

PAKISTAN AND ALI BHUTTO



Reproduced By:
Sani Hussain Panhwar
Member Sindh Council, PPP

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AND

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**Friends of Pakistan
Colombo – Sri Lanka
(1978)**

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THE CONSTITUTION AND ARMY

The Armed Forces of Pakistan stated they acted under the constitution in coming to the aid of civil power during the first round of 1977 March-June post-election violence of the Pakistan National Alliance of nine opposition parties. Article 245 of the constitution was clear in that regard. The pledge given by the armed forces to the Bhutto Government tacitly accepted the legality of the Government which was not undermined, though serious individual electoral malpractices had taken place on both sides.

Retired Air Marshal, Ashgar Khan of Tehrik Istqal Party in May 1977, sent out a call to the armed forces to subvert their loyalty in the midst of internal chaos, excessive violence and continued acts of sabotage calculated to grind the administration to a halt.

Zulfikar Ali Bhutto tried hard for a restoration of political normality through dialogue with the opposition which insisted on the exit of the Prime Minister and holding of fresh general elections outright. When the dialogue took place and they found the gap narrowing between their demands for elections and other major concessions, withdrawing Section 144 in favour of normal political life and ending the state of emergency, their demands rose to 32. While Bhutto persisted in having dialogue they reverted again to the original three including the instant exit of the Prime Minister which was not possible according to the constitution since it safeguarded the creation of a political and administrative vacuum in the country. He offered to have a referendum by amending the constitution, willing to risk the sacrifice of his post rather than the sacrosanct constitution which Pakistan had, for the first time in its history and one approved by all political parties. This was also rejected.

On 6th May 77, the Federal Government issued a notification delegating to the chiefs of Naval and Air Staffs and officers authorized by them its powers under the Defence of Pakistan Rules in areas where the armed forces of Pakistan were acting in aid of civil power. This was different from previous Martial Law Administration. The expectation of the PNA "movement" to eliminate the constitution which would have led to secessionist moves was thus averted.

Violence which the Army quelled in April in Karachi, Lahore, and Hyderabad under the limited declaration of the Martial Law, reared its head in June and July, Renewed talks on conditions under which fresh General Elections in Oct. 1977 should be held, and on the powers of an interim Government entered a stalemate issue and a fresh threat of violence was made. This time the Military hierarchy stated their inability to "act in aid of civil power" which was an *ad hoc* limited

Marshal Law process. The grounds were that PNA elements had derided the armed forces. A sudden decision was taken to prevent likely civil war by taking Bhutto into “protective” custody and establishing Martial Law Administration on 5th July. 1977.

The Army has to meet any challenge of crisis, being inherently a crisis organization. The crisis of external aggression and internal subversion has to be met by any army in the world as an inherent demand and is not expected to be ultrasensitive to undeserved jibes, abuse and blame. The objective realities of the Pakistan situation in June-July 1977, does not seem to have warranted the refusal of the Army to meet the June threats of resurgence of violence. The army was commissioned by the Bhutto Government in full faith to quell post election violence which had developed to overwhelming proportions, causing much damage to the economy and security of the life of citizens. Civil agencies could no longer contain the disturbances, since even the mosques were turned into violence launching pads. The opposition believed that if the army failed to respond to the Government’s commission, it would succumb to their demands. The Army had no constitutional provision to say no to such it request for the constitution of Pakistan passed with the unanimous consensus of all parties had explicitly defined the role of the armed force in a way characteristic of its avowed democratic policy Bhutto had tried to end the “garrison state” where the military had for nearly two decades the upper hand in all political and national matters, (1959-70). The Bhutto regime had considerably changed the colour and structure of the military state. The 1973 constitution of the Islamic State of Pakistan sought to insulate the state from reversion to a military or praetorian regime.

But on July 4th, the Army chief was not prepared to assure Bhutto it would once more maintain law and order in the event of an outbreak of violence in case the talks collapsed. Gen Zia-ul Haq stated later that “he came to the conclusion that the time for military action had come as the talks had collapsed.” He assured the Press Conference that Mr. Bhutto had done his best for settlement, while the PNA demand for a “Super Council” to overcome the implementation of the Accord, stemmed from mistrust.

Together both Bhutto and Gen. Zia up to July 1977 shared the same commitment to national sovereignty, the same abhorrence of provincialism, the same cherishing of the constitution as an embodiment of fundamental law, furnishing specially in the peculiar historical reality of Pakistan, a central point of allegiance, an equilibrium between central authority and the provincial autonomy of constitutive units. The (ex-NAP) NDP headed by Wali Khan, once held there was no Pakistan but only four provinces. Gen Zia assured that fresh elections will be held in “the light of the 1973 constitution and he made it very clear at the outset

of his temporary Martial Law regime that the constitution was "only in abeyance but not abrogated."

During the earlier round of violence, 262 branches of nationalized banks were attacked and 25 burnt. Urban transport had a set back when National Motors in Karachi was set on fire, 1000 chassis were burnt.

On April 27th 1977, the , Chairman of joint Chiefs of Staff Committee, Gen. M. Sheriff, Chief of Army Staff Gen. M. Zia-ul Haq, Chief of Naval Staff Admiral Mohamed Sheriff and, Chief of Air Staff Air Chief Marshal Zulfikar Ali Khan issued a statement: "We wish to make it absolutely clear that the Pakistan Army, Navy and Air Force are totally united to discharge their constitutional obligations in support of the legally constituted Govt. and to, fulfill the pledges their officers and men have taken to defend the country's independence even to the peril of their lives."

They farther stated that the armed forces have to be particularly vigilant when the internal turmoil and consequential state of instability offers ready temptation to the unscrupulous foreign` elements, to take advantage of the situation.

When by May 3rd 1977, the Armed Forces had brought about some peace and order in the ravaged cities of Karachi, Hyderabad and Lahore and created an environment for politicians to talk, the retired Air Marshal Asghar Khan tried to subvert the loyalty of the Armed Forces and preached sedition calling upon them to subvert the Constitution. This was in pursuance of the opposition objectives of depriving the country of the Federal centre by subverting its important instrument (Constitution) for defending its sovereignty and integrity. On May 11th in the National State Assembly Bhutto said "I was forced to use the armed forces to ensure Karachi, Hyderabad and Lahore did not go up in smoke."

Bhutto released from Protective Custody

Released from protective custody in August, Bhutto decided to visit Lahore on August 8th 1977, getting a mammoth reception at the Lahore Air Port. Thousands came in cycles and scooters, while thousands had walked to the Air Port. Scores had climbed roofs of several buildings. The Police had baton charged and tear gassed the crowd to limit the crowd inside and outside the Air Fort. Accusing the PPP elements of violence at the Air Port and roads leading to it, the PNA Sec-Gen, called for a strike in Lahore on August 10th. Violence, looting and arson once more erupted. The catalyst which evoked Martial Law had been the PNA call for a strike. The pre-election campaign for the October polls had already begun. The call for a strike was a direct contravention of the MLA ban on strikes. The strike was later called off.

When Bhutto reached Karachi by train nothing like that human avalanche had converged on any Railway Station in the historical memory. The train was diverted to another station.

On August 12th General Zia addressed the nation and expressed the fear of an inspired move to sabotage the October polls. Ghaffar Khan (Frontier Gandhi) made an appeal the same month to Gen. Zia to place Bhutto on trial and drop the Hyderabad Tribunal. Quite irrelevant to the issues involved in a cry for fresh elections was the insistence on the release of Wali Khan the protagonist of Paktoonistan to fight elections in October, Gen. Zia in an interview to the BBC correspondent on August 23rd, 1977 stated specifically that the Hyderabad trial, (left out even in the last PPP-PNA Accord) was to be left to the new elected Govt. to decide about its procedural process. Most of the nominees for the NWFP by the PNA were those who hold secessionist views. He was genuinely opposed to any interference with this trial, until much later in the year.

BHUTTO DETAINED

Bhutto and 10 of his associates were detained at various places on Sept 17th under Martial Law Order No. 12 of 1977 and it was later announced that Bhutto would be tried by a Military Court.

NUSRAT BHUTTO

An ardent worker for human rights, rural welfare worker, organizer of the women's wing of the PPP, Madam Nusrat Bhutto, wife of Zulfikar Ali Bhutto, opened the election campaign in Rawalpindi. It was attended by over 2 lakhs, although the Police stopped all buses and lorries 40 miles away. She categorically asserted her husband's "unlawful arrest" would not eliminate the PPP, at the forthcoming elections in October.

HABEAS CORPUS PETITION

On Sept. 20th, Nusrat Bhutto, acting Chairman of the PPP registered a Habeas Corpus petition against the order of detention of Mr. Bhutto and 10 of his associates in the Supreme Court at Rawalpindi, under article 18.4 (3) of the 1973 Constitution, raising several questions of constitutional import. Notice to the Attorney General was also issued. Yahya Bakhtiar, former Attorney General, registered the petition under Article 183 of the Constitution which dealt with the enforcement of Fundamental Rights.

The Supreme Court admitted for full hearing the petition challenging the detentions and fixed September 25th for the hearing and ordered the 11 detenus to be brought to Sihala Rest House from the jails and respective places of detentions until the disposal of the petition.

On September 28th Mr. A. K. Brohi, Senior Advocate, Supreme Court, filed a miscellaneous application that the Federation of Pakistan be impleaded as a part and the Court should first determine whether in reference to Begum Bhutto's petition filed under Article 183 (3) question Martial Law Order 12 or any order made by the Chief Martial Law Administrator. He intended to establish the *de facto* immutability of Martial Law. On September 23rd Gen, Zia issued CMLA Order No, 6 of 1977 nullifying amendments to the Constitution affecting the independence of the Judiciary. As an outcome of this promulgation the office of Chief Justice Yaqub Ali whose term had been extended by an amendment fell vacant and the next most Senior judge, Justice Anwar al-Haq was appointed Chief Justice.

On September 22nd Yahiya Bakhtiar, Counsel for Bhutto submitted in the Lahore High Court that it was not properly constituted in accordance with the Law and could not hear criminal cases against Bhutto or any other matter. These objections concerned the complaint filed by Iftikhar Ahmad Tari against Bhutto and 21 others regarding the abduction and detention at Azad Kashmir Dalai Camp. Mr. Justice Aslam Riaz Hussain the duly appointed Chief Justice of Lahore High Court was on July 6th appointed Governor by the Chief of Armed Staff also claiming to be the Chief Martial Law Administrator. Mr. Justice Hussain continued to be the Chief Justice of the Lahore High Court on July 13th by a Law Division Notification and on the advice of the Chief of the Armed Staff for which there was no sanction in the Constitution and contrary to the Provision of Article 48 of the Constitution appointed Mr. Justice Mushtaq Hussain in place of Mr. Justice Aslam Riaz Hussain as acting Chief Justice who continued to hold office of Chief Justice thereafter without taking before the Governor the oath in the form set out in the 3rd schedule of the Constitution which is a mandatory requirement of Article 194 of the Constitution. Moreover, he ceased to be Acting Chief Justice on 16th July when he was appointed through a Parliamentary Affairs Division Notification, the Chief Election Commissioner. Article 216 of this Constitution lays down that the Chief Election Commissioner shall not hold any other office of profit in the service of Pakistan. Hence the Lahore High Court is without a Chief Justice or duly Appointed Chief Justice since July 16th and was not a High Court as required by Article 192 of the Constitution and therefore *coram non judis* and could not hear the complaint or any other matter.

The Supreme Court on 25th September made the Federation on A.K. Brohi's Petition, a party to the writ petition filed by Begum Nusrat Bhutto challenging the detention of Bhutto and 10 other PPP Leaders.

The Attorney General Pirzada appeared as the Law Officer of the Court and submitted that the proclamation of Martial Law is justifiable on the ground of writ and state necessity and on the basis of *salus populi est supreme lex* both doctrines being a part of the unwritten law of Pakistan.

Yahya Bakhtiar, Counsel for Begum Bhutto, said Mr. Brohi in his application had made highly serious, unfair and malicious allegations against Mr. Bhutto and wished that an opportunity be given to him to answer allegations before the Court and the Court should pass an Order on his application without hearing the detenues. Mr. Bakhtiar submitted Brohi should not be permitted to argue his application in the absence of Bhutto. Martial Law Order No, 12, he said had no sanction under the Law and the Constitution. The detention was *mala fide* with the intention of not allowing Mr. Bhutto to effectively launch the election campaign and lead his party, showing the partiality and prejudice of the respondent. The Chief of Staff whilst stating that Bhutto would get a fair trial in a Military Court had stated in various local and foreign press interviews "Bhutto was a murderer and guilty of breach of trust", already giving his verdict. "He was partisan and hostile to his client" said Bakhtiar. The matter was *sub judice*. The Pakistan Economist of Oct. 1977. Page 6, wrote: "No military takeover can acquire a *de jure* position. Law of necessity is its only justification".

Begum Nusrat Bhutto's Petition
Constitution Petition No. 1 of 1977

Petitioner:	Nusrat Bhutto
	Versus
Respondents:	(1) The Chief of the Army Staff (2) The Federation of Pakistan
For the Petitioner:	Yahya Bakhtiar, Sr. Advocate Ghulam Ali Memon,
AOR Respondent:	No. 1 - Not represented No. 2 - A. K. Brohi Sr. Advocate Riaz Ahmad, Asst. Advoc. Gen. Punjab Fazal-i-Hussain AOR
Law Officers of Court.	Sharifuddin Pizada, Attorney General Dilawar Mahmood, Dep. Attorney Gen, M. Afzal Lone, Advocate
Dates of hearing	20- 9-77, 25-9-77, 26-9-77, 1-10-77, 10-10-77, 12-10-77, 20-10-77, 22-10-77,

26-10-77 29-10. 77, 31-10, 77, 1-11. 77

Petition Points

(1) Bhutto and 10 leaders of PPP were arrested in the early hours of 17-9-1977 and detained in various prisons in the fore provinces.

A. K. Brohi's Submissions

(1) No Court, High or (Supreme, can question the validity of any Martial Law Order or Regulation or any Order made by Martial Law Authority.

(2) Under Clause 3 of Article 2 of Laws (Continuance in Force) Order the right to enforce the fundamental rights stands suspended.

(3) The CMLA Proclamation of 5-7-1977 has displaced albeit temporarily the old legal order. The grundnorm of the old legal order provided by the 1973 Constitution has given way to a new one and to that extent jurisdiction of Superior Court is allowed.

(4) According to the doctrine of "revolutionary legality" whenever a Constitution and the national legal order under it are then disrupted by an abrupt political change not within the contemplation of the Constitution, such a change is called a revolution which term also includes *coup d'état*, He quoted Dosso case (PLD 1958 SC 533) and Asma Jilani case, one holding that every revolution once successful is legal adding that success was denoted by acquiescence which makes it lawful and the other holding that a revolution as such is illegal. The supreme Court in the former case should have decided the controversy of simply holding that as a matter of constitutional fact a new legal order has come into being in the country,

(5) The unconstitutional and illegal governance of Pakistan by the detenus and their associates terminated on the eve of Martial Law

(6) The detenus and associates were fomenting civil war to frustrate fair elections. To embark on a detailed factional inquiry is outside the scope of these proceedings.

(7) Massive rigging took place during elections on 7-3-1977 master planned, conceived, directed and implemented by the then Premier Z. A. Bhutto.

(8) Therefore the Bhutto Government lost whatever constitutional validity it earlier possessed and there were widespread disturbances.

(9) Bhutto prolonged the dialogue with PNA leaders in a mala fide manner so that the specter of civil war loomed ahead,

(10) Since imposition of Martial Law on 5-7-1977, peace and quiet has been restored and the national economy restored to normalcy.

(11) The CMLA intended to hold elections but the postponement of October elections is in response to public demand for enforcing accountability in relation to the PPP top leadership.

He further stated :-

“In Pakistan the real sovereign is God Almighty and the state of Pakistan has limited power of which it is a recipient as a trustee or delegate. Therefore the will of one man was repugnant to the groundnorm of Pakistan where no single man could be the sole repository of state power”.

Submissions of Sharifuddin Pirzada (AG)

(1) Supported Brohi’s submissions that the change in Pakistan on 5-7-77 was not usurpation of state power by the CAS, but intended to oust the usurper and the illegally constituted legislative assemblies.

(2) The present situation was not governed by the Court dicta on the Dosso and Jilani cases, as in those cases, the change brought about by military intervention was of a permanent nature whereas the avowed purpose of the CMLA is to be in power only for a limited period so as to hold free and fair elections for the restoration of democratic institutions.

(3) He did not support Brohi’s revolutionary legality views on the rejection of Kelson’s pure theory of law in Jilani’s case relating to the metalegal character of the charges and birth of a new groundnorm. Effectualness alone to the exclusion of all considerations of morality and justice cannot be made a condition of the validity of a new legal order.

(4) He held the action of the CMLA is fully attracted the doctrine of state necessity and of *salus populi est supreme lex* and the Laws

(Continuance in Force) Order 1977 must be treated as a supra constitutional instrument now regulating the country's governance.

(5) The doctrine of necessity is also recognised in the Holy Quran.

(6) All actions of CMLA to meet the exigencies of the situation and to prepare the country for future elections to restore democratic institutions must be accepted by the Courts as valid.

(7) Therefore the Court could not grant any relief to detenus under Article 1843 or the Constitution as the fundamental rights stand suspended.

An extract from the Supreme Court Judgment regarding the protest movement of the PNA reads:

“As to the magnitude of the movement, certain salient facts have already been stated, namely that Mr. Bhutto was obliged to call in the Armed Forces in aid of the civil power in a large number of cities and towns of Pakistan owing to the fact that the civil authorities were unable to cope with the disturbances.

“As regards the casualties suffered and the damage caused to public and private property, Mr. Sharifuddin Pirzada, the learned Attorney-General, has invited us to take judicial notice of the submissions made before the Supreme Court by the former Attorney-General Mr. Yahya Bakhtiar, who now appears for the petitioner, Begum Nusrat Bhutto, on the 6th of June 1977.

While arguing an appeal on behalf of the Federal Government against the decision of the Lahore High Court declaring a unlawful the imposition of local Martial Law by the Armed Forces of Pakistan in pursuance of a direction issued by the Federal Government under Article 245 of the Constitution, Mr. Yahya Bakhtiar gave certain facts and figures in justification of the action taken by the Federal Government, He stated that during the 2 ½ months of agitation 4,653 processions were taken out by the public including 248 processions by women, 92 by the members of the legal profession, 18 by *Ulema* or religious scholars, 248 by students and 57 by boys and children According to Mr. Yahya Bakhtiar, these figures related to the period from March 14 to May 17, 1977.

Mr. Yahya Bakhtiar further informed the Court on that occasion that 241 civilians, belonging to both the political parties, were killed, and 1195 were injured, whereas nine members of the security forces were killed and 531 of them were injured. There were 162 acts of sabotage and arson, besides large scale destruction of property as follows:

Installations 18; shops 74; banks 58; vehicles on the road 1,622 (they did not include the vehicles burnt in the Republic Motors, Karachi): hotels 7; cinemas 11; offices (public and private) 56; railways, whether bogies were burnt or otherwise damaged 27.

These losses and casualties, which according to Mr. Yahya Bakhtiar were unprecedented, appear to me to lend full support to the submission made by Mr. Sharifuddin Pirzada that the Protest movement launched by the Opposition against the alleged massive rigging of the elections organised by Mr. Z. A. Bhutto had assumed very serious proportions indeed.

On the Submissions of Brohi the Supreme Court held that Brohi's apprehension that the Court decision in Jilani's case had the effect of rendering illegal all the successive Governments of Pakistan and the Constitutions framed during their time, was not well founded and in any case stood repealed by decisions of the Courts (Asma Jilani's case). Might was not Right,

The Bench would in this case proceed on the assumption that the 1973 Constitution was validly framed and was in force when the Chief of the Army Staff proclaimed Martial Law on 5-7-1977. The theory of revolutionary legality as propounded by Brohi which the Bench held to be highly inappropriate had no application of relevance to the current Pakistan situation where the phenomenon was more a constitutional deviation rather than a revolution.

The Summing up was as follows:

(i) That the legal character and validity of any abrupt political change, brought about in a manner not contemplated by the pre-existing Constitution or Legal Order, cannot be judged by the sole criterion of its success or effectiveness as contemplated by Kelsen's pure theory of law. Not only has this theory not been universally accepted, or applied, it is also open to serious criticism on the ground that, by making effectiveness of the political change as the sole condition or criterion of its legality, it excludes, from consideration sociological factors of morality and justice which contribute to the acceptance of effectiveness of the new Legal Order. The legal consequences of such a change must therefore, be determined by a consideration of the total milieu in which the change is brought about including the motivation of those responsible for the change and the extent to which the old Legal Order is sought to be preserved or suppressed.

(ii) That in any case the theory of revolutionary legality can have no application or relevance to a situation where the breach of legal continuity is of a purely temporary nature and for a specified limited purpose. Such a phenomenon can more appropriately be described as one of constitutional deviation rather than of revolution:

(iii) That, examined in this light, the Proclamation of Martial Law on the 5th of July 1977, appears to be an extra constitutional step necessitated by the complete break down and erosion of the constitutional and moral authority of the Government of Mr. Z A. Bhutto, as a result of the unprecedented protest movement launched by the Pakistan National Alliance against the alleged massive rigging of elections to the National Assembly, held on the 7th of March, 1977. It was a situation for which the Constitution provided no solution, and the Armed Forces had, therefore, to save the country from further chaos and bloodshed, to safeguard its integrity and sovereignty, and to separate the warring factions which had brought the country to the brink of disaster.

(iv) That the imposition of Martial Law, therefore, stands validated on the doctrine of necessity and the Chief Martial Law Administrator is entitled to perform all such acts and promulgate all legislative measures which have been consistently recognised by judicial authorities as falling within the scope of the law of necessity

(v) That it has also become clear from a review of the events resulting in the culmination of Martial Law, and the declaration of intent made by the Chief Martial Law Administrator, that the 1973 Constitution still remains the supreme law, subject to the condition that certain parts thereof have been held in abeyance on account of State necessity and the President of Pakistan as well as the superior courts continue to function under this Constitution. In other words, this is not a case where the old Legal Order has been completely, suppressed or destroyed, but merely a case of constitutional deviation for a temporary period and for a specified and limited objective, namely, the restoration of law and order and normalcy in the country, and the earliest possible holding of free and fair elections for the purpose of restoration of democratic institutions under the 1973 Constitution.

(vi) That, accordingly, the superior courts continue to have the power of judicial review to judge the validity of any act or action of the Martial Law Authorities if challenged in the light of the principles underlying the law of necessity as set out in this judgment. Their powers under Article 199 of the Constitution thus remain available to their full extent, and may be

exercised as heretofore, notwithstanding anything to the contrary contained in any Martial Law Regulation or Order; and

(vii) That the provisions contained in Clause (3) of Article 2 of the Laws (Continuance in Force) Order, 1977, suspending the right to enforce Fundamental Rights are valid for the reason that the situation prevailing in the country was obviously of such a nature as to amount to an Emergency contemplated by Clause (1) of Article 232 of the Constitution, and the right to enforce Fundamental Rights could, therefore, be legitimately suspended by an Order of the kind which could have been made under Clause (2) of Article 233 of the Constitution.

