

Scenario 210

ON ARTICLES's 62-63 & MORE

On 13th January 2017; Panama Leaks case hearing resumed in the Supreme Court of Pakistan and PM Nawaz Sharif's lawyer Makhdoom Ali Khan continued with his arguments before the five members bench. Then there were same discussions of money trail demands and non-submission of records pleaded because PM was not director or shareholder on papers in any business of his children.

PM NOT ANSWERABLE TO SC [?]:

A day before, PM's counsel makhdoom Ali Khan admitted before the top court that "***there were certain inadvertent omissions***" in the PM's speech of 16th May 2016 in the National Assembly, delivered in the wake of Panama Papers to justify the required money trail BUT the PM was neither a beneficiary nor a director in any of his sons' businesses; adding that "***...no principle of law can hold the premier answerable for his sons' businesses.***"

The Panama Leaks case was being heard in the SC on regular basis but the intelligentsia was correctly pondering that when Gen Musharraf handed over the government to the PPP elects, each Pakistani was shackled in debt of Rs:35,000 which had increased to Rs:129,000 in early 2017, because money was being laundered abroad and Pakistan had to take loans to run its affairs – the people knew that the foreign loans never came to Pakistan; the same were stashed in rulers' accounts in the foreign countries.

PM Nawaz Sharif had claimed that his sons Hassan and Hussain earned everything through hard work - ***but they were only students in 1999 and yet in a matter of two years they earned billions to buy expensive properties abroad.*** The prime minister was accused of laundering money and declaring Maryam Safdar as the owner of the [London] property.

The fact remained that in the self-centred governance of the Sharifs, 57 percent of Punjab's total budget was being spent on Lahore. While Metro buses were being introduced, people of South Punjab were still the ones deprived of basic facilities like health and education.

Specifically, PM Nawaz Sharif's counsel contended that **'the Supreme Court cannot directly disqualify the premier'** in the ongoing Panama Leaks case. He argued further that:

"....disqualification in this situation cannot happen; members cannot be unseated on the basis of statements in parliament and without considering the context of the statements made."

Mr Khan also cited a 2015's SC case in which PTI's Ishaq Khakwani had sought disqualification of PM Nawaz Sharif for his alleged misstatement of facts in the National Assembly on 29th August 2014.

*[Against the backdrop of the PTI-led 126-day sit-in of 2014, the PM had stated that his administration would never ask army to mediate and become a guarantor between the government and the protesting parties — PTI and the Pakistan Awami Tehreek [PAT] — to end their **dharna** on the Constitution Avenue.]*

In the cited judgement, the then presiding judge Justice Asif Saeed Khosa himself, had observed that Article 62(1-f), which spells out qualifications and disqualifications of parliamentarians, was a nightmare and a feat of obscurity. Mr Makhdoom wondered how the same SC could disqualify his client on a provision which the apex court had itself described as a nightmare three years before.

Makhdoom Ali Khan read out an additional note in the said Ishaq Khakwani case in which Justice Khosa had observed that:

".....vague, uncertain, obscure and conflicting terminology of Articles 62 and 63 of the Constitution was bound to confuse voters, hound the candidates and embarrass the returning officers at the time of scrutiny of nomination papers."

Subsequently, that Ishaq Khakwani case came in appeal in which the other presiding judge Justice Ijazul-Ahsan, again a member of the SC's bench hearing the Panama Leaks case also, had dismissed the petition on the grounds that the petitioner had raised a political question.

A prominent jurist S M Zafar had dubbed at least 18 articles of the Constitution as a **"nightmare for the nation but a harvest for lawyers"** while discussing the said constitutional provisions of Art 62 & 63. At this Justice Khosa turned his gaze towards the large number of lawyers sitting inside the Courtroom No 2, quipping: **"Harvests well reaped."**

Citing a number of provisions from the Representation of People Act 1976, the PM's counsel contended that the provisions needed to be read in conformity with Article 62(1-f) of the Constitution, *'which makes it clear that an inquiry like this cannot be conducted by invoking extraordinary jurisdiction by the apex court under Article 184(3)'*.

