

# **The Historic Wrong: Analysing the Presidential Reference of Zulfikar Ali Bhutto's Trial**

***M. Shahrukh Shahnawaz\****

## **Abstract**

Historic wrongs have been acknowledged and apologized for in the post-colonial history, and various judicial verdicts which have committed historic wrongs against the people have been subsequently overturned. The Presidential Reference was filed by the President of Pakistan, under Article 186 of the Constitution of the Islamic Republic of Pakistan, 1973, and invoked the Advisory Jurisdiction of the Supreme Court of Pakistan, seeking opinion on the verdict and execution of Zulfikar Ali Bhutto, Prime Minister of Pakistan. The opinion was delivered after 12 years, after filing of the Presidential Reference, admitting that legal requirements of due process and fair trial were not met during the Trial and Appellate proceedings of Zulfikar Ali Bhutto. The present paper, first, discusses about the historic wrongs committed by judiciary in light of various cases, and, second, discusses the opinion and the additional opinions of the judges, in addressing the lapses during the Trial and Appellate proceedings as well as the scope and limitations of the Advisory Jurisdiction of the Supreme Court of Pakistan.

**Keywords:** Zulfikar Ali Bhutto; advisory jurisdiction; fair trial; transitional justice

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## **Introduction**

Many judicial verdicts are responsible for committing historic wrongs but there are many instances when these verdicts are subsequently overturned. However, not every such opportunity is availed nor is frequently available. The Supreme Court of Pakistan did get an opportunity to correct a historic wrong through its Opinion under Article 186 of the Constitution of the Islamic Republic of Pakistan, 1973. The present paper, first, discusses about the historic wrongs committed by judiciary in light of various cases, and, second, discusses the Opinion and the Additional Opinions of the judges of the Supreme Court of Pakistan, in

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addressing the lapses during the Trial and Appellate proceedings as well as the scope and limitations of the Supreme Court's Advisory Jurisdiction.

### Historic wrongs and judicial verdicts

The post-colonial history is marked with several instances where past wrongs were acknowledged and apologised for. They included conquests, massacres, and genocide of the vulnerable communities, and include laws and judicial verdicts which allowed the ruling status quo to continue committing injustices against vulnerable communities and dismantling democratic institutions. But there are instances where such laws were declared void, sometimes through Transitional Justice, or by overturning judicial verdicts legitimising injustices.

A historic wrong was corrected when the *Dred Scott case*, in which the US Supreme Court (SCOTUS) ruled that a slave resided in a 'free state,' where slavery was prohibited, was not entitled to his freedom,<sup>1</sup> was overturned by the Thirteenth, Fourteenth, and Fifteenth Amendments to the US Constitution.<sup>2</sup>

In *Brown v. Board of Education* (1954),<sup>3</sup> SCOTUS overturned the 'separate but equal' doctrine established in *Plessy v. Ferguson* (1896),<sup>4</sup> ruling that racial segregation in public schools violated the US Constitution's Fourteenth Amendment, which prohibits states from denying equal protection of laws to any person within their jurisdictions. This ruling not only addressed the historic wrong committed by the SCOTUS but also upheld the cardinal principle of the constitution law, that is, every individual is equal before the laws.

Fred Korematsu, a Japanese American citizen, was sent to one of almost dozen internment camps for Japanese American citizens as well as Japanese aliens during World War II. In 1944, he challenged the Presidential Action before the SCOTUS in

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<sup>1</sup> Melvin I. Urofsky, 'Dred Scott Decision', *Encyclopaedia Britannica*, last modified 27 February 2025, <https://www.britannica.com/event/Dred-Scott-decision>

<sup>2</sup> Louis Fisher, *Religious Liberty in America: Political Safeguard* (Lawrence: University Press of Kansas, 2002), 13.

<sup>3</sup> Brian Duignan, *Brown v. Board of Education*, *Encyclopedia Britannica*, 15 May 2026, <https://www.britannica.com/event/Brown-v-Board-of-Education-of-Topeka>

<sup>4</sup> Brian Duignan, 'Plessy v. Ferguson', *Encyclopedia Britannica*, 11 May 2026. <https://www.britannica.com/event/Plessy-v-Ferguson-1896>.

*Korematsu case*, which was upheld by the SCOTUS.<sup>5</sup> However, in the *Trump v. Hawaii* (2018), the SCOTUS overturned the verdict of the *Korematsu case*, characterizing it as ‘gravely wrong the day it was decided’ and ‘overruled in the court of history.’<sup>6</sup>

In Pakistan, the first ever Martial Law under Field Marshal Mohammad Ayub Khan,<sup>7</sup> was legalised in *Dosso case* where the SCP held that the revolutionary government and the new Constitution are, according to international law, the legitimate government and the valid Constitution of the state,<sup>8</sup> but this view was overturned in *Asma Jilani case*.<sup>9</sup> However, the *Dosso case* verdict continues to haunt the democratic values and principles of Pakistan.

In the *Asghar Khan case* (2012),<sup>10</sup> it was decided by the SCP that the loyalties of certain politicians were purchased to manipulate the 1990 General Elections, to sabotage the victory of Benazir Bhutto.<sup>11</sup>

In 2024, the SCP, in *Reference No. 1 of 2011*, availed the opportunity to undo a historic wrong and delivered its Opinion about the Trial and Appeal of Zulfiqar Ali Bhutto, former Pakistani Prime Minister, who was Sentenced to death in 1979.<sup>12</sup> It was a

<sup>5</sup> Howard Ball, *Bush, the Detainee & the Constitution: The Battle Over Presidential Power in the War on Terror* (Lawrence: University Press of Kansas, 2007), 251.

<sup>6</sup> Britannica Editors, ‘Japanese American Internment’, *Encyclopedia Britannica*, 11 May 2026, <https://www.britannica.com/event/Korematsu-v-United-States#ref1257955>.

<sup>7</sup> Britannica Editors, ‘Muhammad Ayub Khan’, *Encyclopedia Britannica*, 10 May 2026. <https://www.britannica.com/biography/Mohammad-Ayub-Khan>.

<sup>8</sup> Hamid Khan, *A History of the Judiciary in Pakistan* (Karachi: Oxford University Press, 2016), 62.

<sup>9</sup> Ayesha Jalal, *The Struggle for Pakistan: A Muslim Homeland and Global Politics* (Cambridge, MA: The Belknap Press of Harvard University Press, 2014), 188.

<sup>10</sup> *Air Marshal (Retd.) Muhammad Asghar Khan v. General (Retd.) Mirza Aslam Baig and Others*, Human Rights Case No. 19 of 1996, Supreme Court of Pakistan (2012), 25, <https://www.supremecourt.gov.pk/downloads/judgements/H.R.C.19of1996%5BAsgharKhanCase%5DDetailedReasons.pdf>.

<sup>11</sup> Asghar Khan Case, *Dawn*, 13 February 2019, <https://www.dawn.com/news/1463532>

<sup>12</sup> Hamid Khan, *A History of the Judiciary in Pakistan* (Karachi: Oxford University Press, 2016), 228.

