrative and purely administrative issues identified would be placed before the house on second day for finding solution thereof. Detail of all 3 activities are as under:

#### 4.1.1 (Analysis & Resolution of Legal Issues)

##### A. jurisdictional aspects

- The feedback obtained from Judges of ATCs and those of NMDs before the workshop indicated the following two divergent views:
  - **View No.1:** The ATCs had no jurisdiction to try cases covered by Chapter VI and IX-A (except s.127), sections 108-A, 153-A, 294-A, 295-A, and 505 of PPC in the absence of complaint made either by order of or under authority from Federal Government or Provincial Government as required by S.196 of the Code of Criminal Procedure, 1898 (V of 1898).
  - **View No.2:** The ATCs had jurisdiction to try cases covered by sections 121 and 121-A of Pakistan Penal Code, 1860 under the provisions of Action (in Aid of Civil Power) Regulation, 2011 as it enjoys statutory protection under Khyber Pakhtunkhwa Continuation of Laws in Erstwhile Federally Administrated Tribal Areas Act, 2019 and the Regulation 2011 would govern all the pending cases in view of principles set out in s.4 of the General Clauses Act, 1956.

Discussion	Recommendations
<ul style="list-style-type: none"> <li>• <b>S.196 Cr.P.C is not applicable to the cases covered by or registered under the special statute (Anti-Terrorism Act, 1997). This view point obtains support of dicta laid down in 3 judgments of the superior courts. (One of which is</b></li> </ul>	<ul style="list-style-type: none"> <li>• S.196 Cr.P.C does not apply to the cases covered by or registered under the special statute (Anti-Terrorism Act, 1997).</li> <li>• All cases covered by or registered under Chapter VI and IX-A (except s.127),</li> </ul>

reported as "Nawaz Sharif vs. State" in 2000 MLD 946). Reliance was specifically placed upon ratio of "Mehram Ali case" for adjudging applicability or otherwise of s.6 of ATA, 1997 to the facts and in the circumstances of a given case. (Mr. Tariq Yusufzai).

- Most of the cases covered under Chapter VI and IX-A (except s.127), sections 108-A, 120, 121-A, 153-A, 294-A, 295-A, and 505 of PPC, pending before the Courts in the NMDs attract the provisions of ATA, 1997, hence triable by ATCs. (Mr. Kalim Arshad).
- The ATC has no jurisdiction to take cognizance of a case covered by S.121 of PPC in the absence of a complaint as required by S.196 Cr.P.C. (Mr. Inam Khan).
- There is difference between taking cognizance and assuming jurisdiction in reference to S. 23 ATA (DG KPJA).
- In the Suo Moto Reference, the Hon'ble High Court used the words "stand transferred", and would it not amount to violation of Order of High Court if the ATC sends the case/s back to the Sessions Court (Mr. Salahudin Khan).
- ATC is, after receipt of case, competent to determine its own jurisdiction in the

sections 108-A, 121, 121-A, 153-A, 294-A, 295A, and 505 of PPC pending before Courts in NMDs would not invariably attract s.6 of ATA, 1997. The Courts in NMDs would deal therewith on case-to-case basis. However the question of jurisdiction of ATCs would depend upon allegations levelled in the /complaint/report of each case.

- ATCs will, with regard to exercise or otherwise of jurisdiction under ATA, 1997, record proper judicial order as required by s.23 of the Act (*ibid*) and no administrative order in this regard shall be made.

matter u/s 23 ATA (Mr. Tariq Yusufzai).

- The Preamble of the Regulation 2011 employs the word "miscreants". Even after the committee constituted by Sessions Judge of NMD sends a case to ATC, it is still within the power of ATC to pass proper order regarding jurisdiction (Mr. Nasrullah).
- If ATC records its order on matter of jurisdiction and sends a matter back to the Sessions Judge, it is quite legal. (Mr. Shahid Khan)
- The ATC, while determining its jurisdiction, must pass judicial order. (Mr. Arshad Kalim).
- S. 196 Cr.P.C does not apply to cases covered by Action (in Aid of Civil Power) Regulation 2011 as it is a special law such as ATA 1997. (Dr. Shakeel Azam Awan).
- The decision of the Committees constituted by the Sessions Judges in their respective jurisdictions as to which of the cases are to be sent to ATCs, per se does not denude the ATCs of power to determine their jurisdiction. However, while doing so, ATCs need to pass judicial orders. (Mr. Muhammad Zubair, MIT).
- Learned judges of NMDs and those of ATCs must adhere to the soul and spirit

of ratio of judgment dated 20-03-2019 of Peshawar High Court, Peshawar in Reference/ Suo Moto No. 1-P of 2019 and connected CM No. 142-P/2019 in cited Reference as decided vide subsequent judgment dated 09-05-2019 of Peshawar High Court, Peshawar because both these judgments quite comprehensively deal with the material question of law on the subject. (Dr. Shakeel Azam Awan).

- Question as to jurisdiction of ATCs will completely hinge upon allegations levelled in the complaint/report of each case (Dr. Shakeel Azam Awan).

**B. Incomplete Records: Implications on pending cases covered by Action (in Aid of Civil Power) Regulation, 2011**

- Whether the source report is sufficient for the purpose of proof?