As a result, the present petition fails and is hereby dismissed. However, it will be for the detenus, if so advised, to move the High Courts concerned under Article 199 of the Constitution.

Before parting with this judgment, it is necessary to refer to certain misgivings and apprehensions expressed by Mr. Yahya Bakhtiar learned counsel for the petitioner, to the effect that the postponement of the elections scheduled to be held on the 18th of October 1977 has cast a shadow on the declared objectives of the Chief Martial Law Administrator. After seeking instructions from his client, Mr. A. K. Brohi has informed the Court that the Chief Martial Law Administrator intends to hold election as soon as the process of the accountability of the holders of public offices is completed, and the time factor depends upon the speed with which these cases are disposed of by the civil courts concerned. The learned Attorney-General has stated at the Bar that, in his opinion, a period of about six months is needed for this purpose, and thereafter it will be possible to hold the elections within two months.

While the Court does not consider it appropriate to issue any directions as suggested by Mr. Yahya Bakhtiar, as to a definite time-table for the holding of elections, the Court would like to state in clear terms that it has found it possible to validate the extra-constitutional action of the Chief Martial Law Administrator not only for the reason that he stepped in to save the country at a time of grave national crisis and constitutional break down, but also because of the solemn pledge given by him that the period of constitutional deviation shall be of as short a duration as possible, and that during this period all his energies shall be directed to yards creating conditions conducive to the holding of free and fair elections, leading to the restoration of democratic rule in accordance with the dictates of the Constitution. The Court, therefore, expects the Chief Martial Law Administrator to redeem this pledge, which must be construed in the a nature of

a mandate from the people of Pakistan, who have, by and large, willingly accepted his administration as the Interim Government of Pakistan.

In the end, we would like to express our deep appreciation for the valuable assistance rendered by the learned Attorney-General for Pakistan Mr. Shariludding Pirzada, and the learned counsel for the parties, namely. Mr. Yahya Bakhtiar for the petitioner and Mr. A. K. Brohi for the respondent in the decision of this case which has raised difficult and complicated questions of constitutional law.

(Announced Lahore)
November 10, 1977.

Sd / C. J.

BHUTTO'S DEFENCE

Many Sri Lankans who have, after Mrs. Sirima Bandaranaike's appeal to Pakistan's CMLA to stay the death sentence, tried to gather material giving both sides of the Pakistan situation, have received only a one sided document from the Embassy of Pakistan in Sri Lanka.

Bhutto's rejoinder to the reply of the Respondent, The Chief of Army Staff of Pakistan was partly blacked out even in Pakistan.

We give below lengthy extracts from Zulfikar Ali Bhutto's rejoinder dated 26th October, 1977.

In the Supreme Court of Pakistan, Rawalpindi.
Original Jurisdiction Re: Constitutional Petition No. 1-R of 1977.
Petitioner Begum Nusrat Bhutto, Respondents Chief of Army Staff etc.

IN THE SUPREME COURT OF PAKISTAN RAWALPINDI ORIGINAL JURISDICTION

**Re: Constitutional Petition No. 1-R of 1977,
Extracts from Zulfikar Ali Bhutto's Reply to Gen. Zia's**

2nd Statement.

Dated 26th October, 1977.

The Respondent, a functionary of the State under the Constitution of 1973 which he had solemnly sworn to uphold as it embodied the will of the people, could not promulgate the Laws (Continuance in Force) Order or any other Regulation or Order in violation of the Constitution of the Islamic Republic of Pakistan 1973. He could not superimpose his own will over the will of the people. His attempts to subvert the Constitution after violating his solemn oath make him guilty of the offence of high treason. The commission of this offence, and feeling of guilt and fear of retribution have been haunting him like a nightmare and all his actions orders and statements are aimed at avoiding the day of reckoning. The entire Nation is being punished because it has demonstrated its unwillingness to accept his will and whim and for asserting its will as embodied in the Constitution of 1973. The Respondent is desperately fighting a losing battle against his own

Nation He should be well aware of the fact that the people of this Ideological state Shall never permit a usurper to impose his will over the will of the people or permit him to nullify the ideals, aspirations and expectations to be achieved by them through their duly elected and chosen representatives. He shall never be permitted to 'suppress' the Constitution of the Islamic Republic of Pakistan along with the corner stone of this edifice that Sovereignty belongs to Almighty Allah alone and is to be exercised as a sacred trust by the people of Pakistan through their chosen representatives. The Respondent has the audacity to assert that he has effectually suppressed this immutable principle of the Constitution and yet claims that he is a Soldier of Islam.

His further claims that he is the sole law-giver in this promised land who is not bound ether by his oath to uphold the Constitution or by the Constitution itself Embezzlement of official funds for personal use and benefit to misappropriation of financial aid by friendly countries for charitable purposes were made without making any effort to discover the truth of these matters. After the Rejoinder supported by documentary evidence was filed on 18th October, 1977 to prove that not a penny of official funds or money received for charitable purposes from the Ruler of a friendly country was used for my personal benefit or for the benefit of my family members, decency demanded some expression of regret for the false allegations broadcast to the whole world maligning not only me as an individual but the Prime Minister of Pakistan who had enhanced the prestige of the country as Chairman of the Second Islamic Summit conference, as a bold spokesman of the Third World and in every other field of International affairs. Pakistan's voice began to be heard with respect in all International Forums The Respondent's personal venom and vendetta against me has caused an irreparable damage to the image of Pakistan by deliberately making false and malicious accusations of a very petty nature an propagating these through our embassies and international Press throughout the World.

The so called mosaic of events was in fact a patch-work of false and concocted stories of alleged crimes intended to malign me and my colleagues on the one hand and to justify imposition of Martial Law and abrogation of the Constitution on the other.

I want to make it clear to this Hon'ble Court that my attitude and my defence has been predicated on the pillar of national interest. The petition in this Hon'ble Court was filed by Begum Nusrat Bhutto and her prayer for relief was sought on legal ground. The Respondent, instead of confining this position to legal points and to the minimum of political issues or 'meta legal' issues, chose in this wisdom, to malign me and my Government and some of my colleagues in the darkest and ugliest hues and colours. The Respondent filed a written statement of over thirty pages with numerous annexures to make me the target of the worst

and meanest vendetta that has been unleashed in the history of our country. It was not a written statement. It was an essay in abuse and lies. Instead of being a legal document worthy of this Hon'ble Court's attention, it was political pornography.

As a public figure, having held the highest elective offices in the country and as a political leader of national stature it was my irksome duty to place the truth on the record of this Hon'ble Court. What is more, this Hon'ble Court will remember that when I had the honour of appearing before it on the 22nd October, 1977 at Rawalpindi. I immediately complied with the observations of the Hon'ble Judges whenever they deemed that a certain point need not be pursued further on the ground of relevance.

As a matter of principle, I do not indulge in political aggression. I believe in keeping political options open provided the options are reconcilable with my convictions and national interest. However, if political aggression is committed against me or my Party and the aspiration of the people, I believe in a decisive counter attack. In this approach I have been influenced by the thought of Mao Tsetung. The Respondent committed repeated political aggressions against me culminating thus far in the humiliating manner of my arrest on September, 3, 1977 and in the obnoxious and sordid Written Statement filed by the Respondent in this Hon'ble Court in this petition. Still, I bear no personal malice towards the Respondent. In contrast the Respondent has turned his personal malice against me with a malice towards the Nation by depriving the people of their inalienable rights. The Respondent has turned his personal bitterness towards me into a frightful bitterness towards the people of Pakistan by denying them the right to choose their leaders through democratic means. In his blind hatred and obsession towards me, the Respondent is turning his personal vendetta against me into a vendetta against Pakistan. In short the Respondent is suffering from 'Bhutto phobia'. My rejoinder did not reveal many of the Respondent's machinations. My rejoinder was written in constraint insofar as it did not reveal all the chicaneries of the Respondent. I thought better sense would prevail and that the respondent would get the message and maintain some poise, some equilibrium, and some sense of balance. But alas, being intoxicated by power, the Respondent's reply goes beyond the reckless and irresponsible ambit of his written statement. Not only the people of Pakistan, but people much farther than the frontiers of Pakistan have their eyes fixed on the current developments in our country. In these circumstances I cannot keep silent. If the Respondent had stopped telling lies about me, I would have stopped telling the truth about him, since the Respondent persists in continuing to tell lies about me I am constrained to pursue to tell the truth about him.

All my submissions are based on concrete facts I am afraid it is the Respondent who is not the respecter of truth. His written statement did not contain an obol of truth His reply under reference does not contain a scintilla of truth. In the last four months the Respondent has been walking on the broken glass of the crystal of promises and pledges he has unabashedly destroyed one by one since that fatal day in July. What record does the Respondent want to keep straight? Unfortunately, the Respondent does not have any conception of the power of reason. His thought and action, his pronouncements and decisions are intrinsically inimical to rationalism. A man can fall from power, but when a man falls in the estimation of his people by deceiving them, by making false promises to them, by treating them with contempt, there can be no greater fall.

The first part of paragraph four is important as it admits that the Armed Forces recognized by Government to be the legal Government of Pakistan. The second part is incorrect. I do not want to mention names to avoid embarrassing the other members of the so-called Military Council. The Respondent should neither drag in the other senior officers of the Armed Forces nor the institution of the Armed Forces in this odyssey. He is the lone warrior. In his speech on July, 5th, 1977, the Respondent assumed full and sole responsibility for his illegal action. He said and I quote his words 'the process of changeover has been accomplished smoothly and peacefully. All this action was executed on my orders'. If all this action was executed on the Respondent's orders, he should not make a vain endeavor to tarnish with the brush of criminal culpability the other officers of the institution of the Armed Forces. The Respondent and the Respondent alone is responsible for the heinous crime of treason. The peoples' conflict is with the Responder. Hence, this petition is against the Respondent. Having explained the position, I want to state most emphatically that I did not request the Respondent to give the statement of 28th of April, 1977. I did not even discuss it with him. I did not raise the subject with him. I had no talk with the Respondent on the statement under reference. The facts are entirely different from what has been stated in this paragraph. What actually happened is that I summoned one of the Chiefs of Staff, but not the Respondent, to the Prime Minister's House on the morning of the 27th of April, 1977 for a discussion on the situation obtaining in the country. During the course of the discussion I touched upon the massive foreign interference in the internal affairs of the country and told the gentleman that I was going to take the Nation into confidence on the foreign efforts to destabilize the situation in Pakistan I told him that I was going to make the disclosure in the National Assembly next evening. It was in this context, that the idea emerged that a joint statement by the Chairman of Joint Chiefs of Staff Committee and the three Chiefs of staff in support of the Government would have a salutary effect if it coincided with my disclosure in the National Assembly. It is, therefore, noteworthy that the statement under reference and my speech in the National Assembly came on the same day. The Chief of Staff undertook to

get the statement of his colleagues. I did not draft the statement. The Chief of Staff with whom the discussion took place returned to see me again after a couple of hours with the signed statement in his hand. I read the text of the statement for the first time when he delivered it to me. I vividly recall his telling me that the Respondent made that draft statement stronger on the words relating to the support to the legal Government. Now, with hindsight knowledge I can understand why the Respondent was so anxious to demonstrate this extra dose of loyalty. Since the Respondent was thickly involved in the foreign plot, he wanted to conceal his involvement by a conspicuous demonstration of loyalty. The chiefs of Armed Forces are not experts in Constitutional Law. This much is readily conceded. Otherwise, the Respondent would not have violated the Constitution and brought in a train of crisis into the country. If the Respondent had known the elementary importance of the Constitution or had any regard for his oath to uphold it, he would not have called it a twelve page document which can be torn into pieces. I agree the Respondent is not an expert on Constitutional Law. The Respondent is not an expert on political science either.

Yet the Respondent, unanswerable and unaccountable to anyone, holds the life and destiny of seventy five million people of Pakistan in his hands. What is the basis of this awesome responsibility? The Respondent is only an expert in breaking solemn pledges and in intriguing against the Constitutional orders. Surely that does not qualify him with the divine right to play amock with Pakistan on the pretext of necessity, however, the Respondent does not have to be an expert in Constitutional Law to make the simple and straightforward statement of 28 April, 1977. The statement in question does not require any special knowledge of law or politics. Furthermore since the Respondent had the facility of consulting the legal experts in the Ministry of Defence or in the G.H.Q., he could have easily taken recourse to such consultation if he had any doubts or inhibitions before signing and issuing the statement to the Press. On the contrary, the Respondent welcomed the opportunity to make a show of his support to conceal any suspicion or to derail any date that might have come within my knowledge about the secret arrangement between the Respondent and a former Ambassador made about ten days earlier in Rawalpindi between the two of them while I was in Lahore. The arrangement was celebrated in the form of a grand reception the Respondent gave to the former Ambassador in the garb of a farewell party. Although the Respondent is a 'Momin' wine flowed freely that evening. I was still in Lahore when the Foreign Office informed me that despite my strict instructions that no senior official or Minister could give receptions and banquets to foreign diplomats without the prior permission of the Foreign Office, the Respondent had not bothered about these standing instructions by giving, the lavish reception to the departing Ambassador.

I discussed the matter with the then Interior Secretary, and admonished him telling his colleagues that the reception without the prior approval of the Foreign office was the signal for the Coup. With this background, the Respondent not only gladly signed the statement of the 28th of April, 1977 but also made it stronger in support of the Government. The Respondent maintained a facade of fraudulent loyalty to my Government until the night of 4th of July, 1977 when I spoke to him on the telephone at about 10.30 P. M.

Para 5 of the reply deals with two main contentions:

- (a) the trial of conspiracy case pending before the Hyderabad Special Court and
- (b) insurgency in Baluchistan.

The respondent has taken a false and untenable stand in both these contentions and all the documentary evidence on these issues available with the Government belies him.

He contends that it is wrong on the part of Mr. Zulfikar Ali Bhutto to allege that the Chief of Army Staff was either specially interested in the trial of cases in the Hyderabad Special Tribunal or that he was unwilling to withdraw the Armed Forces to barracks in Baluchistan.

I had not asked him to prepare a fifty page document to impress upon the leaders of PNA that the trial of conspiracy case before the Hyderabad Tribunal must go on, giving details of evidence in support of his contention that the persons who were being tried at Hyderabad were traitors, secessionists and had been working against the interests of Pakistan since the time of its birth and even before that. I as Prime Minister had not provided the Respondent with the details of that evidence nor did I like that he should give a lecture on the subject. He was rightly snubbed by Nawabzada Nasrullah Khan for doing so and it is really surprising that in the presence of three distinguished leaders of the PNA and three Chiefs of the Armed Forces apart from the Government Team present at the negotiations he should have taken a firm stand and then gone back on it in the reply so conveniently.

The fact that he was specially interested that the trial should proceed before the Hyderabad Special Court can also be verified from the minutes of several Cabinet and other High Powered Committees' meetings in which the respondent consistently pressed this issue and was adamant about it. The contents of this paragraph are filled with monstrous distortions, half-truths and unadulterated falsehoods. Every word, every assertion made by me in my Rejoinder on this

subject can be substantiated and verified by positive proof. The Respondent was uncompromisingly adamant on the Hyderabad Special Tribunal and on the withdrawal of the Army in Baluchistan. He was almost paranoid on these two points. He made a prestige issue out of them in the numerous meetings had on the subject. The Respondent insisted that Ali Bakhsh Talpur, Meraj Muhammad Khan and Ali Ahmed Talpur should also face trial at Hyderabad because they were fully involved in the conspiracy. Due to his insistence, two of them were sent to Hyderabad to face the Special Tribunal, but I refused to include Ali Ahmad Talpur as the Respondent made out only a general case against him. He was equally fanatic in his views about the NAP politicians of N.W.F.P. He called them Congressites. He quoted their speeches and he referred to the books written by them. Above all, he kept referring to the Supreme Court finding on NAP in support of his views.

As already stated the Respondent went to the extent of presenting his views on both these points in the PNP – PPP negotiations on the 2nd or 3rd of July, 1977. Three PNA representatives were present and they heard him for over two hours on the subject.

The Respondent further says in this paragraph that 'it was the former prime Minister who was using all the agencies available to him to dig out a plethora of evidence to prove that the persons involved in the Hyderabad Conspiracy Case had indulged in acts prejudicial to the national interest. The Armed Forces as such did not at any time conduct any such inquiry or investigation. The Armed Services in conformity with the traditional spirit of their profession had kept themselves away from politics and they had no direct contact with any political leader in the country. The Government agencies were the sole source of their information. It was only after the 5th July, 1977, that the real magnitude of the problem became known to the Armed Forces who became, for the first time, aware that the information that had been supplied to them was often out of context and NOT free from bias and slant. Under the circumstance, it would appear to this Honourable Court that the Army's professional role was based on the spurious quality of information which the Government had by then made available to the Army. If the information provided was coloured or inadequate, the fault did not lie with the Defence Services.

I had not concocted or manipulated evidence to prove that persons involved in the Hyderabad Conspiracy Case had indulged in acts prejudicial to the State. People do judge others by their own conduct and standards. The evidence was provided to the Prime Minister not only by Civilian Agencies but also by the Armed Forces, as could be borne out from the record of the Reference Case about the Dissolution of the NAP decided by the Supreme Court of Pakistan on 30-10-1975. That judgment contradicts the Respondent on every assertion made by him

in this paragraph. Summing up the evidence at the conclusion of the judgment this Hon'ble Court held:

“We find on the material produced before us no difficulty in holding that the NAP and its leaders are not reconciled to Pakistan’s existence, integrity and sovereignty, that they have consistently been attempting to create doubts about people’s belief in the Ideology of Pakistan with a view to destroying the very concept which formed the basis of the creation of this country, that they have always been preaching the doctrine of four/five nationalities/nations to prepare the ground for the ultimate secession of N.W.F.P. and Baluchistan on the pretext of demanding the right of self-determination for the different nationalities/nations inhabiting those Provinces and advocating a policy of subversion of the Constitution, rule of law and democratic institutions in the country, that they have for this purpose resorted to large scale acts of terrorism, sabotage and subversion within Pakistan to undermine the security, solidarity and sovereignty of the State in the areas of N.W.F.P. and Baluchistan and that N.A.P. and its leaders had actually organized a large scale rebellion or insurgency in Baluchistan in order to coerce the Central Government and the people of Pakistan to submit to the wishes of the N.A.P. leaders in Baluchistan and N.W.F.P.”

This is the verdict of the Supreme Court of Pakistan based on solid evidence provided among others by the Armed Forces including Field Interrogation Service, Inter-Services Intelligence and this is the evidence which the respondent relied upon in his fifty-page document which he insisted on reading at the meeting with PNA leaders, It was not the Government Agencies that were the sole source of the respondent’s information but evidence proved before the Supreme Court and accepted by it which was known to the Respondent all along. He is now making a vain effort to contradict Pakistan’s Thirty, Years History and the History of the Freedom Movement of the Muslims of the subcontinent for the establishment of Pakistan and the role of those Muslims who opposed it. I was not trying to involve persons in the Hyderabad Conspiracy case but was duty bound to implement the verdict of the Supreme Court mentioned above. I would have failed in my duty if I had not put to trial persons who had actually organized a large scale rebellion or insurgency in Baluchistan, who had resorted to large scale acts of terrorism, sabotage and subversion within Pakistan to undermine the security, solidarity and sovereignty of the State in the areas of N.W.F.P. and Baluchistan as held by the Supreme Court. I would have failed in my duty to the Nation and to the State of Pakistan.

It is really tragic that the Respondent in his zeal to punish me has suddenly discovered:

“That the information that had been supplied to them was often out of context and NOT free from bias and slant. Under the circumstance, it would appear to this Honourable Court that the Army’s professional role was based on the spurious quality of information which the Government had by then made available to the Army.”

It seems he is making an attempt to show that the judgment of the Supreme Court was based on spurious quality of information and that he is a better Judge than the Highest Court of the land that the members of the Armed Forces who valiently fought to safeguard the integrity, solidarity and sovereignty of Pakistan and laid down their lives did so in vain and the Army’s professional role to combat insurgency in Baluchistan was due to coloured and inadequate information provided to the Defence Services.

The Respondent himself was nowhere on the scene when the Armed Forces were dealing with the most serious threat of secession in Pakistan but he implies that his predecessor, General Tikka Khan and his top ranking colleagues of the Defence Services were so easily misled and misdirected by the Civilian Government to take up arms against their own brothers in these areas and that too for over a period of three years or so. The large quantities of Arms and Ammunition, mostly of foreign make were recovered by the Army and their recovery was proved before the Supreme Court of Pakistan by the Army witnesses themselves. The use of this large quantity of arms and ammunitions against the Army causing heavy toll of life was not ‘coloured and inadequate information.’

As I had correctly dealt with the insurgents and secessionists I have become the target of their hostility and their leaders have now joined hands with the respondent against their common ‘enemy’. The respondent in one brief interview observed that the history of Pakistan and Pakistan Movement was all false, that Quaid-e-Azam was wrong and that Khan Abdul Ghaffar Khan was a great patriot and if the father was a patriot, the son would be also a patriot. Thus the respondent has nullified the judgment of this Honourable Court in the said NAP Reference case as well as the judgment of history.

The Supreme Court in that judgment further held: “The learned Attorney-General has also pressed before us 6th and last topic, namely, that the NAP and its leaders have been causing hatred and. disaffection amongst the various sections of the people in Pakistan to create strife and chaos in the country with a view to undermine the integrity of the country.

“We do not consider it necessary to go into this question, because, as we have already indicated earlier, the very concept of Pakistan being a multi-national State and that each of the nationalities/nations living in Pakistan must have the right of self-determination is founded on the basic assumption that the Punjab, being the most populous area in what is now Pakistan is seeking to submerge the other smaller provinces and thereby to deprive them of their legitimate right to be treated as equal partners in the Federation. The demand for Pakhtoonistan is grounded on this assumption of predominance of the, Punjabis in all fields, political and economic. This is the proposition which Khan Abdul Ghaffar Khan propounded in 1947 is as now revealed by his own apprehension disclosed to Pyrelal and reproduced in the latter’s book ‘Thrown to the Wolves’. The author states that, Khan Abdul Ghaffar Khan being a highlander ‘has strong antipathy to being dominated by plainsmen’ and that this feeling ‘was further accentuated by the fear that accession to Pakistan would mean domination by the Punjabi Muslim Capitalist interests, if Pathan autonomy was not conceded’. He also quotes Khan Ghaffar Khan as saying in one of his statements after the establishment of Pakistan that:

“Our Province has been swamped by the Punjabis, who are trying their level best to make the Pathans right amongst themselves. Having lost a good portion of the Punjab through a communal division, the Punjab Nawabs and big capitalists are now after our province in order to make good their loss.”