Reference filed by the Pakistani President under Article 186 of the Constitution. In the Opinion, SCP admitted proceedings against Mr. Bhutto were unfair and lacked due process.<sup>13</sup> However, before delivering the Opinion, the Reference's maintainability was questioned by Justice Syed Mansoor Ali Shah.

### Transitional Justice and SCP

Justice Shah questioned the Reference's maintainability, as according to him, first, how the SCP can render an Opinion when the court cannot touch a decided matter; and, secondly, if the SCP delivers an Opinion then tomorrow References will start landing in SCP to reopen its previous judgements.<sup>14</sup>

M. Shahrukh Shahnawaz tried to address and answer this issue in his article titled *Pakistan, History, Courts And Transitional Justice*, published on 27<sup>th</sup> February, 2024, in the *Friday Times*,<sup>15</sup> as Justice Shah failed to understand Transitional Justice and demonstrated reluctance in addressing and correcting a historic wrong committed by the SCP.

M.S. Shahnawaz wrote that Transitional Justice heals a polity as well as a society while correcting historical records, which was demonstrated by the 'South African Truth and Reconciliation Commission,' by fostering forgiveness by enabling the Apartheid regime's victims to testify publicly and perpetrators to confess and receive amnesty.<sup>16</sup> The Transitional Justice, thus, provided a way to the people of South Africa to heal and move on.

He further highlighted that Justice Shah's view invalidates *Asma Jilani case*, which overturned the *Dosso case*, as it was argued by Justice Muhammad Munir, that the matter was time-barred and, therefore, could not be revisited,<sup>17</sup> however, the *Asma*

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<sup>13</sup> Nasir Iqbal, 'SC Issues Historic Mia Culpa on Zulfikar Ali Bhutto's Trail', *Dawn*, 7 March 2024, <https://www.dawn.com/news/1819762>.

<sup>14</sup> Nasir Iqbal, 'Judge questions "reopening" of Z.A. Bhutto case', *Dawn*, 13 December 2023, <https://www.dawn.com/news/1797439>.

<sup>15</sup> Dr. M Shahrukh Shahnawaz, 'Pakistan, History, Courts, and Transitional Justice', *The Friday Times*, 27 February 2024, <https://www.thefridaytimes.com/27-Feb-2024/pakistan-history-courts-and-transitional-justice>.

<sup>16</sup> Desmond Tutu, 'Truth and Reconciliation Commission, South Africa', *Encyclopedia Britannica*, 25 May 2026, <https://www.britannica.com/topic/Truth-and-Reconciliation-Commission-South-Africa>.

<sup>17</sup> Muhammad Munir, *Highways & Bye-Ways of Life* (Lahore: Law Publishing Company 1978), 261-262.

*Jilani case* allowed the SCP to revisit its past incorrect views, and, thereby, correct a historic wrong.

Regarding opening the floodgates for review of settled cases, it was pointed out by M. Shahruxh Shahnawaz that the government should avail every opportunity to correct the historical record, as was seen in 2023, when German President Frank-Walter Steinmeier apologised for the Tanzanian people's killings under Germany's colonial rule;<sup>18</sup> and he thereafter asked for forgiveness for the crimes committed by his country in the World War II, on the occasion of Warsaw Ghetto Uprising anniversary;<sup>19</sup> and likewise, in 2012, German Medical Association apologised for the atrocities committed by German physicians under Nazi rule;<sup>20</sup> in fact, even General Pervez Musharraf, as Pakistani President, regretted the excesses committed in East Pakistan, during the 1971 war.<sup>21</sup>

M.S. Shahnawaz also highlighted that even otherwise, the court can revisit its previous incorrect view because an illegal order is treated as *void ab initio* (having no legal effect from inception) under the law, and it has been held in various judgements that the party cannot be made to suffer from an act or omission on the part of the court, that is, *actus curiae neminem gravabit*.<sup>22</sup>

Fortunately, Justice Shah will address and admit Transitional Justice in his Additional Opinion, after the publication of the article by M. Shahruxh Shahnawaz, but even then failed to understand its scope.

### **Elected leaders and death sentence**

Several world elected leaders' governments were toppled and were, thereafter, sentenced to death. Celâl Bayar, the President of the Turkish Republic, was arrested during the 1960 military coup, and

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<sup>18</sup> 'German President Apologizes for Colonial Crimes in Tanzania', *Al Jazeera*, 1 November 2023, <https://www.aljazeera.com/news/2023/11/1/german-president-apologises-for-colonial-crimes-in-tanzania>

<sup>19</sup> 'German President Asks for Forgiveness on Warsaw Ghetto Uprising Anniversary', *The Guardian*, 19 April 2023, <https://www.theguardian.com/world/2023/apr/19/german-president-asks-for-forgiveness-on-warsaw-ghetto-uprising-anniversary>.

<sup>20</sup> Art Caplan, 'German Doctors Apologize for Holocaust Horrors,' *NBC News*, 24 May 2012, <https://www.nbcnews.com/health/health-news/german-doctors-apologize-holocaust-horrors-flna793851>.

<sup>21</sup> President Regrets '71 War Excesses: Trade Accords to be Signed Today, *Dawn*, 30 July 2002, <https://www.dawn.com/news/50327/president-regrets-71-war-excesses-trade-accords-to-be-signed-today>.

<sup>22</sup> 2025 SCMR 206.

was thereafter tried on dubious charges of committing crimes against the state and was awarded death sentence, but, keeping in view his age, his sentence was later commuted to life imprisonment.<sup>23</sup>

President Mohammed Morsi was an Egyptian President in 2012, but was removed by the military a year later after protests against his rule, and courts awarded him death sentence, but it was overturned in 2016.<sup>24</sup> However, not every elected leader was lucky enough to be saved from execution.

Adnan Menderes, was a Turkish Prime Minister from 1950 until deposed by a military coup in 1960, and was accused of embezzling state funds, extravagance, and corruption, among other charges, and was sentenced to death and, following a suicide attempt, he was hanged.<sup>25</sup>

Imre Nagy became the Premier of the 1956 Revolutionary Government, who on the last day of the unsuccessful uprising, appealed to the West for help against the invading Soviet troops, but was treacherously deported to Romania, and then returned to Hungary, only to be secretly Tried for treason, and then executed.<sup>26</sup> In 1989 Nagy was posthumously rehabilitated by Hungary's Supreme Court, exactly 31 years after his execution, he was reburied with full honours.<sup>27</sup> But not all executed elected leaders would get justice, either during their lifetime or after their deaths.

There are instances where the elected leader of a nation was awarded death sentence by courts in political offences and political trials, but it was afterwards converted and modified into life imprisonment, however, this was not the case in Pakistan. The SCP, while admitted in its Opinion the lapses in the Trial of Mr. Bhutto, even failed to posthumously acquit him, which tantamount to great injustice.

