

Scenario 212

SC's 20TH APRIL VERDICT DISECTED:

More than a year after the Panama papers were leaked to the public, Pakistan's Supreme Court delivered its verdict on the case as it ordered the formation of a Joint Investigation Team [JIT] to probe how the money of the prime minister's family was transferred abroad.

The petitioners had touted the revelations brought forth in the Panama Papers, published by the International Consortium of Journalists [ICIJ] on 3rd April 2016, as 'evidence' that the premier had lied to the nation in an address to Parliament where he 'explained' his position after leaks.

The Panama Papers, which referred to a massive trove of secret documents leaked from Panamanian law firm **Mossack Fonseca** — which specialised in helping the global elite stash wealth in offshore tax havens — had said that the PM's children, Maryam, Hassan and Hussain Nawaz ***"were owners or had the right to authorise transactions for at least eight offshore companies"***.

The revelations had raised serious concerns regarding the legitimacy of the family's wealth, offshore holdings and business interests, and catalysed opposition parties to rally for the investigation or resignation of the prime minister and his family members.

Maryam Safdar had initially dismissed the documents as a distortion of information, but the prime minister had to eventually relent and order a judicial probe into the allegations raised by opposition parties. In a televised address, the premier also attempted to document his family's financial history and said he was open to a probe.

There was a protracted tussle seen on who would lead the commission [the PTI wanted the sitting chief justice, ***while the PMLN approached at least 5 ex-SC judges; each of them refused***] and the terms of reference of the inquiry [which neither government nor opposition could come to terms on]; a second televised address [***in which the premier said he would resign if proven guilty***]; a landmark parliamentary speech in which a sitting prime minister defended himself on the floor of

the National Assembly; and mounting pressure from the Army and opposition parties, after which the case finally landed in front of the Supreme Court.

13 DAMNING REMARKS BY J KHOSA:

Justice Asif Saeed Khan Khosa, the head of the SC's bench on Panama-gate, wrote a very powerful dissenting note [*five member bench was split 2:3 in its verdict*] saying that [PM] Nawaz Sharif was not truthful. Below are excerpts from his notes - Justice Khosa wrote while dissenting:

1. Justice Khosa quoted from 'The Godfather':

*"The popular 1969 novel '**The Godfather**' by Mario Puzo recounted the violent tale of a Mafia family and the epigraph selected by the author was fascinating: **Behind every great fortune there is a crime. — Balzac**"*

{The novel was a popular sensation which was made into an acclaimed film. It is believed that this epigraph was inspired by a sentence that was written by Honoré de Balzac... in French as:

Le secret des grandes fortunes sans cause apparente est un crime oublié, parce qu'il a été proprement fait.

[The secret of a great success for which you are at a loss to account is a crime that has never been found out, because it was properly executed]

It is ironical and a sheer coincidence that the present [Panama] case revolves around that very sentence attributed to Balzac...}

Justice Khosa later added:

"I may, therefore, be justified in raising an adverse inference in the matter. The fortune amassed by respondent No.1 is indeed huge and no plausible or satisfactory explanation has been advanced in that regard. Honoré de Balzac may after all be right when he had said that behind every great fortune for which one is at a loss to account there is a crime."

"In the above mentioned sorry and unfortunate state of affairs a conclusion has appeared to me to be unavoidable and inescapable that in the matter of explaining the wealth and assets respondent No.1 has not been honest to the nation, to the nation's representatives in the National Assembly and even to this Court."

2. ...other institutions failed or refused to probe Nawaz:

"These petitions had been entertained by this Court in the backdrop of an unfortunate refusal / failure on the part of all the relevant institutions in the country like the National Accountability Bureau [NAB], the Federal Investigation Agency [FIA], the State Bank of Pakistan [SBP], the Federal Board of Revenue [FBR], the Securities and Exchange Commission of Pakistan [SECP] and the Speaker of the National Assembly to inquire into or investigate the matter or to refer the matter to the Election Commission of Pakistan against respondent No.1 [Nawaz Sharif]."

3. a PM could not have a 'field day':

"If this Court stops short of attending to the issue merely because it involves some disputed or intricate questions of fact then the message being sent would be that if a powerful and experienced Prime Minister of the country appoints his loyalists as heads of all the relevant institutions in the country which can inquire into or investigate the allegations of corruption, then a brazen blocking of such inquiry or investigation by such loyalists would practically render the Prime Minister immune from touch-ability or accountability and that surely would be nothing short of a disaster."

"It is said that how high-so-ever you may be the law is above you. It is in such spirit of democracy, accountability and rule of law that this Court would not give a Prime Minister / Chief Executive of the Federation a field day merely because no other remedy is available or practicable to inquire into the allegations of corruption, etc. levelled against him or where such inquiry involves ascertainment of some facts."

4. J Khosa held 'Nawaz was not truthful':

*"It had not been disclosed as to how and through which resources the **respondent's father had established 6 new factories within 18 months of nationalization of Ittefaq Foundries,***

especially when statedly the entire savings of the respondent's elders stood obliterated and wiped out."