This sentiment has been repeated even now by Mr. Wali Khan, himself in his application which he filed in this Court on the 5th June, 1975, for the grant of funds. In this, he expressed himself to the following effect:—

“The real contest is between two units of the Federation which are by reason of their population superiority trying to submerge and swamp the other provinces in the Federation”.

The judgment further held:-

These references have been made only to ascertain as to what his concept of Pakhtoonistan was and how the Pakhtoonistan concept came into being and for no other purpose. We have on these basic concepts tested the evidence to ascertain whether that concept had undergone any radical change by the process of time as now claimed by Mr. Wali Khan and the Party. These comparisons have not been made for the purpose of recording any finding against Khan Abdul Ghaffar Khan, but only to

consider whether the N.A.P as a Political Party as it now exists, has modified its concept of Pakhtoonistan. We have, of course, come to the conclusion that the concept has not undergone any radical change for the reasons which we have given earlier”.

The judgment also refers to several other statements of Khan Abdul Ghaffar Khan and Mr. Abdul Wali Khan. For instance, in his autobiography dictated by Khan Abdul Ghaffar Khan to Mr. K. B. Narang, a speech of the Khan delivered on the Pakhtoonistan day from Kabul Radio on 31-8-1967 has been reproduced at page 237 of the Book ‘My Life and Struggle’ wherein the Khan is reported, to have stated:-

“It, is my belief and conviction that all the people who, live in the country that stretches from river Jhelum to the river Amu “(Oxus), as far as Herat are Afghans. They are all Pakhtoons and this country belongs to them all.”

Similarly,, the judgment refers to several other statements of Mr. Abdul Wali Khan and other NAP leaders like the statement of Sardar Ataulah Mangal at a Press Conference held on 18th July, 1973, after the insurgency had started that: –

“We will settle the problem in the mountains. Our struggle shall not be in the Assembly, people do not accept the Constitution.”

It was, therefore, not spurious quality of information nor was it coloured and inadequate material on the basis of which the Supreme Court gave its finding but undisputed evidence and hard facts resulted in the judgment of the Supreme Court.

The respondent in this paragraph further states:

“The allegation that the Chief of Staff of Army was against the withdrawal of Armed Forces from Baluchistan is an over simplification of a problem, which was both complex and involved.”

In this paragraph the respondent, as quoted above, had earlier stated that the Chief of Army Staff was not unwilling to withdraw the armed forces to barracks in Baluchistan and yet in the same breath he admits that the problem cannot be over simplified and it was both complex and involved. The records in the General Headquarters, the Prime Minister’s Secretariat, and the Ministry of Interior will bear out that the Chief of Staff and his predecessor had again and again impressed upon the Government about the advisability of not withdrawing the troops to barracks in Baluchistan as their presence in the field was considered absolutely necessary to protect the integrity of the country

against the insurgents who were getting continued support from across the borders and had set up camps for training guerrilla warfare inside and across the border. Experts in such warfare had not only gone from foreign country to Marri and Mengal areas but also some Pakistani pseudo intellectuals from London belonging to Karachi and Lahore had taken upon themselves to guide and direct the secessionist movement through violent means.

Attention of the Hon'ble Court is drawn to the voluminous evidence mentioned in the judgment of the Supreme Court in the NAP Reference case to prove serious insurgency in Baluchistan which the NAP leaders called war of National Liberation. Only one passage is cited from the judgment to rebut the assertion of the respondent that he was willing to withdraw the troops from Baluchistan: "There is, in our opinion, a great deal of force in this argument and from what has been stated above. If acts of the kind alleged by the Referring Authority did, in fact, occur in Baluchistan then whatever was done there was done to subvert the Constitution and to prejudice the integrity of the country. The evidence of Mr. Muhammed Ashraf (RAW 14) has clearly established that the camp set up in the mountains, as earlier threatened by Sardar Ataullah Mengal was really a camp of rebels who were carrying out the insurgency plan of the NAP leaders in order to achieve the establishment of an independent Baluchistan. We have no hesitation, upon the evidence placed on the record, in coming to the conclusion that insurgency and subversion was taking place on a large scale in Baluchistan and this was organised and guided by the NAP leaders. The suggestion that only a few of the leaders of the NAP might have been mixed up in this and not the NAP as a party is also unacceptable to us, because the evidence of Asghar, who identified most of the persons in the camp as being members of the NAP and belonging to the Mengal tribe. We have also before us the resolutions of the party itself giving support to the rebels and describing them as 'valient freedom fighters'.

In view of this situation how could any responsible Chief of Army Staff consider withdrawal of troops to the barracks under the circumstances mentioned by the Supreme Court in the judgment?

That the respondent's further assertion that the problem was of a political nature and a political solution was required is also not correct. The demand of the NAP Government in Baluchistan that the Federal Government Agencies cannot enter or move within the Province in performance of their duties with respect to the subjects belonging properly to the Centre, according to the Supreme, Court judgment, amounted to subversion of the Constitution and claiming total independence for the Province. The Supreme Court held:

“We are, therefore, unable to accept the contention that the Provincial Government of Baluchistan was acting lawfully within the field of its own activities in resisting the force used by the Federal Government to quell insurgency, if not almost an armed rebellion in that Province”.

It is also wrong to say that my Government and I did not make efforts to find a political solution to the problem within the limits prescribed by the Constitution but unlike the respondent I was not in a position to take extra or supra Constitutional steps to solve the problem by conceding “their right of secession or opting out of the Federation of Pakistan”. After the back of the insurgency was broken, I was in a better position to find a political solution and for that purpose I took the initiative of talks with Sardar Daud Khan, President of Afghanistan. The interest of the Afghan Government in the insurgency and bomb blast and terrorist activities in those two Provinces of Pakistan is apparent from the judgment of the Supreme Court.

The respondent also makes a preposterous statement in this paragraph that some political leaders have vehemently advanced the contention that “Mr. Bhutto’s plan was to keep the army occupied from one crisis to another with a view to weakening it from within just to enable himself to perpetuate his hold on the country”. He has further called this a sinister move of Mr. Bhutto’s regime.

The army was called to combat insurgency in Baluchistan, army was called on the occasions when there were serious floods or earth quakes in the country and to help in the rehabilitation work. Army was called to act in aid of civil power in Karachi, Lahore and Hyderabad recently. Was the insurgency, floods, the earthquake or the PNA agitations planned or created by me? Is it not the duty of the Army to protect the country and its integrity from external, aggression or internal disintegration when called upon to do by the Government? In any case what has army got to do with political matters and how could he say that I was trying to perpetuate my, hold on the country by diverting the attention of the army “from one crisis to another”. Army had no Constitutional role of the nature implied in this statement of the respondent. My party had a mandate to remain in Government for a specified period of time, under the Constitution. I had ordered the holding of elections long before the expiry of my Government’s term of office. How could I even imagine thinking of weakening of the army from within when no one had made so much effort for making the army strong, and well equipped than my Government and this fact had been admitted time and again by the respondent and other leaders of the armed forces?

The respondent has recently been having meetings with Mr. Abdul Wall Khan and some other leaders who had opposed Pakistan and who have still not reconciled themselves to the existence of the State. They would naturally

vehemently advance the contention that the army should supervise the working of a Civil Government and on any pretext dislodge the Government and take over the administration of the Country. This seems to be the easiest way in achieving their objective of secession and disintegration of the country.

They know that when there is no sense of participation in the, affairs of the Government by the people, there is lawless law of Martial Law, when atrocities are committed, the responsiveness of Government have disappeared, corruption, mal-administration and interference into the daily lives of the citizens become the order of the day and the aspirations of the people, which is the basis for them to live together as a Nation, are undermined, then there is bound to be resistance by the people to the Will of an individual leading to parting of ways.

In his speech on the 5th of July 1977, the Respondent said “truth can never remain unexposed.” For once I agree with him. Sooner or later the truth will tell. The diabolical role of the respondent in this matter will find its place in the history of our country. He will not be able to digest such a wholesome lie.

The Army was in exclusive or almost exclusive control of those parts of Baluchistan where the insurgents were active. On many occasions the respondent complained bitterly about the civil interference in the administrative control of the Army. The officers appointed to civil posts in those regions were mostly former Army officers. On four separate occasions I had laid down a time table for the winding up of the military operations. On each occasion the respondent asked for a further extension of period. In an important conference held in Quetta soon after the respondent had been appointed as Chief of the Army Staff, the respondent wanted his tentacles to be spread beyond those parts of Baluchistan where the insurgents were active. He wanted an additional allocation of funds to give teeth to the military operations. Intelligence was almost completely under the control of the respondent as Military intelligence had all but replaced civilian intelligence. The respondent wanted certain parts of the Province to be put under “*de facto*” Martial Law. When the former Chief Secretary of Baluchistan sought to exercise civil control or joint control the respondent was furious with him. Soon after taking over the country’s administration, he transferred that Chief Secretary from Baluchistan to some Corporation. The respondent was up to his neck in Baluchistan operations, Most of the evidence against the insurgents was provided by the respondent and his agencies. The Constitution of Azad and Greater Baluchistan was found by the respondent’s agents. It was the respondent’s agencies which informed the Government that some foreigners and Pakistani ‘intellectuals’ from Karachi and Lahore were aiding the insurgents. A fleet of helicopters from a friendly neighbouring country was obtained for operations against insurgents. When that Government wanted the helicopters to be returned the respondent requested me

to prevail upon that friendly neighbouring country to allow the helicopters to remain with the respondent for some more time. The respondent after he took over as Chief of the Army Staff from General Tikka Khan, was the principal figure in military operations. He simply cannot take a different position merely because his vacillating mind prompts him to extricate himself from his known role and position on these problems. He should be courageous enough to admit the prominent part played by him in the Baluchistan operations and in the attitude he adopted on the Hyderabad Special Tribunal.

The respondent would feel less perplexed if he saw these problems in their historical perspective. The respondent seems to have a marked propensity towards hasty decisions. The respondent also appears anxious to achieve spectacular results. He is pining for a sensational breakthrough. This is understandable because so far he has failed miserably on all fronts. We only fear that his indecent haste, his faulty judgment and his blissful ignorance of politically complex issues will turn out to be counter-productive and do real harm to Pakistan. By now the secret of his aims relating to N.W.F.P. and Baluchistan are no longer a secret. This very paragraph is an indicator of the working of his mind. The writing on the wall is clear. His inspired political decisions might alter the map of this whole region leave alone Pakistan. But he should have the moral fiber to stand on his own ground and not shift the onus of his own past actions on others.

I am now convinced more than before because by the grace of God of Almighty, with the support of the people and the Armed Forces of Pakistan I broke the back of the insurgency in Baluchistan and brought normality to N.W.F.P. If the respondent had not illegally intervened in the affairs of Pakistan on the 5th of July, 1977, I am confident that during my present term of office, the Nation would have crossed these remaining barriers as well.

However, let me predict that the respondent is incapable of achieving these results for the obvious reasons that he lacks a national mandate and the task is beyond his capacity. Such complicated issues cannot be resolved without a National Parliament and provincial Assemblies. An editorial in the Press Trust Papers ... or a television speech cannot prepare the ground for the resolution of historic problems. The people have to be taken into confidence and there is only one way known to modern man to take the people into confidence. I took the Simla Agreement to the National Assembly. My Government resolved the century old Ahmadi issue through the National Assembly. None of the vital issues are resolved permanently and equitably over a cup of tea. Issues such as these are resolved by the people and their genuine leaders. In the last five and a half years I have raved the ground for the solution of these historic problems. Let the interloper step aside and allow Parliament to complete my mission.

It is redundant, it is useless, and indeed it is immoral to blame my Government for confrontation and for bloodshed when my Government did everything in its power to start with cooperation and dialogues. This part or the past is too fresh in the minds of the people of Pakistan and this Hon'ble Court forms to repeat it here. Later, we had to go through a painstaking ordeal due to the miscalculation and obstinacy of those who had different dreams of the future. I repeat, those sensitive issues have to be solved by an elected Parliament and the historical perceptive must be the determining guide.

The respondent has sought to convey the impression that I created these problems by pursuing a policy of confrontation. In the first place these problems were not created by me. I inherited them. In the second place the factual position is that I have brought these problems so close to the grasp of a permanent solution, that even the respondent, is tempted to toy with idea of resolving them. If the respondent is sincere and he wants a permanent solution, he should immediately fall back on the Constitution of 1973 and not allow the nation to become giddy in the vacuum of Martial Law. Sooner or later, the question of provincial autonomy will come into the picture if a permanent solution is sought. Let us therefore, fall back on the Constitution of 1973 for there to be agreed yardstick of measuring provincial autonomy. Martial Law provides no yardstick. The limited and immediate question before this Hon'ble Court is whether the Martial Law of the respondent can over-ride the Constitution of 1973 but the deeper and more fundamental question before this Hon'ble Court is whether the Federation of Pakistan can survive without the Constitution of 1973. For a multitude of reasons, there is a due necessity of returning to the Constitution with utmost dispatch. Here, I have dealt with only the problem posed by this paragraph, to demonstrate that even this single though vital problem cannot be solved satisfactorily without a return to the Constitution. If this is true of this problem it is more true of all the other problems facing Pakistan. A perverse or a misinterpreted exposition of the theory of Kelson or other jurists will not solve our problems. Neither will the interpretation of the judgments of Southern Rhodesia meet the test of Khuzdar, or Charsadda or Sann. Only a brazen faced usurper would rely on the one hand on the judgment in the case of Southern Rhodesia in favour of Mr. Smith to justify his Martial Law in the Supreme Court of Pakistan and on the other, show solidarity with the majority population of a country observing Namibia Day on the 27th of October. The respondent shows one face to the Supreme Court of Pakistan, another face to the people of Namibia. Neither are the people of Pakistan deceived nor are the people of Namibia. How much more is the word credibility to be shattered by the respondent?

I am duty bound to return to the historical perceptive to repudiate the uncharitable indictment implicit in this paragraph. Not I but the Respondent has

sought to over-simplify an extremely complicated problem by throwing the onus of centuries on the doorstep of my Government by stating that.

“The Government for reasons best known to it, undertook a line of action which resulted in a state of confrontation in that Province”

Perhaps the Respondent was in Jordan doing more heroic things, when I sought the cooperation of the political leaders of these two Provinces to frame the Constitution and Governments and Governorships of both the Provinces. But the respondent could not have been oblivious of all the subsequent development culminating in the finding of the Supreme Court of Pakistan. However, when the Respondent was appointed Chief of the Army Staff by me in supersession of seven officers senior to him in March, 1976, he became very much a part of the establishment to know the reasons. He took a part in the formation of the reasons and he was put in sole charge of affairs in the troubled region. No wonder the Respondent says that neither morality nor justice can question his illegal usurpation of power. Does the respondent really believe that these problems did not exist before the advent of my Government? Let us refresh his memory.

We can begin with Alexander the Great’s conquest or with Ashoka. We can start from any road and go down the hill of history but time is limited and this Hon’ble Court has a specific legal problem to determine. Otherwise we could give a narration of the three Afghan Wars which the British fought. We could talk of the earlier Moghal rule. We could point out Ahmad Shah Abdali’s conquest and of his Journey to Baluchistan when he left behind Marhattas in Marri-Bugti tribal territories. We can discuss the British treaties with Afghanistan and the British treaties with Kalat and With Marri-Bugti Chieftains. This record is available with the foreign office. Over two years ago I had selected a team of experts to prepare it. The Respondent would be well advised to read it.

Coming down to the Pakistan Movement, it must be remembered that despite the emotional appeal what the movement aroused among the over whelming Muslim population of undivided India, there were a number of prominent Muslim leaders who opposed the Quaid-i-Azam and his two nation theory. They opposed Pakistan to the bitter end. For this reason a referendum was held in N.W.F.P. For this reason the Quaid-i-Azam had to conclude fresh treaties with the Khan of Kalat, with the Jam of Lasbella, with the Nawabs of Makram and Kharan For this reason a Shahi-Jirga was held in Quetta which was attended by tribal Chieftains on the question of Baluchistan’s accession to Pakistan. It was a touch and go affair.

Several Sardars were very active in opposing the decision in favour of Pakistan. The Khan of Kalat wanted to declare the independence of Kalat and become a

sovereign State like Nepal. In the Frontier Province, apart from the referendum, the Red Shirts were militarily active. After the Quaid-i-Azam, Mr. Liaquat Ali Khan was also engrossed with the same problems. From 1947 every Government tried to come to a settlement, but every Government failed. Most of the time, during the tenure of different Prime Ministers, after an initial period of attempted negotiations, the N.A.P. leaders were put behind bars. When Ayub Khan took over in 1958, he also started with negotiations but ended up with severe measures against N.A.P. In the N.W.F.P. he ordered not only the arrest of N.A.P. leaders but also the confiscation of their properties. He conducted military operations in Bajour and broke relations with Afghanistan. In Baluchistan, the Ayub Government faced the insurgency of Nauroze Khan Brohi and his followers. That insurgency spread to Jhalawan and Sarawan. It went beyond to the Marri–Bugti regions. Ayub Khan during Martial Law got convicted and executed Nawab Nauroze Khan Brohi's sons. He arrested most of the N.A.P. leaders. He appointed new Sardars in place of the hereditary Sardars. He confronted the insurgents. Towards the latter part of Ayub Khan's tenure, on the advice of Governor and due to the efforts of some of the London Plan Plotters, Ayub Khan changed his policy. He released the Sardars and other N.A.P. leaders and withdrew the forces. The policy was changed but the problem was not resolved.

Then came Yahya Khan and he took upon himself to resolve this problem. He invited the N.A.P. leaders. He spoke highly of them. He showed some gesture of goodwill towards them but the net result was that before the end of his tenure, he banned N.A.P. by an executive order and imprisoned the leaders of the Party. When I took over a broken Pakistan, one of the important Sardars stated publicly that the only answer to the problems broken Pakistan lay in a confederation with India. Slogans of '*Arora Zindabad*' and '*Indira Gandhi Zindabad*' were heard on the streets of Quetta. The Constitution of Azad Baluchistan had been prepared.

A number of foreign guerrilla experts had infiltrated into the strategic parts of the two Provinces. Weapons dispatched for the insurgents were found in an embassy in Islamabad. Jumma Khan Baloch was making hostile and provocative broadcasts from a foreign Radio Station. When I visited Iran I was shown documentary evidence and maps of 'Greater Baluchistan'. The documents were most revealing. The maps of Greater Azad Baluchistan included the Baluchistan of Pakistan and Iran and a small strip of another country. The agents of a number of foreign countries were in touch with the insurgents and their leaders. Despite all these colossal difficulties and international intrigues, my Government was the only one since the establishment of Pakistan to negotiate to a successful conclusion two important agreements with N.A.P. One agreement related to the Constitution and the other to the Governments of N.W.F.P. and Baluchistan. It was a masterly triumph in the art of political negotiations. Perhaps the

preliminary political steps were more important than the negotiations. Without a dexterous handling of the various steps in the ladder by political means and political institutions, the outcome might have been different.

The most important, indeed the decisive element in the situation was peoples mandate held by all the leaders who participated in the negotiations. Without that mandate, it would have been a barren exercise. The successful conclusions of the two agreements were not without repercussions. Some of the leaders wanted to use the control over the Provincial machinery as a spring board to attain their real goals. These individuals regarded the agreements to be a means to an end. They began to do odd things. Slowly and steadily, with the consolidation of their hold over the Provincial Machinery, their attitude became one of defiance. The final result was a parting of the way. The choice was obvious. Either we had to hold Pakistan together or get it under cut. A revolt against the State of Pakistan through an armed insurgency came into full swing in 1973. In the year 1974, it reached disturbing peaks.

Without this national achievement, I doubt if fruitful talks could have begun between Afghanistan and Pakistan in June 1976. My Government succeeded in a national task complicated by past Governments. Either there was an armed insurgency in Baluchistan against the State of Pakistan or there was no insurgency against the State of Pakistan in that Province. If an insurgency did exist it was the solemn and sacred duty of the national Government to confront it with the object of crushing it. Without the support of the Armed Forces it would not have been possible to crush an insurgency of such a grave magnitude. I fail to understand why the Respondent is now making a feeble attempt to extricate himself from the performance of a national duty.

The sweet talk he is having nowadays with N.A.P. leaders would not have been possible without crushing the insurgency.

Within a month the Respondent has made two trips to Tehran. If he has any doubts that there was an armed insurgency for a Greater Azad Baluchistan, he should make a third trip to Tehran.

All the names mentioned in Annexure F/57 were the star insurgents. They were the top leaders of the armed revolt. How does the Respondent, who is a military mans propose to deal with insurgents armed to dismember the State? The production of such documents shows the difference between a National leader and a charlatan. All the individuals mentioned in this document (F/57) fought battles against the Armed Forces of Pakistan. They killed many a young officer and the Jawans in the encounters. One side was fighting for Azad Baluchistan and the other side was fighting for the State of Pakistan. By producing this

document, does the Respondent want me to admit that I should have supported the insurgents and opposed those who were fighting for the survival of the State of Pakistan? I do not understand the object of the Respondent in producing such documents. The insurgency was played down by my Government publicly for obvious reasons, but it was a serious insurgency having powerful foreign support. My Government broke it by a combination of political and military measures.

We mustered the support of the poor masses of Baluchistan. This was done by abolishing the Sardari system, by giving land to the landless tenants, especially in Patt Feeder. It was done by a massive economic programme of development. We put an end to the division of Baluchistan into 'A', 'B' and 'C' compartments. We took the writ of the Federal and Provincial Governments throughout the Province. Today Baluchistan is genuinely and truly a part of Pakistan. By the advent of my Government only 137 square miles of the Province were truly under the control of Pakistan. The remaining 1,34,000, odd square miles were in the control of Sardars. The Government of Pakistan only had nominal control over the rest of Baluchistan. Neither a Prime Minister nor a President nor a Chief of Staff nor any one else for that matter could have put his foot on the rest of Baluchistan without the permission of the Sardar of that jurisdiction. Now all that is gone. Several roads have been built including the one linking Sibi with Barkhan. Trucks and tractors are plying on the roads and on the new farms. The tribal jails have been abolished. The Province has a High Court of its own for the first time. The flag of Pakistan is flying for the first time on the ramparts of every section of the Province. Schools, Hospitals and Mosques have been built. The poor, wretched tribesmen have seen money for the first time. Such revolutionary achievements would not have been possible without crushing the insurgency. Indeed it is unfortunate that blood had to be shed on both sides. But the battle had a cause and it was not a personal cause.