Views	Recommendations of the house
<ul style="list-style-type: none"> <li>• The question is raised regarding evidentiary value of source report, without cross-examination on its author as the QSO 1984 being Federal Law will prevail as against Action (in Aid of Civil Power) Regulation, 2011 which is a provincial statute. (Mr. Inamullah Khan).</li> </ul>	<p>The house has resolved that Courts (Judges in NMDs and Judges of ATCs) will apply independent mind in relation to cases while commenting upon this legal issue of far-reaching legal implications of allowing or disallowing cross-examination.</p>

- (a) In the absence of cross-examination on author of source report, will it be a fair trial?  
(b) What will be the effect of s.19 of the Action (in Aid of Civil Power) Regulation, 2011 whereunder the law has overriding effect.  
(c) How can a witness of record be cross-examined when Article 134 of QSO prohibits it. (Mr. Tariq Yusufzai).
  
- There are two statutes on the subject: i) Action (in Aid of Civil Power) Regulation, 2011 (PATA)/provincial law; and ii) Action (in Aid of Civil Power) Regulation, 2011 (FATA) as notified in Gazette of Pakistan, Extraordinary, Part-II, page 259-275, dated 27 June, 2011. And the later has been given retrospective effect from 1st February, 2008. Both these laws still hold the field. The principles of natural justice are integral part of legal system as enunciated by august Supreme Court of Pakistan in *Anisa Rehman case* (1994 SCMR 2232), hence if Courts in NMDs allow opportunity of cross-examination on PWs, such view of trial courts is not likely to be upset at the level of Higher Fora. (Dr. Shakeel Azam Awan).

- **The courts can exercise independent opinion on question of cross-examination of PWs. The same may subsequently be subject-matter of appeals/revisions before higher courts. (Mr. Shahid Khan).**
- **Trial Courts are independent to pass apt orders regarding cross-examination on witnesses as the law will have its own course in the long run. (Mr. Muhammad Zubair, MIT)**

**C. Procurement of witnesses**

Views	Recommendations of the house
<ul style="list-style-type: none"> <li>• <b>Courts are facing difficulty in procuring attendance of witnesses of source reports. (General opinion of the house).</b></li> <li>• <b>To procure attendance of witnesses of source report, it is better to have liaison with Officers of JAG branch and JAG branch may be asked for appointment of liaison officers. (Mr. Tariq Yusufzai)</b></li> </ul>	<p>Let this matter be taken up with Officers of JAG branch on the second day of workshop.</p>

**D. Production of under-trial prisoners**

Views	Recommendations of the house
<ul style="list-style-type: none"> <li>• <b>Under-trial prisoners in some cases are untraceable. What would be mode of trial in such cases? (Mr. Inam Khan).</b></li> </ul>	<p>All the modes prescribed by law for procuring attendance of accused shall be exhausted.</p>
<ul style="list-style-type: none"> <li>• <b>Under-trial prisoners in some cases have been taken back to Internment Centres. What would be the mode of trial in such cases? (Mr. Muhammad Baseer)</b></li> </ul>	<p>The trial may be postponed if it is reported that accused is in Internment Centre. The matter regarding legality of a person's detention in Internment Centres falls within the jurisdiction of competent forum.</p>
<ul style="list-style-type: none"> <li>• <b>Until legality or otherwise of custody of prisoners in Internment Centres is adjudged by competent fora, the trials of such accused may be postponed. (Mr. Tariq Yusufzai)</b></li> </ul>	<p>The matter is to be taken up with Officers of JAG branch, Home Department, Police Officer, and Prison Officer on second day of workshop.</p>

**E. Incomplete record: Implications on cases other than those covered by Action (in Aid of Civil Power) Regulation, 2011, pending before courts in NMDs.**

Views	Recommendations of the house
<ul style="list-style-type: none"> <li>• <b>In huge number of pending cases (transferred from defunct FCR Regime of erstwhile FATA to the Courts established in NMDs), the records are incomplete for want of FSL reports, Medico-legal reports, challans, statements of PWs etc. (Judges of NMDs and ATCs).</b></li> </ul>	<p>The Courts may ascertain from the Prosecutor or as the case may be, from the complainant, the names of any persons likely to be acquainted with the facts of the case and to be able to give evidence for the prosecution. The Courts may do so by invoking powers u/s 265-F (2) of Cr.P.C at initial stage.</p>

- **The Courts may return such cases to the prosecution to complete the record as per law laid down in 2014 P.Cr.L.J 1071 but Courts cannot give any direction whatever regarding investigation, nor can they interfere with investigative process in any manner as laid down in *Shehnaz Begum* case (PLD 1971 SC 677). (Dr. Shakeel Azam Awan).**

Let it be brought into the notice of the Prosecution Department on the second day of this workshop.
- **The cases sent to prosecution for completing the records have come back to the Courts in the same condition. (Mr. Inam Khan).**
- **These cases are treated as complaint cases as there was no FIR system in erstwhile FATA. (Mr. Salahudin Khan).**
- **In erstwhile FATA, when a citizen made a report, it was treated as complaint case while a crime reported by personnel of Levie (Khasadar) was treated as FIR case. This was practice prevalent in NMDs (erstwhile FATA) before establishment of Courts in NMDs as result of 25th Constitutional Amendment. (Dr. Shakeel Azam Awan).**
- **Section 265-F (2) Cr.P.C may be**

invoked. (Mr. Muhammad Zubair Khan).

