

The Panama Papers verdict and political accountability in Pakistan

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Zahra Dsouza highlights key aspects of the Supreme Court ruling on the Panama Papers case, highlighting the concerns raised over the transparency of the Prime Minister and his family and the criticisms levelled at the regulatory agencies put in place to rein in corruption. She writes the establishment of a Joint Investigation Team is to be welcomed, but that ultimately it will be up to voters to hold politicians to account in the 2018 elections.



The [2016 Panama Papers leak](#) linking three of Sharif's children to offshore accounts caused quite a stir, at least among the public. The Sharif family's [vague and conflicting accounts](#) of how they came to acquire the assets held by the offshore entities and assurances that there was no merit to the allegations of corruption appeared to satisfy the regulatory authorities. The Federal Investigation Agency (FIA), National Accountability Bureau (NAB), State Bank of Pakistan (SBP), Federal Bureau of Revenue (FBR), and Securities and Exchange Commission of Pakistan (SECP) failed to investigate allegations of corruption. Instead, opposition leader Pakistan Tehreek-e-Insaf (PTI) chair Imran Khan chair, Jamaat-e-Islami chief Siraj-ul-Haq and Awami Muslim League chief Shaikh Rasheed Ahmed [petitioned the Supreme Court](#) to disqualify Sharif from holding public office under Article 62(1)(f) of the Constitution on the grounds of dishonesty. With general elections to be held next year, the move was [derided as politically motivated](#). Alternatively, the petition signals that Imran Khan remains committed to the eradication of corruption, the platform on which he ran during the 2013 election campaign.

On the publication of the Supreme Court's decision (full text available [here](#)) Maryam Sharif took to twitter to express her relief and opposition leaders [continued to call for Sharif's resignation](#). The [public was divided](#) along political lines with PML-N supporters cheering while PTI and PPP supporters were of the view that the Court [shirked its responsibility](#) in ordering the constitution of a Joint Investigation Team (JIT) rather than disqualifying Sharif. This may be due in part to the fact that with a few exceptions, commentary on the decision [commenced with a Godfather quip](#) and glossed over the 500+ pages opinion and However, the Court stated that although it could consider disputed questions of fact where a fundamental rights and public importance demanded under Article 184(3) of the Constitution, the proceedings would not resemble the Spanish Inquisition ([p.351](#)).

Apart from quoting literature, the Court criticised the Sharif family to the extent of preparing a table to illustrate the discrepancies in their stories ([p.88-94](#)). Public statements and interviews are not of the same evidentiary value as sworn affidavits and that statements by members of parliament in the national assembly, to the extent that they deal with assembly business, are protected by privilege. However, dishonesty could be inferred from the contradictions in various statements made by the Sharif family to the Pakistani public, the National Assembly and the Court about how the relevant properties in London had been acquired. In a nod to the man on [the Clapham omnibus](#), the Court concluded that even a pedestrian in Pakistan Chowk, Dera Ghazi Khan would arrive at the same conclusion ([p.95](#)).

The Court also chastised the regulatory authorities for their failure to investigate the instant case. The Chairman of NAB defended his inaction by stating that he was awaiting action by unnamed regulators ([p.52](#)). It is unclear what relevance any investigations launched by the lettered agencies would have to an investigation by NAB. The Court commented on the Chairman's incompetence stating, "If out of the 200 million people of Pakistan the only person, we can find to head over Premier Anti-corruption Institution is Respondent No.2, we might as well legalise corruption." ([p.313](#)) Other regulators also came under fire. The Chairman of the FBR stated that investigations were commenced immediately after the leak against all individuals who allegedly owned offshore companies, but cited practical and procedural difficulties in ascertaining their identities. In fact, investigations were only initiated after six months had passed. The Speaker of the National Assembly also failed to refer the matter to the Election Commission. To date, not a single regulatory agency has investigated the allegations on its own initiative. Perhaps

this has something to do with the fact that the heads of these agencies are political appointees and therefore reluctant to bite the hand that feeds them?

