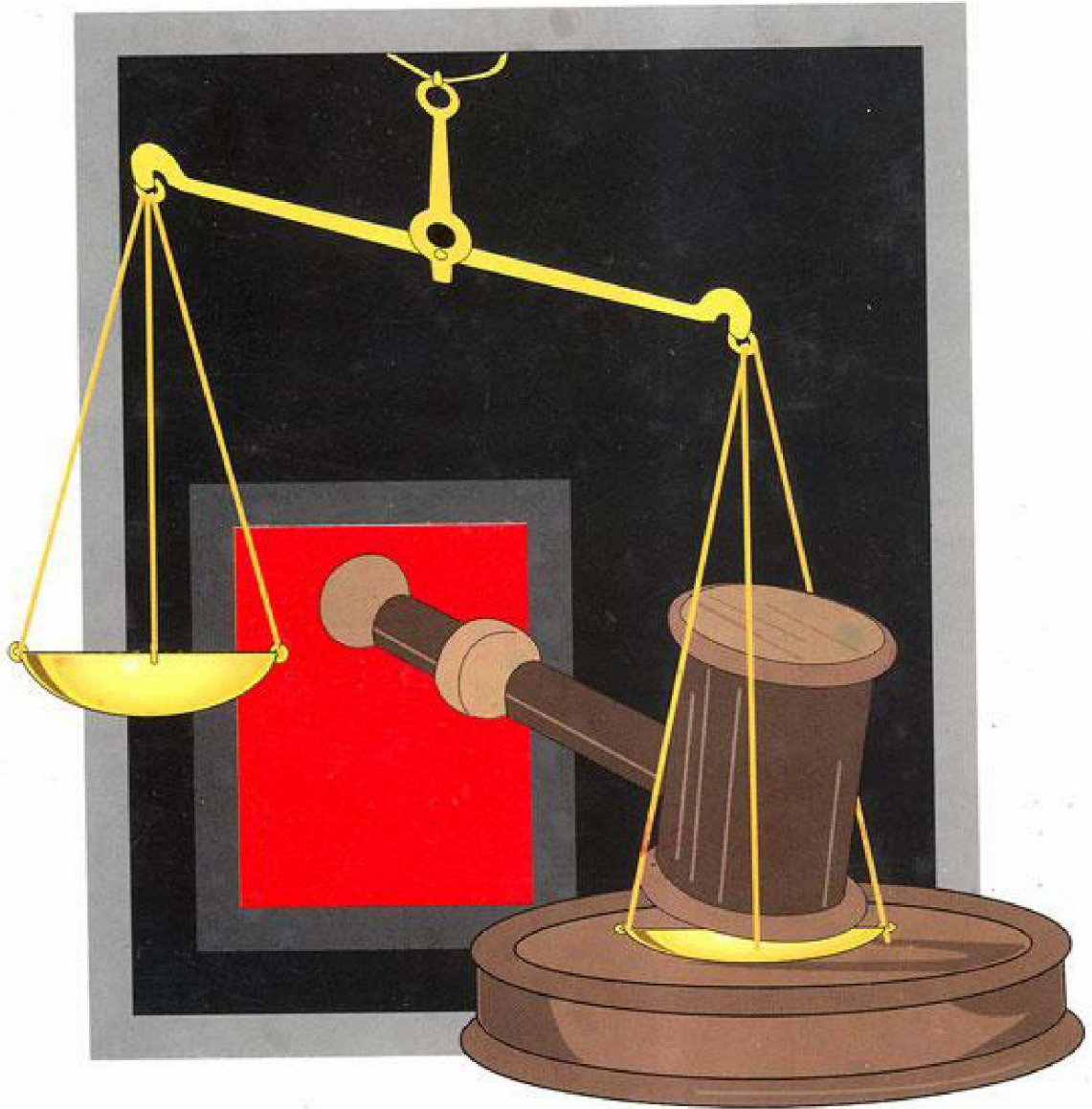


# BLIND JUSTICE



**Bashir Riaz**

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**Sani Hussain Panhwar**

Member Sindh Council, PPP

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**Bashir Riaz**

**FICTION HOUSE**  
**18- Mozang Road, Lahore.**

Published by Fiction House,  
18-Mozang Road, Lahore (Pakistan)

Author : Bashir Riaz  
First Edition : March 2000  
Second Edition : May 2000  
Layout : M. Ilyas  
Title : A. Q. Hijazi  
Composed by : Maheer Computer Point,  
Lahore. Ph: (042)6850380  
Production : Zahoor Ahmed Khan/Rana Abdul Rehman  
Printer : Musawaat Printing Press, Lahore.  
Publisher : Fiction House,  
18-Mozang Road, Lahore.  
Ph:(042)7249218-7237430  
Price : Rs.300/=

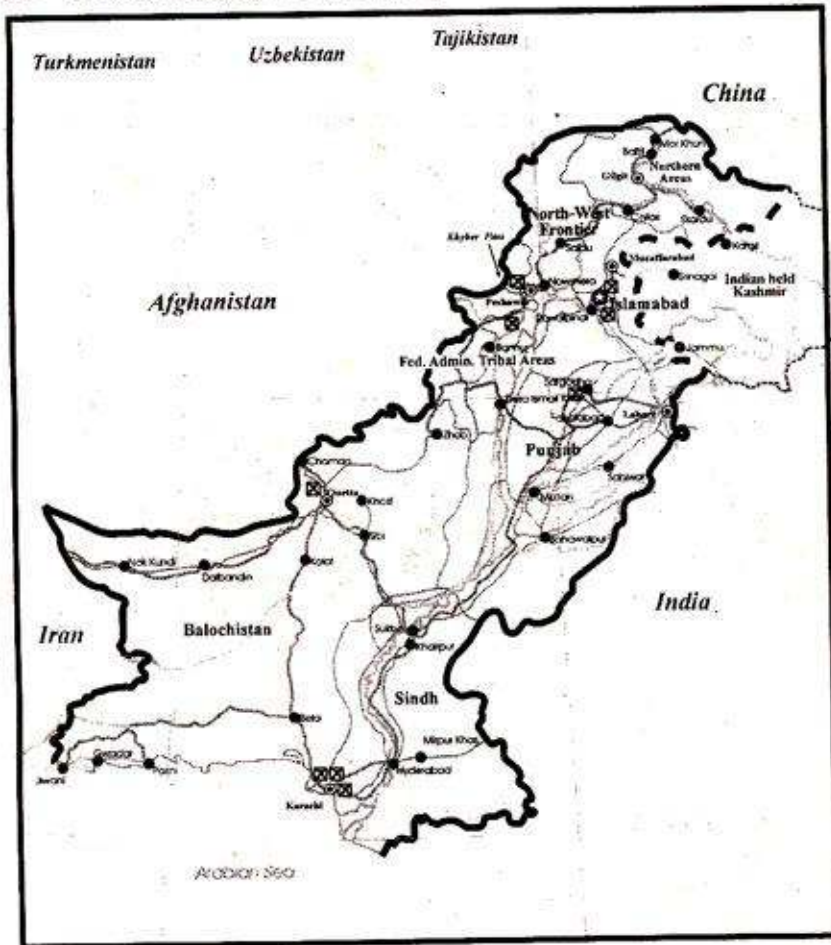
**TO  
ALL THOSE  
WHO  
SUFFERED  
FOR  
THE CAUSE  
OF  
DEMOCRACY  
AND  
JUSTICE**

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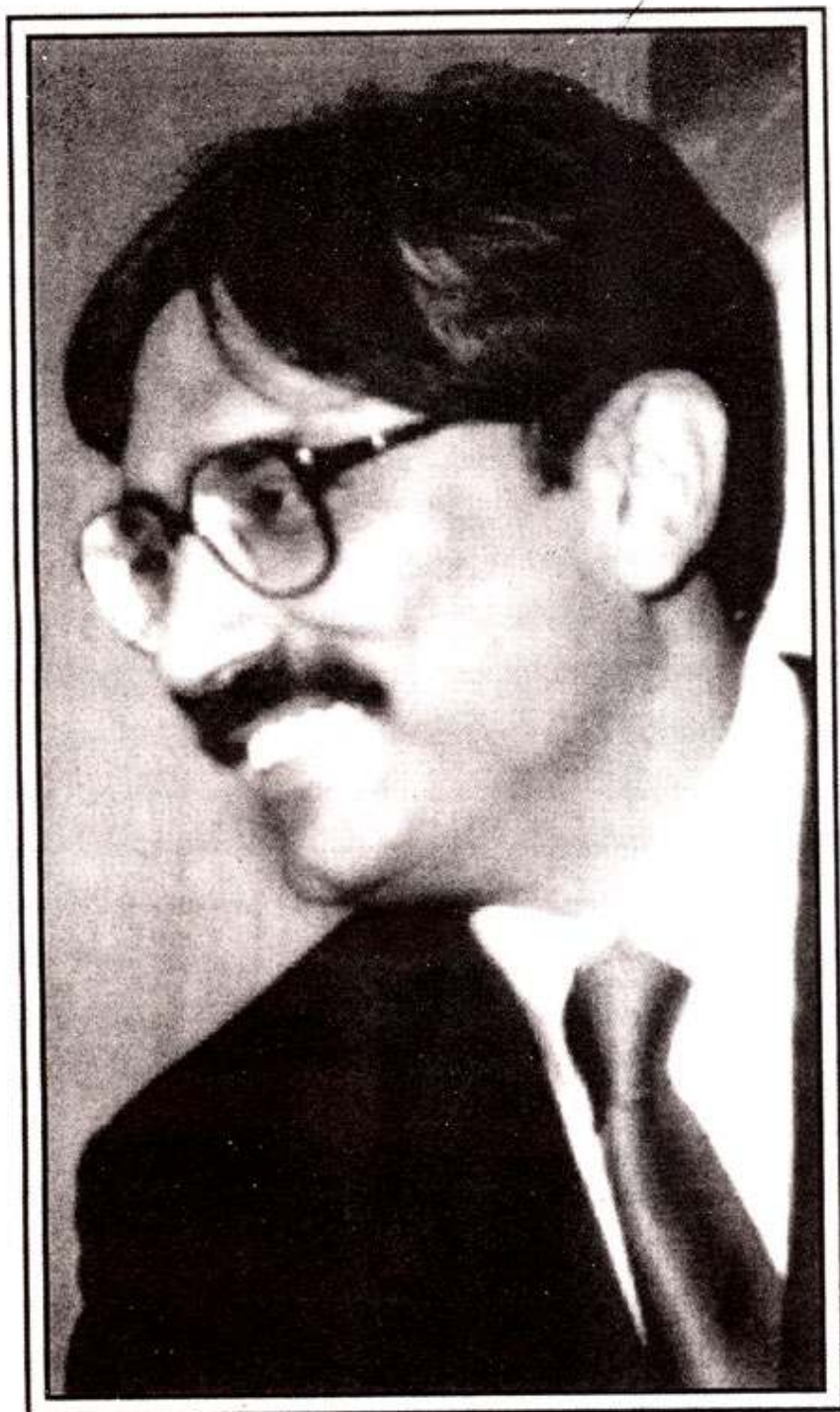
# Pakistan







Mohtarma Benazir Bhutto, Former Prime Minister of Pakistan



Senator Asif Ali Zardari



## Introduction

The fifty two years of Pakistan's independence have been marred by events ranging from direct military intervention, resulting in a high-handed, one man stifling of democracy, to intrigues and backstabbing of political opponents under a democratic dispensation. What has emerged as a broader political landscape, is both predictable and frightening. The irony however is that this sense of predictability does not transcend into an actual functioning of democracy from the highest echelons to the grass-roots level. The effect of all this has been a blatant exploitation of the system by the establishment, directly or through their puppets wearing the stained robes of political high priests. As a natural corollary, this resulted in the transformation of the society into two general groupings. The common man supportive of the Pakistan Peoples Party (PPP) versus the rest. The former mainly comprises the workers and the peasants. The latter led by Pakistan Muslim League (PML) with several factions and other right wings and right of center parties, representing an elitist horde of people. This group has always been out to plunder their country and sacrifice the interest of the people they lead, at the altar of political expediency. The more recent manifestation of this conflict has been the dislodging of the elected governments of PPP by the establishment, fronted by PML(N) and some right wing, practically non-representative political groupings and ethnic exploiters and black mailers.

What followed on both occasions was a ruthless witch-hunt of the PPP leadership, particularly of Benazir Bhutto and her immediate

family. While it is important to put the political history of Pakistan in its proper perspective, it is equally important and necessary to analyze the underlying motives of this 'come what may, get Benazir' attitude.

Political opportunism has not been the exclusive domain of Pakistani politicians. There are other examples, not only in this region but also in Europe and America. However the dubious distinction that Pakistan has acquired, puts the rest to shame. There are numerous examples of physical elimination of political opponents the world over. John F. Kennedy, Martin Luther King, Jr. and Robert Kennedy were eliminated in a democracy such as the United States of America. Liaqat Ali Khan and Zulfikar Ali Bhutto were assassinated in Pakistan. What is more sinister in case of Pakistan is the shameful reality that even the national interest was and is being thrown to the winds in the pursuit of this blind ambition.

The primary objective of this study is to expose the most recent attempt to sabotage democracy, politically eliminate Mohtarma Benazir Bhutto and thus the PPP, which is the true representative of the masses. Establish a one family rule fashioned on the pattern of medieval marauders and conquerors that left behind tyrannic dynasties to subjugate the vanquished. Only this time the vanquished are the unsuspecting free citizens of an independent Pakistan who, in part, voted these plunderers into power, with the connivance of disloyal partyman who had been trusted with the highest office of the land and catapulted to the Presidency – an office he could not even dream of.

What followed is common knowledge but needs to be recounted with precise details for memories are often short and the forgiving people of this country will soon put all this into the dustbin of history as they prepare to grapple with the problems of unemployment, hunger and insecurity in a society coping with injustice and virtual absence of the rule of law.

It is not only desirable but also necessary to look back at the first 30 months of the misrule of Nawaz Sharif. He had inherited an economy, which was moving in a positive direction. This was so because of the prudent economic policies of his predecessor Mohtarma Benazir Bhutto who was not even allowed to complete two years of her five-year term due to the intrigues of the establishment led by President Ghulam Ishaq Khan. Ishaq was fully supported by the PML and other right wing parties. Nawaz Sharif also began to preside over a country that had been put on the road to political and economic liberalism to conform to the changing international realities.

The ascension of Benazir to political power, after eleven long, dark years of General Zia's repression was heralded all over the world as a breath of fresh air and the beginning of a moderate, liberal and Islamic state of Pakistan. The transformation from the military dictatorship to a democratic, representative government encouraged investors from all over the world to seek investment opportunities in Pakistan.

The freedom of the press and the culture of political tolerance, which are the hallmark of a democratic society, were misconstrued by the opponents of Benazir as her weakness. As it is, the elections of 1988 had been manipulated to prevent the PPP from getting a landslide victory that looked apparent. Some of these steps were a caretaker government without a Prime Minister – a constitutional requirement. In the provinces, PML Chief ministers were allowed to continue in order to achieve the 'desired results'. Another glaring example of these manipulations was the refusal of Ishaq Khan to allocate the two-decade old election symbol to the PPP. Despite all that the PPP emerged as the largest single party. Nawaz Sharif hijacked the independent MPAs of Punjab and kept them in virtual confinement at Changa Manga rest houses to buy their loyalties to form a government in Punjab and declare a war against the federal government. A more detailed discussion of other such machinations appears in the following chapter.

The incompetent and corrupt leadership provided by Nawaz Sharif led to a near collapse of all state institutions (1990-93) and brought the country on the verge of economic ruin in a relatively short span of time. The ineptness and inefficiency of his government surpassed that of General Yahya Khan who had earlier presided over the dismemberment of Pakistan. The only distinguishing feature between the two was the fact that while Yahya was not accused of financial impropriety, Nawaz Sharif baffled even the most sympathetic of and neutral observers, with the single mindedness of his purpose to acquire wealth at the expense of the state. He confronted his benefactor, Ghulam Ishaq Khan head on when he tried to stand in his way. In order to prevent the opposition from exposing his misdeeds, he let loose the worst form of tyranny against the Bhutto family through the unscrupulous Jam Sadiq Ali.

When the curtain finally came down on his misrule, due to the intervention of the former Chief of Army Staff, General Waheed Kakar, it was feared that the country might get engulfed in a civil war. The neutral caretaker government of Moeen Qureshi set about the task of holding fresh elections. He also took stock of the economic situation and was not only candid but also alarmed at the state of near bankruptcy that

stared Pakistan in the face. The plunder of the cooperatives had left millions of lower and middle income people destitute. Nationalized Commercial Banks and Development Financial Institutions had been bulldozed to dole out unsecured loans to the Sharif family and its cronies, with the result that the bad debts of these financial institutions had reached unprecedented limits. Muslim Commercial Bank and dozens of profit making public sector industries were handed over to frontmen and favourites at throw-away prices. The policy of denationalization initiated by the first Benazir government had been distorted and used to accumulate personal wealth. Billions were squandered in the yellow cab scheme to gain cheap popularity and receive huge amounts of kickbacks. The ill-conceived and highly overpriced motorway was awarded to Daewoo for commissions amounting to billions of rupees. One of the first steps that Moeen Qureshi took was to discontinue the yellow cab scheme and reduce the motorway to four lanes instead of six.

After the October 1993 general elections, when Mohtarma Benazir Bhutto got re-elected as Prime Minister, she began by picking up the pieces and proceeded to set the house in order. The western countries as well as the South East Asian 'tigers' once again started to look at Pakistan as the ideal ground for direct foreign investment. A country, which came perilously close to being declared a terrorist state, was once again seen in the light of a liberal, democratic Islamic state. The three years that followed saw DFI increase from a meager \$350 million in 1992-93 to \$1.1 billion in 1995-96. The budget deficit declined from nearly 8% of the GDP to just over 5%. \$1 billion of foreign debt was retired. Federal tax revenues rose from Rs.142 billion in 1992-93 to Rs.272 billion in 1995-96. This near 100% increase in revenue was achieved despite a gradual but positive reduction in tariff rates of duty.

The foreign policy of Pakistan also saw a sea of change in this period. The country stood isolated in the world community under Nawaz Sharif. Even our staunchest allies such as China were weary of our intentions. The cause of the Kashmiris' struggle for freedom had been put on the back burner. The American policy makers perceived Pakistan as a state sponsoring international terrorism. It was Benazir Bhutto who stemmed this tide of international hostility, made the Americans realize that they had to support Pakistan's security concerns and its nuclear compulsions. The Kashmir issue was taken to international fora and came alive once again.

The benefit of the far-reaching economic policies brought unprecedented foreign direct investment and resultant increase in employment. During the three years of the second Benazir government,

more than 300,000 people got employment opportunities. In short the negative effects of the 30-month Nawaz Sharif rule that intervened between the first and second Benazir governments were neutralized and the country seemed well on its way to prosperity. It was once again time for the champions of status quo and masters of intrigues to get concerned. They could not sit idle and let democracy flourish and economic prosperity to trickle down to the downtrodden and less fortunate people of Pakistan.

The ball of conspiracies and backstabbing was once again set into motion. The establishment once again turned to the street-wise and corrupt Nawaz Sharif. Only this time they had a half-wit traitor occupying the Presidency. The job of reversing the tide of progress and prosperity, which would lift the masses to a new level of sharing the riches of corruption and misrule. The state of the economy was painted as bleak, which was headed for a collapse. Even the IMF and World Bank were made to believe that Pakistan was on the brink of economic collapse. Some Washington based economists were recruited to write articles in the newspapers which would lend credence to these scary stories of economic doom and gloom.

When this coterie of intriguers found all this insufficient to dislodge the government of Benazir Bhutto, they ruthlessly murdered her brother Mir Murtaza to get at her. It took no time for them and their supporters to point an accusing finger at her and her husband Asif Ali Zardari for the murder of her own brother and the only male member of the Bhutto family. What happened thereafter is common knowledge. Even after the judicial commission appointed to inquire into the matter had absolved Asif Zardari of all responsibility for this ghastly murder, he languishes in jail, pending trial, which is being made to drag on.

Zia knew that the only way for him to keep the PPP from coming back to power was to strike at its populist base. In order to achieve this objective he had to divide the nation into ethnic and sectarian groupings. The largest power base of the PPP, the province of Punjab had to be refashioned into pockets of political influence and then set into motion with an anti-people bias. He divided the people on the basis of 'Biradari' and went on to create a leadership at the local level which would chip away at the roots of people's power.

In Lahore he decided to create a wealthy group of politicians who would control the local bodies with financial power. To this end he decided to return the nationalized Ittefaq Foundries to the Sharif family. At the time the total worth of this business concern was Rs. 5 million. The Sharif family was encouraged to send one male member to the

provincial cabinet of Lt. General Jilani, the then Governor of the Punjab. With Nawaz Sharif as the new Finance Minister of Punjab, the foundation of a corrupt administration was being laid. As was expected of him by General Zia, Nawaz soon set about the task of acquiring immense wealth so that he could challenge the more traditional political leadership. It was soon evident on the military leadership that with the potential for absolute corruption so openly visible in Nawaz Sharif, it would be not only proper but necessary to give him a free hand at least in Punjab. He was therefore moved up the ladder and made the Chief Minister of Punjab.

The task before Nawaz Sharif was simple. Acquire so much financial power and encourage all forms of corruption so that a new class of people could entrench themselves firmly in all positions of power. The Sharif family had a meteoric rise to political and financial power, under the patronage of Zia. It was soon realized by the people that in order to survive and have some say in local and provincial politics they would have to be on the right side of Nawaz Sharif. Even those in the federal government understood that Zia was grooming Nawaz Sharif to eventually take over the country's leadership and complete the rot of the national political system. The bureaucracy bent over backward to please Nawaz Sharif by drafting tailor-made policies to benefit the house of Ittefaq.

The Sharif family purchased a wasteland at Chunnian for little or no money. Soon the federal government issued an SRO to declare it a special industrial investment zone, with very favourable tax and tariff rates. The land turned into gold and the Sharif family made billions as a result. The benefit of exemption from Central Excise duty on new sugar industry was extended to the Sharif family units which had been in operation for more than five years. The Central Excise duty already paid by them was to be adjusted against future production. These are some of the examples of how the doors to all riches were flung open so that Nawaz Sharif could acquire an unassailable position of financial power and a resultant political influence. This was how Zia thought he could win his war against the PPP. Everything appeared to be working according to the master plan.

Two things happened which sidetracked Zia's ambition of hoisting an anti-people regime on Pakistan as early as 1988. First his handpicked, otherwise timid looking Prime Minister Mohammad Khan Junejo decided it was time for him to assert himself. The tussle for absolute control over political power drove Zia to the edge. He could have no more of this independence and sacked the government of Junejo



as well as the National Assembly. While Zia was still busy in finding a way to legitimise the rule of Nawaz Sharif, Nature intervened and Zia, was no more. This setback was something the reactionaries were not prepared for. Ghulam Ishaq Khan's announcement of the date of first party based general elections in 11 years caught pro-Nawaz forces off guard. The Inter Services Intelligence tried to put together a coalition of PML and right wing political forces to counter the sweeping resurgence of the PPP led by Mohtarma Benazir Bhutto. The battle lines were clearly drawn. The pro-democracy forces had started tasting victory of the people after 11 long years in the wilderness. The anti-people and anti-PPP forces had started to realise that their grip on political power was finally slipping.

PML Chief Ministers headed the four provincial governments. It was however not easy to defeat the rising tide of populism and engineer results that would keep the truly representative government out of power. The elections to the National assembly dashed the hopes of many stalwarts of the status quo. Nawaz Sharif played yet another dirty trick out of his political bag. He went around Punjab asking the people to stand up against Sindh. He made them believe that Mohtarma Benazir Bhutto was the representative of Sindh and the Punjabis had to unite to safeguard their interest. In this manner he drove the final wedge of dissention and disunity in a people reeling under the pressure of dictatorship and oppression. The politics in Pakistan would never be the same again.

The establishment had not given up all hope of forming a government without PPP. The acting President refused to accept the PPP as the largest single party capable of forming the government at the centre. He announced that he would make a determination of who could command a majority in the National Assembly, after meeting with the leaders of various groups individually. A sense of uncertainty was thus created. He gave Nawaz Sharif a chance to put together a coalition of some sort and form a government of his own. The stalemate finally ended and more than two weeks of intrigues and manipulations ended in the first popularly elected government in 11 years.

In the Punjab, Nawaz Sharif managed to form a PML government with the support of a large group of independents, who were either browbeaten into supporting him or won over in exchange for political and economic favours. From day one Nawaz Sharif started a policy of confrontation with the Federal government and made his supporters believe that he could bring it down in no time. He thus sent a message to all those who would have nurtured the thought of leaving him

that he was a force to reckon with and only those who stayed by his side would get the benefit of the bargain. He was actively aided by the Ghulam Ishaq led establishment. PPP's political allies, the ANP and the MQM were coaxed into abandoning it. A no confidence motion was brought against the PPP government. Nawaz Sharif tried all means at his disposal to 'buy' the loyalties of PPP legislators. The infamous 'midnight jackal' case is well known for the extremes to which one can go with trying dirty tricks. The motion failed but the efforts to dislodge the PPP continued unabated. Finally on 6<sup>th</sup> August 1990, Ghulam Ishaq Khan struck. He dissolved the National assembly and dismissed the elected government of Benazir Bhutto. A witch-hunt began, leveling serious accusations of financial impropriety against her government.

This time it was easier for the Inter services Intelligence to cobble together a coalition of nine right wing parties called the IJI. Elections were rigged to assure a comfortable majority for this group. Nawaz Sharif was asked to take over as the new Prime Minister. It now seemed certain that Zia's dream had been fulfilled. Mohtarma Benazir Bhutto was kept on the run and made to appear before several special benches of the High Courts in Sindh and Lahore. Her husband was jailed on charges ranging from corruption to extortion and even mass murder. The purpose was clear. Keep her busy while Nawaz Sharif consolidates his economic and political power. Nothing came out of these references and gradually each of the six references against her were dismissed. Asif faced a total of eleven cases. None of these could be established against him and finally he was also freed.

However one objective was achieved. Nawaz Sharif's personal wealth grew at a lightening speed and in less than 30 months of his misrule saw his family business grow from Ittefaq Foundries to over 30 industrial units worth billions of rupees. Public sector financial institutions were forced to finance all such business ventures. Populist development schemes were undertaken to earn huge amounts in kickbacks and commissions. The economy started to stagnate and at one point it seemed that the country would soon be bankrupt. Political polarisation grew to alarming levels and when it became evident that the Federal government supported by the Punjab police may embark upon a civil war, the then Army Chief intervened and thus came to an end the 30 month misrule of Nawaz Sharif.

The 1993 general elections held under the neutral caretaker government of Moeen Qureshi saw the return of Mohtarma Benazir Bhutto. As already stated, the intrigues against her started the day she set foot in the Prime Minister's house. Nawaz Sharif knew that his political

and business survival would depend on how soon he can dislodge the elected government of Benazir Bhutto. With each passing day he was losing ground and yielding it to the peoples representatives. When he finally succeeded in dislodging her government through her own handpicked President, he knew that in order to survive and make up for the lost time, he would have to come up with the most effective of ruses to keep the attention of the people diverted from the real issues. The easiest way out was to promise accountability that was his smoke screen for continuing with the highway robbery that had been interrupted after his ouster from power in 1993. It was also to serve as his main weapon against his arch political rival.

Nawaz Sharif appointed his personal friend Saifur Rehman to head the Ehtesab cell. Gave him unbridled powers and the task to politically eliminate Mohtarma Benazir Bhutto. This known tax evader and loan defaulter was the ideal choice to serve as 'his master's voice'. Unlimited public funds and other official resources were placed at his disposal and he was asked to 'deliver'. Saifur Rehman set about the task of feeding the media with false stories. State controlled electronic media was used to turn the public opinion against her. Officials were intimidated to make accusations against her and her husband. When the Swiss and British government refused to oblige, they were told of Asif Ali Zardari and Mohtarma Benazir Bhutto's involvement in drug trafficking. The objective before Saifur Rehman was clear. Defame Benazir even at the cost of national honour. A more detailed discussion on this so-called accountability appears in the following chapters. The second objective of this high drama was to divert the attention of the public from the misdeeds of the present rulers. The vigilant press could not be kept sway from the plunder for too long. It soon became apparent that the real purpose of this accountability was to eliminate political opposition and make billions at state expense. Soon stories started appearing in the national press, exposing the misdeeds of the second Nawaz government.

One of the first acts of Nawaz Sharif was to come out with a so-called National Economic revival Package. This was a very clever way of making windfall gains at the expense of the National Exchequer. Customs tariffs were drastically cut to provide an opportunity to his family and cronies to make billions. Less than three weeks later the tariffs were raised again to prevent a general, healthy competition. In the field of steel and plastic goods alone, billions of rupees were made in a few weeks time. An artificial 'Atta' crisis was created to give hoarders and wheat smugglers an opportunity to mint money. Nawaz Sharif's son

Husain Nawaz was sent to India on a clandestine mission to strike a deal for export of sugar. To prevent the sugar mills in Sindh were sealed through a questionable order of an Ehtesab Bench of the Lahore High Court. Subsidy and export rebates amounting to Rs. 7,500 per ton was provided to these exporters. All this personal gain took place at the cost of national interest.

As a first step the ECC of the federal Cabinet decided to impose 10% regulatory duty on the import of sugar. However this decision was delayed by more than one month and was not taken until three shiploads of sugar belonging to a front man of the Sharif family had not cleared the port of Karachi. This alone cost the government Rs. 700 million in the form of Regulatory Duty.

On the one hand Nawaz Sharif started the downsizing of the government by rendering hundreds of thousands jobless, and on the other he proceeded to make questionable appointments at salaries which had never been heard of. All these favourites were brought in at the recommendations of family and personal friends. Merit had nothing to do in determining the wages of such appointees. By all accounts a personal empire was in the making and any opposition to it was to be met with an iron hand.



## Background

Ayub Khan had become increasingly weary of Zulfikar Ali Bhutto's popularity among the masses. He was mindful of the fact that this young and dynamic leader that Ayub thought would be his prodigy had started to carve out a well-deserved niche in the history of the nation. Bhutto's prominence in the foreign affairs of Pakistan had made Ayub suspicious of him. The independence of Pakistan's international orientation was something Ayub Khan could not fathom. He believed that by concluding an oil exploration agreement with the Soviet Union and demarcation of an international border with People's China were making his American supporters grow impatient. In short Bhutto was doing all that Ayub feared would lead to his political demise. The 1965 war with India and Bhutto's brilliance at the United Nations Security Council had raised his stature in the eyes of the people of Pakistan. He now stood eminently qualified to assume the leadership of Pakistan. Ayub could take no more of this. The dissension between the two grew deeper after the Tashkent agreement. It was only a matter of time before Bhutto would say farewell to Ayub Khan and chalk out a plan for the future of Pakistan. The formal parting of the ways came in the middle of 1966.

Zulfikar Ali Bhutto knew that the task that lay ahead of him was not easy. He had to organize his thoughts. A lot of homework had to be done. He was not going to risk his own political future as that of Pakistan by taking a leap onto an uncharted course. His vision for the future of Pakistan was based on the principle of people's power. He could not

carry on with the indirect, controlled democracy, experimented with by Ayub Khan. He believed that the people of Pakistan were to be lifted from backwardness and illiteracy if Pakistan was to progress and assume a leading role in the comity of nations.

He visualised Pakistan as the leader of the Muslim ummah. For this he had to break with the tradition. Make the people believe that they are the true representatives of the state not the subjects of an elitist band of rulers who kept them backward and poor so that they may not raise their voice for a share in the national wealth. To this end he founded the Pakistan Peoples Party (PPP).

When Z.A. Bhutto left the Ayub Khan cabinet, he travelled by train from Rawalpindi to Lahore. He was accorded a hero's welcome at the Lahore Railway Station. It was only befitting that he begins his political struggle by founding the PPP in the historic city of Lahore. The manifesto of the PPP was acknowledged as truly representative and revolutionary at the same time. His slogan of "Roti, Kapra Aur Makan" was to become the most popular slogan ever raised in this country, not because it promised the moon but because finally there was someone who cared to enfranchise the people and keep them above political expediency.

The industrial elite and the feudal aristocracy perceived him as a threat. His politics promised a break from the tradition. He gave a voice to the poor masses and made them aware of their rights. While the masses had long awaited a leader in his mould, the elite would only feel threatened at the prospect of this phenomenon. Ayub Khan as the leader of the elite had genuine cause to worry. He had to do something to prevent the inevitable. As a true military general he looked at the immediate objective. He had to contain Bhutto to prevent him from leading the masses from asserting their rights. What Ayub failed to appreciate was that Bhutto was a symbol for change. He had opened the floodgates of popular emotions and there was nothing that could prevent the people from getting their right.

Ayub Khan sent Zulfikar Ali Bhutto to jail, hoping that his popularity with the masses was like a phase in life, which would pass with the passage of time. The events that followed proved how wrong he had been. Each passing day behind the prison walls gave a new sense of purpose to what the people had finally stood for. While Bhutto and the PPP rolled on with greater momentum, Ayub saw power slip out of his grasp.

It was only natural justice that Ayub Khan who had seized power and ruled for more than ten years, with the support of the army, was

finally shown the door by his own Chief of Army Staff. Yahya proclaimed Martial Law, abrogated Ayub's constitution and proceeded to undo what his benefactor had done. He promised to honour the popular demand of direct parliamentary elections on the basis of one man one vote and disband the one unit. PPP was now perceived as the new representative of the people, at least in the western wing of the country. The traditionalists who had dominated the political events of Pakistan for 24 years were destined to be marginalized.

Wherever Bhutto took the message of the PPP, he was welcomed with unprecedented but predictable enthusiasm. The fate of those who stood for status quo had been sealed. The sacrifices rendered by Zulfikar Ali Bhutto and his colleagues were starting to bear fruit. The wave of popular support was turning into a groundswell of public conviction that power truly belonged to them. That the vested interest had to give way to a more equitable economic and political order.

While the emergence of the PPP as the sole arbiter of the nation's destiny was nothing short of a miracle, the way Ayub retreated left a void that could not be filled by the incompetent Yahya Khan. The country was ill prepared for sudden change in its fortunes. The people of East Pakistan had been feeling alienated for some time. The Agartala 'Conspiracy' had made this alienation complete. Mujibur Rahman and his supporters made the East Pakistanis believe that they had been dealt a raw hand all along, and only he and his Awami League could set things right and make amends for the injustices of the past.

Yahya and his band of dim wits in uniform could not even comprehend the magnitude of the problem. The first free and fair general elections of 1970 resulted in the Awami League sweeping the elections in East Pakistan, while the PPP emerged as the dominant political force in the western wing. Both Mujib and Bhutto were leaders of immense popularity and charisma. However, while the latter understood the implications of playing with the people's emotions, the former failed to see the writing on the wall. He had been promising too much too soon to the people of East Pakistan. Now he knew he could not deliver on his promise. One thing had to be ensured. The people had to be kept in a state of frenzy. He promised to give them a new order based on his 'six points'. Now he had to demonstrate he meant business. He announced that the Awami League had already drafted the new constitution and as soon as the National Assembly meets, he would have it presented and passed. This alarmed the West Pakistani leadership, and Zulfikar Ali Bhutto was no exception. All efforts to make Mujib show some

flexibility failed. Even Bhutto's trip to Mujib's Dhanmandi residence in Dhaka failed to yield any positive result.

Yahya panicked and decided to postpone the first session of the National Assembly that he had publicly promised to hold as a first step to transfer power to the people's representatives. As if it was the proverbial last straw that broke the camel's back, the Bengalis stood up not only against president Yahya Khan, but the very writ of the federal government. What followed between the 3<sup>rd</sup> and 23<sup>rd</sup> of March 1971 was a state of rebellion throughout East Pakistan, particularly Dhaka. Yahya tried desperately but unsuccessfully to bring Mujibur Rahman and his Awami League to accept a moderate path.

When a deadlock persisted, Yahya, acting on the advice of his generals, opted for the quick-fix solution. A full-scale army action was launched against the Awami League. Mujib was arrested and flown to West Pakistan. His Awami League was outlawed. Most of the Awami League leadership crossed the border over to India. Yahya slipped out of Dhaka in the middle of the night and did not return even once. Zulfikar Ali Bhutto saw all this political mayhem from up close. Before he left Dhaka for Karachi, he advised Yahya to follow-up his military action with a lasting political settlement of the complex problem. Yahya was not prepared to listen to any voice of reason. He thought he had contained the problem. Those whose hearts bled for Pakistan, knew otherwise.

When Yahya felt isolated in the international community and when the news of the atrocities committed by the Pakistani troops reached the outside world, it was obvious that Pakistan had no support on this issue and something had to be done to reach a political settlement. The Indian propaganda made the Pakistan army look like an occupation force in a foreign land. With each passing day Pakistan was sinking deeper into trouble. Yahya knew India would intervene militarily on the side of the Mukti Bahini and there was precious little he could do to defend both the wings of the country against the numerically superior Indian armed forces. To add to his discomfort was the low morale of the troops in East Pakistan who fought and died in that part of the country and were even buried there so that the people of West Pakistan did not come to know of the reality on ground.

By September 1971 Yahya knew he had no option but to brace up for a war and wait for India to choose the time and place to start the offensive. He believed that as in 1965, the Indians would not be comfortable in launching an all out attack on East Pakistan because of its close proximity with People's Republic of China. The six years



intervening the two Indo-Pak. conflicts had seen a lot happen in the world. China had broken out of its isolation and was on the threshold of gaining entry into the United Nations as a permanent member of the Security Council. It could not afford to carry the image of a country siding with an aggressor to suppress the rights of the people of East Pakistan.

Yahya still believed that the only way to secure Pakistan against an Indian attack was to solicit Chinese support. He quietly despatched a delegation to Beijing to ascertain the Chinese position. He chose Zulfiqar Ali Bhutto to lead the delegation comprising Air Marshal Rahim Khan and Lt. General Gul Hasan. He had two reasons for doing that. First it was Bhutto alone who would be received with cordiality in Beijing due to his contribution towards normalising relations with China, and secondly, with Mujib in jail, he was the only other legitimate leader elected by the people who could speak for Pakistan. The Chinese response was nothing out of the ordinary. They advised a political solution to the problem. Bhutto informed Yahya in no uncertain terms. Yahya in his drunken stupor still ignored the reality and made his officers and the people of Pakistan believe that as soon as war broke out, the pressure on East Pakistan would be relieved. He could then lock India into a stalemate, giving time for international efforts to enforce a cease-fire.

By the first week of November 1971 the Indian army had started armed insurrections into East Pakistan. Yahya decided to appoint Nurul Amin a much respected and seasoned East Pakistani politician as the Prime Minister of Pakistan. He also appointed Zulfiqar Ali Bhutto as his Deputy Prime Minister and Foreign Minister. Unable to bear the pressure anymore, Yahya decided to launch an offensive on the Western front, hoping that it would ease off the pressure on East Pakistan and internationalise the issue.

He sent Bhutto as head to the Pakistani delegation to the United Nations. He was to negotiate a cease-fire and avert a complete capitulation of Pakistan. While Bhutto tried everything he had mastered in the art of diplomacy, the Pakistan army remained on the run. It was obvious that the eastern wing of the country had to be surrendered. The Security Council could not agree to a cease-fire resolution and on 16th December 1971 Lt. General Niazi surrendered his 90,000 strong forces to the joint Indian Army- Mukti Bahini command. The next day India offered a unilateral cease-fire on the western front. Pakistan unconditionally accepted. This was the darkest hour of our national history. Bhutto left the United Nations distraught and disgusted. The

generals had not even given him a fair chance to negotiate a respectable settlement.

Defeated and demoralised Yahya decided that the shock defeat at the hands of the Indians had left him no choice but to exit the scene. Shock and disbelief were giving way to public anger. Someone had to be found to pick up the pieces and rebuild on what was left of Pakistan. There was only one but obvious choice. Zulfikar Ali Bhutto had to be asked to take charge and carry the nation forward.

On 20<sup>th</sup> December 1971 Yahya handed over power to Zulfikar Ali Bhutto as President and Chief Martial Law Administrator. The task that lay ahead of him was not easy. He had to move swiftly and restore the confidence of the people in what was left of Pakistan. He set Mujibur Rahman free and urged him to ask his people to remain within the framework of a united Pakistan. He proceeded tirelessly to elicit international support for Pakistan. He moved swiftly on the political front and promised to give a new constitution.

As one who would reflect the true aspirations of the people of Pakistan he introduced far-reaching land reforms. He took bold economic decisions to restore the confidence in the economy. He ended the monopoly of the 22 families that had been exploiting the workers without compensating them adequately. His bold decision to devalue the much over-valued rupee helped in boosting the Pakistani exports.

90,000 Pakistani prisoners of war were being held in India. More than 5000 square miles of Pakistani territory was under occupation of the Indian army. The Indian government was not prepared for international mediation. Pakistan was asked to resolve all issues bilaterally. This meant that he had to play the finest hand of diplomacy without any cards. What followed thereafter at the Simla talks was quoted as the finest textbook lesson in diplomacy, by no less a diplomat than Henry Kissinger.

Indira Gandhi knew that her counterpart was under tremendous domestic pressure to get the lost territories and the 90,000 P.O.Ws back. She also thought that by forcing a solution on Pakistan, she would be beginning a new chapter in Indo-Pak relations. One without outside mediation and based on her concept of bilateral relations. This would ensure that the Pakistanis would in future only look towards India for the solution of all disputes. What she failed to judge was the fact that his opponent was a man of great political shrewdness and knew that if the Indo-Pak relations had to take this new direction, a deal was as important for India as it was for Pakistan. In fact India needed an agreement more desperately than did Pakistan. Five days of intense negotiations resulted

in India agreeing to withdraw from the occupied territories. The issue of P.O.Ws was left to be resolved later. Bhutto returned to Pakistan with more than the prisoners. He knew that the international pressure on India will mount and the human dimension of the problem would eventually force India to release the prisoners. The territories occupied by India had to be liberated first. He did not want the lost territories of West Pakistan to become something like the West Bank of Jordan. The National Assembly of Pakistan unanimously adopted a resolution, ratifying the agreement. Even the opposition showered praise on this achievement of Zulfiqar Ali Bhutto.

