

## Scenario 5

### **Judiciary in 1979:**

#### ***Z A Bhutto's Judicial Murder:***

In Pakistan, general elections were held on 7<sup>th</sup> March 1977. Pakistan Peoples Party (PPP) emerged as the victorious Party. At the behest of Gen Ziaul Haq, the then Chief of Army Staff (COAS), all the opposition parties in coalition, named themselves as Pakistan National Alliance (PNA), accused government of so-called rigging in the elections. PNA had started countrywide protests and processions against those election's results. These protests went so intensified that Bhutto had to call army in Lahore to apply 'partial Martial Law' to control law & order situation. The armed troops had taken control of the city.

The Martial Law was challenged in the Lahore High Court (LHC). The petition was accepted and heard. The CJ LHC Aslam Riaz Hussain gave verdict that there was no need of Army in the town so the Martial Law was declared unjustified. The PM Bhutto got angry over the decision. The PPP resorted to threats that CJ's house would be hit with grenade but nothing happened. Bhutto and the PPP had suffered a great loss of credibility due to that judgment.

Negotiations with PNA ultimately succeeded. An Agreement was reached amongst them on 8<sup>th</sup> June 1977 for holding fresh general elections on 8<sup>th</sup> October 1977.

On **5<sup>th</sup> July 1977**, the COAS Gen Ziaul Haq imposed Martial Law unilaterally. The National Assembly, the Senate and the Provincial Assemblies were dissolved and Constitution was held in abeyance. After declaring Martial Law in the country, Gen Ziaul Haq addressed a press conference on 14<sup>th</sup> July and claimed:

*"We have no intentions of any witch-hunting. ... The courts are still functioning and we have not stopped anyone going to the courts to take the politicians to task. Then why do they want me or the Military or the armed forces to hang a few politicians? Why should I? Isn't it as much of a concern of the public as it is mine? It should be done by them, if it is to be done."*

Living Bhutto, it is said, was more dangerous for Gen Ziaul Haq's military rule. The fear of Zulfikar Ali Bhutto's return to power had forced Gen Ziaul Haq to take an extreme action of execution of Bhutto through judiciary though there are other explanations too. As the then Secretary Information of the PPP **Fauzia Wahab opined** that:

*"Allegedly 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. He was too strong to be tackled politically. His presence would be of constant threat for them ... (And)...the General knew that the support of the judiciary was crucial..... Therefore, on the assumption of power, he cleverly inducted the chief justices of all provincial High Courts as Acting Governors of their provinces."*

Gen Ziaul Haq's Military Junta established a dummy government of PNA with CMLA as President. Zulfikar Ali Bhutto, the sitting Prime Minister and the Chairman of PPP was arrested on the same day and then released on 28<sup>th</sup> July 1977. Mr Bhutto was re-arrested on 3<sup>rd</sup> September 1977 from his residence named Clifton in Karachi, on the charges of a fabricated murder case; then released on 13<sup>th</sup> September 1977 against a bail order issued by the Lahore High Court. Referring to the pages of '**Pakistan--- A Modern History**' by Ian Talbot:

*'Ahmed Raza Qasuri came forward for Gen Zia although a High Court Inquiry under Justice Shafi-ur-Rahman had exonerated the former Prime Minister in this case. But the Army was bent upon to go ahead [to get rid of Zulfikar Ali Bhutto].'*

After registration of the FIR on 11<sup>th</sup> November 1974, the federal government had appointed Justice Shafiur Rehman to hold a judicial inquiry into the matter. Referring to Mr A Sattar Najam Advocate, **the 'Dawn' of 8<sup>th</sup> April 2011** narrated that *'though Justice Rehman had ideological differences with Z.A. Bhutto and his party but even then he conducted a fair inquiry and declared him innocent.'*

Justice Shafi ur Rehman, who was later elevated to Supreme Court, was known for his impartiality. Then Mr Ahmad Raza Kasuri, the complainant, had also expressed his satisfaction over the judicial inquiry and the matter was settled down. All witnesses and evidences were recorded during the probe and its findings were never challenged. When Gen Ziaul Haq ousted the elected government of Z.A Bhutto on 5<sup>th</sup> July 1977 the murder case was reopened and the trial was commenced on 24<sup>th</sup> September 1977.