At last the Respondent has announced the strike of gas at Pirkoh. This would not have been possible without crushing the insurgency and building of roads. No drilling would have been permitted by the Sardars in these regions. Hence, it is entirely self-defeating to criticise me for the glorious success of the State. My attitude towards the insurgents was humane and visionary. Repeatedly I offered them amnesty. Repeatedly I went to their regions and spoke to their elders. I gave amnesty to thousands of Marri and Mengals and other insurgents who laid down arms against the State of Pakistan. When I gave amnesty to Salman Khan, the nephew of the Khan of Kalat, the Respondent wanted me to withdraw the amnesty on the ground that Saimaa Khan was misusing the pardon. I refused point blank to withdraw the amnesty of Agha Salman Khan and those who surrendered with him. If it was wrong to enter into battle with the insurgents, why was the Respondent unable to hide his jubilation when the insurgent Safdar

Khan Zarakzai was killed or eliminated? Why was the Respondent so delighted over the Sangsilla Operations or over the death of Laungh Khan Mengel? Suddenly, the Respondent has begun to shed crocodile tears for Aslam Gichki who is one of the more elusive and dangerous insurgents. If the Respondent had so much hidden sympathy for Aslam Gichki, the well known insurgent, why did he want me to arrest Ahmed Talpur on the ground that was reported to him by his military intelligence that Aslam Gichki was given abode in the house of Ali Ahmad Talpur whenever the insurgent went to Karachi. On whose side is the Respondent? Surely he has not become an advocate of those who waged war against the State of Pakistan. The Respondent should know that it is possible to come to a settlement on these problems without becoming a spokesman of the insurgents, A political settlement and the insurgency of the past are not irreconcilable, provided the settlement is genuinely political and comes through democratic institutions I wish the Respondent had refrained from touching on this subject in his Reply of 26th October, 1977. He has either been ill-advised or he has shown the instability of his own judgment and discretion. The Respondent has not made out a case against me by the content of this paragraph and by the production of the minutes contained in Annexure F/57. He has only enhanced my prestige as a national leader and tarnished his own image still further. However, since he has thought it fit to bring in the names of the insurgent Aslam Gichki and other well known insurgents, would it not be appropriate to ask the Respondent whether young Asadullah, Mengal the son of Attaullah Mengal was an insurgent? The Respondent forces me to raise this issue much against my inclination. However, by making false and malicious attacks on me, the Respondent leaves me with no option. I know the talk the Respondent had with Attaullah Mengal when he visited the N.A.P. leaders in Hyderabad Jail two months ago. The Respondent tried to mislead Attaullah Mengal by telling him a bundle of lies. Even then I kept silent. When the Respondent told me on the 28th of August, 1977 in Rawalpindi the lie about the alleged slow poisoning of N.A.P. leaders in Hyderabad Jail, I ridiculed him with the reply 'how slow can slow poisoning be'. I knew the motive of the Respondent in making the false and mischievous allegation. The Respondent had provoked me sufficiently for me to tell him that my ethics were different from his notions. By way of illustration I could have mentioned Asadullah Mengal and asked the Respondent why he had requested me to wind up the man-hunt I had ordered for the location of Asadullah Mengal. The Respondent will land himself in greater trouble if he continues his immature and indiscreet approach. What worries me is the damage being done to Pakistan in the pursuit of this folly.

The Respondent has also over simplified matter with regard to the insurgency in Baluchistan. The area in Baluchistan covers almost half of the territory of the country with a population of only about two million people. In this vast Province various tribes live in isolation separated by deep valleys and huge mountains.

There is hardly any communication between the tribes or with the outside world, i.e., the other Provinces of the country or even the people living in Quetta and other small towns. The result of this isolated life had from times immemorial established and perpetuated the Sardari system and the tribal customs and usages. The Sardari system had kept Baluchistan and these tribes not only backward but almost in the medieval conditions.

The British, after occupation of Baluchistan had encouraged and strengthened the Sardari system for their own benefit. They could not afford a big administration and large police force in such a vast area and thin population. They naturally allowed the Sardars complete autonomy in the internal affairs of their areas and permitted them to deal with the tribesmen in any manner they wanted. The Sardars had set up their own Jirgas and Jails and the people were left at their mercy. Sardars had dehumanized the people under this system.

The Court may be pleased to note that the top N.A.P. leaders in Baluchistan were the top Sardars of that area. They talked of Socialism in their Press Conferences in Lahore, Karachi and other cities of Pakistan but refused to allow schools, hospitals and roads to be constructed in their areas. They resisted the writ of the Government and the jurisdiction of the Courts to be extended there. From the times of the British Government in Baluchistan upto 1975 the authority of the Government and its writ could be asserted only in an area of about 135 square miles out of 134 thousand square miles territory of the Province.

When the People's Government with its determination took steps to spread education and establish administration at a huge Cost in these isolated areas when hospitals, schools, clinics, mosques were being built and new Police Stations were being established new road were being constructed, lines of communications provided, these Sardars, the important of whom were in charge of the Provincial Government started rebellion against the Federal Government and the State of Pakistan. They could see their doom in the progress that was to take place in Baluchistan and the people being approached directly over and above the heads of these feudal lords.

In the course of five years the Federal Government abolished the System, new roads were built, schools and colleges, clinics and masques constructed, free land was given to the landless tenants, Shariat Laws were introduced to replace tribal customs and usages. The army played a commendable role in all these Nation building activities and Sardars took large number of their tribesmen to the mountains and armed them to fight the forces of light and progress. People of these tribes were now generally looking up to their Government instead of the Sardars and had begun to have a sense of belonging to the Pakistani Nation instead of a feeling of belonging to a small tribe. Complete integration of these

people of Baluchistan with a Pakistani Nation never appealed to their tribal chiefs who wanted their perpetual held with the divine right to rule over these tribes. The respondent has to study for a long time the history of Baluchistan and its tribes the role of the Sardars in the tribal society of Baluchistan to understand and appreciate the problem and the reasons for insurgency and rebellion in that Province.

Only proper solution to the problem was not talks and talks with the N.A.P. Sardars but the development of the areas on top priority basis coupled with political approach and negotiations. Much more money has been spent by my Government in five years in Baluchistan on development projects and uplift of the people in the province than was done in Pakistan's twenty – five years history and the British Government's seventy years rule put together.

It was never suggested that the Army had deliberately delayed the negotiations between the Government and the P.N.A. but the allegation was that respondent tried to delay and frustrate the talks as he did not want any accord to be arrived at for the obvious reason that he had panned over a sufficiently long time to take over the administration of the country.

The Respondent was working according to the scheme and the time table contained in his Master Plan to overthrow the legal Government established by the law and the Constitution. I, therefore reiterate that the Respondent played a macrobian role to frustrate the PPP-PNA negotiations by putting the Government, on the horns of a dilemma. Outwardly the Respondent, put up the pretence of supporting the legal Government but inwardly he put a number of obstacles in the path of the negotiations. The Respondent alone is responsible for his double dealing role. He should not make a vain attempt to associate the Armed Forces in his crime of treason. There is a clear cut distinction between the culpability of the Respondent and Armed Forces. As Chief of Staff, he sought of confuse the Government and the Armed Forces of Pakistan. If the Respondent had been sincere in the discharge of his Constitutional responsibilities, the Nation would have been saved from the agony of the present crisis which is of his making. There is no attempt on my part to defame the Army. I have rendered yeoman service to the Armed Forces of Pakistan. The Respondent is making a fruitless endeavor to gain the sympathy of the Armed Forces trying to draw the institution as such in his nefarious conspiracy with foreign power to undermine the stability of Pakistan. According to his own words, the Respondent alone was responsible for his illegal action of 5th July, 1977. The Chairman of the Joint Chief of Staff Committee and the other Chief of Staff were informed of the coup after the Respondent had stuck the Nation with his foreign inspired *coup d'état*. The Government was most anxious to see the early end of the agitation as has been

stated in my written statement but the Respondent prolonged it for his selfish and myopic ambitions by putting wheels within wheels.

With regard to the contentions of paragraph 7 it is submitted that the respondent did put into operation his plan of Wheel Jam in May this year. This could be verified from the Press Reports of that period. When the Army was supposed to be acting in the aid of civil power in Karachi, Lahore and Hyderabad, directives were issued by the Army Administrators in these places to stop the movement of vehicles altogether for long hours and thus to help the strike call of the PNA for general strike in these areas. It is admitted that I had commended the role of the Armed Forces during the period when they were called to act in aid of, civil power or the period of Constitutional Martial Law. They were only performing their Constitutional duty. My charge, however, remained against the respondent who described the Constitutional duty of the Armed Forces as '*Langra Loola Martial Law*' as he was not satisfied with the powers that he exercised during that period and was attempting to take over the administration of the country and impose his absolute undiluted and vigorous Martial Law treating the armed forces of Pakistan as his *Lashkar* as if he was the conqueror of Pakistan and it was his divine right to rule.

The "Wheel Jam" contingency Plan was given to the Army by Foreign experts as early as in the days of Ayub Khan. The recruits were carefully selected and trained at Cherat. The Respondent cannot deny the existence of this plan. The Respondent should not forget that as Prime Minister of Pakistan and as Defence Minister of the country I have knowledge of this plan.. Since President Carter might be making a whistle stop in Pakistan next month, in the interest of that visit and due to the delicacy of the subject, I would not like to elaborate on this subject. However, my comments in this connection have been confirmed by foreign journals. The Respondent has said that facts cannot be hidden. This fact certainly cannot be hidden. More material will come to the surface as time passes. I have praise and respect for the Armed Forces of Pakistan. I am proud of their valour. I fail to understand why "the Respondent considers, himself to be the symbol and spokesman of the Armed Forces of Pakistan merely because a year ago, I made the biggest mistake of my life by appointing him Chief of the Army Staff over the heads of seven officers. His predecessor opposed his appointment. The then Secretary of Defence was not in favour of his appointment. The then D. I. B. was of the same view.

THE ACCUSATION

“I am accused of having set up the F.S.F., (Federal Security Forces) which was a sort of private Mafia. That apart from the case of Nawab Ahmed Khan, the F.S.F. planned to assassinate Mr. Khan and Mr. Asghar Khan. It passed on information to the Income Authorities. In such matters, I took a personal interest. In the file of Qadir Bakhsh Nizamani, I wrote, “The case for them and others must be properly constituted so that no court in the country dare grant them interim bail” “The FSF also kidnapped Mr. Bhutto’s opponents and kept them in illegal detention in the notorious Dalai Camp. FSF arms were given to Sardar Doda Khan and to Mr. Salim Bugti, son of Mr. Akbar Bugti.”

“The F.S.F. was not a private Mafia. The law that brought F.S.F. into existence was passed by Parliament by full discussion and debate. The F.S.F. was created to assist the law enforcing agencies to maintain law and order. It was put under the control of the Ministry of Interior and not under the control of the Prime Minister’s Secretariat. It could not be used in any of the provinces without the specific request of the Provincial Governments. After the anxious experience of the nation-wide Police strike, the F.S.F. was established to face such contingencies in the future. When the police strike hit the country, there was general trouble in the country. There were language riots in Sindh and a great deal of labour trouble. There were signs of trouble in Baluchistan. ‘General Arora Zindabad’ slogans were heard. Many prominent political leaders gave statements that the rest of Pakistan would also collapse in a short time. The army was on the borders. General Manekshaw told the people of India that they would get another present in March, 1972. Vast tracts of territory in Pakistan were under Indian occupation. It was under such a calamitous back drop that, the F.S.F. was established. The F.S.F. helped the administration during the floods that hit Pakistan. The F.S.F guarded vital installations through out the country. It guarded the Pat Feeder. It detected bomb blast cases. It did its duties during the Ahmedee agitation. The charter of the F.S.F. is very clear.

The written statement has mentioned the case of Ahmed Raza Kasuri’s father in the context of F.S.F. The Respondent knows better than any one else that this case is sub Judge at the moment. A full Bench of the Lahore High Court is trying the case while I am drafting this reply. Despite this known fact, the Respondent has committed contempt of Court by commenting on this case of capital punishment. He has already made sufficient statements on this case to subvert the comas of justice. He has told foreign journalists that I murdered Kasuri’s father and that he has documentary evidence in support of it. His “verdict” has been published in Pakistan and throughout the world while this case was pending before the High

Court. The Respondent has given his “verdict”, he has given the time it will take to arrive a decision and he has also mentioned the sentence. What is there left for the Full Bench of High Court of Lahore to try? This Honourable Court may take note of all the statements of the Respondent on this case including this written statement and try him for contempt of Court. The Respondent has himself said that no body is above the law.

The respondent says Mian Abbas of F.S.F. was asked to misuse Government property to help PPP candidates.

I cannot offer you any comment as this information is not within my knowledge. However, it is pertinent to mention here that I have not laid my eyes on Mian Muhammad Abbas, formerly Director (Operation and Intelligence) F.S.F. Of course I am aware of this name and existence but I have not had a single minute meeting with him either individually or in the presence of other officials throughout my tenure of office as the President and subsequently, as the Prime Minister of Pakistan. I might have seen him in public meetings or on my tours but I cannot identify him. This is the extent of association with Mian Muhammad Abbas, formerly Director F.S.F. Even if a functionary of the Government makes some Government vehicles available to help a candidate, the responsibility would be that of the Government functionary and of the candidate. The Government as a whole cannot be held responsible for it. It is also strange that an ostensibly impartial and interim Government should only confine its attention to the alleged irregularities of the Pakistan People Party candidates in the elections and should not bother as to how for instance Professor Ghafoor Ahmed in one small part of his Constituency could employ 120 Suzuki vans for days and days. The amount incurred only in the small part of the Constituency. The employment of these vehicles during the election campaign ran into lacs of rupees. Where did all these funds come from and how could the incurring of such huge expenses be overlooked?

Whatever may be written now in the propaganda sheets, the pen of history will write the truth and render unto Caesar what belongs to Caesar. Islam is not the monopoly of the Mullah. My Government gave the country an Islamic Constitution. Under the Constitution it became mandatory to implement basic Islamic tenets within an agreed span of time. The ninety year old Ahmadi problem was resolved not by an individual, but by an institution.

Haj policy was made open and the system of going to Haj on the gamble of the ballot was abolished. My Government had the honour to declare Friday instead of Sunday as the weekly day of rest. In the last thirty years no Government in Pakistan thought it possible or practical to take this action. The Red Cross was changed to the Red Crescent, another decision which no previous Government

dared to take. The Ruet-i-Hilal Committee was formed. A law was passed by parliament to print error free copies of the Quran. Prohibition was imposed. Gambling was banned.

Defense is a sensitive subject. I cannot emulate the Respondent in irresponsibility and recklessness and mention in detail the saga of my efforts to modernize the Armed Forces of Pakistan. I cannot mention my successful negotiations with a number of countries on the acquisition of modern equipment for our Armed Forces. Tempted as I am, I refrain from mentioning how I had to plead with the former President of France and the present President of France to enter into a binding agreement on the Reprocessing Plant. Every year my Government kept increasing defence budgets breaking every successive record. In addition to the huge financial commitment however, each year, in the five and a half year of my Government, a separate sum of Rs. 1600 crores was given to the Armed Forces for the purchase of modern weapons. On top of that, I negotiated with the Government of the Peoples' Republic of China a number of agreements by virtue of which that friendly country gave to Pakistan considerable military assistance without consideration.

The Shahan Shah of Iran also gave valuable assistance without consideration. I prevailed upon the Government of United States to lift the arms embargo which that Government had imposed on Pakistan for ten long years. Suffice it to say that both in development and defence my Government surpassed by long measures the contribution of all past Governments. The contributions were unmatched and unparalleled. Yes, I admitted we took loans and I am grateful to all the friendly countries for giving us liberal loans. I am grateful to the Consortium, the Socialist Countries, particularly the Peoples' Republic of China, the Soviet Union and Romania, and above all, I am grateful to Saudi Arabia, Libya, U.A.E., Kuwait, Qatar and Iran for their generous assistance.

Instead of appreciating these outstanding achievements the Respondent's puppet press and his minions have started to say that my Government increased the debt and burden of Pakistan. Since the time of Muhammad Ali Bogra, Pakistan has been taking debts. The resources of the country do not come half way near the requirements of the country. In these circumstances it is inescapable to take loans. However, during my tenure of office, we tried to generate the resources by taking a number of measures in the public sector and by embarking on a vigorous programme to locate oil and gas and other natural resources. We have found oil and gas at Dodak. Before the 5th of July, 1977 I was informed that we had located oil and gas at Pirko. The prospects in other places were also reported to be encouraging. But whether we find oil and gas or other resources, or whether we learn to cut our cloth to our present resources, is another issue.

The main point is that foreign countries, especially the Muslim countries gave unprecedented loans to Pakistan during my tenure of office because they developed confidence in Pakistan. Finally it boils down to a matter of confidence. No Government no matter how rich its country might be in resources and wealth will risk throwing away its money on a country which is unstable, rudderless and whose value is declining inherently. Recently the American Ambassador to India stated that now the United States regards India as the dominant power of the subcontinent and will no longer try to equate Pakistan with India. The significant and operative part of this statement is not the declaration on the dominant power word 'now' why 'now' why not before the 5th of July, 1977

In the realm of foreign affairs my government did yeoman service to Pakistan. During my tenure of office we concluded the Simla Agreement with India without compromising one bit on the principle of self-determination in Jammu and Kashmir. We rationalized our relations with Bangla Desh despite all the fuss and fury made by interested quarters. We maintained the proper equilibrium with the great powers. We developed cordial relations with Europe and the principle states of that continent. We became a pillar of strength for the Third World. Pakistan was made a beacon of light of the Muslim States. We held the Islamic Summit Conference in Lahore and fulfilled the dream of Iqbal and Quaid-i-Azam. We were approached by friendly states for guidance in their vital issues. Pakistan became a member of the Security Council and Chairman of the Group of 77 during my time.

Naturally the stamp of the author of any successful policy, internal or external, gets imprinted on that policy, Let me give only three examples although these are umpteen. The stamp of Chou En-lai is visible on the foreign policy of China and the mark of Tito is apparent on the Foreign Policy of Yugoslavia. The same is true of India's foreign policy as carved out by Jawhar Lal Nehru. Surely this does not mean that the architect of a magnificent edifice is seeking to project his person at the cost of the edifice. Perhaps the Respondent should read Thomas Carlyle to understand this elementary motion of history.

I have found it necessary to make these comments reluctantly because in paragraph 59, the Respondent in his characteristically cruel and ungracious deductions has stated that now, that is after 5th July, 1977, 'the Country's Foreign Policy' is being conducted in the national interest and not for the aggrandizement of Mr. Bhutto or the projection of his personal image.

This written statement is full of unkind cuts. If my contributions in the realm of internal affairs are to be played down for the political greed and hatred, surely that greed and hatred is not so intense as to belittle my contributions in the field

of foreign policy which stretches over almost two decades. This then is the unkindest out of all.

Without the assistance of files and documents, without consulting any one, I have hastily recapitulated the more memorable internal and external achievements of my Government as objectively as possible to give the factual over all pictures which emerge during my tenure of my office. I gave the country a Constitution; I gave it a progressive sense of direction. I wiped out the stigma and humiliation of the 1971 War. I restored the Nation's self-respect and honour on the international pedestal. I introduced modern reforms to bring Pakistan into the lime light of this century of Science & Technology. I established new institutions like the Ministry of Provincial Coordination to bring about harmonious integration. This Ministry did Positive service in strengthening the tissues of National Unity. I created under the Constitution the Council of common Interest to resolve inter-provincial disputes and problems. I tried to liberate the peasant and the labourer and to emancipate the women of Pakistan. I gave the Minorities a genuine place of equality in our Society. I did anything to save the youth of Pakistan. Yet I am the modern Machiavelli and the evil genius, who institutionalized corruption and terror.

If the present trends are an indication, time will show when corruption and terror reached their Zenith. Only two days ago women were beaten at the Data Darbar for performing religious rites. Women were also beaten up before this Honourable Court when this case commenced, if not thousands of young men have been awarded ten lashes and one year's rigorous imprisonment for raising slogans or for clapping when they Set a glimpse of me on my way to the High Court of Lahore, or on my way back from the High Court to this jail, Hundreds of youngsters have been arrested in my district. The people of Pakistan are being punished because I was their elected Prime Minister and the people of my district are being punished because I was born in that district. This is the humane treatment of the Respondent in contrast to my terror.

The mask of Martial Law cannot conceal the reign of terror that Respondent has let loose throughout the length and breadth of Pakistan. I have been accused of ruthlessly eliminating all opposition whether from the ranks of the People's Party or from the opposition If such were the position, it would not have been possible to have the agitations of this Spring, unless of course, the Respondent was solely responsible for the agitation in order to pave the way for his alleged intervention on the 5th of July, 1977. The Respondent cannot approbate and reprobate at the same time.

Chiefs of Staff, good or bad, loyal or treacherous will come and go, but the institution of the Armed Forces is permanent. Hence, the Respondent should not

try to make his person synonymous with the Armed Forces. He should not inject his wrongs and his crimes on the Armed Forces. The Respondent should not seek to exploit the Armed Forces for the achievements of his personal ambitions. As Prime Minister I did commend the role of the Armed Forces during the agitation and before the agitation. I still maintain the same position in so far as the Armed Forces are concerned. But the Respondent is not the Armed Forces of Pakistan. My indictment is against the Respondent for what he has done to the country.

I still maintain that it was a stage managed drama in furtherance of the Respondent's nefarious Master Plan to strike at the root+ of the country by breaking the Constitutional framework. Mr. Aziz Ahmad was a Minister of the Federal Government. A month or two earlier he had held the portfolio of Minister of State for Defence. He was at liberty to speak on internal or external policies of the Government. The report of Military Intelligence on this meeting only substantiates my suspicions that the Respondent engineered the fiasco to heighten the crisis. Can such a thing happen now and if it does take place will the Respondent go about circulating the event or will take immediate disciplinary action against the officers. Asghar Khan wrote a letter addressed to the Armed Forces of Pakistan inciting them to revolt against the legal Government of Pakistan. Will Asghar Khan write such a letter today and if he does, will the Respondent take it as nonchalantly as he took the letter written by Asghar Khan at the time of my Government, If , all these pieces are put together the mosaic of the Respondents conspiracy becomes quite apparent.

It is wrong that the setting aside of the elections of two or three more PPP candidates could have made any difference to the Government or its majority in the National Assembly. The Commission had set aside the election of one or two former Ministers and other members of the PPP. Some of the orders of the Election Commission setting aside the elections had also been challenged in the High Court. This commission had to dispose of about two dozen complaints which it had received in a period of 60 days prescribed in the Amendment for the purpose. In over 50 days the Commission could only dispose of six or seven complaints. In the remaining period of one week or so, it could only dispose of one or two more matters. Therefore, to suggest that the Commission had sent for about 85 other cases is absolutely untenable. They could not possibly deal with these cases in view of the fact that Election Tribunals had been set up and even before the Election Tribunals very few Petitions were filed. The PNA had refused to respond to the gesture of the Government for the disposal of those complaints by the Election Commission and did not want the Election Tribunals to deal with individual cases of alleged irregularities and rigging, as that would have obviously exposed their stand of massive rigging of the polls. The Amendment was not withdrawn with retrospective effect for obvious reasons that some writ petitions were pending in the High Courts and this would have led to a

misunderstanding that the Government was trying to save the elections of those candidates who had been unseated by the Election Commission.

