

## Scenario 4

### **Judiciary in 1978:**

#### ***Bhutto Hanged by biased Judges:***

Zulfikar Ali Bhutto, during his tenure of premiership in 1970s had promoted one junior judge named Aslam Riaz Hussain J. who happened to be a close friend of the then Attorney General Yahya Bakhtiar (and known to be not a bright judge) while superseding seven judges, including one J Mushtaq Hussain (Known as Maulvi), to the rank of the Chief Justice of the Lahore High Court (LHC).

During the military rule of Gen Ziaul Haq, Justice Maulvi Mushtaq Hussain, was elevated to the slot of the Chief Justice. The fact is still available on record of the Ministry of Law that J Maulvi Mushtaq had then opted for proceeding to Switzerland on two years leave after he was superseded, but returned immediately after Gen Ziaul Haq had imposed martial law in July 1977.

On **11<sup>th</sup> November 1974**, an FIR was lodged at the Ichhra police station Lahore after the assassination of Nawab Mohammad Ahmed Khan Kasuri implicating former prime minister Zulfikar Ali Bhutto for conspiracy to murder his political opponent Ahmad Raza Kasuri, under Sections 120-B, 302, 109, 301 and 307 of the Pakistan Penal Code.

Ahmad Raza Kasuri MNA, son of the deceased, claimed in the FIR that he was the actual target. Ichhra police station had consigned the investigation against Mr Bhutto to record room in 1975, but again started investigations in 1977 when Gen Ziaul Haq ordered to re-open the said case after having detailed meetings with J Maulvi Mushtaq. It was sufficient to have an idea of Gen Ziaul Haq's cunningness against the PM Zulfikar Ali Bhutto because it is a normal police practice that investigations are always consigned to record when no further evidence is available.

On 3rd September 1977, the deposed PM Mr Bhutto was arrested, but much surprising for the General, ten days later he was granted bail by Justice K M A Samdani of the Lahore High Court, as the case did not hold any legal ground. The same day on 13<sup>th</sup> September Bhutto was released from jail; however, within three days his bail was cancelled.

On 16th September midnight, army commandos '*climbed like black cats over the walls of Al-Murtaza, knocking out all the guards before they could raise a cry, hammering their rifle butts at the front door till almost flew off its heavy hinges.*' This time he was arrested and handcuffed, for never to be released again, and despatched to Sukkur Jail straightaway.

The then Punjab government had also set up Justice Shafiur Rehman Commission on the complaint of Ahmed Raza Kasuri to un-earth real facts of Bhutto case but a report had not been made public.

When question of Z A Bhutto's trial surfaced, CJ LHC Maulvi Mushtaq managed to get skipped the stage of trial at Session Court level on the pretext of '*importance of the case as a former PM was being brought in the dock*'. It was otherwise mandatory by law that every murder case should have been tried by a District & Session Judge so that the respective high court could be moved by the aggrieved party for exercising appellat jurisdiction.

Z A Bhutto's was perhaps the only case in the history of Pakistan where the Lahore HC had acted in a murder case by degrading itself to the level of original jurisdiction. It was

purposefully done because J Maulvi Mushtaq Hussain, who headed the bench which handed down the controversial death sentence at the end to Mr Bhutto, had harboured bias against the former prime minister.

A few lines from *'Daughter of the East' by (late) Benazir Bhutto* would give us the deep insight:

*"The case against my father rested primarily on the confession of Masood Mahmood, the Director General of the Federal Security Force. Masood Mahmood was one of the public servants who were arrested soon after the coup and who we had been told was tortured to give false evidence against my father.*

*After almost two months of detention by the military, Masood Mahmood had decided to become an 'approver', a witness who claims to be an accomplice in a crime and is pardoned on the promise that he will tell the 'truth' about the other participants.*

*(Then) Masood Mahmood was claiming that my father ordered him to murder the politician Kasuri... There were no eye-witnesses to the attack. So much so that the FSF guns, which the 'confessing accused' claimed to have used in the murder attempt did not match the empty cartridges found at the scene.*