The Court also cited examples of the regulatory agencies' legacy of giving politicians a clean slate upon their election to public office:

"In the case of Mian Hamza Shahbaz Sharif v. Federation of Pakistan and others (1999 P.Cr.L.J. 1584) two FIRs had been registered by the Federal Investigation Authority in the year 1994 and Challans in respect of such FIRs had been submitted before the competent court with the allegations that respondent No. 1 and others had indulged in serious corruption and money laundering, etc. Those Challans had been quashed later on at a time when respondent No. 1 was serving as the Prime Minister of the country. In the case of Messers Hudabiya Paper Mills Ltd. and others v. Federation of Pakistan and others (PLD 2016 Lahore 667) a Reference had been filed by the National Accountability Bureau against respondent No. 1 and others with the allegations of corruption and money laundering, etc. but even that Reference was quashed during the incumbency of respondent No. 1 as the Prime Minister of the country." (p.18)

The question arises, who will hold the regulators accountable?

The Court examined Article 62(1)(f) of the Constitution, [Prevention of Corruption Act, 1947](#), and [National Accountability Ordinance, 1999](#) and cases where dishonesty, corruption and disqualification of public officials had been at issue. Section 5-C of the Prevention of Corruption Act, 1947 mandates imprisonment of any public servant for a term of up to seven years and forfeiture of any property, either in his own name or in the name of any other person, believed to have been acquired by improper means and proved to be disproportionate to known sources of income in the event of failure to account for such possession to the satisfaction of the Court. Further, under Section 9(a)(v) of the National Accountability Ordinance, 1999:

"A holder of a public office, or any other person, is said to commit or to have committed the offence of corruption and corrupt practices:- ...

(v) if he or any of his dependents or benamidars owns, possesses, or has acquired right or title in any assets or holds irrevocable power of attorney in respect of any assets or pecuniary resources disproportionate to his known sources of income, inability to reasonably account for or maintains a standard of living beyond that which is commensurate with his sources of income ...".

Under Section 14(c) failure to account for such assets therefore creates a presumption of guilt. Thus the onus fell on the Sharif family to provide evidence to exonerate themselves.

Although Sharif declared that his finances were an open book, the Court was cognisant of the "many missing pages" (p.98). The Court considered nomination papers filed by Sharif for election to the National Assembly, the Share Sale Contract, and the Tripartite Sale Agreement pertaining to the factory in Dubai. However, the records did not establish a connection between the proceeds of the sale of the shares and acquisition of the properties in London and the Court could not determine the ownership of the property and assets. Disqualification of holder of public office under Article 184(3) of the Constitution must be based on an investigation and presentation of evidence at trial before an Accountability Court. However, the inability of the petitioners and the failure of the respondents to provide evidence establishing the illegality or otherwise of the transactions in question rendered issues of fact inconclusive. Thus, the Court constituted a JIT to investigate whether Sharif or any of his dependents "owns, possesses or has acquired assets or any interest therein disproportionate to his known means of income" and submit a report to the Court

within 60 days of its constitution ([p.547](#)).

So, the saga continues. In the absence of [definitive evidence of corruption](#), the verdict is not surprising. The JIT, composed of representatives of the FIA, NAB, SECP, SBP, Inter Services Intelligence and Military Intelligence, and thus including the very regulators that turned a blind eye to the allegations of corruption in the first place, does not inspire confidence. This is evidenced by the [rejection of representatives](#) of the SBP and SECP. Nevertheless, the initiative of the opposition underlines that democracy is at work in Pakistan. On announcement of the decision, both the incumbent and opposition leadership [distributed sweets](#) to celebrate their respective 'victories'. In the run up to the 2018 elections the PTI will highlight the decision as a successful challenge to corruption and campaign on the platform of enforcing accountability. However, all may not be lost for the PML-N. Allegations of corruption have yet to halt political aspirations. Despite being dubbed "[Mr. 10 percent](#)" and indicted for corruption charges and murder, Zardari was elected President in 2008 and was acquitted of criminal charges. Similarly, Sharif was appointed Prime Minister in 2013 despite allegations of rigging the 1990 election and corruption. Sharif may be able to rehabilitate his image by providing evidence that all assets owned by the Sharif family have been acquired legitimately. Additionally, he could implement measures to ensure that regulators will not be biased by political affiliations. As an example, he could propose that the NAO be amended such that the Chairperson of NAB would be appointed by the Supreme Court. Ultimately it is for Pakistani citizens to hold politicians accountable via their vote and end dynastic politics that will likely see Bilawal Bhutto and political aspirant Maryam Sharif contest future elections.

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