The respondent had given several reasons from time to time for his decision to 'postpone' the elections. Before this Honourable Court, however, his sole excuse has been the process of accountability which he invented for the first time on 1-9-1977 when formalities with regard to filing of nomination papers their scrutiny and withdrawal had been completed.

Only accountable Government can take accountability. Only a Government answerable to the people can clothe itself with the mantle of such a responsibility. The whole nation cannot be punished and denied of its inalienable rights on such a flimsy pretext. The Respondent broke his promise to the people of Pakistan to hold impartial elections because he knew that despite the mountain of obstacles placed in the path of the Pakistan Peoples Party, my Party, the party of the toiling masses was going to sweep the polls. The Respondent had calculated that my Party would be defeated by his puppets and for that reason he promised impartial elections within ninety days when he made his first speech on the 5th July, 1977. My tour of Sindh and the Punjab and the rising tide of the people in favour of my Party badly shackled the Respondent. All his calculations fell to the ground. In sheer desperation he devised the gimmick of accountability on the 1st of September, 1977 as a cover to frustrate and defeat the will of the people. The Respondent's lame excuses to postpone elections have mala fide odor. This odor can be smelt beyond the frontiers of Pakistan. In his instable thirst to wreck vengeance on me, the Respondent has taken positive action against every citizen of Pakistan. It is the most savage form of collective punishment. The decision of the Respondent has cast a gloom over the Nation. I have touched upon the force of accountability in my rejoinder and in my submissions before this Hon'ble Court on the 22nd of October, 1977. I do not want to belabor the point. It stands nakedly exposed and needs no further elaboration. Out of several thousand candidates only a few belonging to the Pakistan Peoples Party top leadership are being victimized. What is more, the victims also include some who are not even candidates. If the intention of the respondent is to complete this process with regard to all the candidates then this process cannot possibly be completed for several years. It is no business of the Chief of Army Staff to select candidates for the electorate according to his standard methods of accountability in a subjective approach. It is for the Courts of the country under the Laws in force to look into such matters. The respondent has embarked upon a very dangerous and sinister move to perpetuate his hold over the Government and politics of the country allowing no free choice to the electorate and depriving judiciary of its functions in these matters.

The certificate the respondent has taken from the splinters and supine stooges whom he describes as political leaders and from the controlled press require no comment. Such individuals and such a press would hail any decision of a usurper like the respondent. There is no dearth of sycophants. If the respondent wants to know the real feeling of the people, he should follow the example of Haroon-al-Rashid and go incognito into the heart of Pakistan to know how bitterly the people feel over his betrayal.

The respondent has not postponed elections to avoid a catastrophe but to invite a catastrophe. He might have taken this repulsive decision to avoid a personal catastrophe but not a national catastrophe. Actually, the respondent has not the slightest intention of holding free and fair elections. He does not want to transfer power to the people's chosen leaders. He wants to perpetuate his illegal usurpation. The respondent has for the time being postponed elections for about a year to consolidate his power base. He knows that in about a year's time the epoch making event for which I have been striving to attain since 1964 is likely to take place. He will capitalize on that event of great historical importance to continue in power as a 'hero'. But a Nero cannot become a hero. The people will rise against him but by then it might be too late. By that time the Rubicon would have crossed.

What has the respondent done in the last four months to show his credentials as a leader of mean and as a batsman of this Nation? The economy has become chaotic by his anti-people decisions. Prices of essential commodities are souring. For two years the bureaucrats told me to increase the prices of tea and cigarettes but I refused as such increase would have hit common man and increased his sufferings. Within four months the respondent has fallen a prey to anti-people decisions by increasing the price of tea on the eve of winter and by increasing the prices of cigarettes. Prices will rise further in the coming months. The harmful effects of denationalizing the processing plants are already visible. The threats of Martial Law action will not alter the position. My government found gas at Pirkot in July. The respondent has announced the decision in the end of October to take credit for the achievement of my government. The agreement with France for the construction of Saviam trucks was taken by my government in June. I sent my foreign Minister to Paris in May to get the approval of the French Government for he franchise to sell the trucks in the Middle East. My government got the necessary approval and the required credit for the project to become viable. The respondent announced the decision with great fanfare two weeks ago as an achievement of his illegal government. For how long will the respondent bask in the glory of my government? The industrial and economic development has come to a standstill. Whatever activity is taking place is on the basis of the momentum of our dynamic policies.

In the field of politics there is a void. In Foreign Affairs, the glow and glitter are gone. The respondent is visiting foreign countries not like a head of government but like a travelling salesman. In four months he has spoken at length on accountability and on the postponement of elections, on trials and on the virtues of the private sector. He has not uttered a word on Jammu and Kashmir. He has swallowed the declaration of India being the dominant power of the sub-continent and humbled national pride. The respondent has not rejected the Dayan dictated document on the Geneva Conference by declaring that the P.L.O, alone can represent the cause of Palestine in that Conference or in any other Conference in the Middle East. For the first time since the Creation of Pakistan, a President of Turkey is to visit India. Why are all these things happening now? They are happening now because the respondent has irreparably weakened the National framework. These things are happening now because the respondent has created an ominous crisis in Pakistan. It is still not certain if President Carter will condescend to spend a few hours in Pakistan when he goes to India for two days. The foreign Office and our Embassy in Washington are on their knees to get the American President to make a symbolic visit to Pakistan. I wish for the sake of the respondent that President Carter will oblige him. In the past it was assumed that an American President would not come to the Sub-continent without visiting both India, and Pakistan. President Eisenhower visited both countries and it was done as an imperative of U.S. foreign policy without pleading or cajoling. The respondent celebrates Namibia Day on the 27th of October 1977, and his counsel in the Supreme Court holds the Smith usurpation of Rhodesia as a precedent for Pakistan to follow. Without a Constitutional framework, every individual and every department has become a law unto itself.

These are the objective conditions prevailing, in Pakistan. In such conditions of uncertainty and fear, would any sane citizen rejoice over the postponement of elections in the country? The people are silent but their silence should not be misunderstood. They have not acquiesced to the respondent's usurpation. To say that they have acquiesced is an insult to their dignity and self-respect. The people are watching the situation with mute anger. A look into the eyes of the working classes will tell the state of their mind. None of them are happy over the present state of affairs. There is a tear in every eye. They have forgotten the meaning of laughter. Yet the respondent is made to believe that his decision to postpone the ring of freedom, the joy of the ballot has been acclaimed. The people want this night of terror to be put to an end. This is their wish, this is their prayer and this will be their verdict.

The inspired comments by the press, statements of frustrated political leaders do not advance the case of the respondent. The nation was shocked and stunned at the postponement of the elections and the respondent's brazen—some result on the solemn assurance he had given to hold the election on the 18th October, 1977.

Mention of the speeches of the Members of the Bar at the Reference of the new Chief Justice of Pakistan, Mr. Justice S Anwar ul Haq is not only not relevant but also indicates the illusion under which the leaders of the Bar suffered when they made these speeches about the freedom and independence of the judiciary being fully restored by the respondent. The submissions made on, behalf of the respondent in this Hon'ble Court must have now thoroughly disillusioned these members of the Bar when it was repeatedly asserted on behalf of the respondent that the *de facto* assertion of authority by the respondent has paralyzed the judicial process of this Court and that it cannot call in question any order or action of the respondent or Martial Law Authorities, who were controlling and messing up every department of Government and life throughout the country.

To go back on his solemn assurances again with a view to perpetuate his dictatorship does not establish the *bona fides* of the respondent. He claims to save the Constitution by suppressing it. He claims to deal with oppression with tyranny. He wants to bring about democratic institutions by his tailored method of dictation and selection with supreme indifference to the will and opinion of the people. He does not expect to be taken seriously by the Nation when he pleads his bonafides in the matter of his vacillating stands on crucial matters. He makes Pakistan laughing stock of the world when the Chief Spokesman of this country committed Pakistan in unambiguous terms on the 28th September, 1977, before the General Assembly of the United Nations that the election would be held, as promised by the Respondent on the 18th of October, 1977 and power would be transferred to the elected representatives of the Nation. Two days later he blatantly broadcast to the world that the elections had been postponed indefinitely. Not only he has gone back on the solemn assurances given to the Nation but has tarnished the image of Pakistan throughout the world. How any spokesman of Pakistan could be taken seriously in any international forum under these circumstances?

The Respondent has been inveigled by his own contradictions. He has dealt a death blow to his credibility and credentials by swinging from one end of the pendulum to the other. I have stated in my Rejoinder that the Respondent is using the logic of the barracks by adopting the posture of aggression being the best form of defence. His guilty conscience is eroding and corroding his vitals. In a way he has become an abject of pity. Politically the Respondent has fallen flat on his face. He has sown the seeds of his own destruction by abandoning the cause of the Nation in order to fulfill his lust for personal revenge. He has tied himself in knots. The people are not going to untie the knots. Only this Honourable Court can untie the Gordian knot. For this reason the eyes of the whole World are on this Honourable Court.

When I had the honour of appearing in this Honourable Court, I volunteered to make a detailed statement on the use of secret funds before this Hon'ble Court in camera. However, this Hon'ble Court observed that my statement on the subject was not relevant to the determination of the issues raised in the Constitutional Petition. Despite this offer and despite my statement on the subject in the Rejoinder filed by me in this Hon'ble Court, the Respondent persists in harping on this theme. I do not have the requisite information available with me in my cell to furnish a rejoinder on each and every item. I do not have a Photographic memory to comment on each item of expenditure for the month of October, 1973. Four long years have gone by.

I repeat, however, that I gave funds from this Head to the Governments of N.A.P./J.U.I. in N.W.F.P. and Baluchistan. They did not belong to my party. I gave funds from this Head to Bugti and to the Khan of Kalat when they were Governors of Baluchistan. Neither Bugti nor the Khan of Kalat belong to my Party. I gave funds from this Head to Governor Nasirullah Babar who joined my Party after he relinquished the charge of the Governorship of N.W.F.P., I gave funds from this Head to many other persons not belonging to my party. If some poor individuals and workers of my Party were in urgent need of some succor or relief, they were also citizens of Pakistan. I remember giving funds to a young man who lost his eyesight in a quarrel. I did not ask him if he belonged to my Party. I helped him because he lost his eyesight. I fail to understand why my discretion is being questioned on such petty matters. My integrity cannot be compromised by the exercise of my discretion to give assistance and relief to deserving persons on compassionate grounds. I am still prepared to appear before this Hon'ble Court and give in camera the details of the amounts I spent from this Head on the promotion of Pakistan's interest. I would welcome that opportunity. I will like to respectfully submit that in the last four months the Respondent has spent quite a lot from the Secret Service Funds to set up mushroom parties. Some individual politicians have also been given funds by the Respondent. This notwithstanding that the Respondent is not a politician and he does not head a political party. Actually, the Respondent should stop using Secret Service Funds to build up so-called public opinion against elections and for a Presidential form of Government. Perhaps the Respondent is not maintaining written accounts. I maintained written accounts because my conscience was clear. I would not have kept any written accounts if I had thought that the funds were being misused.

(This is totally false, On the contrary,) PPP leaders have exercised a restraining influence in the face of unmitigated provocation; PPP leadership wants the return of the rule of law. A party subscribing to the doctrine of law and Constitution cannot want lawlessness. It is a contradiction in terms and action,

The Respondent, by having a lawless law is subscribing to lawlessness in the country. Not a single leader of PPP made any speech after the 5th of July, 1977 to give substance to this charge. The Respondent's virulent, attacks on me in his speech on 14th August, 1977 and in his Press Conference of 1st September, 1977. The Respondent encouraged some of the P.N.A. politicians to make the dirtiest personal attacks on me. Some of the Gutter Press was given the same encouragement and latitude. The physician should attend to his own health. On the 13th of September, 1977, the Respondent met the political leaders to evolve a code of conduct for the election's and on the 16th of September, 1977, only three days later the respondent arrested me on Eid day in Larkana and ten top leaders of my party. There was no justification for our arrests. We have been the victims of the respondent's vendetta. There is no legal ground for our arrest. We are knocking at the door of the Highest Judicial Tribunal in the country. If we were bent upon taking violent action we would have been in the streets and not in the court room. A huge bundle of annexures has been attached to this reply but it does not contain a single speech of any P.P.P. leader between 5th July and 16th of September (the date of arrest), to show that my party was preaching violence. I have the privilege of being the leader of a revolutionary party. We have faced two military dictators before the respondent. One was Ayub Khan and the other was Yahya Khan. We are not afraid of facing the respondent. The more force the respondent employs to suppress the people, the more will the people raise. This is the verdict of history from the time of the Romans and the Greeks. The respondent is neither Alexander nor Caesar. We are not afraid of the respondent. A Muslim believes in the Will of Allah and not in the will of the Army Commander. A man dies only once. We are not cowards. We will not be intimidated. There, is no point in trying to demoralize us with false cases and with coercive methods. God is on our side because we are on the side of the people and the right. We are not the type of individuals to say one thing and do another. If we had preached violence we would have admitted it without hesitation. Since we have not preached violence we will not oblige the respondent by saying that we have preached violence. The respondent should also, know that violence does not take place by merely preaching it conditions give rise to violence. If the soil is not fit for the seeds of violence to grow, no amount of preaching will give rise to violence. If, on the other hand, the soil is fertile for violence, preaching is not needed. The respondent is creating conditions for violence and he alone will be responsible if one fine day violence erupts in the country. By closing all avenues of normal and legal redress, the respondent is fostering the advent of violence. The respondent should think hard and prevent violence not by the threat or use of force but by restoring normal conditions and by bowing to the will of the people.

The respondent began to poke his nose in these matters from the 9th of April when he told me in Government House, Lahore, that under no circumstances

should I compromise on the release of “traitors” in the Hyderabad Special Tribunal and on the withdrawal of the Army in Baluchistan. The 9th of April 1977, was the starting point of the respondent’s interference in political matters referred to in this paragraph. After his lavish reception for the departing Foreign Ambassador, his interference became more conspicuous. He stood on solid ground and was following the traditions and habits of two of his predecessors Ayub Khan and Yahya Khan. The respondent had clinched a deal with a foreign power and celebrated it with a reception without bothering to follow the instructions of the Foreign Office. There are agitation in the country. As time went on, the respondent began to take more advantage of the objective conditions. He was following the footsteps of Ayub Khan and Yahya Khan. In 1964, Ayub Khan while remaining Commander-in-chief thrust himself on the country as Defence Minister in one of the pre 1958 Governments. Later on, Ayub Khan took advantage of the unstable conditions in 1958, dislodged the civilian government and abrogated the Constitution of 1956. Similarly, Yahya Khan, began to show his teeth to the government of Ayub Khan during the disturbances of 1969. Taking advantage of the situation and of his position as Commander-in-Chief Yahya Khan dislodged Ayub Khan, in March, 1969 and abrogated the Constitution of 1962. The respondent was following the pattern of which he has spoken so much in his written statement. In making the inroads in the political sphere after 9th April, 1977, the respondent was following the ‘glorious’ examples of the previous usurpers. My Government did not encourage him in making these inroads. He took advantage of the situation and exploited it to his benefit. He attended our meetings and on the basis of the information gained, he formulated his Master Plan only after invoking Article 245 of the Constitution in Karachi, Hyderabad and Lahore, did my Government find it necessary to invite from time to time, the concerned Corps Commanders for a review of the law and order situation in the three cities. This was only natural. On two or three occasions, the other Corps Commanders were also invited to Conferences dealing with the general situation prevailing in the country and the military implications involved in the situation, vis-à-vis, Azad Kashmir and the border with India. Apart from such conferences dealing with internal and external off shots of the agitation, the respondent and the Corps Commanders were invited to one other conference in which the question of the Referendum was discussed. In this Conference the respondent and the other Generals pledged complete loyalty to my Government of their own volition. All of them placed their right hand on their heart and swore loyalty to my Government and made the collective request that there should be no compromise on the traitors being tried by the Hyderabad Special Tribunal and on the withdrawal of Armed Forces from Baluchistan. At the same time they feared that serious cracks would appear in the absence of a political agreement between PPP and PNA. All of them were of the view that the only solution lay in an early election. I agree that normally the Respondent and the Armed Forces should have kept out of such matters. The

operative word is 'normally' but were not dealing with a normal situation. It was an abnormal situation, and the respondent made full use of it as is apparent from the imposition of his illegal domain over Pakistan on the 5th July 1977. The Respondent's participation in the Conference only emboldened him to take his final action.

In this paragraph an attempt is being made to avoid the affects of the repeated solemn declarations made by the Respondent giving his reasons for the imposition of Martial Law outlining the objectives and purposes of Martial Law, avoiding dissipation of his energies and efforts on any purpose other than holding of fair and impartial elections within a period of 90 days, transferring power to the elected representatives of people, not doing any witch hunting and not framing Any Martial Law. Order or Regulation except for the purpose of holding elections and maintenance of Law and Order and above all remaining within the bounds of the Constitution of 1973 which he stated had not been abrogated but had been kept alive, only some parts of it were held in abeyance. It was on the faith of these solemn undertakings that people, the political parties, and the judiciary suffered the imposition of Martial Law so as to secure restoration of democratic Government of their choice within a period of about three months. All these undertakings have been given a go by and there remains no basis whatever for the continued usurpation of the power in suppression of the Constitution and the will of the people of Pakistan.

The mala fides of the impugned order have been mentioned in the petition and are floating on the surface. The impugned orders of detention were passed under M.L.O. 12 which concerns itself with detention and empowers the C.M.L.A. to order detention to prevent a person from acting in the manner mentioned therein. On the 17-9-1977 the Respondent issued a Press Statement (Annex. B to the Petition at page 10) giving his reasons for detention of the Chairman, PPP and ten other top PPP leaders. These reasons were that instances of large scale malpractices and commission of crimes had since come to his notice necessitating investigation by Civil and Military Courts and Tribunals and it was to facilitate such investigations that the arrest had been made and that in due course the arrested persons will be put on trial before Civil and Military Courts. Can this be a valid ground for making use of the Regulation relating to preventive detention?

Another reason assigned was that it was necessary to show the true face of the candidates to the electorate and for that it was necessary to complete inquiries and investigation into the alleged crimes, committed by the detenus. This too was apparently false and malafide as at least two of the detenus were not even candidates at the forthcoming elections.

On 13-9-1977 at the Press Conference held after the leaders' conference to mettle the Code of Ethics for elections when the news of my release on bail by the Lahore High Court in the case of murder of Nawab Muhammad Ahmad Kasuri was known, the respondent unequivocally stated that neither I nor any other PPP leader had committed any violation of Martial Law and that he would not use Martial Law against me. Yet within bare three days we were arrested under the impugned orders dated 16-9-1977 under M.L.O. 12. This speaks volumes on malafide nature of the orders.

In para 16 of the Reply of the Respondent it is asserted that stern preventive action was called for even earlier but as the Eid day was near at hand, detention orders were served after that day. So the cat is out of the bag. The respondent was not telling truth when on 13-9-1977 he stated at the Press Conference that I had done nothing against Martial Law and that Martial Law will not be used to deprive me of my liberty. The real reason for the impugned action was to prevent me and other detenus from participating in the election campaign which was to commence on the day following Eid and it was already announced that I was to address the first public meeting of the start of PPP Election Campaign at Rawalpindi on the 19th September, 1977.

Now in para 16 of the Reply it is falsely alleged that in their public speeches the PPP leaders have been openly preaching violence. Plethora of annexures has been filed by the Respondent both with his first written statement and now with his Reply yet not a single annexure has been filed to show any speech of any PPP leader which could in any manner be said to incite violence. As in every other respect the Respondent has been changing his ground in this behalf as well.

The real reason for the impugned orders is the Respondent's anxiety to eliminate me and my Party leadership and even the Party itself from the national scene, to have candidates of his own choice and finally not to have elections at all on the pretext of accountability invented by him in September, 1977 after he had seen the writing on the wall that the people of Pakistan were determined to return the PPP to power.

The sort inter play is a part of the chess board of politics. Asghar Khan was very keen to become the President of P.N.A. but he made way for Maulana Mufti Mahmood on the advice of a Foreign Power which kept Asghar Khan in one pocket and the respondent in another. This Foreign Power advised Asghar Khan to put Maulana Mufti Mahmood in the front to be the centre of the attacks. Asghar Khan was promised to get the build up in the foreign Press and the internal support to jump into Mufti Mahmood's place after the elections. Simultaneously, the Respondent was also being approached. Finally it was decided to drop Asghar Khan and put the Respondent into the saddle. This

information is authentic. The Special Secretary who wrote the note under reference was completely in the dark on this aspect of the global intrigue. In the light of these facts it is useless to quote his report. A different game was being played than one described by the Special Secretary. When the wicket was different, the question of getting stamped on my playing field did not arise.

As far as Annexure F/53 is concerned a prudent and efficient Government responsible to the people had to consider every eventuality. This fear became hypothetical, the moment the talks between PPP-PNA began, this fear disappeared, the moment the talks succeeded.

Martial Law is a paper tiger. It is not the twilight of the Respondent's concept. Martial Law is darkness at high noon. It is neither an order nor a system. It is a whim and this word of ours cannot be run on a whim. This form of lawlessness takes us back to the law of the jungle, where only the strongest survive. Most of our people are weak and backward. They will perish in such an arrangement. Force, naked and brute, moody and mad cannot be made the sole criterion of our honour and our respect. For thirty years we have gone from crisis to crisis and each crisis is deeper than the previous one. At last in 1973, this Nation evolved a democratic Constitution. With all its limitations this Constitution cemented the Federation. It gave birth to new institutions and safeguarded the pre-existing ones. We began to move. We began to tell our progeny that at last we had found our equilibrium. There was hope for the future. Whatever happens to any one of us, we have to save the succeeding generations. Each individual has his own destiny. We cannot be intimidated by the noise of gunfire. This Hon'ble Court cannot be silenced. Its destiny demands that it upholds the Constitution and the law. The jurisdiction of this Honourable Court cannot be curtailed by an interloper. The doctrine of necessity propounded by The Respondent is anathema to the vision of an Honourable State. Martial Law and a new order are terms which cannot be reconciled. One is the antithesis of the other. There is the permanent order of the Constitution of 1973. The Respondent is duty bound to uphold it.