- Section 265-F(2) Cr.P.C is invoke able as it is result of Law Reforms 1972 and as such is more exhaustive than section 540 Cr.P.C. (Mr. Tariq Yusufzai).
- The question of invoking the provisions of Section 265-F (2) Cr.P.C arises only after the charge has been framed. (Mr. Muhammad Bashir Khan/DG).
- Section 265-F (2) Cr.P.C is self-contained, hence may be invoked before framing of charge. Its invocation at initial stage will not vitiate a trial as it will not amount to irregularity occasioning miscarriage of justice. (Dr. Shakeel Azam Awan).
- If section 265-F (2) Cr.P.C is invoked, it will not be an irregularity vitiating the proceedings. Exceptional circumstances justify invocation of this provision. (Mr. Tariq Yusufzai).

**F. Consideration of customary practices:**

Views	Recommendations of the house
<ul style="list-style-type: none"><li>• <b>Keeping in view the norms of the society, amicable dispute resolution is being encouraged by the courts in</b></li></ul>	The Courts, while dealing with cases, have to follow the <i>dicta</i> laid down by august Supreme Court of Pakistan in judgment

NMDs. (Mr. Issa Khan and Mr. Zafar/SCJs). dated 16.01.2019 in C.P No. 24/2012 and C.P No.737-P of 2018.

- The concept of Jirga as adjectory body has been done away with in the light of judgement dated 16.01.2019 of august Supreme Court of Pakistan in C.P No. 24/2012 and C.P No.737-P of 2018.

The Courts in NMDs need to focus on Order IX-A, XV, XV-A, and XXIII of CPC to administer justice. The Arbitration Act, 1940 and s. 89-A of CPC provide adequate mechanism to resolve civil disputes. There is no restraint on parties to make use of these two laws (Arbitration Act & s. 89-A of CPC) for resolving their civil disputes. It will help Courts consider the local norms for safe and sound administration of justice in NMDs keeping in view the existing legal framework and case law noted above. (Dr. Shakeel Azam Awan).

**G. Absence of papers regarding proceedings of absconding accused:**

Views	Recommendations of the house
<ul style="list-style-type: none"> <li>• What should the Court do in cases in which papers regarding proceedings against absconding accused are not available on record? (Mr. Nasrullah</li> </ul>	<p>The trial Court has to initiate fresh proceedings under sections 204/87 and 88 Cr.P.C for preserving evidence of prosecution in absence of accused</p>

**Gandapur)**

(absconder) as required by section 512 of the Code.

- **The trial Court may initiate fresh proceedings under sections 204/87 and 88 Cr.P.C for preserving evidence in absentia of accused as required by section 512 of the Code. The prosecution has right to produce its evidence in absence of accused if he is shown to be a fugitive from law as the evidence is to be preserved. If accused is late on arrested, prosecution has to produce evidence except those PWs who are dead as their deposition are transposed to the case under Art. 47 of QSO. (Dr. Shakeel Azam Awan, Mr. Muhammad Zubair & Mr. Tariq Yusufzai).**
- **Mr. Tariq Yusufzai added that *Muhammad Ramzan* case PLD 2010 SC 585 is distinguishable in the current situation.**
- **Spirit of section 512 Cr.P.C is to allow prosecution to produce evidence in absence of accused. (Mr. Muhammad Bashir/DG)**

## H. Civil & Criminal cases clubbed: Remedy

Views	Recommendations of the house
<ul style="list-style-type: none"> <li>• There are cases in which previous regime (FCR Regime) consolidated civil &amp; criminal proceedings. What should the courts do? (Mr. Salahudin)</li> <li>• The courts should segregate the civil proceedings from the criminal ones. (Mr. Muhammad Zubair).</li> <li>• The courts should, after separating the civil proceedings from the criminal ones, send the civil matters to the civil courts for trial/appropriate proceedings. And proceedings in criminal case shall go ahead according to law. (Dr. Shakeel Azam Awan)</li> </ul>	<p>The Courts should segregate the civil proceedings from the criminal one's and deal with them separately according to law.</p>

### 4.1.2 Legal-cum-Administrative Issues

#### A. Problem relating to JAG Branch:

Views	Recommendations of the house
<p><b>The house, during discussion, noted the following problems:</b></p> <ol style="list-style-type: none"> <li>a. Non-production and non-appearance of witnesses including non-mentioning the names of witnesses in records.</li> <li>b. <u>Anti-smuggling drive and involvement of Army therein.</u></li> <li>c. <b>Absence of mechanism for coordination with Internment</b></li> </ol>	<p>The house proposed to take up these issues with JAG Branch on 2nd day of workshop.</p>

Officers, as the accused are not traceable in certain cases.

- d. Question regarding trial of accused where Army personnel is killed or injured.

**B. Problem relating to Police:**

Views	Recommendations of the house
<p>The house also discussed a number of other problems. Following amongst them were found to be the major ones by the Judges of NMDs.</p> <ul style="list-style-type: none"><li>a. Non-availability of trained officials for execution of process (summons/warrants).</li><li>b. Vast areas vis-a-vis small number of DFCs causing delay in service of process.</li><li>c. Non-existence of Investigation Wings in NMDs.</li><li>d. Inadequate number of Police Stations vis-a-vis population of area.</li><li>e. Non-production of accused in pending cases.</li><li>f. Defective investigation.</li><li>g. Non-production of witnesses.</li><li>h. Supervision of Prisons by police department- an issue entailing serious legal implications.</li></ul>	<p>House resolved to take up these serious matters with police department on 2nd day of workshop.</p>

- i. Appointment/sending of DFCs vis-a-vis sectarian issues (Mr. Asghar Shah).
- j. Loyalties of Levies to previous regime (Mr. Asghar Shah).
- k. DPO is complainant in number of cases. Thus the same person is dealing with operations as well as investigation (Mr. Mamraiz Khan).
- l. DFCs are illiterate, hence unable to write reports. (Mr. Nasrullah).
- m. Mr. Asad Hameed Bangash said that he had given training to the DFCs.
- n. Mr. Kaleem Arshad said that he had prepared forms of summons/warrants in Urdu which he could share with other districts as the same provide for how to write reports (all modes of service) on the back of summons/warrants.