On the same day **[13th January 2017]**, Advocate Shahid Hamid who represented children of the prime minister also submitted additional documents on behalf of Finance Minister Ishaq Dar and prime minister's son in law Capt Safdar.

In his reply Ishaq Dar stated that the Islamabad High Court [IHC] on **16th September 2015** had rejected Farrukh Nawaz Bhatti's petition seeking his [Mr Dar's] disqualification as Senator for his confessional statement before an Accountability Court hearing Hudaibiya default case. Likewise the evidentiary value of the purported confessional statement had also been adjudicated by the Lahore High Court [LHC] in 2011 which later quashed the same case in his favour.

Captain Safdar recalled that Nawabzada Salahuddin Saeed had challenged before the Election Commission of Pakistan [ECP] that he failed to disclose the assets of his wife [Maryam Safdar] in his nomination form and later in his annual statement of assets and liabilities furnished before the ECP; he didn't disclose that his wife owned the four London flats.

Moreover, Nawabzada Salahuddin Saeed's claim was refuted as Captain Safdar had been paying regular income tax since joining public service in 1986 and thereafter since elected as MNA in 2008.

On 16th January 2017; PM Nawaz Sharif's counsel Makhdoom Ali Khan started his day again from the same groove and tried to repeat the same tunes which he had been playing since a week; Justice Khosa had to ask him to conclude his arguments regarding Articles 62 and 63 till the end of that day. Mr Khan then argued that Indian courts had also overlooked clauses in the Indian Constitution similar to the **'Sadiq & Ameen'**, in cases pertaining to alleged twisting of facts on the Parliament floor.

J Azmat Saeed asked the lawyer if the Indian law contained Article 62, to which the PM's counsel replied that the words similar to '**Sadiq**' & '**Ameen**' also exist in the Indian Constitution. On freedom of speech while addressing the National Assembly, the apex court also remarked that:

'...if Article 66 is part of the Pakistani Constitution, so is Article 62 which deals with the morals and character of members of the Parliament'.

Mr Khan spent hours in citing previous cases re-gathering the disqualification of members of Parliament on the basis of their dual nationality; more emphasizing that the ousted members were disqualified only after evidence was provided against them in the court. The court remarked that the previous verdicts given in dual nationality cases, cited by the PM's counsel, also proved that the SC had jurisdiction over disqualification cases.

However, the SC bench unanimously maintained that disqualification cases could be heard by the apex court.

The PM's counsel, citing a number of provisions from the Representation of People Act 1976, contended that the said provisions needed to be read in conformity with Article 62(1-f) of the Constitution, which '*makes it clear that an inquiry like this cannot be conducted by invoking extraordinary jurisdiction by the apex court under Article 184(3)*'.

In nutshell, PM Nawaz Sharif's counsel contended that the Supreme Court was not able to adjudicate on the PM's speech in parliament, as the parliamentary proceedings were not to be challenged at any forum under Article 66 of the Constitution. Thus there was a constitutional bar on the superior courts to give a declaration on the parliamentarians' speeches in parliament.

[Article 66: "*Subject to the Constitution and to the rules of procedure of Majlis-e-Shoora [parliament], there shall be freedom of speech in the parliament and no member shall be liable to any proceedings in any court in respect of anything said or any vote given by him in the parliament.*"]

PM's counsel argued that:

"Firstly, every word in the PM's speech is true as there is no lie; he did not deceive or misrepresent. However, if it is presumed the

PM lied, even then the court cannot give declaration due to Article 66, which protects the freedom of speech in parliament."

However, Justice Asif Saeed Khosa observed that the issue before the SC was not adjudicating on the PM's speech but his family's properties in London and the petitioner had just referred to the premier's speech in support of his arguments.