By the end of 1973 Pakistan had started assuming the role of the true leader of the Muslim world. Bhutto proposed the second Islamic Summit to be held in Saudi Arabia. King Faisal suggested that Pakistan should host the summit, for which the Saudi government would provide adequate funding. This was to be Pakistan's finest hour in the world, which had only recently seen it truncated in half and humiliated at the hands of India. After intense diplomatic negotiations and shuttle diplomacy between Islamabad and Dhaka, by the leaders of the Muslim countries, Mujib agreed to attend the Islamic summit at Lahore and agreed to release the prisoners-of war in return for Pakistan's recognition of Bangladesh. An independent Bangladesh had already become a reality and it was only the formal gesture of accepting this fact that ensured the release of the P.O. Ws. Thus Pakistan had achieved one more objective without really conceding anything.

The success on the diplomatic front also included an agreement with France to provide Pakistan with a nuclear reprocessing plant. Pakistan needed this to address its acute energy problem that had been exacerbated with the spiralling oil prices. The death of President George Pompidou of France did not change the French policy. Giscard de Estaing promised to follow through on this promise. The United States government was weary of Pakistan's intentions and thought the reprocessing plant would serve dual use of also acquiring nuclear weapons technology. The Secretary of State, Henry Kissinger tried to dissuade Bhutto from going for the nuclear option even for peaceful purposes. When Bhutto refused to relent, he was warned of being made a "horrible example".

But the Indian nuclear test of May 1974 had left him with no choice but to move swiftly in the field of nuclear technology at any cost. The Americans were already quite fed up with Bhutto's increasing role in the Muslim world, with his policy of non-alignment, with his call for a more just sharing of world resources through a North-South dialogue. If

the world was to be saved from a nuclear capable Muslim country, Bhutto had to be stopped in his tracks. The best way to do this was to build a strong opposition to him within Pakistan.

In less than five years after taking over as President, Bhutto had given Pakistan a unanimously accepted constitution, restored the morale of the nation and particularly the armed forces, taken steps to make Pakistan a true Islamic welfare state. He had established and nurtured the institutions necessary for a parliamentary democracy. He thought it was time to take the next logical step and held elections to the national and provincial assemblies. The elections were not due until a year later but he decided to hold them in March 1977. During the course of these five years, as he had moved along to introduce far reaching social and economic reforms, Bhutto also found it necessary to make the country's bureaucracy more responsive to the people it was supposed to serve. There had been half-hearted and unsuccessful attempts at reforming the services during the Ayub era. Cornelius commission report was one such attempt. However the vested interest never allowed that report to be implemented. The hold of the feudal-industrialist elite on the bureaucracy of Pakistan was complete. They would not part with this single most important tool of exploitation. Bhutto moved to change the elitist outlook of the Civil Service of Pakistan and decided to give it a more responsive image of public service. He introduced administrative reforms in 1973 and struck at the elitist structure of the services. The powerful civil service known as the Civil Service of Pakistan or the CSP was not amused. It licked its wounds and decided to wait for the opportune moment. That moment had arrived in the premature announcement for general elections.

The opposition parties in Pakistan, which had been discredited and defeated in the first ever general elections of 1970 saw this as an opportunity to dislodge the immensely popular PPP government. Nine right-wing parties led by the defeated traditionalists ganged up to form what came to be known as the Pakistan National Alliance (PNA). Their star leader was the former Air Chief Air Marshal Asghar Khan. He started his campaign on a hate Bhutto note. He would tell his audiences that he would hang Bhutto by the Attock bridge or by a lamppost in the city of Lahore. The people were made to believe, before the elections started, that the elections would be rigged and therefore the result of the elections would not be acceptable to them. This showed that they had entered the election contest with the clear knowledge and belief that the PPP would emerge victorious after what had been achieved by it in five short years of its government.

The opposition failed to put up a candidate against Bhutto and his Chief Ministers and cried foul by alleging that their candidates had been kidnapped to facilitate the return of these leaders as unopposed. This was really far-fetched and did not make sense because there was in no way any opposition leader including Asghar Khan that could defeat Bhutto or his Chief Ministers in their home, constituencies. The election commission found no truth in the allegations and the campaign went on as expected, returning the PPP with 154 of the 200 general seats.

The opposition started a violent campaign of political unrest and declared that it was boycotting the provincial elections scheduled for three days later. The cities of Lahore and Karachi were their primary targets. Bhutto offered to look into the allegations of rigging in selected constituencies. The PNA would not relent. The campaign of a defeated coalition went on to discredit the entire exercise of the elections. Groups of armed men on motorcycles swarmed the streets and burnt PPP flags and shops. PPP supporters were lynched. Innocent bystanders lost their lives to this political mayhem. The PNA leadership exhorted the army to intervene. The situation was being pushed to a point where such intervention would look like the only natural course to follow.

While the truth behind the insanity that gripped Pakistan in those months: would never be conclusively known, it was strange that people on the streets were found carrying dollar bills in their fists. Was the CIA, directly instigating the people to dislodge the government of the man they had come to regard as a threat to their policy objectives? The events were too bizarre to offer a logical explanation even with hindsight. By the third week of April 1977 Karachi had been paralysed by an operation wheel jam. Army had to be called out in Karachi and Lahore to restore order. The PNA movement finally started to fizzle out. The Army was sent back to the barracks.

After Bhutto promised new elections in October 1977, even the PNA leaders thought a peaceful solution was possible. When all seemed to be getting back to normal, General Zia struck in the middle of the night of July 4 and 5. The army took over the administration. Bhutto and some other leaders were taken into "protective custody" and martial law was imposed on the country. The constitution was suspended and Zia promised to hold free, fair and impartial elections within 90 days.

If free and fair elections were to be held after 90 days as promised by Zia, what was the need to intervene directly? More so after the PPP and PNA had agreed on a political solution and everything seemed ready to return Pakistan to complete normalcy. The intentions of the general were anything but noble. He had made up his mind that he

would not allow Bhutto to return to power. He was also clear in his mind that the army action had made Bhutto more popular than he was ever before and it would be impossible for him to get the desired result through an election. He had other plans for his mentor. He would try him for conspiracy to murder a political opponent and use the judiciary to eliminate him.

In the weeks and months following the military coup, a somewhat bizarre war of nerves was played between Zia and his chief tormentor, whose popularity remained on the increase. His resolve to use the democratic process for a return to his rightful place would not give in to despair. He knew that Zia had not taken over to hold free and fair elections and let him return to power. But he was not prepared to give anyone the impression that all had been lost to the whims of a military adventurer, pursuing a deeper political objective than what was apparent. After his release from "protective custody" Bhutto was arrested in the middle of the night from his 70, Clifton residence. A judge of the Lahore High Court set him free 10 days later for government's failure to show probable cause in the murder of Ahmed Raza Kasuri's father. He was once again arrested from his family house "Al-Murtaza" in Larkana and taken to Sukkur jail. From there he was shifted to Karachi and then Kot Lakhpat jail in Lahore. A full bench of Lahore High Court was constituted to initiate the murder trial. This effectively meant that Bhutto would be denied at least one right of appeal.

The trial that followed was nothing more than a farce. There was no direct evidence to show any nexus between the murder and the man accused of hatching a conspiracy to murder a political opponent. The only evidence available was the confession of Masud Mehmud, former head of the Federal Security Force. On a promise for clemency, Masud Mehmud was made to say that Bhutto had ordered him to physically eliminate a small time PPP rebel Ahmed Raza Kasuri. That he had then ordered the staff of the Federal Security Force to carry out the plan and on that fateful night three years ago, they had opened fire on Kasuri's car, killing his father by accident.

From the way the trial was proceeding it was obvious that the decision to convict Bhutto had been taken long before the regime accused him of the murder charge. In fact loyalists in the government had warned him days ahead of his arrest that he would be framed in a murder case. It was suggested to him that he should slip out of Pakistan and return to fight another day. Bhutto would have none of that. He knew he was innocent. He also knew Zia was not in a mood to let him off. But he would not abandon his mission and his people for his personal safety.

The verdict to convict and hang him was unanimous. Bhutto's counsel decided to file an appeal in the Supreme Court.

It was widely known that Zia would influence the Supreme Court as well. One of the judges on the Supreme Court, Qaiser Khan was reluctant to sit on the bench because he thought he would reach the date of his retirement before the hearings concluded. On the express promise that he would be allowed to continue until the hearings concluded he decided to sit on the bench. However he was sent on retirement before the hearings were over. The episode left a doubt in everybody's mind as to which way he would have voted had he been allowed to continue. Another judge, Justice Waheed was indisposed with a minor heart condition and advised a few weeks rest. The Chief Justice Anwarul Haq decided to proceed without waiting for his return to the bench.

The decision rejecting Bhutto's appeal was 4-3. The desired outcome had been managed and it was now for Zia to carry out the death sentence. This was exactly what he had hoped and planned for. The stage was now set for the final act. With Bhutto executed Zia would not have to fear any other politician and knew he was in for long comfortable political ride. He refused to budge in the face of international pressure for clemency and commutation of death sentence. Bhutto was a proud man and knew he was innocent. He would not file a mercy petition. The petitions filed on his behalf by his family were rejected. He was sent to the gallows in the middle of the night.

Zia decided that if he had to keep the public sentiment under control, he had to keep Begum Nusrat Bhutto and Mohtarma Benazir Bhutto under arrest on one pretext or another. They were kept under house arrest at Al Murtaza, Larkana and 70, Clifton, Karachi. They also spent several long stints in various jails of the country usually in solitary confinement. With the passage of time, other political forces in the country also started waking up to the reality that Zia's mission was not yet completed. He wanted to rule the country for a long time to come and give it his own brand of "Nizam-e-Mustafa" or the Prophet's Administration. They decided to get together and forge an alliance of some sort to counter the threat of an indefinitely long dictatorship by Zia.

Begum Nusrat Bhutto and Mohtarma Benazir Bhutto were asked by the PPP leaders to consider such a proposal. It was a very difficult decision but in order to defeat the designs of this dictator it was considered that they had to agree on a minimum programme of some sort to advance the cause of democracy. The erstwhile political adversaries of the PNA were invited to 70, Clifton for a meeting. It was suggested that a

movement for restoration of democracy (MRD) had to be initiated. In February 1981 the MRD was formally formed.

Zia had launched a ruthless policy of persecution against the PPP and firmly believed that unless he eradicated the PPP and Bhutto from the people's minds, there was a chance of the PPP's return to power which would neither be good for him personally nor for the country. To him PPP and Pakistan could not coexist. The assassination of Bhutto had pushed active politics far into the background. With Mohtarma Benazir Bhutto and Begum Bhutto confined no PPP leader had the courage or following to mobilise the masses and confront Ziaul Haq. The MRD decided to confront Zia politically and mobilise the masses for a return to democracy and elections.

Zia had other designs. On March 2nd 1981, a PIA plane was hijacked to Kabul while on a domestic flight to Peshawar from Karachi. Al Zulfiqar a militant organisation that claimed to be a part of the PPP took credit for the hijacking. The unfortunate incident lasted 13 days and ended in Damascus. The hijackers demanded and secured the release of a number of jailed PPP activists. Mohtarma Benazir Bhutto was once again arrested and confined at Sukkur jail.

This saga of arrest and detention continued. Zia, finally allowed Begum Bhutto under the advice of a medical board, to go abroad for much needed cancer therapy. It was in 1983 that the MRD decided to formally launch a resistance movement. August 14 was set as the day for commencement of protest rallies. The government believed that there would be no serious trouble and that the movement was bound to fizzle out sooner rather than later. The martial law administration of Sindh thought there would be no trouble in the province since the big landowners of Sindh had traditionally sided with the establishment and would therefore not throw their lot behind such a movement.

They were in for a rude shock. The hanging of Zulfiqar Ali Bhutto had left the province highly politicised. What happened in August 1983 in the province of Sindh would always be remembered as the blackest hour in the history of the country. Hundreds of people were killed. Even women and old men were not spared. The troops of the Frontier Constabulary and Frontier Corps were used to ruthlessly crush what had started as peaceful demonstration for the restoration of the people's rights. The movement was not restricted to Sindh alone and there were demonstrations by lawyers and students in other parts of the country. However the administration succeeded in giving the impression to the rest of the country that the MRD was movement only in Sindh,



designed to give it Sindhi nationalist orientation and finally lead to cessation from Pakistan.

Although the MRD had failed to result in a return to democracy it had alerted Zia to the fact that he had to take far reaching steps to secure himself against the possible resurgence of the PPP. He experimented with partyless local bodies' elections and believed that if he somehow managed to create a new leadership at this level he could stem the tide of the PPP's popularity. He believed that the new basis for political leadership could rest on the identity of leader's tribe or "biradari" and that the populist slogan of Bhutto would one day peter out and be forgotten. He created a handpicked Majlis-e-Shura to replace the National Assembly and tell the world particularly his benefactors in the United States that he had started a return to civilian rule.

Zia ordered a referendum in December 1984 to elicit a 'yes' or 'no' answer to the question whether the people wanted to continue with the process of Islamisation. The public response was extremely poor but Zia announced that he had been voted in for five years with overwhelming majority. He then proceeded to announce non-party based elections to the National Assembly. The PPP boycotted the elections to Zia's relief.

A new assembly was elected. Zia picked an obscure Mohammad Khan Junejo to become the new Prime Minister. He declared that he would lift martial law once the new assembly had given its approval to his proposed 8th Constitutional Amendment. This amendment gave veto powers to the president to overrule the elected Prime Minister and Parliament. It also gave him the power to dissolve the National Assembly and dismiss the Prime Minister for virtually any reason.

The architect of this amendment Shaarifuddin Pirzada had ensured that Zia remains the undisputed and de facto Chief Executive of the country even after lifting of martial law. Zia held the new assembly hostage and did not lift martial law until the assembly had given its required approval to this most controversial amendment to the unanimously adopted 1973 Constitution. Once he did that he also asked the assembly to legitimise all action taken by Zia subsequent to the military coup of 5th July 1977 and until the day of restoration of democracy.

As it all this was not enough Zia had also seen it proper to encourage the emergence of sectarian and ethnic groups into new political entities. He had to ensure that the PPP does not slowly regain its political power. He had to create alternatives to this populist political force that had become dormant but was very much alive in the hearts of

the people. In Sindh he flirted with the Sindhi nationalists and saw to it that the newly founded Mohajir Qaumi Movement (MQM) gets the required support. His Chief Minister in Sindh Syed Ghaus Ali Shah encouraged ethnic troubles and bloody clashes followed between the Urdu-speaking supporters of MQM and the local Pukhtun population over a trivial dispute. He did everything in his power that could be found to give the PPP chance to re-emerge. The Soviet invasion of Afghanistan has also been a great source of strength for Zia. He used the invasion as a means to consolidate his personal power and made the West believe that only he could fight their proxy war against the Soviets and destroy them and communism. The arms shipped for the Mujahideen freely and routinely found their way into Pakistan. Drug trade flourished and new centres of financial and armed influence began to grow. The regime turned a blind eye to all this and rampant corruption in government that had become the order of the day. Close relatives of top government functionaries became involved in gunrunning and drug trafficking. In short Pakistan had reached a state during the years of martial law that was decidedly its lowest point in history. Complete moral fabric of state and society had been destroyed. It was then that Benazir Bhutto decided to end her two-year self-exile and return to Pakistan and try to pick up the pieces.

Her return to Lahore in April 1986 was something quite unparalleled in Pakistan's history. More than three million people had turned up to greet her and responded to her call for a change. The people thought they had been freed from the clutches of Zia and his martial law now that Benazir had returned to Pakistan. The response was so overwhelming that even the newspapers sympathetic to the regime called the reception truly historic. It was the same story whenever she went: Gujranwala, Faisalabad or Jhelum. As if the people had been awakened from their slumber. They seemed too impatient to wait any longer. The only thing they would now settle for was a change that would bring Benazir Bhutto as the Prime Minister of Pakistan.

It was not her intention to overthrow the government through violent protests but Zia felt threatened. While Benazir's popularity was soaring Zia had to contend with his own hand picked Prime Minister Junejo. With the passage of time Junejo decided to assert himself and establish that he was the Chief Executive of the country. Their differences kept on increasing until Zia ran out of patience and decided to use his powers under the scandalous 8th amendment to the Constitution.

On 29th May 1988 Zia ordered the dissolution of the National Assembly and dismissed Junejo as Prime Minister. Junejo was accused of incompetence and a lack of interest in Islamisation. Zia thought that he could not trust another man to become the caretaker Prime Minister and decided to form a caretaker government with himself as the Chief Executive of the country. He ignored the constitutional requirement of appointing a caretaker Prime Minister to conduct fresh elections.

The dismissal of Junejo was seen by a majority of the people as a return of PPP if elections were to be held. There was no doubt in anyone's mind that Zia would try to rig the elections and prevent the PPP from forming the government. He was not going to allow Bhutto's daughter to become the Prime Minister. He also knew that his options were limited and no matter how he tried to manipulate the election results it would be virtually impossible to prevent a PPP victory at the polls. Junejo's Muslim League saw large scale defections as its leaders started to converge on the PPP to get its ticket for the upcoming elections and ensure a victory. In his desperation Zia announced the enforcement of "Shariah" in the country. To some political observers the move was ominous. Was Zia going to use it to disqualify Benazir Bhutto from contesting elections because she was a woman? Others thought it was not possible even under Zia's own Amendment to the Constitution. He refused to announce the date for the new elections, which under the Constitution had to be held within 90 days of dissolution.

But Zia thought he was above the law. If he could do without a caretaker Prime Minister he could also hold elections as and when he pleased. Under pressure from all quarters he announced 16th November as the date for general elections to the National Assembly and cited monsoons and the month of Muharram his excuse for the delay in holding the elections within 90 days. Zia's dilemma of holding an election and preventing Benazir from coming to power came to an end due to divine intervention on 17th August 1988 when the PA F aircraft carrying him back to Rawalpindi crashed killing everyone on board. His successor Chairman Senate Ghulam Ishaq Khan announced that he would go ahead with the elections as announced by Zia. Even he refused to appoint a caretaker Prime Minister and decided to oversee the elections himself. After Zia's death the Lahore High Court declared his May 29th action illegal. The Supreme Court upheld the decision but declared that since the nation was all geared up for the elections it would not restore Junejo's government. The elections had to be held as scheduled.

Zia's death did not mean the establishment's aversion to popular rule had also ended. It was obvious that any free and fair elections would ensure a PPP victory and the emergence of Benazir Bhutto as the new Prime Minister. This had to be avoided but in a way that no voices are raised against the process of elections. Ghulam Ishaq Khan was a past master at the art of political intrigue. He encouraged the four Chief Ministers all from Muslim League to indirectly influence the election results. The state electronic media gave more time to the political campaign of the Muslim League at the cost of other parties particularly the PPP. The Lahore High Court had declared on a petition filed by Benazir that the conditions of holding an identity card for voting was unnecessary and any identification would suffice. The government went to the Supreme Court and had the decision reversed.

The government ensured that no new national identity cards were issued to anyone unless a Muslim Leaguer identified him. This meant that a large number of PPP voters would not be able to cast their vote. The election commission did not have the scimitar the two-decade-old election symbol of the PPP on its ballot paper. Ghulam Ishaq turned down PPP's request to allot it the old election symbol. In a country with a very low rate of literacy it was not going to be easy for the PPP voters to identify their candidates. The government knew this move would also cost the PPP a substantial number of votes.

The final desperate move of the establishment was to create a nine party political alliance called the Islami Jamhoori Ittehad (IJI) which was cobbling together of the Muslim League with eight other right wing parties. The Inter Services Intelligence (ISI) played a leading role in its formation. Brigadier Imtiaz Ahmed who was the head of the internal security wing of the ISI personally supervised the election campaign of the IJI, which was overseen by Lt General Hameed Gul, the Director General. The establishment believed that putting up joint candidates against the PPP would enable the anti PPP forces to achieve better results. The strategy worked to some extent but could not turn the tide completely.

The results of the elections to the National Assembly came as shock to many. PPP had staged some of the biggest upsets in Pakistan's history. The PPP candidates had defeated most of the traditional stalwarts. However the steps taken by the establishment had prevented the PPP from getting a clear majority in the National Assembly. The

establishment tried to put up obstacles in the way of a smooth transition from the caretaker administration to a PPP government. Ghulam Ishaq Khan exercising the then available powers to determine who in his opinion would command a majority in the National Assembly decided to meet with leaders of various political parties instead of inviting Benazir Bhutto to form government. The PPP had won 94 of the 207 seats with the IJI trailing behind with 54 seats. Other parties with the exception of the MQM had only nominal representation. ANP was an election ally of the PPP and it was common belief that even the MQM would go along for a coalition with the PPP. He however decided to create the impression that the IJI also stood a chance of forming the government. Nawaz Sharif met with Ishaq and leaders of MQM and some other parties to win their support and deprive the PPP from forming a government at the centre.

Another development of significance and what proved to be ominous was the polarisation created in the national politics by Nawaz Sharif after the election results to the National Assembly came in. Defeated and dejected at the prospect of a return of the PPP Nawaz went around Punjab telling the people that the Sindhis had voted for Sindhi and the self respecting Punjabis should come out and vote for their rights. In other words he exhorted them to vote for the IJI and not the PPP which in his words was the party of the Sindhis. The elections to the provincial assemblies showed a markedly different pattern. The IJI candidates secured 100 seats against 93 of the PPP in the Punjab Assembly of 240. There were a lot of independent candidates who won on account of 'beradari' vote which had been institutionalised by Zia through his non party elections. Nawaz Sharif after realising that he could not form the government at the centre decided to capture power in the Punjab. He used his official position as the caretaker Chief Minister of Punjab to influence the independents. He used strong-arm tactics where they worked and resorted to political bribe where force had no effect. Setting a new and shameful trend in national politics he offered plots cash and jobs to the independents in return for their support to his election bid as the Chief Minister. He held the independents hostage in the rest houses of Changa Manga forests for the entire duration of transfer of power to the elected representatives. Bus loads of MPAs were hauled to the Punjab Assembly on the morning of the election of the

leader of the house and ensured his election as the Chief Minister of Punjab.

With its own Chief Minister firmly in place in Punjab the establishment saw to it that Benazir Bhutto faces hurdles in smooth functioning of the government. Nawaz had the backing of the President and the powerful Chief of the Army Staff General Aslam Beg. In Baluchistan, supported by the IJI, Akbar Bugti formed his government. Both the Chief Ministers were coaxed into a state of rebellion against the Federal Government.

While the political wheeling-dealings were on the establishment also placed several conditions before Benazir Bhutto if she wished to become the Prime Minister. One of the conditions, which she accepted, was the election of Ghulam Ishaq Khan as President. The sole objective of all these conditions was depriving the PPP of its genuine return to power and continuation of the Zia legacy.

Ishaq derived his 'legitimacy' from his only continuance the bureaucracy. The administrative reforms introduced by Zulfikar Ali Bhutto in 1973 had eliminated the CSP as the ruling class of Pakistan. Although the eleven years of Zia had allowed them to regain all its influence in running of the affairs of state this class was suspicious of the return of his daughter at the helm of affairs. They thought their survival would largely depend on the continuing influence of the establishment and threw its weight behind all moves aimed at destabilising the Benazir government.

The 20 month rule of Mohtarma Benazir Bhutto was a bizarre drama of the civil servants conspiring against the elected Prime Minister. Punjab soon became the hub of all anti PPP moves. Encouraged by the establishment the IJI got Junejo and Ghulam Mustafa Jatoi elected to the National Assembly in the bye-elections. This led to the formation of a combined opposition of all anti PPP forces in the National Assembly. Jatoi was elected as its leader and the plan to dislodge Mohtarma Benazir Bhutto got a new impetus. The allies of the PPP the ANP in the frontier and the MQM in Sindh were persuaded by Ishaq to break away from the coalition.

The combined opposition in the National Assembly tabled a no confidence motion against Mohtarma Benazir Bhutto and tried to buy the loyalties of PPP members in the National Assembly. Brigadier Imtiaz and Major Amer of ISI helped the IJI leaders in negotiating a 'deal' with

possible defectors. The infamous 'operation midnight jackal' was personally supervised by Imtiaz. When Mohtarma Benazir Bhutto confronted General Beg with the evidence against these serving army officers he had no choice but to send them on compulsory retirement. A non punishment for committing high treason.

Rumours of an imminent downfall of the PPP government were routinely planted in the national press. Law and order problems were created disturbing normal life in Sindh particularly in Karachi. Business suffered and production began to decline. The only supreme objective before the establishment was to get rid of Benazir's government.

When all intrigues failed Ishaq thought it was time to make the decisive move. He used the draconian powers of the President under the 8th Amendment and dissolved the National Assembly and dismissed the Benazir government. He used almost the same grounds as his mentor Zia had done while dissolving the Assembly in 1988. For the second time in two years an indirectly elected President had dissolved an elected Assembly. Charges of corruption were levelled against Mohtarma Benazir Bhutto and her husband Asif Ali Zardari. Ishaq sent her message asking her not to contest elections. He threatened her with filing of cases and arrest of her husband. Undeterred she decided to go ahead with the preparations for the upcoming elections. The dissolution order was challenged in the superior courts.

Following the dissolution of the National Assembly Ishaq had also dissolved all the provincial assemblies. Aftab Sherpao the PPP Chief Minister of NWFP had challenged the dissolution of the NWFP assembly and his government in the Peshawar High Court. The High Court accepted the petition and held the dissolution unconstitutional. Even before the written judgement was issued the Supreme Court granted stay to the federal government and stopped the operation of the High Court's order. Like his predecessor Ziaul Haq, Ishaq was not going to let the PPP return to power. All preparations were made to rig the elections.

The PPP formed an election alliance with three other parties and decide to contest elections on the platform of the Pakistan Democratic Alliance (PDA). Ishaq threw all caution and inhibition to the wind and started openly campaigning against the PPP. The electronic media was used to narrate imaginary stories of corruption and misrule by the PPP. The courts dismissed the petitions against the dissolution order. The dissolution order of Zia was held to be illegal and unconstitutional by the

courts after his death. However despite being based on similar grounds it was upheld by the courts when Ishaq used it against Mohtarma Benazir Bhutto.

With the court's verdict in his favour Ishaq proceeded to take steps that would not only keep the PPP out of power but also destroy it politically so that it never threatens the established order again. To this end he resorted other tactics besides spreading misinformation against Benazir and the PPP. He reached out to the disgruntled elements in the PPP and used inducements of rewards if they were to go against their own party and its leadership. Jam Sadiq Ali and Ghulam Mustafa Khar were recruited for this purpose. 'Development funds' were placed at the disposal of the caretaker governments to buy votes in the elections. A pliable district administration was put in place to achieve the desired results.

The PPP leadership was subjected to trials in special courts on trumped up charges of "accountability". Elections were rigged to such an extent that the PPP was deprived of power even in Sindh where it had won an overwhelming majority just two years ago. The rigging was so predominant that even the caretaker Prime Minister Ghulam Mustafa Jatoi charged that Nawabzada Nasrullah was defeated under a well thought out plan. Mustafa Khar made a categorical statement that Nawaz Sharif was installed as Prime Minister under a programme chalked out before the elections. Jam Sadiq Ali the caretaker Chief Minister of Sindh went to the extent of saying that Benazir should be grateful to Ishaq Khan for letting her win from her home constituency of Larkana.

The ISI spent huge amounts from the funds at its disposal to ensure the defeat of PPP candidates. The former Director General of ISI Lt General Asad Durrani filed an affidavit before the Supreme Court stating that General Aslam Beg had placed Rs. 140 million at the disposal of the ISI to achieve the desired results. Younus Habib of the infamous Mehran Bank provided this money to the ISI. A petition filed by Air Marshal Asghar Khan is still pending before the Supreme Court.

In all the government filed six references against Mohtarma Benazir Bhutto in special courts. The first reference was for alleged misuse of secret service funds. The second reference was for favouring a London based firm in the allotment of 287 acres of land for the construction of a hotel in Islamabad. It was alleged that "had the deal gone through it would have caused hundreds of crores of rupees as a loss



to government". The third reference alleged "misuse" of a PIA aircraft for transporting PPP MNAs to Saidu Sharif. The next reference was about alleged "improper" allotment of LPG distributorship to certain individuals. The fifth reference was for the sale of cotton by the Cotton Export Corporation to a British firm. The reference alleged that the sale, which had been duly approved by the Economic Coordination Committee of the Cabinet, had resulted in a loss of US\$ 4.6 million to the exchequer. The sixth and last reference was regarding the alleged improper award of a Karachi Electric Supply Corporation contract to M/s Fitchner instead of M/s Lehmeier who were supposed to be the lowest bidders resulting in a loss of Rs. 101.3 million to the government.

All these references were eventually rejected for complete absence of evidence. However the government managed to achieve two things. It kept Benazir Bhutto running from one court to the other and tried to defame her in the eyes of the public. Second it gave the government of Nawaz Sharif a clear field for making money through questionable deals away from public scrutiny.

In fact Nawaz Sharif went so much overboard that his mentor Ghulam Ishaq Khan himself lost patience with him and started addressing letters to Nawaz Sharif for alleged irregularities in running the affairs of the state. The friction grew so strong that both men resolved to get rid of the other. The battle lines were clearly drawn and it was only a matter of time when the final showdown took place. Ishaq used his powers under the 8th Amendment yet again and dissolved the National Assembly in April 1993.

Nawaz Sharif went directly to the Supreme Court. The charges of corruption were held to be no ground for dissolution of the Assembly. The same Supreme Court which had earlier held Zia 's action as illegal and Ishaq's action of dismissing the Benazir government constitutional now declared Ishaq's dissolution without lawful authority and ordered the restoration of the National Assembly.

Nawaz returned as Prime Minister but the friction between the former President and Prime Minister was so deep rooted that they could not coexist. When it seemed apparent that the tussle between them may result in a bloody civil war the then army chief General Waheed Kakar intervened and brokered a deal under which both men agreed to resign and pave the way for fresh elections.

By this time the people had realised that Benazir Bhutto had been ousted from power in 1990 due to a well thought out plan and deprived of victory in the 1990 elections due to massive rigging. The neutral caretaker government of Moeen Qureshi held the elections in October 1993 and Benazir Bhutto was elected Prime Minister for the second time.

Although Moeen Qureshi was asked to become the caretaker Prime Minister with the approval of Nawaz Sharif the latter refused to accept the election results and declared that he would bring the Benazir government down in less than six months. The familiar pattern of intrigues started once again and Nawaz stepped up the propaganda against the PPP government. As stated publicly by Moeen Qureshi when he took over the economy was in ruins. The budget deficit was over 8% with foreign exchange reserves below \$ 400 million. There was no foreign investment worth a mention and the stock market had plunged to its lowest.

Mohtarma Benazir Bhutto took positive and swift steps to put Pakistan back on the road to economic recovery. In the three years that she was in power, deficit came down to just over 5% of the GDP, foreign exchange reserves reached an all time high of \$ 3 billion and the stock market index surged to over 2600 points. The law and order situation improved to a point where people of Karachi started living normal lives once again and fear gave way to hope and confidence in the government.

One thing however did not change. The PPP haters never stopped hating it. The privileged thought their survival was at stake if they allowed the PPP to continue in power. The intrigues intensified, and this time around the conspirators led by Nawaz thought they had the best weapon against Benazir Bhutto, in the form of her handpicked President Farooq Legahari. A deal was struck between them to remove Benazir Bhutto by using the 8th Amendment and holding elections with a plan to rig them so as to let Nawaz return to power.

To this end a conspiracy was hatched to kill Mir Murtaza Bhutto in an "encounter" with the police and then blame Benazir Bhutto and Asif Zardari for his murder. Some Washington based economists were commissioned to write articles to show that the economy was nearing total doom. Finally on the night of 5th November 1996, Leghari dissolved the National Assembly and dismissed Mohtarma Benazir

Bhutto as Prime Minister. Asif Zardari was arrested and held without any charges.

Mohtarma Benazir Bhutto approached the Supreme Court to challenge the dissolution as did Yusuf Raza Gilani; the speaker of the National Assembly. The attitude of the Court headed by Sajjad Ali Shah became obvious when it returned the petition for using "intemperate" language. The petition was reworded as advised by the registrar but it was returned once again.

When finally it was received, the Chief Justice decided to hear the pending petition filed against the 8th Amendment before taking up Benazir's petition. After deciding this case he took up the Case of Gilani and reserved the judgement. He then declared that the Court would observe the winter recess and thereafter take up Benazir's petition. While all this was going on the other two petitioners, Mehmud Achakzai, who had challenged the 8th Amendment and Gilani urged the Court to take up Benazir's petition first. Sajjad Ali Shah refused to do that. He also rejected Benazir's plea that the full court hear the petition as had been done before. With only three days to go for the general elections, the Supreme Court rejected her petition and upheld all the charges.

The decision was a complete somersault from its earlier decision in the Nawaz Sharif case. The timing of the decision was such that Leghari used it as an effective tool for an anti-PPP campaign carried out on the electronic media. Not content with what he had done to keep PPP out of power and bring in Nawaz Sharif, Leghari amended his own laws to save Nawaz from disqualification that was certain on account of his being a loan defaulter. The caretaker law minister, Justice (Rtd.) Fakhruddin G. Ibrahim resigned in protest. This did not bother Leghari and he went ahead with his plan to rig the election results. The rigging was so heavy that Leghari plan backfired on him and the Muslim League captured two-thirds majority. The voter turn out was extremely low. Leghari himself estimated it to be around 25%. In fact it was not more than 15-17%. Yet the results showed that 36% votes had been cast.

Nawaz Sharif returned to power and set about the task of politically eliminating Mohtarma Benazir Bhutto and the PPP. He was facing dozens of cases in the High Courts for corruption and mismanagement. It was his turn once again to turn all the state firepower on Benazir Bhutto. The electronic media was used shamelessly to concoct stories about corruption allegedly committed by Benazir and

Asif Zardari. He appointed his personal friend and crony Saifur Rehman, a loan defaulter himself, to oversee accountability. The ruthless persecution that followed and is continuing is discussed in the subsequent chapters. The two-fold objective of eliminating Benazir Bhutto and covering up their own misdeeds had to be achieved at all cost-even at the cost of national honour. Nawaz collaborated with the MQM to keep the PPP out of power even in Sindh. He even agreed to pay "compensation" for the alleged custodial, killings of MQM activists who had committed murders and robberies and held Karachi hostage to their whims.



## Deceit and Lies

Before the decision to dissolve the assembly, a plan to topple Benazir Bhutto government and to discredit it with false allegations of corruption and abuse of power was designed by Farooq Leghari and Nawaz Sharif. After dismissing Benazir Bhutto's government in November 1996, Leghari installed a caretaker government that was totally biased against Benazir Bhutto. Meraj Khalid was installed as the caretaker Prime Minister but all authority was exercised by Leghari himself or his close friend and a CSP batch mate Shahid Hamid who held the portfolio of Defence and Establishment as Minister in the caretaker government. The CSP officers from the batch of 1964 (Leghari's Batch) helped Leghari to pursue his agenda. Leghari abused the state owned electronic media to discredit Mohtarma Benazir Bhutto and her husband particularly and her government in general. Wild and ludicrous allegations of corruption and abuse of power were propagated on TV and radio and print media. Engineered stories were planted through the print media. This ugly media war against Mohtarma Benazir Bhutto was waged to justify the dismissal of her government.

The people were tricked to believe that Mir Murtaza Bhutto was murdered in a fake police encounter on the directives of Asif Ali Zardari. The PPP government had restored peace in Karachi through effective action against terrorism but this great achievement was portrayed as an act of political vendetta against the MQM. Karachi had been held hostage to the terrorists for a long time but these terrorists were made to look like

innocent victims of state terrorism. Leghari even sacrificed national interest in his hatred for Mohtarma Benazir Bhutto. The world opinion about Pakistan took a negative turn. The international press taking the cue from Pakistani print and electronic media, began to paint Pakistan as a state where human rights were non-existent, where governments only pursued objectives of gaining personal riches and where the rule of law has no meanings.

A calculated plan was maliciously drawn to paint Benazir Bhutto black. It was done by pressuring, and coercing bureaucrats, businessmen and industrialists to make perjured statements against her and Senator Asif Ali Zardari. First the caretaker government and then Nawaz Sharif regime threatened and arrested bureaucrats and others. Farooq Leghari, with the help of his right hand man Shahid Hamid and fully supported by the Sharif family and their cronies, started intimidating the bureaucracy. Pakistan's High Commissioner to the United Kingdom Wajid Shams-ul-Hasan, a man of excellent credentials and enormous respect in the journalists' community, was arrested while on a visit to Pakistan. He was pressured to make false statement about Asif Ali Zardari's ownership of the Rockwood estate in Surrey, England. He was accused of being involved in the shipment of furniture and "antiques" to London, which were allegedly owned by Asif Ali Zardari and were dispatched to Surrey. Wajid Shams-ul-Hasan, a serious heart patient, was dismissed from his diplomatic assignment and threatened with a jail term.

Wajid's arrest and dismissal also served as the cover-up of Leghari's own misdeeds. Leghari had spent millions from the national resources on his passion for hunting. On a number of occasions the press had reported in detail about these serious indiscretions. In the past Leghari had asked our High Commission in United Kingdom for a regular supply of ammunition for his hunting adventure and he feared that if Wajid returns to London, he would be able to get the documentary evidence about these misdeeds which will expose Leghari's wrongdoing. So it had become necessary for Leghari to get Wajid out of the way. He was arrested, sent to jail and denied bail for several months.

Ahmed Sadiq, the former Principal Secretary to Mohtarma Benazir Bhutto, was another target of the caretaker administration. He was arrested and sent to Adiala jail in Rawalpindi without any charges being levelled against him. He was coerced into making incriminating allegations against Benazir Bhutto and Asif Ali Zardari. When he did not succumb to the pressure, he was threatened with institution of cases against him. He was confined for one month under the Maintenance of Public Order (MPO) and was released on bail. He was again arrested in

Karachi and was kept at the offices of Federal Investigation Agency (FIA). A joint investigation team of FIA and intelligence agencies tortured him into making perjured statements against Bhutto. He was forced to comply with the demand to implicate Benazir Bhutto and Asif Ali Zardari in corruption and abuse of power.

At first, Ahmad Sadiq refused to level these charges against Mohtarma Benazir Bhutto or Senator Asif Ali Zardari. Frustrated by Sadiq's refusal to falsely implicate Mohtarma Benazir Bhutto, the interrogation team subjected this 65-year old man to physical torture. Senator Saifur Rehman, head of the accountability cell, in front of journalists himself admitted torturing Ahmed Sadiq. At another instance Saifur Rehman threatened Naseer Ahmed, former Secretary Petroleum and Natural Resources, of the same treatment as being extended to Ahmed Sadiq if he refused to co-operate. After undergoing physical torture, including staying awake consecutively for three days and nights and being threatened with arrest of his son, Ahmed Sadiq resigned to say whatever his captors wanted him to say against Mohtarma Benazir Bhutto and Asif Ali Zardari. He agreed to sign on the dotted line in exchange for his personal freedom and after an assurance that his family would also be left alone.

The caretakers also arrested M.B Abbasi, the President of the National Bank of Pakistan at that time. Like Wajid Shams-ul-Hasan and Ahmed Sadiq, he was also held under the MPO. It was a blatant abuse of power by the government. M. B. Abbasi was also asked to 'co-operate' and make false statements against Mohtarma Benazir Bhutto and Asif Ali Zardari.

He also initially refused to give in to these unreasonable demands. He was then subjected to physical torture and at one stage was kept awake for 75 hours at a stretch. He complained of this torture when he was produced for obtaining his physical remand before the Special Judge for Offences in Banking (Sindh). Reports of this torture appeared in the national press. Abbasi continued to resist these pressure tactics. The joint investigation team also offered him several concessions in return of 'co-operation' and to accuse Asif Ali Zardari on electronic media of wrongdoing and corruption.

This physical and mental torture continued for nearly a year and a half. Finally he was flown to Islamabad, where he was kept in room No. 3 of the Sindh House. Saif interrogated him personally and threatened him with dire consequences if he continued to refuse to make a false statement against Benazir Bhutto and Asif Ali Zardari or at least only against Asif

Ali Zardari. Saif also told him that he would be released and cases against him would be withdrawn if he agreed to make the required statement.

Abbasi was being charged with cases of corruption committed while he was Chairman NDFC appointed in 1993 by the caretaker government Moeen Qureshi. Another allegation against him was of spending a huge sum of money in decorating the Head Office of National Bank and refurbishing the Bank President's office, for which the bank had appointed Habib Fida Ali as the architect at agreed terms and conditions. Abbasi finally gave in and agreed to sign an affidavit as required by Saif-ur-Rahman.

The government had also arrested Rehman Malik, the Deputy Director General of FIA. He was also detained under the MPO like the others. He had conducted several investigations against the Sharif family and their cronies and cases had been filed in various courts on charges of corruption. Rehman Malik was an important member of the Interior Minister Major General Naseerullah Babar's team, which had restored peace and re-established the writ of the government in Karachi. He was also threatened with dire consequences if he refused to implicate Benazir Bhutto and Asif Ali Zardari in the corruption cases fabricated by the government. Rehman Malik refused to give in to all kinds of pressures. He was given the incentive that he would be reinstated to his previous post in FIA if he towed their line. He refused to make any statement against the former Prime Minister or her husband. After almost one year of detention, he was released by the High Court on bail and had to flee the country.

There are other numerous cases where bureaucrats were either intimidated or lured with incentives to testify against Benazir Bhutto. The Nawaz government followed up what the Leghari caretaker government had initiated against Mohtarma Benazir Bhutto, for a common purpose.

The caretaker government also accused Asif Ali Zardari of owning dozens of horses valued at millions of rupees and keeping them in air-conditioned stables at the Prime Minister's House in Islamabad. These stables were allegedly built at a cost of several million rupees from the budget of Capital Development Authority (CDA). The Chairman of CDA Zafar Iqbal was also arrested and asked to endorse the allegation. The allegation was totally baseless so he refused to make any statement against Mohtarma Benazir Bhutto or Asif Ali Zardari.