*"It is also strikingly noticeable that in that speech there was no mention whatsoever of **setting up of any factory in Dubai which was sold in 1980**. That speech also failed to disclose any detail of the funds available or procured for **setting up of the factory near Makkah**."*

"It was maintained in that speech that the funds generated through sale of the factory near Makkah were utilized by respondent No.1's sons namely Mr. Hassan Nawaz Sharif and Mr. Hussain Nawaz Sharif for setting up their business. It had been maintained by respondent No.1 that through that speech he had made the entire background of his family's business clear to his countrymen and that he had informed them about all the important stages of the family's journey in business."

*"He had proclaimed that what he had disclosed were the **"true facts"**. I have, however, found that that was not the case and unfortunately respondent No.1 had economized with the truth on that occasion."*

"Even a layman can appreciate, and one does not have to be a lawman to conclude, that what had been told to the nation, the National Assembly or even this Court about how the relevant properties in London had been acquired was not the truth. A pedestrian in Pakistan Chowk, Dera Ghazi Khan (a counterpart of Lord Denning's man on the Clapham omnibus) may not have any difficulty in reaching that conclusion."

5. How were London properties acquired?

"There was absolutely no explanation offered in that speech as to how the relevant four properties in London had been acquired and respondent No.1 had never stated on that occasion that he had no concern with the ownership of those properties or that no money belonging to him had been utilized for their acquisition."

"On April 22, 2016 respondent No.1 addressed the nation again on the subject on radio and television but that speech did not contain any specific information about the resources or assets of the respondent and his family. Again, no explanation whatsoever was

offered in that speech as to how the properties in London had been acquired."

6. Dubai Factory was not mentioned in PM's addresses:

"On May 16, 2016 respondent No.1 read out a written speech in the National Assembly which was broadcast and telecast live on radio and television and this is what he said on that occasion: [4:19] A careful reading of that speech made by respondent No.1 shows that it was for the first time that any mention had been made therein by the respondent to setting up and sale of a factory in Dubai as no mention of the same was made by the respondent in his first or second address to the nation on the issue."

"It had been stated in the latest speech that in the year 1999 the entire record of the family's business had been taken away by the authorities and the same had not been returned despite repeated requests but later on in the same speech respondent No.1 had categorically stated that the entire record and documents pertaining to the Dubai and Jeddah factories was available and that such record could be produced before any committee or forum!"

7. J Khosa asked 'Factory was in Makkah or Jeddah':

*"The first address to the nation mentioned setting up of a steel factory near Makkah but the speech made in the National Assembly referred to a steel factory in Jeddah. In the first address to the nation respondent No.1 had claimed that the proceeds of sale of the steel factory near Makkah had been utilized by his two sons for setting up their business but in the speech made in the National Assembly he had changed his earlier stance and had maintained that the generated resources had been utilized for **"purchase of the flats in London."***

"Even in that speech respondent No.1 had never stated that he had no concern with the ownership of those properties or that no money belonging to him had been utilized for their acquisition."

8. PM said - record was available; his lawyer said - NO:

*"The story about '**purchase**' of the relevant properties in London had taken yet another turn at a subsequent stage. 78. Although it had specifically and repeatedly been said by respondent No.1 on*

*the floor of the National Assembly in the above mentioned speech that the entire record relevant to the setting up and sale of the factories in Dubai and Jeddah was available and would be produced whenever required yet when this Court required Mr. Salman Aslam Butt, Sr. ASC, the then learned counsel for respondent No.1, on December 07, 2016 to produce or show the said record he simply stated that no such record existed or was available and that the statement made by respondent No.1 in the National Assembly in that respect was merely a **'political statement'!**"*

"It may be pertinent to mention here that in the evening preceding the said stand taken by the learned counsel for respondent No.1 before this Court an interview was telecast on Geo News television wherein Mr. Haroon Pasha, the chief financial advisor of respondent No.1 and his family, had stated before the host namely Mr. Shahzeb Khanzada that the entire record about Dubai and Jeddah factories was available and that the said record had been handed over to respondent No.1's lawyers and now it was for those lawyers to present it before the Court."

9. J Khosa 'shocked' by attempt to suppress facts:

*"In one of his **interviews with Mr. Javed Chaudhry on Express News television on March 07, 2016** Mr. Hussain Nawaz Sharif, respondent No.7, had also categorically maintained that the entire record pertaining to acquisition of the four properties in London was available with the family and the same would be produced before any court looking into the matter.*

Such state of affairs has been found by me to be nothing but shocking as it tends to be an attempt to suppress the relevant facts and the truth and to mislead the Court. Mr. Haroon Pasha and Mr. Hussain Nawaz Sharif have never denied or contradicted the contents of the above mentioned interviews."