Mr Sattar Najam was perhaps Assistant Advocate General at that time and later, during Gen Ziaul Haq's regime fake cases were registered against him allegedly for forging case documents before the judicial inquiry. He had to flee Pakistan due to constant raids on his house and threats to his family on the instance of the military ruler. He came back to Pakistan in Benazir Bhutto's first rule in 1988 and was made Deputy Attorney General then raised to Advocate General of Punjab.

Gen Ziaul Haq had managed to remove the record of the judicial inquiry from all concerned forums, including the High Court. The concerned record was also stolen from his house when he was out of the country during Gen Ziaul Haq's rule. Mr Najam told that *'due to this attitude of Justice Mushtaq, his fellow judge Justice Gulbaz Khan had refused to sit on the bench but later he had to withdraw the decision,'* may be due to immense pressure from the military rulers.

Z A Bhutto was charged with conspiracy to murder Nawab Mohammed Ahmed Qasuri (father of Ahmad Raza Qasuri), the alleged target in an assault on his car.

[The background of this murder case was that on 11<sup>th</sup> November 1974 shortly after midnight, Ahmed Raza Qasuri, member of the National assembly and a bitter critic of ZAB and the Peoples Party was on his way home, with his family after attending a marriage ceremony in Shadman Colony Lahore. The stillness of the night was broken by the sound of gunfire; in a split second Nawab Mohammed Ahmed Khan sitting in the front seat received fatal injuries and was pronounced dead on arrival at the nearby United Christian Hospital. Shortly after Ahmed Raza Kasuri lodged a first information report (FIR) in police station Ichchra Lahore.

The assailants were unknown but Ahmed Raza managed to name Zulfuqar Ali Bhutto as the brain behind the murderous attack on his father. The logic behind the accusation was that Ahmed Raza had become a thorn for ZAB and his people's party as he was a member of the opposition, information secretary of the *Tehreek-i-Istiqlal* and a renowned critic of Bhutto and his policies. He added that in June 1974 Bhutto had threatened him on the floor of the National Assembly, *"You keep quiet! I have had enough of you! Absolute poison! I will not tolerate your nuisance any more."*

Coming back to the history, 13<sup>th</sup> September's bail to Z A Bhutto was granted by Justice KMA Samdani of the Lahore High Court declaring that the case did not hold any legal ground. Gen

Ziaul Haq had realized that odd situation but, as has been quoted in '**Zulfi Bhutto of Pakistan**' by **Stanley Wolpert**:

*'.....from now on he (Gen Zia) would also have to take on the task of meeting out justice to his hated enemy by bringing him up for murder in his own reliable martial law court.....he (Zulfi) had been warned, upon his release from prison on 13<sup>th</sup> September that an order for his detention under some preventive law or martial law was being prepared. He (Zulfi) feared that Gen Ziaul Haq had now decided to perpetuate himself, and thought that if elections were postponed, there would be disastrous consequences for the country.'*

So, as it could be expected from the courts in Pakistan that they always sided with the rulers, within three days Zulfiqar Ali Bhutto's bail was cancelled. In the mid-night of 16<sup>th</sup> September, Z A Bhutto was again re-arrested from his residence at Karachi named *Al-Murtaza*, not in a respectable manner but through army commandoes by surrounding the hole campus by some & one platoon by jumping over the walls and striking the doors with heavy iron rods as if the former prime minister was a hardened criminal, possibly going to run away from the back door of his residence after hearing about the police. Astonishing it was.

This time he was arrested, for never to be released again, on basis of the same murder charges and was taken to the Sukkur Jail about 500 km away from Karachi.

Justice Samdani, who had released Z A Bhutto on bail was transferred back to the Sindh High Court. Another development is also on record that a courageous Chief Justice of Pakistan Yaqub Ali Khan was forced to retire by the 22<sup>nd</sup> of the same month, because three day earlier, he had admitted Begum Nusrat Bhutto's petition in the Supreme Court of Pakistan challenging the constitutionality of her husband's detention.

Justice Anwar-ul-Haq was announced as the new Chief Justice of Pakistan, who had no legal training and had entered the judicial service as an administrator but had the honour of being a personal friend of Gen Ziaul Haq. Gen Ziaul Haq had brought him there because he knew that any loophole in managing Z A Bhutto's trial could have jeopardized his grand scheme. This time Z A Bhutto was arrested under some military order putting behind the High Court's bail orders.