The nightmare of Martial Law must come to an end. The Respondent, without further ado must fulfill his promise and hold fair and impartial elections. The people alone can take accountability. Silence of the people does not mean their acquiescence. The mirage of 'effectual law' will not stand the strain of a people cheated of their rights. Man decays and ages move on. We must move with ages. It was painful to be told that the Respondent's Counsel had quoted Voltaire in defence of his suppressive new order. Voltaire was the soul and essence of freedom. But more than the damage done to Voltaire and Kelsen we have to think of the damage being done to Pakistan. Did millions die to live in terror, did they die to be flogged and lashed? Let not Dosso speak. Please let the Quaid

speaking. In your hands, my Lords, lies the decision to make or mar. Today we are in jails, the institution of Parliament has been sealed. The voice of the people has been silenced. Today only you hold that pen which is mightier than the sword.

ACCOUNTABILITY

General Zia on TV and radio announcing the decision to postpone October polls, said the step was taken to “save the country from a dangerous crisis and to place full facts before the public through the process of accountability”

Even the opposition Tehrik-i-Istiqlal leader, not seeing the connection between polls and accountability said, “though the process of accountability was necessary, the formation of a democratic, civilian Government was a bigger necessity. Any attempt to stop the process of artificial means would not be an act of wisdom”.

Mufti Mahmud, the PNA leader said, “Where was the need to postpone polls if Mr. Bhutto and his companies were to be tried in civil courts?”

Pir Pagaro’s Muslim League gave unqualified support to the decision to postpone elections. Bhutto advised the PPP not to fall in to booby traps but remain united, “Time is not against us, it will work in our favour,” he said. “We have been detained in order to get us out of the political field. The charges leveled against us have been fabricated. It is unfair to punish a nation of 70 million in order to punish one individual. If polls had been held I estimate winning five seats in NWFP, one in Baluchistan and sweeping the Punjab and Sindh bringing the 128 seats and 8 tribal seats.”

The Khan Murder Case

Nawab Mohammed Ahmed Khan was the father of Ahmad Raza Kasuri, a PPP member elected as MNA in December, 1970. He was the only member of the PPP who attended the Dacca National Assembly Session scheduled for 3-3-1971, against the expressed wishes of Bhutto. On this act which Bhutto held was tantamount to an act against the integrity of Pakistan, serious differences arose between him and the rebel member of the PPP. He later refused to accept the recognition of Bangladesh, since it was a move to entrench Bhutto in power! He was also not in favour of the Constitution of Pakistan of 1973 unanimously approved by all parties. He accused Bhutto in the NSA that 94,000 POWS of Pakistan were held in India because of Bhutto's connivance with the Indian Government! He organised his own group known as the Raza progressive group in the PPP and being expelled from the Party in October 1972, joined the Tehrik-i-Istiqlal in June, 1973. On June 3, 1974 he stated in the NSA that the Constitution had "not been unanimously passed," evoking a sharp retort from Bhutto: "I have had enough of you. Absolute poison, I cannot tolerate you any further". On November 10, 1974 a burst of weapons hit his car at 8 p.m. and his father later died of injuries received.

A Press release of the local Embassy of Pakistan gives a detailed one sided account of the case entitled, "High Court Sentence Bhutto to Death".

The Lahore High Court Judgment stated the acceptance of evidence of Ghulam Hussain (Approver), Arshad Iqbal, Asst: Sub Insp. F.S.F and Rana Iftikhar Ahmad who confessed their role in the attack of Kasuri's car and the evidence of Abdul W. Khan, Saeed Ahmad Khan and Fazal Ali that ammunitions and weapons of 7.62 MM were in the use and possession of the Federal Security Forces. The supply of weapons to Ghulam Mustafa (accused) was corroborated by the statement of A. Badshah Khan who did so on the order of Mian Muhammad Abbused, accused. The driver Amir who took Ghulam Mustafa in his jeep to the officer of Badshah is stated to have seen him bringing something wrapped in a cloth which appeared to be a weapon.

The motive was stated to be established by the approver Masud Mahmood's evidence and documentary evidence. The motive was to eliminate Kasuri who was a strong and virulent critic of Bhutto, the first accused. The remarks in the NSA were accepted to be evidence for the murder motive.

While dealing with the conspiracy between the accused, the Bench held conspiracy is an offence in *actus reus* (guilty act). While dealing with the

conspiracy between the accused the Bench held that conspiracy is an offence in which *actus reus* (guilty act) is complete the moment there is an agreement and it is not essential an express agreement should have been reached in one or several sittings or that an express agreement should be proved. It is a matter of inference deduced from acts of persons done in pursuance of an apparent criminal purpose. The uncorroborated testimony of an accomplice is admissible in Law.

The Court sentenced on 20-3-1978 Bhutto, Mian Mohammad Abbas and Ghulam Mustafa to death under Section 302 PPC read with Section 301, 109 and 111 PPC and Arshad Iqbal and Ifti Khan Ahmad under Section 302 read with 301 PPC and 34 to death. All five shall be hanged, was the verdict.

Mian Mohammad Abbas and Ghulam Mustafa were in 1974 Director, Operations and Intelligence and Sub-Inspector in the Federal Security Forces respectively.

Two of the earlier accused, Masood Mahmood and Ghulam Hussein, then Director-General and Inspector respectively to the same Force, were granted pardon when they turned approvers at the trial. Masood Mahmood directly involved Mr. Bhutto in the commission of the offences.

The full Bench agreed it was open to the Court to take into consideration the confessions of Ghulam Mustafa, Arshad Iqbal and Rana Iftikar Ahmad, accused, at least against Mian Mohammad Abbas and the conviction of the three accused could be based on these confessions provided they were found to be voluntary.

Mian Mohammad Abbas, one of the accused at the trial, pleaded that the confessional statement attributed to him was neither true nor voluntary.

The Trial in January 1978

In the course of the trial Mr. Bhutto alleged bias against the acting Chief Justice. At a certain stage using the Court's power under the normal law of procedure in Pakistan, the Bench ordered proceedings to be held in camera, when Bhutto exercised his right of cross examination of the principal prosecution witnesses.

During the in-camera proceedings, the Court released only a summary of the proceedings for publication in the Press and Bhutto's rejoinder of 26-10-1977 to the reply of the Respondent General Zia through A. K. Brohi, was not released in full to the public. Bhutto took exception to the procedure adopted by the Court which can be taken only before a Court of Appeal. The Bench trying the case was of the view that Bhutto's petition was submitted only to scandalize the Court and to give publicity to baseless allegations in order to weaken public confidence in the Court, It considered proper that Bhutto's application at the motion stage be heard in Chambers. Bhutto submitted application for transfer of the case to some other Bench but the petition was dismissed.

Against the holding of the Court in camera on 25-1-1978 a demonstration took place outside the Chief Justice's Chambers. The Bench decided that proceedings of the trial would continue in camera in view of the possibility of such disturbances occurring in future!

Mr. Bhutto then withdrew his powers of attorney of all his counsel and Mr. D. N. Awan stated his client did not wish to defend in view of what happened on 25-1-1978 when Mr. Bhutto had been ordered to take a seat, since the Court was not inclined to hear his "irrelevant arguments". The accused refused to cross-examine other formal witnesses. When a question was put to Bhutto under Section 342 Cr. P. C., he stated since he was boycotting proceeding, he would not be offering any defence (Bhutto's counsel had cross-examined 31 witnesses up to this date). Bhutto indicated that "the present case was fabricated against him and he apprehended he would not get fair trial and justice in the Court".

Elections

National consensus awaited the promised elections in March 1978. Earlier the abortive PPP-PNA Accord had stipulated October 18, 1977, until the moratorium of the Alliance units cried out for postponement of the elections parroting weakly that "The process of accountability should first be completed" but in actuality unnerved by the undeniable popularity of the PPP. Meanwhile the internal rivalries of the Pakistan National Alliance had corroded any possibility of its offering a capable alternative to form a national government much less run it. Hence when the ML authority indefinitely postponed the October polls sine die, the PNA were relieved, hoping that the PPP top leadership would be involved in, if not in one case at least in another of a rush of promised cases. The acceptance of election delay by the NDP, the earlier proscribed NAP in new garb, led to the abolition of the Hyderabad tribunal and release of NAP leaders headed by Wali Khan, son of Abdul Ghaffar Khan, popularly known as "Frontier Gandhi" and one time opponent of Pakistan's Muslim League.

Meanwhile with postponement of March elections, there was national disillusionment and disaffection against both the PNA and ML authority. Also the question of developing the Nuclear processing Plant remained suspended in mid air.

While ML authority toyed with the idea of reducing political parties to two or three on the lines of UK or USA where there are only two (but no ban on the emergence of more), a section of the Lahore High Court Bar Association functioned more and more like a political party, ignoring the protocol governing a legal professional organization, transcending the limits of concern with civil liberties or the rule of law.

The principle of every citizen accused of any crime or offence being considered innocent until proved guilty was violated both by ML authority and the Lahore High Bar Association.

Journalists under MLA regime

Journalists and other newspaper personnel all over Pakistan observed November 21, 1977 as a Protest Day in support of Press freedom and against the closure of the Karachi branch press of the PPP paper Musawat, the change of editor in Hilal-i-Pakistan, the ban of the weekly Nusrat and refusal of the Lahore Musawat to reinstate some dismissed employees. The latter demand was granted by Nusrat Bhutto.

Jaleel celebrated journalist, and Musawat Editor of Karachi had died of brain hemorrhage on his return from questioning by the MLA authorities of Karachi.

On the morning scheduled for the printing of Bhutto's defence in Court, (blacked out by the local press), the Musawat press was sealed. This defence has been printed elsewhere in this publication.

The protest organised by the Pakistan Federal Union of Journalists (PFUT) and the All Pakistan Newspaper Employees' Federation (AP NEC) was reinforced by a joint meeting of PFUT and APNEC of Karachi to organise a hunger strike if the demands were not ceded. Several editors of progressive papers were in prison.

The government issued a note a day before Protest Day, but its veracity was questioned at P. Day meetings, stating, the editor of Hilal-i Pakistan had not resigned but had been dismissed. The excuse that Musawat which owed Rs. 2 lakhs to the People's Foundation Trust (taken over by the Government which action was being challenged by Nursat Bhutto) had now been stated to owe Rs, 16 lakhs was not an acceptable one to close down a newspaper since most newspapers had to run on non-profit lines.

The journalists had their victory as the demands of the newspaper world were granted.

On 28-3-1978 the CMLA informed his government would , "allow constructive criticism, but would not tolerate any projection harmful to the interests of the Country" He wanted pressmen to form a Press Council to oversee and judge published material under an agreed Code of Ethics for Journalists.

Meanwhile Minhaj Baran, President of Pakistan Federal Union of Journalists protested over the recent seizure of copies of the PPP daily, Musawat of Karachi. Musawat's Lahore edition was forced to close down following the sealing of the press where it was published. An alternative publication was also sealed. Several

other newspapers and weeklies faced difficulties and called for funds to meet the bonds demanded by the ML government for publishing material it held "harmful to the interests of the country."

At the end of April 1978, twenty two journalists were detained shortly before they were due to start a hunger strike in defiance of this ML directive. They included Nisar Usman, Secretary General of the Journalists Union, the President of the Union Minhaj Baran was detained and later expelled from the Punjab Province. Journalists and other newspaper workers protested against the forced closure by the regime of the Urdu daily Musawat. In the first week of May, journalists on hunger strike were arrested and 42 pressmen detained.

International and National Reaction on Death Sentence

In Bhutto's reply to General Zia's 2nd Statement he had said: "Not only the people of Pakistan, but people much farther than the frontiers of have their eyes fixed on the current developments in our country."

With the announcement of the death sentence imposed on Bhutto, appeals poured in from abroad that his life be spared. The news that two Judges of the Bench had dissented but after a joint meeting of top Military personnel and some members of the Bench a few days before the announcement, the "unanimous decision of the Court was secured," disturbed both local circles and international friends of Pakistan.

British Independent Television News (ITN) soon after the March death sentence interviewed General Zia who was asked whether it was a fact that the military government in power had influenced the Court which sentenced Mr. Bhutto to hang. The reply was: "Although we are a military government, we have not abrogated the Constitution. It is technically held in abeyance. To assume the military government, because there is martial law, can or will influence the Court is totally wrong."

The interviewer Sandy Gall asked General Zia whether he had discussed the case with Pakistan's Supreme Justice. "No Sir, It is up to the judge to decide" was the reply and added "Elections will be held in months, rather than years. All I am looking for is environment in which to hold elections and more than that to see that the results are positive".

Foreign Dignitaries Among others, President Nicolae Ceausescu of Rumania appealed to Pakistan to spare the life of former Premier Zulfikar Ali Bhutto. So did Turkish President Fahri Koruturk, Turkish Premier Bulent Ecevit, President of UAE, Sheikh Zayed Sultan al Nahyan, President of Libya Col. Muammar Gaddafi, Greek Premier Constantine Karamanlis, Sri Lanka's former Premier, Sirimavo Bandaranaike, Saudi Arabia's Khalide, UN Secretary General, Kurt Waldheim, Senator Gee Mc Govern, eight members of The U.S. House International Relations Sub-committee.

Several hundred students waved back flags in Indian occupied Jammu—Kashmir against the death sentence on the deposed Premier and handed a protest note to a UN observer posted in the city.

Running battles erupted in various parts of Pakistan between police and people protesting against the death sentence. A university was closed indefinitely. Over 159 were arrested in Karachi for organizing demonstrations. Workers and women supporters demonstrated in many parts of the Punjab. Islamabad University had to be closed after student demonstrations. Tikka Khan's wife led a procession in Rawalpindi. Tikka Khan was Defence Minister in Bhutto's overthrown government. College students of Lahore who felt Bhutto and his PPP government were unseated by US collaborators (because of their refusal to forego the purchase of a Nuclear reprocessing Plant from France having faced a Canadian broken pledge to supply one, its militant championing of Arab and third world causes of political and economic justice from the developed world) carried anti-American slogans.

Waves of unrest throughout the Muslim World ensued after the pronouncement of the death sentence.

Nearly a thousand supporters of Bhutto were detained while the house arrests of his wife and daughter were extended.

In London about 700 people demonstrated outside Pakistan's Embassy. In New York, classmates of Bhutto at California's Berkeley University, began an anti death sentence commutation.

A Reuter cable from Lahore soon after the death sentence stated Begum Bhutto had come to know of a plot to poison her husband in his death cell, the idea being to make it appear that he committed suicide rather than face the gallows. Soon after this disclosure, Bhutto was allowed to have his own cook while he was in his condemned cell 10 by 7 feet.

THE LONDON LINES CARRIED A EDITORIAL TITLED “HE WOULD BECOME A MARTYR”

Mr. Bhutto has been found guilty of murder by the Punjab High Court, Ostensibly therefore he is now not as political prisoner but a common law convicted criminal. But the reality is that this trial was a political trial and that Mr. Bhutto’s Execution would be a political act with momentous political consequences.

To say that is not necessarily to impugn the impartiality of the Punjab’ judges, and is certainly not to absolve Mr. Bhutto of any responsibility for the death of Nawab Muhammad Ahmed Khan. It is clear that those who killed the Nawab were intending to kill his sons Mr. Ahmed Reza Kasuri, a prominent opponent of Mr. Bhutto’s and that they were acting as agents of Mr. Bhutto’s regime. Moreover there was evidence that in this case a specific order for Mr. Kasuri’s “elimination” was given by Mr. Bhutto personally. Perhaps not every court would have found that evidence as conclusive and incontrovertible as the Punjab High Court did, but that is properly a matter for the Supreme. Court to determine, if Mr. Bhutto decides to appeal as his counsel has advised him.

What is clear is that this trial could only have taken place in a given set of circumstances. ‘These circumstances arose from the overthrow of Mr. Bhutto’s regime by a military coup, and from the subsequent decision of the army leaders that Mr. Bhutto should be dealt with judicially before any new elections were held It is obvious that in taking this decision they were influenced by the fact that Mr. Bhutto still enjoyed considerable popular support and by the fear that he might actually win at election if allowed to compete on equal terms. Had he done so and returned to power, not only would there have been no further question of his being tried but it was very likely that he would have instigated a prosecution of the army officers who overthrew him.

Again, that does not necessarily mean that the decision to put him on trial was a dishonorable one. A man who has committed serious crimes while in power may reasonably be held to have disqualified himself from running for political office again, and it was not unreasonable to argue that before being asked to vote for or against Mr. Bhutto, the public had a right to know whether he was in fact guilty of the crimes of which he was accused. How else could this be established except in a court of law? Yet had Mr. Bhutto been acquitted he would emerge a more dangerous political opponent than ever. Everyone was well aware therefore, that a verdict of “guilty” was what the new regime wanted, and meanwhile the

regime has shown itself ready to deal firmly and ruthlessly with political opposition in any form.

The court was thus deliberating under heavy political pressure. It may be that did not in fact affect its conclusions, but inevitably it will affect the willingness of Mr. Bhutto's supporters to accept those conclusions as valid.

In these circumstances if Mr. Bhutto were to be executed it would inevitably be seen not as a just punishment but as the cold-blooded elimination of a dangerous political opponent ironically the very crime of which Mr. Bhutto has been convicted. It would certainly be a shock to Pakistan's friends in the Commonwealth, who regretted Mr. Bhutto's decision to take her out of that body and were aware of his undoubted shortcomings as a ruler, but would none the less regard him as deserving a better fate than the gallows. Still more important, it would make the restoration of civil peace within Pakistan harder rather than easier. It would make Mr. Bhutto a martyr for his followers among the illiterate masses, and would probably also alienate many of the educated people who until now felt no sympathy for him. It would render the present rulers in their turn criminals in the eyes of a large section of public opinion, and might well inaugurate a cycle of political vengeance from which it would be hard to escape. No doubt General Zia will have the wisdom to spare his country and himself of these added dangers.

**A. local news paper quoted the following report from Bonn:
Bhutto has not received fair trial, says Bonn paper**

*PTC-Reuter
BONN.*

The Frankfurter Allgemeine Zeitung (Conservative) commenting on the death sentence, passed in Pakistan on former Prime Minister Zulfikar Ali Bhutto said in an editorial; "Pakistani justice is famed for its independence says the head of the military regime General Zia-Ul-Haq.

"How is it then possible after the overthrow of Prime Minister Bhutto his greatest political rival Pathan leader Iqbal Khan, found guilty by a Pakistani Court of high treason and sentenced to a lengthy prison term has been set free?

"It is the same with the current court case against Bhutto. One cannot but suspect the Pakistani judges can read the desires of whoever happens to be in power at the time", the paper said.

“General Zia publicly condemned Bhutto before judgment was even passed. The judge who presided over the Lahore Supreme Court which sentenced the former Prime Minister to death for ordering the murder of a political opponent, showed bias on several occasions”.

The paper concluded: “Whether or not he committed the crime of which he staffs accused, Bhutto has not received a fair trial. How independent is the Highest Pakistani Court which now has to rule on his appeal against the death sentence.

APPEAL

Lawyers of Bhutto took steps to appeal against the death sentence as protests against the former Prime Minister's murder conviction continued. Defence counsel requested trial documents from the Lahore High Court. The documents would provide Bhutto with an opportunity to elaborate his allegations that he had not received a fair trial which accused him of having ordered assassination of Ahmed Raza Kasuri in October 1974. Bhutto gave as one reason his later boycotting of the case that contradictions in the prosecution case were not being recorded and all his requests to get the cases to a new unbiased Bench were rejected.

When the case was filed and Bhutto was arrested on September 3, 1977 and booked for murder, Lahore High Court Judge who heard the petition for bail release, S. A. K. Samdani granted him bail on September 13. But four days later he was once more detained under martial law order until the proceedings of the case started on October 11. Justice Samdani, it was reported, was transferred later as Law Secretary.

The appeal was fixed for May 6th 1978. Yahya Bakhtiar while complaining of harassment and it being made impossible for him to see Bhutto to obtain instructions applied on April 11th for more time or prepare his client's appeal against his death sentence. May 20th has been fixed for the hearing of appeals from five together. The High Court had earlier given only 7 days for appeal, while the law allowed for 30 days.

**PRESS RELEASE ISSUED BY
THE INFORMATION SECTION OF EMBASSY OF PAKISTAN,
COLOMBO.**

**HIGH COURT SENTENCES BHUTTO TO DEATH
SUMMARY OF JUDGMENT.**

From Our Lahore Office (PAKISTAN TIMES - March 19 & 20, 1978) March 18:
The following is a summary of the 405-page judgment of the Full Bench of the Lahore High Court in the Nawab Mohammad Ahmad Khan murder case, finding the accused Mr. Zulfikar Ali Bhutto and four others guilty as charged and sentencing them to death by hanging.

The prosecution case was that Mr. Ahmad Raza Kasuri who was a founder member of the PPP and had been elected on the ticket of that party as MNA in December 1970 developed strained relations with the principal accused, Mr. Z. A. Bhutto. The latter in order to get him assassinated or liquidated entered into a conspiracy with Mr. Masood Mehmood, Approver, through the FSF. Mian Mohammed Abbas, joined the conspiracy on the direction of Masood, Approver, through the FSF and directed Ghulam Hussain, Approver, to organise the murder of Ahmad Raza Kasuri. Mian Abbas arranged for supply of arms from armoury of FSF. The other three accused and Ghulam Hussain joined the conspiracy at a later stage. On the night between November 10 and 11, 1974 Ghulam Mustafa, Ghulam Hussain, Approver, Arshed Iqbal and Rana Iftikhar Ahmad fired with automatic weapons at the car of Ahmad Raza Kasuri at the roundabout of Shadman Shah Jamal Colony, Lahore. The firing resulted in the death of Nawab Mohammad Ahmad Khan, father of Mr. Ahmad Raza Kasuri, while he himself escaped unhurt. As a result of nominal investigation the case was filed as untraced in September 1975.

Mr. Abdul Khaliq, Deputy Director, Federal Investigation Agency, who appeared before the Court as a witness and had investigated the case, explained the circumstances leading to the discovery of different links culminating in the murder. He stated that after the promulgation of Martial Law on July 5 last year the Central Government directed the FIA to enquire into the performance of the FSF and its officers. Inquiries were conducted into various political murders, kidnappings, abduction and dispersing of political meetings and processions by the FSF. In this connection the bomb blast case in the premises of Lahore Railway Station on the visit of Air Marshal (Retd.) Asghar Khan in March 1975 was

looked into and paid agent of the FSF was caught red handed at the railway station. He was later let off on the intervention of authorities. Various officials of the FSF were called and interrogated.

CONFESSIONS

The witness had said that it had come to light that Ghulam Hussain, Inspector, FSF, (approver) along with his colleagues was seen in Lahore on those days. It was apprehended that the FSF might be involved in the murder of Nawab Mohammad Ahmad Khan. Arshad Iqbal and Rana Iftikhar were interrogated on 24 and 25 July, 1977. As a result of the inquiry they were arrested on July 25. They confessed before a magistrate the next day. Ghulam Mustafa, Ghulam Hussain (Approver), Masood Mehmood (Approver) and Mian Mohammed Abbas were also interrogated and arrested. All of them confessed their guilt and made statement, under Section 164 Cr.P.C. before magistrates. Masood Mehmood directly involved the principal accused, Mr. Z. A. Bhutto, in the commission of the offences.