<sup>23</sup> Mahmud Celal Bayar, 'Celal Bayar', *Encyclopedia Britannica*, 18 August 2026. <https://www.britannica.com/biography/Celal-Bayar>.

<sup>24</sup> 'Egypt: Mohammed Morsi Death Sentence Overturned', *BBC News*, 15 November 2016, <https://www.bbc.com/news/world-middle-east-37985498>.

<sup>25</sup> Malcolm Edward Yapp and John C Dewdney, 'Turkey', *Encyclopedia Britannica*, 03 September 2026, <https://www.britannica.com/place/Turkey>

<sup>26</sup> Britannica Editors, 'Cold War', *Encyclopedia Britannica*, 29 August 2026. <https://www.britannica.com/event/Hungarian-Revolution-1956>

<sup>27</sup> Britannica Editors, 'Hungarian Revolution', *Encyclopedia Britannica*, 19 January 2026. <https://www.britannica.com/biography/Imre-Nagy>

## The Opinion and Additional Notes

The Advisory Jurisdiction under Article 186 of the Constitution was invoked and Opinion was sought on five questions from the SCP in 2011, and the Opinion was announced on 06<sup>th</sup> March, 2024.<sup>28</sup> The Opinion was sought on the following questions:

### *Question (1)*

*Whether the decision of the Lahore High Court as well as the Supreme Court of Pakistan in the murder trial against Shaheed Zulfiqar Ali Bhutto meets the requirements of fundamental rights as guaranteed under Article 4, sub-Articles (1) and (2)(a), Article 8, Article 9, Article 10A/due process, Article 14, Article 25 of the Constitution of the Islamic Republic of Pakistan, 1973? If it does not, its effect and consequences?*

### *Question (2)*

*Whether the conviction leading to execution of Shaheed Zulfiqar Ali Bhutto could be termed as a decision of the Supreme Court binding on all other courts being based upon or enunciating the principle of law in terms of Article 189 of the Constitution of the Islamic Republic of Pakistan, 1973? If not, its effect and consequences?*

### *Question (3)*

*Whether in the peculiar circumstances of this case awarding and maintaining of the death sentence was justified or it could amount to deliberate murder keeping in view the glaring bias against Shaheed Zulfiqar Ali Bhutto?*

### *Question (4)*

*Whether the decision in the case of murder trial against Shaheed Zulfiqar Ali Bhutto fulfils the requirements of Islamic laws as codified in the Holy Quran and the Sunnah of the Holy Prophet (SAW)? If so, whether present case is covered by doctrine of repentance specifically mentioned in the following Suras of Holy Quran:*

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<sup>28</sup> Supreme Court of Pakistan, *Reference by the President of Islamic Republic of Pakistan under Article 186, of the Constitution to Revisit the Case of Zulfiqar Ali Bhutto Reported as PLD 1979 SC 38—53, Reference No. 1 of 2011, 6 March 2024.* [https://www.supremecourt.gov.pk/downloads\\_judgements/reference\\_1\\_2011\\_06mar2024.pdf](https://www.supremecourt.gov.pk/downloads_judgements/reference_1_2011_06mar2024.pdf).

(a) Sura Al-Nisa, verses 17 and 18; Sura AlBaqara, verses 159, 160 and 222; Sura AlMaida, verse 39; Sura Al-Aaraaf, verse 153; Sura Al-Nahl, verse 119; Sura Al-Taha, verse 82; as well as (b) Sunan Ibn-e-Maaja, Chapter 171, Hadith No. 395.

#### *Question (5)*

*Whether on the basis of conclusions arrived at and inferences drawn from the evidence/material in the case an order for conviction and sentence against Shaheed Zulfiqar Ali Bhutto could have been recorded?*<sup>29</sup>

With respect to the first question, the opinion of the SCP was:

*'(i) The proceedings of the trial by the Lahore High Court and of the appeal by the Supreme Court of Pakistan do not meet the requirements of the Fundamental Right to a fair trial and due process enshrined in Articles 4 and 9 of the Constitution and later guaranteed as a separate and independent Fundamental Right under Article 10A of the Constitution.*

*(ii) The Constitution and the law do not provide a mechanism to set aside the judgment whereby Mr. Bhutto was convicted and sentenced; the said judgment attained finality after the dismissal of the review petition by this Court.*<sup>30</sup>

The opinion for the second question was:

*'Referenced questions do not specify the principle of law enunciated by this Court in the Zulfiqar Ali Bhutto case regarding which our opinion is sought. Therefore, it cannot be answered whether any principle of law enunciated in the Zulfiqar Ali Bhutto case has already been dissented to or overruled.*<sup>31</sup>

Regarding the third and fifth question, the opinion of the SCP was:

*'In its advisory jurisdiction under Article 186 of the Constitution, this Court cannot reappraise the evidence*

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<sup>29</sup> *Ibid.*

<sup>30</sup> *Ibid.*

<sup>31</sup> *Ibid.*

*and undo the decision of the case. However, in our detailed reasons, we shall identify the major constitutional and legal lapses that had occurred with respect to fair trial and due process.*<sup>32</sup>

The SCP did not render any opinion for the fourth question on the ground that no assistance was offered,<sup>33</sup> but Justice Muhammad Ali Mazhar would deal with this question in his additional opinion.

### ***Reasons for the Opinion by the Chief Justice Qazi Faez Isa***

The detailed reasons for the Opinion was authored by Chief Justice of Pakistan (CJP) Qazi Faez Isa, and uploaded on the SCP's website on 08<sup>th</sup> July, 2024.<sup>34</sup> Justice Syed Mansoor Ali Shah, Justice Yahya Afridi, Justice Muhammad Ali Mazhar and Justice Syed Hasan Azhar Rizvi would attach their Additional Notes. SCP also sought assistance from *amici curiae* on the following points:

- '(1) If, and when, can a murder trial be conducted by the High Court, and to cite local and international precedents;*
- (2) Was the murder-trial being conducted by the High Court objected to, and if it was, how was the objection attended to;*
- (3) The consequences, if any, of departing from the usual mode of trial;*
- (4) The admissibility or otherwise of a confessional statement of an approver and to what extent can it be used against a co-accused;*
- (5) Was there any legal bias, and if so its effects; and*
- (6) What were the facts leading to reopening the investigation, and was it because fresh evidence had been discovered or was it on account of the usurper securing his position.*<sup>35</sup>

CJP Isa explained that the Police closed the investigation which was not challenged by the legal heirs of Ahmed Raza Kasuri, and the government of Punjab appointed a Lahore High Court

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<sup>32</sup> *Ibid.*

<sup>33</sup> *Ibid.*

<sup>34</sup> Supreme Court of Pakistan, *Reference No.1 of 2011: Reference by the President of Islamic Republic of Pakistan under Article 186 of the Constitution to Revisit the Case of Zulfiqar Ali Bhutto Reported as PLD 1979 SC 38-53: Reasons for the Opinion Authored by Justice Qazi Faez Isa* (Islamabad: Supreme Court of Pakistan), 8 July 2004. [https://www.supremecourt.gov.pk/downloads\\_judgements/reference\\_1\\_2011\\_08072024.pdf](https://www.supremecourt.gov.pk/downloads_judgements/reference_1_2011_08072024.pdf)

