**[Incomplete justice](https://www.dawn.com/news/1820207/incomplete-justice)**

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THE state-sponsored judicial murder of Zulfikar Ali Bhutto (ZAB), a key founder of both mass democracy and constitutionalism in Pakistan, is a historical and legal fact which very few independent and fair observers will deny.

But the reality is that until March 6, 2024, the state institutions involved in the tragic episode were in official and judicial denial. The Supreme Court of Pakistan (SC), in its [opinion dated March 6](https://www.dawn.com/news/1819573/sc-says-conditions-of-fair-trial-due-process-not-met-in-zulfikar-bhuttos-trial), 2024 on Presidential Reference No.1 of 2011, has partially cleared this dark stain on the Pakistani state and its judicial institutions.

**Incomplete justice for PPP:** In order to provide justice to ZAB, there was a major constitutional and legal problem. ZAB’s appeal and review were dismissed by the SC and his [death sentence](https://www.dawn.com/news/1160422) had already been executed in 1979. In other words, once the SC decides a case finally on appeal or review then it has no constitutional power to review and set aside the judgement, ie, the doctrine of finality of judgements.

But oddly, instead of taking the internationally recognised route of passing fresh legislation to review cases of injustices, like ZAB’s case, or invoking other legal remedies, the then PPP government filed [Presidential Reference No.1](https://www.dawn.com/news/617944/reference-filed-in-sc-for-review-of-bhutto-case) in 2011 to set aside the conviction and the death sentence awarded to ZAB.

The SC framed five questions in the presidential reference. Firstly, it asked if the decision of the Lahore High Court and the SC met the requirements of fair trial and due process in the ZAB case, and if not, what were the consequences. The SC opinion has partially answered this question in the affirmative by holding that the “proceedings of the trial by the Lahore High Court and of the appeal by the Supreme Court of Pakistan do not meet the requirements of the fundamental right to a fair trial and due process”. But the court answers the later part of the question in the negative by holding that the “Constitution and the law do not provide a mechanism to set aside the judgement … the said judgement has attained finality”.

Secondly, was the SC judgement in the ZAB case a binding precedent for all other courts in Pakistan? The SC opinion answers this question in the negative by holding that the reference is defective because it doesn’t specify the principle of law enunciated in the ZAB case.

Thirdly, would maintaining the death sentence of ZAB amount to deliberate murder? Also, after reappraisal of the evidence, could the conviction and death sentence of ZAB have been recorded? These were questions three and five, and both were answered in the negative by holding that there can be no reappraisal of evidence and a previous SC decision cannot be undone in an advisory jurisdiction under Article 186 of the Constitution.

Fourthly, did the ZAB decision fulfil the requirement of Islamic laws? The SC opinion answers this question in the negative by holding that no assistance was rendered by the counsels on this question.

Will the judges remain in their ivory towers or see the reality of political injustice in Pakistan?

As can be seen from the above, nearly four out of the five questions in the presidential reference were dismissed as they were answered in the negative. Moreover, the SC has neither set aside the conviction of and death sentence against ZAB nor formally acquitted him of the murder charge.

**Judicial courage, duty and creativity:** Faced with a presidential reference, which was defective in text and had also wrongly invoked Article 186 of the Constitution (advisory jurisdiction) to set aside the conviction and sentence passed against ZAB in 1979, the SC showed courage, a sense of duty, and creativity to do justice.

Firstly, it showed the courage to accept and rectify to a certain extent the grave injustice committed against ZAB as well as the Bhutto family and PPP workers. More importantly, by accepting this grave injustice, it has admitted to the collusion between the superior judiciary and the military dictatorship of Gen Ziaul Haq to subvert democracy, constitutionalism, fundamental rights and judicial independence in Pakistan.

Secondly, it showed a high sense of duty to provide partial justice to ZAB by holding that his trial and the appeal proceedings were unfair and lacked due process.

Thirdly, the court showed remarkable creativity; it recognised that it could not set aside ZAB’s conviction and sentence, but held that the trial and appeal proceedings were unfair and lacked due process. Thus, the SC has completely delegitimised the conviction and death sentence against ZAB on grounds of unfairness and the lack of due process. After this SC opinion, the ZAB conviction judgement exists as a testament to a legally proven grave injustice.

**Relevance and selective justice:** Great decisions must fulfil the twin criteria of excellence and relevance. No doubt, the SC opinion is brilliant but the public discourse wonders if it is relevant to contemporary times. It asks: wouldn’t such an opinion by the SC only be relevant if the principles of fairness and due process are also applied to the tsunami of contemporary political victimisation unleashed against Imran Khan and the PTI?

Do the [three criminal convictions](https://www.dawn.com/news/1810889) against Imran Khan not violate every principle of fairness and due process enshrined in the Constitution? In short, will the judges continue to live in their ivory towers or descend to the reality of political injustice in Pakistan?

Secondly, as the SC opinion notes, judges must decide “without fear or favour, affection or ill-will”. The honourable judges of the SC should seriously consider why a substantial section of the citizenry views even judicially correct judgements as examples of selective justice, for example, the removal of lifelong election disqualification and the ZAB SC opinion as appearing to favour only certain political parties.

Thirdly, as the SC opinion also notes that we must “acknowledge our past mistakes”, will it graciously consider revisiting its recent judgement, widely seen as erroneous, in the PTI bat symbol case?

Unless the above perception of irrelevance and selective justice is rectified, this brilliant SC opinion will sadly also be perceived as incomplete justice by the people of Pakistan.

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