

# ISAS Brief

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## **The Disqualification of Nawaz Sharif: Implications for Democracy in Pakistan**

*Pakistan's Prime Minister Nawaz Sharif has been disqualified by the country's Supreme Court. The democratic system will continue, with his younger brother Shahbaz Sharif set to be elected a prime minister in due course. Yet, the ruling may weaken the consolidation of democracy in Pakistan by upending elected institutions and encouraging the flow of power to unelected ones.*

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On 28 July 2017, the Supreme Court of Pakistan disqualified Prime Minister Nawaz Sharif from holding public office. This landmark decision was made by the court's five-member implementation bench, which unanimously deemed him "dishonest" and, subsequently, unfit for office. It also ordered the National Accountability Bureau (NAB)<sup>2</sup> to file references before the accountability court against Nawaz Sharif, his family members and other respondents.

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<sup>2</sup> The NAB is a constitutionally-established federal institution responsible for taking action against corruption in Pakistan.

The judgment brought an end to Nawaz Sharif's third term in office, approximately 10 months before the next elections that would have made him the first prime minister in the country's history to complete a five-year term. Following the decision by the country's apex court, a statement from the PM House, Nawaz Sharif's official residence, stated that Nawaz Sharif had stepped down, even with "strong reservations" about the judgment.<sup>3</sup>

The ruling party, Pakistan Muslim League – Nawaz (PML-N) holds a comfortable majority in the National Assembly (NA). Following the Supreme Court's ruling, it moved swiftly to ensure continuity by nominating Nawaz Sharif's younger brother Shahbaz Sharif as the party leader in the NA and prime minister till the 2018 elections. Shahbaz Sharif is currently chief minister of Punjab. He will need to resign from his post, forego his seat in the Provincial Assembly and seek election most likely from Nawaz Sharif's constituency, NA-120 in Lahore, a PML-N stronghold. The process though fairly straightforward, may take up to a month. Therefore, the party has selected an interim prime minister, Shahid Khaqan Abbasi. The NA will elect him on 1 August 2017.

## **Panama Case and Corruption Charges**

The Supreme Court based Nawaz Sharif's disqualification on his 2013 nomination papers to the Election Commission of Pakistan (ECP), which failed to disclose his employment in a Dubai-based company, Capital FZE, owned by his son. As Chairman of the company's board, he was liable to receive a salary, which even if he did not withdraw, was a receivable asset. In the court's view, he, therefore, violated Article 62 of the Constitution, requiring him to be "honest and truthful".<sup>4</sup>

Nawaz Sharif's disqualification evidently resulted from this technicality rather than the corruption charges that followed him into the government since the Panama leaks on 3 April 2016 which linked eight offshore companies with the Nawaz Sharif family. According to the leaks, Nawaz Sharif's children, Hassan, Hussain and Maryam, were

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<sup>3</sup> "Nawaz Vacates PM House, Departs For Murree", *DAWN*, 30 July 2017, <https://www.dawn.com/news/1348561/nawaz-vacates-pm-house-departs-for-murree>.

<sup>4</sup> "Nawaz Sharif Steps Down As PM After SC's Disqualification Verdict", *DAWN*, 28 July 2017. <https://www.dawn.com/news/1348191/nawaz-sharif-steps-down-as-pm-after-scs-disqualification-verdict>.

“owners or had the rights to authorize transactions for several companies” and these companies were used to buy properties in London.<sup>5</sup>

The PML-N and the Nawaz Sharif family mismanaged the controversy arising from the leaks. The relentless pressure from opposition parties, failure to address the controversy in time and contradictory statements about the money trail brought the suspicion to rest firmly on the shoulders of the Nawaz Sharif family. After weeks of hearings by the Supreme Court’s inquiry commission, a split verdict of 3-2, in favour of Nawaz Sharif was announced on 20 April 2017. Yet, this did not protect the prime minister, as the court ordered a six-man joint investigation team (JIT), comprising officials from the NAB, Securities and Exchange Commission of Pakistan, State Bank of Pakistan and one member each from intelligence agencies linked to the military, the Inter-Services Intelligence and Military Intelligence, to further investigate the money trail and Nawaz Sharif’s financial dealings.

The JIT submitted its investigation report to the Supreme Court on 10 July 2017. It found “significant gap/disparity amongst the known and declared sources of income and wealth” accumulated by Nawaz Sharif and his family. Perhaps the biggest setback for PML-N came to the heir-apparent, Maryam Sharif, who was accused of forging documents to show that she was a trustee for her brother, the real owner. The trust deed, which she apparently signed in February 2006, was printed in Calibri font that was not commercially available until January 2007. Following the submission of the JIT’s report, the Supreme Court heard arguments from both sides, concluded hearings on 21 July 2017 and announced its ruling on 28 July 2017.

## **Implications for Democracy**

The disqualification of Nawaz Sharif by the Supreme Court is different from past displacements of elected leaders by the country’s powerful military. As a result, the democratic system is likely to continue, with no conceivable threat of a military coup. In the past, a power vacuum used to be an incentive for the army to step in. However, this

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<sup>5</sup> “How Pakistan’s Panama Papers Probe Unfolded”, *DAWN*, 3 April 2017. <https://www.dawn.com/news/1316531>.

time, the continuity of succession did not create that sort of disjunction. The PML-N holds a majority in the NA and Shahbaz Sharif is likely to be prime minister until the next elections in 2018.