<sup>35</sup> *Ibid.*

(LHC) Judge as a Tribunal to conduct inquiry, but nothing was unearthed, but after the government of Mr. Bhutto was overthrown by General Muhammad Zia-ul-Haq on 5<sup>th</sup> July, 1977, the investigation was reopened in the murder case, and transferred to the Federal Investigation Agency (FIA), without any explanation, and then, the Challan was submitted under Sections 302, 307, 120B, and 109 of the Pakistan Penal Code (PPC), 1860, nominating Mr. Bhutto; Masood Mahmood, Director-General Federal Security Force (FSF); Mian Muhammad Abbas, Director FSF; Ghulam Hussain, Inspector FSF; Ghulam Mustafa, Inspector FSF; Arshad Iqbal, Inspector FSF; and Iftikhar Ahmad, Assistant Sub Inspector FSF, however, in the Final Challan, Masood Mahmood and Mian Muhammad Abbas were made Approvers, that is, Accomplices becoming Prosecution Witnesses (PWs).<sup>36</sup>

While the case of Mr. Bhutto was transferred to the LHC, CJP Isa writes that a murder case under Section 302 PPC can only be tried by the Sessions Court, as the Acting Chief Justice Maulvi Mushtaq immediately and on the same day granted the petition and transferred the case to the LHC. Thereafter the trial was commenced before the LHC, but the charge was framed after a delay of couple of dates, to which all Accused pleaded not guilty, and statements of forty one PWs, and four Defence Witnesses were recorded, and the judgment was reserved on 2<sup>nd</sup> March 1978, and announced on 18<sup>th</sup> March, 1978, finding Mr. Bhutto guilty and awarding him death Sentence, and after the Appeal and thereafter Review Petition were dismissed, Mr. Bhutto was executed on 4<sup>th</sup> April, 1979.<sup>37</sup>

CJP Isa clarified that the SCP is not hearing a Petition, an Appeal or a Review Petition, nor the Constitution provides any mechanism to set aside Mr. Bhutto's Conviction under the SCP's Advisory Jurisdiction as it had attained finality, but the detailed reasons identified major constitutional lapses regarding fair trial and due process, which included (1) reopening of the investigation; (2) reinvestigation by FIA; (3) transfer of cases by the High Court; (4) prejudice caused to the Accused.<sup>38</sup>

CJP Isa pointed out that that by conducting the murder Trial itself, the LHC made several provisions of the Constitution and Chapter XVII of the Code of Criminal Procedure (CrPC), 1898, redundant, as Sections 376 provided for the High Court to

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<sup>36</sup> *Ibid.*

<sup>37</sup> *Ibid.*

<sup>38</sup> *Ibid.*

confirm Sentences or annul Conviction; under Section 378 every death Sentence is to be confirmed by the High Court, an important safeguard against faulty convictions and hasty hearings, but this provision was only once disregarded, which was in this case, and therefore, violated Articles 4 and 9 of the Constitution. He writes that an Appeal against the Conviction and Sentence of a Sessions Court lies to the High Court under Section 410 of CrPC, but since the Trial was conducted by the High Court itself, Mr. Bhutto was deprived of one right of Appeal which violated Constitution's Article 4, which requires that all be treated in accordance with law; Article 9 which prohibits anyone to be deprived of life save in accordance with law; and Article 10A which provides for a fair trial, and these rights cannot be disregarded even during the proclamation of emergency.<sup>39</sup>

Masood Mahmmod, to become an Approver, wrote to the Magistrate, Lahore, on 7<sup>th</sup> September, 1977, that he carried out Mr. Bhutto's orders, to murder Muhammad Ahmed Khan Kasuri, and if he is pardoned, he would disclose material facts regarding the conspiracy leading to the murder, as this heinous offence has haunted his conscience, and the Magistrate accepted his plea on 14<sup>th</sup> September, 1977.<sup>40</sup>

Muhammad Ahmed Khan Kasuri was the Magistrate who signed and witnessed the hanging of the legendary hero of independence movement, Bhagat Singh, at Shadman Crossing, Lahore, when every other Magistrate in India had refused, and ironically he was shot dead, at the very place.<sup>41</sup>

CJP Isa writes that Masood Mahmood testified that Mr. Bhutto appointed him as the Director General of FSF for his integrity, and mentioned several names, but many of whom did not appear before the Court, and even though his credibility was accepted by both the courts, there were many factors which showed that he was self-serving, morally bankrupt, and a false witness. CJP Isa elaborates that Massod Mahmood repeatedly referred to his conscience, but his conscience lay dormant throughout his tenure as the Director General of FSF, and his resurgent conscience was

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<sup>39</sup> *Ibid.*

<sup>40</sup> *Ibid.*

<sup>41</sup> Majid Sheikh, 'Harking Back: On the Trail of Hiding Places of Bhagat Singh', *Dawn*, 1 October 2017. <https://www.dawn.com/news/1361070>

premised on first extricating himself and securing himself a pardon.<sup>42</sup>

CJP Isa writes that there was no direct nor circumstantial evidence against Mr. Bhutto for the offences with death Sentence under Sections 302 (murder); 307 (attempted murder); and 111 (abetment), as the entire Prosecution case relied upon Masood Mahmood and Mian Muhammad Abbas's statements, however, Mian Muhammad Abbas retracted his confession, while Haq Nawaz Tiwana (previous Director General of FSF) and Abdul Hamid Bajwa had died, and M. R. Welch (Director FSF in Quetta) and Saeed Ahmed Khan were produced as PWs, without being made Approvers.<sup>43</sup>

CJP Isa writes that motive cannot corroborate an Approver's testimony, but for the Trial Court, motive can be corroborated, which negated Section 114 of the Evidence Act, 1872, as its illustration (b) states that an Accomplice is unworthy of credit, unless he is corroborated in material particulars. He writes that only in paragraph 584 of the judgment was there a fleeting reference to motive yet the Trial Court proceeded on an incorrect assumption that the motive stood established, even though the facts said otherwise. He writes that the Appellate Court even upheld that the four co-Accused and two Approvers were not Accomplices but witnesses and they did not require corroboration.<sup>44</sup>

CJP Isa writes that Mr. Kasuri cited motive for targeting him was his political differences with Mr. Bhutto, relying upon National Assembly's speeches, but under Article 66(1) of the Constitution, no member shall be liable to any court proceedings for anything said in Parliament. He writes that neither the two ladies in the car, nor any of the other children of the deceased were examined to consider if someone else had a motive, and it was never considered that such enmity could equally be a reason to falsely implicate Mr. Bhutto.<sup>45</sup>