*The witnesses were briefed on what they should say and favourable answers were deliberately whittled down. At the end of the trial, not one of the objections raised or the contradictions in the evidence pointed out by the defence consuls and which appeared in 706 pages of testimony [for Mr Bhutto's defence]".*

General Arif had recorded the fact that it was Gen Ziaul Haq himself who came to the prosecution's help by granting pardon to the approver Masood Mahmud. Similar promises were reportedly made to the three other FSF officials also but they were hanged. As expected, J Maulvi Mushtaq and his full bench found Zulfikar Ali Bhutto guilty of murder and sentenced him to death on 18<sup>th</sup> March 1978.

A veteran western writer **Stanley Wolpert** writes in his celebrated book titled **'Zulfi Bhutto of Pakistan'** that:

*"Expecting a fair trial from a person like Maulvi Mushtaq was very much unlikely. The whole nation witnessed in disgust how the judicial process was blatantly transgressed and the principles of justice and impartiality were trampled upon. The Acting Chief Justice Maulvi Mushtaq Hussain never so much as attempted to suppress or hide his personal animus. It never occurred to him that he should refuse himself from the trial [against Zulfi Bhutto]."*

Barrister Aitzaz Ahsan, who was witness to the entire court proceedings in the Bhutto case, also held that the trial was very hostile. At one stage the hostility and hatred of J Maulvi Mushtaq went to such a high pitch that Mr Bhutto had inadvertently used guarded language against him. But Bhutto was sentimentally aroused to reflect his mind in that manner because the whole bench was biased and hurling hatred and sarcastic remarks at their former prime minister.

The judges on bench who found him guilty, especially J Mushtaq Hussain, were clearly motivated against Bhutto. The question of bias raised by Bhutto was the single most important aspect of the case which, if addressed honestly, could have changed the course of history.

Against J Mushtaq Hussain, Bhutto's stance was supported by several facts. A division bench of the LHC consisting of Justice K M A Samdani and Justice Mazharul Haq was already enquiring into a private complaint of Ahmed Raza Kasuri, whose father was killed. While the enquiry was going on, an incomplete *challan* was submitted in magistrate's court which was immediately forwarded to the respective District & Sessions Judge of Lahore.

Later on, J Maulvi Mushtaq Hussain transferred the case from the Court of Sessions to LHC the same day when Bhutto was re-arrested on 16th September 1977. Again, on the same day, the Chief Justice constituted a special bench of five judges presided over by himself, though a complete *challan* was not submitted till then and yet the trial was fixed for 24<sup>th</sup> September 1977.

In the statement submitted before the Supreme Court during the hearing of his appeal, Z A Bhutto had stated:

*"It is indeed a mockery for this regime to pontificate on the independent character of the Chief Election Commissioner when it has brazenly merged the office of the Chief Election Commissioner and the Chief Justice of the Lahore High Court, under the control of the man who is known to be after my blood.*

*There has been an encounter with J Mushtaq Hussain earlier; when he was pleased to hear my detention petition virtually 'in camera' inside the prison walls of Lahore Camp Jail. This was in January 1969. However, it was not he who released me from detention, but the government, which withdrew the detention order.*

*Once again, when he (Mr Bhutto) became President, Maulvi Mushtaq Hussain met me in the Punjab House Rawalpindi. He gave blatant indications of his ambitions suggesting that, at this political juncture in the history of Pakistan, the new President would need a trustworthy man in the control of the judiciary.*

*He was gravely dejected when his expectations were not met, when a few months later Sardar Muhammad Iqbal was appointed as the Chief Justice of the Lahore High Court by my government. He did not conceal his anger. He displayed his resentment in many ways. When following the Constitutional Amendment, Mr. Justice Aslam Riaz Hussain was appointed as the Chief Justice of Lahore HC; he interpreted this second suppression to be an intolerable insult."*

But lack of fairness was not restricted to the high court; it permeated the Supreme Court too which found the objections rose by Bhutto not worthy of consideration as if there was a pact between the judges.