### C. Issues relating to Prisons

Views	Recommendations of the house
<p>After discussion, the house agreed that following are the major issues which would require solution:-</p> <ul style="list-style-type: none"> <li>a. Some Jails in NMDs are being managed by Police Officer (confessions, if recorded, of accused in</li> </ul>	<p>The issues diagnosed shall be taken up with IG Prisons on 2nd day of workshop.</p>

- custody in such Jails will be adversely affected in terms of evidential value).
- b. Non-maintenance of Jail records.
- c. Staff appointed by government in such jails is not available for duty, hence such jails are not operational.
- d. Want of logistics for taking prisoners from Prisons to Courts and back to Prisons from Courts

**D. Home Department**

Views	Recommendations of the house
<p>The Judges of NMDs and those of ATCs had already given details of problems in writing. The feedback so given by them again came under discussion. Ultimately, the house agreed on the following as the major issues:-</p> <ul style="list-style-type: none"> <li>a. Certain cases are still being retained by former regime of repealed FCR.</li> <li>b. Deputy Commissioners/Assistant Commissioners (formerly PAs/APAs) may be asked to give certificates to the effect that no civil/criminal cases are lying with them and all cases have been sent to Judiciary.</li> <li>c. Previous regime (now DCs/ACs) are taking up civil and criminal cases under garb of Revenue and Miscellaneous matters to assume jurisdiction of Courts without lawful</li> </ul>	<p>The issues noted shall be taken up with Home Department on 2nd day of workshop.</p>

authority in NMDs.

- d. The retention of already pending cases and entertainment of newly-instituted cases by old regime (now DCs/ACs) are clear cut violation of Judgment dated 16.01.2019 of august Supreme Court of Pakistan in C.P No. 24/2012 and C.P No.737-P of 2018.
- e. Levies are still siding with previous regime.

#### E. Prosecution

Views	Recommendations of the house
<p>The Judges of NMDs have reported that Officers of Prosecution remain absent in most of cases. And stop-gap arrangements made by Prosecution Department in NMDs for criminal cases and that made by Government in NMDs for civil matters on ad-hoc basis are adversely affecting the disposal of cases.</p>	<p>The issues raised shall be taken up with DG (Prosecution) on 2nd day of workshop.</p>
<p>The judges of NMDs and those of ATCs are facing a common problem of non-scrutiny of criminal cases by Prosecution because records of cases sent to Courts from previous regime (FCR Regime) are incomplete in many respects.</p>	
<p>DPP has been trying to get in touch with higher ups for resolution of problems but</p>	

he is unheard (Mr Asad Hamed Bangash).

What has been the response given to DPP Kurram on his query?(Mr Salahudin)

Team of prosecution officers should at least visit the tribal areas for looking into infrastructure and other related issues (Mr. Zubair MIT).

#### F. Parallel System of Courts in NMD

Views	Recommendations of the house
Mr. Asghar Shah has pointed out that Assistant Commissioner and Revenue officer in Orakzai have assumed jurisdiction of Courts, as evident from News Paper clippings (provided with written feedback) showing that said Officers would welcome the decision of Jirga for resolution of disputes.	The matter is to be seriously taken up with Government of Khyber Pakhtunkhwa on 2nd day of workshop.

#### 4.1.3 Administrative Issues

##### A. Residential Accommodation.

Views	Recommendations of the house
In-house discussion has unveiled that almost on all stations, residential accommodation happens to be the biggest administrative problem. There is one exception as Mr. Asad Hameed Bangash has informed the house that	These issues, it has been resolved, shall be brought into notice of high-ups of Government of Khyber Pakhtunkhwa on second day of workshop for being sorted out and resolved at the earliest.

**there is no such problem on station of his posting.**

**It has also been pointed out that Civil Judges and three Senior Civil Judges posted in NMDs have no official vehicles.**

**Mr. Shahid Khan has stated that Government may be asked to provide residential accommodation for Judges of District Khyber in Phase-V, Hayatabad. He has further stated that in-charge of Federal Complex intimated him that the Judges of NMDs will have to vacate Courts in Federal Complex because Federal Courts will be functioning there very shortly. He has stated that this matter may be taken up with the government.**

**Mr. Kaleem Arshad has stated that in view of no accommodation being available in Tank for Judges of South Waziristan, the Commissioner D.I.Khan Division may be asked to provide residential accommodation to the Judicial Officers of South Waziristan at DI Khan.**

**The house has suggested that government may be asked to place some houses in each NMD at the disposal of concerned Sessions Judge for being**

The house has suggested that government may be asked to place some houses in each NMD at the disposal of concerned Sessions Judge for their allotment to Judges in NMDs, it would resolve lot of residential problems.

allotted to Judges in NMD, it would resolve the issue of residential accommodation to a considerable extent.