In fact a piece of land within the premises of the Prime Minister's House was utilised as polo ground. Temporary stables were built for the horses. It was also alleged that these horses were fed jam and apples at the state expense and these stables were even shown on national TV. It was



not mentioned that Asif Ali Zardari had not taken away the sports ground with himself but it had remained as state property.

It was a blatant lie to cover up Leghari's own wrongdoing. It was Leghari who had abused his authority in getting a heated swimming pool and a firing range in the Presidency at a huge cost to the CDA. On one hand he wanted to protect himself and on the other feed false stories against Benazir Bhutto. The state TV was abused to propagate false accusations against Mohtarma Benazir Bhutto and Asif Ali Zardari.

The caretakers also accused Asif Zardari of purchasing several acres of land near Islamabad for the construction of a resort hotel. They alleged that Asif Zardari had used his position as the Prime Minister's husband to force the former owners of this land to sell it at throwaway prices. This land in question was situated next to the Fecto Cement factory an unlikely site for any hotel. Nawaz regime has the same purpose as Leghari's administration so they brought some people on national TV for false propaganda. The regime even pressurised the local Tehsildar to appear on national TV accusing Asif Ali Zardari for wrongdoing. The false accusations made on TV were heard by millions of those who watch television and the purpose of a media trial was achieved. No case has yet been filed on these totally false allegations.

The list of fabricated stories is a long one. The Islamabad New City project initiated by a local entrepreneur Tahir Niazi with a huge foreign investment from a Singapore based investor, was also made to look like a rip off. The National Housing Authority was also a partner in this project. For this project, land was acquired at normal market price. The amount of money paid by the people wanted to buy residential plots in the scheme was properly deposited in the banks. No discrepancy was ever found in any of these accounts. The investor from Singapore strongly protested to the Government of Pakistan against its action and the project is still alive. However the masses had been misled and the objective of a media trial was achieved by the regime.

The elections of February 1997 were rigged to bring Nawaz Sharif to power with such an unprecedented majority that even Qaid-e-Azam did not enjoy. Nawaz Sharif had promised to the people of Pakistan during his election campaign to improve economy but instead he followed another agenda. Nawaz knew that because of his deep involvement in corruption and his inability to govern he would not be able to retain power for too long and sooner or later the people would discover the truth and reject him. Nawaz also feared that a possible return of Benazir Bhutto as Prime Minister would mean the end of his career as politician. Plans had

been made in connivance with Leghari to discredit Benazir Bhutto and eliminate her from politics.

The Nawaz government decided to turn the state machinery into the worst persecution apparatus and conducted Mohtarma Benazir Bhutto's media trial with a vengeance. The Nawaz Sharif regime knew that they have no evidence against Mohtarma Benazir Bhutto and the courts would have no choice but to acquit her so an unprecedented media trial was launched to misguide the people into believing that the charges of corruption against Mohtarma Benazir Bhutto were serious and perhaps true.

To achieve this objective, the Nawaz government created an Accountability Cell called the 'Ehtesab Cell' in the Prime Minister's Secretariat. Senator Saifur Rehman, Nawaz's partner in crime, was appointed chairman of this "Cell". Saif himself is a loan defaulter and his company Redco has been involved in several cases of evasion of duties and taxes. Nawaz had given him a carte blanche in his last term as Prime Minister and all state resources were abused to benefit his business.

Saif was given only one task to get Benazir Bhutto at all cost even at the cost of national interest. Saif's family owned a small Pharmacy in 'Muzang', Lahore and had started amassing wealth from the time when Nawaz Sharif was Chief Minister Punjab.

When Nawaz became Prime Minister, Saif's company Redco grew by leaps and bounds. Power went to Saif's head when he was made the Chief of Accountability Cell. He regularly abused the electronic media and held frequent press conferences to level baseless charges against Benazir Bhutto and Asif Zardari. Bureaucrats were either harassed, threatened and arrested or offered incentives as bribe to go on TV and level false accusations against Mohtarma Benazir Bhutto. Salman Farooqi, a seasoned bureaucrat was threatened that he would be arrested if he did not accuse the former Prime Minister and her husband of taking commissions and kickbacks in the Independent Power Project (IPP) deals. He was brought on TV to accuse that Mohtarma Benazir Bhutto as Prime Minister did not listen to his recommendations. Salman's TV appearance did not set him free because he had annoyed Nawaz on some other issue and was arrested once again. His wife's appeal to the Chief Justice of Pakistan got published in the national press. She denied charges of allegations and requested in-camera trial so that her husband could tell the truth because she feared her husband would be physically harmed if he told the whole truth and thereby exposed important people. She also complained to the Chief Justice that her husband was arrested because he

did not give in to 'dishonest demands' of Saif-ur-Rahman and the statement he made on TV was not enough.

Dr. Zafar Altaf, former secretary Agriculture was also brought on TV to level baseless charges against Asif Ali Zardari and in return he was promised a promotion.

The former Chairman of Pakistan Steel Mills Sajjad Hussain was also detained under the MPO, by the caretaker government. He challenged his detention in the Sindh High Court and was released. A few weeks later, he was again arrested on charges of corruption as the Chairman Pakistan Steel Mills. He was released after three months by the Sessions Court.

Immediately after his release he was re-arrested by the FIA, and booked under various provisions of the Pakistan Penal Code. The Sindh High Court ordered to release him on bail. His wife Amina Sajjad filed a petition in the Sindh High Court stating that her husband is suffering from severe depression and had become mentally unstable due to being falsely implicated in corruption charges. She further stated that Saifur Rehman had sent a message for her husband asking to meet him and get himself absolved of all charges.

Sajjad met Saif in Islamabad in the first week of June 1997. Saif told him point blank that if he signs the statement prepared by him, he would be exonerated in all the cases lodged against him. On Sajjad's reluctance, Saif threatened him with arrest and physical torture. Faced with these threats, and under extreme duress, Sajjad signed the statement accusing Asif Ali Zardari of taking bribes. She further stated that her husband was also forced to return 20 million rupees to the state and had to pledge their house for this purpose.

She also said that Hasan Wasim Afzal, 'co-ordinator' at the Ehtesab Cell and Saif's right hand man, called to inform her that a PTV team would come to their house the next day to record Sajjad's statement for TV broadcast and for the press. The PTV crew and pressmen arrived at her house the next day but found Sajjad in an unstable mental state so they called Saifur Rahman from her house to inform him about the situation. Saif directed them to return the following day for the recording.

This clearly shows the extent to which Saifur Rehman would go to conduct a media trial of Benazir Bhutto and Asif Zardari. To harass the bureaucracy, Saif without any legal authority sent a list of 87 senior officers to the Establishment Division to place them under suspension and take disciplinary action against them. This action sent a message to the others that Saif was calling the shots and they must listen to him if they wanted to save their jobs.

One of the 87 bureaucrats suspended from service was Ejaz Rahim former Chief Secretary of the NWFP during PPP government. He was transferred by the caretaker government and appointed the Managing Director of PTV. Saif asked him to run a cooked up story of corruption against the previous government on TV. Rahim declined without prior permission with the Justice Division for fear of defamation suit against his organisation. Saif persisted and the repeated refusal of Ejaz Rahim, added his name to the list of those who were to be suspended and charged with corruption.

Ejaz Rahim's successor in the NWFP, Khalid Aziz was also placed under suspension on serious charges of corruption. Aware of the fact that his fate was sealed, he decided to make peace with Saifur Rahman. He promised to provide incriminating evidence against Asif Ali Zardari and to implicate him in drug smuggling cases. He promised to go to the United States and get sworn statements of Ayub Afiridi and Anwar Khattak, the two internationally known drug traffickers, who had been extradited to the US by the Benazir Bhutto government. He was asked to deliver his promises first and then get his reward. For more than one and a half year, Khalid Aziz worked as Additional Secretary in the Ehtesab Cell of the Prime Minister's Secretariat while still under suspension from this job. This entire act was in blatant disregard of the rules and regulations but the government wanted to achieve the objective of conducting a media trial of Mohtarma Benazir Bhutto by all means.

The objectives of the Leghari-Sharif duo were to dismiss Benazir Bhutto government, to eliminate her politically and install Nawaz Sharif as Prime Minister. To achieve this, several charges were levelled against her in order to dissolve her government. One of the most important and much publicised charge was that corruption was rampant during tenure as Prime Minister. Leghari had issued an ordinance to carry out a large-scale accountability of corrupt politicians and public servants and appointed Justice Mujaddid Mirza, a retired judge of the Supreme Court as the Chief Ehtesab Commissioner. During the caretaker government, no evidence of corruption was found against Mohtarma Benazir Bhutto and Asif Zardari. When confronted with this fact by the media, Leghari could only state that white-collar crime was very difficult to detect. He was asked to explain why did he make serious accusations of corruption when there was no evidence available. He had absolutely no explanation. Meraj Khalid, the caretaker Prime Minister confessed on TV that he had heard a lot about corruption committed by Benazir Bhutto but could not find any evidence whatsoever to substantiate these charges.

The PPP government had awarded PSI (Pre-Shipment Inspection) contracts to two firms of international repute. Their induction in the system had immensely curtailed corruption, which was rampant because of discretionary powers until then. These companies had reported the failure of custom authorities to collect Rs. 27 billion in Customs duty. The Economic Co-ordination Committee of the PPP cabinet had ordered an inquiry to determine the facts.

The CBR (Central Board of Revenue) in a bid to get its powers back in its own hands immediately moved a summary to the caretaker cabinet recommending termination of PSI contracts. The contracts were ultimately terminated in March 1997. When Saifur Rehman started his job of witch hunting, he was told by the CBR that Benazir Bhutto could be implicated in corruption in awarding these contracts. Saifur Rehman grabbed on the opportunity and set another media trial in motion. This Ehtesab drama is discussed in detail in chapters five and six.

Saifur Rehman vigorously pursued his media trial of Benazir Bhutto and abused his new-found authority to misuse the electronic media beyond all limits. Frustrated with the fact that no corruption was committed and hence no evidence could be found against her, Saif appeared on TV frequently and addressed numerous press conferences to level baseless allegations of corruption against her. This media trial initially aroused great public interest however with the passage of time people began doubting the veracity of these planted stories.

Independent analysts demanded in the print media for taking these cases to the courts. Since there was no evidence, none of the cases was sent to courts. The Chief Ehtesab Commissioner returned the cases sent to him by the Ehtesab Cell for lack of evidence. Saif-ur-Rahman decided to curtail the Ehtesab Commissioner's powers and take all powers into his own hands. The Ehtesab Ordinance issued by Leghari during caretaker government was amended many times to give more powers to Saif. Initially it was decided that the Ehtesab will be carried out from 1985 but to save Nawaz Sharif from being convicted on charges of corruption and wrong-doing as Chief Minister Punjab, the year of start of Ehtesab was brought forward to 1990.

Special Ehtesab Benches were constituted and hand picked judges having close links with Sharif family were appointed as heads of these benches. Sharif produced forged, fake and stolen documents before these benches.

Saifur Rehman made frequent visits to United Kingdom and Switzerland and also sent his chief associate, Hassan Waseem Afzal to obtain forged documents abusing Pakistani embassy in Switzerland. On

Saif's demand the Attorney General of Pakistan sent a rogatory letter to his Swiss counterpart stating that Benazir Bhutto and Asif Zardari were being tried in Pakistan on various charges of corruption and alleged that certain bank accounts of foreign based companies, were in fact Mohtarma Benazir Bhutto and Asif's accounts. Not a single case had been sent to any court until that time.

Strangely, the Swiss government ordered these accounts to be frozen. Saif proudly appeared on national TV and declared that clear and convincing proof of corruption had been found. Benazir Bhutto denied any connection with the companies whose accounts had been frozen but Saif continued his propaganda due to his exclusive control on the electronic media. A shameless media trial continued.

Waseem Afzal, the prosecution's Chief witness, on 16 February 1999, before Ehtesab Bench admitted that none of these accounts were either in Benazir Bhutto or Asif's name. Saif went berserk after Waseem's statement in court and started an advertisement campaign in national and regional newspapers against Mohtarma Benazir Bhutto and Senator Asif Ali Zardari.

A similar rogatory letter was also sent to the British government. The request was declined on the grounds that unless the alleged wealth was the result of a drug related crime, the British law did not permit any assistance. The drive to implicate Asif Zardari in drug trafficking started because in absence of any drug related case being registered against him, no investigation could be initiated in the UK. The Director General of the Anti Narcotic Force, Major General Mushtaq Hussain wrote a letter to the Interior Minister Chaudhry Shujat Hussain stating that the Ehtesab Cell's move to involve Asif Zardari in drug related cases would back fire. To quote his words, he stated that, "there is an apparent attempt to link Asif Zardari with drug trade by bringing evidence from criminals—but he never figured in the drug trade in the past".

The ANF had also checked with the US Drug Enforcement Administration (DEA) and other Drug Liaison Officers based in Pakistan. Their reports were consistent with the findings of the ANF. The letter was in response to the so-called confessional statement of Arif Baloch alias Noora Teddy. Arif Baloch was arrested in Karachi on theft charges. He was taken to Lahore and subjected to torture in order to make him implicate Asif Zardari in drug trafficking. The statement attributed to Baloch was drafted in Saif-ur-Rahman's Ehtesab Cell. The illiterate Baloch was made to sign the dotted line. On the basis of this statement, a formal complaint, FIR No. 525/97 was lodged against Asif Zardari with the Crime Investigation Agency, Lahore, in October 1997.

Later Arif Baloch denied the allegations and asserted that he was forced to make the confessional statement. His lawyer Khwaja Ahmad Tariq Rahim, former governor of Punjab, was not allowed to proceed to London to make a statement before the magistrate investigating the drug-related charges against Asif Zardari. In a similar move, Asif's counsel, Farooq Naek was also prevented from proceeding to London to represent his client. Saifur Rehman's desperation knew no bounds, and he was prepared to go to any length to malign Benazir Bhutto and Asif Zardari in corruption. Khalid Aziz who had promised to help Saif was sent to the United States, to visit convicted drug traffickers serving jail terms, to extract some kind of a statement to implicate Asif Zardari for drug trafficking.

An internationally known trafficker, Mushtaq Malik alias Black Prince, who has been in jails in Amsterdam and New York for the last 15 years made an unsigned statement claiming connections with Asif Zardari in his drug trade. The DEA categorically told the Pakistani authorities that such statements had no legal standing unless these assertions were also made at the time of initial investigations leading to a trial and conviction. Saif's henchmen next went to visit Anwar Khattak in jail in the US. He was arrested and extradited to the United States during the first Benazir Bhutto government. In her second tenure Anwar Khattak's properties in Pakistan were confiscated under the relevant law. Khattak had a score to settle with Benazir Bhutto and agreed to give an unsigned statement similar to the one given by Mushtaq Malik.

Sadaruddin Ghanji, former owner of the Karachi Sheraton Hotel, who had been arrested in Germany and sentenced to a 13-year jail term in the 1980s, was involved in massive fraud and evasion of duty on imported palm oil. He owed nearly a billion rupees to the banks and more than half a billion in Customs duty. Saif met him in Dubai, where Ghanji had gone to avoid arrest and prosecution. In exchange for a statement against Asif Zardari, he was assured free passage back to Pakistan. He made the statement and returned to Pakistan and was not arrested by FIA or Custom officials. He made the payment of evaded duties and taxes. He offered his shares in Sheraton Hotel, which were grossly exaggerated in value, to settle his bank loans.

Another drug trafficker, Shorang Khan who was arrested by the Benazir Bhutto government was released by the then Superintendent of Police, Mumtaz Burney without lawful authority. Burney was removed from his duties and placed under suspension. In May 1998, the police arrested Shorang Khan from Karachi and a few days later took him to Lahore. His son Ajan Khan filed a constitutional petition in the Sindh

High Court against his arrest. In the petition, besides other things Ajan stated that his father was being forced to make a statement involving Asif Zardari in drug trafficking. According to this petition, Shorang Khan was subjected to physical torture and made to put his thumb impression on some documents that he obviously could not read or understand.

Senator Saif had put the national interest at stake in his bid to implicate Bhuttos in corruption when he sent a list of distinguished Pakistani nationals alleging their involvement in drug trafficking. The list was sent with a covering letter signed by the Attorney General of Pakistan. The list contained names of Mohtarma Benazir Bhutto, Begum Nusrat Bhutto, Asif Zardari, former President Ghulam Ishaq Khan, former caretaker Prime Minister Moeen Qureshi, Air Chief Marshal Abbas Khattak, Admiral Mansoorul Haq, Lt. Gen. Tirmizi, Retired Chief Justice of the Sindh High Court Abdul Hayee Qureshi and several other politicians, bureaucrats and serving or retired officers of armed forces.

The Swiss authorities ordered a probe in Switzerland on the assurance of Senator Saif that investigations in Pakistan had already indicated involvement of these people in drug trade.

To cope with acute shortage of energy in Pakistan, Pakistan Peoples Party government adopted a sound energy policy and foreign investment was brought to Pakistan through Independent Power Producers (IPPs). In order to find any evidence of corruption against Mohtarma Benazir Bhutto and Asif Zardari, Saifur Rehman started hounding the sponsors of the IPPs. This damaged the national interest as these power projects were funded by foreign investors, the World Bank, Japanese and British governments.

The owner of one of these power projects, Farooq Hasan who has the reputation of being a clean businessman was arrested and forced by Saif to make written statement that he had made cash payments of millions of dollars to Asif Zardari. A patient of hypertension, Farooq could not resist the pressure and signed the statement drafted by the Ehtesab Cell. After he was released, he went abroad and sent a letter to Nawaz Sharif in which he complained of Saif's excesses and denied the incriminating parts of his statement. Farooq Hasan's wife Wasima Hasan also wrote to Nawaz Sharif accusing Saif of persecuting her husband and sought his intervention. Nawaz did nothing to intervene as Saif was only serving his master's interest as best as he could. It is another matter that Saif's incompetence caused serious damage to Pakistan's interest. The United States, Japan and United Kingdom protested the maltreatment of their investors who were summoned by Saif and threatened with dire consequences.



The Private Power Policy of the PPP government had attracted huge Direct Foreign Investment in the energy sector. \$ 1.67 billion were invested by the IPPs by getting loans from the World Bank, the International Finance Commission, the Japanese EXIM bank, the US EXIM bank, the Asian Development Bank and the Common Wealth Development Corporation. The Hub Power Company (HUBCO) Project was signed by the first Nawaz government in 1992 allowing them a rate of 6.7 cents per kilowatt-hour.

The subsequent agreement entered into by the PPP government used this agreement as a guideline and fixed the rate at 6.5 cent per kWh, with a clause for adjustment based on oil prices. Like HUBCO the other agreements also had the standard arbitration clause. Under the provisions of this clause, all disputes were to be resolved by the International Chamber of Commerce (ICC) or the International Centre for Settlement of Investment Disputes (IGSID). The Nawaz government had aggravated the economic crisis due to its mismanagement. Government owned corporations, particularly WAPDA were facing an economic collapse.

The Nawaz regime thought that if the IPPs reduced the power rates, it would overcome WAPDA's financial crisis. Instead of negotiating an amendment and downward revision in tariffs, the government accused IPPs of overcharging and corruption. Saif thought he had come across the golden opportunity to extract some incriminating statements from the owners of these power projects and blame Benazir Bhutto and Asif Zardari for massive corruption. He asked the Law Minister to draft an ordinance, which would require the owners of these projects to disclose illegal practices committed and commissions or kickbacks given by them.

In April 1998, 'Corrupt Business Practices Ordinance' was promulgated. This ordinance was promulgated one day before the scheduled session of the National Assembly and the Senate because the government did not want to discuss the bill in the parliament due to its questionable nature. This law was IPP specific and also had a dubious provision that if a confession about irregularities was made and the agreements were renegotiated, there would be no punishment for the guilty power producers. However the efforts to induce the investors as prey failed miserably and the investors considered their reputation worth more than their investment.

The government's objective was very clear. Blame Benazir Bhutto and Asif Zardari and get away with even murder. While all this harassment was going on, the public attention was diverted from the fact that the power supplied by these IPPs to WAPDA was only 2% of the total power generated in the country. This negligible power supply to

WAPDA was obviously not the cause of WAPDA's woes and Pakistan's economic mess. Nawaz Sharif went public and stated that if the power tariffs were revised downward, Pakistan's economy would recover immediately.

Misinformation, deceit and lies, that are the hallmark of Nawaz government, kept the public attention diverted from the truth. As Nawaz buckled and kneeled before the US President, he promised to resolve the IPPs issue to the satisfaction of all parties. It was a huge loss of face for Nawaz and his government, but for someone who thrives on intimidation of his political opponents, it meant nothing. All the propaganda about corruption in these power agreements came to naught. In fact it drove away all foreign investment without which the country is not able to revive its shattered economy.

On March 04, 1999, on the floor of the Senate Gohar Ayub Khan, Minister for Water and Power admitted that no corruption was detected in IPPs. It is shameful that the leader of the Pakistani masses Mohtarma Benazir Bhutto and Senator Asif Ali Zardari had been subjected to the unprecedented dirty media trial for over two years.

Another example of the government's tactics of deceit and lies is the arrest of a Dubai businessman. The police in Karachi arrested Arif Zarwani, a well-known Dubai businessman, who has property and business interest in Pakistan and in several other countries. He was flown to Islamabad by a late night flight, escorted by Hasan Waseem Afzal and other officials of Ehtesab Cell. He was taken to a 'safe house' of the FIA in Islamabad and was kept in its basement. He was handcuffed, cursed and beaten by the interrogators.

Their demand was simple. Zarwani was asked to disclose Asif's alleged bank accounts abroad and the amount of money deposited by Zarwani in these accounts. Since there was no truth in the allegations, Zarwani refused to make the required statement. His captors freed Zarwani when the United Arab Emirates Government intervened.

In order to save face, the Ehtesab officials headed by Hasan Waseem Afzal told him that they had arrested him under mistaken identity and in fact they were looking for a Pakistani with a similar name. This desperate act nearly resulted in a diplomatic row with a friendly government. Had Zarwani succumbed to pressure like the others, they would have asked him to appear on TV and add to their so-called 'achievements'. The deceit and lies that this government has resorted in order to get Benazir Bhutto convicted on charges of corruption and conduct her media trial is unprecedented.



## The Cover Up

When people in authority commit criminal acts and resort to illegalities, they always try to do it under cover of legal authority. The pretexts for such transgressions range from acts performed to advance public welfare, actions taken to correct the 'wrongs' committed by the previous governments and charting of a new course to better the social and economic lot of the oppressed masses. Nawaz Sharif rose to political prominence under the tutelage of the military dictator General Zia-ul-Haq, who was desperate to create a new breed of pliant, to corrupt national leadership in order to sideline the Pakistan Peoples Party, and prevent Benazir Bhutto from taking over the government as a popularly elected leader.

Zia was under pressure from the United States and other western countries to end martial law and return the country to democracy. The Soviet invasion and occupation of Afghanistan was a God-sent for him and helped him delay the inevitable for many years. His search for the alternate leadership focused on Nawaz Sharif who was not even capable of heading a local government. Zia asked his military governor of Punjab to appoint Nawaz a minister in the provincial cabinet. With the portfolio of Finance, Nawaz was initiated in the realm of unparalleled corruption and political patronage. A few years later, when Zia declared a return to civilian rule, after ensuring for himself, a five-year term as President, through a farce of a referendum, he appointed Nawaz Sharif as Chief

Minister of Punjab. After entering upon the highest office of the largest province of Pakistan, Nawaz Sharif found himself not answerable to anyone.

Prior to his back-door entry into national politics Nawaz Sharif was only exposed to government officials as a small time businessman looking for loopholes in the laws and bribing his way to personal gains whenever he came upon the opportunity to do so. It is a well known fact that he and his younger brother Shahbaz were the link between their father Mian Sharif and the officials who were inclined to accept gratification for doing them undue favours. The brothers were known to hang out in the offices of the Customs and Income Tax Departments. This happened for several years, grooming the brothers in the art of bribing their way to achieve their objectives. With the official authority at his disposal, Nawaz added a new dimension to his mode of operation — intimidation. Bribery and intimidation continued for so long that it became his psyche. It is with this background, that one must look at Nawaz Sharif's conduct to understand his actions and appreciate the chasm between his words and deeds. Over the years he has mastered this art and brazenly given it the stature of statecraft. To him everything must be measured on a scale of personal profit otherwise it is a loss to him and an affront to his family name.

At the time of Nawaz Sharif's illegitimate marriage to political power, the Sharif clan owned only a modest foundry situated in Kot Lakhpat, Lahore, under the name of 'Ittefaq Foundries'. This factory which was nationalised under the economic policies of the first PPP government, was injected with massive capital by the government and had become a sizeable enterprise. Zia returned the foundry to the Sharif family and they got back a bigger business than they had handed over to the government. During the decades of the eighties, when Nawaz was Finance Minister and later, Chief Minister of Punjab, the Sharif family increased its holdings from one foundry to nine factories. This was no economic miracle. It was a result of patronage, political favours and blatant corruption.

While Zia provided political patronage, Mian Sharif used his cunning and unsuitable greed, to amass wealth and political power. He knew it was not only possible, but also desirable to make both interdependent. This was to become the 'Sharif Philosophy' in the years to come. Unknown to millions of innocent Pakistanis, this philosophy was

bound to push Pakistan in the political abyss it finds itself in today. With all principles of democracy and national moral standards consigned to the dustbin of history, the nation kept spiralling down to become known as one of the most corrupt countries in the world. A country that actively, if covertly, supports terrorism, where governments can only function if they support the vested interest of the establishment and its greedy stooges. The brief interludes of governance, when the Sharifs were not at the helm of national affairs did not last long enough to correct the course of the nation's ship and save it from degradation in the eyes of the international community. Nor did these attempts succeed in checking the rot creeping into the moral fibre of the society.

During his incumbency as Chief Minister of Punjab, Nawaz allotted nearly 5600 plots to his favourites, himself and his family under fictitious names. He also allotted thousands of these plots to people who could be cast in the PML mould and become Nawaz Sharif's power base. Thousands of nominees of his political supporters and others who could be converted into his supporters, were given jobs in the District administration as tehsildars which is the most crucial and effective link between the government and the people of the rural areas.

Thousands of such nominees were appointed in the Punjab police as sub-inspectors and station house officers. These two tiers of administration have virtually undisputed control over the rural populace, effective to subjugate the people governed by the administration of the day in the tradition of the British Raj.

This mediocre business family with little or no formal education and without an inkling of statecraft copied the British model with one significant but damaging variation. While the British had recruited such officials after verifying their antecedents to ensure their allegiance to the throne, they also placed a heavy reliance on honesty, Nawaz, naively following in the foot-steps of his political mentor and military dictator, dispensed with the requirement of honesty. All that mattered was allegiance to him and his misrule. Thus came into being a huge corps of loyalists, who would support every action of his and at the time of the elections, muster the required votes by intimidating the voters.

The creation of this loyal lower level administration was not in isolation. Nawaz also created his middle and senior level band of loyalist administrators from among the police and district administration. Favourites and kin of PML legislators and influential leaders were

grouped together to head the police and district administrations in Punjab. 'Biradari' or mutual support based on caste affiliation gave way to the principle of service before self. These officers, who generally belong to the Federal government cadres, were told that they would enjoy the positions of power so long as they were unflinchingly loyal to Nawaz. During the first tenure of Benazir Bhutto, some very senior bureaucrats were encouraged by him to refuse the Federal government's orders, transferring them back to the centre, and continue working for the Punjab government. When the federal government issued formal transfer orders, directing them to report to Islamabad, some of them went to the Lahore High Court and got injunctions against the lawful orders of the federal government. With these actions began the lamentable politicisation of the bureaucracy. The obvious result of these actions accelerated the decay in their morals and gave a fillip to their open corruption. Something that Zia set in motion to prolong his tyranny was given a new dimension by his prodigy.

The effect of the policies formulated and implemented under the 'Sharif Philosophy' had their visible impact on the body politic of Pakistan. The PPP, which was formed in Lahore and came into power mainly with the support from the people of Punjab, maintained its political base intact throughout the repressive rule of Zia. This was demonstrated to the world when Mohtarma Benazir Bhutto made her triumphant return to Pakistan in 1986, landing at Lahore. The historic welcome accorded to her was a clear condemnation of Zia and a reaffirmation of the people's faith in the 'Bhutto Doctrine' of "all power to the people" and a vote of confidence in the leadership of his political heir and leader of the party, Benazir Bhutto.

Zia's exit from the scene due to the divine intervention of 17<sup>th</sup> August 1988, was seen by everybody, as a return of the PPP to power through the elections scheduled for November 1988. Despite the tremendous mass support she enjoyed throughout the country and particularly in Punjab, her party was deprived of several constituencies known to be PPP strongholds. This was only made possible by keeping Nawaz Sharif as the caretaker Chief Minister and allowing him to position the right set of officials in all such districts. PPP voters were driven away from the polling booths, national identity cards were not issued to thousands of them. And resorting to downright deceit and fraud, thousands of PPP identity cards were taken away on the pretext of giving financial relief to those affected by floods of August 1988.

Not satisfied with these immoral and illegal steps, the administration relocated several polling booths on the eve of the elections. The Establishment feared PPP's return to political power and took an extraordinary step of grouping together all the political parties opposed to PPP. This was a clear manifestation of the establishment representing the vested interest versus peoples' representatives. Islamic Democratic Alliance or the Islami Jamhoori Ittehad (IJI) was formed comprising mainly of Pakistan Muslim League and eight right-wing parties. The Inter Services Intelligence (ISI) helped them in achieving better results in the 1988 elections. Despite all these factors, PPP won five out of nine national assembly seats in Lahore. Overall it won 94 general seats, 7 minority seats and was supported by 8 independently elected members from the federally administered tribal areas (FATA). A total of 109 seats in a house of 217 gave them a simple majority.

Shocked at the popularity and victory of the PPP, Nawaz raised the slogan of "jag Punjabi jag" or "Punjabis, stand up and be counted". With this slogan, divisiveness in the society got a new dimension. The PML managed a slim lead of 5-6 seats in a house of 240 in the Punjab assembly. Nawaz Sharif wooed a sizeable number of independents, on promises ranging from ministerial slots to plots and appointments of their nominees in government jobs. Political patronage, bribes and corruption became the order of the day. Nawaz Sharif allotted government land at throwaway prices to keep his power base intact and challenge Benazir Bhutto. At the same time he continued to amass personal wealth with a new vigour.

When Nawaz Sharif was the Chief Minister under the protection and patronage of Zia, he used the Central Board of Revenue to issue policy directives aimed primarily at benefiting his family business. The government had declared a three-year exemption from central excise duty to all newly set up sugar mills in order to boost sugar production and achieve self reliance. CBR manipulated the decision of the ECC, and anti-dated the exemption by five years. Nawaz Sharif's sugar mill, which had been set up years earlier, was also extended the benefit meant for new mills. The duty that had already been paid was adjusted against future production. What prompted CBR to do this is largely unknown to people.

I. A. Imtiaz was the Chairman CBR at that time. The Finance Committee of the National Assembly was inquiring into a very controversial decision taken by him. Imtiaz had earlier ordered that a

huge quantity of gold belonging to the notorious smuggler, Seth Abid, and seized during the late 1960s was wrongfully seized and should be returned to him. The government had already disposed of the seized gold. Imtiaz ordered that an amount equal to the value of the seized gold be refunded to Abid. Over the years while this controversy lingered on, the value of gold had gone up manifold. Instead of refunding the amount equal to the value at the time of seizure, Imtiaz ordered that the present market value be applied. This caused a loss of millions to the government. Nawaz Sharif promised to save Imtiaz and in return got the undue benefit of exemption from excise duty on sugar that was legally not available to him.

Another act of Imtiaz aimed at benefiting Nawaz Sharif was the declaration of a wasteland near Chunnian in Punjab as special industrial estate entitling new industry to exemption (zero duty and taxes). Nawaz had bought hundreds of acres in Chunnian at very low prices. When CBR declared this land as special industrial zone, the price of this land skyrocketed. Nawaz Sharif made millions from this decision.

The story of such manipulations is endless but one more must be told. CBR reduced customs duty on the import of scrap. On the face of it this decision applied to every importer, but the biggest beneficiary was the Ittefaq Foundry. CBR also increased the customs duty on scrap available from ships at the Gadani ship-breaking yard in Balochistan, making it more expensive. As a consequence of this, the Gadani ship-breaking industry, which was the largest such industry in the world was destroyed. Nearly 10,000 workers were rendered jobless. But Nawaz Sharif was unmoved by the fact that his personal gain was a huge loss to thousands of people.

Soon after becoming Prime Minister in February 1997, Nawaz Sharif started executing his plan of making up for the time lost while he was in the opposition for three years. The dubious 'heavy mandate' he got in the 1997 elections was not enough for him to do as he wished. He had the Awami National Party (ANP) as his election ally. He sought the support of other smaller parties with representation in the national assembly to amend the constitution in a manner that would suit his style of governance without let or hindrance. He also promised the moon to Muttahida Qaumi Movement (MQM) in order to get enough votes to form a PML government in Sindh and keep the PPP completely out.

Muslim League had only 17 seats in the Sindh Assembly as opposed to PPP's 36 and MQM's 28. Nawaz decided to seek the support



of smaller groups in the assembly for his nominee Liaqat Jatoi. MQM presented a long list of its demands, a lot of which were questionable and some downright unfair and illegal. It asked for freedom of its workers who had been arrested on charges ranging from kidnapping and robbery to murder and terrorism. These men were arrested and put on trial when Mohtarma Benazir Bhutto decided to put an end to lawlessness in Karachi and restore the writ of the state. Some of these men were accused of killing hundreds of law enforcement officials. They had implicated the top leadership of MQM, including the self exiled Altaf Hussain, in various acts of lawlessness.

The MQM not only demanded their release but also withdrawal of cases against these men and their leaders. The most shocking and perverse of all these demands was payment of financial compensation to the families of those MQM men who had been killed while committing various criminal acts. Nawaz Sharif promised to accept this demand as well and in fact paid out large amounts. This ensured the installation of Liaqat Jatoi as Chief Minister of Sindh. Nawaz specially went to London, on one pretext or another, to meet Altaf and save the coalition from breaking up whenever MQM's demands were not met. However when Altaf refused to co-operate on the Shariat amendment bill, Nawaz broke the alliance, accusing MQM of Hakim Saeed's murder. The same party which was the "victim" of Mohtarma Benazir Bhutto's policy and a close ally of Nawaz all this time, suddenly became an enemy of the state. In order to prevent the PPP from coming into power in Sindh, Nawaz Sharif declared governor's rule in Sindh, under the emergency powers acquired immediately after the nuclear tests of 28<sup>th</sup> May 1998.

Under the personal enrichment plan, Sharif family had been quietly purchasing land in Raiwind, near Lahore over the past few years. Their total holding is reported to be in excess of 1800 acres. The place that has come to be known as 'Raiwind Farm' has been developed at state expense. The Sharif family owns houses built on this land. Since Nawaz Sharif's becoming the Prime Minister, this farm has been declared Prime Minister's Camp Office, to legalise expenditure from the state treasury. However Nawaz has grossly abused the facility to make it a model farm. Complaints have been filed against him and Shahbaz Sharif before the Chief Ehtesab Commissioner but no action has been taken on these complaints.

The farm is spread over six villages called Manak, Arayan, Pajjian, Baddoki, Sheikh Dakot, and Aasal Akhowal. The original cost of this land is reported to be around 900 million rupees. After an expenditure of over 600 million incurred by the state, the present market value of this farm is estimated to be Rs. 5 billion. This gave them a net increase of Rs. 4.10 billion.

The Public Works Department (PWD) was asked to maintain the PM's Camp Office. It was also directed to maintain the family residences. The PWD asked for Rs. 80 million for the upkeep of this farm and got the proposal approved. The State-owned Sui Northern Gas Company was directed to provide a natural gas pipelines connection to the Raiwind Farm. It provided the exclusive connection at a cost of Rs. 70 million. Ironically the newly laid pipeline only benefits the Sharif family and no other resident of the area has been given a gas connection.

Chief Minister Shahbaz Sharif asked the District Council, Lahore to build a twenty-foot wide road to his family farm. The total roadwork connecting the main Raiwind road to Mul village was built by the Frontier Works Organisation at a cost of Rs. 320 million debited to the state exchequer. There is a canal passing through this farm. The irrigation Department of the government of Punjab was asked to pave the canal bed. M/s Indus Associates were awarded the contract for this work at a reported cost of Rs. 80 million. The water supply to the canal was disrupted due to ongoing work and the people in the surrounding villages suffered due to scarcity of water.

Nawaz Sharif also directed the Water and Power Development Authority (WAPDA) to lay a special electric supply line for uninterrupted power supply to his farm. The project was completed at a cost of Rs. 50 million paid out of WAPDA's funds. He also ordered the state owned Pakistan Telecommunication Corporation (PTCL) to establish a 200-line telephone exchange for the primary, if not exclusive, use of Sharif family. This extravagance cost the PTCL Rs. 20 million.

Shahbaz Sharif asked the Lahore Development Authority (LDA) to launch a new housing scheme called 'Jubilee Town' near Raiwind. Before the scheme was announced, armed with the insider information, the Sharifs bought 150 acres of land adjacent to it. As if all this abuse of authority was not enough, Nawaz has also asked that the ring road to be built around Lahore be re-aligned to pass close to his farm. This road will

provide quick and easy access to the new airport terminal being built at Lahore.

When the word about this plunder of state money leaked out, the press started probing the scandal. The media watch continued and with each passing day, it intensified. Nawaz Sharif became concerned and decided to change the public perspective by deploying his usual style of deceit and lies. Mian Sharif went public and claimed that the farm was purchased and built out of their own money. A large number of press reporters were invited to visit the farm. Husain Nawaz, the Prime Minister's son briefed the press and took them around selected areas of the farm accompanied by Shahbaz and Mian Sharif. The press asked probing questions and none of the Sharifs could give a satisfactory answer. Mian Sharif claimed that his family had spent over 700 million rupees to develop the area that included a hospital for the benefit and welfare of the people of Raiwind. It is strange that between the financial years 1994-97 Nawaz paid only Rs. 416 as income tax, yet he and his family have that kind of money to spend.

In order to keep the public attention diverted from this brazen act of corruption and abuse of power, Nawaz has let loose his hit-man Saifur Rehman to persecute Mohtarma Benazir Bhutto and keep the media interest alive in the references against her.

While campaigning for the general elections of 1997, Nawaz had made tall claims about his ability to revive the economy and restore law and order. He knew that the economy was passing through a difficult phase but was not in such a bad state as was being depicted by a select group of anti-Benazir Bhutto people. He also knew the limitations of his own ability to govern. He had mismanaged Punjab and later Pakistan for almost eight years. There was little else he could do now. When incompetence is accompanied by dishonesty, the situation becomes more difficult to handle.

Nawaz Sharif decided to act on a two-pronged strategy. First, keep Mohtarma Benazir Bhutto busy with trials and allegations, and do the best he could for himself. Second, try and fool the people with populist, but hollow slogans and announce fairy-tale packages for revival of the economy. He also knew he could not pull this farce off for too long. It was therefore necessary to concentrate all the power in his hands. But he knew that the state institutions, provided under the Constitution would

stand in his way. He planned and executed a systematic demolition of these institutions.

The 8<sup>th</sup> Constitutional Amendment, forced by Zia on a party-less assembly had given sweeping powers to the President to the detriment of the Parliament. There were no differences between him and the opposition that Article 58 (2) (B) must be removed to prevent another dissolution of the National Assembly. The 13<sup>th</sup> Constitutional Amendment was passed unanimously. The manner in which it was passed, without any debate and within minutes of its presentation before the House did not give a truly democratic perception.

Nawaz Sharif feared that his autocratic style of governance would one day be challenged by his own party-men besides the opposition. He got the 14<sup>th</sup> Constitutional Amendment passed in much the same way as the 13<sup>th</sup> amendment. This amendment was meant to put an end to floor crossing by members of the assembly to the detriment of their party interest and for personal gain. The amendment was so drafted that it prohibited any expression of dissent and in fact amounted to denial of the right of freedom of speech.

While hearing a petition against the amendment, the Supreme Court observed that a member was free to express his opinion on an issue, and if in conflict with the party position, it would not entail automatic disqualification. Despite this, the members are afraid of expressing themselves freely and true parliamentary form of government cannot be put into practice. With the President and Parliament under his control, Nawaz Sharif turned his guns on the judiciary.

In the name of providing, quick and cheap justice to the people and eliminating terrorism and crime, he sought to establish special anti-terrorist courts in the country. Sajjad All Shah, the former Chief Justice of Pakistan, tried to dissuade Nawaz Sharif from taking this step by giving him private counsel. Shah reasoned that any special courts, outside the control of the superior judiciary would tantamount to a parallel judicial system and would be against the Constitution. Nawaz, an autocrat, shunned all such counsel. He got the necessary legislation passed by what had by now become a rubber-stamp Parliament. With this step he put himself on a collision course with the judiciary.

To further the objectives of transparency and accountability, the Supreme Court decided to take up for hearing, some of the petitions filed against Nawaz Sharif and other members of his party, alleging corruption.

The long outstanding and famous complaint filed by former Air Force Chief Asghar Khan for misuse of ISI funds during the 1990 elections was one such reference.

Nawaz Sharif made a scathing attack on the Supreme Court and continued a propaganda war against it in general and Sajjad Ali Shah in particular. This resulted in a contempt of court case against Nawaz and several of his party-men and allies. When it looked that the derogatory tone and tenor of the criticism mounted against the Supreme Court would lead to a possible conviction of those accused of committing contempt of court, Nawaz decided to go for an all-out assault on the Supreme Court.

The appointment of Sajjad Ali Shah as Chief Justice, bypassing his seniors three years earlier had left the Supreme Court divided. Taking advantage of this internal conflict, Nawaz used all resources at his command to have Constitutional petitions filed against the "illegal" appointment of Shah. He also decided to change the law dealing with contempt of court. The National Assembly witnessed what was termed as a free for all attack on the Chief Justice. Nawaz sought the intervention of the army in the dispute. As result of direct military rule for more than twenty years, the army had become an institution, which could stake its own claim to a share in political power. The long history of army rule and some cases decided by the Supreme Court fashioning new doctrines for legitimising the role of the army had made the army an important arbiter in the political power game. The army chief, General Jahangir Karamat was summoned from his foreign tour. He advised restraint to all sides involved in the dispute. Former President Farooq Leghari had become embroiled in the dispute as he thought he had an opportunity to cut Nawaz down to size. General Karamat asked Nawaz and Shah to put their dispute on hold for one week and let the tempers cool down so that an atmosphere of amity could once again prevail.