The autopsy on the body of the late Nawab Mohammad Ahmad Khan showed that the injury on his head was inflicted by some fire-arm and was sufficient to cause death in the ordinary course of nature. The cause of death was injury to brain and shock and only few hours had lapsed between the injury and the death and similarly between the death and the post-mortem examination. A bullet and two metallic pieces, which were sealed in a tube and the clothes of the deceased which were blood-stained, were handed over to the police. On receipt of the statement of Mr. Ahmad Roza Kasuri, Mr. Abdul Hayee Niazi, SHO, Ichhra, Lahore, recorded the FIR. He directed ASI Mohammad Sarwar to reach the hospital along with constables. He himself first went to the spot and from there proceeded to hospital where he found senior officers like the Deputy Commissioner, Sardar Abdul Vakeel, DIG, Khan Asghar Khan, SSP, and Mr. Abdul Ahad, DSP. He deputed Mohammad Sarwar, ASI, to take care of the car and prepared the inquest report of the deceased, obtained death certificate and submitted an application for post-mortem examination.

The SHO collected 24 empty cartridges from the spot and the lead of a bullet from near the bungalow. These empty cartridge and the bullet so recovered were not sealed. The memo was also not prepared in view of a direction given to the official by DSP Abdul Ahad.

The prosecution produced evidence to prove the following points:

1. Strained relations and enmity between the principal accused and Ahmad Raza Kasuri resulting in the threat at the floor of the Parliament on June 3, 1974.

2. The conspiracy to Muder Ahmad Raza Kasuri between the petitioner and Masood Mehmood and joining of the other accused and Ghulam Hussain, Approver in that conspiracy.
3. Attack on Ahmad Raza Kasuri as a part of the same conspiracy firstly at Islamabad and later at Lahore, the last occurrence culminating in the death of the deceased.
4. The steps taken by the principal accused and his subordinates to channelize the investigation in a murder so as to exclude the possibility of detection of the actual culprits and interference in the investigation of the provincial police by central agencies.
5. Preparation of incorrect record by the police under the direction of the officers of the Central Government with the object of making the detection of the actual offenders extremely difficult.

HISTORY OF DIFFERENCE

Mr. Ahmad Raza Kasuri in his long statement before the Court narrated the differences which had developed between him and principal accused (Z. A. Bhutto). According to him he was the only member of the PPP who had gone to Dacca to attend a session of the National Assembly scheduled to be held on March 3, 1971 against the express wishes of Mr. Bhutto. On this serious differences arose between the two of them. Later he neither signed nor did he go in favour of the Constitution of Pakistan of 1973 and did not accept the recognition of Bangladesh which, according to him, was a result of the ambition of the principal accused to acquire power. He had expressed an opinion on the floor of the House that 94,000 POWs were locked up because of the principal accused's connivance with the Indian Government and had opposed the laws introduced by the Government. He had also organised his own group known as Raza Progressive group in the PPP. An attack was launched on him on January 17, 1972 in which three bullets hit his legs.

In this incident his brother also received injuries. Thereafter he made a temporary peace with Mr. Bhutto as a matter of political strategy since the latter was Chief Martial Law Administrator and was witch hunting his political opponents under the Martial Law umbrella by securing quick punishments for them from military courts. After the lifting of Martial Law, the witness again showed his teeth to Mr. Bhutto and revived his role of criticizing him in and outside the National Assembly. He was expelled by Mr. Bhutto from the PPP in October 1972 He joined the Tehrik-i-Istiqlal in June 1973.

TWO INCIDENTS

Mr. Ahmad Raza Kasuri referred to an incident in the parliament on June 3, 1974 when he had pointed out that the constitution had not been unanimously passed Mr. Bhutto lost temper and pointing his finger towards the witness said: "I have had enough of you, "Absolute poison. I cannot tolerate you any further". There was exchange of hot words from both sides. On June 4, 1974, a privilege motion was filed by witness alleging that some goondas were looking for him and this had happened because of his altercation with Mr. Bhutto.

He narrated the incident of August 24, 1974 at Islamabad in which he was fired at from a blue jeep in broad daylight on which a case was registered at P Station. Islamabad. No police officer contacted him thereafter and no investigation or inquiry into the incident was made.

He then gave his version of his visit to Quetta in September 1974 to attend a meeting of the working committee of Tehrik-i-Istiglal and the precautionary measures taken by him since he was a marked man.

He then related the incident pertaining to his visit to the wedding ceremony of Syed Bashir Shan in Shadman Colony, Lahore on November 10, 1974 at 8.00 p.m. It was a dinner-cum-qawwali function. Shortly after midnight he with his parents and aunt started towards his house in Toyota Mark II car which he himself was driving. He reached the Shah Jamal roundabout which was about 70 yards from the wedding house and hardly put his car into the second gear when the first burst of weapons hit the body of his car and damaged its dynamo. Immediately the car's lights went off. Then there were repeated bursts with automatic firearms.

He managed to drive on and when he cleared the roundabout and turned towards F.C. College Bridge and reached the house of Mr. Muzaffar Ali Qizilbash, he looked into the driving mirror and found that no car was following him. He noticed that his father was resting his head on his shoulder. He moved his hand forward towards his father only to find that his hand was soaked with blood. His mother reported from the rear seat that his father's blood was already in her feet. The witness rushed to the UCH. The SSP, Lahore, was informed and he arrived in the hospital with DIG, Mr. Abdul Vakeel Khan. The officers were trying to draft an FIR but he did not agree to the registering of a case on the basis of that draft. There was some argument on the drafting of the FIR since the officials insisted that Mr. Bhutto should not be named. At 3 a. m. a doctor from the operation theatre announced the death of his father. He lost temper and told

the police officers with finality that if they had to record an FIR, the name of the principal accused (Mr. Bhutto) must be included in it. He himself dictated the statement and signed it.

He said that the police did not contact him or his relatives in connection with the investigation.

Regarding his rejoining the People's Party he stated that in September 1975, Saeed Ahmad Khan, Chief Security Officer to Prime Minister and Abdul Hameed Bajwa deceased started visiting him. Saeed Ahmad Khan had told him that he was a marked man and danger had not been abated. He had told him that while maintaining his then stance he had not only put his life in jeopardy but had put his entire family at stake. He advised that witness to patch up with Mr. Bhutto, Mr. Abdul Hafeez Pirzada visited him in October 1975 and tried to persuade him to compromise with Mr. Bhutto and rejoin the PPP. He patched up with Mr. Bhutto on April 6, 1976. According to him, he simply maintained a posture of affiliation with the party as a measure of expediency and self-preservation.

MASOOD'S EVIDENCE

Masood Mehmood, Approver, stated that before his promotion as Additional Secretary he had been superseded by four juniors and after promotion he was posted as Managing Director, Board of Trustees of the Group Insurance and Benevolent in the Establishment Division which he termed as a punishment post. Mr. Wiqar Ahamed, Establishment Secretary, asked him to call on the Prime Minister on the morning of April 12, 1974. Accordingly he went there. During the interview Mr. Bhutto said some kind words to him, praised him and his work and offered to him the post of Director-General of the FSF, and advised him to be on the right side of Mr. Wiqar Ahmad. Mr. Bhutto told him not to seek instruction from Khan Abdul Qaiyum Khan, then Minister of Interior He ordered that the FSF be made into a deterrent force because he wanted the people of Pakistan, his Ministers, MNAs and MPAs to fear it. He advised him not to terminate the services of re-employed officers without his permission and in this connection he mentioned Mian Mohammad Abbas.

The witness Said that between April 12 and 23, 1974 he was visited several times by Mr. Saeed Ahmad Khan and his assistant Mr. Abdul Hameed Bajwa. Bajwa made it quite plain that if the witness did not accept the job offered to him, his wife and children might not be able to see him again: Similar apprehensions were expressed by Saeed Ahmad Khan but in mild and persuasive language. The charter of the FSF given to the witness by Mr. Bhutto orally was (a) breaking up of political meetings, (b) harassment of personages both in his own party and opposition and (c) induction of plain-clothed persons in public meetings addressed by him to swell the crowds.

One of the functions was to brief the Prime Minister about the situation in the country and the information collected through sources about members of his own party including some Ministers and those in the opposition. The witness was asked to be present in the National Assembly when Mr. Bhutto was attending the session. He witnessed the occurrence with regard to the Prime Minister rebuking Mr. Ahmad Raza Kasuri on the floor of the house. A day or two later the Prime Minister sent for him and told him that he was fed up with the obnoxious behavior of Ahmad Raza Kasuri and that Mian Abbas knew all about his activities.

He told the witness that Mian Abbas had been given directions to get rid of Ahmad Raza Kasuri. He ordered the witness to ask Mian Abbas to get on with the job and to produce the dead body of Ahmed Raza Kasuri or his body bandaged all over. He told him he would hold him personally responsible for the

execution of the order. On the protests of the witness Mr. Bhutto lost his temper and said that he would have no nonsense either from him or Mian Abbas and said, "You don't want Wiqar chasing you again. Do you?"

ORDER REPEATED

The witness called Mian Abbas and repeated the order of Mr. Bhutto. Mian Abbas was not disturbed and said that he would see to it that the orders were duly executed. The witness was reminded and goaded again and again about the execution of the orders by Mr. Bhutto personally on the green telephone as well as through Saeed Ahmad. He referred to an earlier incident of August 1974 in which Ahmad Raza Kasuri was sniped at in Islamabad. Before this incident Mr. Bhutto had asked the witness to take care of Ahmad Raza Khan Kasuri who was likely to visit Quetta. Accordingly he had told Mr. Welch, Director, FSF Quetta, that some anti-State elements including Ahmad Raza Kasuri had to be got rid of.

He referred to intelligence reports from Quetta regarding Ahmad Raza Kasuri and also certain correspondence between Mian Mohammad Abbas and Mr. Welch. All this correspondence had taken place because he had been asking Abbas to enquire about the steps taken regarding Ahmad Raza Kasuri.

He stated that on November 11, 1974, the Prime Minister and the witness were at Multan. Very early in the morning of that date Bhutto rang him up and said: "Mian Mohammad Abbas has made complete balls of the situation. Instead of Ahmad Raza he got his father killed." On his return to headquarters Mian Abbas had reported to him that the operation had been successful but instead of the intended victim, his father Nawab Mohammad Ahmad Khan had been murdered at Lahore.

On return to Rawalpindi Mr. Bhutto summoned him. He was peeved and agitated. He had said that the actual task had yet to be accomplished. On this the witness had declined to carry out such orders any more.

Thereafter threats were held out to witness and attempts were made on his life as well as to kidnap his children. Several times his food at Chamba House was poisoned. He discovered that some of his own subordinates seemed to have been bought over since he had seen them lurking at places where they should not have been when he was around.

He made a confessional statement before a magistrate in Islamabad and addressed a letter to the District Magistrate on September 7, 1977, requesting for grant of pardon.

Mr. Saeed Ahamed Khan corroborated Masood Mehmood, Approver. Mr. Bhutto had ordered him to send reports on a number of persons including Ahmad Raza Khan Kasuri and some other renegades of the People's Party. He, therefore, opened files of such persons. The files in respect of Ahmad Raza Kasuri were also opened in the month of December 1973.

Mr. Kasuri was being kept under strict surveillance under the orders of Mr. Bhutto and his telephone was tapped, With regard to getting rid of Ahmad Raza Kasuri, the witness corroborated fully Masood Mchmood.

He said that a Special Inquiry Tribunal was set up to enquire into the murder of Nawab Mohammad Ahmad Khan. During the proceedings before the Tribunal, the name of Mr. Bhutto was mentioned. On this, Mr. Bhutto rang up the witness and enquired from him as to where he was. He said that he was in Rawalpindi. On this he lost his temper and said: "What the hell are you doing in Rawalpindi, when my name is being taken before a judicial inquiry being held at Lahore by Justice Shafiur Rahmen in the murder case of late Mohammad Ahmad Khan, What kind of Chief Security Officer and legal adviser are you?" He directed the witness to proceed to Lahore and meet the Advocate General, the Chief Secretary, the IG Police and the investigating officers, which he did. He came to know during the course of inquiry that the empties of the bullets used at the scene of the offence were of 7.62 mm caliber which indicated the use of Chinese weapons in the official use of the F.S.F. The police was helpless in investigation. He informed Masood Mehmood about the use of weapons which were in the official use of the F.S.F., but Masood Mehmood put him off on the plea that the Chinese arms were also issued to Army units besides being smuggled into the country. Not satisfied with this, the witness met Mr. Bhutto and conveyed his impression but he found that the answer of Mr. Bhutto was similar to the one given by Masood Mehmood. Mr. Bhutto snubbed him and said that he should keep out F.S.F. He directed him to find out from Joint Army Direction Organization whether arms of this caliber were available elsewhere, and also to write to the Defence Secretary.

Further he should make enquiries from Bara regarding availability of arms of this caliber. Mr. Bhutto also talked about family disputes of Ahmad Raza Kasuri.

The JADO informed him that a number of Service arms were using 7.62 mm caliber weapons and they could have been purchased at Bara. The Defence Secretary pointed out that Chinese weapons were in the use of F.S.F., Frontier Corps units and Armoured Corps tank crews. He again saw Mr. Bhutto and enquired whether letter from the Defence Secretary should be produced before the Tribunal. Mr. Butto said: "Have I said to you to safeguard my interest or to incriminate me. This letter will certainly be not produced before the Tribunal.

You are, trying to become over clever and if you don't behave you will suffer the consequences which your progeny will not forget." Accordingly the letter was not produced before the police or the special Tribunal.

He said he was ordered to publicize material produced before the Tribunal which was favorable from the point of view of Mr. Bhutto. He wrote a letter to Director General Information to arrange publication of the portions of statements of SSP, Lahore and Malik Waris DSP before the Tribunal which were side lined by him. Mr. Bhutto had assigned the document proving that it had been seen by him and had his approval. Accordingly, wide publicity was given by the Ministry of Information and Broadcasting to these statements. The Tribunal gave its report and a note was put up to Mr. Bhutto pointing out that the Tribunal had criticized the lapses in investigation but it seemed to have felt satisfied with the investigation carried out later by the DSP, CIA.

The witness recommended the publication of relevant portions of the report with a view to clearing the position emanating as a result of the incident. This note came back to the witness with a note from Mr. Bhutto that he would decide after seeing the report. The matter was kept pending. Later in a meeting of the witness with the Prime Minister the latter directed that the report would not be published as it was adverse.

The witness gave details of how Ahmad Raza Kasuri was made to rejoin the PPP. According to him there was a rift between Ahmad Raza Kasuri and Tehrik-i-Istiglal Chief Air Marshal (Retd.) Asghar Khan. The witness was instructed by Mr. Bhutto to win over Ahmad Raza Kasuri and bring him back to the PPP. He gave the necessary instructions to Mr. Abdul Hameed Bajwa who initiated talks with Ahmad Raza Kasuri and arranged meetings of the witness and Mi. Kasuri. Kasuri had told the witness that he could not join a party which was headed by a person responsible for the murder of his father and one who was after his blood. The witness had told him that if he rejoined the PPP, he might be rehabilitated otherwise his life might be in jeopardy as he knew that he was a marked man. Later he agreed with the soundness of this suggestion and asked the witness to inform Mr. Bhutto that he was prepared to join the PPP and he would like to meet Mr. Bhutto.

Some documents were produced before the Court one of which was a note reporting to Mr. Bhutto the meetings of the witness with Ahmad Raza Kasuri and conveying his request for an audience with the Prime Minister Mr. Bhutto was purported to have written the following lines on the note: "He must be kept on the rails, he must repent and he must crawl before he meets me. He has been a dirty dog. He has called me a mad man. He has gone to the extent of accusing me

of killing his father. He is a lick. He is ungrateful. Let him stew in the juice for some time." The note was signed on July 29.

Mervyn Rupert Welch, Director, F.S.F., appeared as another witness and corroborated the earlier witnesses, with regard to the movements of Ahmad Raza Kasuri to Quetta in July 1974. He explained that in the context the words 'take care of and 'eliminate' were used in the sense that Mr. Ahmad Reza Kasuri be assassinated. He gave an account of the manner in which Mr. Kasuri stayed in Quetta.

Ghulam Hussain said that he joined the FSF in December 1973 after interview with the then Director General of the force. He was in charge of ammunition. Mian Abbas asked him to find out the residence of Ahmed Raza Kasuri and also to identify him. He ordered that it was his duty to remove Kasuri from the path of Mr. Bhutto and that this was the order given by Masood Mehmood, and promised full protection to him otherwise, his service as well his life would be in danger. It was under the promise of protection, threat of loss of service and life and the pressure brought to bear upon him that the witness agreed to implement the order. The ammunition was secured for him by Mian Abbas. No entry was made about these in the relevant register. He found out that Mian Abbas had also detailed another team which had instruction to do away with the witness in case he failed to perform the task assigned to him and then proceed to perform it itself.

The witness went to Rawalpindi in a blue jeep with two constables, the genuine number plate of the jeep was removed and drove to MNAs hostel where Ahmad Raza Kasuri was. When Ahmad Raza Kasuri was heading towards his residence he switched on the right indicator of his car at an intersection. When the jeep was about to reach the intersection the witness directed the driver to take the jeep to the left and ordered Mulazim Hussain, Constable, to open fire through the rear window of the jeep, the blind of which had already been rolled up. With the first fire Ahmad Raza Kasuri glanced towards the left and sped on. The jeep of the witness was then driven to a circuitous route to the FSF headquarters.

Mian Abbas reprimanded him and showed his surprise that a commando who had been given automatic weapons and a jeep had allowed the quarry to escape in broad daylight. Mian Abbas said that the failure to complete the mission had exposed the whole thing and this had made the Prime Minister very angry. He was directed to remain on the job and to finish off Kasuri quickly.

By that time Ahmad Raza Kasuri had come to Lahore Mian Abbas directed the witness to take the ammunitions from The commando camp and proceed to Lahore with Rana Iftikhar Ahmad, who was one of the commandos. Sufi Ghulam

Mustafa had to provide the arms and a jeep. The witness proceeded to Lahore. Sufi Ghulam Mustafa had told the witness that he had been informed that the mission was to be accomplished by Iftikhar and Arshad Iqbal with the help of the witness. At about 7 or 8 p.m. on November 10, 1974, Sufi Ghulam Mustafa Iftikhar Ahmad and Arshad Iqbal accompanied by the witness left in a jeep for Model Town. They spotted the car of Mr. Ahmed Raza Kasuri on their way. They turned their jeep to follow hit car but lost track of it. They then rang up the residence of Ahmed Reza Kasuri and were informed that he had gone to attend a dinner party in Shadman Colony. Thus they went to Shadman. They reached the house and parked their jeep there.

Act of murder

The witness took a pistol with two magazines containing 16 rounds while Arshad Iqbal and Iftikhar Ahmed were given a sten-gun each fully loaded with two magazines. The witness directed Arshad Iqbal to open fire in the air the moment he saw that Ahmad Raza Kasuri's car was about to pass by him. He ordered Iftikhar Ahmed to open fire at the first car which came before him after Arshad Iqbal had fired in the air. The witness himself started pacing the road. He heard the sound of firing at about midnight. The second and third bursts followed after short intervals. He hurriedly reached the intersection from the branch road which he was pacing. Shortly thereafter a car without headlights emerged from the road which linked the road that he was pacing with the road that came from the wedding house. Soon the jeep came over and he was assured by Arshad Iqbal that he had fired in the air after identifying the correct car while Rana Iftikhar informed him that he had fired at the first car which came after the first burst and that his aim had been correct. They all went to the FSF headquarters. The arms were deposited with Sufi Ghulam Mustafa Thirty rounds had been fired.

Mian Mohammad Abbas was contacted but he was not available on the telephone. Subsequently Ghulam Mustafa contacted him and in the presence of the witness gave him the news of the death of Nawab Mohammad Ahmad Khan. Mian Abbas directed the witness to return to Rawalpindi.

On instructions from Mian Abbas the witness claimed his travelling and daily allowance for Karachi for the months of October and November 1974 and submitted TA/DA bills. These bills were scrutinized by Mian Abbas to ensure that the witness had not indicated his presence at Lahore during the day of occurrence.

The witness stated that Arshad Iqbal was later attacked at Lahore outside his house in Ichhra but in that attack his brother Amjad was murdered. He admitted that Arshad Iqbal had told him after the occurrence that he had submitted his resignation more than once but it was not accepted. The witness said that undue influence and coercion for attempt on Ahmad Raza Kasuri's life was exercised by Mian Abbas.

Malik Mohammad Waris, D.S.P, stated that he took the file of this case to Mohammad Asghar Khan who directed him to take it to Saeed Ahmad Khan to Rawalpindi and seek instructions from him with regard to investigation.

A number of other prosecution witnesses appeared but their evidence was of a formal nature and they supported the prosecution version orally as well as provided certain documents which formed part of the prosecution story. The confessional statements of Mr. Iftikar Ahmad, Arshad Iqbal and Ghulam Mustafa were recorded by Mr. Zulfikar Ali Toor, Magistrate 1st Class Lahore who also appeared as a witness. He also recorded the statement of Mian Abbas and said that he had observed all formalities. He gave time to Mian Abbas to think over and informed him that he was not obliged to make confessional statement. He warned him that in case he made a confessional statement it might be used against him. After he was satisfied that the accused was making a voluntary statement he proceeded to record it. The statement was read out to Mian Abbas and he admitted it to be correct and put down his signature on it. The custody of Mian Abbas was given back to Assistant Director, F.I.A., for being taken to judicial lock-up.

Before the start of the trial Mr. Bhutto challenged the constitution of the Court on the ground that by his appointment as Chief Election Commissioner the Acting Chief Justice had ceased to hold the latter office. He also made allegations of bias against the Acting Chief Justice. The Supreme Court directed him to raise these questions in the High Court. He then submitted two petitions challenging the constitution of the High Court and showing apprehension that he would not get a fair trial in view of the allegation of bias against the Chief Justice. These petitions were dismissed in limine by the Full Bench of the High Court.

The judgment said that besides strongly refuting the allegations of bias it was pointed out in the order that the matter was being heard not by the Acting Chief Justice alone but by a larger bench of five judges each of whom had to act independently and was under oath to act justly without fear or favour. The accused submitted two petitions for special leave to appeal against the order before the Supreme Court. He however withdrew the petition filed by him to challenge the order passed on the petition raising question of bias against the Chief Justice. Thereafter he submitted several incompetent petitions and information's repeating the same allegations, despite the fact that the matter had attained finality. In some petitions there was a prayer for transfer of the case to some other Bench or to the Sessions Court, All these petitions were dismissed. It was repeated that the apprehension of the principal accused was altogether unreasonable.

The judgment continued that in his last petition for transfer which was submitted on January 18, 1978 the accused repeated all the earlier allegations of bias and supplemented them with a number of scandalous, scurrilous and baseless allegations. He also took such objections to the Court's rulings of procedure adopted by it, which could be taken only before a Court of Appeal.