Justice Azmat Saeed Sheikh observed that:

"Will a parliamentarian face penal consequences, if he makes a false statement in parliament? The apex court has jurisdiction to disqualify the parliamentarians under Article 184 (3) of the Constitution but can we disqualify the PM on the basis of the available material?"

The fact remained that petitioner Imran Khan wanted PM Nawaz Sharif to be disqualified because the latter [PM] was not **Sadiq** [truthful] and **Ameen** [trustworthy]. Here the PM's counsel cited a 10-year-old judgment by the Election Commission of Pakistan [ECP] and said:

*"..... when Dr Sher Afgan Khan Niazi and Dr Farooq Sattar filed references against him [Imran Khan] before the ECP, he [Imran Khan] took the position that the requirement of being '**Sadiq & Ameen**' did not apply to elected members.*

According to Imran Khan, it applies only to candidates contesting elections. Imran also did not dispute the correctness of the paternity judgment of the California Supreme Court but contended that it was inadmissible.

*Imran Khan applies double standards. When the test of '**Sadiq & Ameen**' was sought to be applied to him, he contended that it was not applicable on him but he now wants the same standard to be applied to the PM."*

PM's counsel said the superior courts had repeatedly held that they would not use their authority in constitutional jurisdiction to disqualify the elected representatives of the people. It was for this reason that [a member of the bench] **Justice Ijazul Ahsan, as the Lahore High Court judge, had allowed Raja Parvez Ashraf to contest elections in spite of the fact that there were derogatory findings against him in rental power case.**

PM's counsel, however, admitted that the SC had disqualified elected candidates in exercise of its jurisdiction under Article 184(3) of the Constitution in former PM Yousuf Raza Gilani's Case and the dual nationality cases.

Mr Khan had also argued that the 18th Amendment had raised the threshold, or the standards, for disqualification of parliamentarians by inserting a condition; i.e. ***'unless there is a declaration by a court of law, an elected member will not lose his seat for not being sagacious, righteous, non-profligate, Sadiq & Ameen'***.

Mr Khan once more stressed that PM's speech delivered in the National Assembly last year had no discrepancies or misstatements and **suddenly raised a question asking for immunity from the apex court in context to his conflicting statements on the basis of article 248 of the constitution.**

Justice Ijazul Ahsan caught Mr Khan immediately that:

"On one hand you maintain that Nawaz Sharif did not lie on the floor of the National Assembly on the other you plead that the PM has immunity even if he wasn't truthful."

The legal fraternity held that the counsel for PM Nawaz Sharif was not presenting arguments related to the Panama case which was the basic issue; while adding that: ***'....seeking immunity was tantamount to the fact that the premier was accused.'***

Makhdoom went on and maintained that the premier was seeking his right on the basis of article 66 available to every legislator. He referred to the **Zahoor Ali murder case** and claimed that former PM Z A Bhutto also sought immunity in that particular case.

PM's counsel also argued that the law of wealth tax was scrapped in 2003 and there was ***'...no evidence suggesting any link of Nawaz Sharif with Dubai factory was available.'***

Justice Asif Khosa remarked that the apex court was trying to understand the issue involved - ***'Who is telling the truth, kids or their father.'***

Justice Azmat Saeed while throwing his weight behind justice Khosa observed that the apex court was reviewing the speech of Nawaz's address to the nation as well apart from his speech on the floor of the house.

Even at the last moment in the court, PM's counsel Mr Khan continued arguing that PM Nawaz Sharif's speech delivered on the parliament's floor in May 2016 following the Panama leaks had no discrepancies or misstatements and that even if it had, the country's premier could enjoy immunity from prosecution. Justice Azmat observed that the court was reviewing whether Nawaz Sharif could be disqualified on the basis of available documents before it.