This was the decisive moment in the history of the dispute between the judiciary and the executive. Supreme Court judges sitting at the Quetta and Peshawar registries passed judgements declaring the appointment of Shah as Chief Justice illegal but gave legal protection to all acts done while he was Chief Justice. Shah continued with the hearing of the contempt of court case and on realising that conviction was the most likely outcome, Nawaz Sharif had his party leaders and workers launch a physical attack on the Supreme Court Bench headed by the Chief Justice. The district administration of Islamabad remained an idle

bystander. The Court proceedings were disrupted, and Shah and other judges on the bench ran for cover. Some leaders of the PML were later indicted in the case for having committed contempt of court. The case is still pending before the Supreme Court. In the meantime the judges opposed to the appointment of Shah as Chief Justice passed a unanimous judgement removing him from the post he had held for three years. They also appointed the next senior most judge of the Supreme Court, Justice Ajmal Mian as the Chief Justice. This was something unprecedented in the history of Pakistan. Farooq Leghari was asked by the government to administer oath to the new Chief Justice Ajmal Mian but instead of doing that, he preferred to resign from his office.

The tussle between the Judiciary and Nawaz Sharif had lasted more than two months and created an atmosphere of uncertainty, divisiveness and political instability, adversely affecting the already serious economic and political crisis. Nawaz Sharif thought he had tamed the judiciary that got busy in healing its wounds sustained during the crisis. It had been through agonising times, unprecedented in its fifty-year history. The Supreme Court went about its task with a clearly demonstrated sense of maturity. The court examined Nawaz Sharif's anti-terrorist Act and most of its provisions were struck down for being in conflict with the constitution.

Nawaz Sharif decided to take another shot at the judiciary. Expressing his lack of confidence in the manner of dispensing justice by ordinary courts and even those established under his Anti terrorist Act, he announced the establishment of military courts in Karachi to try cases of acts of terrorism. This move had a dual purpose. On the one hand it was meant to establish a parallel judicial system and on the other it was to be used to pressurise the MQM and convict its workers accused of committing acts of terrorism. To the horror of the saner elements in the country, the military courts comprising army officers with no legal background or training were given three days time for concluding trials. An appeal period, of three days was provided and the military appeal courts were given three days to decide an appeal. All proceedings under these Courts were kept out of the review powers of the Superior Judiciary.

This court system sentenced several persons to death and two were actually executed during the month of Ramazan. In the normal course of events, executions are not carried out during the holy month of fasting. Hearing several petitions filed against the military courts, a full

bench comprising the Chief Justice and eight other judges first stayed the executions of sentences and then after hearing all sides to the dispute, ruled that the establishment of military courts was against the Constitution and of no legal effect.

Ever since the announcement of this decision, the state electronic media has launched a systematic campaign against the Supreme Court. Nawaz himself persistently attacked the superior judiciary in his public speeches on a daily basis. His war with the judiciary was not over until he had destroyed himself and weakened the judiciary.

A free press is unquestionably an important institution of the state. Nawaz has always been averse to this freedom of press and has shown little if any respect for it. The press has been targeted by various regimes in the country, but with each passing day it has carved out its own place in the society fully supported by the people. Nawaz thought it was essential to reign in the press and prevent them from reporting his misdeeds and corruption. He abhorred even constructive criticism. He would not tolerate any reporting that goes against him.

Once again the malicious and reckless head of Ehtesab Cell was directed to silence the Jang Group of publications. This group has the largest combined circulation of Urdu and English language newspapers. When the stories of 'London Observer' and other foreign newspapers were reproduced by 'The news' and 'Daily Jang', Saif called the chief editor and publisher Mir Shakilur Rahman to put some sense into him. Mir Shakil was undaunted and refused to do Saif's bidding. Saif had asked Mir Shakil to remove some journalists from his newspapers for being critical of the government and place his nominees in those positions. Mir Shakil refused and faced dozens of cases from Income Tax and Customs departments.

In a taped conversation between the two, Saif was heard telling Mir Shakil that had he known about the Income Tax Appellate tribunal's proceedings a day earlier, even the "judge's father" would not have had the courage to rule in Jang Group's favour. Mir Shakil played this tape recording before a packed audience of journalists in the Karachi Press Club. Saif did not deny making the remarks. The tussle lasted for about two months. Finally the government backed down when Nawaz and Saif realised that the entire press was turning against them for their acts of intimidation.

Under the cover of economic revival, Nawaz manipulated the tax and tariff structure, by presenting what were called three mini-budgets in

the first months of his second misrule. Customs tariffs were drastically reduced and again revised upward to give himself and his cronies a chance to make big illegal gains. With every such move, the economic crisis worsened. Nawaz Sharif took steps propagated as austerity measures but all these were no more than mere window dressing. He went about pursuing showcase mega projects instead of cutting wasteful expenditure. With the failure of each of his policies the media campaign against Mohtarma Benazir Bhutto got more intensified. Undeterred by the character assassination launched by the government, Mohtarma Benazir Bhutto kept on pursuing her role as the leader of opposition and pointed out the failures and misdeeds of Nawaz Sharif at every forum.

The mishandling of the IPP issue had made the economic crisis even more serious. The nuclear explosion of May 1998 made things even worse. But nothing stopped the inept and thoughtless Nawaz Sharif from committing more blunders. He declared an emergency, and froze the foreign currency deposits that had been protected under the law passed by his first government. On the day of the freeze Nawaz Sharif, his family and cronies withdrew more than two hundred million dollars from these accounts. This was questioned in the National Assembly, where the opposition members alleged that \$500 million were transferred out of the country on that day.

The then Finance Minister Sartaj Aziz admitted that \$200 million had been transferred out of Pakistan. The Lahore High Court has already ruled against the freezing of the foreign currency accounts and government went in appeal against that decision before the Supreme Court. There are no two opinions that the freeze decision was a big blunder. Nawaz: admitted this fact while pleading with the expatriate Pakistanis in Kuwait to send more money into these accounts. The result of this folly has been disastrous and whatever foreign remittances were coming in the country (\$ 1.5 billion annually) have virtually dried out. While the freezing of the accounts shrunk the foreign exchange remittances, the mishandling of the IPP issue drove the investors away.

There is no end to the shocks Nawaz Sharif can deliver to the country and society. In a surprise move, while addressing the nation on national television, he announced his plans to construct the controversial Kalabagh Dam on river Indus. The smaller provinces of Sindh, Frontier and Balochistan have been traditionally wary of the proposed dam and for valid reasons. Instead of first seeking a consensus on the issue, he made his reckless announcement embittering even his allies. But building a consensus is not his forte. The proposed dam would cost in excess of \$12



billion. Pakistan is virtually in default yet he announced his plan to build Kalabagh dam, which only worsened the divisiveness. Practically all the parties except PML stood up united against this decision. Even the PML Chief Minister in Sindh expressed his disagreement publicly. The country stood divided on the lines of Punjab versus the rest—something that it cannot afford during this crucial period in its history.

The lust for political power made Nawaz Sharif come up with another highly controversial decisions of his second tenure. He proposed the 15<sup>th</sup> Constitutional amendment bill or the Shariat Bill aimed at getting unfettered powers to rule as he wished. It was resisted strongly by the entire opposition and the independent members. When Khursheed Mehmud Kasuri, one of his senior PML leaders expressed his dissent in a parliamentary party meeting, Nawaz Sharif asked him to resign his National Assembly seat. Khursheed Kasuri immediately submitted his resignation, which was later withdrawn on the intercession of the saner elements in the PML.

Nawaz Sharif's next target was the MQM and Jamhoori Watan Party (JWP.) led by Sardar Akbar Bugti. Desperate for their indispensable votes in the National Assembly and more particularly in the Senate, Nawaz first tried to tempt them with lucrative posts in the cabinet. He even travelled to London to convince Altaf. After failing to get his support, Nawaz decided to crack down on the MQM. It was accused of Hakim Saeed's murder and Nawaz announced break-up of PML's alliance with MQM. The nation that felt divided and subjugated to a one family rule was further divided on this issue. Despite serious and overwhelming opposition to this bill, Nawaz Sharif continued to advocate the amendment in order to acquire unquestionable powers and to be able to rule by decree.

In October 1998, the former army chief went public and issued a statement giving his views on national issues. This was perceived by many as an indictment of Nawaz government and a serious proposal to debate in order to pull the country out of the mess it finds itself in. Nawaz reacted predictably and sacked his army chief who was due to retire in three months time. He shattered the morale of the army by the manner in which the army chief was asked to resign. Thereafter he kept the constitutionally required post of Chairman Joint Chiefs of Staff vacant so that the new army chief remains under the fear of being 'elevated' to the post of Chairman. For Nawaz, he is the only state institution and the rest are undesirable impediments in his dictatorial manner of governance.

His foreign policy has also been in total disarray. He has been bending over backwards to please America and follow its policy dictates

without any regard to the national interest. He mishandled the nuclear issue by first reacting to Indian nuclear tests and then lacked the vision to take advantage of the situation by signing the CTBT without losing time and gain some advantage out of an independent policy objective. He linked it to an Indian response and would only react to whatever position India takes on this question. His handling of the Kashmir issue has been inept, to put it mildly. The several rounds of talks with India, to give the appearance of normalisation of relations, have also been unsuccessful. The bus diplomacy, adopted on American policy guidance has also failed to produce any results. Whatever role Pakistan had played in Afghanistan until his coming to power has also been neutralised due to lack of wisdom. The first round of talks between the northern alliance and Taliban, held in Islamabad resulted in a deadlock. The venue shifted to Ashkabad with no role left for Pakistan. While the country suffered in terms of money, law and order and drug problem for nearly two decades, it will find itself sidelined when things settle down in Afghanistan.

A more devastating result of Nawaz Sharif's policies has been the Talibanization of several parts of the Balochistan and Frontier provinces. He announced while on a tour of the Orakzai agency, that he liked the Taliban style of justice. Within days, an indigenous Taliban movement was formally announced, which held open courts, passed death sentences and executed people. The governor of Frontier announced enforcement of Sharia in Malakand Division. This has set a trend of Taliban style vigilants roaming the streets and breaking into peoples' homes to see if anyone has got a TV set or a VCR. Video rental shops are being ransacked and people subjected to threats of harsh action. Despite being aware of all this, Nawaz continued to advocate the passage of the Shariat bill and push the country well beyond a point of no return.

These are only some of the examples of his mismanagement, corruption and inability to comprehend the problems Pakistan faces today. Aware of his abilities and his plans, Nawaz thought it best to carry out a witch-hunt of Mohtarma Benazir Bhutto, and conduct her media trial to divert the public attention. This in his eyes would be the best cover-up. His final ambition has been to eliminate Mohtarma Benazir Bhutto from politics, through trials by special Courts, which are generally being perceived as entirely partisan by the people. Today nobody except Nawaz Sharif and his cronies believe in the transparency or fairness of these cases. He has discredited the process of accountability, an important element of any democracy, to settle personal scores and rule Pakistan unchecked.



## SGS and Cotecna Case

Two references filed by the Nawaz Sharif government against Mohtarma Benazir Bhutto are the awards of pre-shipment inspection (PSI) contracts to two foreign companies that specialise in this field. The two companies, Societe Generale de Surveillance, SA (SGS) and Cotecna Inspection, SA (Cotecna) have offices all over the world. These companies had submitted bids in response to an international tender in 1992. For various reasons, discussed later, the contract had not been awarded until the dismissal of the first Nawaz Sharif government in 1993. The caretaker government did not take a final decision as it was thought best to leave it to a politically elected government. The PSI companies continued to pursue the award of contracts after the general elections and the assumption of the office of Prime Minister by Benazir Bhutto. After long deliberations, the two companies were awarded contracts in September 1994.

The award of these contracts curtailed the discretionary powers of the customs officers to a great extent. As a result the opportunity to extort money also became limited. In 1996, the PSI companies submitted their performance report to the government. It was stated in that report that government revenues increased by 27 billion rupees as a result of their intervention. They also claimed that Pakistan Customs failed to collect another 27 billion revenue, as advised by the PSI companies through their inspection reports.

Economic Co-ordination Committee of the Federal Cabinet ordered that the matter be investigated. CBR officials considered the

dismissal of the PPP government as a good opportunity to shift the blame on the PSI companies and either drastically restrict their role, or get the contracts cancelled. The CBR submitted their recommendations to the caretaker government in a summary for the cabinet. The caretaker government decided to cancel the contracts after giving due notice of three months. The CBR also cast aspersions on the decision making process and suggested that the award of contracts involved payment of kickbacks to Mohtarma Benazir Bhutto and her husband. The chorus of accountability that had been raised by Farooq Leghari and Nawaz Sharif, needed something concrete to make the allegations against Mohtarma Benazir Bhutto stick.

The three months of Farooq Leghari's unobstructed use of executive authority during the caretaker government's rule had not produced any evidence of corruption against her or her husband. Nawaz Sharif appointed Saifur Rehman Chairman of the Accountability or. Ehtesab Cell in the Prime Minister's Secretariat and gave him unlimited powers to use the entire state machinery to get Benazir Bhutto. Saifur Rehman is a man with a very modest educational and family background. He had never exercised executive authority. His only experience was in breaking government rules and regulations and making short cuts to enrich himself and his family. Since he had also been fronting for Nawaz Sharif in his business ventures in the Gulf countries, he was very close to Nawaz Sharif and made it clear to the bureaucracy that he was the boss. He asked the CBR to find some proof of irregularities committed by Benazir Bhutto in awarding these contracts. The CBR officials thought that if they obliged him, they would not only deflect his wrath from them but also please one of the most powerful men in the country's new administrative set up.

The CBR submitted a report to the government alleging that the decision to award the contract was in complete violation of the laid down procedures. It also insinuated that the representatives of the PSI companies used to visit the Prime Minister's House and hold meetings with Mohtarma Benazir Bhutto and Asif Zardari. And that the decision to award the contracts on the terms and conditions of the agreement was taken by her personally against the advice of the CBR and the Ministry of Finance.

Saifur Rehman was overjoyed. He asked CBR for assistance in the investigation. He asked for officers who were known to be anti-Benazir Bhutto. Documents were collected from the CBR files that would point an accusing finger at her. Other documents, negating any suggestion of irregularities or favours were carefully set aside. Saif ur

Rehman then went on several foreign trips in search of some evidence to link it with corruption charges. He produced some papers showing bank accounts of some offshore companies in Swiss banks and correspondence and bank transactions between these offshore companies and the two PSI companies.

All the documents produced by are photocopies. No originals have been produced or submitted before the court. Saifur Rehman and his close confidant and assistant Hasan Wasim Afzal then proceeded to forge some of these documents. The letter rogatory to the Swiss government sent by Saifur Rehman had stated that the accounts in the name of the offshore companies in fact belonged to Benazir Bhutto, Asif Zardari and Begum Bhutto. The letter also made a false assertion that the money in these bank accounts was payment of kickbacks and commissions to Mohtarma Benazir Bhutto and her immediate family. Some statements obtained from senior bureaucrats under duress or inducements were also sent to the Swiss government. The first two cases listed were the PSI contracts to SGS and Cotecna.

The Swiss police froze these bank accounts, and for unknown reasons declared that the accounts belonged to Mohtarma Benazir Bhutto and Asif Zardari had been frozen on a request from Pakistan as prosecution against them was pending in Pakistani courts and was in an advanced stage. In fact no case had been sent for trial until that time. The references prepared by the Ehtesab Cell had been either returned or withheld by the Chief Ehtesab Commissioner for want of evidence. Saif ur Rehman's primary objective had been achieved. He went on state television and radio and addressed largely attended press conferences, where he declared that concrete evidence of corruption had been found against Mohtarma Benazir Bhutto and Asif Zardari and that the money in the frozen bank accounts was commissions from these PSI companies. He also declared that the amounts run into several hundred million dollars and the Swiss government was being requested to transfer the money to the government of Pakistan. These allegations generated immense public interest, and with the help of the print and electronic media he did not only succeed in conducting an international media trial but had Mohtarma Benazir Bhutto "convicted" in the eyes of those who were ready to believe him.

The Swiss authorities asked the government of Pakistan to show them direct evidence of corruption and the ownership of these companies by Benazir Bhutto and Asif Zardari within thirty days. Saifur Rehman in turn asked the Swiss to help him find evidence linking the offshore companies with Mohtarma Benazir Bhutto and Asif Zardari. Armed with

the freeze order, the statements of some officials and forged documents, Saifur Rehman persuaded the powerless Chief Ehtesab Commissioner to send the references to the specially created Ehtesab Bench of the Lahore High Court. The presiding judge of this bench is the brother of a sitting member of the National Assembly, elected on a ticket from Nawaz Sharif Pakistan Muslim League. As a matter of normal practice, a judge in such a situation declines to hear a case where his impartiality can be questioned. However he chose to sit on this bench and hear the case. After a year of the dismissal of Benazir Bhutto's government something reached the court to give credence to the wild allegations of corruption levelled against her.

According to the 'Investigation Report' contained in the reference filed before the Ehtesab Bench of the Lahore High Court in respect of SGS, the Chief Ehtesab Commissioner ordered in his letter No. PSO/DS-D. 115/97 dated 1<sup>st</sup> December 1997, to conduct an inquiry into the matter. Two officials of the Ehtesab Cell were directed to conduct the inquiry through Ehtesab Cell order No. JS (A/C)/97 on the same day.

This in itself is a little strange because the two orders were issued by two different entities, located in different buildings. As a matter of normal practice the movement of documents from one office to another takes some time and once it is received, it goes through several levels of examination and scrutiny. All this does not happen within a few hours. It is obvious that the decision to investigate had been taken by Saifur Rehman and he conveyed this to the CEC directing him to issue an order. In the meantime he had the other order either already issued, or ready to be issued.

Another interesting aspect of this case is the fact that the two officials mentioned 'in the Ehtesab Cell's directive had already recorded the statements of all the witnesses listed in the two references. Most of these statements were recorded in October 1997. If the Chief Ehtesab Commissioner had ordered the inquiry on 1<sup>st</sup> December 1997, how did the officials record the statements two months prior to that and under what authority? This shows the manner in which Saifur Rehman proceeded to persecute Mohtarma Benazir Bhutto and Asif Zardari. First two paragraphs of the two references are identical and contain the same discrepancy as to who ordered the inquiry and when?

Part one of the investigation reports in the two references deals with the ownership of some offshore companies established in the British Virgin Islands. In the SGS reference it is alleged that Bomer Finance Inc. was incorporated on 25<sup>th</sup> April 1991 and according to the Memorandum of Association of this company Asif Ali Zardari, a resident of Bilawal

House, Clifton, Karachi, was the sole owner of the company. It is also alleged that a meeting of the shareholders was held on 25<sup>th</sup> June 1991 during which Asif Zardari appointed Jens Schlegelmilch as President and sole director of the company. The venue of this so-called shareholders meeting is not mentioned. On the date of the meeting Asif Zardari was in prison at Karachi and could not therefore fly to the British Virgin Islands or Geneva to chair the meeting. The jail rules also do not allow such meetings to be held by prisoners. Asif Zardari's visitors were also restricted to Mohtarma Benazir Bhutto, his immediate family members and his lawyers. Nobody, including Schlegelmilch could have access to him. The assertion that such a meeting was held is absurd. Since the reference is based on coerced statements of officials, forged documents and conjectures, it fails to mention this vital information about the venue of the meeting.

The reference goes on to state that a Mandate Agreement was signed subsequently between Asif Zardari, the alleged owner of Bomer Finance, Inc. and Schlegelmilch, who was the only director of the company. Again there is no mention of the time of signing of such an agreement. At paragraph 4 of the investigation report, it has been stated that on 11<sup>th</sup> March 1994, M/s SGS gave an undertaking to Schlegelmilch, to the effect that in consideration of his active support and assistance in negotiations with the government of Pakistan, SGS would pay him consultant's fees at the rate of 6% of the total payments received by the company.

The so-called agreement between Bomer and SGS has not been produced. Daniel Devaud, the examining magistrate in his letter rogatory sent to the government of Pakistan, has admitted this fact. The reference filed before the Lahore High Court however has a copy of the alleged mandate agreement annexed with it. It is strange that the government of Pakistan claims to have received the documents from the Swiss authorities, which admit that this agreement was not found anywhere. How did the Ehtesab Cell produce a photocopy of this mandate agreement for the Lahore High Court? Saifur Rehman should, but can not explain.

These inconsistencies in the acts and assertions of the Ehtesab Cell and the Swiss examining magistrate leave no doubt in anyone's mind that the so called mandate agreement has been forged by Saifur Rahman. The investigation report refers to a letter addressed by SGS to Schlegelmilch in which they have reportedly confirmed the payment of 6% commission of the total payments received by them. The reference contains a photocopy of this alleged commitment.

The letter of 3rd October, addressed by Saifur Rahman, to Beat Frey of the Swiss police at Berne, makes very interesting reading. Paragraph 1.1 on page two of this letter categorically states that "During Mohtarma Benazir Bhutto's tenure as Prime Minister of Pakistan a contract of pre-shipment inspection was given in violation of rules to Messers SGS Societe general de Surveillance, Geneva" (emphasis added). Before the case was even submitted to the court for adjudication, Saif ur Rehman had held Benazir Bhutto guilty of violating the rules.

This misled the Swiss examining magistrate, who asserts in his letter rogatory containing an indictment order that the contract was awarded in "violation of rules and abusing her authority by Benazir Bhutto and A. R Siddiqi, the Chairman of CBR". Saifur Rehman's letter goes on to claim that "SGS transferred important sums to account number 552 343 with the Union Bank of Switzerland, Geneva". He admits in the letter that it is not directly evident from the actual bank statements but there is a hand written ledger maintained by Schlegelmilch 'from which it appears that the above mentioned account in fact belonged to Bomer'. He also goes on to claim that 'he is in possession of copies of this account for the period August 1994 to January 1995 showing a payment of not less than U.S 1,325,000 by SGS'. The letter of SGS addressed to Bomer, undertakes to make the alleged 6% payments within thirty days, of the end of each calendar quarter. It also mentions at the unnumbered second paragraph that details of all payments received will be furnished by SGS. If the letter is to be believed, then the first payment to Bomer became due on 30th April 1995 since the contract was executed on 1<sup>st</sup> January 1995, Saifur Rehman fails to explain how the payments from Bomer to SGS started eight months before they became due under the so-called agreement.

Saifur Rehman has referred to a hand written ledger, maintained by Schlegelmilch in which he mentioned that the Bomer account was "50% for AAZ-50%BB". The same 'ledger' has been produced before the Ehtesab Bench of the Lahore High Court, as Exhibit Y. The photocopy (which is the only thing produced by Saif) has two hand written ledgers for the same period for account number 552 343 in Union Bank, Geneva. On one copy it is mentioned that the beneficiary is Bomer Finance, Inc. with credit as "50% AAZ-50% BB", while on the other the beneficiary is shown to be Asif Ali Zardari.

The period for which the ledger has been maintained for account number 552 343 is from August 15, 1994 to June 16, 1995 on one copy and August 15, 1994 to June 20 1995 on the other. There are 37 entries in one ledger and 22 in the other. Some of the entries in both ledgers are



identical, while others for the same dates differ from each other. There are several inconsistencies and contradictions in the photocopies of these documents that have not been explained. Instead of offering an explanation, Saifur Rehman and the examining magistrate have assumed without question that the documents are authentic. No explanation has been offered as to why SGS started making payments eight month before they became due. It has also not been explained which of the two ledgers is to be believed since one shows Asif Zardari as the beneficiary and the other shows both Asif Zardari and Mohtarma Benazir Bhutto to be beneficiaries in equal amounts.

At paragraph 1.2 of his letter, to the Swiss police, Saifur Rehman claimed that the same account was also credited with payments from Cotecna, and mentions Annex F as a proof of that. The hand written ledgers have been shown as exhibit in the Cotecna reference while there is no mention of any payments from Cotecna in them. Saifur Rehman had obviously forged some other document that he annexed as 'F' in his letter to the Swiss police and has not produced it for the Cotecna reference. His primary objective has all along been a media trial and persecution of Mohtarma Benazir Bhutto and Asif Zardari. Forgeries and lies managed to achieve that objective.

Saifur Rehman began his letter to the Swiss police by levelling a preposterous charge that according to his intelligence reports, a new dimension of this case is its links with drugs and narcotics money, and that the amounts were huge. On page three of his letter, Saifur Rehman made another blatantly false statement. He claimed that a set up, similar to Bomer, was operated by Schlegelmilch for Begum Nusrat Bhutto, under the name of Mariston securities, Inc. BVI. He asserted that Cotecna issued an undertaking to Mariston securities on June 29<sup>th</sup> 1994, that it would pay them 6% of the total payments received by Cotecna from the government of Pakistan, in case Mariston succeeded in getting Cotecna a PSI contract from the government. A photocopy of a bank account opening document is also part of the case record. This document shows the account number as 6229,020-9.1331. 26<sup>th</sup> March 1993 has been mentioned as the date of opening of the account in Barclays Bank (Suisse) SA, Geneva. The reference goes on to support the allegation by exhibiting photocopies of three bank transactions into this account.

The intriguing fact is that one transaction was made on 16<sup>th</sup> February 1991, another on 10<sup>th</sup> December 1991 and the third on 8<sup>th</sup> September 1992. Saifur Rehman and his Ehtesab Cell whiz kids have failed to explain and even notice that all three alleged transactions into this account are between six to twenty three months before the account was

actually opened. This is an act of forgery committed by someone who does not even care to take a good look at the documents in hand. In all likelihood Saif ur Rehman got hold of copies of some transactions of this bank account and forged the documents to make it look like it belonged to Begum Bhutto.

In short what Saifur Rehman is trying to establish is that Begum. Bhutto got a commitment from Cotecna for a 6% commission on 29<sup>th</sup> June 1994. She opened an account at Barclays on 26<sup>th</sup> March 1992 and received payments four years prior to the undertaking from Cotecna and the actual award of contract. The most astonishing fact is that if Saif ur Rehman is to be believed she received the payments in her account two years before she even opened it!

The SGS and Cotecna references allege payment of commission at the rate of 6% of all fees received from the government of Pakistan. According to the assertions made in these references and the documents exhibited as evidence, SGS promised Bomer Finance, Inc. 6% in their letter of 29<sup>th</sup> March 1994. A similar percentage is stated to have been promised by Cotecna to Mariston Securities on 29<sup>th</sup> June 1994. The Cotecna reference also alleges that the same day Cotecna promised to pay 3% of its fees to Nassam Overseas. They also undertook to pay Nassam 3% of all payments received by SGS. If all these amounts are added up a total of 9% was to be paid to the three offshore companies. The difference of 3% between the charges levelled in the two references and the so-called documents has not been explained. This difference amounts to approximately \$ 5 million in alleged commissions and kickbacks paid to these companies. The deplorable fact is that when evidence is engineered it becomes glaringly contradictory. That is exactly what happened in these cases.

Some other acts of forgery committed by the Ehtesab Cell reveal several such contradictions and inconsistencies. The reference filed before the Lahore High Court asserts that Asif Zardari formed Bomer Finance, Inc. and was the sole beneficiary. The indictment order of the Swiss examining magistrate, Daniel Devaud states that Schlegelmilch testified before him and disclosed that he had set up Bomer in either 1990 or 1991 for one of his Russian clients. The indictment order of Devaud has been given extensive coverage in the print and electronic media of Pakistan. Saifur Rehman made it look like Mohtarma Benazir Bhutto and Asif Zardari had already been convicted.

If this order is to be believed the assertion in the reference that Bomer is owned by Asif Zardari is false beyond any doubt. The Cotecna reference accuses Asif Zardari of owning Nassam Overseas, Inc. and

receiving commissions from this PSI company. Then at paragraph 7 it goes on to state that either Asif Zardari or Begum Nusrat Bhutto owns Nassam. This assertion in itself reflects on the quality of investigations and the conjectures on which the references have been based.

What makes it even more preposterous and incredible is the findings of the Swiss examining magistrate. Paragraph 7 of the letter rogatory issued by him concludes that Nassam Overseas, Inc. is a Panamanian company and its beneficial owner is Nasir Hussain. The prosecution has made this letter rogatory part of the case record. In his letter Devaud also concluded that the undertaking given to Mariston securities by Cotecna was replaced by a similar undertaking to Bomer Finance, Inc. The gist of this undertaking is that in case Bomer succeeds in getting the PSI contract within six months of the date mentioned, Cotecna would pay them 6% as commission on all payments received from the government of Pakistan. The so-called undertaking, according to the letter rogatory is of 24<sup>th</sup> March 1995. The agreements between the PSI companies and government of Pakistan were signed on 29<sup>th</sup> September 1994. How and for what purpose an undertaking to secure the agreement is given six months after it had already been signed? There is no explanation and accusations based on lies and forgeries can never have one.

The copies of payment advices attached with the references and the letter rogatory have also been subjected to forgeries. These documents are in French but at some places entries have been made in English which is difficult to understand. The examining magistrate also states in his letter that Nassam addressed a letter to Cotecna from Panama on 15<sup>th</sup> August 1995 demanding \$170,206.20 as 3% commission due for the period between April and June 1995. He also concluded in his findings that Schlegelmilch is the sole Director/ operator of this company. Then like states that on the same day Schlegelmilch wrote another letter to Cotecna from his office in Geneva asking for payments that had become due. How did Sclegelmilch manage to write two different letters from Geneva and Panama on the same day betrays all logic. In their mania to defame Benazir Bhutto and have her convicted for corruption Saifur Rehman and his incompetent staff engineered evidence without realising the innumerable and glaring contradictions.

In Part II, paragraph 6 of the SGS reference it has been alleged that A.R Siddiqi, former Chairman of the Central Board of Revenue made a presentation to the former Prime Minister and other high ranking officials during which he concealed important facts. It is stated in the two references that A. R. Siddiqi failed to mention the fact that Cotecna had

failed to achieve the objective of higher revenue collection in the past. It has also been asserted that in 1992 and 1993 both these companies had tried to get a pre-shipment inspection contract, but due to the past performance of Cotecna they had not succeeded in getting one. The references also state that A. R. Siddiqi concealed the fact that former President Ghulam Ishaq Khan had vehemently opposed the PSI contract and the former caretaker Prime Minister Moeen Qureshi had closed the PSI chapter in Pakistan.

There are two aspects of these assertions. First, if what has been asserted is true, then Benazir Bhutto and others who attended the briefing were not aware of these facts and hence cannot be held responsible for any shortcomings in the decision. Secondly, that the evidence on record conclusively rebuts these assertions.

The Central Board of Revenue's record makes very interesting reading. The PPP government had hired the services of Cotecna for a period of two years in 1990. Ghulam Ishaq Khan dismissed the PPP government a few months later. The PSI contract continued to remain in operation until November 1991. The CBR asked the government to terminate the contract, as it was not producing the desired result. Cotecna claimed that the scope of work given to them was so limited that they could not improve the revenue collection significantly. The government agreed to the requested termination.

Even before the Cotecna contract was terminated, the CBR was asked by the government of Nawaz Sharif to hire the services of a PSI company. Nawaz Sharif met with the top officials of SGS in Davos, Switzerland where he had gone to attend an investment conference in January 1992. The President of SGS, Elizabeth Salina Amorini led the SGS delegation. Soon after this meeting, Pakistan's permanent representative to the United Nations offices at Geneva sent a telex message to the Prime Minister's Secretariat informing them about the forthcoming visit of the SGS delegation. He stated that, "Irrespective of the timing when the contract is to be awarded, it may be noted that the visit of the SGS delegation has been arranged on the directive of the Prime Minister". Nawaz Sharif had already decided to hire SGS and the CBR was asked to complete the formalities to make it look like the contract was awarded after observing the required legal formalities. Other correspondence between Pakistan's mission at Geneva and the Prime Minister's Secretariat provides further confirmation of this fact.

The SGS delegation arrived in Islamabad on 25<sup>th</sup> February 1992 and their President left the next day. Amorini wrote a letter to Nawaz Sharif on 2<sup>nd</sup> March 1992 thanking him for the time he devoted to their

meeting in Islamabad and to invite tenders before the award of contract. She went on to say, "However, I am confident that the selection committee will bear in mind your stringent requirement of efficiency and professional services as well as your concern for a rapid implementation of this programme". Her letter also made a note of an understanding reached between her and Nawaz Sharif that the selection procedure would be completed by 31<sup>st</sup> March 1992. Nawaz Sharif had not only taken a decision to award a PSI contract to SGS but given the CBR less than a month to complete all formalities, including calling of international tenders, evaluation of bids and negotiations of the terms of contract. She wrote two more letters to Nawaz Sharif mentioning another meeting between them. In the normal course of business the Prime Minister does not come in contact with officials of foreign companies seeking contracts in Pakistan.

International tenders were invited on 6<sup>th</sup>, 7<sup>th</sup> and 8<sup>th</sup> March 1992. In all nine bids were received by the CBR. The evaluation committee completed the technical evaluation in three days. A letter of intent was issued to SGS on 2<sup>nd</sup> April 1992. However the former President expressed his serious concern and reservations at the proposed contract. However, disregarding the President's objections, on 17<sup>th</sup> May 1992, Nawaz Sharif formally approved the summary proposing the award of a PSI contract to SGS. The agreement between the government of Pakistan and SGS could not be signed due to the president's concerns and a strong resistance from the business community. Amorini wrote another letter to Nawaz Sharif on 4<sup>th</sup> December 1992. She referred to the opposition of the Federation of Pakistan Chambers of Commerce & Industry (FPCC & I) in this letter. She also mentioned a meeting that took place between the FPCC & I and SGS on 28<sup>th</sup> July 1992 in Islamabad. After this meeting a delegation of FPCC & I visited Indonesia in November 1992 to study the SGS operations in that country. The delegation recommended the award of contract to SGS. All these factors, coupled with Nawaz Sharif's political troubles prevented him from awarding a contract to SGS.

The political events of 1993 led to the resignation of Nawaz Sharif and Ishaq Khan and the formation of a neutral caretaker government headed by Moeen Qureshi. SGS had been raising the issue of induction of a PSI scheme since late 1991. It approached the caretaker government to formalise the contract. Several letters were addressed to Babar Ali the caretaker Finance Minister and other senior officers of CBR and Finance Division. Javed Talat who was the Chairman CBR at that time sent a summary to the caretaker Prime Minister with two recommendations. First that the customs department should be revamped

and modernised by allocating extra funds, and secondly that the idea of re-introducing the PSI scheme be dropped. Moeen Qureshi agreed in principle with the proposal to revamp the customs but left the question of PSI contract to the government to be inducted after the general elections. In an earlier cabinet meeting Moeen Qureshi had emphasised the need to introduce the PSI scheme in such a way that the political government that would take over from him does not find any reason to cancel the contract. The reference filed by Ehtesab Cell made a false statement that Moeen Qureshi had closed the PSI chapter.

The PPP government took over in October 1993 and embarked upon an IMF backed programme to significantly reduce the budget deficit rapidly. For this purpose the government had set a very ambitious revenue target of 260 billion, an increase of 40% over the collection of 172 billion rupees in 1993-94. The IMF and the World Bank had been recommending hiring of services of a PSI company to prevent leakage of tax revenues. In the meantime, SGS had bought controlling shares in Cotecna and the two companies approached the PPP government for a final decision on the award of contract that had been lingering on for more than two years. The two companies submitted two identical draft agreements for negotiations and a decision on the terms and conditions that had changed from the draft approved by Nawaz Sharif in May 1992.

There were two significant variations from the earlier approved draft. One was the increase in inspection fees from 0.78% of the cost and freight value of the inspected goods to 0.81% of dutiable value. The other variation was enhancing the period of service from two years to five years. The justification offered for the first was escalation in prices since the approval of the 1992 draft agreement and for the second the two companies cited substantial investment already made by them and what was required to set up a world wide Pakistan specific operation. All these facts were placed before the committee that was chaired by Benazir Bhutto. The Ministers, Secretaries to the government and other senior officials who attended the meeting agreed to accede to the requested changes in the terms and conditions. In order to protect the government's interest, Benazir Bhutto directed the CBR to include a termination clause in the contract in case the performance of the PSI companies was not up to the expectations of the government. With any provision to terminate the contract, the duration is of little or no consequence.

The reference also alleges that A.R Siddiqi sent the draft agreements to ministry of Law and Justice who raised several objections and that these objections were ignored at the time A. R. Siddiqi signed the contract. This is again factually incorrect as a comparison of the

agreements and the advice of the Justice Division makes it clear that the legal opinion was duly considered and incorporated. Even if it is assumed that the legal opinion was not considered by the CBR, it is not the responsibility of the Prime Minister to ensure such compliance. The investigation report acknowledges this fact that the advice of the Justice Division was sought after the approval given by the committee headed by the Prime Minister. However in order to accuse her of taking an illegal decision, she has been blamed for everything real or imaginary.

The references also accuse Mohtarma Benazir Bhutto of causing a huge loss to the national exchequer by awarding these PSI contracts. But the fact is that M/s Ferguson, an auditing firm of international standing has verified an increase of 27 billion rupees in customs revenue. Hafiz Jamil Awaisi, the complainant in the SGS reference admitted during cross-examination that he had not come across any evidence of loss of revenue, due to the working of the PSI companies. He admitted that the SGS had initiated legal proceedings against the government of Pakistan in a Swiss court for recovery of its legitimate fees.

The outcome of this pending litigation cannot be forecast but if judgement were passed against the government, it would tarnish the image of the country in the eyes of the international community. Answering a question about the production of documents, he stated that he had prepared Part II of the investigation report and Joint Secretary Shahid Raja and other officials had drafted the other two parts but had not signed the report. He also deposed that Hasan Wasim Afzal went to Switzerland several times and he had given him the documents of foreign origin. Awaisi stated that Afzal was not an investigating officer but only he and Saifur Rehman visited foreign countries and brought all the documents. In an investigation conducted under proper legal provisions, the investigation officer recovers the documents.

However since Saifur Rehman had to doctor and forge the documents, he could not trust anyone other than his right-hand man. Awaisi also stated under oath that although he was not required to make a determination regarding loss of customs duty, he had given his opinion in the investigation report that a loss was caused to the exchequer due to the wrongdoing of the previous government. It only leads any logical mind to believe that Awaisi was under direct orders from Saifur Rahman to reach that conclusion. He also admitted that the IMF had recommended the hiring of a PSI company to weed out corruption and enhance revenue collection. Awaisi admitted that on February 18, 1992 the Prime Minister's Secretariat had informed the CBR that an SGS delegation would be visiting Islamabad.

An Interesting aspect of his cross-examination is the date when the investigations began. He stated in his investigation report and under oath that he was assigned the job of this investigation on 1<sup>st</sup> December 1997. The documents enclosed with the reference confirm that he recorded the statement of Javed Talat former Secretary Finance on 24<sup>th</sup> October 1997. He recorded the statements of Mumtaz Ali, former Member, CBR and Khalil Ahmad former Chief Collector on 12<sup>th</sup> October 1997. He and his assistant, Inspector Gulshan Khan between 10<sup>th</sup> and 23<sup>rd</sup> October 1997, recorded statements of other CBR and Customs officials. If the Chief Ehtesab Commissioner issued the order to investigate on 1<sup>st</sup> December 1997 according to the complainant, he failed to justify under what authority he initiated the investigation.

It is obvious that Saifur Rehman violated the provisions of the Ehtesab Act and ordered the Investigation on his own. What confounds all reason is that Saif ur Rehman went on national television and radio and addressed largely attended press conferences well before the commencement of the investigation and declared that Mohtarma Benazir Bhutto, Asif Zardari and Begum Bhutto had received millions of dollars as commission from these companies. He gave a public verdict about their guilt before he actually initiated the investigation. He was blinded by his obsession to accuse Mohtarma Benazir Bhutto of corruption and conduct her media trial and thus failed to put things in their logical order.

Another key witness for prosecution, Ramzan Bhatti admitted during cross-examination that SGS and Cotecna were short-listed by the government for the award of a contract in 1992. Bhatti was the Collector at Karachi who had resisted the induction of a PSI company and after the dismissal of Benazir's government, he had recommended to the caretaker government that the contracts should be cancelled. However he failed to assert that there was any flaw in the award of contracts to SGS and Cotecna. Mumtaz Ali, the former Member, CBR stated during his cross-examination that there was no dissenting opinion at the time A. R. Siddiqi made the presentation to the meeting chaired by Benazir Bhutto. He also admitted that the Justice Division had vetted the draft agreements. He did not say that their recommendations were not accepted by the CBR at the time of signing the agreements. None of the prosecution witnesses produced before the court any suggestion of any wrongdoing by Benazir Bhutto or Asif Zardari.

Out of 23 prosecution witnesses listed in the reference, about a dozen were produced before the court. None of them could substantiate the charges levelled against Mohtarma Benazir Bhutto or any other accused person. Even Hasan Wasim. Afzal who works hand in glove with



Saifur Rehman failed to say anything credible or convincing. He had no satisfactory answer to the origin of the documents he had procured from abroad. He could not establish the authenticity of most of these documents. Frustrated at this development, the government withdrew more than one hundred of the documents submitted by the Ehtesab Cell. These two high profile references went a long way to defame Mohtarma Benazir Bhutto, Asif Zardari and Begum Bhutto. The, extensive and frequent coverage on the electronic media and press made headlines. The false and fabricated stories were supplied to foreign newspapers and some of them carried prominent stories based on all the lies generated by Saif ur Rehman and his Ehtesab Cell.

In the final analysis, what was initiated by Nawaz Sharif himself and only followed up by Mohtarma Benazir Bhutto with good intention and in national interest, has been blown out of all proportion and made to look like there was some foul play in the decision taken to award these contracts. Saifur Rehman and his dirty tricks brigade has completely failed to produce any evidence of wrongdoing. They even failed to mention the fact that the hiring of PSI companies actually helped in higher revenue collection, which has been established with the record available with the government. In their obsession to discredit Benazir Bhutto in the eyes of the people, Nawaz Sharif and Saifur Rehman acted against national interest.