## B. Court Rooms & others

Views	Recommendations of the house
<p><b>Non-availability of proper court rooms and offices is yet another problem. Connected therewith is problem of inadequate court rooms. (General view of NMDs Judges)</b></p> <p><b>It is pointed out that district courts have been given Government Girls Degree College North Waziristan for its use as courts' premises but this specific matter is being exploited by District Administration. (Mr. Mamraiz Khan).</b></p>	<p>These issues, resolves the house, shall be brought into notice of high-ups of Government of Khyber Pakhtunkhwa on second day of workshop for being sorted out and resolved at the earliest.</p>

## 5.0 Summary of Second Day Activity

### 5.1 Participants

5.1.1 Participants of the first day activity included: 7 District & Sessions Judges, 2 Additional District & Sessions Judges, 2 Senior Civil Judges of NMDs and 7 Judges of Anti-Terrorism Courts. The second day activity was graced by officers of Government of Khyber Pakhtunkhwa including Officers of JAG Brach, Pakistan Army. The Judicial Officers taking part in the first day activity were also part of second day activity. The media men too attended the activity. The worthy MIT presided over the workshop.

5.1.2 The Secretary to Government of Khyber Pakhtunkhwa, Home Department and Director General (Prosecution) did not attend the workshop despite invitation being sent to them and their telephonic commitment with Dean Faculty. The former deputed a junior

officer (a Section Officer) while the latter deputed Director (Administration) and Director (Legal) to represent them respectively. The house felt the absence of Secretary Home and Director General Prosecution with great concern.

## **5.2 Opening Ceremony**

5.2.1 The session began with recitation from the Holy Quran. National Anthem was played to mark the commencements of other activities. Director General gave welcome address, and worthy MIT as Chief Guest made opening remarks. The Dean Faculty highlighted objectives of workshop. He stated that second day activity would comprise three events, viz firstly, the distinguished guests would give their views, input and insight on the development made by their respective departments in NMDs after 25th Constitutional Amendment; secondly the participant Judges would place the legal-cum-administrative and purely administrative problems being faced by them in the NMDs before the house so that the distinguished guests could be made aware of such challenges for being resolved; and thirdly, with the able guidance and co-operation of distinguished guests, the house would endeavour to find out practicable solutions to such problems and a roadmap for future planning.

## **5.3 Feedback by Guest Speakers**

Additional Inspector General (Prisons) spoke about the steps taken so far by Inspectorate of Prison in NMDs. He informed that stop-gap arrangements had been made to establish Prisons in all NMDs and staff had been sent to man such prisons. He further informed that the Inspectorate had sent SNEs along with PC-1s to Government for construction of district prisons in NMDs. He disclosed that efforts were underway to maintain records in such prisons.

DIG Special Branch highlighted efforts of police department in NMDs which included: establishment of police stations, posting of SHOs, police personnel and DFCs, posting of DPOs, training of police staff, and efforts of police department for absorption of Levies force and the training of Levies' men as Police officials for NMDs.

Special Secretary to Government of Khyber Pakhtunkhwa Finance Department shared the efforts made by FD for NMDs. He stated that there had been allocated funds allocated for

NMDs. He stated that the SNEs and PC-1s sent by Judiciary to government for the requirements in NMDs, would be taken up on priority basis subject to availability of funds as the burden of NMDs, which was previously on Federal Government being part of FATA, had henceforth fallen on Provincial Government. He explained that the government of Khyber Pakhtunkhwa had, from its available resources, though earmarked funds for development of NMDs, yet matching contribution from the federal government was still awaited. He, however, remarked that the government was serious in development of NMDs in all respects.

Director Prosecution (Legal) spoke about position of PPs in NMDs and stated that public prosecutors had been posted and Directorate had asked the government for creation of posts and recruitment of PPs for NMDs but response thereto was still awaited.

Officer of JAG branch stated that Pakistan Army was extending all out help for protection of Judicial Officers and complexes in NMDs. He further stated that JAG branch had already liaison with district administration for facilitating the activity of governance and would extend the same facility to Judiciary.

#### **5.4 Legal-cum-Administrative Problems**

Dean Faculty took up problems faced by stakeholders of justice in NMDs as highlighted in written feedback of Judges of NMDs and those of ATCs before holding workshop, as also the problems diagnosed and indentified during extensive discussion in the first day of workshop. He placed such problems, one by one, before Special Secretary Finance Department, DIG Police, AIG Prisons, Officers of Prosecution, Junior Officer of Home Department and Officers of JAG branch respectively. The Judges of NMDs and ATCs also highlighted such problems in detail before the house. Officers of Departments mentioned above, on their respective turns, responded to such problems.

## 5.5 Legal-cum-Administrative Issues

### A. Problems relating to JAG Branch:

Views	Response of the Department
<p><b>The following problems were brought to surface:</b></p> <p><b>a. Non-production and non-appearance of witnesses including non-mentioning of names of witnesses in records.</b></p> <p><b>b. Anti-smuggling drive and involvement of Army therein.</b></p> <p><b>c. Absence of mechanism for coordination with Internment Officers, as the accused are not traceable in certain cases.</b></p> <p><b>a. Question regarding trial of accused where Army personnel is/are killed or injured.</b></p>	<p>The Courts, while analysing evidence, must take note of peculiar circumstances under which cases were registered and military operations had to be carried out. It was in the backdrop of such circumstances that Action (in Aid of Civil Power) Regulation was promulgated.</p> <p>For production of witnesses, let letters be addressed and sent to the concerned Unit/s, Station Headquarter/s and JAG Branch GHQ.</p> <p>Hindrances being encountered by process-servers or DFCs should be taken up at local level. Pakistan Army would be ready to extend full cooperation to the Courts.</p> <p>JAG branch would appoint Liaison Officer/s for Judges of NMDs and ATCs to sort out issues regarding tracing out witnesses.</p>