PML[N]'s Danyal Aziz, while talking to newsmen outside Supreme Court, expressed that: ***'BBC twisted the facts in its story regarding ownership of London flats.'***

Meanwhile, *Jamaat-e-Islami* [JI] filed **another amended petition** in the apex court seeking disqualification of PM Nawaz Sharif; **in its earlier petitions, the JI had not made PM a party**. The amended petition said that the PM purchased flats in London by evading tax - and that the PM concealed the properties and flats deliberately; thus no more ***'Sadiq & Ameen'*** – JI was seen totally non-serious in this case.

SHAMIM AGRI-FARMS NAMED:

On 17th January 2017; the Supreme Court observed that the privilege of lawmakers regarding their speeches in parliament is not absolute but subject to the Constitution. The observation came after PM Nawaz Sharif's attorney failed to impress a five-judge bench with his argument on the privilege of parliamentarians under Article 66 of the Constitution.

PM's counsel Makhdoom Ali Khan tried to convince the bench that there was absolute privilege of free speech in parliament like any other parliamentarian under Article 66 and NOT under Article 248 of the Constitution. Mr ali contended that his client was an MNA; therefore, *"don't judge him less than any MNA"*.

*[PTI's Imran Khan had requested the top court to disqualify the prime minister for making a **'false statement in parliament about the ownership of the Sharif family's property in London and steel mills in Dubai & Jeddah .'**]*

On Counsel Ali's citation of several judgments of foreign courts about the privilege of free speech of parliamentarians, Justice Khosa observed that:

"...nobody is prosecuting the PM on the basis of his speech in parliament but these were not regular parliamentary proceedings as the prime minister himself had volunteered to say something on the Panama Leaks issue.

[Further]that committing a crime is not performance of official duty and parliament is not an island where you can do whatever you want".

Justice Sheikh Azmat Saeed clarified it further that:

"The immunity and privilege to the prime minister is not absolute. The president and the governor under Article 248 of Constitution have complete immunity, but not the prime minister."

It may be interesting to know that the PTI chairman had made four allegations to seek disqualification of Nawaz Sharif under Article 63(1)(0) for tax evasion. The allegations were that:

- *The PM received \$9million from sale of Gulf Steel in the 1980s; it should have been declared as wealth in the tax returns submitted under the Wealth Tax Act 1963.*
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- *The wealth statement for tax year 2011 and tax year 2012 were filed later which was an offence attracting a penalty.*
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- *The PM gave gifts worth Rs:317,000,00 to Hussain Nawaz and Rs:194,594,40 to Maryam Safdar which were deception and gifts received by Nawaz Sharif from his son should have been treated as income and tax paid on it.*

The PM's counsel said **the prayers in the PTI's petition were contradictory to each other. Upon this, the bench observed that this matter would not be reopened.**

On the same day, the PM's daughter Maryam Safdar submitted her reply in the apex court which stated that she was not dependent on her father ever since she got married in 1992. In her reply, she stated that expenditures for **Shamim Farm House** were paid jointly and her share in tax returns of **Shamim Akhter [PM's mother]** in 2013 was Rs:5 million while it went up to Rs:6 million for subsequent years, 2014 and 2015.

Maryam detailed that out of 384 kanals of **Shamim Agri Farms**, 364 kanals were being supervised by her grandmother Shamim Akhter while saying that: **'I paid Rs:12.13 million as tax in 2016.'** the aggregate income of Maryam and her husband Captain Safdar had been further supplemented by the salary and allowances that her spouse had drawn since 2008 as a member of the National Assembly; Cap Safdar had been a taxpayer since he joined the government service in 1986.

Maryam's attorney Shahid Hamid presented details of assets and taxes paid by his client in agriculture and non-agriculture income. Maryam Safdar stated that the Raiwind estate comprising five homes belonged to her paternal grandmother.

On 18th January 2017; hearing of the Panama Leaks case started with questioning about some agricultural land which PM Nawaz Sharif had allegedly bought in the name of his daughter Maryam in 2011. The court also inquired after large sums of money that were gifted by the premier's son Hussain Nawaz to his father.