In early 2011, a reference (no: 1/2011), to have a fact finding verdict from the Supreme Court of Pakistan after thirty years, was moved by the then PPP Law Minister Babar Awan. In that petition Mr Awan contended that Z A Bhutto had died in custody much before he was hanged and alleged that it was a case of custodial assassination.

Babar Awan regretted that the high court had kept pending an application of Mr Bhutto to be decided after the trial in which he had expressed his apprehensions of an unfair trial by the court. Mr Awan also read out different applications and letters written by Mr Bhutto like that of 5<sup>th</sup> October 1977, challenging the maintainability of the trial; another letter of the same date highlighting bias of J Maulvi Mushtaq; application of 5<sup>th</sup> November 1977 expressing that he had no expectation of a fair trial; letter of 25<sup>th</sup> February 1978 sent to the then Punjab Governor requesting him to transfer the case to another bench with much other material.

After admitting Babar Awan's reference, the Chief Justice Iftikhar M Chaudhry had nominated a special bench comprising 11 judges and preferred to hold day to day hearing. Justice (rtd) Tariq Mehmood, was asked to assist the court as *amicus curiae* (friend of the court) because he had personally witnessed the Bhutto trial in 1977-79.

**Fauzia Wahab**, Information Secretary of the PPP had opined at [www. Bhutto.org](http://www.Bhutto.org) & [www.Sixhour.com](http://www.Sixhour.com) that:

*'An alive Bhutto was too dangerous. No chances could be taken. His strong roots in the people of Pakistan, his ability to turn foes into friends, his commanding stature in international politics made him a formidable figure in the complex polity of Pakistan. The generals knew that Zulfikar Ali Bhutto could not be defeated politically. His presence would be of constant threat for them.'*

Gen Ziaul Haq knew that support of the judiciary was crucial to accomplish his plans. Capital punishment through the military courts against him would raise protests of injustice the world over and could potentially backfire. Therefore, on the assumption of power, he cleverly inducted the chief justices of all provincial High Courts as Acting Governors of their provinces. J Maulvi Mushtaq, who nursed an animosity against Bhutto since long, was appointed as the Acting Chief Justice of the Lahore High Court. A vilification campaign against Zulfikar Ali Bhutto ensued.

The 're-filed case shortly after the coup' by Ahmed Raza Qasuri, (*Ref: Pakistan - A Modern History by Ian Talbot*) came in handy for the dictator. Although a High Court Inquiry under Justice Shafi-ur-Rahman had exonerated Mr Bhutto in this case, but Gen Ziaul Haq was bent upon getting rid of the living legend at all costs.

Much later; Dr J Nasim Hasan Shah, one of the signatories writing death obituary for Mr Bhutto, in a staggering press interview to the **daily 'Jang' on 23rd August 1996** had openly indicated the bias of the presiding judge of the trial court, J Maulvi Mushtaq, who had personal grudge against Mr Bhutto. An interesting aspect was that Justice Shah himself was an ad-hoc judge at the time of Bhutto's trial and was confirmed only when the desired decision was penned down and he had affixed his signatures on that sheet of unprecedented judicial murder. What a little price Justice Nasim H Shah got for his tyrannical act.

The former Chief Justice had no hesitation to affirm that J Maulvi Mushtaq should have avoided naming himself as a member of the trial bench to maintain dignity of the court in the principled tradition of justice. It was in this context that during the trial, J Maulvi Mushtaq had made uncalled for personal remarks provoking Bhutto to boycott the trial.