### B. Problem relating to Police:

Views	Response of the Department
<p><b>The problems highlighted during discussion which require resolution at the end of police department are as under:</b></p> <p><b>a. Non-availability of trained officials for execution of process (summons/warrants).</b></p> <p><b>b. Vast areas vis-a-vis small number of</b></p>	<p>DIG Special branch stated as under:</p> <ul style="list-style-type: none"> <li>• There was resistance to new system in NMDs, hence the police had decided to go slow in the area thus the issues would be resolved gradually and slowly.</li> <li>• The matters highlighted as issues would immediately be discussed in Central</li> </ul>

**DFCs causing delay.**

**c. Non-existence of Investigation Wings in NMDs.**

**d. Inadequate number of Police Stations vis-a-vis population of each area.**

**e. Non-production of accused in pending cases.**

**e. Defective investigation.**

**g. Non-production of witnesses.**

**h. Supervision of Prisons by police department was a grave issue.**

**i. Appointment/sending of DFCs vis-a-vis sectarian issues (Mr. Asghar Shah).**

**j. Loyalties of Levies to previous regime (Mr. Asghar Shah).**

**k. DPO was complainant in number of cases. Thus the same person being complainant cannot act as Investigating Officer. (Mr. Mamraiz Khan).**

**l. DFCs being illiterate were unable to write reports. (Mr. Nasrullah).**

**m. Mr. Asad Hameed Bangash said that he had given training to the DFCs.**

**n. Mr. Kaleem Arshad said that he had prepared forms of summons/warrants in Urdu which he could share with other districts as the same provide for how to write reports (all modes of service) on the back of summons/warrants.**

Police Office to find out appropriate solutions thereof.

- As the funds were in the hands of political administration, therefore, Levies, being subservient to them, were reluctant to observe the duties under new system. As soon as the funds were placed at the disposal of DPOs in NMDs, the things would set right.
- Courts had since been set up, therefore, police would establish and strengthen the investigation wings in NMDs. The police would also strengthen summons/warrants cells.
- Number of police stations would be increased as per population.
- The DPO's action in Northern Waziristan was though unwarrantable but he had no other option but to register and investigate the cases himself.
- Police would hold meeting with Inspectorate of Prisons with regard to production of accused before Courts.
- The police would provide complete security to all Judicial Officers in NMDs.
- The Courts of North Waziristan would get back *Naib Courts* within a day or two.
- The police would take up the issue regarding incomplete records in

criminal cases in NMDs with the Investigation Wing and Prosecution Wings. And I.Os would cooperate with prosecution.

**C. Issues relating to Prisons**

Views	Response of the Department
<p><b>The major issues requiring immediate solution on the part of Inspectorate of Prisons are as follows: -</b></p> <ul style="list-style-type: none"> <li><b>a. Some Jails in NMDs were being managed by Police Officer (confessions, if recorded, of accused in custody in such Jails would be adversely affected in terms of evidential value).</b></li> <li><b>b. Non-maintenance of Jail records.</b></li> <li><b>c. Staff appointed by government in such Jails was not available for duty, hence such Jails were not operational.</b></li> <li><b>d. Want of logistics for taking prisoners from Prisons to Courts and back to Prisons from Courts.</b></li> </ul>	<p>AIG Prisons stated as under:</p> <ul style="list-style-type: none"> <li>• He would immediately take up the matter regarding powers of Superintendent Jail in respect of Prison for North Waziristan so that such powers could be delegated to Officer of the nearest district, i.e., Superintendent Jail, Bannu.</li> <li>• There was resistance to the new system in the area but Prisons Department had sufficiently overcome the problem. It had declared 15 Prisons as Sub-Jails. 8 Sub-Jails were in control of Prison Department while 4 Sub-Jails were about to be taken by Prison Department in the NMDs. 3 Jails were in control of <i>Khasadars</i> as yet who were reluctant to deliver the same to the Prison Department. Efforts were under way in this regard. This would be possible only with support of DPOs and concerned police including</li> </ul>

Home Department. In most of the cases, record of prisoners was not available in the prisons but was lying with *Khasadars* and Levies.

- The taking of prisoners from Jail to the Courts and back to the prisons was a responsibility that squarely rested with the police.
- Prison Department would cooperate with other departments to sort out all the issues.
- Till the jails in South Waziristan were not functional, the Jail at Tank would work for it.
- The Prison Department would shortly resolve issue regarding non-availability of conviction warrants.