The revenue collection has been declining since the removal of the Mohtarma Benazir Bhutto government. Historically there used to be a 10-12% growth in revenue collection each year. During Benazir's tenure as Prime Minister the increase went up to 20%. But Nawaz Sharif's concern has all along been a media trial of Mohtarma Benazir Bhutto and her family in order to keep her busy with court cases on trumped up charges. This has given Nawaz Sharif a free hand to dismantle all state institutions and indulge in corruption without any questions being asked.

With his false and fabricated cases getting torn apart by Mohtarma Benazir Bhutto's counsels, Saifur Rehman again resorted to a massive media trial by placing half-page advertisements in the national press accusing Mohtarma Benazir Bhutto and Asif Zardari of amassing wealth illegally. In fact, to a lay person the allegations appearing in these advertisements are no less than a conviction, Saifur Rehman accuses Mohtarma Benazir Bhutto and Asif Zardari of owning properties and bank accounts in several countries without showing the remotest connection between the properties and accounts with Mohtarma Benazir Bhutto or Asif Zardari. Saifur Rehman is spending millions to defame Mohtarma Benazir Bhutto with impunity.

The continuing mass support that Mohtarma Benazir Bhutto enjoys, public awareness of corruption and poor governance by Nawaz Sharif coupled with the hollowness of the charges levelled against her have made Saifur Rehman act impetuously. In the eyes of the people as indeed it ought to be in the eyes of the law, all these acts of the Nawaz government are no more than witch-hunt of Mohtarma Benazir Bhutto and her family.



## ARY Gold Case

The government of Nawaz Sharif, after assuming power, started looking desperately for an evidence of corruption against Mohtarma Benazir Bhutto, as Leghari had done in the three months of caretaker administration without any success. M/s ARY Traders, a Dubai based firm dealing in gold trade all over the world had been licensed by the Mohtarma Benazir Bhutto government for the import of gold on a fixed amount of duty. The licensing of gold import was aimed at preventing the smuggling of gold into Pakistan, enhancing revenue collection and documenting of gold trade. Although due diligence was exercised in granting the license, Saifur Rehman thought he had come across yet another opportunity to persecute Mohtarma Benazir Bhutto in the name of accountability and add a new dimension to her media trial.

Between August and October 1997 Saifur Rehman wrote three letters to the Swiss Federal Police, seeking assistance in, what he called, "unearthing the corruption of Mohtarma Benazir Bhutto". He sent forged photocopies of documents allegedly showing ownership of some offshore companies by Mohtarma Benazir Bhutto, Asif Zardari and Begum Bhutto. The thrust of his charges against Mohtarma Benazir Bhutto was the same in each case. He argued in these letters that the companies named by him were actually owned by Mohtarma Benazir Bhutto or her immediate family, through a front man, Jens Schlegelmlich. The amounts deposited in the bank accounts of these companies were alleged to be kickbacks and commissions received for giving undue favours to these companies, in violation of Pakistani law. The most sinister allegation was that according

to Saifur Rehman's intelligence reports, there was a direct link between these accounts and drug money. He included the ARY gold import license in his list of misdeeds of Mohtarma Benazir Bhutto in exchange for getting a financial benefit. He followed the familiar pattern of coercing statements out of officials he could pressurise or inducing those opposed to Mohtarma Benazir Bhutto to point an accusing finger at her. However the fanciful tale of misdeeds and corruption he came up with, was always incredulous. The ARY case is no exception for providing an insight into this malicious and dirty campaign.

This reference alleges that Mohtarma Benazir Bhutto government wrongly granted an exclusive import license to ARY, creating a monopoly and approved such a favourable rate of duty that it caused a loss of more than 1800 million rupees to the government revenue between March 1995 and September 1996. And as usual it has been suggested that Asif Zardari was the conduit between her and Haji Abdul Razzak, the owner of ARY. The amount of commission agreed between the parties was stated to be rupees five per tola of gold imported into Pakistan.

The reference as well as Saifur Rehman's letter to the Swiss police categorically assert that the offshore company Capricorn Trading, SA, BVI received no less than US \$ 18 million from ARY as commission. One can never feel surprised at the nonsensical conjectures and propositions made by Saifur Rehman, but this allegation is so unintelligent that even a child would not like to own it up.

ARY imported a total of 2,902,604 tolas of gold until the ouster of the Mohtarma Benazir Bhutto government. If the agreed amount of commission was five rupees per tola of gold, as alleged in the reference, the total amount does not exceed Rupees 14,513,020. At an average exchange rate of one dollar to forty rupees, the amount in US dollars equals exactly 362,825.50. Looking at it another way, in order to receive US \$ 18 million as commission, ARY should have imported 144,000,000 tolas of gold, or fifty times higher than what they actually imported. Neither Saifur Rehman nor his eager to please but silly band of "Investigators" can explain this huge discrepancy.

A firm by the name of M/s Bullion Bond had submitted a proposal to the Prime Minister's Secretariat in 1992. They had proposed the reduction of duty from 2% to 1.5%. The Finance Division had offered its views on 27<sup>th</sup> September 1992. Several reminders were sent by the Prime Minister's Secretariat and finally when ARY Traders submitted their proposal to the then Minister of Commerce in November 1993, it was compared with the previous offer and a new scheme was formulated by the Finance Division in consultation with other relevant officials. The

new scheme was to replace the then existing scheme of import of gold under personal baggage, introduced a few years earlier. The objective of both the schemes was to eliminate the smuggling of gold that was adversely affecting the economy.

The reference filed before the Ehtesab Bench of Lahore High court starts with a background of how different views were expressed by various officials of the Ministry of Commerce, Central Board of Revenue and the Ministry of Finance on the proposal received from ARY Traders. It has been alleged that the dissenting views of CBR and Commerce Division were not incorporated in the Summary submitted by the Finance Division to the Economic Co-ordination Committee of the Cabinet. It has also been alleged that the Finance Division submitted this summary in violation of the rules of business and that this summary should have been initiated by the Commerce Division.

Both allegations are factually incorrect. The proposals of the CBR and Commerce Division were incorporated in the summary. The Rules of Business, 1973 require that a summary for the Cabinet has to be moved by the Division concerned, and in case the subject relates to more than one Division, the initiating Division should consult the other Divisions. Finance Secretary Javed Talat had consulted CBR and Commerce Division.

The ECC of the Federal Cabinet approved in principle, the proposal to allow import of gold to 10 companies. The proposal from Finance Division also set certain criteria for issuing the licenses to companies interested in importing gold. The rationale behind the new scheme was that gold was being smuggled into the country in large quantities in spite of a liberal scheme allowing import by passengers as their personal baggage. There had been many instances where the same documents were used by people to bring in gold several times if they were not detected by Customs staff posted at the international airports. Duty was levied at the rate of 2% of the value under the baggage scheme. The Finance Division proposed that it should be fixed at U.S \$1.40 per tola irrespective of the value.

Tenders were invited by advertising the new policy in the national press. In all eleven offers were received, of which four were rejected outright because a call deposit of US \$ 100,000 was not attached with them. Commerce Division evaluated the proposals. The officer evaluating the proposals stated that only ARY Traders met all the criteria laid down in the tender document. According to the evaluation report, another company Al Ramaizon Trading Est. operating in Saudi Arabia had sufficient experience in the Saudi market but did not have the required

local establishment to run the business. This proposal was kept pending for further probe.

The third firm M/s H. A. Rahim & Sons had failed to produce any documentary evidence in support of their claim or experience in gold trade. They had only supplied evidence to show that they were general traders and textile manufacturers. Their bid was also rejected summarily along with those submitted by the other firms. After the dissolution of the PPP government, both these firms were granted licenses to import gold. In fact H. A. Rahim & Sons are the largest importers of gold in Pakistan at present. The reference goes on to state that Aslam Hayat Qureshi, former Secretary Commerce violated the decision of the ECC of the Federal Cabinet and granted a license to only ARY Traders, thus creating a monopoly situation. By accusing Aslam Hayat of violating the ECC's decision, the reference acknowledges that there was nothing wrong with the decision to grant licenses. If only one firm qualified for the import license there was no intention to create a monopoly for ARY.

The reference accuses Asif Zardari of striking a deal with Haji Razzak of ARY in early 1994 to share the profits from the import of gold if ARY got a monopoly. There is nothing to substantiate this charge except a statement allegedly made by Husain Lawai, former President of the Muslim Commercial Bank. It has been claimed that Lawai made the statement voluntarily. If there is any truth in this assertion, why did the prosecution fail to produce him before the Ehtesab Bench? The statement was not even made under oath before a judicial authority. In all probability it was written in Saifur Rehman's office and bears forged signatures of Lawai.

Another allegation made in the reference is that the Ministry of Finance waived the regulatory duty on the import of gold after getting the approval of the ECC of the Cabinet. The reference attempts to conceal material facts from consideration by the court. In order to improve the revenue collection and in consultation with the IMF, on 29<sup>th</sup> October 1995, the government had imposed 10% regulatory duty on a number of imported goods. In fact it was all across the board imposition of regulatory duty. By inadvertence, it was also imposed on the import of essential items such as wheat and fertiliser, on imports into the Export Processing Zones and on gold and silver, items that are usually prone to smuggling. The Secretary Commerce submitted a summary for the ECC to waive the regulatory duty on all such items, He further recommended in his second summary on 22nd November 1995 that the exemption granted by the ECC would be deemed to have been in effect from 29th October 1995. Concealing and manipulating this fact as well, the reference also

alleges that 40,000 tolas of gold imported by ARY were given a special exemption by the Central Board of Revenue without lawful authorisation from the ECC of the Federal cabinet.

The reference then states that two other firms, M/s H. A. Rahim & Sons and M/s Al Ramaizon Trading, Est. were issued licenses for the import of gold after the approval of the competent authority while Salman Farooqi, who was then Secretary Commerce was on a foreign tour. The ECC had approved certain criteria that these two firms did not meet and hence were denied the license earlier. There is nothing on record to show that these firms later took steps to meet the criteria laid down in the approved policy. The only authority competent to make any changes in the approved policy was the ECC. However Joint Secretary Commerce sought his Minister's approval to issue them import authorisation, stating that both firms met the criteria. This was factually incorrect. Later on the Secretary, after seeking the advice of the Justice Division, ordered that the new licenses be cancelled.

The story made for the reference then takes the usual twists and turns of offshore companies and kickbacks allegedly deposited in them. On page seven of the reference it has been stated that "there are reasons to believe that granting of monopoly to ARY was in consideration for payment of commissions/kickbacks to Asif Zardari and Benazir Bhutto". To support this allegation, the reference asserts that a company by the name of Capricorn Trading Inc, SA was incorporated in the British Virgin Islands on 5<sup>th</sup> January 1994. The reference also asserts that there is "strong evidence to conclude" that this company was owned by Asif Zardari because after its incorporation an account number 818097 was opened in the name of Capricorn on 5<sup>th</sup> October 1994 at Citibank's Dubai branch by Jens Schlegelmilch. Another account in Citibank, Geneva bearing number 342034 was also allegedly opened by him for Capricorn Trading Inc. on 27<sup>th</sup> February 1995.

The reference contains unverified copies of three bank transfers from the Dubai account of Capricorn to the Geneva account (Exhibits "AF", "AG", and "AH"). The first exhibit is a copy of a debit/credit advice issued on 12<sup>th</sup> May 1995 showing interest and commission and other bank charges on an account balance of U.S \$ 18,210,000. The second exhibit is a similar statement on a deposit of U.S. \$ 10,204,000, issued on 4<sup>th</sup> May 1995. And the third is an inward transfer advice of the same date and same amount. It was claimed once again that Schlegelmilch "has been found to be the agent of Asif Ali Zardari for his other offshore companies".

This fairy tale is based on three exhibits. Exhibit "AB" is supposedly a copy of the cover sheet of a so-called Mandate Agreement between Asif Zardari and Schlegelmilch concerning Dustan Trading Inc. (BVI). Exhibits "AC" and "AD" are identical documents concerning Elkins Holding SA (BVI) and Bomer Finance Inc. (BVI). None of these show any date, place or Asif Zardari's signatures.

The credibility of the prosecution's case is further eroded by exhibit "A1", a copy of a hand written ledger for Capricorn's Geneva account showing two \$5,000,000 deposits from ARY on 5<sup>th</sup> and 6<sup>th</sup> of October 1994. The ledger also shows a transfer from Citibank, Dubai on 4<sup>th</sup> March 1995 for \$10.204 million and one on 7<sup>th</sup> March for \$8.1 million. These two amounts add up to \$18 million are alleged to have been paid as commission to Asif Zardari and Benazir Bhutto by ARY, if Saifur Rehman's letter to the Swiss police is to be believed. How would he then justify the other \$10,000,000 allegedly transferred by ARY.

In order to make their claim of payment of commissions more convincing, the prosecution have attached a copy of a letter purportedly written by Schlegelmilch to ARY on 19<sup>th</sup> October 1995, 'confirming' receipt of five million dollars and demanding the remaining five million. More amazing is the fact that all these transactions precede the date on which ARY started its operations. If Asif Zardari was supposed to get five rupees for each tola of gold imported by ARY, why were these payments made when the import had not even commenced? Obviously Saifur Rehman has built up stories replete with innumerable canards and falsehoods and tried to make the courts believe that there is conclusive evidence, beyond any shadow of doubt that these companies are owned by Asif. The courts may or may not believe any part of these fabrications but for the feeble minded it comes out as a sordid tale of loot and plunder.

The Ehtesab Cell's case against Mohtarma Benazir Bhutto and Asif Zardari is that ARY were illegally given a monopoly to import gold into Pakistan in exchange for commissions and this act on part of Benazir Bhutto caused a huge financial loss to the country. The reference alleges that she caused a loss of Rupees 20,781,881 due to reduction in duty from 2.5 percent of the value to a fixed amount of \$1.40 per tola of gold. It has also been claimed that the exemption of regulatory duty caused a further loss of 1,556,012,297 rupees on the import of gold and 58,645,387 on the import of silver-a total loss of Rupees 1822.24 million. The policy decision taken by The ECC of the Federal Cabinet had allowed the reduction in the rate of duty and exemption of regulatory duty, which was imposed inadvertently. There was no reason to ascribe any ulterior motive to Benazir Bhutto. Both the decisions were aimed at eliminating the



smuggling of gold and silver. Saifur Rehman's wild allegations and fabricated stories only supplemented his efforts to tarnish the image of Mohtarma Benazir Bhutto through a media trial.

A very significant concealment of another material fact from the court's scrutiny is the continuation of the same policy by the caretakers and by Nawaz government. ARY still have the same import authorisation and the rate of duty has remained unchanged at \$1.40 per tola. No regulatory duty has been imposed on the import of gold or silver. In fact the Nawaz government issued SRO 555 (1)/98 on 12<sup>th</sup> June 1998, again fixing the rate of duty on gold at the same rate. In only eleven months after the dissolution of the PPP government ARY imported 1,376,819 tolas of gold. Other importers imported another 4,376,016 tolas of gold. At the continuing rate \$1.40 per tola, total Customs duty amounted to \$8,040,356. At an average conversion rate of \$1.00 to rupees.42, the amount of duty in rupee terms was 337,694,952. The value of these imports in rupees comes to 31,587,116,000 at an average of Rs. 5,500 per tola. At the old, much trumpeted rate of 2%, the total duty collection should have been Rs. 631,742,300. This difference alone translates into a loss of Rs. 294,047,348. Since the Nawaz government has not re-imposed the 105 regulatory duty that Mohtarma Benazir Bhutto has been accused of waiving illegally, the additional loss adds up to a staggering Rs. 3,158,711,600. Thus Nawaz Sharif caused a loss of revenue of Rs. 3,452,758,948 in only eleven months up to 30th September 1997 nearly twice the amount of loss allegedly caused by Mohtarma Benazir Bhutto. If the latest figures of gold import and revenue collection become available, the "loss to the government" would multiply manifold. Only the court seized with the matter can question the government and ask it to explain the duplicity in the standards applied to Mohtarma Benazir Bhutto and Nawaz Sharif.

Governments have been making adjustments in the tariff rates of duty, in furtherance of their stated policy objectives. Benazir Bhutto government was no exception. That is why it introduced a rational gold import policy, which is still being implemented. By fabricating stories and using deceit and falsehood, Saifur Rehman has made it look like one of the biggest scams ever unearthed. And months before the issue could go to a court for adjudication, he extensively abused the electronic media to conduct her media trial.

The Nawaz government has used the adjustments in tariff rates to benefit himself, his family and cronies quite frequently. While announcing the 1998-99 federal budget he slashed the rate of duty on the import of luxury cars from 265% to 125%. This drastic reduction was made to benefit his

business partner, crony and chief hit man Saifur Rehman's Redco Company which imports BMW cars in Pakistan against documents illegally purchased from overseas Pakistanis. Nawaz Sharif has been harping on austerity measures ever since he took over as Prime Minister but he found it fit to reduce the rate of duty on luxury cars to extend undue benefit to Saifur Rehman. When this policy was severely criticised and condemned Nawaz decided to impose a 100% regulatory duty. The duty on luxury cars is still less than what it used to be and there is no benefit to the national economy by this reduction nor does it serve any stated public policy objective. He has been using the adjustments in tariff rates quite frequently in the name of revival of the economy but only to enrich himself and his family. These steps taken by him are discussed in detail later in this book. The brazenness with which he accuses Benazir Bhutto and trumpets completely false and fabricated charges on the electronic media has helped him in diverting public scrutiny from his own misdeeds and mismanagement.



## The Ursus Tractor Case

The absence of any evidence of corruption against Mohtarma Benazir Bhutto or Asif Zardari had sufficiently embarrassed Farooq Leghari when at the end of the caretaker administration's 90 days he made this admission while talking to the CNN correspondent in an exclusive interview. His collaborator Nawaz Sharif, who was brought back as Prime Minister by resorting to massive rigging of the 1997 general elections, after the dismissal of Benazir Bhutto government, found himself facing an impossible task of uncovering evidence, as none existed. Both of them were, and continue to be, her sworn enemies and had made tall claims of carrying out an across the board accountability to recover the wealth allegedly looted by Mohtarma Benazir Bhutto and Asif Zardari between 1993 and 1996. After a campaign of planting fabricated stories in the local and international press that ran for more than a year, they had succeeded in creating the perception that Mohtarma Benazir Bhutto had robbed the country. They claimed that if the wealth looted by her were brought back, Pakistan's economic woes would come to an end.

Farooq Leghari and Nawaz Sharif had rejected the accountability law introduced in the National Assembly by the PPP government. Leghari, through a Presidential decree, promulgated the "Ehtesab Ordinance" 1996. On realizing that the new law would disqualify his collaborator Nawaz Sharif and several other front-rank Muslim Leaguers for huge bank defaults, he asked his Law Minister to amend the ordinance. When the Law Minister refused to amend the law, Leghari changed the Law

Minister's portfolio and asked his de facto Prime Minister Shahid Hamid to take over the portfolio of Law as well and make the necessary amendment.

After assuming power, Nawaz Sharif allowed the ordinance to lapse because it would have covered his five years as Chief Minister of Punjab during which he had flouted all rules and regulations to enrich himself and his family and built an artificial political base. He got the Ehtesab Act, 1997 passed by the Assembly despite severe criticism by the opposition and independent members. This law was again amended to give police powers to Saifur Rehman who had been appointed Chairman of the Ehtesab Cell created in the Prime Minister's Secretariat. Another amendment was made to strip the Chief Ehtesab Commissioner of his powers to investigate. In short it was ensured by Nawaz Sharif and Saifur Rehman that the accountability drive remains in their firm control to eliminate any chance of their own accountability and keep Benazir Bhutto on the run so that the misdeeds of Nawaz government go unnoticed and unpunished.

With each passing day, Saifur Rahman found himself lost in a maze of lies and fabricated stories of corruption against Benazir Bhutto and Asif Zardari that he had maliciously built and propagated without any evidence to substantiate any of the allegations. He forged some documents to show that some offshore companies allegedly belonging to Mohtarma Benazir Bhutto, Asif Zardari and Begum Bhutto were used to receive commissions and kickbacks on government contracts.

Saifur Rehman wrote three letters to the Swiss Police for assistance in the investigation. He also asked the Attorney General for Pakistan to write a letter to the Swiss authorities, requesting mutual assistance. The Attorney General's letter makes a very interesting reading. After referring to the correspondence exchanged between his office, Saifur Rehman and the Swiss police, he gave a resume of the political and legal background of Pakistan. Then the familiar stories of corruption, based on conjectures, are narrated to make the Swiss believe that their help is needed in getting Mohtarma Benazir Bhutto and Asif Zardari convicted, through due process of law, in the cases pending against them. On top of his list of allegations are the SGS and Cotecna contracts. These are followed by the ARY gold case. The next case has been mentioned as the 'Ursus Case' or the Awami Tractor Scheme (ATS). Then he mentioned the purchase of French submarine as the fourth case. Case number five has

been titled as the aerospace case. Rustal trading case appears at number six and Credit Suisse First Boston Case is listed at number seven. No case had been filed in any court until then. The cases mentioned at serial number 5 to 7 have not been filed so far.

After a brief narration of the background the Attorney General's letter, at paragraph 3.2 makes a reference to Dargal Associates, SA, an offshore company operated by Didier Plantin. In this letter he admitted the fact that terms of agreement between Dargal and Ursus are not known. However he asserted that Ursus paid substantial amounts of money to Dargal as consulting and promotional fees. Without offering any evidence or logical explanation the AG concluded that this company was set up and used to receive kickbacks for the award of contract to Ursus. On 7<sup>th</sup> November 1997, one day after the Attorney General sent this formal request for mutual assistance, Saifur Rehman appointed Mohammad Iqbal Qasmi, an Inspector in Federal Investigation Agency as the investigating officer. How did Saifur Rehman or the Attorney General send specific allegations of corruption to the Swiss authorities before the investigation actually started, cannot be explained by either.

The reference filed before the Lahore High Court begins by concluding that the Awami Tractor Scheme (ATS) was a "very good example of the elaborate white collar crime committed against the Government of Pakistan and its people". The reference admits the fact that the former Prime Minister had ordered during a Board of Investment meeting held in April 1994 that the situation regarding the adverse effect of smuggled tractors on the local industry be examined. The Ministry of Food, Agriculture and Livestock sent a detailed report to the Prime Minister, informing her that the smuggled tractors were 30-40% cheaper than the locally manufactured tractor but were inferior, based on outdated technology. The Ministry, in its report, stated that the local tractor was priced at Rupees 270,000 while the imported tractor would cost 100,000 plus a profit of 10,000. The Ministry also recommended that Balarus would be a good choice for the tractor scheme. Without offering any evidence of value, it suggested that the import price should be fixed at Rupees 100,000 plus 10% profit.

The ECC of the Federal cabinet considered the summary and approved it. It also decided that efforts should be made to buy tractors from Iran or China, if they turn out to be cheaper. The reference then assumes, without any tangible reason, that progress in implementing the

scheme remained very slow between the approval of the ECC on 3d May 1994 and incorporation of Dargal associates on 14th June 1994. It has been alleged that MINFAL (Ministry of Food and Agriculture) submitted a summary for the approval of the Prime Minister on 20<sup>th</sup> July 1994, more than two months after the ECC decision. If Dargal's incorporation was the catalyst that accelerated the proceedings, why did MINFAL send a summary to the Prime Minister five weeks after Dargal's incorporation?

The reference also alleges that the decision to increase the price from 110,000 to 150,000 was a violation of the ECC's decision. Some crucial facts were concealed, following the typical pattern of filing these references.

The summary to the Prime Minister had mentioned that the prices of tractors would range between US \$4436 for the Chinese tractor to \$4800 for Ursus from Poland. Converted into rupees, the price range was expected to be 136,485 to 141,220. This important fact had led the Ministry to recommend a fixed price of RS 150,000 for sale in Pakistan. However the reference insinuates that the price was raised in order to get commissions from the suppliers. The reference also alleges that the technical evaluation of the proposed models of tractors had given a negative evaluation for Ursus. It then goes on to state that 40% of the farmers desirous of buying tractors had opted for Ursus. If these tractors were inferior or defective, why would such a large number of buyers opt for it?

The reference claims to have uncovered evidence of payments of consulting and promotional fees paid by Ursus to Dargal Associates for the supply of tractors to Pakistan. All the documents enclosed with the reference are unauthenticated photocopies of some correspondence and invoices allegedly issued by Dargal. Even if these documents are authentic copies of the originals, how can these payments be attributed to Benazir Bhutto or Asif Zardari? There is no connection shown between either of them and Dargal or for that matter any of the 19 offshore companies claimed to have been established for Asif Zardari's benefit. Saifur Rehman and his investigators have not even shown any semblance of method in their madness. The claim of Asif Zardari's ownership of Dargal is as far-fetched as any of the other offshore companies listed by the Ehtesab Cell. In the usual 'Alice in Wonderland' fashion a story has been fabricated without credible facts.

The reference concludes that from the documents it obtained mysteriously, it has been established that Dargal is a dummy company, owned by Asif Zardari, through his 'front man', Schlegelmilch. It makes a specific reference to clauses 4.1, 4.2 and 4.2(3) &(5) of the Memorandum of Association in support of this assertion. Clause 4.1 places certain restrictions on the activities of companies established in the British Virgin Islands, under local laws. Clause 4.2 points to conditions whereby a company shall not be deemed to have done anything prohibited by clause 4.1 and then in sub-clauses (3) & (5) it explains those acts. This line of argument has no relevance to the claim that Dargal was owned by Asif Zardari.

The reference also makes claims of financial transactions between Ursus and Dargal through unverified copies of some documents. These are two invoices raised by Dargal for payment of "consulting and promotional" fees. It is a well known and established business practice that companies in Europe and Asia hire the services of consultants and promoters to get international contracts when they have no presence in countries where they intend to do business or lack sufficient knowledge of local conditions. In the United States such payments were prohibited by the 'Foreign Corrupt Practices Act' during the 1970s after the Belgian king and the then Japanese Prime Minister were accused of receiving commissions. However the Americans still hire 'lobbyists' to do similar jobs. Whatever financial dealings may have existed between Dargal and Ursus is of no relevance to the case against Benazir Bhutto and Asif Zardari without first establishing, with credible documentary evidence that either one of them had any connection with the company.

The reference makes another preposterous claim about providing 'leverage' to Asif Zardari due to the requirement of pre-shipment inspection by Cotecna or SGS. A letter from the Polish Trade Commissioner in Islamabad addressed to Steve Shanks in London has been exhibited with the reference to mention the legal requirement of a pre-shipment inspection. Another exhibit (EX-25) has been annexed which is a photocopy of an allegedly hand written and unsigned fax message referring to the Cotecna inspection requirement. The reference claims that this is a letter from Amer Lodhi and also claims that Amer is a friend of Benazir Bhutto and Asif Zardari. No basis for asserting this claim of friendship has been shown. Whoever sent that fax message stated in the last paragraph that he was going to Islamabad on 13th February 1995 and

then on to Manila. He also gave a contact number and name of a hotel in Manila. The last line of this fax said, "Amer arrives there 16-02". From this message it appears that the sender was someone other than Amer.

The reference goes on to develop a conspiracy theory in order to receive kickbacks and commissions. It accuses Benazir Bhutto of "manipulating rules, regulations and procedures" and in doing so, "violating the mandate of her office". There is nothing significantly different in this reference from what has been alleged in the other references. All six have been based on conjectures and flights of fancy that have become the trade mark of Saifur Rehman's malicious tactics of conducting Mohtarma Benazir Bhutto's media trial and trying to influence the courts and the minds of the people of Pakistan. The Chief Ehtesab Commissioner has been rendered so ineffective and powerless due to the amendments in the Ehtesab Act that he could not even apply his independent mind and forwarded these references replete with lacunae, inaccuracies and contradictions.

Another allegation against Mohtarma Benazir Bhutto is the decision to exempt Customs duty on these tractors. The underlying purpose of the scheme was to provide tractors to farmers at low prices. The exemption of duties and taxes is always aimed at achieving that end and not to deprive the government of its legitimate revenue. It is plain logic that a government would not do something to harm itself. During his first tenure, Nawaz Sharif had introduced the yellow cab scheme completely exempting duty on all imported cars including Mercedes Benz, for use as taxis. He again announced the reintroduction of the infamous yellow cab scheme notwithstanding the fact that the earlier scheme had caused a loss of billions to CBR and state owned banks.

In meeting of the IMF's Board of Executive Directors held in March 1999 the representative of the United States strongly objected to wasteful projects such as yellow cabs, motorways, new terminal at Islamabad airport and the so-called self employment scheme. In February 1999, Abdus Sattar Lalika, Federal Minister for food and agriculture appeared on the PTV programme 'Muqaddama'. He proudly announced that Nawaz Sharif had offered a subsidy of Rupees 100,000 on each tractor to be sold to small farmers and in addition to this the government of Punjab, headed by Nawaz Sharif's brother had given another subsidy of equal amount to farmers in Punjab. The amount of government funds thus spent would not constitute a loss to the Nawaz government but the



exemption of Custom duty given by Mohtarma Benazir Bhutto for the same objective has been made to look like a loss to the government and forms part of charges against her. To be precise the CBR has worked out a loss of Rupees 1. 671 billion on account of this exemption.

The reference also makes a material misstatement of facts by asserting that on the basis of "strong evidence" produced by the Ehtesab Cell, the Swiss authorities have started proceedings in a court at Geneva. No court proceedings of any kind have been initiated against Mohtarma Benazir Bhutto or Asif Zardari in any Swiss court. Saifur Rehman has abused the government owned electronic media quite frequently to deceive the people and make them believe that Benazir and Asif are being tried in Switzerland. This case is no different from the others in this established pattern of conducting a media trial.

It is interesting to examine the statements made by some of the witnesses. Zafar Altaf, who was the Secretary Food & Agriculture, stated that the issue of fixing the price of tractors to be imported under the Awami Tractor Scheme was discussed in several ECC meetings. He also stated that the final directive came from the Principal Secretary to the Prime Minister. The reason for these discussions on the price arose due to sale of smuggled tractors in Quetta and the high prices of locally manufactured tractors. Zafar Altaf also stated that the issue was finally settled by the Agricultural Development Bank of Pakistan (ADBP) which was supposed to implement the policy. He also referred to consideration of Iranian and Chinese tractors in a meeting chaired by Mohtarma Benazir Bhutto and that she left the selection of appropriate tractors to the Minister concerned. However the gist of statements of various witnesses, annexed with the reference makes Zafar Altaf's statement extremely damning.

Another statement made by Ahmed Sadiq, former Principal Secretary to Benazir Bhutto needs to be looked at. Ahmad Sadiq was accused of corruption and twice arrested and tortured. He has been made prosecution's key witness in each of the references filed against Benazir Bhutto. In the opening paragraph of his statement Ahmad Sadiq asserts that Benazir Bhutto asked him to direct Zafar Altaf to expedite the implementation of the Scheme and fix the price at Rupees 150,000. He also stated that Mohtarma Benazir Bhutto repeatedly asked him to emphasize the importance of the scheme because it concerned the agricultural community, to whose welfare she attached great importance.

He also stated that he came across Steve Shanks “perfunctorily”. However despite this he formed an opinion that Shanks was a shady character. He also made wild allegations of Asif’s friendship with Shanks and their foreign trips taken together. Sadiq failed to substantiate his allegations with any documentary or other evidence.

Hasan Wasim Afzal, the official ‘coordinator’ of the Ehtesab Cell and the closest confidant and accomplice of Saifur Rahman has also been named a witness for prosecution in every reference. The only statement he made in each of the references is that he would prove various aspects of the charges at the time of direct examination, including the verification of documents produced by him. In none of the references he has been able to offer any authentication of these documents, several of which appear to be forged and tampered with. Even if the courts seized with the cases decide that the “evidence” is inadmissible, Saifur Rahman and Wasim Afzal would have achieved their objective of conducting Benazir Bhutto's media trial.



## PIA Appointments Case

The Chief Ehtesab Commissioner filed a reference before the Ehtesab Bench of the Sindh High Court on 15<sup>th</sup> May 1997, under the Ehtesab Ordinance, 1997. The reference was filed against the former Managing Director and some other officials of Pakistan International Airlines, Ahmed Sadiq former Principal Secretary to Mohtarma Benazir Bhutto and two other officials of the Prime Minister's Secretariat. The charge against all these persons was abuse of their official position to appoint, promote or transfer abroad various persons, in violation of rules of appointment. The 'Brief facts' attached with the reference alleged that 1393 persons were appointed in different cadres by these persons.

On 26<sup>th</sup> March 1998, the Chief Ehtesab Commissioner filed a 'supplementary reference' before the same court. The names of Mohtarma Benazir Bhutto and her political secretary, Naheed Khan were added to the list of the accused. Ahmed Sadiq's name was removed from this list and added to the list of witnesses.

The 'brief facts' contained in the 'supplementary reference' make very interesting reading. After narrating a distortion of facts, it concludes by asserting that the accused persons "have jointly with common intention and in collusion and conspiracy with each other entered into corruption and corrupt practices". Nowhere in the reference there is any allegation against any of the accused, of committing acts in exchange for a pecuniary advantage. Section 3) (1) (a) to (f) of the Ehtesab Act, 1997 defines corruption and corrupt practices. Acceptance of illegal gratification or remuneration, valuable thing for inadequate consideration,

misappropriation for personal use, acquisition of property by illegal means and rigging of elections have been defined as 'corruption and corrupt practices' punishable under the Act. The reference is therefore patently incompetent and not cognisable under the Act. However in order to harass Mohtarma Benazir Bhutto and keep her shuttling between Lahore, Islamabad and Karachi, Saif has filed this reference. It also serves the additional purpose of adding to the allegations of corruption and misdeeds committed by her. This case, like all the others has also been given extensive media coverage for tarnishing the image of the leader of opposition and diverting public attention and scrutiny away from the misdeeds of Nawaz Sharif and his cronies.

Nawaz Sharif has been accused of making illegal appointments in PIA and other government owned corporations and departments during his last tenure as Prime Minister. He has also made hundreds of appointments in his current tenure. In some cases the pay and allowances offered to the appointees are several thousand percent higher than those permitted under the rules.

On 28<sup>th</sup> May 1998, Raja Zulquarnain, an advocate by profession, filed a complaint before the Chief Ehtesab Commissioner, requesting him to have the matter investigated and file a reference before the relevant Ehtesab Bench. He annexed copies of documents reflecting the transgressions committed by Nawaz Sharif and others. When he failed to get any response from the CEC, he filed a Constitutional Petition against him before the High Court of Sindh at Karachi on 2nd October 1998. Several other complaints of a similar nature have been filed against Nawaz Sharif but none have been investigated so far.

The reference alleges that "the accused persons have by using corrupt, dishonest and illegal means shown undue favour and caused undue pecuniary advantage to various persons". Pecuniary advantage is when one is put in a better situation than others to make money or, receive something of value. In other words get something that is not his or her due. In a legal sense, pecuniary advantage is pecuniary consideration. Consideration has been defined in Black's law Dictionary as the cause, motive, price, or impelling influence, which induces a party to enter into a contract. The same dictionary defines pecuniary consideration as, "A consideration for an act of forbearance which consists either in money presently passing or money to be paid in the future, including a promise to pay a debt in full which otherwise would be released or diminished by bankruptcy or insolvency proceedings". In short it is a financial benefit of any kind that is not due as one's right.

The appointment of a person against a salaried position does not fall under this definition of pecuniary advantage by any stretch of imagination. Once a person is appointed to such a position and renders services required under the terms of employment contract or rules governing such appointment, he becomes eligible to payment as a matter of right.

Without going into the merits of appointments made, which are subject of this reference, it is obvious that no allegation has been made that any of the persons appointed in the airline got paid without performing his or her duties as required. In such a situation, the claim of causing undue benefit can not withstand a test of scrutiny. If for a moment it is assumed that the appointments were made in violation of rules governing such appointments and Mohtarma Benazir Bhutto is responsible for making these appointments, the proper charge to investigate would be that of misconduct and not corruption or corrupt practices. Misconduct is not a cognisable offence under the provisions of the Ehtesab Act, 1997.

Brief facts of this reference state that the Prime Minister's Secretariat issued instructions to the PIA management to furnish details about vacancies existing in the airline. The narrative goes on to assume that in order to accomplish the illegal designs, one of the co-accused, Ghulam Qadir Jamot who was the Director Administration at that time, recommended that the ban on recruitment be lifted by the competent authority.

It is the government's prerogative to impose or lift bans on recruitment and in no way indicates a conspiracy or intrigue to do something illegal. The reference admits that an advertisement appeared in the leading newspapers of the country on 27<sup>th</sup> July 1995. According to the brief facts of the case, some 19,000 applications were received, out of which nearly 12,500 applicants were called for tests and interviews. It has been alleged that only those candidates were selected whose cases had been recommended by the Prime Minister's Secretariat.

There is an allegation against Siraj Shamsuddin, former Joint Secretary in the Prime Minister's Secretariat of getting 1500 blank application forms from Jamot. According to the allegations in the reference, 392 offer letters were issued to various candidates on the directives of the Prime Minister's Secretariat, as conveyed by Siraj Shamsuddin, and Najmul Hasan, both of whom are co-accused in this case. It has also been stated that on a subsequent date, 528 appointment letters were issued, raising the total number of appointments to 882. The reference thereafter alleges that besides these appointments, 870 other

persons were, also recruited in different cadres. And finally it has been alleged that 14 persons were appointed in the officer cadre on instructions from Ahmed Sadiq, who was allegedly conveying Mohtarma Benazir Bhutto's directives.

The total number of appointments adds up to 1766 instead of 1393 as stated in the opening paragraph of the reference. This wide discrepancy in the allegations made in the reference has not been explained and clearly reflects on the quality of investigations and independent application of mind, that the Chief Ehtesab Commissioner was required to apply under the relevant law.

In the first 12 paragraphs of the "brief facts" contained in the reference, nothing has been mentioned to demonstrate that Benazir Bhutto had ordered any of the appointments. The fact that applications were forwarded by her Secretariat cannot lead one to conclude that she had ordered any illegality to be committed by her staff or the PIA management. Providing of jobs has been the cornerstone of her government policy during both tenures, as opposed to large-scale retrenchment carried out by Nawaz Sharif in the name of "right-sizing".

The Ehtesab cell resorted to a novel theory of proving Mohtarma Benazir Bhutto's complicity in this matter. After Ahmed Sadiq was promised that his name would be deleted from the list of the accused, he made a statement that Mohtarma Benazir Bhutto was in the habit of putting a tick (check) mark on the files as an indication of her approval. In support of this assertion made by Ahmed Sadiq, the reference also contains statements of two other officers of the Prime Minister's Secretariat to substantiate Ahmed Sadiq's claim.

One such statement has been made by Zafar Ali Hilaly who was working as Additional Secretary (Foreign Affairs) in the PM Secretariat. He referred to two summaries submitted to her, informing her of major accidents in the Pakistan Air Force, and two other summaries informing her about impending bilateral talks, for signing of air services agreements with Tunisia and Australia. The copies of these documents contain check marks. However even if it is assumed that Mohtarma Benazir Bhutto put the check marks, it only goes to show that she had indicated that she had seen the documents, which were for her information.

One of the exhibits with the reference is a copy of a directive sent by Ahmed Sadiq to the Managing Director, PIAC. The directive stated that, "the Prime Minister has been pleased to desire that Mrs. Sajida Kamran may be appointed in Group-5 and Mr. Kamran Qayyum in Group-6 in the Marketing Department of PIAC". The tick or check mark on which the prosecution bases its reliance as Mohtarma Benazir Bhutto's

approval to various proposals, is also clearly visible on this directive signed by Ahmed Sadiq and addressed to the Managing Director. All other documents exhibited in support of this contention were to be seen by Mohtarma Benazir Bhutto as opposed to this exhibit which was addressed to the Managing Director.

Strange as it seems, the tick mark appears on this exhibit also, without assigning any reason for it. The next exhibit is an office copy of the same directive, which does not contain the tick mark. It is therefore reasonable to conclude, that Ahmed Sadiq, or someone else made the tick mark on this exhibit. It may not be illogical to assume that the tick marks on other exhibits were also made by someone other than Mohtarma Benazir Bhutto.

In late 1995 or early 1996, it was reported in the local press that over 1000 summaries were approved by either the Principal Secretary or other officials of Mohtarma Benazir Bhutto's Secretariat without ever placing them before her. She had ordered an inquiry into the matter and a lot of those summaries were found to never have reached her office. The formal outcome of that inquiry is not known, but it only goes to prove that orders and directives were frequently issued in her name unlawfully. This assertion of the Ehtesab Cell based on some tick marks is also a fabrication meant only to tarnish her image by insinuating that she acted beyond the scope of her lawful authority. Had she wanted to circumvent the normal recruitment procedure, she could have invoked her inherent executive authority and ordered recruitment by relaxing the laid down rules and procedures.

The reference also contains a copy of the order of the Supreme Court on Ahmed Sadiq's leave to appeal, filed against the refusal of bail by the Sindh High Court. Justice Abdul Hafeez Memon and Justice Ijaz Nisar heard the petition. The order written by Justice Ijaz Nisar released Ahmed Sadiq on bail.

In his petition, Ahmed Sadiq contended that the proceedings against him were malafide, and that he merely conveyed the orders of the competent authority/Prime Minister and did not order the appointments on his own.

Azizullah Sheikh counsel for Ahmed Sadiq argued that the order of the High Court did not "spell out legal or cogent reasons" for refusing bail. He further averred that there was no allegation against the petitioner having received any monetary gain from the persons recommended by him for appointment in PIA as reward for showing them undue favour. The Court then went on to observe that the learned Ehtesab Bench had quoted incorrect facts in the impugned order. As an example it illustrates a letter

written by Ahmed Sadiq for the appointment of Shahid Khan Toru in Group VII and observed that Ahmed Sadiq's letter did not indicate the group in which he was to be appointed on deputation.