Dr J Nasim Hasan Shah had also admitted that never before in the judicial history of Pakistan any abettor was awarded capital punishment. Justice Shah quoted the actual wording that:

*'During the hearing of the case, I asked Yayha Bakhtiar (Bhutto's lawyer) if he wanted to argue for remission of his punishment but he refused. Later this became a major issue in the review petition. In my personal view, Bhutto's punishment could have been reduced...'*

Justice Nasim Hasan Shah when asked that if he could have given a dissenting note after all; said confidently that *'it could have been done but his lawyer's argument was that he didn't care about the punishment. We had some limitations and Yahya Bakhtiar had stubbornness, which annoyed us.'* Some historians hold that Bhutto's counsel had also contributed much towards Bhutto's capital punishment.

Justice Nasim H Shah further hinted that both Gen Ziaul Haq and Maulvi Mushtaq had fears that Bhutto's survival could be risky for them, so he should better be eliminated first and no chances taken. **'I am very sorry it had to be done'**; Justice Shah's words had reflected much about the military ruler's tyrannical mind and weakness of the judicial heads.

Furthermore, Justice Shah was not hesitating to tell that there was immense pressure on judges. He told that:

*"Justice Haleem was apprised by the 'agencies' that his only son lived in Karachi and his life was in danger and he was very scared .... 'Basically what could the poor judges do in such circumstances?' There was one witness testimony after the other."*

The world known jurists and legal experts had termed Bhutto's hanging as **'judicial murder'** including Ramsay Clarke, a former US Attorney General. T W Rajaratnam, a former judge of the Sri Lankan Supreme Appellate Court wrote a thought provoking book titled **'A judiciary in crisis?'** having Bhutto's trial stories. One Victoria Schofield said that:

*'Those who were blinded by hope, optimism and trust in the judicial institutions of the country only saw that the military authorities had already made up their minds. The judicial process merely prolonged the agony and uncertainly. No one could honestly say that Zulfikar Ali Bhutto was sent to death for his alleged part in a*

*murder; he was sent to death because in the political climate of Pakistan at the time, the people who had the power wanted him out of the way.'*

I A Rehman (Referring to **the 'News' of 17<sup>th</sup> April 2011**) had rightly opined that soon after the coup of July 1977 Gen Ziaul Haq had started thinking of extending his reign beyond the 90 days he had promised at the outset. This meant staying in confrontation with Bhutto and the PPP for a long time and PPP could not be suppressed so long as Bhutto was around. The army junta had felt it when Bhutto received a stirring reception upon his arrival in Lahore in August 1977. Even ordinary villagers had perception that there was one vacant grave and if it was not occupied by Bhutto Gen Ziaul Haq would be laid down there.

Due to backing of Gen Ziaul Haq, Bhutto's trial was again maligned after dismissal of the review petition by the Supreme Court when a state sponsored public campaign was run in the media to strengthen Gen Ziaul Haq's hands and his resolve to execute Bhutto.

One could go through the newspaper headlines from those days: 'SC verdict supported'; 'Zia urged to implement SC order'; 'No clemency for Bhutto'; 'Court verdict must be implemented'; 'Bhutto deserves no mercy'. Moreover, Ahmed Raza Kasuri was not alone in declaring that 'if Pakistan has to live, then Bhutto has to go', astonishingly once PPP's Federal Law Minister Babar Awan was also there to lead processions carrying placards of '**Hang Bhutto**'.

The fact, however, remained that most Pakistanis did not accept the Bhutto verdict as just and that is why the PPP mustered consistent support of the general populace for the Bhutto family during the movement against General Ziaul Haq and in the elections held during 1988-2008 and even after.

If one goes through late **Bhutto's** book titled '**If I'm Assassinated**', one would find certain stunning facts about the inside thinking of J Maulvi Mushtaq, the so called Chief Justice. Once Z A Bhutto protested on conversion of his trial from open proceedings into an in camera trial for his defence. During the trial, one judge made the profound observation that '*We are trying you and not the public.*' On this illuminating remark, J Maulvi Mushtaq added '*but he wants publicity.*' What an irony; Mr Bhutto had observed.

