

# ISAS Brief

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Institute of South Asian Studies  
National University of Singapore  
29 Heng Mui Keng Terrace  
#08-06 (Block B)  
Singapore 119620  
Tel: (65) 6516 4239 Fax: (65) 6776 7505  
[www.isas.nus.edu.sg](http://www.isas.nus.edu.sg)  
<http://southasiandiaspora.org>



## **New Signals for Democracy: Pakistan Supreme Court's Verdict in the Prime Minister's Case**

*What will be the impact of the latest split-decision by Pakistan's Supreme Court in what had come to be known as the "Panamagate case"? In the 3-2 majority judgment, the Supreme Court has ruled that Prime Minister Nawaz Sharif could not be forced out of office on the basis of the evidence presented to it concerning alleged financial misdeeds by his family as revealed by the 'Panama documents'. Nonetheless, the Court ordered an inquiry into the financial dealings of the Prime Minister and the Sharif family.*

Shahid Javed Burki<sup>1</sup>

### **The Panama Documents**

In April 2015, a total of 11.5 million documents were released to the public by an anonymous source, detailing the alleged murky dealings of some of the world's most powerful people. The papers detailed financial and attorney-client information for 214,488 offshore entities. The

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<sup>1</sup> Mr Shahid Javed Burki is Visiting Senior Research Fellow at the Institute of South Asian Studies (ISAS), an autonomous research institute at the National University of Singapore. He can be contacted at [sjburki@gmail.com](mailto:sjburki@gmail.com). The author bears responsibility for the facts cited and opinions expressed in this paper. During a professional career spanning over half a century, Mr Burki has held a number of senior positions in Pakistan and at the World Bank. He was the Director of China Operations at the World Bank from 1987 to 1994, and the Vice President of Latin America and the Caribbean Region at the World Bank from 1994 to 1999. On leave of absence from the Bank, he was Pakistan's Finance Minister, 1996-1997.

documents belonged to the Panamanian law firm and corporate service provider that went under the name of Mossack Fonseca. The papers linked Maryam Nawaz, the daughter of Pakistan's Prime Minister Nawaz Sharif, and her two brothers, Hasan and Hussein, to four offshore companies, Nescoll Limited, Nelson Holdings Limited, Coomber Group Inc., and Hangan Property Holdings. These companies were reported to have acquired luxury real estate in London during 2006-07. This was the time when Nawaz Sharif, exiled by General Pervez Musharraf who had taken over as Pakistan's ruler in an October 1999 coup d'état, was living in London. The real estate was collateral for loans of up to US\$ 13.8 million. The Prime Minister's children claimed that the money came from the sale of a family business in Saudi Arabia.

Other Pakistanis, both politicians and businessmen, too figured in the Panama papers. The late Prime Minister Benazir Bhutto was also a Mossack Fonseca client. In 2001 the Panamanian firm set up Petroline International Inc. for the former Prime Minister, her nephew Hassan Ali Jaffrey Bhutto, and her aide and head of security Rehman Malik. Malik later became Senator and a powerful Cabinet Minister when Asif Ali Zardari, Bhutto's husband, was the country's President.<sup>2</sup>

## **The Supreme Court Verdict**

In a series of petitions, Imran Khan's Tehreek-i-Insaf, Jamat-i-Islami's chief Siarajul ul Haq, and Awami Muslim League leader Sheikh Rashid, sought the Pakistan Supreme Court's ruling on whether Prime Minister Nawaz Sharif was qualified to hold the office to which he had been elected. In two speeches, one on the television and the other in Parliament, he had claimed that he did not own foreign properties. That turned out to be not the case – it was a “lie” – the opposition claimed and argued that he should be disqualified from holding the office of prime minister.

The Court was forced to hear the case when Imran Khan threatened to close down Islamabad by having a “million of his followers” march to and in the country's capital. After hearing the

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<sup>2</sup> The Panama papers are the subject of many inquiries. For one detailed account see, Bastian Obermayer and Frederick Obermayer, *The Panama Papers: Breaking the Story of How the Rich and Powerful Hide Their Money*, New York, One World Publications, 2016

case the Supreme Court took some time to announce its verdict. It deliberated for a couple of months. On 20 April 2017 the panel of five judges, issuing a 3-2 split-verdict, did not find that the Prime Minister was not qualified to stay in office. On the question of the Sharif family's financial dealings, the Court ordered the constitution of a six-member Joint Investigation Team (JIT) that would include members from the country's two premier military intelligence agencies – the well-known Inter-Services Intelligence (ISI) and the Military Intelligence (MI). The JIT will investigate whether the Prime Minister and his family members had amassed wealth beyond their known sources of income.

### **Pending Probe into the Sharif Family's Financial Dealings**

The Supreme Court's scepticism was reflected in the opening lines of the 540-page verdict. It referred to the epigraph in Mario Puzo's novel, *The Godfather* – "behind every great fortune there is a crime". Keeping that in view, it ordered that the Prime Minister and his children should face a further investigation by the JIT. The team, to be constituted within a week of the announcement of the judgment, would be required to report on its work every week to a special bench of the Supreme Court to be appointed by the Chief Justice, and would have to complete its work in 60 days. Its main task was to trace the money trail that led to the creation of several shell companies that were owned by the children of the Prime Minister. Their existence was revealed by the Panama papers, and the Court was not persuaded by the explanation provided for the purchase of expensive London properties.

### **Impact on Pakistan's Political Development**

The verdict may change the course of Pakistan's political history. Its impact may go beyond improving the quality of governance. That a sitting government, holding a comfortable majority in Parliament, allowed a Supreme Court case filed against it to proceed without interference, is in itself a sign of political progress. It is a sign that institutional checks and balances are working to some extent and there are means available to watch the working of the executive branch of government. However, the fact that the Court, in ordering the setting up of a body to inquire into the Sharif family's financial dealings, included military-intelligence

representatives as members, signifies the continued lack of full confidence in civilian institutions. “But the inclusion of military run intelligence agencies in a probe against a serving prime minister in matters of finance and the law is remarkable – and a precedence that should not be established”, wrote the respected newspaper *Dawn* in an editorial published a day after the Court announced its judgment. “What is concerning about the composition of the JIT, especially with the inclusion of a Military Intelligence representative is the signal it sends about the lack of institutional trust. Civilian matters should be probed, adjudicated and resolved in the civilian domain”.<sup>3</sup>

The newspaper is right in pointing out that institutions in the civilian domain are not as yet fully trusted. Until such trust is established, Pakistan cannot be considered to have developed a well-functioning political system. But the case itself, and the verdict it resulted in, can be seen as signs of progress. According to Pamela Constable, a seasoned analyst of Pakistani affairs who writes for *The Washington Post*, “with Sharif still in office but chastised, analysts called Thursday’s ruling a victory for Pakistani democracy, with a prime minister enduring a long legal process and all sides accepting the verdict”.<sup>4</sup>

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<sup>3</sup> *Dawn*, “Panama papers verdict”, April 21, 2017, p.7

<sup>4</sup> Pamela Constable and Shaiq Hussain, “Pakistani prime minister narrowly avoids ouster over corruption claims”, *The Washington Post*, April 21, 2017, p.A10