*"There may be many definitions of the word 'honest' but deliberate withholding or suppression of truth is not one of them and the same is in fact an antithesis of honesty. **I am, therefore, constrained to declare that respondent No.1 has not been honest to the nation, to the representatives of the nation in the National Assembly and to this Court** in the matter of explaining possession and acquisition of the relevant four properties in London."*

10. Story about Qatar business - an afterthought:

"Even the story about investment in real estate business in Qatar and the subsequent settlement of that business was also, thus, nothing but an afterthought. It may also be pertinent to mention here that in his three speeches mentioned above and also in his concise statements submitted before this Court respondent No.1 had never said a word about any investment by his father in any real estate business in Qatar and funds generated through a settlement of that investment being utilized for acquisition of the properties in London whereas through their concise statements submitted before this Court by his children that was the only source of funds through which the said properties had been acquired in the name of respondent No.7 namely Mr. Hussain Nawaz Sharif."

11. Hassan Nawaz was rolling in money:

"All those businesses of respondent No.8 (Hassan Nawaz) were going on and the said respondent was rolling in money in England for many years before June 2005 when, according to respondent No.1 (Nawaz Sharif), the sale proceeds of the factory in Jeddah had been given to his sons for setting up their business.

Nothing has been produced by respondent No.1 before this Court to rebut the above mentioned documents based upon the British public record."

12. Story about Al-Thani family lost credibility:

"That story about investment in the real estate business of Al-Thani family in Qatar has taken many turns in this case and has, thus, lost its credibility. In their first concise statement jointly filed by respondent No.1's children they had never mentioned that story."

*"In their subsequent concise statements they adopted that story as their only story. However, in their last Joint and Further Concise Statement (**Civil Miscellaneous Application No. 432 of 2017 filed on January 23, 2017**) the sons of respondent No.1 gave the story another twist. The previous story was about an "investment" made by late Mian Muhammad Sharif in the real estate business of Al-Thani family in Qatar but through their last story advanced through the above mentioned concise statement it was maintained by respondent No.1's sons that the proceeds of sale of the factory in Dubai (**12 million Dirhams**) had been*

'placed with Sheikh Jassim' Al-Thani who 'retained' the amount with an assurance of just and equitable return."

"According to the latest story there was no investment involved in the matter and the services of a member of Al-Thani family of Qatar had been utilized only for parking of the relevant amount with him, probably as a bank!"

"It appears that close friendship between Al-Thani family of Qatar and respondent No.1 and his family has stood the test of time. It is proverbial that a friend in need is a friend indeed. Being a foreign dignitary Mr. Hamad Bin Jassim Bin Jaber Al-Thani is held by me in high esteem yet the information about him available on the Internet is unfortunately quite uncharitable."

13. Nawaz + his family were evasive: J Khosa

"On the basis of the discussion made in the earlier part of this judgment the explanations advanced by respondent No.1 in respect of the four properties in London and even in respect of his and his family's businesses and resources have been found by me to be nothing but evasive and the statements made by him in that regard have appeared to me to be contradictory to each other.

The explanations advanced by him have also been found by me to have remained utterly unproved through any independent evidence or material and, hence, the same were quite likely to be untrue.

Even the children of respondent No.1 have not been able to bring anything on the record to show that the explanations advanced by respondent No.1 were or could be true and correct."

WIN-WIN POSITION FOR ALL:

Since mid 2016; Pakistani Prime Minister Nawaz Sharif was troubled by the Panama Leaks uproar and trial, which could have cost him his post but after the decision was out, he could breathe a sigh of relief.

There had been huge media hype in Pakistan, with many people, particularly supporters of Imran Khan, hopefully the judges would disqualify PM Sharif but the SC bench issued a split decision - two judges in favour of

the prime minister's disqualification, while the remaining three ordered further investigation into the corruption scandal - thus brought Pakistani politicians on their toes afresh.

The judges wrote in decision what the PM had already said in his letter dated 22nd April 2016 - that a commission should be constituted to investigate the matter. The PML[N] reiterated that:

"We are ready for all kinds of investigation. It has been established today that any evidence or sacrifices given by our opponents in the Supreme Court were not enough. We have succeeded."

According to some legal experts, the papers collected or downloaded and placed before the court by the PTI lawyers were not necessarily evidence of corruption, as using offshore structures is entirely legal. But irrespective of its legality, the political repercussions of the scandal were immense for PM Sharif and his family.

A damaging verdict nonetheless because the opposition parties though accepted the apex court's decision but asked the prime minister to resign **'on moral grounds'**. The popular voices were that:

"The Supreme Court's judgment in the Panama Leaks is 'morally damaging' for Prime Minister Sharif. The premier cares about this kind of damage or not but in any civilized country, the head of government would have tendered his resignation in this situation.

The judicial commission cannot work independently if the premier remains in charge.

The ruling Muslim League party is celebrating the verdict prematurely. The sword is still hanging over the prime minister's head - the case is not over yet.

The SC should also have ordered Sharif to step down [temporarily] as PM to allow independent investigations. Sadly, it didn't."