The trial of Zulfiqar Ali Bhutto and five other defendants commenced on 11<sup>th</sup> October 1977 in the Lahore High Court before a bench of following five judges (i) Maulvi Mushtaq Hussein as Chief Justice, (ii) Justice Zaki ud Din Pal (iii) Justice MSM Qureshi (iv) Justice Aftab Hussein and (v) Justice Gulbaz Khan. The public prosecutor was Ejaz Hussein Batalvi and ZA Bhutto was defended for part of the proceedings by D.M Awan, Ehsan Qadir Shah, and Enayatullah. By this time the military regime of Gen Zia ul Haq was in complete control of the country. All pillars of state including the judiciary and the executive had been made subservient to the whims and wishes of the military dictator.

How the judiciary were made to dance to the tune of the rulers .... See these paragraphs:

[The procedure adopted became a glittering piece of judicial history that Mr. Bhutto was denied trial at the sessions level which was (and still it is so) otherwise imperative to meet the ends of justice and was / is the established procedure in criminal jurisprudence. The main reason for holding a trial initially by a Sessions Judge is to provide the accused an opportunity to appeal before the High Court in the event of his conviction. It is a legal requirement in Pakistan.

Further, it enables two judges of the High Court to assess the reasoning adopted by the lower court. All that mandatory requirements were ignored and bypassed.

A Division Bench of the Lahore High Court was already inquiring into a private complaint of Ahmad Raza Kasuri about the incident of his father's murder (which later on exonerated Mr Bhutto of the charge of murder). The bench was also seized of the bail matter. An incomplete *challan* (prosecution report with details of

evidences) was meanwhile submitted in the court of a magistrate of Lahore which was immediately forwarded to the Session Court.

*The withdrawal of the matter from the lower court to the High court was decided without hearing the accused or his counsel, and confirmed the suspicion of bias.*

The CJ Maulvi Mushtaq Hussain afterwards told a German diplomat on question of transferring the case, that "*Because no other judge would be able to control the accused*". [Article '**Tale of a vitiated murder by Fakhar Zaman** is referred]

Professor F C Crone of Copenhagen, who had followed the proceedings of the case, had commented in **Asia Week of 5<sup>th</sup> May 1978** that '*the trial could not, by any standard, be characterized as fair. It appears that the coup generals see Bhutto's death---his judicial murder---as a logical necessity of removing a dangerous political enemy*'.

Referring to '**Judicial Murder of a Prime Minister**' written by **Tariq Ali**, Gen Ziaul Haq's mind was already made up; he was determined to kill Bhutto. This is evident from the interview he gave to the media on 6<sup>th</sup> September 1977 in which he confirmed that he had personally ordered the arrest of Z A Bhutto and added:

*"Mr. Bhutto was a Machiavelli of 1977. An evil genius running the country on more or less Gestapo lines, misusing funds, blackmailing people, detaining them and even perhaps ordering people to be killed."*

The Lahore High Court pronounced their judgment on **18th March 1978**. Bhutto was found guilty and sentenced to death. This unanimous decision stated that the prosecution had proved their case and that Zulfikar Ali Bhutto was a "compulsive liar". Gen Ziaul Haq had earlier stated in an interview to monthly '**Urdu Digest**' on **15<sup>th</sup> September 1977** that:

*'Bhutto is a cheat and a murderer and he would not be able to escape the severest punishment on the basis of the evidence already available'.*

The prosecution's star witness was Masood Mahmood, a shady character of dubious antecedents and a former Director General of Federal Security Force (FSF), on whose testimony the entire structure of case was built and finally proved to be the bedrock of the Government's case. The judges of the Lahore High Court were totally unconcerned and oblivious to the fact that Masood Mahmood made a confessional statement in order to save his own neck and thus should have been classified as:

- an unsatisfactory witness,
- an accomplice and a participant in the crime,
- he admitted his guilt three years after the crime was committed,
- he made his confessional statement a long time after he was arrested, detained and kept in solitary confinement,
- there were many other criminal charges against him, and

Allegedly the judicial process was blatantly transgressed and the principles of justice and impartiality were crushed. In the words of **Stanley Port** again:

*"The Chief Justice Maulvi Mushtaq 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."*

Benazir Bhutto contended in his book titled '**Daughter of the East**' that:

*".....The witnesses were briefed on what they should say. ....At the end of the trial, not one of the objections raised or the contradictions in the evidence pointed out by the defence appeared in the record 706 pages of testimony."*

As expected, Justice Maulvi Mushtaq and his full bench found Zulfikar Ali Bhutto guilty of murder and sentenced him to death.