Justice Ijazul Ahsan questioned PM Nawaz Sharif's lawyer Makhdoom Ali Khan that the court wanted to know the source of the amount, where such a big amount was [*continuously*] coming from at least over a period of four years. According to Justice Ijazul Ahsan, the move signalled that a significant amount of money had been circulating.

Mr Khan told the court that the amounts of Rs:210m & Rs:129.8m were sent by Hussain Nawaz in 2012 as gifts. Justice Khosa at once passed observation that:

"It could be that - this is black money. The son [Hussain Nawaz] sent the amount to the father [Nawaz Sharif] and the father bought the land in his daughter's name."

It was an agricultural land spread over 5.38 acres in Mansehra district, which was worth Rs:243m in year 2012 and was duly declared by the PM in his 2011-12 income tax returns. Justice Gulzar Ahmed, while referring to that land, asked that:

"This property was not **benami**, was it? Why did Hussain Nawaz only give gifts to his father?"

Justice Sheikh Azmat Saeed reiterated the bench's desire to see the records of transactions; he nearly shouted at the PM's counsel:

"We are not speaking in Persian – put up the records."

Maryam Nawaz's dependence status was brought into focus once again as counsel Makdhoom Ali Khan maintained that her name was listed as the PM's dependent on tax forms because there was no other column on the sheet. He further argued that the purpose of writing her name on the form was not to declare her a dependent.

Mr Khan told the bench that allegedly Maryam Safdar was declared a dependent in the nomination papers but the prime minister never accepted those accusations. He pleaded that in the premier's household it was only him and his wife no dependants.

Justice Gulzar observed that the tax forms were edited in 2015 and inquired that when did the Panama matter emerge?

Panama came forward in 2016 and before that the tax forms were edited; Mr Ali told. He also pleaded that accusations of tax evasion made against the prime minister were incorrect; and that amounts of money had been gifted by the premier to his daughter through banks - full record of bank transactions was available.

During the hearing, the court also put forth an inquiry regarding the Azizia Steel Mills in Jeddah. The focus remained on how money received from sale of the mills was transferred to Pakistan. Justice Khosa showed concern about it while addressing PM's counsel Mr Khan:

"One aspect of the case is concerned with money laundering. The accusation is that the amount was sent abroad through unlawful means. You will have to give details as to how the amount was transferred."

In response, the counsel told the court that the amount was sent by Hussain Nawaz from Saudi Arabia in 2010.

Justice Ijaz asked: ***"Other than this, what other business does Hussain Nawaz have in Saudi Arabia?"***

The counsel told the court that details of Hussain's businesses would be provided by his lawyer; on which Justice Ijaz felt little upset while saying:

"Hussain Nawaz gave the gifts in 2010 but the steel mill was sold in 2005. We will want to see that the amount of \$1.9m

came in through banks or not. It is normally determined whether tax returns were submitted against that transaction."

The premier's lawyer told the apex court that submitting documents regarding the transactions was not necessary since he had argued that gifts were transferred through the banks. He added that if the court asked for them, details of the accounts could be provided.

The fact remained that the main accusation in this regards was that income was masked as gifts to evade tax. Makhdoom Ali Khan accepted that the prime minister had given gifts to his children but those gifts were transferred through banks. Then Justice Azmat asked the counsel:

"From what business is so much money coming in? Has the father ever asked his sons where the money is coming from?"

"What is the reason for giving such amounts as gift?"

Observing that there were discrepancies between the arguments presented in court and the speech delivered by the prime minister in the National Assembly, Justice Khosa said PM's speeches would be analysed from all angles. **The PM's counsel was instructed to clear those confusions in court next day.**

On 19th January 2017; details of property bought in the name of Maryam Safdar were submitted in the Supreme Court; the documents included legal papers related to the property as well as the dates of purchase.