The judgment said: "Since the practice of this Court is to hear motion cases in Chambers and the Bench trying the case was of the view that the petition was submitted only to scandalize the Court and to give publicity to these baseless allegations with a view to shaking public confidence in the Court, it was considered proper to hear this transfer case in motion in Chambers. The accused was called to the Chamber alone to argue the matter since he had submitted the petition in person and not through counsel. On entering the Chambers the principal accused showed surprise that the matter was not being heard in court and requested that it should be heard there. This made it obvious that he was more interested in publicizing his baseless and scandalous allegations in the petition and his arguments on it. He was informed that motion cases are generally heard by the Court in Chambers. The principal accused then submitted that his counsel would argue the case. He named Mr. D. M. Awan and Mr. Ehsan Qadir as his counsel. Both the counsel were therefore called. However, they had nothing substantial to say. After finishing his arguments Mr. Awan requested to be allowed to withdraw from the case. His request was not granted. He prayed that the accused might be given a chance to make submissions on merits. He was allowed to do so although he had no such right, when his counsel had been given full hearing.

The accused, the judgment said, started making a political speech which was irrelevant. He was warned by the Court to be relevant but he finished his submissions by saying that if he was not allowed to say, what he wanted to say he would not address the Court any further. The petition for transfer was then dismissed.

Later Mr. D. M. Awan stated that his client had withdrawn the powers of attorney of all his counsel and he did not want to defend the case. The court directed Mr. Ehsan Qadir and Mr. Awan to conduct the defence at State expense. Mr. Qadir appeared before the Bench and requested to be relieved. Mr. Awan also had the same request on the ground that the accused had refused to give him any instructions. The court was of the view that since the accused appeared bent upon thwarting the attempt to arrange for his defence at State expense, it relieved Mr. Awan and directed the accused to conduct the case himself. This was the only course open to the Court, the judgment said.

When the first question was put to Mr. Bhutto in his examination under Section 342 Cr. P. C. He stated he was boycotting the proceedings and would not offer any defence. He would make a statement only about the reasons why the present case was fabricated against him and why he apprehended he would not get a fair trial and justice from the court. Applications making allegations against the Court had been disposed of and they were not relevant to the statement under

Section 342 Cr. P. C. The Court observed that if the accused considered it necessary to harp on the same tune, it must be only with the intention that his slanderous statement might receive publicity in open court as well as in Press.

The judgment said: "Now no court much less a superior court can allow a litigant to challenge before it its fairness, integrity and impartiality, or to scandalize it and to go on repeating with impunity, scandalous and libelous attacks on judges and to malign them. If this is allowed it would shake the public confidence in the administration of justice. In exercise of the discretion vested in the courts by the proviso to Section 352 Cr. P. C. the proceedings were therefore directed to be held in Camera."

Mr. Bhutto made a statement and was asked to sign it but he refused to do so. On his enquiry whether he could correct typographical or grammatical errors he was told to make any corrections so long as the substance of the statement was not changed. He wrote certain uncalled for and incorrect remarks that the statement might not have been complete, the Court observed. Thereafter he sent application from the jail that his statement was not correctly recorded. This application was dismissed since the statement had been typed on the dictation of the accused himself and the allegations in the petition were absolutely false. Later a few supporters of Mr. Bhutto demonstrated against the holding of the court in camera and created disturbances outside the High Court. It was ordered that the proceedings of the trial would continue to be in camera.

DEFENCE WITNESSES

During the course of the trial Mr. Bhutto made a long statement denying the charges and giving his own version.

No evidence was led by Mr. Z.A. Bhutto but Mian Mohammad Abbas summoned three defence witnesses but later gave them up. He examined three formal witnesses, Mohammad Amin, Abdul Majid and Abdul Khaliq, Deputy Director FIA who was summoned for the production of record. Amin produced a statement of Abbas of July 21, 1977, pertaining to affairs of FSF, Abdul Majid DSP, Special Cell, Ministry of Interior was produced to prove an order to have been passed by Mian Abbas directing an inquiry to be held against Ghulam Hussain and others. The witness denied the existence of such an order. He stated that the document only showed that an inquiry was ordered by Sardar Tahir Ali Kheli, Director, Training, FSF who had sent the papers to Mian Abbas for appointment of a particular officer as enquiry officer. But Mian Abbas regretted his inability to do so. Abdul Khaliq produced certain documents relating to some recovery memo and a copy of the T.A. bill of Mian Abbas to prove his presence in Peshawar on the relevant dates.

The Court held: "It is proved that Nawab Mohammad Ahmed Khan died as a result of the murderous attack by Arshad Iqbal and Rana Ifitkhar Ahmad accused made under the supervision of Ghulam Hussain near the Shah Jamal Shadman roundabout Lahore on the night between the 10th and 11th of November 1974 with weapons of 7.62 bore obtained by Ghulam Mustafa from Amir Badshah Khan for that purpose under orders of Mian Mohammad Abbas accused.

The Court also held that the conspiracy in the present case became complete as soon as Masood Mehmood agreed to and did convey the unlawful order of the principal accused to Mian Abbas, The next significant development of conspiracy was the order of the principal accused to Masood Mehmood to take care of Ahmad Raza Khan Kasuri on his visit to Quetta. Masood Mehmood gave directions to N.R. Welch to get rid to Kasuri. This part of the statement of Masood Mehmood was not only corroborated by Welch but it found further corroboration from the documentary evidence on record. Further the incident at Islamabad also lent full support to the evidence of conspiracy.

The Court held that the prosecution had led considerable evidence to prove the subsequent conduct of Mr. Bhutto and his officers in the uncalled for and illegal

tampering with the evidence and the investigation of the case. The fact that the empties were not sealed initially, were not kept in the *malkhana* of the police station and were allowed to be substituted was proved beyond any shadow of doubt. This story proved the tampering with the evidence by Abdul Hamid Bajwa and Mian Abbas.

Corroboration

The Court was of the view that the participation of Mian Abbas in the conspiracy and the role played by him in its execution was corroborated by direct testimony of two witnesses and other circumstantial evidence of motive as well as the conduct before and after the murder. There was sufficient corroboration of the testimony of each approver which not only tend to connect but did actually connect the two contending accused in the cases with the crime charged against them. Even if there had not been such a strong corroboration, the conviction could have been based on the evidence of these accomplices because in so far as the principal accused was concerned the motive was exclusively his. The involvement of Mian Abbas by Masood Mehmood and Ghulam Hussain who had no score to settle with him was avidence of his connection with the offence.

The counsel for Mian Abbas had pleaded for lesser punishment for him on the ground of sickness, old age and under a hard taskmaster, "This submission is not tenable. He is the person who supervised the entire operation, selected the assassins and supplied arms to them for commission of the heinous offence. It would amount to miscarriage if the normal sentence of death is not imposed upon him."

Regarding Mr. Z. A. Bhutto, the Court wrote six pages on his conduct and said that he was the arch culprit having a motive in the matter. He used the members of the FSF for personal vendetta and for satisfaction of an urge in him to avenge himself upon a person he considered his enemy. There was no rule under which he could escape the extreme penalty.

The Court ordered that all the five accused should be hanged by the neck till they were dead. Mr. Bhutto was ordered to pay a sum of Rs. 25,000 as compensation to the heirs of Nawab Mohammad Khan, deceased. The sentences of imprisonment under each head would be concurrent and these sentences as also the sentence to be undergone in default of payment of fine would be effective in case the sentence of death was commuted.

Regarding the conduct of Mr. Bhutto in court the judges were of the view that he had been hurling threats as well as insults on the court and at times had been unruly. In addition he had proved himself to be a compulsive liar. He was allowed thrice to dictate his statement directly to, the typist and he dictated nine pages on January 25, more than 11 pages on January 28 and about 11 pages on February 7 without any interference by the Court. All the three statements were

full of repetition of false and scurrilous against the Court. Yet he came out with allegations that the statements were not fully recorded. Out of the five accused he was the only one who had been leveling all sorts of imaginary and false allegations against the court.

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**SHORT REPORT
of an
Amnesty International Mission to
Pakistan
on 20 - 25 January 1978
(EXCERPTS)**

INTRODUCTION

On 20 January, Professor Mumtaz Soysal, Vice-Chairman of the International Executive Committee of Amnesty International and Professor of Constitutional Law at Ankara University, Turkey, and Yvonne Terlingen, a Dutch lawyer from the International Secretariat, travelled to Pakistan for a five-day visit. This short report on a mission to Pakistan, 20-25 January 1979, ... outlines areas of concern which specifically relate to the position of fundamental rights under martial law.

Following receipt of the delegates' report by the International Executive Committee, Amnesty International, ... wishes to express its concern about the introduction of martial law provisions curtailing fundamental freedoms and, in particular, 'the practice of trying civilians before military courts.

i. Military courts are by their nature summary and do not follow the rules and procedures applicable before ordinary courts, designed with care to ensure that the greatest degree of fairness is assured to the accused. Military judges do not have the benefit of the extensive training and experience which is generally required from civil judges trying criminal offences. Amnesty International's reservations about the military court procedure (which in Pakistan does not allow for appeal to a higher court) were strengthened by the experience of 'a recent attendance of summary military court proceedings.

AI believes that if civil courts are capable of functioning civilians should be tried before the ordinary courts of law in accordance with the requirements of due process of law. Moreover no civilians should be imprisoned for contravention of martial law provisions curtailing fundamental freedoms as listed in this report.

ii. AI notes with great concern the introduction of the punishments of flogging and amputation of the hand under the martial law provisions, and the fact that the punishment of flogging is now being administered to prisoners convicted of carrying out normal political activity. AI opposes the introduction of these punishments and the use of flogging on political prisoners since it considers

these punishments to be forms of “cruel, inhuman and degrading treatment or punishment,” as defined in international legislation.

iv. b. There is also concern about the twelve special courts more recently set up by the government to try alleged criminal offences of misconduct and corruption of members of the previous government. AI believes that the wide powers given to the courts to try such offences open the possibility of their use for political ends. AI believes that all charges, including those against political personalities, should be brought before ordinary courts with full access of the public and the press, where all customary legal safeguards apply.

There are a number of political prisoners in Pakistan, mainly members of the Pakistan People’s Party (PPP), at present serving sentences handed down, by military tribunals for contravening martial law regulations curtailing fundamental freedoms.” AI has adopted 30 of these prisoners as “prisoners of conscience”.

That martial law orders and regulations issued since 5 July 1977 have also introduced forms of punishments such as flogging and amputation, which AI considers to be “cruel, inhuman and degrading punishment,” as defined under international law. Although these provisions, which we will describe below, exist in some other Islamic countries, AI is concerned about their introduction in Pakistan and the application of the punishment of flogging in particular as a means to punish political dissent.

Powers to detain and try political prisoners

On 14 September 1977, the government announced that it had set up a special court, consisting of three High Court judges, to try offenses punishable under the high Treason (Punishment) Act 1973. AI is concerned about this development, since a charge of treason was brought (in a private suit) against former Prime Minister Mr. Z. A. Bhutto in August 1977 and is pending before the Lahore High Court. AI believes that political prisoners should always be tried under the ordinary procedures of law and has the full protection of all customary legal safeguards.

Restoration of powers guaranteed to the higher judiciary in the Constitution

On 7 July 1977, the new government restored powers to the higher courts to issue writs under Article 199 of the Constitution, including the writ of habeas corpus (Laws (Continuance in Force Amendment) Order of 7 July 1977). And, on 22 September 1977 the Laws (Continuance in Force) Fifth Amendment) Order was passed, annulling the amendments made to Articles 179, 195 and 199 of the Constitution. In its report, AI had pointed out that these amendments had withdrawn powers from the higher courts to grant bail and give other orders for

interim relief to certain categories of prisoners. They had also introduced serious restraints on the independent functioning of Pakistan's higher judiciary. AI has said that these amendments "deprived the higher judiciary of their principal means of effectively and speedily remedying violations of individual liberties".

Number of Political prisoners

AI believes there are at present several hundred political prisoners held under martial law provisions in Pakistan.

New Arrests

After the Government assumed power, leading members of the Pakistan People's Party (PPP), including the former Prime Minister, were arrested under detention laws and subsequently charged with criminal offences. Political party workers have also been arrested either under preventive detention laws or for violating martial law orders and regulations. They are usually quickly tried and sentenced by the martial law court. AI believes that several hundred political party workers are presently so being held and has adopted 50 as "prisoners of conscience". Solely on the basis of reports appearing in the Pakistan press, drawn upon by AI, it is clear that at least 404 persons have so far been sentenced in 34 cases of trial by summary martial law courts, of these, at least 321 are political prisoners sentenced under martial law provisions restricting fundamental freedoms as described in this report. Sentences imposed by martial law courts are often of one year's imprisonment or less and are not always necessarily reported in the press, it is therefore difficult to give a precise estimate of the number of political prisoners held at any one time.

The Position of Fundamental Rights and the Powers of the Judiciary Under the Martial Law Regime

The Laws (Continuance in Force) Order 1977, of 5 July, 1977, provides that:

"The Fundamental Rights conferred by Chapter One of part two of the Constitution and all proceedings pending in any court in so far as they are for the enforcement of any of those rights, shall stand suspended".

The Constitution, according to the wordings of the 5 July Order, is held "in abeyance" and Pakistan shall, subject to the martial law orders and regulations issued by the authorities, "be governed as nearly as may be, in accordance with the Constitution".

AI notes, however, that the Government's Order includes the suspension of the right to life, the right not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment, the freedom of thought, conscience and religion, the freedom from slavery and the right not to be punished under

retroactive laws-rights guaranteed in the Pakistan Constitution. (These rights are guaranteed in Articles 9, 14, 20, 11 and 12 of the Pakistan Constitution, respectively.) These are all rights from which no derogation is possible, even in times of a “public emergency threatening the life of the nation,” as defined in Article 4 of the national Covenant on Civil and Political Rights.

The AI delegates, in the course of their discussions in Pakistan, have noted the importance and value of the judgment to Supreme Court, passed on 10 November 1977, on the validation of the Martial Law and its legal consequences. Whereas AI does not take any position as regards the legitimacy of government dished by extra-legal means, the judgment deserves special attention as the consequence of the particular difficulties in which the judiciary may find itself in a country of tension under military rule and as a remarkable effort to set legal limitations to the arbitrary actions which a government might easily take under such conditions.

The petition before the Supreme Court was presented by Begum Nusrat Bhutto and it challenged the detention of Mr. Zulfikar Ali Bhutto and 10 leaders of the Pakistan People’s Party under Martial Law Order No. 12 of 1977, on grounds that the detention under martial law without lawful authority and mala fide.

Political party workers, in particular those belonging to the Pakistan People’s Party, continue to be arrested under these martial law provisions, often to prevent them from organizing or taking part in processions which are prohibited under martial law.

Martial Law provision restricting fundamental rights

A number of political prisoners have been sentenced by summary military courts for contravening martial law regulations which seriously restrict fundamental rights.

Several hundred political workers, trade unionists and students have been arrested for “trying to form a procession and raise slogans” (Dawn, 13 October 1977); “hoisting flags of a political party” (Pakistan Times, 11 October) and making “calls for strikes” (Dawn, 19 February 1978).

The majority of those arrested and sentenced by military tribunals for political activities (and the majority of those at present adopted by AI as “prisoners of conscience”) are members of the Pakistan People’s Party.

Flogging

Several martial law regulations provide for the punishment of flogging. In Pakistan, the punishment was introduced after the military take over of July 1977

and has been administered to, among others, political prisoners who have been sentenced to undergo flogging for attempting to lead processions and “raising slogans against the government” (in most cases reported to AI, these are slogans in favour of the Pakistan People’s Party and Mr. Z. A. Bhutto.) The punishment has also been administered to persons “making objectionable speeches” “and “hoisting flags of political parties.” Most recently, on 20 February 1978, seventeen members of the Pakistan Television staff were sentenced by summary military court to flogging (varying from 10 to 15 lashes) and one year’s imprisonment for leading a take, over of television studios in four Pakistani cities, in connection with wage demands. According to information available to Amnesty International from the Pakistan press, at least 161 persons have so far been sentenced to undergo ‘flogging’ for committing political offences of this nature.

Trial of political prisoners by military courts

Two types of military courts exist in Pakistan, summary military courts and special military courts. Both have jurisdiction to try civilians on a wide range of martial law offences but also offences punishable “under any other law for the time being in force.” AI has set out its serious reservations about the trial of civilians before such courts at the beginning of this short report.

Summary Military Courts consist of one member. The accused can address the courts and cross examine witnesses, but only a memorandum of evidence needs to be taken down. The accused has no right of representation by a lawyer, although the accused may have a person to assist him, who could be a legal adviser he may, be present during proceedings as a “friend of the accused,” and may advise him in that capacity. (The friend of the accused” cannot address the court directly.) The maximum punishment these courts can impose is one year’s imprisonment and / or flogging not exceeding 15 lashes. The maximum period of imprisonment is imposed in most cases. There is no provision for appeal.

Special Military Courts consist of three persons, one of them a magistrate, the other two of the rank of Major or Lieutenant-Colonel. Only a summary of the evidence needs to be recorded and if necessary may be dispensed with in a case and in lieu thereof an abstract of evidence may be recorded.” The courts may impose all punishments, including the death penalty and amputation of a hand, however, the execution of these last two punishments has to be confirmed by the Chief Martial Law Administrator. Any question relating to the jurisdiction or the legality of the exercise of powers of the military courts shall be referred to the Chief Martial Law Administrator, whose decision is final. In other words, there is no provision under martial law for review of the legality of decisions taken by the martial law authorities by any court of law in Pakistan, including the Supreme Court.

However scrupulously military courts may carry out their functions, there are clearly features in the military court procedure. Particularly in relation to defence arrangements and absence of appeal procedures, which should be of great concern to all those interested in providing a fair trial to an accused. For example, a petition before the Sindh High Court challenged the varying sentences (from 8 to 12 months' imprisonment and 8 to 10 lashes) awarded to seven boys found guilty of "taking out a procession and raising pro-Bhutto slogans" by the Summary Military Court, Nawabshah.

In the case which the AI delegates partly attended (the charge was illegal possession of arms,) there were four prosecution witnesses and two witnesses for the defence. The accused in this case did not have the help of a "friend" who could assist him. AI was informed that the accused had the assistance of a police officer to advise on defence matters. The delegates gained the impression that the same police officer also acted as adviser to the prosecution witness under examination by the court when the delegates attended the proceedings, AI was also told of reports (which it was unable to confirm because of lack of time) that lawyers present during the trial of political workers to advise the accused as a "friend" were not allowed entry into the court of a summary military court in Lahore.

Even without confirmation of these reports, AI feels that the existing defence arrangements before summary military courts trying political prisoners are inadequate and can in no way equal legal advice by qualified legal counsel as exists under the ordinary criminal law procedure. The absence of adequate defence arrangements is particularly disquieting in view of the summary way in which the evidence is recorded before military courts.

In the court case which the AI delegates attended during their mission, the evidence was dictated by the military judge and taken down, in English, although the accused did not speak or understand that language. The accused was thus clearly in no position to, question or even understand the nature of the evidence recorded, in a normal court a crucial function on defence counsel, which is essential feature of a fair trial.

Arrest and Trial of Leaders of the People's Party

Apart from political party workers, whose imprisonment has been referred to in the previous section, leading politicians are also being held in most cases, there are serious charges against them.

AI is concerned at the establishment of twelve special courts under the provisions of the Holders of Reprehensive Offices (Punishment for Misconduct)

Order of 25 November 1977. Special courts, established under the Order, may try acts of misconduct and scheduled offences committed by “holders of representative offices” as described in the amended Order and committed after December 1970. AI wishes in particular to draw attention to the provision that a special court has the power to “conduct its proceedings and regulate its procedure in all respects as it deems fit” (section 6 (2) of the Order.) And, although there is the possibility of appeal to the Supreme Court (section 6), no court has any jurisdiction of any kind in respect of any order, sentence of proceedings of a Special Court (section 9). Special courts are therefore not bound by the ordinary, rules covering criminal procedure and AI believes that the wide powers given to the courts to try this specific category of criminal offences opens the possibility of their use for political ends. This is particularly so in view of the restriction that the special courts should only try allegations of misconduct of officials of the previous government (its jurisdiction being limited to offences allegedly committed by “holders of representative offices” after 1972 - i.e., time that the previous government assumed office), and that conviction for misconduct by special court leads to disqualification from public office for seven years.

In this context, it is of considerable concern to AI that the first special court set up under the Order (the special court to deal with cases against a person who has held the office of President or Prime Minister), announced on 7 March 1978 that its hearings of six charges.....against the former Prime Minister, will be heard in camera. (The Court announced that it would hold hearings in Kot Lakhpat Jail, Lahore, where Mr. Z.A. Bhutto, the former Prime Minister, is currently being held.)

As already stated, AI believes that all charges including those against political personalities, should be brought before the ordinary courts of law and the ordinary rules of evidence and procedure should apply access of the press and foreign observers should be guaranteed at all stages.

Amnesty International’s position as regards Mr. Bhutto’ case

AI has taken an interest in this particular case since it concerns the trial of a prominent political personality for acts he allegedly committed while holding office. Given that situation, there is the risk that political factor could affect the circumstances of the trial, however fairly the judges trying the accused may have exercised their functions. AI believes that it is therefore important that all safeguards against such possible influences be taken and recommends that international observers from qualified international organizations be assured access to all further stages of the trial, including the stage of appeal. It regrets the Lahore High Court decision to conduct the last stage of the trial proceedings ‘in camera.’

Mr. Z. A. Bhutto is currently being tried for serious offences under the provisions of the Pakistan Penal Code. However, AI notes that he is also being held in detention under the provisions of Martial Law Order No. 12, aimed at political activity. And, while AI has not taken up Mr. Bhutto's case as that of a "prisoner of conscience," as defined in Article 1 of the AI Statute, AI believes that Mr. Z. A. Bhutto, like other political prisoners, has the right to a fair and open trial and should be held in conditions which comply with the United Nations Standard Minimum Rules for the Treatment of Prisoners. During their visit, the AI delegates discussed with government officials reports it had received prior to their visit that Mr. Bhutto was not being given proper treatment in jail. In order to verify or deny these reports, AI requested the Chief Martial Law Administrator for permission to meet Mr. Bhutto in jail. AI was offered the possibility of meeting Mr. Bhutto in court, an offer which the AI delegates declined since it would not enable them to make an on the spot evaluation of the conditions of Mr. Bhutto's detention. The government refused the AI delegates permission to meet Mr. Bhutto in jail.

AI was therefore unable to satisfy itself that Mr. Bhutto is being held in conditions which comply with international standards. Consequently, AI is very much concerned at the government's decision to refuse the AI delegates permission to meet Mr. Z. A. Bhutto in jail.