CJP Isa explains that the alleged motive was at best was a suspicion as Mr. Kasuri admittedly had no personal knowledge of any conspiracy by Mr. Bhutto. He elaborates that Mr. Kasuri's testimony had many inconsistencies and he undermined his own

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<sup>42</sup> Supreme Court of Pakistan, *Reference No. 1 of 2011: Reasons for the Opinion*, 8 July 2024, [https://www.supremecourt.gov.pk/downloads/judgements/reference\\_1\\_2011\\_08072024.pdf](https://www.supremecourt.gov.pk/downloads/judgements/reference_1_2011_08072024.pdf)

<sup>43</sup> *Ibid.*

<sup>44</sup> *Ibid.*

<sup>45</sup> *Ibid.*

credibility by applying for a ticket of Pakistan People's Party (PPP), for the 1977 General Elections, while implicating Mr. Bhutto for his father's murder.<sup>46</sup>

CJP Isa explains that in criminal cases, the Prosecution need not set up a motive but if it does and fails to establish it, then there are consequences.<sup>47</sup>

CJP Isa writes that instead of Mr. Kasuri, his brother Major Ali Raza first reported to Police and neither the FIR was registered when he reported the crime nor was, he cited as the complainant in the FIR when it was registered nor produced as witness, and the courts failed to notice this glaring anomaly. CJP Isa writes that by categorising Mr. Kasuri as the informant; assuming that the FIR was promptly recorded without Mr. Kasuri having time to embellish it and falsely implicate Mr. Bhutto; and accepting the Prosecution's allegation of a conspiracy on the basis of FIR, the courts disregarded the constitutional safeguards.<sup>48</sup>

CJP Isa writes that all six co-accused had made confession, and two of them were pardoned and made Approvers, while one retracted his confession before the Trial Court but reiterated it before the Appellate Court, and the remaining three co-accused were represented by a counsel at state expenses, who failed to explain them that abiding superior's command is no defence to the murder charge.<sup>49</sup>

CJP Isa writes that the President could have pardoned Mr. Bhutto under Article 45 of the Constitution, and President Fazal Ellahi Chaudhry had written to General Zia, spelling out extra-judicial considerations which would weigh with the Executive in taking decision in this matter, but the case of Mr. Bhutto was not dealt in accordance with Article 45, committing another transgression of due process. But CJP Isa was criticised for re-evaluating evidence.<sup>50</sup>

### ***Justice Syed Mansoor Ali Shah's Additional Note***

Justice Shah's Additional Opinion was uploaded on the SCP website on 26<sup>th</sup> November 2024.<sup>51</sup> He writes that the Bench had

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<sup>46</sup> *Ibid.*

<sup>47</sup> *Ibid.*

<sup>48</sup> *Ibid.*

<sup>49</sup> *Ibid.*

<sup>50</sup> *Ibid.*

<sup>51</sup> Supreme Court of Pakistan, *Reference No. 1 of 2011: Reference by the President of Islamic Republic of Pakistan under Article 186 of the Constitution of Revisit the Case of Zulfiqar Ali Bhutto Reported as*

unanimously opined that under Article 186 of the Constitution, the SCP cannot reappraise the evidence and undo the decision of the case, nor undertake a fact-finding inquiry, nor adjudicate a *lis* between parties nor review its judgment.<sup>52</sup>

He writes that certain observations by CJP Isa verged on reappraisal of evidence in a case which the SCP had finally decided, and has also drawn support from Transitional Justice, which provides remedy against the injustices caused by political trials.<sup>53</sup>

By relying upon Fiona Feiang Shen-Bayh's *Undue Process: Persecution and Punishment in Autocratic Courts*, he writes that authoritarian regimes use political trials, which serve as their judicial tool, to legitimise their seizure of power, suppress political resistance, delegitimise opponents and consolidate authority, as they violate due process and fair trial requirements to produce politically desirable outcomes, by relying on statements obtained from former allies of the accused, through coercion and/or inducement.<sup>54</sup>

He explains that in post-authoritarian regimes, Transitional Justice forms a crucial part of the transition from authoritarianism to constitutional democracy, as it involves uncovering the crimes of former authoritarian rulers and holding them accountable for past human rights violations, including unlawful detentions and politically motivated trials. He further writes that Transitional Justice is not about vengeance but it heals and provide justice, and includes truth and reconciliation commissions; prosecuting former authoritarian rulers; rendering opinions on the fairness and legitimacy of judicial decisions made during authoritarian regimes; delivering justice to affected individuals; and sending message that judicial complicity with authoritarianism will not be shielded from scrutiny.<sup>55</sup>

He mentioned some decisions of the Pakistani courts for upholding Transitional Justice, but Pakistani judiciary has never implemented Transitional Justice to heal the people, and Justice Shah also missed the opportunity and failed to implement

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PLD 1979 SC 38—53: *Additional Note Authored by Justice Syed Mansoor Ali Shah* (Islamabad: Supreme Court of Pakistan), 5 July 2024. [https://www.supremecourt.gov.pk/downloads\\_judgements/refer ence\\_1\\_2011\\_an\\_26112024.pdf](https://www.supremecourt.gov.pk/downloads_judgements/refer ence_1_2011_an_26112024.pdf)

<sup>52</sup> *Ibid.*

<sup>53</sup> *Ibid.*

<sup>54</sup> *Ibid.*

<sup>55</sup> *Ibid.*

Transitional Justice by conservatively and narrowly implementing SCP's Advisory Jurisdiction.<sup>56</sup>

He writes that as a judicial tool, Mr. Bhutto's Trial strengthened General Zia's authoritarian regime and suppressed political resistance; and that instead of independent evidence, the Prosecution relied heavily on confessional statements of Mr. Bhutto's former associates as Approvers.<sup>57</sup>

He writes that several requirements of procedural due process and fair trial were violated to achieve political desirable outcomes, including the unauthorised investigation, which was previously closed by the Magistrate; the unlawful transfer of the investigation from Police to FIA; the transfer of the Trial from the Sessions Court to the LHC without adherence to legal requirements; the unjustified cancellation of Bail by the LHC; the determination of Mr. Bhutto's recusal application by judges other than those whose recusal was sought, without addressing the instances cited to demonstrate the bias of Justice Maulvi Mushtaq; the composition of the Benches of the Trial and Appellate Court, which were headed by Justice Maulvi Mushtaq and Justice Anwar-ul-Haq, who had personal grievances against Mr. Bhutto, for being passed over for appointments as Chief Justice of LHC and CJP, respectively; and the unwarranted reconstitution of the SCP Bench from nine to seven judges, and due to these blatant violations, Mr. Bhutto is the victim of 'unfair judicial proceedings' and 'legalised political murder,' and 'judicial murder'.<sup>58</sup>