J Maulvi Mushraq was a known Bhutto hater and made no secret of his dislike and enmity with the former Prime Minister. Just *before the beginning of the trial, the constitution of the court was challenged* by Z A Bhutto on the grounds of appointment of J Maulvi Mushtaq as the Chief Election Commissioner by Gen Ziaul Haq. Z A Bhutto's appeal and rejoinder to the press alleged partisanship against Maulvi Mushtaq Hussein and labelled it a mockery of justice in combining the office of the Chief Election Commissioner and CJ LHC.

Z A Bhutto also pointed out the visible bias and vindictive nature of J Maulvi Mushtaq by bringing to light the fact that Maulvi Mushtaq on the retirement of Justice Iqbal, had been superseded during Bhutto's rule although he was the senior most judge of the Lahore High Court and since that day he had nurtured a grudge against Z A Bhutto. All the allegations were repeated in the application for transfer of the case on behalf of Z A Bhutto before the High Court and the Supreme Court of Pakistan. The High Court dismissed the appeal summarily on 9<sup>th</sup> October 1977.

Throughout the course of trial in the Lahore High Court, Justice Maulvi Mushtaq Hussain failed to disguise his contempt for Z A Bhutto and continued to spit venom in the form of rude, insulting and uncalled for remarks against him. While Z A Bhutto was placed behind the dock he was once given a chair with the enigmatic and uncalled for remarks by Justice Maulvi Mushtaq Hussain that "*We know you are used to a very comfortable life*".

On one occasion J Maulvi Mushtaq even mentioned a 'hypothetical' case of judges being superseded for appointment of a Chief Justice. The jurists present there laughed because indeed the Chief Justice himself was the judge superseded during Bhutto's term as Prime Minister for which Mr Bhutto was being prosecuted not on the charge of Kasuri's murder.

J Maulvi Mushtaq also gave an *interview to the BBC* correspondent Mark Tulley. He spoke about common law traditions and that he was disappointed that Amnesty International did not send observers. The Chief Justice stated that the Bhutto's case was being heard by five judges although the law required only two. This was not only unusual but also against all judicial ethics for a judge to comment publicly on a case being tried in his own court. The Chief Justice completely forgot that the person most in need of an assurance that justice would be done was the accused Z A Bhutto himself.

On **25<sup>th</sup> March 1978**, Z A Bhutto lodged an appeal to the Supreme Court of Pakistan against his death sentence announced by the Lahore High Court. Z A Bhutto appealed to the Chief Justice Anwarul Haq to withdraw from the case as he had publicly criticized Bhutto and his Government. The Supreme Court bench consisted of nine Judges at the start.

This appeal was rejected by Chief Justice of the Supreme Court Anwar ul Haq as being "*unfounded and based on misunderstanding.*" Hearing of the appeal continued from 20<sup>th</sup> May 1978 to 23<sup>rd</sup> December 1978.

**6<sup>th</sup> February 1979:** J Anwarul Haq, Chief Justice of Pakistan, delivered the decision and upheld LHC's death sentence by a ratio of 4:3. During the course of trial in the Supreme Court the number of Judges hearing the appeal was reduced to seven from nine. Justice Qaiser Khan retired on 30<sup>th</sup> July 1978 because his contract was not renewed as was done in the case of Justice Burhanuddin. Justice Wahidud Din stepped down after suffering a stroke on 20<sup>th</sup> November 1978 thus was removed from the panel. One Justice Malik Akram had played a decisive role while going against Mr Bhutto.

The three judges who voted for Z A Bhutto's acquittal were Justice Dorab Patel of Balochistan, Justice Safder Shah of NWFP, and Justice Mohammed Halim of Sindh as they could not find any direct evidence for the conspiracy to murder. While Justice Anwarul Haq in his eight-hundred pages decision dismissed all the errors and illegalities in the Lahore High Court's trial as totally irrelevant to the verdict and confirmed the death sentence. He himself wrote the judgment, dismissing the Bhutto's appeal and upholding the conviction and death

sentence. J Malik Akram, J Karam Elahi Chohan and J Nasim Hassan Shah agreed with the CJP. Ironically all the four judges who upheld the death sentence belonged to the Punjab.