The court cited contradictions in another letter from Ahmed Sadiq, ordering that Shakil Zaman be posted abroad, whereas no such instructions were conveyed in the letter. Justice Ijaz Nisar then went on to observe that, "it is a settled proposition of law that in such matters, the Court should merely look at the material placed before it by the Investigating Agency and whether it prima facie satisfies that some tangible evidence can be offered which if left un-rebutted would lead to the inference of guilt—". The Court again observed that there was no allegation or material against the petitioner of having received any pecuniary advantage from the persons recommended by him for appointment in PIA.

If the same test of scrutiny is applied in the case of Mohtarma Benazir Bhutto, there is prima facie, no case against her. A mere allegation, entirely unsubstantiated by any tangible evidence, that she and other accused persons made these illegal appointments, with common intention and in collusion and conspiracy with each other entered into corruption and corrupt practices, does not warrant prosecution under the Ehtesab Act, 1997.

Paragraph 18 of the reference asserts that "Ahmed Sadiq was simply carrying out the directives of the Prime Minister. Therefore, in the interest of justice, it is urged that the special prosecutor may be directed to withdraw his name from the list of accused persons and add it, to the calendar of witnesses". As Principal Secretary to the Prime Minister, he was required to offer advice against any directive, which in his opinion was outside the scope of relevant rules and regulations. There are innumerable examples of dissenting opinions recorded by Ahmed Sadiq and others, who acted in that capacity with different Prime Ministers. However under pressure from Saif, he agreed to state whatever was required to save himself from prosecution and would help Saif persecute Mohtarma Benazir Bhutto.

This reference, as well the other references discussed in the previous chapters have been filed with common objective of harassing Mohtarma Benazir Bhutto and defaming her by conducting a media trial in order to keep her busy in courts all over the country. And while she spends a great deal of time, energy and money in defending herself against these cases fabricated on the basis of coerced statements, lies and forgeries, Nawaz Sharif, his family and cronies pursue their agenda of loot and plunder unchecked by the opposition.





## Unending Corruption of Nawaz Sharif

At the time of independence in 1947, the Sharif family migrated to Lahore from Amritsar in east Punjab. They started a very modest business, by establishing "Ittefaq Foundries". Mian Muhammad Sharif, Nawaz Sharif's father and six of his brothers jointly owned the business. Zia returned this unit to the Sharif family in 1979. Ittefaq had been nationalised in 1972 by the first PPP government. Zia also wrote-off Rupees 5.84 million of the company's liabilities. This was done as a special favour to promote this family and bring them into politics in pursuance of his plan to create a new leadership to challenge the hold of the PPP. The 1980s saw a rapid growth in the business fortunes of this family. As Finance Minister and later Chief Minister of Punjab, Nawaz had done "wonders" for his family business by taking advantage of his public office. Between 1990 and 1993, when he was Prime Minister, the family business experienced a meteoric rise and the total number of factories owned jointly or exclusively by Mian Sharif's family, rose to 31. This phenomenal growth in business was achieved by taking advantage of laws specially drafted for their benefit and by violating prudential regulations and taking huge, inadequately secured bank loans. The groups loans stood at Rupees 350 million in 1983. However by the end of 1993 these loans had risen to RS. 6150 million, and at present are estimated to be close to Rupees 10,000 million. Nawaz routinely used his public office to get these loans and whenever payments became due, he got the loans re-scheduled without any delay or difficulty. When the Benazir government directed the banks and Development Finance

Institutions to follow the rules and regulations governing sanctions and re-scheduling of loans, Nawaz Sharif cried foul and blamed her of trying to destroy the family business.

Payment of taxes has been anathema to the Sharif family. In 1988-89, the Income Tax department demanded Rs. 250 million as outstanding income tax from only four business concerns of the family. After Nawaz Sharif became Prime Minister in 1990, the case was not pursued by the CBR for fear of reprisal from Nawaz Sharif. However, in 1995 the court ordered the Ittefaq Group to pay this amount along with a penalty of Rs. 150 million. Nawaz Sharif paid only Rs. 897 as personal income tax during 1992-93. All the income from the family business enterprise was used to establish new factories.

Nawaz Sharif's cousin Mian Khalid Siraj and some others went to court to get a fair share in the loot. Nawaz Sharif had the dissenting relatives arrested, including female members of the family. In January 1994 Khalid Siraj wrote a letter to the Prime Minister complaining about the high-handedness of Mian Sharif and his family. He listed 19 companies owned by the Ittefaq Group, and added that the companies owned by Sharifs are not included in the list furnished by him. His letter also stated that Mian Sharif had given an undisclosed but huge amount to General Zia in 1984, to get the desired results in his fake referendum, which enabled him to declare himself elected as President for five years. Khalid Siraj complained that since Mian Sharif was the undisputed lord and master of the family business, he sucked out huge amounts to establish his own Sharif Group of Industries and installed nine other projects, owned by him and his sons. According to his disclosures, Nawaz Sharif family transferred liquid cash abroad, which resulted in the closure of some of the Ittefaq Group units.

This money was then laundered back into Pakistan under fake names and bank accounts and used to draw loans from banks to set up their own industrial units. In a clever move Nawaz Sharif claimed that Mohtarma Benazir Bhutto had stopped the credit line of these units as part of vendetta against him and the units were closed as result of that. In a very shrewd move he milked the family members dry and got political mileage out of it by blaming Mohtarma Benazir Bhutto for rendering thousands of poor workers jobless on account of closure of these units.

The State Bank Circle of FIA office in Lahore investigated the money laundering allegations against Nawaz and his family when Benazir was Prime Minister. The report is startling, unravelling of the cleverness and concealment deployed by him in whitening the black money on which no taxes had been paid. The report is complete with the

names of the individuals who remitted the amounts, dates of transaction, Foreign Exchange Bearer Certificate (FEBC) numbers and dates. It also indicates the names of those who cashed these FEBCs with dates and amounts received in Pak rupees. The report was submitted with necessary verification certificates issued by the Bank of Oman. The period under investigation was from December 1988 to July 1989 while Nawaz was Chief Minister of Punjab. The total amount of telegraphic transfers made during this period was reported to be US \$ 7,580,000 and the amount of cashed FEBC was Rs. 146,056,000.

Another investigation conducted by FIA makes even more startling revelations about the corrupt activities of Nawaz and family. Nawaz Sharif took advantage of "The Economic Reforms Act" promulgated during his first tenure as Prime Minister. He used various, often fictitious accounts to remit foreign exchange from abroad by first sending out local currency illegally through what is known as "Hawala" transactions. These transactions are made by delivering cash to local money dealers, who in turn give an equal amount in the desired foreign denomination. Nawaz kept himself clear of all these transactions and used two close business associates, Javed Kyani and Sheikh Saeed. Kyani opened three foreign currency accounts in Habib Bank, AG Zurich, Lahore in the names of Mohammad Ramzan, Salman Zia, and Asghar Ali, with opening deposits of less than \$300 in each account. The identity cards used for opening these accounts were found to be fake. Kyani then opened accounts in the names of Kashif Masood Qazi, Sikandra Masood Qazi and Nuzhat Gohar Qazi. U. S. \$ 1.5 million were deposited in these accounts. A transfer of \$500,000 was made from Nuzhat Qazi's account to the account of Kashif Qazi. Thereafter Hudabyia Engineering Limited and Hudabyia Paper Mills Limited used these deposits to secure huge loans in local currency. The Sharif family owns both these industrial units.

The report then discloses that Kyani opened two more accounts in Habib Bank, AG Zurich, Lahore branch under the names of Attia Kyani and Mariam Begum Kyani. All these accounts were used to launder money and secure bank loans against the deposits. Since foreign currency deposits were exempt from income tax, Nawaz managed to avoid payment of taxes on the profits made by his family business. The report concluded that the total extent of money laundering and avoidance of taxes has not been fully uncovered by the probe. It is much more than what had been verified through bank records. Out of the amounts uncovered by the investigation, \$ 11 million were laundered through banks in Switzerland, United Kingdom, USA, Saudi Arabia, Dubai,

France, Kuwait and Pakistan. Another amount \$50 million is held in business and properties managed by Hans-Rudolf Wegmuller and Urs Specker based in Switzerland. Nawaz Sharif also owns four expensive flats in the famous Avenfield House, Park lane, Central London, valued at \$5 million. The total thus uncovered by the probe comes to US \$ 66 million. The British Virgin Island companies 'Nescoll' and 'Nielson enterprises' own the four flats in London. Two foreign nationals Wegmuller and Specker, administer these companies on behalf of Nawaz Sharif and his family.

'The Observer' of London had disclosed the details of these shady deals, which were reproduced by some local newspapers. Nawaz denied ownership of the flats. Husain Nawaz, his son said the family had a leasehold on the property and it did not own the flats. Khalid Anwar, Nawaz Sharif's law minister said that the family owned only two flats.

These conflicting statements are sufficient proof of the ownership of this property by the Sharif family. The FIA report carries copies of land registry title search. The four flats numbered 16, 16-A, 17 and 17-A are shown as leasehold estate in the Greater London Property Register. The date of lease is October 1978 for a period of 83 years. Nawaz Sharif and his family acquired these flats between 1991 and 1995. The leasehold will expire in the year 2061. It is not uncommon, even in Pakistan to own leasehold interest in property but it can not be equated with rented property, that Nawaz Sharif and his family would have people believe. Several local newspapers have reported that Nawaz Sharif stays at his own flats whenever he is in London. Nawaz Sharif has never contradicted any such news report.

AI-Tawfeek Company for Investment Funds, which is an off shoot of a Saudi Bank in Cayman Islands filed a law suit for the recovery of a loan in the London High Court. The company complained that Mian Sharif and his two sons had guaranteed the loan amounting to 11 million British Pounds. The loan was used to purchase machinery for Hudabyia Paper Mills, a Sharif group concern. The high Court issued a writ in the names of the defendants. 'The Observer' of London also published this report. Husain Nawaz, Nawaz Sharif's son claimed that the previous government compounded the business group's problems. He also claimed that his family had filed a suit in Pakistan against the nationalised commercial banks for damages amounting to Rs. 5 billion. Haroon Pasha, spokesman for Sharif group, denied any such loan and lawsuit for its recovery. However a report carried by 'The News', Karachi, dated London on 21<sup>st</sup> December 1998, quoted Saifur Rehman as saying that a law suit for recovery of 11 million pounds was pending in London.

The News had earlier also reported that a writ number 1998-A-991 was filed in the Queen's Bench division of the High Court in London. The writ claimed that Mian Sharif and his son Abbas Sharif had guaranteed the leasing of equipment worth \$ 12,046,803 for Hudabyia on 15th February 1995. The period for the loan was 66 months at an interest rate of 3.5% over LIBOR or a minimum of 9.5%. Later Shabaz Sharif also provided a guarantee of an equal amount. The total amount claimed as principal and interest was \$30,908,765.45 or 18.5 million pounds instead of 11 million pounds admitted by Saif.

The ill-gotten fortune of Nawaz Sharif and his family has been possible only at the expense of the state. The 'Chunnian Industrial Estate' scandal, undue exemption of Central Excise duty on his sugar mills, manipulation of tariff structure to his benefit are only some of the examples. The most intriguing aspect of 'Chunnian Industrial Estate' is the fact that it is not contiguous.

The CBR declared those land tracts of 'Chunnian' as industrial estate, which were owned by the Sharif family. Never in the history of declaration of industrial estates has CBR issued a notification like the one it issued for 'Chunnian'. The number of his misdeeds can only be covered in a book written exclusively for this purpose. However some other brazen acts of corruption must be mentioned to understand the need for the never-ending media trial of Mohtarma Benazir Bhutto.

In the early and mid-1980s, when Nawaz Sharif was wielding unbridled power in Punjab, Ittefaq foundries grew at a rapid pace. He evaded Customs duty on the scrap imported by Ittefaq by not declaring the imported quantity of scrap used by the foundry. Often in the guise of scrap other iron and steel products were imported and cleared under the lower rate of duty applicable on scrap. The first PPP government had established a dry port at Lahore in 1975. There was a long-standing demand of the business and industrial concerns of Punjab to make such a Customs facility at Lahore so that they do not have to go to Karachi for clearance of their imports. Nawaz Sharif extended the benefit of this facility to his family business in connivance with some senior Customs officers. Ittefaq foundry generally imported huge quantities of scrap and using Nawaz Sharif's political clout, used to get several railway cargo wagons to transport it. At times there used to be special train that carried the imported scrap to Lahore. The train or numerous railway wagons would not unload their cargo at the dry port, as was the required procedure. Instead, the train used to carry the goods into the Ittefaq premises and unload it there. The Customs staff used to inspect the

imported goods in their premises and write favourable examination reports.

The colluding officials had found a novel way of extending this illegal facility to Ittefaq. The Deputy Collector of customs at the Lahore dry port issued a local order declaring that Ittefaq's premises would be treated as a dry port for the purposes of their imports. This was not within the competence of the Deputy Collector as only CBR can notify specific Customs Stations. The practice continued for some years, until one of the officers at Lahore referred the matter to CBR. The Collector, Lahore was advised by the CBR that the premises of Ittefaq could not be treated as a dry port. However the practice continued until Benazir became Prime Minister in December 1988. The large-scale evasion of duty can be seen from one single example. After the establishment of Lahore dry port, the Custom House at Karachi continued to detain imported consignments at Karachi on finding discrepancies in the declaration and physical inspection of imported goods. Punjab businessmen protested against this practice on the ground that the Customs officers posted at Lahore could easily and effectively check such false declarations. It was resolved between the Collectors at Karachi and Lahore as well as CBR that in case of any difference between the declaration and physical verification, the Collector, Karachi would send a telex to Collector, Lahore informing of the discrepancy and also call him on telephone as well. It was decided that the imported goods would not be detained at Karachi.

After the general elections of November 1988, President Ishaq Khan had given the impression that he would ascertain as to who in his opinion would command a majority in the national assembly and then nominate the Prime Minister. Until then, due to the changes made in the Constitution by Zia, the President had this discretion. Nawaz made a desperate bid at getting the required number of votes in the assembly but failed. This delayed the transfer of power to Mohtarma Benazir Bhutto by more than two weeks. The delay also gave an impression to many that Nawaz Sharif may become Prime Minister. While he was struggling for power, a consignment of 'seamless pipes' imported by Ittefaq, arrived at Karachi port. This consignment was destined for Lahore. Under the procedure prescribed by the CBR, Collector Karachi was required to inform his counterpart at Lahore immediately. But he did not for two reasons. First he was the Deputy Collector who had 'informally' allowed the practice of unloading of cargo at Ittefaq's premises. Second he was not sure who would become the Prime Minister. He let the imported pipes to go to Lahore and eventually to the premises of Ittefaq but did not

inform the Collector Lahore. Ishaq Khan announced on 1st December 1988, that he was inviting Mohtarma Benazir Bhutto to take oath as Prime Minister. At this point, Collector Karachi sent a back-dated letter to his counterpart, informing him that the consignment declared as scrap, actually contained 600 tons of seamless pipes, on which a much higher rate of duty would be applied.

Collector Lahore asked his staff for an immediate report, but was informed that the consignment had been cleared at the premises of Ittefaq two days prior to the information and it was reported to be 'shredded scrap'. This is how the government was deprived of its legitimate revenue due to the collusion of corrupt officials with a more corrupt Nawaz Sharif.

Instances of this nature are said to be numerous, but have generally gone undetected due to such collusion. Ittefaq Foundry has fabricated around fifteen sugar production plants. These plants require pipes that form almost one third of the value of such plants. Nawaz Sharif's family adopted the practice of "smuggling" these plants in the garb of scrap. A look at the record of total imports of pipes by Ittefaq would illustrate this devious method of gaining riches since the declared import of pipes by them is next to nothing.

Until Mohtarma Benazir Bhutto became Prime Minister in 1988, Nawaz Sharif's family was not in the habit of paying their electricity bills. WAPDA could not dare ask for the payment of outstanding dues. When the PPP government started recovery of outstanding state dues whether in the form of bank loans or utility bills, Nawaz Sharif claimed that he was being politically victimised. Millions of rupees of WAPDA's bills were held up. After a prolonged tussle with WAPDA and under threat of disconnection of power supply, Ittefaq paid its bills.

During his first tenure as Prime Minister, Nawaz Sharif implemented two populist schemes in Pakistan. Both involved Daewoo company of South Korea. The first was construction of Islamabad-Lahore motorway, an exclusive contract for Daewoo, awarded at a cost of Rs. 23 billion. The other scheme was the infamous yellow cab scheme in which it had a significant share. This motorway was completed at a cost of Rs. 31 billion. The completion cost did not include ancillary facilities such as rest areas, petrol pumps and emergency help facilities. The contractor had arranged a 60% foreign loan component for this project. The final cost of this motorway is expected to exceed Rs. 50 billion, due to the fast eroding value of the Pakistani rupee. Daewoo had submitted an initial bid of Rs. 9 billion, for a four-lane motorway. However the company was asked to revise the bid upward and offer to

make a six-lane motorway. A revised bid of 16 billion was submitted. The company was again asked to revise the bid. Within a week it submitted a bid of Rs. 23 billion, which was approved. Huge sums were reportedly paid to Nawaz Sharif and his brother Shahbaz as commission for the contract. Toll tax collected from the motorway is not even enough to pay for its upkeep. At the time of launching this project, it was estimated that the daily vehicular traffic on this motorway would be 17,000 in the first year, with a 10% growth in the subsequent years. In fact it is not even 10% of the estimated number.

According to the Minister of Communications, Rs. 140 million were collected in the first full year of operation. While Pakistan was on the verge of default on its loans, Daewoo asked for payment of the first instalment on the debt servicing of foreign loan arranged by it. Nawaz Sharif ordered the release of this instalment against the advice of the Ministry of Finance. There were \$ 1.4 billion outstanding on various loans and repatriation of sales proceeds and profits of various shipping companies, foreign airlines and other foreign investors, but Daewoo was given priority over all other outstanding payments, with the obvious reason that with each payment, Nawaz Sharif gets his share of the commission.

The yellow cab scheme was also launched with two underlying motives in mind. The sensible objective was to provide sufficient number of public transport vehicles at affordable rates to alleviate the shortage, and to create self employment opportunities to the unemployed. The real purpose was to gain cheap popularity and make personal gain from the massive purchase deals. Daewoo figured prominently in this grandiose scheme also. The government ordered thousands of substandard cars from Daewoo and others, including at least ten-year old models from Toyota and Peugeot of France. In one of the shipments of cars from Daewoo, FIA detected a huge quantity of automobile parts that had not been declared as part of the shipment and were concealed in the trunks of the cars. For obvious reasons the case was hushed up. This scheme cost the nationalised commercial banks in excess of Rs. 40 billion, bulk of which has not been recovered. Local automobile industry also suffered heavily since most of the vehicles for this scheme were imported from abroad, thousands of which were inferior to the locally produced cars. The third dimension of this unforgivable waste of public funds is the loss of revenue caused due to complete exemption from payment of Customs duty and sales Tax. Unrepentant at this misdeed, Nawaz Sharif has again launched a so-called self-employment scheme estimated to cost the government Rs.250 billion during the current and



next two financial years. Small and medium enterprise business loans are being doled out to political favourites with the knowledge that most of the money being paid out would not be recovered, as happened with the yellow cab scheme. As if the damage caused by his previous public transport misadventure was not enough, he has announced the revival of the yellow cab scheme for which Rs. 25 billion have been set aside in his self-employment scheme.

Everybody condemned his previous scheme except those who benefited from it. He has been advised by independent economists and analysts to desist from spending more money on yellow cabs at a time when the country is facing the most difficult economic situation in its history. Nawaz Sharif abhors any advice that goes against his personal interest and restricts his popularity gimmicks. We are ready to witness billions of rupees go down the drain once again.

If all the corrupt acts of Nawaz Sharif, and his lust for power and wealth were recounted, it would make the late Ferdinand Marcos of the Philippines look like a timid petty thief. Nawaz Sharif's latest demonstration of complete disregard for public opinion and flaunting of unaccounted for wealth is the internationally known 'Raiwind Farm'. This uninhibited extravaganza made at public expense has become the virtual capital of the country. Nawaz Sharif, his brother Shabaz and their father Mian Sharif, now commonly known as "Abbaji" rule by decree and issue edicts from this place. Officials from Islamabad have to take their files and briefs to the family estate of these self styled 'Mughal Emperors'. But this is not the only physical manifestation of their acquisition of wealth. The FIA investigation report carried a list of 28 urban properties and agricultural and industrial land owned by the family in Pakistan. This list includes expensive houses and residential plots in Lahore and hill resort of Murree. Other properties are spread over Chunnian, Multan, Sheikhpura and suburbs of Lahore. In Chunnian alone, Nawaz Sharif had purchased 376.5 acres of land in various deals and after getting the area declared as a tax-free industrial zone he sold 160 acres at prices several times higher than what he had paid. Besides these local properties worth several hundred million, Nawaz also owns the four flats in the expensive Park Lane of London.

Nawaz Sharif's collection of expensive cars is quite well known. His zest for exceeding the speed limits on the extravagant Lahore-Islamabad motorway is also no secret. What most people do not know is his ownership of a helicopter. This disclosure was made in another reference filed before the Chief Ehtesab Commissioner in December 1997. The detailed information furnished with the reference is startling.

Nawaz Sharif purchased this helicopter from a Moscow based Russian company, through his friend Sheikh Addul Rehman Bin Nasir Al Thani at an undisclosed price. Nawaz used this M.I-8 helicopter during his election campaigns in 1993 and 1996-97. He was routinely shown alighting or boarding this helicopter on national TV. A copy of the letter from Sheikh Al Thani mentions the particulars of this helicopter and states that he had sold it to Mian Nawaz Sharif. A copy of the application for registration, signed by Nawaz has also been attached with the reference.

Nawaz Sharif signed this application on 23<sup>rd</sup> October 1996. The certificate of registration issued by the Civil Aviation Authority on 10th November 1996 gives all necessary particulars of the helicopter and shows the registration marks as "AP BFT". Nawaz has been shown as the owner with 180-H, Model Town, Lahore as his address. There is no doubt about the ownership of this helicopter, nor has Nawaz denied it.

An interesting aspect of this case is the fact that Nawaz Sharif failed to declare the helicopter as well as the other properties owned in Pakistan and abroad at the time of filing his declaration of assets for the 1997 elections. What makes it worse is the fact that during the last three years Nawaz Sharif paid only Rs. 416 as income tax. Someone who has no agricultural income and who earns only enough to pay such a paltry amount as income tax can certainly not justify owning such expensive properties.

Manipulation of rules and regulations and specially tailored Statutory Regulatory Orders (SRO) has been the primary vehicle for self advancement, deployed by the Sharif family. His second tenure as Prime Minister was no different from the first, including the manipulation of SROs. The application of central excise duty exemption policy to his already running sugar mill, reduction of Customs tariff on imported scrap, declaring Chunnian land as special industrial zone and lowering the Customs tariff rates on luxury cars, for the benefit of Saifur Rahman's Redco company were only some of the rule bending and manipulations from his first tenure.

Announcing the budget for 1992-93, the government drastically cut the Customs tariffs on big cars. The duty structure has always been based on the engine capacity of the cars. In 1992 the category of cars with engine capacity of 1330 to 1600 cc was changed to cover cars up to 1800-cc engine capacity. This was done to benefit Redco, which was and still is the country agent of BMW cars. The capacity of cars subject to 125% duty was changed to include 1800cc cars in order to allow Redco to import BMW 318 at the lower rate.

In less than a month after taking over as Prime Minister, Nawaz Sharif started repeating his old tricks. Presenting his "package" for economic revival, on 28th March 1997, he announced reduction in Customs duty on iron and steel products to 45% from 50%. Those importers who were holding their goods in the bonded warehouses were induced to clear them at this lower rate. As an extra incentive, the government announced waiver of penal surcharge on goods that had stayed in the bonded warehouses beyond the stipulated period.

Less than two weeks later on 1st April 1997, the rates were lowered to 25%. Those who were the intended beneficiaries of this reduction had already placed the orders for their imports. By the time others moved in to take advantage of the lower rate of duty, the government again raised the rate of duty to 45% on 28th May 1997. While it gave a windfall profit to the selected few, it caused a loss of millions to the exchequer. Similar manipulations were made in some other cases. Duty on plastic and plastic goods was reduced to 25% from 45%. It was again raised to 35% two weeks later.

Another ploy to make money at the expense of the country is the levy of regulatory duty on the import of sugar. The sugar manufacturers complained about availability of cheap imported sugar and wanted the government to correct the anomaly. A summary was sent to the ECC of the cabinet in early 1997, recommending the levy of 10% regulatory duty on imported sugar. For unspecified reasons the decision was deferred until the next meeting. Two weeks later it came up for decision but was deferred again. Another two weeks passed and on consideration for the third time the recommended regulatory duty was imposed. The reason for this delayed decision was the late arrival of three shiploads of sugar belonging to a front man. The sugar was cleared only one day prior to the final decision depriving the government of Rs.70 million in revenue.

With the increase in local sugar production, the government decided to allow export of surplus stocks. While Nawaz Sharif was talking tough with India, his son Hussein secretly visited Delhi to strike a sugar export deal. His family is the largest producer of sugar in Pakistan. He wanted to take advantage of his public office to make billions for himself. The government announced a subsidy and rebate on export of sugar. The incentive for policy is for the general benefit of all sugar exporters but only the Sharif family and close friends such as Humayun Akhtar can truly take advantage of this policy. Sharif family owned mills have priority over other mills as far as availability of railway wagons is concerned. According to newspaper reports, hundreds of wagons are

stranded in India but the sugar export by Nawaz Sharif's family owned mills continues unabated.

Ironically while sugar is sold in the local market at prices ranging between Rs. 19-20 a kilogram, in India it sells for only Rs. 11 per kilogram. The East Punjab state-government is considering the imposition of a 4% sales tax on Pakistani sugar. The subsidy and rebate which costs hundreds of million rupees to Pakistan is not only helping Nawaz become richer but it would also add to India's coffers.

After getting a complete monopoly on sugar industry in Pakistan, the Sharif family has gone ahead and taken management control of a sugar mill in Kenya. Local press reports carried detailed stories about this deal.

Their spokesman denied any link with these reports, but the denial was unconvincing and more stories appeared to lend credence to the earlier reports.

Nothing is beyond Nawaz Sharif, when it comes to make money. Soon after taking over as Prime Minister, he created an artificial wheat flour shortage. Benazir government had placed orders for the import of 1.8 million tons of wheat. The caretakers cancelled the orders and when the imports were re-ordered, some delay took place. There was still no serious shortage of wheat in the market. Nawaz allowed movement of wheat across provincial boundaries. This resulted in large-scale smuggling of wheat across the border with Afghanistan. Hoarders made hay and people suffered on account of shortage of wheat flour. The price of one kilogram touched Rs. 20 and for that also people had to stand in long lines for hours. Worst hit by the crisis was Frontier province where demonstrations and roadblocks became a routine affair.



## **After The Misrule, What Next?**

**Farhatullah Babar**

A few months before Nawaz Sharif brought disaster upon himself and the country, the Economist of London had warned against the consequences of what it termed as Nawaz government's 'systematic chaos'.

"Pakistan has been run by such dreadful governments for so long this one has turned out to be chaotic", it said.

The editorial went on to say: "Over the past two years Nawaz Sharif, the prime minister has been picking off individuals and institutions that he believes pose any threat to his own power. He has seen off a president and the chief of army staff, and is now trying to push through a constitutional amendment that would give him sweeping powers to ignore Pakistan's legislature and provincial governments in the name of Islamisation.

"The judiciary at first tried to check Mr. Sharif, but has given up. When the Chief Justice, Sajjad Ali Shah, took the president's side in an argument with the prime minister in 1997, a mob from Mr. Sharif's party stormed the Supreme Court and Mr. Sharif sacked Mr. Shah. The courts have given Mr. Sharif little trouble since.

“This year it is the turn of the press. A few months back, the Jang Group of Newspapers had its bank accounts frozen and its newsprint confiscated. Now Najam Sethi, a newspaper publisher and editor is being held without charge, accused, by government press releases, of working for both the CIA and Indian Intelligence.

“Mr. Sharif’s predecessor, Benazir Bhutto, has just been sentenced in absentia to five years in jail for corruption. Mr. Shah, the sacked Chief Justice had agreed to hear corruption charges against Mr. Sharif, but was sacked shortly afterwards. Mr. Sharif’s family has been tainted by a High Court judgement in London against his father and two brothers in March, ordering them to repay 32.5 million dollars in loans taken out from a Saudi finance house for a paper mill owned by the family.”

The Economist editorial then listed how the money, which should have been spent on development, was being wasted. It listed Nawaz pet political projects like yellow cab scheme, the motorway and the new airport at Karachi as schemes, which were neither justified by economists nor implemented in an honest and transparent manner. Terming all this as unfortunate for the people of Pakistan the paper asked the World Bank, the IMF and other international financial institutions not to give aid to Pakistan. State institutions of an independent judiciary and a free press guaranteeing accountability and openness essential for development had been destroyed by the Sharif government. If the ultimate object of development of the country was thus not being served because of the Nawaz government’s ‘systematic’ assault on institutions, what was the point in doling out funds, it asked. “When a government sets about undermining the institutions designed to hold it in check, it is time to start thinking about shutting off the flow of money”.

Nawaz Sharif was averse to institutional rule and preferred to operate at best through a limited coterie of family members and friends and at worst in complete secrecy. Thus operating he centralised power both horizontally and vertically. At the horizontal plane he took away the powers of the presidency, the judiciary, the parliament and other institutions. At the vertical plane he took away powers of the recognised tiers of local bodies and provincial governments. There was an element of deception and secrecy in his own rise in the political party. He did not rise to the position of president of the party from political ranks, but via a

lateral move through a coup remarkable for its secrecy, deception and suddenness.

Institutions were an anathema to Nawaz Sharif, which he could not comprehend much less, respect and learn to live with. He had no faith in policy but put trust in patronage. That is why he seemed to believe that the institution of military would be his only if he put his man at the top. He did place what he thought were his own men in the presidency and the GHQ and secured a personal victory against Justice Shah but in the process weakened the institutions. And as institutions were crumbling, he failed to deliver on resurrecting a collapsing banking system, rising sectarian violence, directing foreign policy, building national cohesion or in keeping his important regional allies. When the balance sheet is finally drawn, his government will be remembered less for its heavy mandate and more for its absolute authoritarianism, pervasive corruption and cronyism and a systematic destruction of the institutions.

Is there a way to prevent a recurrence of “systematic chaos”? Yes, there is. We must be prepared to face the truth about what went wrong, where and why during the various phases of our national life? We must first know the truth behind all important events in our country’s 52-year history. We have entered the twenty first century and let us begin from the basic: tear apart the shroud of secrecy and search for the truth to build reconciliation. We need to set up a Truth Commission.

South Africa has experimented with remarkable success with the idea of a Truth and Reconciliation Commission. Under the leadership of Archbishop Desmond Tutu the South African Truth and Reconciliation Commission has sought to bring out the truth voluntarily from the perpetrators of apartheid crimes in return of promises of some amnesty. It has been a cathartic experience for South Africa and has helped promote national reconciliation, which lay shattered because of the worst degradation inflicted by man on fellow man in the system of apartheid.

In Pakistan the need for a Truth and Reconciliation Commission is even more. Ever since independence we have avoided facing the truth. Our most crucial national events remain shrouded in secrecy and mystery. Not knowing the truth and groping in the dark people have developed their own perceptions about different realities based on half truths, lies and predispositions. With the result that social cohesion and

national integration are the weakest. People do not trust the governments and the governments have no faith in the masses. In fact people believe in the opposite of what the governments say.

We talk of religion but have demonstrated scant respect for truth. We started avoiding truth from the day we began our journey as an independent nation. On August 11, 1947 the Quaid had stated in his speech:

“I think we should keep this in front of us as our ideal and you will find that in the course of time Hindus would cease to be Hindus and Muslims cease to be Muslims, not in the religious sense but in the political sense as citizens of the state”.

This is what the Quaid said on the floor of the august house. This is what he meant to be the future Pakistan. But then someone, somewhere surreptitiously decided to excise this part of the Quaid's speech. Did the Quaid ask that mysterious some one to excise this part from the speech? Who was that someone? Was he alone in thus acting or was he aided and abetted by others in this? Where from did he derive his authority to delete a principle of policy from the Quaid's speech? Did he inform the Quaid about it?

Four years later the first Prime Minister Liaquat Ali Khan was assassinated. An enquiry was held and it was promised that its report would be made public. Nearly half a century has passed but the full report has not been made public. Is it confidential even after half a century of Liaquat's assassination? The conspirators who perpetrated the crime may be dead now. But why not unmask them? Who stood in the way of charging them at the time? Why should they be shielded even half a century later? Who are shielding them?

There are many questions to be answered about the 1965 war. Indeed not only the 1965 war, but all wars with India including the most recent one in Kargil heights.

For a long time the nation was fed on the myth that it had won a decisive war with India in 1965 until the beans were spilled by those very people who actively participated in it, or had access to evidence contrary to the claims made.

There are many who believe and offer cogent evidence for it that the dismemberment of Pakistan started with the war in 1965. They believe that it was this very war which kicked off a chain reaction



culminating in the break up of the country. Who started it and with what purpose in mind. No one has examined who and why the war was so carelessly planned that East Pakistan was left completely at the mercy of India.

Air Marshal Asghar Khan has asserted time and again that in fifty-two years of its existence, Pakistan has fought four wars with India without a clear objective. All these wars he says were also grossly mishandled. "These wars and the Kargil operation had been launched in the hope that world powers would come to our rescue, intervene, bring about a cease-fire and somehow help us to achieve our political objectives", he says.

Former Army Chief General Mirza Aslam Beg has also reportedly stated that it was a myth to claim that we won the 1965 war. A Truth Commission should establish who undertook such serious misadventures and bungled it up.

The Hamood-ur Rahman Commission Report is still a secret. Why? The report about the most cataclysmic event in Pakistan's history, of its break up, has not been made public even after thirty years of the event. It is now said that each and every copy of the Hamood Commission Report was destroyed. Who ordered it and with what purpose? Why did President Yahya Khan not call the National Assembly session in Dhaka? Bengalis have talked of untold army atrocities in East Pakistan. How true are these allegations and has anybody been punished for it. Was a deliberate effort made to hide these alleged atrocities from the view of Pakistani public?

Or, take the Afghan war and the fire at the Ojheri ammunition depot. Hundreds of millions of dollars and weapons flowed into it. Weaponization of civil society in Pakistan, heroine trade and a proliferation of corruption are all attributed to it. M. P. Bhindara says "the Afghan war was the starting point of mega corruption in our society". According to him one particular general, now dead, became a billionaire. There could be many more too, alive or dead. They all must be exposed.

Scores of innocent people were killed in 1988 when a mysterious fire broke out in the military ammunition depot at Ojheri between Rawalpindi and Islamabad. The depot reportedly served as ammunition centre for the Afghan war. There have been rumours of unaccounted for

stinger missiles. What caused the fire? Could it possibly be an act of sabotage? An enquiry was ordered and as usual it was promised that its report would be published. Muhammad Khan Junejo had publicly vowed to punish the culprits. Instead, he got sacked not long after the fire charred the civil population in the vicinity and also the mountain of evidence of mega corruption in the Afghan war.

And take the Kargil misadventure of last year. We are asked to believe that the Kargil operation was a great military triumph. We are told that the object of the Kargil operation was to internationalise the Kashmir issue and that this has been achieved. Yes, the issue has been internationalised but how? All major powers have asked us to return to the 'Line of Control'. They asked us to bring back the mujahideen also who we had claimed were independent and not under our control. Our old ally China also joined major powers in demanding this.

After 'internationalising' the issue we have dutifully complied with the international demand and come down from the heights of Kargil alongwith the mujahideen. And we did it fast enough to complete in the time frame given. In rolling down the slopes, democracy in Pakistan has also been rolled up. A claimed military victory has turned out to be a strategic disaster. Who planned it and with what purpose? Both Farooq Leghari and Mohtarma Benazir Bhutto have stated that they were also given similar briefings about proposed operations, which would lead to sure military victories. They rejected the proposals because they carried the seeds of strategic disasters. Who then ordered Kargil? Was real everyone on board? What did we gain and what did we lose?

At a seminar on "The Armed Forces and Nation Building" in Karachi on August 3, 1997, former Air Force Chief Nur Khan said that our leaders, by design took the country to war twice and that by design lost both wars. He also said that we were neither capable of going to war successfully against India nor could we take it on in an arms race.

Writing in the Dawn about the same time another ex-Air Force Chief Asghar Khan had this to say:

"The defensive strength of Pakistan has been gradually weakening and Pakistan is not in a position today to meet effectively a threat to its security from the most likely direction. It is almost totally dependent on defence purchases from abroad, for which it neither has the money nor a reliable source of supply. The recent statement by Dr. A.

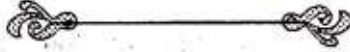
Q.Khan that we have the capacity to destroy all India's cities within 15 minutes, might have brought satisfaction and a sense of security to the majority of our gullible public, but it was one that could have been made by an irresponsible politician and not by a scientist. It is this kind of chauvinism that has contributed to bringing the country to its present state of shaky existence. With our economic and military limitations, we must consider the options available to us in a realistic manner. The first and probably the least attractive is to give up any hope of securing freedom for the people of Kashmir and mend our fences with India".

Our past history is shrouded in mystery and secrecy. We have not endeavoured to reach to the bottom of the truth. As a result there have been allegations and counter allegations against one another. In the media trial heroes have often been painted as villains and villains white washed as national heroes.

Illegalities, violations of the law, corruption and indeed all evil thrive in an atmosphere of secrecy. Many of the evils perpetuate because people have been denied access to truth. Tear apart the shroud of secrecy and expose facts and potential wrongdoers are deterred. No society is ever able to completely eradicate evil but a conscious effort can be made to reduce it. To reduce evil true facts must be exposed and made to pass the test of public scrutiny. Public opinion and media serve as strong deterrents to evil and wrongdoing. In the United States and other western democracies there are specific laws guaranteeing free access to information on matters of public importance after a specified period of time say twenty-five or thirty years. The intricate workings of the governments, which are normally shrouded in secrecy, and beyond public scrutiny for reasons of sensitivity and national security are required to be made public. The hitherto tightly guarded state secrets become open public documents. That is why the highly classified US State Department's record bearing on the formulation of important foreign policy initiatives has been periodically made public. It has given an opportunity to scholars, academicians and journalists to reconstruct the events dispassionately from the vantage point of two or three decades after the event. The fresh perspective thus acquired makes every one wiser. Unfortunately no government in Pakistan has recognised the crucial importance of some such law guaranteeing access to information.

That is why important public documents like the Hamood Commission report still remain shrouded in secrecy and mystery.

While setting its own agenda the proposed Truth Commission may also seek guidance from public opinion as to the areas which need to be investigated. One such area could be the allegations and counter allegations of corruption, loot and plunder.

**A**

**Synopsis of**  
**Legal Opinion by Sir John Morris,**  
**Former Attorney General UK**

**In the Trial of Mohtarma Benazir Bhutto, Former Prime  
Minister of Pakistan and her Husband Senator Asif Ali  
Zardari  
In the SGS Case**

In April 1999 Mohtarama Benazir Bhutto and her husband Senator Asif Ali Zardari were convicted by the Rawalpindi Ehtesab Bench of the Lahore High Court of alleged acts of corruption under the retrospective Ehtesab (Accountability) Act 1997.

Throughout their trial both Mohtarama Benazir Bhutto and her husband claimed that they were not being given a fair trial. This may seem like standard political rhetoric from a convicted politician.

An opinion, however, on amongst other things, the fairness of Mohtarama Benazir Bhutto's trial based on established principles of Common Law, European Law and International standards was sought from the member of the Privy Council The Rt. Honourable Sir John Morris QC, the former Attorney General of England and Wales. His opinion confirmed Ms Bhutto's claims.

The former Attorney General amongst other things opined:-

1. "There are a number of specific instances where there are strong grounds for believing her trial to be unfair".
2. "Looking at the case "as a whole" there are grounds for grave misgivings as to the fairness of the trial."
3. "I would have thought there would need to be strong arguments of the necessity for the same Judge to have continued to hear the case against Ms Bhutto apparently outside his jurisdiction. The perception of prejudice is strong and the fact of continuing to be involved after the case had been moved creates a perception of an unhealthy and undue interest in pursuing the Bhutto case".
4. "I am not aware of the reasons why the Swiss legal expert, although he had arrived in Pakistan a little late it seems, was not allowed to be called to explain the above. On his affidavit he would have wholly undermined the evidence of the commissioner."
5. "She did not give evidence in chief. She wished to do so after her new list of defence witnesses were called. This was refused. Making all allowances for my lack of knowledge of legal procedures in the case, it is plain that she was not given the opportunity to put her case properly."
6. "Various acts of harassment are alleged of herself, her counsel and witnesses. They deserve close examination."
7. "She was not allowed to lead her own evidence or to call the witnesses she desired."

8. "The wrong in this case is that by freezing Mohtarma Benazir Bhutto's assets, legal advice could not be properly prepared in time."
9. "It would be seen on the above yardsticks for representation, the court was very unsympathetic if not biased against Mohtarma Benazir Bhutto."
10. "In the perception of Mohtarma Benazir Bhutto there was an undue haste for the proceedings to be brought to an end. There is substance in this."

**B**

**DETAILED LEGAL OPINION  
Of Sir John Morris, Ex-Attorney General, UK**

**IN THE MATTER OF THE TRIAL OF  
MOHTARMA BENAZIR BHUTTO**

1. I am instructed to advise as to whether Mohtarma Benazir Bhutto had a fair trial in ER 30/98 "State versus Mohtarma Benazir Bhutto and others".

I am not asked to advise, as my instructing solicitor made clear in our initial consultation, on the merit of the case itself. This is subject to appeal and would involve consideration of the law of Pakistan and its law of evidence, which would be outside my knowledge, and also a detailed analysis of the evidence which is substantially documentary.

2. By what standards is a fair trial to be judged?

The fundamental basis from my point of view must be the common law which applied both to England and also to Pakistan; both countries pre-partition had a common legal fount, and nay statutory or other development since.

The need for a fair trial can be said to have been internationally codified by the Universal Declaration of Human Rights, 1948, the International Covenant on Civil and Political rights, 1966, and the European Convention on Human Rights 1950.