He writes that in the fulfilment of the duty under Transitional Justice, and to distance ourselves from past violations of human rights while moving forward in a manner consistent with justice for those who suffered from these violations, we explored all possible options within the existing Constitutional and legal framework, but there is no mechanism to set aside or overturn the judgment by which Mr. Bhutto was Convicted as it attained finality. He writes that in its Advisory Jurisdiction, the SCP cannot reappraise the evidence or overturn a final decision, however, it was concluded that the Trial and Appeal proceedings did not meet the fair trial and due process requirements as provided under Articles 4 and 9 of the Constitution, which were later reinforced

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<sup>56</sup> *Ibid.*

<sup>57</sup> *Ibid.*

<sup>58</sup> *Ibid.*

under Article 10A of the Constitution, as an independent fundamental right.<sup>59</sup>

He appreciated Justice Dorab Patel for courageously dissenting and acquitting Mr. Bhutto, and thereafter, refusing to take oath under General Zia's Provisional Constitutional Order, thereby, surrendering his impending eight-year tenure as CJP.<sup>60</sup>

### ***Additional Notes by Justice Syed Hasan Azhar Rizvi and Justice Yahya Afridi***

Justice Rizvi's Additional Note was uploaded on the SCP's website on 27<sup>th</sup> November, 2024.<sup>61</sup> First part of his Opinion explains the major lapses in the proceedings before the LHC and the SCP. Second part outlines the reasons for his disagreement with certain observations made by the CJP Isa, even though he expresses concurrence with the CJP's Opinion, his disagreement pertains to paragraphs 26 to 30.<sup>62</sup>

He discussed the lapses in Mr. Bhutto's case, that included the biased conduct of the Acting Chief Justice; non-observance of prescribed procedure by the courts; in-camera trial without any justification; denial of right to defend; erroneous appreciation of Approver's evidence; Masood Mahmood not being qualified as an Approver; lack of corroboration of Approver's evidence; unproven motive; no evidentiary value of Mian Muhammad Abbas's retracted confession; and the impact of negative ballistic expert's report.<sup>63</sup>

He discussed his disagreements with CJP Isa regarding paragraph 26 of the Opinion as a High Court under Article 185(2)(b) of the Constitution and Sections 411-A and 526 Cr.P.C. can conduct a Trial, but these provisions do not allow High Courts to conduct murder Trials. In reply, he writes that the High Court can take direct cognizance under Section 194 Cr.P.C. of a criminal case for any offence under PPC; and can also transfer a case to try

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<sup>59</sup> *Ibid.*

<sup>60</sup> *Ibid.*

<sup>61</sup> Supreme Court of Pakistan, *Reference No. 1 of 2011: Reference by the President of the Islamic Republic of Pakistan under Article 186 of the Constitution to Revisit the Case of Zulfiqar Ali Bhutto Reported as PLD 1979 SC 38–53: Additional Note Authored by Justice Syed Hasan Azhar Rizvi* (Islamabad: Supreme Court of Pakistan, 27 November 2024), [https://www.supremecourt.gov.pk/downloads/judgements/reference\\_1\\_2011\\_an\\_27112024.pdf](https://www.supremecourt.gov.pk/downloads/judgements/reference_1_2011_an_27112024.pdf)

<sup>62</sup> *Ibid.*, 15.

<sup>63</sup> *Ibid.*

itself under Section 526 CrPC, and that Section 411-A CrPC only provides a remedy of Appeal to an Accused who was Convicted in a Trial by the High Court in the exercise of its Original Criminal Jurisdiction. He writes that this provision has an exception under which no Appeal lies in cases where an Appeal lies to the SCP under Article 185 of the Constitution. He explains that Article 185(2)(b) of the Constitution stipulates that an Appeal lies to the SCP from any High Court's judgment, decree, final order, or Sentence, if the High Court has withdrawn any case for Trial before itself from any subordinate court and, thereafter, Convicted and Sentenced the Accused, therefore, as the LHC withdrew the case of Mr. Bhutto from the Sessions Court, and Convicted him, his case was not covered under Section 411-A CrPC, being subjected to its exception clause, and therefore, Mr. Bhutto filed a Criminal Appeal before SCP under Article 185(2)(b).<sup>64</sup>

He cited an Islamabad High Court's (IHC) decision regarding an Additional Sessions Judge and his wife, for torturing their domestic worker, and they both were Convicted and their Criminal Appeal under Section 411-A CrPC was dismissed by the IHC's Division Bench, and the decision was reported as *Raja Khurram Ali Khan and another v. Tayyaba Bibi and another* (2019 YLR 98). The SCP also dismissed the Criminal Appeal filed against the judgment of the Division Bench, which was reported as *Raja Khurram Ali Khan and 2 others v. Tayyaba Bibi and another* (PLD 2020 SC 146).<sup>65</sup>

His second disagreement with CJP Isa pertained to paragraphs 27 and 28 of the Opinion, regarding the confirmation of the death Sentence by a High Court. He writes that under Chapter XXVII CrPC provides valuable safeguards for life and liberty of Convicts in cases involving capital Sentences, and this chapter only deals with the Sentence of death passed by a Sessions Court and does not deal with the death Sentence passed by a High Court as Section 374 CrPC, and Section 377 provides that such confirmation, or any new Sentence or order passed by the High Court, shall, when such High Court consists of two or more judges, be made, passed and signed by at least two of them. He writes that both of these provisions require no interpretation regarding whether a death Sentence passed by a Full Bench comprising of five judges of the High Court requires confirmation by another two judges of the same High Court. He further elaborates that when the High

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<sup>64</sup> *Ibid.*

<sup>65</sup> *Ibid.*

Court passes a death Sentence in its Original Jurisdiction, Chapter XXVII CrPC becomes redundant, but the Convict has the remedy of Appeal under Article 185(2)(b) of the Constitution or Section 411-A CrPC.<sup>66</sup>

He wrote that he has no hesitation in stating that no evidence was available on record to sustain Mr. Bhutto's Conviction, and the evidence of the material witnesses namely Mr. Kasuri, Masood Mahmood, Saeed Ahmad, Mr. Welch, and Ghulam Hussain is full of contradictions, and was not sufficient for awarding capital punishment to Mr. Bhutto. He writes that the case of Mr. Bhutto is a bitter example of unfairness, wherein both substantive and procedural laws were misapplied to please the then Martial Law authorities, and as a result, a great political leader was lost. He further writes that this case stands as a stark reminder of how legal systems are manipulated for political gains, leading to grave injustices, and public trust in the legal system being eroded. He writes that the loss of Mr. Bhutto was a blow to his supporters and to the nation.<sup>67</sup>

The Additional Note by Justice Afridi, who later became the CJP, was uploaded on the SCP's website on 17<sup>th</sup> December 2024.<sup>68</sup> He concurred with the Opinion of the Justice Shah about some parts of the Opinion, authored by CJP Isa, verged on reappraising evidence, exceeding the scope of SCP's Advisory Jurisdiction, under which the SCP can neither reappraise the evidence nor undo the final decision.<sup>69</sup>