*[Justice Ghulam Safdar Shah expressed his sorrow over the tragedy of Bhutto's death and somewhere gave the impression that he would have accepted the argument of ZAB's defence team. This caused panic and uneasiness for Gen Ziaul Haq's team, therefore, he ordered the Federal Investigations Agency (FIA) to chase Justice Shah. He was dragged into explanations and, as per government version, was found indulged in 'wrong' practices by the FIA. With notable discrepancies the then government approached the chief justice for action against the judge. A case was referred to the Supreme Judicial Council (SJC) and J Safdar Shah was forced to resign. He left the country immediately after.]*

Justice Aslam Riaz Hussain was the only left out judge from the Supreme Court bench constituted to hear Bhutto's appeal. Reason was that once in Governor House Lahore, Gen Ziaul Haq had asked him that:

*'How you people make judges. I replied that a judge should be a gentleman. Secondly he should be a gentleman. Thirdly he should be again a gentleman. Gen Ziaul Haq kept my reply in mind. Gen Ziaul Haq might have discussed my mind with the CJP at some convenient time. Later, when the bench was constituted in Bhutto's appeal, Chief Justice Anwarul Haq made sure that I was not included in it.'*

Justice Malik Qayyum, in an interview published in daily **the 'Jang' dated 5<sup>th</sup> February 2006**, however, had pointed out that:

*'Mr Bhutto had filed a review petition [against the final verdict of his death sentence] before the Supreme Court. My father, J Malik Akram, had written the disposal order of that review petition saying that it could better be dealt with by executive. Mr Bhutto's counsels should have urged before the court at some initial stage that the punishment be reduced as per facts available on file.*

*Mr Bhutto's defence lawyers had done another blunder by making a strong demand that the case should be heard by 'all available judges of the Supreme Court' including the ad-hoc judges. Had that demand not made, the bench would have been comprised of only five permanent judges. Bhutto could have avoided major punishment*

*If it would be so then Mr Bhutto could get a definite relief because CJP Anwarul Haq and J Malik Akram were against Bhutto but three judges named J Dorab Patel, J M Haleem and J Safdar Shah were in favour of Mr Bhutto. J Karam Elahi Chohan and J Nasim Hasan Shah were ad-hoc judges but they were included in the bench only after making demand from Mr Bhutto's defence lawyers team.*

*Secondly, Mr Bhutto had himself approved the bench and had categorically said before the apex court that he had full confidence on that bench of the Supreme Court.'*

Moreover, Justice Malik Qayyum categorically told that:

- He'll not speak on Bhutto's case because his father Justice Malik Akram was one of the judges who had given verdict against him. He had not even read the whole judgment of the Bhutto's case.
- His father J Malik Akram had no relations or friendship with Gen Ziaul Haq. Before July 1977 he was a judge. Once Gen Ziaul Haq made Justice Afzal Cheema as Chief Justice while superseding his father, the later had tendered resignation which was not accepted and Justice Malik Akram was urged to continue.

- CJP Molvi Mushtaq Hussain should not have heard Bhutto's case because the defence lawyers had moved a no confidence on the basis of alleged bias against CJP Molvi Mushtaq in writing.

Justice Nasim Hasan Shah later became the Chief Justice of Pakistan in April 1994. After his retirement, Dr Nasim Hasan Shah had once conceded that '*Bhutto could have escaped the gallows and his death sentence reduced easily*'.