#### D. Home Department

Views	Response of the Department
<p><b>The house invited the attention of Home Department to the following issues for taking immediate steps to resolve the same:-</b></p> <p><b>a. Certain cases were still being retained by former regime of repealed FCR.</b></p> <p><b>b. Deputy Commissioners/Assistant Commissioners (formerly PAs/APAs) be asked to give certificates to the effect</b></p>	<p>The representative of Home Department (SO) responded that he was focal person and Secretary Home had gone to Northern Areas on official tour whereas Special Secretary was busy with Chief Minister. He stated that he was authorised on behalf of Secretary Home to give response to all questions. He stated that all cases pending before political administration in NMDs had been sent to the High Court. He undertook that APAs/ACs would be directed to furnish</p>

that no civil/criminal cases were lying with them or any executive officer/official and all cases had been sent to Judiciary.

c. Previous regime (now DCs/ACs) was taking up civil and criminal cases under garb of Revenue and Miscellaneous matters to assume jurisdiction of Courts without lawful authority in NMDs.

d. The retention of already pending cases and entertainment of newly-instituted cases by old regime (now DCs/ACs) are violative of Judgment dated 16.01.2019 of august Supreme Court of Pakistan in C.P No. 24/2012 and C.P No.737-P of 2018.

e. Levies are still siding with previous regime.

certificates to the effect that no cases were pending before them or any other officer/ official of administration in NMDs. Representative remarked that all the matters pointed out as issues in the Workshop would be taken up by Home Department seriously.

Absence of Home Secretary made it difficult for house to dwell upon these issues effectively.

**E. Prosecution**

Views	Response of the Department
<p>The Judges of NMDs reported absence of Officers of Prosecution in most of the cases. They were of the view that the stop-gap arrangements made by Prosecution Department in NMDs for criminal cases and those made by Government in NMDs for civil matters on ad hoc basis were adversely affecting the disposal of cases.</p>	<p>There was shortage of prosecutors. One prosecutor was attached to 3 Courts in NMDs.</p> <p>The cases registered after the promulgation of 25<sup>th</sup> Constitutional Amendment were also being dealt with by Levies. Though Levies did lack competence to deal therewith, yet prosecutors were helping them out. In</p>

<p><b>The Judges of NMDs and those of ATCs were facing a common problem of non-scrutiny of criminal cases by Prosecution because records of cases sent to Courts from previous regime (FCR Regime) were incomplete in many respects.</b></p>	<p>so far as cases under FCR, the same had not been sent by Prosecution to the Courts.</p> <p>Problems faced by prosecutors in NMDs shall be thoroughly examined and meeting would be shortly held in this regard.</p>
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#### F. Parallel System of Courts in NMD

Views	Recommendations of the house
<p><b>Mr. Asghar Shah pointed out that AC and Revenue Officer in Orakzai had assumed jurisdiction of Courts, as evident from News Paper clippings (provided with written feedback) showing that such Officers would welcome the decision of Jirga for resolution of disputes.</b></p>	<p>The matter, being violative of the judgment dated 16.01.2019 of august Supreme Court of Pakistan in <b>C.P No. 24/2012</b> and <b>C.P No.737-P of 2018</b>, shall immediately be taken up very seriously with Government of Khyber Pakhtunkhwa in Home Department. Home Department would itself resolve this issue having serious legal implications, on priority basis under intimation to MIT, PHC, Peshawar.</p>

### 5.5 Administrative Issues

#### A. Residential Accommodation, Court Rooms & Others:

Views	Response of the Government
<p><b>In-house discussion unveiled that almost on all stations, residential accommodation happened to be one of the biggest administrative problems. There was one exception as Mr. Asad</b></p>	<p>Problems were bifurcated being immediate and otherwise.</p> <p>Special Secretary, Finance Department, assured the house that the matters regarding residences and Court Rooms would</p>

**Hameed Bangash informed the house that there was no such problem on station of his posting.**

**Non-availability of proper court rooms and offices was also a problem. Connected therewith was problem of inadequate court rooms. (General view of NMDs Judges).**

**It was pointed out that Civil Judges and three Senior Civil Judges posted in NMDs had no official vehicles.**

**Mr. Shahid Khan stated that Government be asked to provide residential accommodation for Judges of District Khyber in Phase-V, Hayatabad. He further stated that in-charge of Federal Complex had intimated him that the Judges of NMDs would have to vacate Courts in Federal Complex because Federal Courts would be functioning there very shortly. He stated that this matter be taken up with the government.**

**Mr. Kaleem Arshad stated that in view of no accommodation being available in Tank for Judges of South Waziristan, the Commissioner D.I.Khan Division be asked to provide residential accommodation to**

immediately be taken up with Establishment Department and Deputy Commissioners / Commissioners of districts/ divisions concerned under intimation to MIT, PHC. High Court shall be informed within two/three days about status of vehicles for all Judges of NMDs.

As soon as the Provincial Government received tranche from Federal Government, the problems pointed out shall be resolved.

the Judicial Officers of South Waziristan at DI Khan.

The house suggested, "Let government be asked to place some houses in each NMD at the disposal of concerned Sessions Judge for allotment to Judges in NMD". It would help resolve residential accommodation problems to some extent.

It was pointed out that District Courts had been given Government Girls Degree Collage, North Waziristan for its use as Courts premises but this specific matter was being exploited by District Administration. (Mr. Mamraiz Khan)'.  
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## 5.0 Conclusion

1. The workshop was, in essence, beneficial and productive;
2. Legal issues, raised and minutely discussed, have mostly been resolved. The same will have the effect of bringing in coordination and liaison between Courts in NMDs and ATCs;
3. Problems with regard to production of under-trial prisoners and witnesses have been sorted out with JAG branch;
4. The methodology worked out to sort out issues regarding inchoate records in pending cases (*cases sent from defunct regime of FCR to Courts in NMDs after 25th Constitutional Amendment*) will help disposal of cases without impinging upon rights of prosecution and accused ;
5. Judicial Academy will undertake joint trainings of IOs, Prosecutors, Prison Officers and Judges;
6. Owing to want of proper representation of Home Department and Directorate of Prosecution, issues concerning them could not be thrashed out and dwelt upon meaningfully. To this end, interaction with them is essentially needed to sort out and resolve some of the crucially important problems being faced by stakeholders of justice in general and Judges in particular. Coordination of Home Department and Directorate of Prosecution with Judges of NMDs and ATCs is also of immense importance for the welfare of public and smooth running of the judicial system in the NMDs.