Mr Bhutto was once informed in *Kot Lakhpat* jail that his request to address the court had been rejected. Since 9th January 1978, he was not being defended by lawyers. He had not heard the prosecution witnesses during his illness and absence from the court. He was insulted and humiliated by the court during the open trial for three months.

Contrarily, the prosecution versions had received the full blast of publicity but suddenly the trial was converted into a secret meeting. The dice was completely loaded against him but with all those tormenting handicaps, when he sought to address the closed court in defence of his life, he was not permitted. His request was turned down. Undoubtedly it was an ex parte judgement where the trial court had awarded the death sentence without hearing the defence of 'accused'.

Late Mr Bhutto once wrote that during trial the bench, in particular J Maulvi Mushtaq was always rude, abrasive and insulting to him. Quite opposite, J Maulvi Mushtaq was kind and soft towards the confessing co-accused (perhaps Masood Mehmood). He smiled at the bench for their rotten and partial minds. He enjoyed their rustic sense of humour at Bhutto's expense.

The approver, Masood Mehmood sometimes translated certain questions in Urdu and Punjabi for the bench whenever he thought that they were not able to follow the English. 'The taunts, the frowns and shouts were reserved only for Mr Bhutto; sympathetic and favourable commands used for him were "shut up," "get up" and "take this man away until he regains his senses etc.'

Syed Afzal Haider, a prominent lawyer, living witness to the whole trial and a retired judge had placed all the court proceedings and documents in his book on Bhutto's court killing. First volume comprised of 1500 pages whereas the second volume is the analysis of the whole case in the light of previous court references.

Syed Afzal Haider has discussed in detail that Mr Bhutto was denied the right to be tried before a Session's Court. In his book, he mentioned the dates when Justice Anwarul Haq spoke against Bhutto during the trial of the case and made public speeches. Mr Haider also referred to a letter in his book in which Bhutto told J Anwarul Haq not to sit on his bench but who bothered. The most significant was the fact that in 1978 the Islamic provisions were ready and the law of *Qisas & Diyat* was in place.

Having been a member of the Council of Islamic Ideology for five terms and having seen the records, Mr Haider knew that the law was not allowed to be implemented because, according to Section 9, life sentence was given to the person who was found to be a conspirator. Gen Ziaul Haq had withheld the law while J Afzal Cheema was also involved in it.

Bhutto was simply denied the best lawyers. The lawyer from Sindh was sent back, the lawyer from Punjab was packed off, and so the trial was not fair. It was absolutely unfair. Mr Haider categorically told that J Mushtaq Hussain was a cruel, cold and highly callous man. He behaved very badly in the court being head of a full bench. He called Bhutto '*a bad Muslim*' and a '*compulsive liar*'. Of course, the God worked His justice and everybody saw how he [Maulvi Mushtaq] died. Residents of Model Town Lahore still remember his horrible death.

Aslam Riaz Hussain was also the sitting judge of the Supreme Court. Being his friend, once Mr Haider asked him why did he not participate in Bhutto's appeal trial; reply came that he was asked by the CJP Anwarul Haq to sit in this case but he told the latter that he would decide the case firstly on the question of bias, that J Maulvi Mushtaq Hussain was biased or not. The CJP Anwarul Haq said, '*No, I am sorry, you can't come.*' This decision was a predetermined conclusion. What prompted J Nasim Hasan Shah, God knows better.

Once Syed Afzal Haider was holding a seminar in Lahore on Bhutto's vicious trial, in which Rajaratnam, the Chief Justice of Sri Lanka and an author of a world known book on Bhutto, was also invited from Colombo. CJP Muhammad Afzal Zullah had called him and kept him in wrongful confinement in his chamber for seven hours because he did not want him to participate in the seminar on Bhutto trial. Such was Justice Zullah's prejudice, hatred and hostility against Mr Bhutto. He was released only when the convention was over.

In nut shell, aftermath of Bhutto trial is still continuing. The judgment is continuously being rejected by the bench, the bar, and the people of Pakistan and by all generations to come.