There is a common thread between each of the international enactments although the detail may have been developed in different terms, the common thread is natural justice.

The parts of each with the greatest applicability to the issues I have to consider appear to be the following:-

The Universal Declaration, Article 10.



"everyone is entitled in full equality to be fair and public hearing by an independent and impartial tribunal....."

Article 11 "no one shall be guilty of any penal offence... which did not constitute a penal offence, under national or international law, at the time when it was committed".

The International Covenant on Civil and Political rights 1966.

Article 14

1...."in the determination of any criminal charge against him... everyone shall be entitled to a fair and public hearing by a competent independent and impartial tribunal established by law".

3 (b) "to have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing"

d) "to examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf as witnesses against him".

Article 15 repeats the substance of Article 11 of the Universal Declaration

The European Convention of Human Rights 1950.

Article 6.

1. "in the determination of....any criminal charge... everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law"

3.b. "to have adequate time and facilities for the preparation of his defence"

Again similar provisions as to his defence, means and rights to examination of witnesses as in the previous enactments.

The position at common law is expressed by the learned authors of Hood and Philips "Constitutional and Administrative Law at page 670 7<sup>th</sup> Edition. (Sweet & Maxwell).

"natural justice... refers principally to two fundamental principles of procedure: that whoever takes a decision should be impartial, having no personal interest in the outcome of the case (*nemo iudex in re sua*) and that a decision should not be taken until the person affected by it has had an opportunity to state his case (*audi alteram partem*).

Under the title "man may not be a judge in his own cause" a judge is only qualified if there is a likelihood of bias or a reasonable suspicion of bias. It is not necessary to establish that a judge...making a decision was in fact biased".

Lord Heward LCJ's famous words in 1924 are prayed in aid, to the affect that "justice should not only be done, but should manifestly and undoubtedly be seen to be done"

(The King v Sussex Justices ex p McCarthy 1 KB 256, 259)

On 15 Jan 1999 Lord Browne-Wilkinson delivered his opinion in the House of Lords in re Pinochet.

The fundamental principle is that a man may not be a judge in his own cause. This principle, as developed by the courts, has two very similar but not identical implications. First is may be applied literally: if a judge is in fact a party to the litigation or has a financial or proprietary interest in its outcome then he is indeed sitting as a judge in his own cause. In that case, the mere fact that he is a party to the action or has a financial or proprietary interest in its outcome is sufficient to cause his automatic disqualification. The second application of the principle is where a judge is not a party to the suit and does not have a financial interest in its outcome, but in some way his conduct or behavior may give rise to a suspicion that he is not impartial, for example because of his friendship with a party. This second type of case is not strictly speaking an application of the principle that a man must not be judge in his own cause, since the judge will not normally be himself benefitting, but providing a benefit for another by failing to be impartial.

Acquaintanceship with one of the parties to litigation, preconceived notions on the merits of a dispute or strongly held beliefs may all constitute disqualifying bias. (R v Board of Visitors or Frankland Prison ex p Lewis (1986) 1 WLR 130).

I reached the conclusion without any difficulty that in assessing whether Mohtarma Benazir Bhutto has had a fair trial, the same principles would apply whether one looks at it from the viewpoint of various international enactments or the common law itself.

It is however interesting to note the interpretation in The European Court of Human Rights of article 6, where the court may not have found a specific right in its determination of whether there is a fair hearing, the court would look at it on a "trial as a whole" basis. In Barbera, Mesegue and Jabardo v Spain (1988) A 146 paras 68, 89, the court referred to the fact that the accused had been driven over 300 miles the night before the trial, the "unexpected changes" in the courts membership, the "brevity" of the trial, and "above all" the failure to adduce and discuss important evidence orally in the accused's presence as considerations that taken "as a whole" rendered the hearing unfair contrary to article 6 (i).

If there is a legitimate doubt as to a judge's impartiality, he must withdraw from the case. Huscholdt v Denmark (1989) A 154 para 50.

As the European Court has stated in "Fey v Austria (1993) A255B (1993)" what is at stake is the confidence which the courts in a democratic society must inspire in the public and, above all as far as criminal proceedings are concerned the accused.

I will not seek to answer the questions put to me.

1. Mohtarma Benazir Bhutto questions the impartiality of the Judges at her trial. One was a duly appointed Judge, the other was confirmed in his appointment following her conviction.

The following, amongst others, are the grounds for Ms. Bhutto believing the Court not to be impartial.

- a). When Mohtarma Benazir Bhutto was Prime Minister of Pakistan between September 1993 and November 5<sup>th</sup> 1996, her Government dismissed one of the Judges, namely Mr. Justice

Malik Muhammad Quayum. I am told that the father of the learned Judge was one of the Judges who ruled against Mohtarma Benazir Bhutto's father in the Supreme Court of Pakistan, and imposed the sentence of death upon him. (Annexure II Bias Trial attached to the Grounds of Appeal on behalf Ms. Bhutto in the Supreme Court of Pakistan.

b). The Supreme Court had transferred Mohtarma Benazir Bhutto's case from the Lahore High Court to Rawalpindi Bench of the Lahore High Court. The same Judge Quayum J. who was the Senior Judge then, having been appointed by the Chief Justice of the Punjab High Court came to Rawalpindi Bench personally to hear the Bhutto case. He was not a normal member of the Rawalpindi Bench of the Lahore High Court but he came, as I understand, to try the Bhutto case only.

Against the above background I would have thought there would need to be strong arguments of the necessity or the same Judge to have continued to hear the case against Mohtarma Benazir Bhutto apparently outside his normal jurisdiction. The perception of prejudice is strong and the fact of continuing to be involved after the case had been moved creates a perception of an unhealthy and undue interest in pursuing the Bhutto case.

From what I have been told and from an examination of the documents, the only safe way of proceeding would have been by way of a different Bench in Rawalpindi. In that case there would be no such perception of bias.

I am not in position to advise whether what transpired violated the constitution of the Islamic Republic of Pakistan 1973.

2. Whether the conduct of the case was itself unfair.

I take the points mainly in the order of the Petition of Appeal so far as applicable.

a) "the dropping: of the trial of the co-accused. It would seem to me from the only system I am familiar with that in the general sense it is properly in the province of the prosecution to decide not to proceed against any particular co-defendant either on evidential

or public interest grounds. I understand some were outside the jurisdiction at the time.

The inference that Mohtarma Benazir Bhutto sees to draw is that she and her husband were, and they only are the Defendants at this stage, specially targeted. This issue can be reconsidered when looking at "the case as a whole". It could be a factor not no more.

- b) A denial of the proper opportunity to defend herself,
  - i). the length of time the prosecution took compared with the decision of the Court to close the Defence within days.
  - ii). The appointment of the Commission to examine evidence in Switzerland.
  - iii). The failure to allow the expert evidence on Swiss Law to be called.

I think I would be going beyond my functions if I was to opine on any length on the above given my lack of expertise on the Pakistan law of evidence. Suffice it to say that had the Swiss expert been called he would have explained the status of the inquisitorial functions of the Swiss "Judge". The expert state in para 14 "investigative proceedings are of an investigative and not trial nature. Any evidence of whatsoever nature including statements and documents collected during the course of investigation and placed in the criminal file are of an investigative nature. As such there are not and may not be regarded other than hints or elements of evidence and in no way as legal public or proven evidence. ... Thus none of the documents or statements or statements in such a file...are of proven evidentiary value".

The documentary evidence in this case was crucial. The law of evidence in Pakistan I believe sets out the importance of original evidence. In any event under any jurisdiction non-original copies of evidence have to be properly proven in accordance with its own rules. It appears to me that an examination of documents in

French by a non French speaking commissioner is of minimal value. For reasons set out in the petition Mohtarma Benazir Bhutto was not represented in Switzerland.

I am not aware of the reasons why the Swiss legal expert, although he had arrived in Pakistan a little late it seems, was not allowed to be called to explain the above, On his Affidavit he would have wholly undermined the evidence of the Commissioner.

- c). The personal pressure of the accused given the fact that there was a number of trials occurring contemporaneously.

It appears that the Defence was under considerable strain because of the timing of hearing and the freezing of all the accounts of Mohtarma Benazir Bhutto and her husband.

Mohtarma Benazir Bhutto complains that her evidence was read in her absence which was contrary to her instructions, and of the failure to allow defence witnesses to be called. I understand that she was only allowed to be questioned. She did not give evidence in chief. She wished to do so after her new list of defence witnesses were called. This was refused. Making all allowances for my lack of knowledge of legal procedures in the case, it is plain that she was not given the opportunity to put her case properly.

The various matters set out in the Petition will undoubtedly be examined by the Supreme Court.

I reach the view that, -

- i). in the perception of Mohtarma Benazir Bhutto there was an undue haste for the proceedings to be brought to an end. There is substance in this.
- ii). I cannot quite understand the necessity for limitations of her evidence nor the disallowance of her defence witnesses neither do I understand the various matters set out in paragraph 24 of her petition, (annexe 1 hereof) to the Supreme Court and particularly the justification for them.

**Various acts of harassment are alleged of herself, her counsel and witnesses. They deserve close examination.**

The general principle is that the trial should be in public, there is not a necessity for it to be televised, indeed we do not allow it in English courts, and for her to be denied access to a court trying her would be grossly improper. What numbers of the public should be allowed in, and under what if any restrictions is necessarily a matter for the national state and/or the judge in all the circumstances, subject to the usual consideration that justice should be seen to be done.

The general principle developed is that there should be equality of arms between the Prosecution and the Defence and I find it difficult to countenance a situation where there is an allegation in paragraph 27 of the Petition that the Defence was either not allowed to put or unduly curtailed.

This is a matter to be judged against the normal principles of the law of evidence of Pakistan. Likewise any ruling appertaining to the non availability of Counsel has to be judged against the usual practice of the court.

What would be improper would be a denial to Ms. Bhutto of being able to put her defence properly for any of the above reasons, particularly if it was perceived as a plan to expedite the case against her under the direction of a court which continued to try her, contrary to the custom and practice of the judicial hearing system of Pakistan.

I find the circumstances set out in paragraph 24 of the petition add to the picture of unfairness. After a long trial it seems unreasonable to fetter the Defence in this way.

The court had indicated its wish for oral arguments of the Defence to be curtailed, and requested written arguments from the Defence in lieu, which in the event were not entertained and the court proceeded to judgement.

Looking at the case "as a whole" there are grounds for grave misgivings as to the fairness of the trial, namely,

- i) the fact that the senior Judge did not excuse himself from initially trying Ms. Bhutto in Lahore against the background that there would undoubtedly be a belief by her that he was not an appropriate person to try her.

- ii). The fact that unusually the Chief Justice of Punjab nominated the same Judge to hear the case at Rawalpindi, and he accepted the nomination.
- iii) The procedures in the case whereby after hearings of the prosecution case over a long period of time, the Defence was not allowed to be properly put. She was not allowed to lead her own evidence or to call the witnesses she desired.
- iv) The apparent irregularities initiated by the court of obtaining evidence from Switzerland to fill a lacuna in the prosecution case, and a refusal by the court to hear the Swiss legal expert for the defence.

**In a case where there was very great reliance by the prosecution on documentary evidence, it was imperative that such evidence including its provenance was properly proved and where disputed an opportunity to challenge it.**

1 The Ehtesab Act 1997.

I am not qualified to interpret the law of Pakistan with regard to the Ehtesab Act.

However I note the following

- i) The act shall come into force at once (Section 1 (3))
- ii) It shall apply to the holders of public office since the 6<sup>th</sup> day of November 1990 (Section 1 (2))

1990 was substituted for 1985, thereby excluding applicability to similar persons between 1985 and 1990.

- iii) The "holder of a public office" includes a person who "is, or has been" Prime Minister (Section 2 (1)(2))



- iv) The holder of a public office.....is said to commit the offence of corruption....
- a) if he accepts or obtains from any person any gratification, other than legal remuneration.....(Section 3 (i) (a))
- v) "nothing contained herein shall authorise the punishment of a person for an offence by a penalty greater than, or of a kind different from the penalty prescribed by law for that offence at the time the offence was committed. and the court while imposing a penalty may, if necessary, modify it to such extent as may be necessary" Section 29.

The charge against Mohtarma Benazir Bhutto is framed to deal with alleged irregularities from 16.11.93 to 5.11.96. The particular contract complained of is dated 29.9.94.

The offences alleged occur at a period before the Act's commencement which was "at once" in 1997. In this case, if there was no offence under the Act at the time in question, there could not be a proper prosecution.

If I am wrong in this, and the Act applies to certain office holders, who held office since the 6.11.1990, whose actions although alleged to have been committed before 1997 were nevertheless encompassed by the Act, it is nevertheless contrary to all the usual canons of interpretation of the common law as being retrospective.

Further the international enactments I have referred to earlier, refer to the necessity for the alleged misconduct to be a criminal offence "at the time" when it was committed.

It is a well understood principle that a criminal statute is not retrospective in its effect

I summarise the views of Lord Reid in DPP v Ottevell (1970) AC 642 at 649

- \* Penal statutes includes criminal and civil statutes imposing penalties

- \* If "after full inquiry and consideration, one is left in real doubt, the accused or person from whom the penalty is claimed must be given the benefit of that doubt"

Lord Esher in Tuck & Sons v Priester (1887) 19 QBD 629 at 638

- \* "If there is a reasonable interpretation which will avoid the penalty in any particular case, we must adopt that construction. If there are two reasonable constructions we must give the more lenient one. That is the settled rule for construction of penal sections."

McCullough J.R v Hallstrom, ex p W (No.2) (1986) 2 All ER 859

- \* "There is.....a canon of construction that Parliament is presumed not to enact legislation which interferes with the liberty of the subject without making it clear that this was its intention.

On page 48 of the Judgement of Malik Mohammad Quayum J. he said that the Ehtesab Act applied because "if the act was an offence at that time though under a different law, the trial under the new law does not in any manner violate the constitutional protection. In the present case, the action of the Respondents in awarding contracts for illegal gratification and receiving kick-backs was an offence under Presidential orders numbers 16 and 17 of 1997. As such there was no violation of a constitutional guarantee".

Maxwell "Interpretation of Statutes" 12 ed Sweet and Maxwell says

- "It is a fundamental rule of English law that no statute shall be construed to have a retrospective operation unless such a construction appears very clearly in the terms of the Act, or arises by necessary and distinct implication: West v G e (1 911) 2 Ch 1 per Kennedy LJ.
- However "The presumption is rebuttable even in the case of a penal enactment. So in DPP v Lamb (1 941) 2 KB 89, a provision increasing penalties for the contravention of the Defence (Finance) Regulations 1939 was held applicable to all

convictions after the new provision came into force, even though they were for offences completed before".

It seems to me that there is at least an ambiguity in the Ehtesab Act, had it been an English Statute it would not be construed to bite retrospectively. It can be distinguished from Lamb and our War Crimes Legislation which are unequivocal. On the other hand it could be asked why would the Act contemplate the non-retroactivity of its penalties if it did not seek to cover past acts?

Nevertheless adopting the words of Lord Reid, there must be real doubt as to whether the act is retrospective as regards an offence committed before. If that was the intention it should have said so.

There is nothing particularly unusual in the freezing of a Defendant's assets. It is frequently done in English courts particularly in drug related cases. What is important is to ensure either by the ring fencing of some assets or the provision of Legal Aid that a person is adequately defended. The usual principles of allowing a defendant to be heard before an order is made should be adhered to. This principle was contravened as the order was obtained on the ex parte application. The wrong in this case is that by freezing Ms Bhutto's assets, legal advice could not be properly prepared in time.

I am not in a position to opine on Article 248 (i) and 173 (iv) of the constitution of the Islamic Republic of Pakistan 1973.

It is alleged in Annexure 2 para (vii) relating to the Appeal that insufficient time was given to the Appellant to engage Counsel and for the preparation of the case in Rawalpindi. "When the appellant.....engaged counsel who happened to be in the court room on that date the said advocate was only given 24 hours to prepare the brief containing voluminous record and prepare cross examination of the prosecution witnesses".

There is considerable jurisprudence under Article 6 (iii) (b) of the European Convention that "there should be adequate time and facilities for the preparation of the Defence". It has been ruled that in the absence of one's own lawyer a Legal Aid lawyer must be appointed in good time, and if replaced for good reason, additional time must be allowed for the new lawyer to prepare the case. Goddi v Italy (1984). A.76.

In cases at the trial stage before the ordinary courts, the Human Rights Commission has accepted that a period of 17 days notice of the hearing in a fairly complicated case of misappropriation of funds was sufficient on the facts. X and Y v Austria (1978). 7909/77 ISDR 1 06.

Mohtarma Benazir Bhutto, given the voluminous nature of the evidence, would certainly come in a class of case which deserved substantial time for preparation.

It would be seen on the above yardsticks for representation, the court was very unsympathetic if not biased against Mohtarma Benazir Bhutto.

At my initial consultation it was noted "that Mohtarma Benazir Bhutto was not present at the sentencing. The hearing was brought forward. She was due back a week later".

In fact she had the court's permission to be absent at this time. In the normal course of events a person should be present at his sentencing. An opportunity is normally afforded to mitigate. However the judges here knew all the facts. It has also been noted "that Mohtarma Benazir Bhutto had been exempted from attending overlapping trials in different cities". I am not sure without further elucidation how far it could be said that the sentencing was expedited so as to avoid her being present.

I reach the view on the questions asked that,

- (i) The constitution of the court could give rise to a suspicion that it was not impartial, or a likelihood of bias or a reasonable suspicion of bias to Mohtarma Benazir Bhutto or any objective person. That is all that is required so far as the principles enunciated in re Pinochet, and by the authors of Hood and Phillips are concerned.
- (ii) There are a number of specific instances where there are strong grounds for believing the trial to be unfair.
- (iii) The absence of original documents before the court has to be judged against the law of evidence of Pakistan. The evidence of the commission to Switzerland was unsatisfactory and the failure to allow the defence Swiss law

expert to be called was of fundamental importance, particularly given the importance of documentary evidence in the case. I repeat these matters have to be considered in the context of law of evidence in Pakistan.

- (iv) There is doubt as to whether the Ehtesab Act was retrospective in which case the defendant must be given the benefit of that doubt.

3 Hare Court  
At 1 Little Essex Street  
London

sd/-  
Sir John Morris Q.C  
9-9-1999.

ANNEX 1

24. That later in the day after court hours transpired that a wholly false and maliciously motivated application was moved through the Deputy Attorney General at Karachi in the Sindh Province where it was misrepresented that Ehtesab Reference No. 30/98, had been fixed for hearing prior in time on 16-03-1999 and in view of the directions of the Supreme Court Ehtesab Reference No. 28/98 could not be fixed or heard on 18-03-1999. On such misrepresentation the Ehtesab Bench at Karachi postponed the hearing of the Ehtesab Reference observing that the next date would be given in the presence of the parties on the date fixed i.e. 18-03-1999. The fact to the contrary is that Ehtesab Reference No. 28/97 before the Ehtesab Bench of High Court of Sindh at Karachi was fixed for 18-03-1999 on 12-03-1999 and as such it was the titled Ehtesab Reference No. 30/98 pending before the Ehtesab Bench of Lahore High Court, Rawalpindi Bench which could not be fixed for 16-03-1999 as was rightly pointed out by Mohtarma Benazir Bhutto's counsel on 15-03-1999. Thus the fixation of hearing by the trial court on 16-03-1999 against the order of the Hon'ble Supreme Court was wholly void and could not be treated as a date of hearing at all and further postponement of the matter to 17-03-1999 was of no avail and was contumacious defiance to the authority of the Hon'ble Supreme Court of Pakistan. The order of postponement before the Ehtesab Bench of High Court of Sindh at Karachi having been obtained through fraud and deception cannot be considered as a valid deferment of that case. It stood confirmed that the date of hearing of Ehtesab Reference No. 28/97 before the learned Ehtesab Bench at Karachi was a lawful valid date and hence would remain as such. Any interception of the like nature cannot be conducive to the administration of justice and does not auger well with the respect and dignity of the August Court. An application was accordingly filed on 17-03-1999 requesting for adjournment of the Reference No. 30/98 but the same was dismissed without issuing notice to the Special Public Prosecutor and without hearing.



## **Legal Opinion of Eminent US Jurists**

**Synopsis of Opinion**

**By**

**David Harwell, Former Chief Justice,  
South Carolina, USA**

**and**

**Burley B. Mitchel, Former Chief Justice of the North  
Carolina, USA in the trial of**

**Mohtarma Benazir Bhutto and her husband**

**Senator Asif Ali Zardari**

**in the SGS Case**

In April 1999 Mohtarma Benazir Bhutto and her husband Asif Ali Zardari were convicted by the Rawalpindi Ehtesab Bench of the Lahore High Court of alleged acts of corruption under the retrospective Ehtesab (Accountability) Act of 1997, (the Act). The Act has since been repealed by a Presidential Proclamation on the removal of the Nawaz Sharif Government ostensibly on the grounds that it was an inappropriate piece of legislation which has been used by the Nawaz Sharif regime to eliminate its political opponents rather than effecting even handed accountability.

Throughout their trial both Mohtarma Benazir Bhutto and her husband continuously claimed that they were not being given a fair trial and that their trials were predetermined, bias and unfair from the outset. In short they claimed that Justice was not done and that their conviction was a result of a political vendetta by the now ousted and discredited Nawaz Sharif regime through its manipulation of the judiciary.

Sir John Morris Q. C. the former Attorney General of England and Wales had already opined that the trial was unfair when judged against certain universally accepted standards of fairness. In order to assess whether Ms. Bhutto and her husband's claims regarding the unfairness of their trial had any validity a further opinion was sought from the U.S. jurisdiction from two eminent U.S. jurists David W. Harwell, former Chief Justice of the Supreme Court of South Carolina and Burley B. Mitchell, former Chief Justice of the Supreme Court of North Carolina respectively. (The Justices).

The Justices after having reviewed the case record of the trial reached the conclusion that both Mohtarma Benazir Bhutto and her husband's trial would have been regarded as unfair when judged against the principles which govern fair trials in the U.S and that no U.S. Court would accept the judgement as valid for any purpose.

The Justices, amongst other things, opined that:

1. That Mohtarma Benazir Bhutto was denied any opportunity to present a meaningful defense to the charges.
2. An American Court would not recognize the conviction as valid in the United States.
3. Mohtarma Benazir Bhutto was denied the most rudimentary of due process protections: a trial before an impartial tribunal, the effective assistance of counsel and the right to present a defense.
4. (with regard to the senior presiding judge) the appearance of partiality is conclusively established and the evidence (on record) indeed may well be sufficient to establish the existence of actual bias.



5. The conferral upon Judge Quayum of diplomatic passports for himself and his wife, an act which appears to be unprecedented, following shortly after his issuance of a ruling against Mohtarma Benazir Bhutto is tantamount to a reward for a judicial ruling.
6. Mohtarma Benazir Bhutto's trial appears to epitomise the judiciary's abandonment of its independence - without which the impartial meting out of Justice is an impossibility.
7. In a case in which the prosecution presented 14 witnesses and in excess of 2000 pages of documentary evidence no trial lawyer could possibly have been prepared properly to try a case of such magnitude on one day's notice.
8. Because the constraints placed on Mohtarma Benazir Bhutto and her counsel by the Pakistani authorities were such that no lawyer could have provided timely effective assistance. Ms. Bhutto was denied her right to counsel.
9. The Court denied Mohtarma Benazir Bhutto any opportunity to present witnesses in her own behalf including even her own testimony.
10. The Court declined to hear the testimony of Mr. Salvatore Arosano, a Swiss lawyer who would have testified to his expert opinion on the admissibility of critical foreign documentary evidence despite his presence in court and an application to call him as a witness.
11. The circumstances (on record) establish a complete denial of the fundamental right to present a defense, a denial that seems to have been particularly pernicious because so much of the prosecution's case was based upon non-original documents the authenticity of which was never established.
12. No United States Court would countenance a criminal conviction following a trial in which only the

prosecution was permitted to call witnesses despite the accused's proper and timely requests to present the testimony of witness in his defence. Such a trial is anathema to the most fundamental commands of due process.

13. Mohtarma Benazir Bhutto's conviction was not obtained following a fair trial before an impartial tribunal and her conviction is thus utterly inconsistent with the most minimal of due process guarantees.
14. When measured against only the most basic and rudimentary due process guarantees the proceedings are found to be seriously deficient.
15. In our opinion no United States Court would accept the judgement against Mohtarma Benazir Bhutto for any purpose.
16. (As in this case) no verdict obtained following trial before a tribunal so redolent of bias against the accused and in which the accused was so blatantly denied the opportunity for meaningful assistance of counsel and the right to present a defence should be accorded respect in any jurisdiction that adheres to the rule of law.

**B**

**DETAILED LEGAL OPINION OF  
EMINENT AMERICAN JURISTS IN BHUTTO CASE**

**By**

**David Harwell Former Chief Justice South Carolina State and  
Burley B. Mitchel former Chief Justice of the State of North  
Carolina. USA**

**INTRODUCTION**

We have been requested to undertake a review of the proceedings before the Ehtesab Bench Lahore High Court, *State vs. Mohtarma Benazir Bhutto, et al.*, in Ehtesab Reference No. 30/1998. To facilitate our review, we have been provided with copies of the Submissions on Behalf of Mohtrama Benazir Bhutto, prepared by Farooq H. Naek for the Supreme Court of Pakistan, the opinion of Sir John Morris Q.C. (dated September 9, 1999), excerpts of the trial record, and the court's judgments.

Out of deference to the sovereignty of the Pakistani legal system, we will not opine on the ultimate validity of the charges brought against Ms. Bhutto. Indeed, the preparation of such an opinion by any disinterested jurist would be impossible, if only because Ms. Bhutto was denied *any* opportunity to present a meaningful defense to the charges. Without *all* of the pertinent evidence having been made part of the trial record, the ultimate merit of the prosecution's case must await a *fair* determination before an impartial tribunal.

The framework for our opinion derives from an established body of United States precedent governing the admissibility of foreign convictions in the United States federal courts. This body of precedent strikes a balance between respect for the sovereignty of foreign judgments and fundamental due process guarantees by permitting the introduction into evidence in United States trials of convictions obtained in a foreign country "provided that the procedural protections necessary for fundamental fairness are observed by the foreign jurisdiction." *United States v. Rodarte*, 596 F.2d 141, 146 (5th Cir. 1979) (citation omitted); *accord, e.g., United States v. Kole*, 164 F.3d 164, 174 (3d Cir. 1998), *cert. denied*, --- U.S. ---, 119 S. Ct. 1484 (1999); *United States v. Manafzadeh*, 592 F.2d 81, 90-91 (2d Cir. 1979); *United States v. Wilson*, 556 F.2d 1177, 1178 (4th Cir.), *cert. denied*, 434 U.S. 986 (1977). A

conviction obtained in another country that fails to accord fundamental due process in criminal proceedings will not be accepted as valid by a United States court. *E.g.*, *United States v. Rovetuso*, 768 F.2d 809, 816-17 (7th Cir. 1985), *cert. denied*, 474 U.S. 1076 (1986).

Sensitive to the prerogative of a sovereign state to select the modes of procedure for its criminal tribunals, the United States courts evaluate a foreign conviction “not by its conformity with every ingredient of what in American terms is fundamental criminal procedure, but ... by its conformity with those particular norms of American criminal procedures, jurisprudence constitutionalized, that are the particular domain of absolute rock bottom fundamental fairness.” *United States v. Moskovits*, 784 F. Supp. 183, 190 (E.D.Pa. 1991). Those “rock bottom” guarantees are historically ingrained in American constitutional jurisprudence as fair notice and a fair opportunity to be heard before judgment is pronounced. *Frank v. Mangum*, 237 U.S. 309, 326 (1915). “A person’s right to reasonable notice of a charge against him, and an opportunity to be heard in his defense — a right to his day in court — are basic in our system of jurisprudence; and these rights include, *as a minimum*, a right to examine the witnesses against him, to offer testimony, and to be represented by counsel.” *In re Oliver*, 333 U.S. 257, 273 (1948) (emphasis supplied). The failure to accord a fair hearing to the accused “violates even the minimal standards of due process.” *Groppi v. Wisconsin*, 400 U.S. 505, 509 (1971).

When Ms. Bhutto’s conviction is tested against these most fundamental precepts of American due process, it will be seen that the conviction cannot pass muster, *i.e.*, an American court *would not recognize* the conviction as valid in the United States. Ms. Bhutto was denied the most rudimentary of due process protections: a trial before an impartial tribunal, the effective assistance of counsel, and the right to present a defense.

## I. THE GUARANTEE OF A FAIR AND IMPARTIAL TRIBUNAL.

“A fair trial in a fair tribunal is a basic requirement of due process.” *In re Murchison*, 349 U.S. 133, 136 (1955). The United States Supreme Court repeatedly and stringently has enforced this fundamental aspect of due process. *E.g.*, *Weiss v. United States*, 510 U.S. 163, 178 (1994) (“[a] necessary component of a fair trial is an impartial judge”) (citations omitted). This due process right “is quite separate from the right to any particular form of proceeding,” *Peters v. Kiff*, 407 U.S. 493,

501 (1972), ensuring “an absence of actual bias in the trial cases.” *In re Murchison*, 349 U.S. at 136.

The protection against a biased tribunal lies at the very core of American constitutional law, having first been voiced in *The Federalist Papers* by James Madison:

No man is allowed to be a judge in his own cause, because his interest would certainly bias his judgment, and, not improbably, corrupt his integrity ....

THE FEDERALIST NO. 10, at 79 (James Madison) (Clinton Rossiter ed., 1961). As noted by Sir John Morris Q.C., the immediate past Attorney General of England and Wales, in his analysis of Ms. Bhutto’s conviction, the right to an unbiased tribunal is as deeply ingrained in Anglo-American common law. I WILLIAM BLACKSTONE, COMMENTARIES \*91 (“it is unreasonable that any man should determine his own quarrel”).

Moreover, due process protects against the *appearance* of bias: “[O]ur system of law has always endeavored to prevent even the probability of unfairness ....” *In re Murchison*, 349 U.S. at 136. Where the “situation is one ‘which would offer possible temptation to the average ... judge to ... lead him not to hold the balance nice, clear and true,’” the judge may not sit even if there is no *actual* bias against a party. *Aetna Life Insurance Co. v. Lavoie*, 475 U.S. 813, 822 (1986) (citation omitted). “[T]he appearance of even-handed justice ... is at the core of due process.” *Mayberry v. Pennsylvania*, 400 U.S. 455, 469 (1971) (Harlan, J. concurring).

“To this end no man can be a judge in his own case and no man is permitted to try cases where he has an interest in the outcome.” *Gutierrez de Martinez v. Lamagno*, 515 U.S. 417, 428 (1995) (citation omitted). Whether the tribunal before which Ms. Bhutto was tried is seen as actually biased or exhibiting the *mere appearance* thereof, the conviction could never withstand scrutiny under the most rudimentary of American constitutional principles. The available record reflects the following pertinent facts:

- (1) One of the two judges who heard Ms. Bhutto’s trial, Justice Malik Muhammad Quayum, was dismissed as a judge when Mohtarma Benazir Bhutto was Prime Minister of Pakistan.

- (2) Judge Quayum's father, when sitting as a judge of the Supreme Court of Pakistan, imposed a death sentence on Mohtarma Benazir Bhutto's father.
- (3) Judge Quayum was issued diplomatic passports for himself and his wife by Prime Minister Sharif in April 1998, following Judge Quayum's order freezing the assets of Mohtarma Benazir Bhutto and her husband. Judge Quayum is the only judge in Pakistan to have a diplomatic passport, and the Prime Minister overruled the Acting Foreign Secretary's decision to deny Judge Quayum's request because judges are not entitled to diplomatic passports.
- (4) In response to a statement by Mohtarma Benazir Bhutto expressing dissatisfaction that a judge with close links to the Sharif regime should be sitting on the tribunal hearing her case, Judge Quayum responded that, had he seen Mohtarma Benazir Bhutto's statement earlier, he would have denied bail to a member of Mohtarma Benazir Bhutto's party who had appeared before him.
- (5) Perhaps most disturbing is the fact that, following the transfer of Ms. Bhutto's case from Lahore to Rawalpindi, Judge Quayum traveled to Rawalpindi personally to hear Mohtarma Benazir Bhutto's case, although he is not a member of the Rawalpindi Bench of the Lahore High Court.
- (6) The second judge on the tribunal, Sayed Najam Kazmi, was unconfirmed at the time of the proceedings against Mohtarma Benazir Bhutto and was confirmed following the rendition of judgment against Mohtarma Benazir Bhutto.

The appearance of partiality is conclusively established by these facts, and the evidence indeed may well be sufficient to establish the existence of *actual* bias.

The conferral upon Judge Quayum of diplomatic passports for himself and his wife, an act that appears to have been unprecedented, following shortly after his issuance of a ruling against Mohtarma Benazir

Bhutto, is tantamount to a reward for a judicial ruling. The United States Supreme Court long has condemned *any* practice that would give rise to a personal temptation on the part of a judge to issue a particular ruling. *E.g., Ward v. Village of Monroeville*, 409 U.S. 57, 60 (1972); *Tumey v. Ohio*, 273 U.S. 510, 523-27 (1927). Certainly, it was reasonable for Mohtarma Benazir Bhutto to conclude that Judge Quayum received a reward from the Sharif government for his adverse ruling in her case and that Judge Quayum might well expect further rewards for returning a final judgment of conviction. This reasonable belief could only be reinforced by the fact of Judge Quayum's dismissal as a judge during Mohtarma Benazir Bhutto's term in office and by Judge Quayum's father having served on the tribunal that sentenced Mohtarma Benazir Bhutto's father to death.

**The United States Department of State's Pakistan Country Report on Human Rights Practices for 1998 finds that the Pakistani judiciary "is subject to executive influence, and suffers from inadequate resources, inefficiency, and corruption." Mohtarma Benazir Bhutto's trial appears to epitomize the judiciary's abandonment of its independence — without which the impartial meting out of justice is an impossibility.**

To conclude with the words of the United States Supreme Court in the landmark *Murchison* decision:

A fair trial in a fair tribunal is a basic requirement of due process. Fairness of course requires an absence of actual bias in the trial of cases. But our system of law has always endeavored to prevent even the probability of unfairness. To this end no man can be a judge in his own case and no man is permitted to try cases where he has an interest in the outcome. That interest cannot be defined with precision. Circumstances and relationships must be considered. This Court has said, however, that "Every procedure which would offer a possible temptation to the average man as a judge \* \* \* not to hold the balance nice, clear and true between the State and the accused denies the latter due process of law." Such a stringent rule may sometimes bar trial by judges who have no actual bias and who would do their very best to weight the scales of justice equally between

contending parties. But to perform its high function in the best way “justice must satisfy the appearance of justice.

349 U.S. at 136 (citations omitted).

## II. THE RIGHT TO COUNSEL.

It was in 1932, in *Powell v. Alabama*, 287 U.S. 45 (1932), that the United States Supreme Court declared that the Sixth Amendment to the Constitution of the United States, which amendment provides that in all criminal prosecutions the accused shall enjoy the right “to have the Assistance of Counsel for his defence,” is an essential component of the right to be heard in criminal cases. *Id.* at 68-69 (“[t]he right to be heard would be, in many cases, of little avail if it did not comprehend the right to be heard by counsel”). The Court also recognized that providing access to counsel “at such a time or under such circumstances as to preclude the giving of effective aid in the preparation and trial of the case” would “ignore the fundamental postulate ... ‘that there are certain immutable principles of justice which inhere in the very idea of free government which no member of the Union may disregard.’” *Id.* at 71-72 (citation omitted).

In *Gideon v. Wainwright*, 372 U.S. 335 (1963), the Supreme Court held that counsel must be appointed in felony cases for all defendants who are unable to afford retained counsel because “lawyers in criminal courts are necessities, not luxuries.” *Id.* at 344. As the Court explicated:

The right of one charged with crime to counsel may not be deemed fundamental and essential to fair trials in some countries, but it is in ours. From the very beginning, our state and national constitutions and laws have laid great emphasis on procedural and substantive safeguards designed to assure fair trials before impartial tribunals in which every defendant stands equal before the law ....

*Id.* The Court subsequently expanded the right to appointed counsel to individuals charged with lesser offenses, holding that, “absent a knowing and intelligent waiver, no person may be imprisoned for any offense, whether classified as petty, misdemeanor, or felony, unless he was



represented by counsel at his trial.” *Argersinger v. Hamlin*, 407 U.S. 25, 37 (1972) (footnote omitted).

The Supreme Court recognized, as early as the *Powell v. Alabama* decision, that the right to counsel contemplates representation by an attorney who is able properly to prepare to represent the accused at trial. 287 U.S. at 56-57. A “necessary corollary” of the right to counsel “is that a defendant must be given a reasonable opportunity to employ and consult with counsel; otherwise, the right to be heard by counsel would be of little worth.” *Chandler v. Fretag*, 348 U.S. 3, 10 (1954). The denial of such an opportunity is a denial of the right to counsel itself. *Avery v. Alabama*, 308 U.S. 444, 446 (1940). It is a denial of the basic right to a fair trial to force an accused to trial “with such expedition as to deprive him of the effective aid and assistance of counsel.” *White v. Reagan*, 324 U.S. 760, 763-64 (1945).

These venerable principles have been affirmed time and again by the United States Supreme Court. Noting that the passage of time “has not eroded the force” of the Court’s pronouncements in *Powell v. Alabama*, the Supreme Court reaffirmed the primacy of the Sixth Amendment right to counsel in *United States v. Cronin*, 466 U.S. 648 (1984):

An accused’s right to be represented by counsel is a fundamental component of our criminal justice system. Lawyers in criminal cases “are necessities, not luxuries.” Their presence is essential because they are the means through which the other rights of the person on trial are secured. Without counsel, the right to a trial itself would be “of little avail” as this Court has recognized repeatedly. “Of all the rights that an accused person has, the right to be represented by counsel is by far the pervasive for it affects his ability to assert any other rights he may have.”

*Id.* at 653 & n.8 (footnotes omitted; emphasis supplied).

The Court also reaffirmed in *Cronin* that the right to counsel contemplates the *effective assistance* of counsel:

The special value of the right to the assistance of counsel explains why “[i]t has long been recognized that *the*

*right to counsel is the right to the effective assistance of counsel.*” The text of the Sixth Amendment itself suggests as much. The Amendment requires not merely the provision of counsel to the accused, but “Assistance” which is to be “for his defence.” Thus, “the core purpose of the counsel guarantee was to assure ‘Assistance’ at trial, when the accused was confronted with both the intricacies of the law and the advocacy of the public prosecutor.” If no actual “Assistance” “for” the accused’s “defence” is provided, then the constitutional guarantee has been violated ....

*Id.* at 654 (citations omitted; emphasis supplied). “Unless the accused receives the effective assistance of counsel, ‘a serious risk of injustice infects the trial itself.’” *Id.* at 655 (citation omitted).

The documents with which we have been provided reflect that, following the transfer of the case against Mohtarma Benazir Bhutto from Lahore to Rawalpindi, Mohtarma Benazir Bhutto was provided a mere 24 hours within which to engage counsel before the proceedings against her commenced. In a case in which the prosecution presented 14 witnesses and in excess of 2000 pages of documentary evidence, no trial lawyer could *possibly* have been prepared properly to try a case of such magnitude on one day’s notice. Moreover, the appeal papers before the Supreme Court of Pakistan reflect that Mohtarma Benazir Bhutto, her husband, and their lawyers were subjected to harassment and intimidation during the course of the trial, *e.g.*, armed police in riot gear were deployed outside of the courtroom, Mohtarma Benazir Bhutto was repeatedly stopped and searched as she approached the courtroom, Ms. Bhutto was at times denied access to the trial, and entry to the courtroom was unreasonably restricted throughout the proceedings. Not even the most courageous and dedicated advocate could have provided competent representation under these grotesque circumstances. Because the constraints placed on Mohtarma Benazir Bhutto and her counsel by the Pakistani authorities were such that no lawyer could have provided truly effective assistance, Mohtarma Benazir Bhutto was denied her right to counsel. *United States v. Cronin*, 466 U.S. at 660-61.

### III. DENIAL OF AN OPPORTUNITY TO PRESENT WITNESSES.

The Sixth Amendment to the United States Constitution includes the guarantee of “compulsory process for obtaining witnesses” for the accused, by which guarantee the Framers intended to ensure that “defendants in criminal cases should be provided the means of obtaining witnesses so that their own evidence, as well as the prosecution’s might be evaluated” by the court. *Washington v. Texas*, 388 U.S. 14, 19-20 (1967). As the Supreme Court long has held, “the truth is more likely to be arrived at by hearing the testimony of all persons of competent understanding who may seem to have knowledge of the facts involved in a case.” *Rosen v. United States*, 245 U.S. 467, 471 (1918). The exclusion of relevant testimony on behalf of an accused thus violates the Sixth Amendment right to compulsory process. *Washington v. Texas*, 388 U.S. at 23.

The Supreme Court more recently has affirmed the fundamental nature of the right to present defense witnesses:

Whether rooted directly in the Due Process Clause of the Fourteenth Amendment, or in the Compulsory Process or Confrontation clauses of the Sixth Amendment, the Constitution guarantees criminal defendants “a meaningful opportunity to present a complete defense.” We break no new ground in observing that an essential component of procedural fairness is an opportunity to be heard. That opportunity would be an empty one if the State were permitted to exclude competent, reliable evidence bearing on the [defense] ... In the absence of any valid state justification, exclusion of this kind of exculpatory evidence deprives a defendant of the basic right to have the prosecutor’s case encounter and “survive the crucible of meaningful adversarial testing.”

*Crane v. Kentucky*, 476 U.S. 683, 690-91 (1986) (citations omitted); *accord, e.g., United States v. Scheffer*, --- U.S. ---, 118 S. Ct. 1261, 1264 (1998) (arbitrary exclusion of defense evidence violates right to present a defense).