However, there are certain troubling aspects about the ruling that do not bode well for the consolidation of democracy in the country.

The use of ‘corruption’ and ‘accountability’ as tools to remove elected civilian leaders is an oft-repeated history in Pakistan. In the 70 years since independence, no prime minister has been able to complete his or her full term. On 28 July 2017, Nawaz Sharif became the 15<sup>th</sup> prime minister to be removed.<sup>6</sup> The Supreme Court’s investigation into corruption charges on a sitting prime minister and his family was unprecedented in the country’s history. It would also positively impact the rule of law and accountability of public servants in the country. Yet, it appeared to be focusing selectively on Nawaz Sharif’s family and his close associates.

At the same time, the constitutional clause of “honest and truthful” politicians to disqualify Nawaz Sharif is very subjective and can be used to disqualify almost all politicians in the country. It was introduced by General Zia-ul-Haq (prime minister from 1977 to 1988) to check the power of politicians during his military rule in the 1980s. The application of this clause by the court to disqualify an elected leader may set a dangerous precedent in the country.

As Fisher and Taub write in the *New York Times*, Nawaz Sharif’s disqualification is also problematic because historically, “unelected power centres, not voters, decide who rules” the country.<sup>7</sup> These power centres appear to be controlled by the judiciary, army or bureaucracy. For instance, between 1951 and 1956, four prime ministers were dismissed or resigned due to differences with the Governor Generals at the time. In 1977, Zulfikar Ali Bhutto (prime minister from 1973 to 1977) was deposed in a military coup by General Zia-ul-Haq and later tried and executed by the Supreme Court in 1979. His daughter,

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<sup>6</sup> “15th Prime Minister Fails To Complete Tenure”, *DAWN*, 29 July 2017. <https://www.dawn.com/news/1348349/15th-prime-minister-fails-to-complete-tenure>.

<sup>7</sup> “Pakistan, Ousting Leader, Dashes Hopes For Fuller Democracy”, *The New York Times*, 28 July 2017. <https://www.nytimes.com/2017/07/28/world/asia/pakistan-ousting-leader-dashes-hopes-forfull-leader-democracy.html>.

Benazir Bhutto, was prime minister twice (from 1988 to 1990 and from 1993 to 1996), and, both times, her government was dismissed (1990 and 1996) by the respective presidents accusing her of nepotism and corruption. More recently, in 2012, the Supreme Court disqualified Syed Yousuf Raza Gillani (prime minister from 2008 to 2012) for contempt of court.

This perpetuates a system where elected leaders and political parties are weak and insecure, and believe that the ‘real’ holders of power can remove them anytime. This motivates short-sightedness and protection of their own interests rather than those of the voters. It creates weak elected institutions as opposed to the strong unelected institutions (military and courts) which are widely respected and trusted. Thus, their ‘interventions’ and ‘checks’ on the political parties and leaders are welcomed and allowed by the general public. In this weak system, rival political parties also welcome the interventions, creating agitation and actively calling for the unelected institutions to step in. This cycle repeats itself every few years in the country.

It is problematic because interventions tend to weaken democracy. They prevent the development of democratic institutions and more power flows to the unelected institutions. The military, for instance, controls national security and foreign policy in the country. During this term, Nawaz Sharif attempted to assert power by proceeding with prosecution of General Pervez Musharraf for subverting the constitution in 1999, improvement in relations with India through trade and business linkages, and a leaked media report of the military not doing enough against militancy in the country. Although Nawaz Sharif backed down each time, the resulting friction in civil-military relations created a convergence to anti-Nawaz Sharif forces, which he and his party, perhaps confident of re-election in 2018, did not pay enough heed.<sup>8</sup>

The unceremonious departure of Nawaz Sharif has left the PML-N morally and politically wounded. Its top leadership, including soon to be elected Shahbaz Sharif, will be dodging corruption charges in the months to follow. Its stranglehold on Punjab will be loosened as it will attempt to consolidate power at the Centre. A weakened PML-N will give rise to new political actors, with defectors moving to the party most likely in favour of the

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<sup>8</sup> Rumi, Raza. “A ‘Judicial Coup’ Against Pakistani PM Sharif.” *DW*, 2017, <http://www.dw.com/en/opinion-a-judicial-coup-against-pakistani-pm-sharif/a-39871933>.

military establishment. The resulting political uncertainty may weaken the democratic process further.

## **Conclusion**

Weak elected institutions have resulted in weakened democratic norms and practices in Pakistan. Accountability and rule of law are needed to strengthen these institutions and consolidate democracy in the country. For that, the judiciary is expected to play a key role. Yet, the grounds for disqualification of Nawaz Sharif are deeply problematic and reminiscent of ‘selective justice’ applied in the past on elected civilian leaders. In addition, interventions such as this perpetuate weak democratic systems that take power from the voters to the unelected power centres.

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