

THE BHUTTO'S LETTER TO
ANWAR-UL-HAQ
CHIEF JUSTICE
SUPREME COURT,
MAY 1978

REPRODUCED BY

SANI H. PANHWAR

CONFIDENTIAL

To,

Mr. Justice Anwarul Haq,
Chief Justice of Pakistan and
President of Pakistan
Rawalpindi.

Sir,

My appeal against the judgment of the Lahore High Court sentencing me to death and imprisonment is pending in the Supreme Court of Pakistan of which you are the Chief Justice. I am writing this application from the death cell of Kot Lakhput Jail, Lahore with a request which, I consider to be pre-eminently legitimate and reasonable. I am writing this application after anxious and careful thought. The request is simple one. Please do not preside over the Supreme Court when my appeal comes up for hearing on 20th May 1978. The following are the reasons for my request:-

1. You resented the Constitution Sixth Amendment made by the Parliament whereby your predecessor got an extension in the term of his office and your promotion to the office of the Chief Justice of Pakistan got consequently delayed. Yes, as leader of the House, I was responsible for that amendment in the Constitution made through Parliament in accordance with the procedure laid down in the Constitution. You have held the Constitution to be still the Supreme Law of the land except, that according to your judgment, a single individual without any mandate from the people, can amend it at will. You have in fact empowered him to change altogether the shape of the Constitution and indeed 'to scrap it'. Thus he has to been allowed by you to rule the Country in the most arbitrary manner for an indefinite period without being accountable to the people. You considered it necessary to give this power to this individual because he nullified the Constitutional Sixth amendment a day after your predecessor while presiding over the Supreme Court admitted for hearing Begum Nusrat Bhutto's petitions challenging the Martial Law of General Ziaul Haq, he Chief of the Army Staff. By the repeal of this Constitutional amendment, he was able to unceremoniously remove your predecessor Mr. Justice Mohammad Yaqoob Ali from the office of the Chief Justice of Pakistan and appoint you to succeed him. How much a Chief Justice can influence a Bench presided over by him becomes apparent when the same Bench presided over by you nullified its order, made four days earlier, when presided over by your predecessor about bringing me and other detained colleagues of mine from different parts of the Country to Rawalpindi for the hearing of the petition.
2. Before you assumed office as the chief Justice, the judges of the Supreme Court had, I believe, declined, to take a fresh oath as determined by the 'suspender' of

the Constitution, But on your assumption of office as the Chief Justice all the judges of the Supreme Court immediately agreed to take the new oath ordered by General Ziaul Haq.

3. At the reference given on your appointment, you considered it appropriate to be critical of my administration for the amendments made in the Constitution during my Government — clearly implying your deep resentment against me. Thus, inferentially you expressed your gratitude to General Ziaul Haq for removing Mr. Justice Yaqoob Ali and appointing you as the Chief Justice. You reciprocated his gesture in full measure by your judgment in Begam Nusrat Bhutto's petition. By virtue of this Judgment, General Ziaul Haq was declared as a national saviour, his Martial Law and *coup d'etat* justified on "the doctrine of necessity" and his power to act as the one man parliament to amend the Constitution confirmed. You could not possibly withhold the power of amending the Constitution from him on without this power he could not have repealed or nullified the Constitution Sixth Amendment which facilitated your appointment as the Chief Justice of Pakistan and Mr. Justice Yaqoob Ali's removal from that office.
4. Again on the occasion of the Fourth Pakistan Jurist Conference which was inaugurated by General Ziaul Haq you thought it fit to criticise my Government in your presidential address.
5. While addressing the Bar Association at Karachi on 23rd and 24th of January this year you publicly and bitterly criticized my Government and Party.

You went to the extent of advising advocates to 'educate' the people so that persons like me and my colleagues were not returned to power by them in future (for your satisfaction, please check the Radio Pakistan the transcripts of your address at Karachi as the newspapers did not fully report these speeches. The tapes of your Karachi addresses, I understand, are available with some private individuals also).

6. That you and Mr. Justice Mushtaq Hussain the Chief Justice of the Lahore High Court have been very close to each other for many years and both of you are zealously collaborating with the Martial Law regime. There could be no two opinions about it.
7. That while my appeal is pending before the Supreme Court you did not consider it indiscreet or embarrassing to accept General Ziaul Haq's offer to appoint you as the Acting President of Pakistan. Was this also unavoidable because of the doctrine of necessity? By becoming the Head of State of the country and by actively identifying yourself fully with the Executive at this critical juncture when the dark shadow of the Martial Law is cast over the whole country and more so on my appeal. You have institutionally used the office of the President and that of the Chief Justice into one. By merging, albeit temporarily, the two remaining organs

of the State — The Executive and the Judiciary — completely you have done irreparable loss to the Country.

General Ziaul Haq has called my trial by the High Court as just and fair trial although I have disputed this in my appeal and the Supreme Court has yet to determine these questions. He called me a “murderer” when my case was subjudice in the High Court. Now belatedly, he tells the world leaders not to make appeals for exercising an executive power of commuting the death sentence awarded to me on the ground that the matter is subjudice before the Supreme Court. Although this executive power has nothing to do with the appeal pending in the Supreme Court, yet it never occurred to him not to prejudice end prejudice the false case against me when it was pending in the High Court.

You would, therefore, be doing a service to Pakistan, the Judiciary and yourself by not sitting on the Bench which hears my appeal, by not selecting judges for that purpose but letting the full court, including the ad-hoc Judges to hear the appeal as was done by the Court in hearing Begum Nusrat Bhutto’s petition against Martial Law. I had thought that perhaps you would yourself find it unfair and embarrassing to preside over the Bench which hears my appeal in view of the undisputed and well known facts stated above. I have been constrained to address you on the subject as I find no indication thus far, on your part to disassociate yourself from the appeal in my case.

7th May 1978

Zulfikar Ali Bhutto
Appellant
Death Cell, District Jail
Kot Lakhpat, Lahore