Despite the hype around the corruption scandal, some analysts held that Prime Minister Nawaz Sharif was **'victimized'** by the country's powerful military establishment being very sceptical of him due to his repeated attempts to improve ties with India.

PM N Sharif's supporters said that corruption scandals involving politicians were not a new occurrence in Pakistan. Former President Asif Ali Zardari had been accused of massive corruption, and there were graft allegations against the military Generals [in April 2016] as well, but hardly anyone from the army was tried. Ali Chishti, a defence analyst held that:

"The Panama Leaks scandal in Pakistan is more a political issue than legal. There have been bigger corruption scandals in the country; none attracted that much attention.

Thursday [20th April 2017]'s verdict in the case is, however, a victory for PM Sharif."

The fact remained that SC's said decision was actually a victory for everyone. The opposition said that two judges on the bench asked for PM Sharif's removal, while the ruling party PML[N] could rejoice that there was no immediate threat to the prime minister's job.

The five-judge bench said it was not satisfied with regards to the money trail provided by the Sharif family's counsels and ordered the formation of a JIT to investigate the Sharifs' business dealings abroad. The justices also asserted that the FIA and National Accountability Bureau [NAB] had been unsuccessful in playing their role effectively.

The premier's daughter, Maryam Safdar, tweeted a photo of Prime Minister Nawaz Sharif, his family and PML[N] leaders celebrating the verdict with smiles and embraces. Defence Minister Kh Asif told reporters that:

"They have said what the PM already said in his letter – that a commission should be constituted to investigate the matter.

We are ready for all kinds of investigation. It has been established today that any evidence or sacrifices given by our opponents in the SC were not enough. We have succeeded."

PML[N]'s federal Railways Minister Kh Rafique said: *"The Pakistan Tehreek e Insaf [PTI] should also respect the court's decision."* Minister for Planning and Development Ahsan Iqbal termed it a 'historic victory' for the PML[N] and tweeted that:

"The minority judgement shows that the PTI represents a minority in Pakistan. Conspirators have been defeated yet again after

the dharna. After suffering successive electoral defeats IK's desire to de-seat PM through non-ballot means failed again."

PTI's lawyer Fahad Chaudhry said that:

"PML[N] leaders celebrating a 'victory' did not seem to have read the verdict in full. If they had, they would realise what has actually happened to them."

PTI's MNA Asad Umar noted that:

"Not a single judge found Nawaz Sharif innocent. All five judges rejected the false stories presented by Nawaz Sharif ... The two judges who decided that Nawaz Sharif stands disqualified are both future chief justices of the SC.

The three other judges rejected the defence provided by Sharifs and ordered [an] investigation by a JIT."

PTI's Asad Umar further tweeted that:

'1 year after panama disclosures and 5 and a half months after supreme court hearing started not a single judge found nawaz sharif innocent.'

The Panama Papers, which refer to a massive trove of secret documents leaked from Panamanian law firm **Mossack Fonseca** — had said that:

"...the PM's children, Maryam, Hasan and Hussain Nawaz were owners or had the right to authorise transactions for several [offshore] companies.

At least eight offshore companies were found to have links to the Sharif family in the documents that were leaked."

The general masses held that revelations in the court had raised serious concerns regarding the legitimacy of the family's wealth, offshore holdings and business interests, and catalysed opposition parties to rally for the investigation or resignation of the prime minister and his family members.

Maryam Safdar had initially dismissed the documents as a distortion of information, but the prime minister had to eventually relent and order a judicial probe into the allegations raised by opposition parties. In a

televised address, the premier Sharif also attempted to document his family's financial history and said he was open to a probe.

A second televised address [*in which the premier said he would resign if proven guilty*]; a landmark parliamentary speech [*in which a sitting prime minister defended himself on the floor of the National Assembly*]; and mounting pressure from the people and opposition parties finally got the case landed before the Supreme Court – and thus the outcome.

PML[N] CELEBRATED IT AS VICTORY:

In the aftermath of SC's decision of **20th April 2017**, no political party was really sure whether to celebrate or lament the order.

Immediately after announcement of the judgment, PML[N] spin-machine started to project the court's judgment as a '**victory for PM Nawaz Sharif**'. Through a misreading and misinterpretation of the judgment, members of the Cabinet proclaimed that '**the court had rejected Imran Khan's claims**'. And without understanding the judgment, the ruling leadership distributed sweets to celebrate their great honour of having been disqualified by [only] two honourable judges.

Prime Ministers of Ukraine and Iceland buckled to the thinning ice, as did the Industry Minister in Spain but the tumbling of crowns was in consonance with the collective morality of the developed nations, where when people are caught with their pants down, they do not make a display of their dishonour. For instance, the Japanese Prime Minister Naoto Kan had resigned in August 2011, citing his failure to show leadership in the aftermath of the tsunami crisis.

On 21st April 2017; Pakistan's Interior Minister Ch Nisar, while speaking to the media, rejected the notion that the Panama Papers verdict was a "**split decision**", adding that although the judges' opinions may be different but "**all five signed off on formation of a Joint Investigation team [JIT]**".