The former Chief Justice volunteered these contentions in a startling press interview to the ***daily Jang dated 23<sup>rd</sup> August 1996***. He also dared to comment on the constitution of trial bench of the Lahore High Court, and said that '*Maulvi Mushtaq Hussain should have avoided naming himself as a member of the trial bench to maintain the dignity of the court in the principled tradition of justice. The grudge being that he (Z A Bhutto as Prime Minister) had superseded him (the judge) by a junior one while appointing Chief Justice of the Lahore HC.*'

The former Chief Justice had no hesitation in averring that '*.....it was in this context that during the trial, Justice Maulvi Mushtaq Hussain had made uncalled for personal remarks provoking Mr Bhutto to boycott the court proceedings.*'

J Nasim Hasan Shah when confronted by the interviewer admitted that never before in the judicial history of the country any abettor was awarded capital punishment. He 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, had to be done*"..... a belated remorse by a participating judge who perhaps suffers pricks afterwards. Emphasis by the judge on "had to be done" speaks for itself. It was an open admission that there was immense pressure on the judges from military dictator to uphold the LHC verdict in the case.

The '***Dawn***' of ***4<sup>th</sup> September 2009*** had opined that if any further proof was needed that Bhutto's trial was nothing but a sham to physically eliminate him, this book of J Nasim Hasan Shah was enough proof. Admitting in his book that '*he met a fellow judge, Dorab Patel, to have the three acquittals changed to guilty as a quid pro quo, is a clear indictment Nasim Hasan Shah has written against himself with his own guilty hands dripping with Bhutto's blood.*'

That was why the world jurists from former US attorney-general Ramsay Clark to a former Sri Lankan Chief Justice had declared it as '**the Murder of the Trial**' in legal interpretations.

Bhutto's judicial murder, unless honourably revoked, will forever remain the greatest slur on the face of the Supreme Court and in the annals of PLD. As popularly demanded by certain politicians Gen Ziaul Haq's symbol be hanged and retired Chief Justice Nasim Hasan Shah should be called in the dock being the only surviving judge of Bhutto's (judicial) murder and one who has provided new evidence not known or admitted at the time of the trial in the Lahore High Court then.

In nut shell, it was a pity that the superior trial and appellate courts, which should have been above mistrust and suspicion, had to earn this accusation from neutral observers and jurists of world repute because the judges succumbed to unseemly pressure from the military dictator, Gen Ziaul Haq. In ordinary circumstances, such a trial would have been vitiated and could have caused disqualification of the judges who were there on the two benches.

It was indecent haste (the statutory period of 30 days for filing an appeal was reduced to seven days) which caused circumvention of judicial norms, and the entire proceedings, both at the trial and appellate stages, left serious doubts lurking in dispassionate minds and thus its retrial by the Supreme Court under Presidential Reference no: 1/2011 contained merits because after the confessional statement of Justice Nasim Hasan Shah, the order of the LHC and SC lost their effect.

**1<sup>st</sup> April 1979:** Gen Ziaul Haq rejected the mercy petition of Z A Bhutto (and just 3 days after, on **4<sup>th</sup> April 1979, Mr Bhutto was hanged** to death in Rawalpindi jail). Mercilessly

and despicably, he was hanged at the hands of one Tara Masih. The jurists and opinion makers all over the world termed it a '**Judicial Murder**'. That is the reason that this case has never been quoted as a reference in any court since it was decided and the judgment published. A painful chapter closed.

Justice S A Nusrat, a former Federal Law Secretary, in his interview published in print media on 25<sup>th</sup> July 1999, had contended that in Bhutto's case more fault goes to a 'defense lawyer' of Mr Bhutto (may be Yahya Bakhtiar) than judges partisanship. He told that:

*'In the beginning Mr Bhutto himself committed blunders; sometimes by trying to get the trial delayed and sometimes by getting the judges influenced through "foreign appeals". Then his defence lawyer's one gross mistake decided the whole case.'*

*Before the LHC bench, the prosecution had placed an office file of IB / FSF, originally belonging to the custody of Masood Mahmood, which was concerning Ahmed Raza Kasuri. On one page Mr Bhutto had written in his own hand 'eliminate him' referring to Kasuri. The prosecution had decided within them that no body would ask any question to anyone to get explanation of phrase "eliminate him".'*

*All of a sudden, the defence lawyer questioned Masood Mahmood: 'what you understood from the phrase [eliminate him]'; Masood Mahmood promptly said: 'very simple, he should be killed'. The CJ Maulvi Mushtaq himself got nervous on that unexpected question. A pin drop silence prevailed in the court room and Maulvi Mushtaq's pen suddenly dropped from his hand. The cunning Justice Maulvi Mushtaq Hussain had smilingly uttered that 'today the defence lawyer has accomplished the job of prosecution.'*

In an interview of July 1998, the then Governor Punjab Justice Aslam Riaz Hussain told that Gen Ziaul Haq was determined to kill Mr Bhutto by all means and at all costs because he knew that either he would survive or Bhutto at last. Justice Aslam categorically said that even if Mr Bhutto had survived through Nawab Kasuri's murder trial, he would have entangled in another sedition case with 'charges of separation of East Pakistan' for which files were ready in GHQ. Every judge had an idea that there was no point in going against the wind.