“Few rights are more fundamental than that of an accused to present witnesses in his own defense,” and “this right is *an essential attribute of the adversary system itself.*” *Taylor v. Illinois*, 484 U.S. 400, 408 (1988) (citation omitted; emphasis supplied). As the Court elucidated in *United States v. Nixon*, 418 U.S. 683 (1974):

We have elected to employ an adversary system of criminal justice in which the parties contest all issues before a court of law. The need to develop all relevant facts in the adversary system is both fundamental and comprehensive. The ends of criminal justice would be defeated if judgments were to be founded on a partial or speculative presentation of the facts. The very integrity of the judicial system and public confidence in the system depend on full disclosure of all the facts, within the framework of the rules of evidence. To ensure that justice is done, it is imperative to the function of courts that compulsory process be available for the production of evidence needed either by the prosecution or the defense.

*Id.* at 709.

Because “[t]he right to compel a witness’ presence in the courtroom could not protect the integrity of the adversary process if it did not embrace the right to have the witness’ testimony heard by the trier of fact,” *Taylor v. Illinois*, 484 U.S. at 409, the right to offer testimony is guaranteed by the Sixth Amendment:

The right to offer the testimony of witnesses, and to compel their attendance, if necessary, is in plain terms the right to present a defense, the right to present the defendant’s version of the facts as well as the prosecution’s to the jury so it may decide where the truth lies. Just as an accused has the right to confront the prosecution’s witnesses for the purpose of challenging their testimony, he has the right to present his own witnesses to establish a defense. *This right is a fundamental element of due process of law.*

*Washington v. Texas*, 388 U.S. at 19 (emphasis supplied).

Mohtarma Benazir Bhutto's appeal papers affirmatively reflect that the court denied her *any* opportunity to present witnesses in her own behalf — **including even her own testimony**. The court appears to have "closed" Mohtarma Benazir Bhutto's defense and that of her husband after the conclusion of the prosecution's case, despite Mohtarma Benazir Bhutto's having listed a total of 39 witnesses to be called in her defense. Moreover, it appears that the court further declined to hear the testimony of Mr. Salvatore Aversano, a Swiss lawyer who would have testified to his expert opinion on the admissibility of critical foreign documentary evidence, despite Mr. Aversano's presence before the court and an application to call him as a witness. The court further declined to accept Mr. Aversano's affidavit into evidence as an admissible written statement. After denying that request, the court recessed, returning later the same day to announce the conviction and sentence.

The circumstances establish a *complete* denial of the fundamental right to present a defense, a denial that appears to have been particularly pernicious because so much of the prosecution's case was based upon non-original documents, the authenticity of which documents was never established. No United States court would countenance a criminal conviction following a trial in which *only* the prosecution was permitted to call witnesses despite the accused's proper and timely request to present the testimony of witnesses in his or her defense. Such a trial is anathema to the most fundamental commands of due process.

### CONCLUSION

To return to first principles, Mohtarma Benazir Bhutto's conviction was not obtained following a fair trial before an impartial tribunal, and her conviction is thus utterly inconsistent with the most minimal of due process guarantees. It bears reiteration that the proceedings against Mohtarma Benazir Bhutto have not been evaluated or tested against the full panoply of rights guaranteed to an accused under the United States Constitution, statutory provisions, or common-law protections. Rather, consistent with the established framework for testing foreign convictions in the United States courts, the proceedings have been measured against *only* the most basic and rudimentary of due process guarantees. As so measured, however, the proceedings must be found seriously deficient. In our opinion, no United States court would accept the judgment against Mohtarma Benazir Bhutto for *any* purpose.

No verdict obtained following a trial before a tribunal so redolent of bias against the accused and in which the accused was so blatantly denied the opportunity for meaningful assistance of counsel and the right to present a defense should be accorded respect in any jurisdiction that adheres to the rule of law.



## Legal Opinion

of

**Mr. Hodge Malek, Queen's Counsel and  
Mr. Andrew Tabachnik**

**in the Trial case of SGS and Cotecna against  
Mohtarma Benazir Bhutto and Mr. Asif Ali Zardari**

### INTRODUCTION

1. By a judgment of the Trial Court dated 15 April 1999, Mohtarma Benazir Bhutto was held to have violated the Ehtesab Act 1997. Her appeal to the Supreme Court of Pakistan is to be heard shortly. In relation to this appeal, we have been instructed to advise whether such appeal would have been likely to find favour with an English Court had the present case been tried by an English Court. In addressing this question, we have been asked to consider in particular:

(1) Whether the evidence before the Trial Court established offences under the Ehtesab Act 1997 by Mohtarma Benazir Bhutto beyond a reasonable doubt, in other words to the criminal standard of proof; and

(2) Whether the proceedings before the Trial Court violated Mohtarma Benazir Bhutto's right to a fair trial.

2. We advise on the basis of the documents from the trial and information supplied to us by Mr. Farooq H. Naek, who is retained to conduct the appeal itself. We are not qualified to advise on Pakistani law

and practice. We advise from the perspective of English law and practice. We are advised by Mr. Naek that, as one would expect, Pakistani law incorporates the fundamental principles of the common law that any criminal charge must be proved beyond a reasonable doubt to found a conviction, and that every accused is entitled to a fair trial and an opportunity to put on a defence. Our conclusions on these questions appear at paragraphs 16 - 17 below.

### THE EVIDENCE

3. It has long been enshrined in English jurisprudence that a criminal charge must be proven beyond a reasonable doubt: see *Woolmington v DPP* [1935] AC 462 at 481-2 where Viscount Sankey VC, speaking for the House of Lords, emphasised:

"Throughout the web of the English criminal law one golden thread is always to be seen, that it is the duty of the prosecution to prove the prisoner's guilt.... If at the end of and on the whole of the case, there is a reasonable doubt, created by the evidence given either by the prosecution or the prisoner ... the prosecution has not made out the case and the prisoner is entitled to an acquittal. No matter what the charge or where the trial, the principle that the prosecution must prove the guilt of the prisoner is part of the common law of England and no attempt to whittle it down can be entertained."

4. The convenient manner in which to consider the Trial Court's conclusions is to review in turn each of the following factual issues:

(1) Whether the manner in which the relevant PSI contract was awarded to SGS was (as the Trial Court concluded) an "eye-wash" or whether the award was transparent, open and regular.

(2) If the former, whether there was an agreement for the payment of "commissions" between SGS and Bomer Finance Inc ("Bomer").

(3) If so, whether Mohtarma Benazir Bhutto had knowledge of, or participated in, any dishonest scheme between SGS and Bomer.



5. In our view, unless the prosecution is able to establish each of these three elements beyond a reasonable doubt, the conclusion is inevitable that the conviction of Mohtarma Benazir Bhutto infringes Viscount Sankey VC's "golden thread".

(1) Government of Pakistan's award of the PSI contract to SGS

6. A central plank of the prosecution's case at the trial, and the Trial Court's decision, was that the award of the PSI contract to SGS was an "eye-wash", that it had occurred in a highly suspicious and irregular manner (in particular, because of the absence of a tendering process) and that, in short, it bore the hallmarks of a dishonest scheme from the very outset.

7. Our review of the evidence before the Trial Court on this topic indicates to us that, in fact, there is very real doubt as to this conclusion. At the very lowest, we do not regard the prosecution's case on this issue as having been proven beyond a reasonable doubt. Our reasons are as follows:

(1) The evidence appears to us to establish that the PSI contract was awarded as a result of an open, regular and transparent process. This process had commenced when the previous Nawaz Sharif administration had published, through the international press, a Tender Notice. SGS had been scrutinised by the Technical Sub-Committee of the Ministry of Finance and Economic Affairs, and approved as a qualified tenderer in light of its "vast experience and resources". Matters had not progressed at that stage to the award of a contract for unrelated reasons (such as budgetary considerations, and SGS's initial refusal to give a performance guarantee). Subsequently, the contract was awarded to SGS, but only following detailed negotiations as to the terms and conditions of the contract between SGS and senior Government officials (from the Finance Ministry, the Customs Department and the Law and Justice Division), and on the unanimous recommendation of the Cabinet Committee, the Central Board of Revenue, the Customs Department and the International Monetary Fund. In view of such wide scrutiny of the award to SGS by Government officials from a wide range of Departments, we have difficulty understanding why the Trial Court characterised the award to SGS as "surreptitious" (para 79 of the Judgment).

(2) The ultimate decision to award the PSI contract to SGS was taken by a thirteen person Cabinet Committee, and not by Mohtarma Benazir Bhutto alone. The prosecution made much of the fact that the minutes of Mr Siddiqui's presentation and the subsequent decision to award the contract to SGS are brief. A more plausible inference is that the case for award to SGS had been convincingly made by his presentation (and the papers circulated in advance). There appears to have been no evidence before the Trial Court to indicate other than that the decision to award the PSI contract to SGS was taken in accordance with the fundamental constitutional principle of collective cabinet responsibility. This principle was described as follows by Lord Salisbury in *Life of Robert, Marquis of Salisbury* (Vol II, p219-220):

"For all that passes in Cabinet every member of it who does not resign is absolutely and irretrievably responsible and has no right afterwards to say that he agreed in one case to a compromise, while in another he was persuaded by his colleagues ... It is only on the principle that absolute responsibility is undertaken by every member of the Cabinet, who, after a decision is arrived at, remains a member of it, that the joint responsibility of Ministers to Parliament can be upheld and one of the most essential principles of parliamentary responsibility established."

(3) The Trial Court expressed the view that a further tendering exercise should have been carried out before award of the PSI contract to SGS. With great respect, this appears to us to be a most unfair criticism. None of the very large number of senior Government officials involved in the negotiation and completion of the SGS contract (from the Cabinet Committee, the Finance Ministry, the Customs Department and, most significantly, the Law and Justice Division) ever suggested that such a course be adopted.

(4) The award of the PSI contract to SGS appears to have been enormously beneficial to Pakistan. The Ferguson report indicates that the "cost : benefit" ratio is 1 : 6.9; in other words that, for every rupee paid to SGS in fees, SGS has ensured the collection of 6.9 rupees which would otherwise have been lost to

Pakistan. Thus, assuming that fees of about Rs. 150 million were paid to SGS during the contractual period, the resulting benefit to Pakistan in terms of revenue that was collected that would not otherwise have been would be in the region of Rs.1.035 billion. This, in our view, is a substantial argument against holding that the award of PSI contract to SGS was a highly suspicious "eye-wash". We do not consider that it was addressed, convincingly or at all, by the Trial Court.

(5) The Trial Court criticised (at paragraph 105 of the Judgment) the terms of the SGS contract as being excessively generous to SGS. Again, this seems to us to be an unfair criticism, unsupported by the evidence. In particular, documents attached to the Reference itself (Annexes O and P) evidence that SGS insisted on the relevant terms. No doubt this was the quid pro quo for the performance guarantee given by SGS in its 2nd June 1994 letter. Further, as the benefits to Pakistan set out in the Ferguson report indicate, SGS was well worth the Government's concessions on the points in question.

(6) Finally, but of great significance, there does not appear to have been any credible evidence before the Trial Court to indicate that, whether "behind the scenes" or in the course of the relevant Cabinet Committee meeting, Mohtarma Benazir Bhutto made any corrupt or dishonest attempt (or, indeed, any attempt at all) to influence the judgment of other members of the Cabinet Committee (or of other Government officials who dealt with this contract). Without highly probative evidence addressing this issue, and in light of the other matters considered above as to the apparently regular, open and transparent manner in which the SGS contract was awarded, we consider that the prosecution should have failed at this threshold question.

(2) Scheme for payment of "commissions" by SGS to Bomer

8. The prosecution's case (accepted by the Trial Court) was that a scheme had been set up whereby Bomer was paid by SGS 6% of invoices rendered by the latter to the Government of Pakistan, and that Bomer was a company beneficially owned by Mohtarma Benazir Bhutto and her husband Asif Ali Zardari.

9. Again (and without addressing questions as to the admissibility of the various documents, which are issues of Pakistani criminal procedure beyond the scope of this Joint Advice), our view is that the prosecution's case has not been proved beyond a reasonable doubt. We set out below the reasons for our opinion that reasonable doubt exists on this question:

(1) One of the prosecution's principal witnesses (number 14) admitted during his cross-examination that "It is correct to suggest that these companies [i.e, including Bomer] are not owned by Mohtarma Benazir Bhutto and Asif Ali Zardari": p10 of the 16/2/99 transcript. We are most surprised that this concession, which in our judgment is highly damaging to the prosecution's case, appears to have been completely ignored by the Trial Court in its Judgment.

(2) Much emphasis was placed on a "mandate agreement", purportedly between Asif Ali Zardari and one Schlegelmilch (who is said to have been the Swiss "administrator" of the "kick-back" scheme between SGS and Bomer). Such reliance is, in our judgment, unwarranted. First, the "mandate agreement" appears to suggest that a "request" was, on or about 25th June 1991, made by Asif Ali Zardari for Schlegelmilch to act as "sole director-president" of Bomer. But this is impossible, because Asif Ali Zardari was imprisoned in Karachi Jail between 28th October 1990 and 6th February 1993. Second, although purportedly "made and executed in Geneva", there was no evidence at the trial that Asif Ali Zardari was ever in Geneva, let alone that he was there when the (undated) "mandate agreement" was executed. Third, it is noteworthy that the "mandate agreement" is undated, and that the amount of the "agent's fee" has not been completed.

(3) Much emphasis was also placed on an agreement dated 11th March 1994, purportedly between Bomer and SGS. Fundamentally, however, the original of this document has never been found. Particularly where, as in this case, questions had been raised as to whether signatures had been forged, we are surprised that this factor did not lead the Trial Court to disregard entirely the 11th March 1994 agreement. It is, of course, extremely difficult, if not impossible, to resolve questions as to

the authenticity of signatures on a photocopied document in the absence of the original.

(4) We next consider the various payment orders and related documentation that were said to demonstrate that money (at the rate of 6% of invoices rendered) was in fact paid by SGS to Bomer. This documentation is, to our minds, some evidence that payments were made. But, can it be said that this evidence was sufficient to resolve the question in the prosecution's favour beyond a reasonable doubt? In our judgment, no. We would have expected that, by the time of the trial, the prosecution were able to, and did, produce, in addition to this documentation, other records that would have been of a far more probative (indeed, an unchallengeable) nature, namely bank statements. Without such independent and incontrovertible corroboration (the absence of which evidence has, so far as we are aware, never been explained by the prosecution), it seems to us that there is (at the very least) a reasonable doubt as to whether the Trial Court should have concluded (as the defence contended) that the documents in question were no more than the product of an elaborate forgery perpetrated by others.

(5) Finally, we turn to the handwritten ledger which the prosecution contended (and the Trial Court accepted) recorded payments into and out of an account apparently held by Bomer at UBS. Again, in our judgment, the prosecution did not convincingly answer the defence's challenges to this document. There was no evidence as to whose handwriting was on the ledger, and no explanation as to why payments in 1994 are recorded on the ledger (in contrast with the prosecution's acknowledgement that SGS did not commence performance of the PSI contract until 1995). Such questions could to a large extent have been resolved upon the production of the relevant bank statements from UBS. In our judgment, failure to produce (or make any attempt to explain the absence) of such records is fatal to the charges in this case.

(3) Knowledge or participation by Mohtarma Benazir Bhutto.

10. The final part of the prosecution's case (again, accepted by the Trial Court) was that Mohtarma Benazir Bhutto had herself knowingly

participated in, and benefitted from, a dishonest scheme involving "kick-backs" from SGS to Bomer.

11. We are bound to say that we regard the prosecution's evidence on this crucial question as extremely weak. Our reasons, in brief, are as follows:

(1) Perhaps the most crucial evidence relied on in this context by the Trial Court was the issue of the jewellery. In our opinion, such evidence was highly unconvincing. There was not, in our view, any satisfactory evidence connecting Mohtarma Benazir Bhutto with the jewellery. First, there was no evidence as to where the jewellery had been found (other than somewhere "in Geneva"). Accordingly, there was no evidence that the jewellery was seized from, say, a locker or bank vault owned or controlled by Mohtarma Benazir Bhutto, or an associate of hers. Second, there was no evidence that Mohtarma Benazir Bhutto had bought the jewellery in question (indeed, this was denied by the jeweller, Mr Chatila, in his 4th May 1999 affidavit) or had ever worn or been seen with it. Third, in any event, there was no convincing evidence that the source of the purchase of the jewellery was Bomer. Fourth, we are, again, considerably surprised that the Trial Court relied in this context (see paragraph 101 of the Judgment) on the assertion of M. Devaud that Mohtarma Benazir Bhutto "has at her free disposal" the Bomer account. This assertion -- which appears to us to amount to nothing more than hearsay -- is not supported or corroborated by any of the evidence that was before the Trial Court.

(2) Reliance was also placed by the Trial Court on alleged visits to Pakistan, and indeed to the Prime Minister's House in May 1995, of Schlegelmilch. However, the evidence in this regard fails, in our judgment, to establish the connection between Schlegelmilch and Mohtarma Benazir Bhutto beyond reasonable doubt standard of proof. We take this view for the following reasons. First, Schlegelmilch's name does not appear in the relevant visitors' book. The Trial Court found that this was "on account of the person making entries [being] unfamiliar with [a] foreign name like Jens Schlegelmilch" (paragraph 103 of the Judgment). While such a scenario is, of course, a possibility, we do not consider the Trial Court's conclusion satisfactory in the

absence of any evidence from the person making the relevant entries as to his or her actual or probable state of mind at the material time. Second, proof of Schlegelmilch visits to Pakistan is, by itself, of little weight or materiality. Many foreign businessmen visit Pakistan, and stay, during their visits, at the Marriot Hotel, Islamabad. Third, in order to connect Schlegelmilch with Mohtarma Benazir Bhutto, we would have expected the prosecution to have adduced either eye-witness evidence of meetings between the two, or some other compelling evidence (such as letters or phone records) linking the two. In the absence of such evidence, we regard the prosecution's case on this point as weak and unconvincing.

(3) The overwhelming bulk of the (considerable) documentation before the Trial Court had no apparent connection with, and made no reference to, Mohtarma Benazir Bhutto. Mention of her does not appear in the "mandate agreement", the 11th March 1994 agreement, or the documents which are said to evidence payments from SGS to Bomer. Certainly, it is beyond question that her signature appears nowhere amongst this vast documentation.

### **THE FAIRNESS OF THE TRIAL COURT PROCEEDINGS**

12. As stated above, we have also been instructed to express our view as to the fundamental fairness of the proceedings before the Trial Court. We are able so to do quite shortly. In our judgment, the Trial Court proceedings were highly prejudicial and unfair to the defendants, and, in our opinion, an English Court would hold that such flaws were so fundamental that the convictions should, for that reason alone, be quashed. Our reasons are essentially twofold.

13. First, we consider the participation of Malik Muhammad Quayum J as the presiding member of the Trial Court gives rise to a reasonable suspicion of bias within the meaning of the test stated recently by the House of Lords in *R v Bow Street Metropolitan Stipendiary Magistrate ex p Pinochet Ugarte (no 2)* [1999] 1 All ER 577. The basis of this conclusion is:

(1) Malik Muhammad Quayum J (whose father was part of the Supreme Court panel that imposed the death penalty on Mohtarma Benazir Bhutto's father) was dismissed as a Judge during the administration of Mohtarma Benazir Bhutto. This factor alone ought to have been a sufficient basis for the Judge recusing himself from the case.

(2) We are informed that, on the direct instructions of (then) Prime Minister Nawaz Sharif, the Judge and his wife were issued with diplomatic passports, though there was no good reason for such an exceptional course (which, significantly, overruled an earlier refusal of the Acting Foreign Secretary) being adopted. Of greater concern still is the fact that notice of (then) Prime Minister Nawaz Sharif's decision was apparently passed to the Judge direct from the Ehtesab Bureau itself, a matter of days after he (the Judge) had issued an order freezing the assets of Mohtarma Benazir Bhutto and Asif Ali Zardari. If the foregoing is correct, one inference is that the diplomatic passports were a reward for issuing the freezing order, in which event it hardly needs saying that the Judge should not have adjudicated on the prosecution's charges.

(3) The Judge travelled from Lahore (where he ordinarily sits, and where this prosecution commenced) to Rawalpindi apparently for the specific purpose of adjudicating on this case. The impression created is most unhealthy.

14. Second, it is, of course, a fundamental pre-requisite of a fair trial that the defence be permitted an opportunity of presenting a defence. Expression of this principle is enshrined in the Universal Declaration of Human Rights 1948, the European Convention on Human Rights 1950, and the International Covenant on Civil and Political Rights 1966. In our view, the defendants were denied by the Trial Court a full and fair opportunity to present their defence to the charges. Our reasons for so concluding are:

(1) Salvatore Aversano, an important defence witness on the question of the admissibility of the Swiss documentation, was



not permitted to give either oral or written evidence to the Trial Court, even though he was present in court on 15th April 1999. There appears to be no good reason (inter alia, in view of the gravity of the charges and the severity of the punishments to which a conviction would render the defendants liable) for refusing to hear M. Aversano's evidence. We are bound to say that we find the Trial Court's decision to bar his evidence extraordinary.

(2) We are also of the view that there was no sufficient justification for the decision of the Trial Court refusing Mohtarma Benazir Bhutto permission to call her desired witnesses on 22nd March 1999.

(3) We are informed that Mohtarma Benazir Bhutto was given only 24 hours to engage and brief a lawyer when the case was transferred to Rawalpindi. If this is so, the convictions should, in our opinion, be quashed for this reason also. The weight and complexity of the documentation in this case (which has taken us considerably longer than 24 hours to read) plainly demonstrates that this was a woefully inadequate amount of preparation time.

15. We note that allegations are also made as to systematic harassment and intimidation of witnesses and lawyers. The veracity of these allegations has not been tried, or properly determined. In these circumstances, it is not for us to express a view as to whether they are supported by evidence. Assuming, however, that the Supreme Court holds that they are well made out as a matter of fact, it seems to us that, for this reason alone, the convictions must be set aside.

### CONCLUSION

16. In summary, for the reasons we have discussed above, we consider that there is serious doubt as to the reliability and fairness of Mohtarma Benazir Bhutto's conviction. Our view is that, on the evidence with which we have been provided, an English Court would quash the convictions and dismiss the charges against her on the basis

that none of the essential elements of the charges has been proved beyond a reasonable doubt.

17. In our judgment, it is also the position that the proceedings against her were conducted in a highly unfair and prejudicial manner. We consider that the procedural irregularities in this case were so serious that they would in and of themselves persuade an English Court to overturn the Trial Court's decision.

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February 2000



## **Frame up in Murtaza Murder Case**

Senator Zardari has been denied his right to liberty and is currently imprisoned for the fourth year running. He has not been convicted by any impartial or fair court as defined under international jurisprudence. He suffers from spondylitis and cannot get proper medical treatment in prison.

Several courts have already given the Senator medical bail but the authorities continue to hold him in prison to pressure former Prime Minister Benazir Bhutto.

Senator Zardari has been exonerated of the charge of conspiring to kill his brother in law by a Judicial Inquiry headed by a Supreme Court Judge which found no evidence against the Senator. In fact, the Judicial Inquiry, whilst exonerating the Senator, blamed other "higher authorities" who until today have remained uninvestigated. To harass Zardari, he is still being tried for the offence in violation of the high powered judicial finding.

Recently, Senator Zardari moved an application that his family's torment should be ended by his acquittal as all the witnesses to the conspiracy charge had been examined and did not implicate him. Yet, just to make him and his family suffer, the application was discharged on the grounds that it was premature.

The facts are that the first police report was filed on the day of the incident which reported that armed guards of Mir Murtaza Bhutto had fired on police personnel who fired back. As a consequence, Mir Murtaza Bhutto and others were tragically killed. The counter police report (F.I.R. No. 443/96), on which the trial commenced, was drafted by leading Lawyers and presented to Sindh High Court Sindh in draft form and, after seven weeks, lodged before police. This counter report did not name Senator Zardari. Yet he was dragged into the case to defame the Pakistan Peoples Party of which he is a member and which the large majority of Pakistanis support.

In a bid to frame the Senator, the case was shunted from officer to officer. It has been examined, at different times, by four different police officials and two judicial magistrates were also suspended who declined to record fabricated statements allegedly by witnesses in police custody. The case was also amended by a military team which interrogated the Senator (a Joint Investigation Team) although the law did not provide for them to do so. This was in December 1996.

The case was sent for trial on 30-11-96 with an incomplete Challan (report). Six months later the final report was put in over the objections of the defence that it was time barred. More than two hundred witnesses were cited to delay matters and the defence was denied witness statements for a long period.

Apprehending that the over two hundred witnesses were meant for a political objective, the defence filed an application asking the prosecution to name the conspiracy witnesses who were pertinent to the case of the Senator. This was allowed in September 1997 and the prosecutor named twenty witnesses as pertinent to conspiracy. The Prosecutor examined 14 Witnesses and gave up the rest.

None of the conspiracy witnesses provided evidence that the firing took place as part of a conspiracy between Senator Zardari and one of the participants in the firing. There is no evidence of the date, time and place where Senator Zardari conspired with other co-accused because no such meeting took place nor such evidence exists. Conspiracy was manufactured for political purposes to destabilise democracy in the country and overthrow the government elected by the people of Pakistan.

The court record clearly shows:

That there is no evidence, direct or circumstantial, on record to establish any conspiracy by Senator Zardari.

That Prosecution failed to prove conspiracy, common object, common intention to murder or attempt to murder by Senator Zardari as required under Pakistani penal law (Section 120-A, P.P.C.) The

Prosecution failed to show that Senator Zardari met with any of the other co-accused to conspire the murder of Mir Murtaza Bhutto through illegal means by showing it as an overt act of police encounter.

The prosecution witnesses were more concerned with deposing that Mir Murtaza Bhutto disliked his brother in law. But they failed to show that Senator Zardari disliked his brother in law making the dislike one way.

Even if the prosecution witness statements that political differences amount to personal dislike is accepted, it cannot substitute for a motive for murder. In fact, if it is accepted, it can be used against the Prosecution witnesses on the same principle that out of political enmity they have trumped up charges against the Senator.

Keeping in mind that the Inquiry Tribunal, consisting of a Supreme Court Judge and two High Court Judges has found that there is no evidence of conspiracy against Senator Zardari available after examining 136 government witnesses, it is a travesty of justice that Senator Zardari continues to face proceedings in this case. It is all the more cruel in that none of the conspiracy witnesses could provide an iota of evidence. It is also noteworthy that there is not a single independent witness on conspiracy. All conspiracy witnesses are members of the Shaheed Bhutto group who may themselves have developed differences with Murtaza Bhutto over his meeting with his sister in July 1996 and sought a change of leadership by joining those who conspired against the PPP government. Certainly, the death of Mir Murtaza Bhutto benefited those who were enemies of the Bhutto family.

The proceedings against Senator Zardari, given the Inquiry report and the conspiracy witness statements, is inhuman and reflects poorly on the justice system of Pakistan. It also damages the standing of the country as one where the elected representatives of the people are treated in a brutal manner out of tune with the march of the rest of the civilisation.



## **Is Politician Alone to Blame?**

by

Mian Raza Rabbani

In today's Pakistan the fashionable thing is to lay the blame of corruption, default in bank loans, failing of the systems, derailment of democracy and indeed the crisis of civil society and the State on the shoulders of the political parties. I do not intend to defend my class through these columns. I admit our part in the decay and rot of the systems.

The Federation of Pakistan is at the edge of the precipice. To resurrect it, a realistic and dispassionate appraisal of facts, individuals and institutions is required. In the 50 years of Pakistan the whipping horse of our society has been the politician who periodically has paid for his alleged sins, but the degradation of society continues. The reason being that an evaluation of the vested interests, the pressure groups and the institutional interests that exert authority in our polity has been confined. In order for the nation, society and the Federation to survive a "National Confession" is required, where each individual and institution has the moral courage to admit its part in the degeneration of society.

For many a year two members of the elite power lobby, namely the civil bureaucracy and the fundamentalists, have initiated a systematic and scientific campaign against the political worker. The purpose, to monopolise the policy formation and decision making process, while on the other hand to enter the corridors of power through the back door, respectively. The electoral history of Pakistan shows that the fundamentalists have never polled more than 3% of the votes cast in any

general election. Thus their assent to power through a free and fair election is a far cry, this gives rise to the nexus with the civil bureaucracy to discredit and eliminate the genuine political forces in order to maintain and attain State power.

Before going any further, what is the crux of Pakistan's problem? It may sound all too simple but in actual fact it is "the denial and lack of sanctity given to the expression of the will of the people." To attain and maintain this, the power elite has resorted to compromise, corruption, abuse of power, favoritism and nepotism. These are the ills that have permutated into the body polity and fiber of our society. What is the Will of the people of Pakistan? To be governed in accordance with law through their elected representatives, wherein the principles of democracy, freedom, equality, tolerance and social justice are fully observed; the State ensures the elimination of all forms of exploitation and fulfilment of the principle of, "from each according to his ability to each according to his work."

The will of the people has found expression in the Objectives Resolution, which is Article 2A, in the Preamble and in Articles 3,4 and 5 of the Constitution. In the long, arduous struggle of the masses against civil and military dictatorship. How do the people seek a translation of these principles? As envisaged in the Constitution i.e. a Federal, Parliamentary democracy. It is the continuous negation in history of this intent of the people that has given birth to the crises of civil society and the State.

As one ravel the pages of Pakistan's turbulent political history, to the dismay of some, the politician does not stand alone instead at moments he is the victim of the nexus between the civil – military bureaucracy assisted by Judgements rendered by certain individuals in the Judiciary. History does not hold the politician alone as the villain.

A glance into our past shows that on the 24<sup>th</sup> October 1954 the Governor-General, Mr. Ghulam Muhammad, a bureaucrat, through a Proclamation dissolved the Constituent Assembly that was drafting the Constitution. The real reason for the dissolution was that it was clipping the powers of the Governor-General, to wrest powers from the bureaucracy and to prevent him from dismissing a Ministry, which enjoyed the confidence of the majority on the floor. This was to be achieved by the 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Amendment Acts, 1954 to The Government of India Act.

On the 25<sup>th</sup> October 1954, Ghulam Mohammad moved to reconstitute his Council of Ministers. The President of the Constituent Assembly, Maulvi Tamizuddin Khan moved the Chief Court of Sindh

against the Federation of Pakistan through a writ of mandamus, seeking to restrain the enforcement of the Proclamation. A Full Bench of the Chief Court of Sindh held that the dissolution of the Assembly was a nullity in law, the Assembly, the Office of the President of the Assembly existed. The Order also dealt with the powers of the Governor-General,

The Federation of Pakistan went into appeal against the said Order. A full Bench of the Federal Court of Pakistan held that section 223-A of the Government of India Act, under which the Chief Court of Sindh had assumed jurisdiction to issue writs, had not been assented to by the Governor-General, therefore, the Court had no jurisdiction to issue the writ. The main Judgement was written by Muhammad Munir, CJ while Cornelius J. dissented. The first derailment has taken place and been given validity. Maulvi Tamizuddin's case is a turning point in our constitutional history.

The Constitutional vacuum so created, the Governor-General sought to validate Acts of the Constituent Assembly by issuing The Emergency Powers Ordinance (IX of 1955). This act was adjudicated in Usif Patels case. The Court held that the power to legislate for making provisions in the Constitution could be exercised only by the Constituent Assembly. The Governor-General was not competent to issue an ordinance on a constitutional matter. The Court also expressed disappointment that the Ordinance made no reference to elections. In the meantime the Governor-General made a Reference to the Federal Court, being Special Reference No. 1 of 1955. This was answered on the 16<sup>th</sup> May 1955, wherein the Court reiterated its earlier position in the Tamizuddin case and held that the Governor-General had the power to validate laws under the Common Law of Civil and State Necessity. The Court held that it was the duty of the Governor-General to bring into existence a representative Assembly. He could not nominate persons but only determine the manner in which they are chosen. The new Assembly would be competent to excise powers conferred by the Indian Independence Act, 1947 on the Constituent Assembly. A new Constituent Assembly came into being on the 7<sup>th</sup> July 1955. The Assembly adopted the Constitution Bill on the 29<sup>th</sup> February 1956. Maj. General Iskander Mirza was elected as the President designate.

Iskander Mirza was a ruthless bureaucrat, he appointed Ch. Mohammad Ali, a former head of the civil service, as Prime Minister. Mirza did not allow him a free hand; as a result he resigned. Mr. Hussain Shahid Suhrawardy was elected as Prime Minister in September 1956 at the head of a coalition Government. As Suhrawardy made efforts to forge an alliance with the Members of the Punjab and advised the



President to summon the Assembly he was compelled to resign. The reason being that like Ghulam Mohammad, Mirza felt that the decision making would shift to the Assembly to the exclusion of his Office. The common factor in both the cases is the challenge to the power of the individual, both bureaucrats, posed by the Assembly.

Malik Feroz Khan Noon was appointed the Prime Minister, under patronage of the Presidency a vote of no confidence was moved against the Speaker of the National Assembly on the 23<sup>rd</sup> September 1958. An engineered assault was made on the Deputy Speaker, a few days later he died. On the 7<sup>th</sup> October 1958, the President abrogated the Constitution he gave assent to. The Proclamation dismissed the Central and Provincial Governments, dissolved the National and Provincial Assemblies and banned all political parties, Martial Law was imposed. General Ayub Khan was made the Chief Martial Administrator. The civil and military oligarchies had completed the take over.

On the 27<sup>th</sup> October, 1958 the Supreme Court of Pakistan having Mohammad Munir as the Chief Justice, in Dosso's case held the coup d'état as successful and satisfying the test of efficacy thus giving it legal sanctity. On the next day of the Judgement the President resigned in response to message delivered by three Cabinet Ministers all Lieutenant-Generals and Ayub became the President. The Judgements delivered by CJ Mohammad Munir in the Moulvi Tamizuddin Khan case, Governor-Generals Reference No. 1 of 1955 and in the Dosso case had a tremendous bearing on the constitutional development of Pakistan. The derailment of democracy and denial of the will of the people, which commenced in 1954, was complete and sanctified at every step.

The nexus between the various power élites during that period is spelt out in the book, FRIENDS NOT MASTERS and also in an article of Justice Munir, in The Pakistan Times of September, 1968 from which it comes to light that the drafting of the Laws (Continuance in Force) Order promulgated by the Martial Law regime of Iskander Mirza, to which his Bench later gave validity, was within his knowledge. It is also a matter of record that Ayub Khan appointed Justice (rtd.) Munir as his first Law Minister under the 1962 Constitution.

Ayub Khan gave the 1962 Constitution along with his "decade of progress" which needs to be gone into at another time. The accumulative effect of the Ayub era was that Pakistani history saw the greatest uprising of the people against his economic and political policies. As a consequence on 25<sup>th</sup> March 1969, in an address to the nation he admitted his rejection by the people of Pakistan. Ayub Khan wrote to General Yahya Khan calling upon him to discharge his "constitutional and legal"

duty. Yahya acted promptly and by a Proclamation issued on the 26<sup>th</sup> March 1969, abrogated the Constitution, dissolved the National and Provincial Assemblies and imposed Martial Law. Yet again the author of the Constitution presides over its abrogation.

General Yahya on the 31<sup>st</sup> March promulgated the Provisional Constitution Order on the lines of the Laws (Continuance in Force) Order, 1958. In June of the same year a Full Bench of West Pakistan High Court in the case of Mir Hassan & others versus. The State declared that, the action of any authority including the Martial Law Authorities had to have the backing of a constitutional provision. As a consequence of this Judgement the CMLA promulgated an Order called The Jurisdiction of Courts (Removal of Doubts) Order of 1969. This Order took away the jurisdiction of the superior Courts with retrospective effect. There was no judicial protest against the Order.

Elections were held in December 1970 by Yahya under the Legal Framework Order, which was promulgated on the 30<sup>th</sup> March 1969. The events that followed are a tragic part of our history, reflecting our resistance to devolution of power and failing in recognizing the economic and political rights of the Units that make up the Federation. As a consequence of the events Yahya was forced to step down and detained. Mr. Bhutto was asked to take over being the leader of the majority Party as the President and Chief Martial Law Administrator on 20<sup>th</sup> December 1971. The National Assembly met and gave him a vote of confidence, an Interim Constitution was adopted by the National Assembly on the 17<sup>th</sup> April 1972 and Mr. Bhutto was inducted as the President under the Constitution. The Supreme Court of Pakistan in the case of State versus Zia-ur Rehman gave legitimacy to the Government and validity to the then Constitution. It also held that the National Assembly, as it then was, had the authority to frame a Constitution. This led to the unanimous passage of the 1973 Constitution.

Malik Ghulam Gilani, a member of the National Assembly and Mr. Altaf Gauhar were arrested and detained under orders of the Martial Law Administrator. Miss Asma Jilani and Mrs. Zarina Ghauhar challenged the arrests in the High Courts, their Petitions were dismissed. They appealed to the Supreme Court where both the appeals were disposed of by a single Judgement in Miss Asma Jilani's case. The decision in the Dosso case was over ruled, the Court set a great wrong to the people of Pakistan right, and held that Yahya was a usurper, the statement of law contained in the Dosso case was not correct law and had led the country to deviation.

Justice Yaqoob Ali made the following observation in Asma Jilani's case;

“ ----- . A country which came into being with a written Constitution providing for a parliamentary form of Government with distribution of State power between the Executive, Legislature, and the Judiciary was soon converted into an autocracy and eventually degenerated into military dictatorship. From now onwards people, who were the recipients of the delegated sovereignty from Almighty, ceased to have any share in the exercise of State powers. -----.”

As a sequel to an international conspiracy the democratically elected Government of Mr. Bhutto was ousted by a military coup on the 5<sup>th</sup> July 1977. The coup came in the wake of an agreement being arrived at between the PPP and the PNA. General Zia-ul-Haq put the Constitution in “abeyance” and arrested the political leadership of the country. In his address to the nation the Dictator said, “-----My sole aim is to organise free and fair elections, which would be held in October this year-----.” Many an October came but it seems the icy winds blew the elections and the will of the people away.

On the 27<sup>th</sup> July 1977 Mr. Bhutto was released only to be rearrested on the 3<sup>rd</sup> September 1977 in Kasuri's murder case. Mr. Justice Samdani granted him bail on the 13<sup>th</sup> September 1977, however, he was rearrested on the 17<sup>th</sup> September 1977. The detention was challenged in the Lahore High Court by Begum Nusrat Bhutto, through W.P No. 3732 of 1977. A Full Bench on the 14<sup>th</sup> March 1978 directed the regime to produce the detainees in Court on the 19<sup>th</sup> March, but the Order of the Court was not complied with. In fact the Petition kept pending subsequent to his assassination.

Begum Bhutto also moved the Supreme Court in its original jurisdiction. The matter was taken up for hearing on the 20<sup>th</sup> September 1977, Mr. Justice Yaqub Ali was the Chief Justice. The Court ordered the transfer of Mr. Bhutto and others to Rawalpindi and adjourned the case to the 25<sup>th</sup> September. As a result Zia the dictator issued CMLA No.6 of 1977 on the 22<sup>nd</sup> September, which amended Article 2 of (Laws Continuance in Force) Order 1977, the effect was that the amendments made to Articles 179, 195 and 199 by an Act were deemed not to have been amended and in Article 8 of CMLA No.1 a new proviso was added which meant that the incumbent of any office who would have retired from office in the absence of the amendments in the Constitution will cease to hold office forthwith. The purpose behind this exercise was to remove Chief Justice Yaqub. The new Chief Justice was Mr. Justice Anwar-ul-Haq. It will be recalled that Mr. Justice Anwar-ul-Haq was a

direct affectee of the Constitutional amendments that kept the incumbent in office. As a result when the Court reassembled on the 25<sup>th</sup> September 1977 there was a new Chief Justice and the orders of the Court for the transfer of the detainees were never complied with.

The case was heard by a Full Bench of the Supreme Court from the 20<sup>th</sup> September till the 1<sup>st</sup> November 1977. Without at this stage going into details of the arguments the Chief Justice concluded; the Court was not persuaded that the Constitutions of 1962 and 1973 were not valid. There was also no justification for the suppression of the view adopted by the Court in Asma Jilani's case. The crux of the Judgement was, "Having found the extra-Constitutional step taken by the Armed Forces of Pakistan was justified by requirements of State necessity and welfare of the People it is now necessary to examine its legal consequences." In its conclusions on this plain the Court was of the view; that the 1973 Constitution was the supreme law of the land subject to the condition that certain parts were held in abeyance; the President and the superior courts function under the Constitution, the fact that the Judges have taken a new oath under the PCO does not derogate from this position; the CMLA is entitled to perform all such acts and promulgate all legislative measures including the power to amend the Constitution which the judicial authorities recognise as falling within the scope of the law of necessity. The Court did not deem it appropriate to issue any directions as to a definite time table for elections.

Zia defaced the Constitution and made it unique in the world by including his name in the document. The insertion of Article 58(2)(b) saw the dismissal of four elected Governments, the role played by Ghulam Ishaq, a bureaucrat was no different to Ghulam Mohammad or Iskander Mirza and like in history the back up support was ready and waiting. It is interesting to note that in all interruptions of the will of the people the *raison d'être* is the same namely, the political system has failed, the politicians are corrupt, the democratic process has to be kept on hold till accountability is not completed, economy has to be revived and a system responsive to the people has to be brought into existence. History is witness that each has carried out accountability and given his brand of democracy. The 1956 and 1962 Constitutions that gave the "desired" system were asked to be abrogated by their own "authors." The 1973 Constitution adopted by the genuine political forces has withstood the onslaught of civil and military dictators, having a moral binding that they also shudder to tamper with.

The repeated failure on the part of the major power elite to arrive at an equilibrium has resulted in the creation of very strong vested

interests such as bank loan defaulters, big business, feudal, drug Mafia and the fundamentalist who are not ready to yield to change. It is their lust for power and maintaining the status quo that results in a change of partners ever so often but sees no change in the system. This is substantiated when you divide our history into the period the country has been under Martial Law or regimes stemming thereof, politicians supported and brought into power through manipulated elections and the genuine political forces who come to power through the people. The later does not account for more than 15 years out of the 50 years of our national existence.

Where then lies the fault? The purpose is not to shift the blame or responsibility but after 50 years to arrive at a correct synthesis to build a new, which is possible when each individual and institution in Pakistan picks up the moral courage to admit in public its part in the "betrayal" of the will of the people. For then the nation can look forward to the redressal of the historical wrong done to the Federation and her people.