The Interior Minister also expressed his discomfort with political parties announcing protests, terming it as detrimental to the integrity of the SC's verdict. He commented that:

"The onus of proving a case lies with prosecution all over the world but in Pakistan, it is the opposite; this is not a corruption case.

Lots of people have houses abroad...Since day one, the Prime Minister has not hidden his assets. The apex court's decision to further investigate allegations of corruption against the prime minister should be accepted in all its merit."

The verdict's winners and losers were already known but Imran Khan was looking for a total gain scenario; it has been his 'strategy' since about two decades. Khan had been waiting for Allah, the army or Aladdin to deliver the success - trophy to him but perhaps, he had not done his homework; he had no time for institutionalising his great support for the singular cause he pursued. Lastly, he expected the SC to clear the way for him in a manner Gen Musharraf availed in his early years of governance.

Through an essay titled '**Law and politics**', daily '**the News**' dated **27th March 2017** had already predicted that Imran Khan had positioned himself for political manoeuvring in case Nawaz Sharif is damaged by the verdict. His demand for free and fair elections prior to the decision was an attempt to maximise his advantage.

As expected, Panama-gate decision fell short of the 'total gain' scenario and Imran Khan had also comprehended that. He again resorted to agitation – repeating his four years earlier slogan of '**PM's resignation wanted**'. Hard luck; that it was not the time when anyone could bring the entire system to a grinding halt. No 126 days space, referring to the 2014's sit-in, was available to Mr Khan to linger with his demands.

[The net loser was Nawaz Sharif; his past had caught up with him. Throughout the Panama leaks hearings he had constantly faced the what-to-do-with-the-dead-body challenge. It had popped up from the trunk of the car, from the shallows of the nearby lake, from the suitcase in the closet or the cupboard downstairs.]

If the last part of the Panama leaks hearings was a guide, the bench wasn't convinced of the argument that the Sharifs had been upfront in building their fortunes. Thus the decision left the PM short of declaring guilty of hiding his wealth or lying under oath, every word of the verdict inflicted a thousand cuts on him.

The inability of the Sharifs to bring forward convincing documentary proof of their financial innocence brought innumerable devastating effects for their political empire, too. Nawaz Sharif had a lot to hide and was less than

The Living History of Pakistan Vol-VII

truthful in his disclosure; a heavy cost to bear. He was a reduced leader after the verdict; the damning indictment of the PM in person saw him sliding downhill – for all times to come though it was not the end of PML[N] politics. However, the PM's camp was prepared for the worst.

The fact remains that the Panama leaks verdict of 20th April could not settle the dust; it could not indicate a clear road to the nation's destiny. It started another round of dirty politics that had already wasted Pakistan's seventy years – could not deliver a new Pakistan at all.

Prime Minister N Sharif and his immediate family survived in the SC's ruling, for no part of the verdict directly declared them guilty. On the other hand, the opposition parties, particularly the PTI, were not offered any face-saving result in the verdict. On the whole, the court's decision to form the JIT to investigate the case further was seen as clever trick to stall the case which, like all previously formed JITs, could fall into gloom.

Intelligentsia also held that with the evidence that was placed before the court, the decision could not have been fairer. The petitioners' evidence was by and large based on the data whereas the defendants mostly tried to twist the case through procedural lacunas in judicial system of Pakistan.

Unlike other JITs in Pakistan whose fate remained unresolved, the SC's verdict on the Panama-gate was likely to reach its conclusion. Given the range of stakeholders in the JIT and likely street, media, and political pressure that the PTI started generating immediately after, manoeuvring of the case by the PML[N] was not easy.

As against the popular perception that the court's decision had not harmed the PM's standing, the verdict had done exactly the opposite. In essence, with the split decision of guilty or not guilty, the court's ruling indicated that the PM and his family should be completely probed; the formation of the JIT showed that there was enough material to explore further.

The court's orders compelling the prime minister and his sons to appear before the JIT that comprised of the country's bureaucracy and security agencies was embarrassing enough for the PML[N] as party. For some the SC's verdict had opened floodgates of more controversies – another Pandora box in the country.

On 23rd April 2017; a four-party alliance of PML[Q] , Sunni Ittehad Council, *Majlis Wahdatul Musilmeen* [MWM] and Pakistan *Awami Tehreek* [PAT] approved the formation of a grand alliance on the Panama issue, under Ch Shujaat Hussain; the PML[Q]'s patron-in-Chief.

In a meeting held at the residence of PML[Q]'s Ch Shujaat Hussain, a six-point joint declaration was issued demanding that performance of the Joint Investigation Team [JIT] should be made public every fortnight. The joint declaration said:

"In the light of Panama Leaks verdict, the prime minister has become an accused. To fulfil the requirements of justice, it is a must that Nawaz Sharif should resign immediately, so that the JIT investigation could be kept free of unnecessary influence of the prime minister.

Moreover, the Lahore High Court judge Baqir Najfi's report on the Model Town tragedy be immediately made public."