The history points towards another odd situation that was likely to develop in Pakistan at that time. Gen Ziaul Haq had ready files, since 1977, with certain names of army Generals and Brigadiers who were to be posted as judges in superior courts if and when needed. It was only in Gen Ziaul Haq's mind that, whether or not, with the appointments of senior army officers he was going to install parallel military courts.

In a way the judges did right to stand in the game at least otherwise, irrespective of the worldly criticism, the whole system of judicial norms and traditions would have been spoiled. In that situation, they went wrong in only one case that was about Bhutto's trial, for the rest, the judiciary continued functioning as normal.

Justice Dr Javed Iqbal, in his interview published in print media dated 9th November 1991, had also mentioned the same fact. In his opinion, Gen Ziaul Haq could have finished Mr Bhutto's story within a week through a military court trial but he purposefully sent it to the High Court just to spoil civil judiciary through his cronies like Maulvi Mushtaq. Justice Javed Iqbal categorically told that:

*'Gen Ziaul Haq had a plan in his mind to hang Bhutto. Had the Lahore High Court given him relief or set him free, the military court was already on papers to give the desired decision as the General [Ziaul Haq] wanted then.'*

Justice Javed Iqbal had also told that Mr Bhutto had sent him a special message to join the Lahore HC bench to hear his case. Subsequently the CJ Molvi Mushtaq had also asked him to sit on that bench but he refused simply on a reason that:



*'In the previous general elections I was a candidate of National Assembly's seat in my home constituency against Zulfikar Ali Bhutto, and I had been defeated by him so I cannot sit in a bench hearing case against his person; no way.'*

Very few people know that a book titled '**Afwah aur Hageeqat**', a collection of late Z A Bhutto's writings and translated in Urdu by Altaf Hassan Qureshi was got published in 1993 by Benazir Bhutto after 14 years of his father's death. Benazir Bhutto wanted to convey that her father and the PPP were not against the army and judiciary as institutions. They were against Gen Ziaul Haq only and his near associates in high judiciary.

In that book, while explaining the reasons for amendments in the 1973's constitution, late Mr Bhutto had categorically mentioned about Maulvi Mushtaq Hussain, who *being a butcher from Jalandher (India)* was purposefully obstructed to become the Chief Justice of Lahore High Court because he was known for 'raping justice'. Mr Bhutto had given details of strained relations between him and Justice Maulvi Mushtaq Hussain by quoting that:

*'In 1966, when he was the Foreign Minister in Gen Ayub's cabinet and Maulvi Mushtaq was the Law Secretary, there prevailed a cold war between them on some petty issues. Later Gen Ayub made Maulvi Mushtaq a judge and sent him to Lahore. In 1968 Mr Bhutto was arrested in Lahore but was got ridiculed by making him appeared before the same Justice Maulvi Mushtaq Hussain.'*

*'In December 1971, when Mr Bhutto became the Chief Executive of the country Maulvi Mushtaq met him and extended his offer that if he is made Chief Justice he would help the government even in odd matters. Mr Bhutto had declined his offer which desire was afterwards fulfilled by Gen Ziaul Haq.'*

In the same book, two letters of late Z A Bhutto, written from Rawalpindi Jail to the then Chief Justice of Pakistan Anwarul Haq, are also included in which Mr Bhutto had asked him not to sit in the Bench to hear appeal against Maulvi Mushtaq's orders because 'he (CJP) in person would not be able to deliver justice just to please his Jalandhry friend Ziaul Haq'.

This book provides enough material to believe that late Mr Bhutto was helpless at the hands of judiciary and some army Generals. He had brought amendments in the constitution to make some of the judges toothless who were inducted in the judiciary by Gen Ayub and Gen Yahya in row but ultimately the same judges had taken him to the gallows causing a judicial murder.