Schedule of Activities	
DAY-01	
Times	Activities
09:00-09:30	<p>Plenary session: Opening and General presentation of the workshop</p> <p>Recitation of Holy Quran (5 mins)</p> <p><b>Welcome Address and opening speech</b> (10 mins) Director General</p> <p>Opening Remarks By Chief Guest (10 mins)</p> <p><b>Presentation of the Agenda</b>, the objective of the workshop and the expected results (5 mins)</p> <p><b>Faculty KPJA</b></p>
	<i>Session II Overview of Legal Problems</i>
09:30-11:00	<p>Focus: (1) Jurisdictional <i>issues</i>. (2) <i>Trial of pending cases-question of retrospectivity</i>. (3) <i>Incomplete record-Whether pending cases still retained by defunct regime</i>. (4) <i>Incomplete record (challan forms, list of witnesses, bail order/bail bonds/recovery memo , seizure memo, site plan, warrants and proclamation notices, source reports), Pending cases /covering up defects</i> (5) <i>Investigation flaws –Absence of investigation wing and trained staff-Future Problems .</i> (6) <i>Scrutiny of Record by Prosecution</i>. (7) <i>Non-registration of FIR by police</i> (8) <i>Absorption of customary practices in legal regime-the possibility?</i></p> <p>Facilitator: Faculty KPJA</p>
11:00 - 11:30	Tea Break
	Session III (Legal-cum-Administrative Problems)
11:00-12:30	<p><b>Focus: (1)Absence of Naib Courts.(2)Summon/warrant cell for execution of processes in criminal case . (3)Management of sub-jails by police. (4) Production of under-trial prisoners (5) Maintenance of Record by Jail Authorities. (6) Non-availability of accused in jail. (7) Handing /taking over of files from defunct regime. (8) Assumption of court jurisdiction by defunct regime. (9) Availability of notary publics, stamp vendors, petition writers, stamp papers.</b></p> <p>Facilitator: Faculty KPJA</p>
12:30-	Prayer & Lunch Break

<b>01:30</b>	
	<b>Session IV (Administrative Problems)</b>
<b>01:30-03:00</b>	<p><b>Focus:(1)Court rooms, Residences for judges. (2) Liaison between ATC, District Courts and District Government. (3) Offices, Office Equipment for Prosecution. (4)Number of Police Stations vis-a vis population (5)Any other allied matter</b></p> <p><i>Facilitator: Faculty KPJA</i></p>
DAY-02	
<b>Times</b>	<b>Activities</b>
<b>09:00 - 09:30</b>	<p>Plenary session: Opening and General presentation of the workshop</p> <p>Recitation of Holy Quran (5 mins)</p> <p><b>Welcome Address and opening speech (10 min)</b></p> <p>Director General</p> <p>Opening Remarks By Chief Guest(10 min)</p> <p><b>Presentation of the Agenda, Recap of the first Session, the objective of the workshop and the expected results (05 min)</b></p> <p><b>Faculty KPJA</b></p>
	<i>Session II Updates on NMDs</i>
<b>09:30-10:30</b>	<p><b>Guests speakers, Secretary Home, Secretary Finance, DG Prosecution, DIG Police and IG Prisons shall share update on NMDs</b></p> <p><i>Facilitator: Faculty KPJA</i></p>
<b>10:30 - 11:00</b>	<i>Tea Break</i>
	Session III (Legal-cum-Administrative Problems and solution)
<b>11:00 - 01:00</b>	<p>Focus: <b>(1)Incomplete record(challan forms, list of witnesses, bail order/bail bonds/recovery memo , seizure memo, site plan, warrants and proclamation notices, source reports)-Pending cases /covering up defects (2)Investigation flaws –Absence of investigation wing and trained staff-Future Problems.(3)Scrutiny of Record by Prosecution.(4)Non-registration of FIR by police(5)Absence of Naib Courts.(6)Summon/warrant cell for execution of processes in criminal cases.(7)Management of sub-jails by police.(8)Production of under-trial prisoners(9)Maintenance of Record by</b></p>

	<p><b><i>Jail Authorities.(10)Non-availability of accused in jail.(11)Handing /taking over of files from defunct regime.(12)Availability of notary publics, stamp vendors, petition writers, stamp papers.</i></b></p> <p><b>Purely Administrative: (1) Court rooms, Residences for judges.</b></p> <p><b>2)Liaison between ATC, District Courts and District Government. (3) Offices, Office Equipment for Prosecution. (4)Number of Police Stations vis-a-vis population (5) Any other allied matter</b></p> <ul style="list-style-type: none"> <li>• <i>Facilitator: Faculty KPJA</i></li> </ul>
<b>01:00 - 01:30</b>	<i>Prayer &amp; Lunch Break</i>
	<b><i>Session IV Wrap-up and Concluding Ceremony</i></b>
<b>01:30 Onwards</b>	Concluding Ceremony
	<p><b>Wrap Up</b></p> <p><b>Concluding address of the Director General/Chief Guest</b></p> <p><b>Certificate Distribution</b></p> <p><b>Group Photo</b></p>