In fact the Sharif family was not given clean chit by either side of the judges but reality was being deliberately downplayed by the official spin masters. All the opposition parties also held that out of five judges of the SC, none declared PM Nawaz Sharif '**Sadiq & Ameen**' therefore; he should resign prior to appearing before the JIT.

The Supreme Court of Pakistan's main concern remained the non-accountability of the ruling elite at the hands of anti-corruption watchdogs working at the wish and whims of the sitting governments.

The questions worth probing about the unexplained sources of wealth of the ruling family was referred to the Joint Investigation Team [JIT]; drawing representations from the State Bank of Pakistan [SBP], Securities Exchange Commission of Pakistan [SECP], National Accountability Bureau [NAB], Federal Investigation Agency [FIA], Pak-Army's Inter Services Intelligence [ISI] and the Military Intelligence [MI].

Incidentally, the government's SECP later told the Public Accounts Committee [PAC] that it couldn't find any fault with Sharif's businesses; SBP said most of the money in such cases was generally transferred abroad through *hundi / havalas*; the NAB had also declared that charges against the Sharif family were beyond its jurisdiction and FIA did nothing either.

Intelligence Bureau [IB] was NOT included in the JIT because, in SC's opinion, it had no achievement at its credit. The big question was that the same departments were being made part of the JIT to probe the Sharif family; the SC judges had already noted their disappointment in the verdict.

The Living History of Pakistan Vol-VII

Another bigger query was that if JIT would be able to conduct probe of the incumbent prime minister while the five member judges on bench were unanimous in voicing disappointment over performance of the accountability watchdogs.

Pakistan's history is witness that all the institutions in general and anti-corruption bodies in particular had been used as a tool by the governments in power. Instead of carrying out their job, FIA, NAB and FBR etc either acted as hit-men of the top boss for punishing his opponents or whitewashed the crimes of the government functionaries; thus kept a notorious reputation.

In Panama Leaks first reveal in April 2016, more than 200 Pakistanis were identified in connection with the offshore companies but the above said watchdogs could not dare going after them because Prime Minister's family was also named.

*[The SC itself had a chequered history; just four years earlier it had set a bad precedent in **Arsalan Iftikhar Case** wherein the son of a former Chief Justice Iftikhar Chaudhry was let off through cheap procedural gimmicks; the book '**The Living History of Pakistan Vol-I**' Scenarios 100-101, pps 1619-1650 [2015] GHP Surrey UK [www.inamsehri.com] is referred for details.*

One-man commission was formed under the leadership of Dr Shoaib Suddle, the then-Federal Tax Ombudsman; he was granted judicial powers to deal with that case. But surprisingly, the SC dissolved the said commission after submission of the preliminary report which was damning against the CJP's son.]

A leading lawyer Saad Rasool [daily the '**Nation**' dated **23rd April 2016** is referred] analysed the Panama judgment in its true legal context:

*"Two honourable judges have declared that the PM is not '**Sadiq & Ameen**', under the Constitution. And the remaining three judges, having rejected the PM's flimsy defence, have sent the issue for further investigation, under supervision of the honourable Court. No judge has accepted the PM's stance. No judge has acquitted the PM. No judge has declared that the Petitions were without merit. And no judge has dismissed the Petitions."*

A brief overview: while all five members of the bench penned their individual opinions, the judgments authored by Justice Asif Khosa in dissent and Justice Ijazul Ahsan in majority provided the most detailed reasoning.

J KHOSA'S HISTORICAL AXIOMS:

Justice Asif Saeed Khosa's meticulous judgment, penned in his characteristically prolific style, exhaustively deliberated the multifaceted issues involved in the case. Recognizing that the SC, in exercise of its jurisdiction under Article 184(3) of the Constitution, cannot adjudicate disputed questions of fact, Justice Khosa presented a brilliant rationale for deciding the case. He declared that:

"....it is not the properties in London which is in issue before this Court but what is at issue is [PM's] honesty for the purposes of a disqualification under Article 62(1)(f) of the Constitution.

I have decided to keep aside the material produced by the petitioners..... and to take into consideration primarily the explanations offered and material supplied by the PM's family".

As such, based on this terrific reasoning, Justice Khosa sidestepped disputed questions of fact, and ***focused solely on the issue of honesty of [the PM] with reference to the explanations advanced by him and his family.***

After explanation of his noble conviction, Justice Khosa pointed out the plethora of ***'contradictions and broken links'*** in the material produced by the PM and his family, concluding that ***'the PM economized with the truth'***. He observed that:

"No details of any bank account, any banking transaction or any money trail has been brought on the record by the PM or his family.

.....and that the entire story about Qatari investments was nothing but an afterthought with absolutely nothing on the record to substantiate the same."

Thus, Justice Khosa made the inescapable conclusion that:

"....even a layman [in Pakistan Chowk, Dera Ghazi Khan] can appreciate... that what has been told to the nation, the National Assembly or even this Court about how the relevant properties in London had been acquired - was not the truth."