It had been also surfaced that had Mr Bhutto not compromised with some grave mistakes of the then Generals, he would not have faced the misery of July 1977 coup with secret patting of Gen Ziaul Haq by the Americans who were bent upon taking revenge from him [PM Zulfikar Ali Bhutto] for his nuclear programs & objectives of leading the Islamic countries at par with western powers.

Leaving all the conspiracy theories aside, putting all the explanations forwarded by the legal stalwarts at back, brushing all enlighten quotes of intelligentsia under the carpet one would like to ponder at least that Mr Bhutto might have paid the price of those murders or murderous crimes which he could not recall till his last breathing moment. He might know about them. He might not be at fault in Kasuri's case but he had paid compensation of those cries and sighs which he or his cronies had not heard when passing over some unknown dying human beings.

Referring to a veteran lawyer Akram Sheikh's interview published in daily ***the 'Jang' dated 12<sup>th</sup> November 1997***:

*'Bhutto was not wrongly punished. It is God Almighty's divine law that a man continues with his wrong doings and goes unharmed. Suddenly the divine law takes turn and that man is caught, apparently innocent, to compensate for those hidden sins & crimes which he had done earlier. No person on earth could extend him harm what to speak of judges or courts. Suddenly, he was picked up by the God Almighty to pay for his proud, hatred, double standards, cheating the humanity in the name of*

*Roti-Kapra-Makan but from inside up keeping Jagirdari values. However, the decision was controversial and would remain so in Pakistan's judicial history for all times to come.'*

**In 2004**, perhaps only once in Pakistan's Judicial History, a petition against a Former Chief Justice of Supreme Court of Pakistan was filed, seeking registration of a case against him on charges of abetting in the 'murder' of a former Prime Minister Mr Bhutto. A division bench comprising Justices Sheikh Abdur Rashid and Bilal Khan held that the petition hardly qualified for processing because the judge of a bench could not be proceeded against in a case which had already been decided 25 years earlier by a competent court.

The petition was filed by one Hanif Tahir of *People's Lawyers Forum (PLF)*. The members of the bench felt that petitioner could hardly address legal aspects of the case and certain cogent questions. One member of the bench remarked;

*'In a situation where the judgment of a case was effective for citation as a reference, an ambiguous statement of one of the members of a panel of judges hearing the case, could in no way prejudice the decision after two decades. If such things were allowed to happen, the whole judicial system would collapse.'*

Hanif Tahir had quoted the former Chief Justice Nasim Hasan Shah as saying in two of his press interviews that the Supreme Court judgment in the appeal of the late Bhutto against his death sentence awarded by the Lahore High Court, was a wrong decision and it was a fit case for lesser punishment. Justice Shah was part of the 7-member bench of the Supreme Court which upheld the death penalty.

Hanif Tahir had contended that comments of the former CJ amounted to a confessional statement and that he had shown no such sentiments while agreeing with the majority opinion of apex court's bench which confirmed the execution of Mr Bhutto. Hanif Tahir was relying on the text of interview as 'public document' but was unable to define the legality of public documents. The bench of the Lahore High Court on 12<sup>th</sup> February 2004 dismissed the said petition in lamina.

**18<sup>th</sup> October 1979:** Gen Ziaul Haq, as the Chief Martial Law Administrator, had promulgated a Presidential Order no: 21 of 1979 under which an amendment in Constitution was made where there was no National Assembly, no session in vogue. Under this order Section 212-A was added for the **'Establishment of Military Courts & Tribunals'**.

*[Gen Ziaul Haq then told members of the Pakistan Bar Council that he had secured total collaboration from the two Chief Justices in giving effect to the idea of inserting Article 212-A in the constitution; that they had seen the draft amendment and had approved it. The General posed a question to the Bar Council members: how could he be blamed when the highest judiciary itself had accepted the imposition of martial law and the establishment of military tribunals at its own cost?*

*Article 212-A was made part of the Constitution which contemplated the setting up of military courts and tribunals precluding the superior judiciary from entertaining any applications in respect of matters to which the jurisdiction of the military courts had been extended.]*

Perhaps these were the military courts which Gen Ziaul Haq was going to launch in Pakistan within moments had any of the two superior courts done justice with Z A Bhutto to set him free. Bhutto would have been trapped in some other case then manufactured in the GHQ.