He concurred with the Opinion by CJP Isa and the Additional Note by Justice Shah that pertains to the procedural due process and fair trial violations.<sup>70</sup>

He concurred with the view of Justice Rizvi that the observation of the CJP Isa that Article 185(2)(b) of the Constitution, and Sections 411-A and 526 of the CrPC do not

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<sup>66</sup> *Ibid.*

<sup>67</sup> *Ibid.*

<sup>68</sup> Supreme Court of Pakistan, *Reference No. 1 of 2011: Reference by the President of the Islamic Republic of Pakistan under Article 186 of the Constitution to Revisit the Case of Zulfikar Ali Bhutto, Reported as PLD 1979 SC 38–53: Additional Note Authored by Justice Yahya Afridi* (Islamabad: Supreme Court of Pakistan, 17 December 2024), [https://www.supremecourt.gov.pk/downloads\\_judgements/reference\\_1\\_2011\\_17122024.pdf](https://www.supremecourt.gov.pk/downloads_judgements/reference_1_2011_17122024.pdf) - Yes. 17 December 2024 is the correct date for Justice Yahya Afridi's additional note in Reference No. 1 of 2011.

<sup>69</sup> *Ibid.*

<sup>70</sup> *Ibid.*

permit the High Court to conduct a murder trial, is untenable. He agreed with the view of the Justice Rizvi that Chapter XXVII of the CrPC does not extend to death Sentences passed by the High Court in the exercise of its Original Criminal Jurisdiction.<sup>71</sup>

He elaborated that the Reference was filed against the backdrop of the restoration of judiciary and the proactive role of the restored judiciary in addressing the matters of public importance, and that the Reference was filed because of the facts disclosed in the interview and autobiography of CJP Nasim Hasan Shah.<sup>72</sup>

He explained that in the SCP judgement, CJP Nasim Hasan Shah rejected that the Trial of Mr. Bhutto was vitiated by bias of Justice Maulvi Mushtaq, who presided over LHC Bench that conducted the Trial, however, in an interview with journalist Iftikhar Ahmad for the program *Jawabdeh*, he described Justice Maulvi Mushtaq as an overt enemy of Mr. Bhutto, expressing that he should not have been part of the Bench. He further writes that CJP Nasim Hasan Shah revealed in his autobiography *Memoirs and Reflections* that his inclusion in the Bench to hear the Appeal of Mr. Bhutto was orchestrated by the Attorney General Sharifuddin Pirzada and Justice Maulvi Mushtaq, which shows that Justice Maulvi Mushtaq pursued the matter zealously even after the LHC had finally decided the case and the Appeal was *sub judice* before the SCP.<sup>73</sup>

He writes that the extraordinary political climate apparently influenced the justice which was inconsistent with the judicial independence, however, he admires the courageous dissents of Justice Dorab Patel, Justice Muhammad Haleem and Justice G. Safdar Shah.<sup>74</sup>

### ***Additional Note by Justice Muhammad Ali Mazhar***

The Additional Note<sup>75</sup> by Justice Mazhar was uploaded on the SCP's website on 31<sup>st</sup> January, 2026, and it is divided into thirteen

<sup>71</sup> *Ibid.*

<sup>72</sup> *Ibid.*

<sup>73</sup> *Ibid.*

<sup>74</sup> *Ibid.*

<sup>75</sup> Supreme Court of Pakistan, *Reference No. 1 of 2011: Reference by the President of Islamic Republic of Pakistan under Article 186 of the Constitution of Revisit the Case of Zulfiqar Ali Bhutto Reported as PLD 1979 SC 38—53: Additional Note Authored by Justice Muhammad Ali Mazhar* (Islamabad: Supreme Court of Pakistan, 31

parts. He writes in paragraph No.3 of his Additional Opinion that while the Opinion rendered under Advisory Jurisdiction may not be binding, it carries significant credence and persuasive value, and mentions in paragraph No.4 of his Additional Opinion that it was expounded in Reference No.2 of 2005 (PLD 2005 SC 873), which dealt with *Hisba Bill*, that in light of Articles 189 and 190 of the Constitution, the Opinion expressed by the SCP on a Reference under Article 186 is required to be esteemed by all organs of the State, and therefore, he writes that it would not be fair to say that the SCP's Opinion of under Article 186 of the Constitution has no binding effect.<sup>76</sup>

He further elaborated that while Section 536 CrPC empowers the High Court to transfer a case to try itself, but with certain conditions and parameters which were not fulfilled in Mr. Bhutto's case, and he was not given the notice of the transfer application, and he not only challenged the transfer application but also objected to the Bench trying the case.<sup>77</sup>

He writes that there were instances of altercations and sarcastic remarks from the Bench during the Trial which led Mr. Bhutto to believe that he could not have a fair trial, and repeatedly raised allegations of bias, but the bench was overzealous or under external pressure, continued with the trial, and awarded a maximum Sentence based solely on the evidence of an Approver without any other incriminating or circumstantial evidence. He writes that due to the probability of bias, judges should recuse themselves, because reposing public confidence in the judiciary is the yardstick by which the justice delivery system and its integrity are appraised, including adherence to the doctrine of *ex debito justitiae*.<sup>78</sup>

He writes that in Pakistan's history, it was the first ever murder trial conducted by a High Court, and was decided by a Bench of five likeminded judges, who unanimously agreed to award the death penalty, and Mr. Bhutto was treated as an unfavourite child of the law, because in case of apparent bias, the accused could not expect a fair trial.<sup>79</sup>

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January 2026). [https://www.supremecourt.gov.pk/downloads\\_judgements/reference.1.2011.31012026.pdf](https://www.supremecourt.gov.pk/downloads_judgements/reference.1.2011.31012026.pdf).

<sup>76</sup> *Ibid.*

<sup>77</sup> *Ibid.*

<sup>78</sup> *Ibid.*

<sup>79</sup> *Ibid.*

He writes that if the murder trial of Mr. Bhutto had been conducted by the Sessions Court and the death penalty awarded, he could have appealed before a Divisional Bench of the LHC, but since the trial was conducted by the LHC itself, his right to Appeal in a High Court was forfeited. He writes that the SCP, in order to ensure safe administration of justice, typically grants Leave to Appeal and provides ample opportunity for hearing and re-evaluate and revisit the awarding of death penalty, however, in the case of Mr. Bhutto, due to the direct Appeal being preferred under sub-article (2)(b) of Article 185 of the Constitution, instead of sub-article (3) of Article 185, at least one sure-shot expected right of Appeal with the Leave of the SCP was lost, and the solitary remedy that remained was to move a Review Petition alone after dismissal of Appeal by the SCP.<sup>80</sup>