This unbelievable story of oscillating and vacillating explanations, had no credibility, and made one wonder where truth and honesty stand in the list of priorities of [the PM], thus meriting disqualification under Article 62 and 63 of the Constitution.

Surprisingly, Justice Ijazul Ahsan and other two judges agreed with almost all of the factual and legal conclusions arrived at by Justice Khosa and Justice Gulzar. Justice Ahsan pointed out "**patently contradictory statements**" of the PM and his family members, and observed that:

"Qatari letters have not been proved in accordance with law, are ex facie based upon hearsay and not substantiated by any credible material, let alone document(s) / evidence.

.....that **it is hard to believe** that 12 million Dirhams exchanged hands **in cash**.

.....and that *no effort has been made to provide even the basic answers* to questions raised [against the PM], and *no effort was made, despite questions asked, to explain why two young men, who were studying in London, needed four large independent flats to live in."*

In fact, Justice Ahsan pointed out that the deceptive payment spreadsheet, presented by the PM's lawyers, was an "**amateurish exercise in reverse accounting**", thus "**bogus**", and having "**no legal or evidentiary value and we have no hesitation in out rightly rejecting it.**"

The general populace was seen angry that what stopped Justice Ahsan and the other TWO judges to take the necessary final step of disqualifying the PM, as Justice Khosa and Justice Gulzar did? Some claimed that the bite was too big for the Court. Might be the three judges wanted to adhere to un-precedented form of due process because it was concerning the title of premiership; which the SC had itself ignored in many recent cases like Tauqir Sadiq case, Arsalan Iftikhar case etc.

The consensus remained that JIT was not expected to work independently, while investigating the sitting PM. If NAB, FIA and other regulators were not performing their job [as observed in the judgment itself] why were they included in the JIT; why were intelligence agencies entrusted with 'investigation' job?

How another blatant lie was tolerated that "**every documentary evidence**", in possession of Sharifs, had already been placed on the record of the SC's bench by them? The JIT was supposed to investigate issues concerning "**the Qatari letters - a myth or reality**" even after judges of the Supreme Court had already rejected their veracity.

The general populace were unable to grasp that if the JIT's probe would be concluded in 60 days; some considered it a repeat of the Arsalan Iftikhar or Saleem Shehzad Cases. What was at stake: not simply the disqualification of the PM; but, instead, the legitimacy of Pakistan's superior court.

People had already lost faith in country's criminal justice system, and instead placed faith in Military Courts; see the 3416 pages of country's contemporary history placed in FOUR volumes of '**Judges & Generals in Pakistan**' and FIVE volumes of '**The Living History of Pakistan**' all printed in UK during 2011-17.

Four of the five judges acceded that the apex Court could either examine the evidence itself – as it had done in the Dual Nationality Case and the Fake Degrees Scandals – or it could alternatively vest the responsibility in the concerned agencies – as was done in the **NICL Scandal** and the **Hajj Corruption Scandal**; but ultimately ending with 'THUSS..'

Deliberation was also afforded to the distinguishable nature of disqualification criteria under Articles 62 and 63 from the conviction criteria under NAB Ordinance. As given earlier in preceding pages, Justice Khosa, in his literary genius, noted that:

".....if the Court restrains itself on procedural technicalities then the message being sent would be that if a powerful and experienced Prime Minister of the country / Chief Executive of the Federation appoints his loyalists as heads of all the relevant institutions in the country which can inquire into or investigate the allegations of corruption, etc against such Prime Minister / Chief Executive of the Federation then a brazen blocking of such inquiry or investigation by such loyalists would practically render the Prime Minister / Chief Executive of the Federation immune from touch-ability or accountability and that surely would be nothing short of a disaster".

The other questions were that '**....does the Constitution require a person being adjudged on his public dealings or by legal morality; should he be disqualified first or convicted first**'. Two favoured the former and three the latter propositions.

Major question was - would the JIT, comprising of the subordinates of the 'cronies owing their loyalty to their masters to whom they are beholden', really expected to achieve in two months what the Supreme Court, with all its authority and might, could not in over five months?

One social activist Khaled Cheema held on his FB pages that:

"After following the daily proceedings of the Panama Leaks hearings and the remarks of the Honourable Judges, it seemed that all the five judges were unanimous about the guilt of Nawaz Sharif. However, initially the delay in announcing the Judgement and later its split decision seemed a disappointment; however,"

The initial remarks of Justice Khosa in the Judgement were a strong hint which most people did not give the due importance. The inclusion of ISI and Military Intelligence in the JIT was done for keeping track of the investigations and more so due to the plentiful evidence and records which could be taken out from the archives of 'secret but nationalist' agencies.

The SC proved itself seriously concerned with justice when the selection of the members from the other four departments was challenged and directly intervened by the Judges. By saying through the words that **'...this judgement would be remembered for twenty years and more'**, the apex court meant serious business.

The history witnessed that all five Justices were convinced about the guilt of PM Nawaz Sharif, but hats off to them for thinking beyond the Judgement and how they could take steps to start the process of ridding the nation from the evil of corruption and to start the REAL process of accountability – never seen before in Pakistan.

The judges most probably concluded that if they invoked the Articles 62 and 63, NS would be declared unseated but he would still be leading his PML[N] and be in a position of pulling the strings despite being guilty – **and the later developments surfaced in subsequent two months' politics proved it true.**

That was why the apex court smartly came up with the JIT ploy and instituted it so that criminal proceedings could be initiated subsequently. Then put up those **'basic 13 questions'** for the JIT to investigate. In hindsight any one could read them again; very incriminating questions which later proven correct and provided base for starting criminal proceedings of the Sharifs.

The people saluted the Supreme Court and the '**Split Decision Wisdom**' on which the PML[N] once distributed sweets and flouted the Victory sign but, in fact, it was the beginning of new era in '*Judicial Pakistan*'.

On 2nd May 2017, the Supreme Court started picking up members of the Joint Investigation Team [JIT] to conduct a probe into the Panama leaks case as per its decision of 20th April 2017. Additional Registrar SC was appointed as the coordinator making him responsible for facilitating all communication between the JIT and the apex court.

The special [new] bench for the Panama Leaks hearing was duly constituted by the CJP Saqib Nisar a day earlier and the same three judges, who vide their decision dated 20th April had opined that further probe through a JIT was necessary, were named as the special [new] bench. The bench commenced the hearing of the case next day i.e 3rd May 2017.

A review petition had already been filed a day earlier in the SC challenging the apex court's 20th April landmark verdict in Panama Leaks case and seeking formation of a ***probe commission instead of the Joint Investigation Team*** [JIT]. It was moved by Watan Party's Barrister Zafarullah Khan, especially known for being on pay roll of Sharifs.

The petition had also prayed the court ***to expunge its remarks in the verdict related to Mario Puzo's novel The Godfather.***

On 3rd May 2017; the SC's 3 members special bench rejected the nominations submitted by the State Bank of Pakistan [SBP] and the Securities & Exchange Commission of Pakistan [SECP] for the JIT, which were tasked to implement the apex court's verdict in Panama case.

The [special] SC's bench was headed by Justice Ejaz Afzal Khan and comprised Justice Sheikh Azmat Saeed and Justice Ijazul Ahsan. The SBP and the MD SECP were asked to bring the lists of all grade 18 & above officers with the respective departments. The SC had tasked the JIT to submit a report every two weeks to the SC's special bench.

The most frightening part in SC's majority judgment [of 20th April 2017] in the Panama case was the judges' view penned down in Para 23 of the majority judgment, authored by Justice Ejaz Afzal Khan, the verdict said:

'....sufficient material has surfaced on record which prima facie shows that PM Nawaz Sharif and his dependents and benamidars acquired assets in the early Nineties and

thereafter which being disproportionate to his known means of income - call for a thorough investigation."

The Panama decision dated 20th April 2017 also noted with concern that:

*"In the normal circumstances this job could well be done by NAB, but when its Chairman, in view of his conduct he has demonstrated in Hudaibiya's case by not filing an appeal against a split verdict of the Lahore High Court, appears to be indifferent and even unwilling to perform his part, **we are constrained to constitute a joint investigation team [JIT]...."***

In Para 16 of the said judgment, the SC, referred to a number of documents produced by the petitioners showing the establishment of **Gulf Steel Mill at Dubai**, its sale, launching of **Azizia Steel Mill at Jeddah**, its sale and incorporation of Nescoll Limited and Neilsen Enterprises Limited in British Virgin Islands. It also contained:

"Under the veil of the aforesaid companies, respondent No.1 [PM Nawaz Sharif] has been alleged to have acquired flats No. 16, 16-A, 17 and 17-A at Avenfield House, Park Lane, London....."

In any case, the questions how did Gulf Steel Mill come into being; what led to its sale; where did go its sale proceeds; how did they reach Jeddah, Qatar and the UK; whether respondents No. 6, 7 and 8 in view of their tender ages had the means in the early nineties to purchase the flats; whether sudden appearance of letters of Hamad Bin Jassim Bin Jaber Al-Thani is a myth or a reality; how bearer shares crystallized into the flats; how did Hill Metal Establishment come into existence; where did the money for Flagship Investment Limited and its Working Capital Fund come from and where did the huge sums running into millions gifted by respondent No.7 to respondent No.1 drop in clamour for answers to be found by the investigation agency and then by the Accountability Court established under the National Accountability Bureau Ordinance."

[There were more paragraphs in the judgment referring to Nawaz Sharif's daughter Maryam Safdar - the same can be seen on other pages of this book under separate headings.]

What more humiliation, shame, disgrace and dishonour could PML[N]'s general voters and especially the stooge ministers' team around PM House

The Living History of Pakistan Vol-VII

feel in the above given situation – but astonishingly they continued to blow their trumpets of hilarious innocence for their corrupt leadership.