He writes that the late CJP Nasim Hasan Shah, former CJP, in his interviews on print and electronic media, admitted that the Mr. Bhutto's Appeal was decided under coercion, leaving no doubt that it was in fact a judicial murder, and, thereby, violating his oath. He further writes that CJP Nasim Hasan Shaha retired on 14<sup>th</sup> April, 1994, but was first interviewed by journalist Mr. Suhail Warraich in 1996, which was published in *Jang Magazine*; and another journalist, Mr. Iftikhar Ahmed, interviewed him on 3<sup>rd</sup> December, 2003, for his TV show, aired on Geo TV Network. He further writes that the revelations made by him, after many years added fuel to the fire and were also incorporated in the Reference as eye-openers, as CJP Nasim Hasan Shah confessed in his interview with Iftikhar Ahmed, televised on Geo TV's programme *Jawabdeh*, that Mr. Bhutto's punishment could have been reduced; that judges were under external pressure; that Justice Maulvi Mushtaq was Mr. Bhutto's enemy; that he could have written a Dissenting Note; that Mr. Yahya Bakhtiar, representing Mr. Bhutto, had annoyed the judges; and that Mr. Bhutto should have given the benefit of doubt. These revelations, though belated, blew the whistle on the biases involved in the Trial and Conviction of Mr. Bhutto, exposing blatant violations of fair trial with the complicity of the judges conducting the Trial.<sup>81</sup>

He writes that normally, in cases where the High Court has confirmed the death penalty, SCP, in order to ensure the safe administration of justice, not only grants Leave but, at times, considers mitigating circumstances, altering the punishment

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<sup>80</sup> *Ibid.*

<sup>81</sup> *Ibid.*

without specific arguments, and sometimes, court even hints at this line of argument. He further writes that in the judgment of the Review Petition, the SCP recorded submissions by Yahya Bakhriar that, even if the Petitioner's Conviction were maintained, it was a fit case for the lesser penalty under Section 302 PPC, read with Sections 109 and 111 PPC, as the petitioner was guilty of only Abetment and was not present at the scene of the murder, however, these submissions were discarded for not being raised during the hearing of the Appeal, as the counsel was more focused on seeking Acquittal than pleading for mitigation of the Sentence. He writes that the SCP missed the train and failed to consider mitigating circumstances despite overwhelming material on record which could have justified an Acquittal or, at the very least, a conversion of the death penalty to life imprisonment, and this omission was quite tragic. He writes that SCP rendered its opinion almost after 13 years, it may be said, better late than never, but there was no plausible justification for the delay.<sup>82</sup>

He writes that no opinion was rendered by SCP on Question No. 4 of the Reference, framed by the SCP, which had a direct nexus with the doctrine of repentance, as no assistance was provided on this question. He further writes that this question was framed with reference to various verses of the Holy Quran, forming a substantial segment of the Reference, and should not have remain untouched or unanswered. He further writes that why the question regarding the doctrine of repentance was framed by SCP? Who had to or has to repent for the unfair and biased trial? Was it the departed souls who tried the case in the High Court? Those who heard the Appeal and Review? The Bench that entertained and framed the question? Or the Bench Members who rendered their Opinion years after the Reference was instituted? He moreover writes that it not only demonstrates some sort of remorse though not explicitly articulated but it also implies a recognition of repentance for the failure to ensure a fair trial and due process, even as Question No. 4 of the Reference remains unanswered.<sup>83</sup>

## Conclusion

Historic wrongs can be committed through judicial verdicts, but the SCP had an opportunity to correct a historic wrong committed

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<sup>82</sup> *Ibid.*

<sup>83</sup> *Ibid.*

when Mr. Bhutto faced injustice in two courts.<sup>84</sup> However, historic wrong in this case was partially admitted to the extent that requirements of due process and fair trial were not met, however, SCP's Advisory jurisdiction was narrowly interpreted except Justice Mazhar's Additional Opinion. SCP should have availed the opportunity and posthumously acquit Mr. Bhutto, but the judges limited themselves by flawed and narrow interpretation of SCP's Advisory Jurisdiction as the said limitation on the Advisory Jurisdiction was self-imposed by the judges of the SCP.

Justice Shah questioned the maintainability of the Reference, but then discussed Transitional Justice in his Additional Opinion, but did not implement it in spirit and essence. The Reference was filed due to the facts disclosed by Justice Nasim Hassan Shah in his interview, while the Conviction was based upon the evidence of Approver. The Judicature not only helped strengthen the rule of General Zia, but Chief Justices of all provincial High Courts accepted his request to become the Acting Governors of their respective provinces.<sup>85</sup>

The Opinion could also have discussed in great detail about rejecting the plea of Mr. Bhutto that during the recording of his statement under Section 342 CrPC, the Trial Court failed to put some pieces of evidence to him, but the SCP held that no prejudice has been caused to him, not only for the reason that he or his counsel were fully aware of the entire evidence led by the prosecution but also because he had in any case refused to answer most of the questions put to him under a declared stance deliberately adopted by him, therefore, in these circumstances the omission, if any, would stand fully cured under Section 537 CrPC.<sup>86,87</sup>

There were many attempts to save the life of Mr. Bhutto, including appealing to General Zia for executive clemency but it

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<sup>84</sup> Ramsey Clark, 'Injustice Against Bhutto in 2 Courts', *New York Times*, 14 February 1979. <https://www.nytimes.com/1979/02/14/archives/injustice-against-bhutto-in-2-courts.html>

<sup>85</sup> Stanley Wolpert, *Zulfi Bhutto of Pakistan: His Life and Times* (Karachi: Oxford University Press, 2007), 304.

<sup>86</sup> Sani H. Panhwar, *Zulfikar Ali Bhutto Trial Documents* (2021), 242, <https://bhutto.org/wp-content/uploads/2021/08/Zulfikar-Ali-Bhutto-Trial-Documents.pdf>

<sup>87</sup> *Zulfiqar Ali Bhutto v. The State*, Pak Legal Database 1979 SC 53, <https://www.paklegaldatabase.com/judgements/page/2218/>

was being said at that time ‘one grave, two men’,<sup>88</sup> thus, making it difficult to hope for any mercy from General Zia.

Following the SCP’s Opinion, Resolution No.566 was passed by the Senate, embracing the historical Opinion of the SCP in the Presidential Reference, and stated that the SCP has acknowledged that Mr. Bhutto’s execution was a judicial murder and he did not receive a fair trial according to the law.<sup>89</sup>

The Opinion of the SCP in Reference No.1 of 2011, provided the SCP with an opportunity to correct a historic wrong; win back the trust of the people; strengthen the federation; repair the damage done to the democracy of Pakistan; reinforce constitutional values; expose the malice on the part of the judges who were entrusted to deliver justice but failed miserably; and allow the people of Pakistan especially Sindh, to heal and forgive.

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<sup>88</sup> ‘One Grave for Two Men’, *Time*, 19 February 1979, <https://time.com/archive/6846101/world-one-grave-for-two-men/>.

<sup>89</sup> Resolution No. 566, *Senate of Pakistan*, 8 March 2024, [https://senate.gov.pk/uploads/documents/resolutions/1710219438\\_510.pdf](https://senate.gov.pk/uploads/documents/resolutions/1710219438_510.pdf).