During the proceedings, Justice Asif Saeed Khosa asked whether Prime Minister Nawaz Sharif had purchased the property using the name of his daughter. The Prime Minister's attorney, said – YES, it is true; and that **when Maryam paid the full price of the property**, the ownership was transferred to her.

On that day, the PM's counsel Makhdoom Ali Khan also told the SC bench that the government of Pakistan owned two offshore companies; explaining that *"Two Pakistani state hotels, Roosevelt in USA and Scribe in France, are owned by offshore companies; thus establishing offshore companies is not illegal."*

To this, Justice Khosa clarified that owning an offshore company was not an issue but the issue was of concealment of wealth and tax evasion.

On the same day; while discussing Article 184 (3) of the Constitution, Justice Asif Saeed Khosa observed that:

"....adjudicating the qualification of PM Nawaz Sharif as a lawmaker is a matter of public importance."

However, Justice Azmat Saeed Sheikh, during the course of hearing, observed that SC would not disqualify PM Nawaz while depending on disputed documents. The judge observed that in Panama leaks case, the chief executive of the country was involved and therefore the matter was of public importance - ***"The criminal law can be tried in this matter."***

Another judge Justice Ejaz Afzal Khan observed that if the court convicted an MP on the basis of criminal law then he would be disqualified and the stigma of his disqualification would remain forever.

Referring to the **Farzand Ali case judgment, Justice Azmat Saeed Sheikh observed** that the top court could disqualify any parliamentarian after election.

The PM's counsel Makhdoom Ali Khan concluded his 17-hour-long arguments on that day. The judges appreciated his valuable assistance on different legal issues as Khan cited more than 100 judgments during his arguments, aimed at protecting the PM from disqualification. Paying tribute to Makhdoom Ali Khan, Justice Khosa said his arguments were exceptional and it was a treat to listen to him.

The counsel in his arguments repeatedly stated that he was not raising objection to the maintainability of the petition filed by PTI chief Imran Khan. He, however, cautioned the bench regarding the scope of its jurisdiction in this matter under Article 184 (3) of the Constitution; he also cited Articles 10-A, 17, 25 of the Constitution.

Citing judgments, Makhdoom Ali said the SC would avail or exercise no adjudication when intricate examination of voluminous evidence would be required. ***"The PTI has relied on newspaper clippings, books, articles, interviews and news reports. None of this can be called evidence,"*** the PM's counsel explained.

The fact remained that similar matters were also pending in the Election Commission of Pakistan [ECP] as well as the Lahore High Court but it was

yet to determine about the competent forum for deciding the definition of '**Sadiq & Ameen**' under Article 62 of the Constitution.

On 20th January 2017; when the five-member larger bench resumed hearing of the Panama Leaks case hearing that day, the *Jamaat e Islami* [JI] filed yet another petition seeking Prime Minister Nawaz Sharif's personal appearance in the apex court to clarify the controversy over his family's alleged offshore assets.

JI counsel Taufiq Asif gave his arguments on the National Assembly speech of the PM Nawaz Sharif regarding his children's businesses abroad. He urged that since there were inconsistencies in the PM speech, it showed the PM lied to the Parliament, and that he was no more a '**Sadiq & Ameen**' [honest and trustworthy] as per the requirement of Article 62 and 63 of the Constitution; hence, the court should declare him ineligible for the office.

Taufiq Asif further contended that the PM used his government position in favour of his personal status. It was violation of his oath; therefore he should be disqualified. The PM had admitted owning the London flats. However, **Justice Khosa rejected** the argument, saying that had the PM accepted this property the hearing of this case should have ended today.

Justice Ejaz asked if there was a code of conduct which said that the Prime Minister could not engage in business - no such limitation my Lord; the counsel said. Justice Azmat Saeed remarked: "**Why are you dragging the case on mere assumption? No evidence has been brought to us.**"

Justice Asif Saeed Khosa said that the Prime Minister has asked for privilege of the parliament under Article 66 not immunity. Further that if the PM had hid the London flats on purpose.

On 23rd January 2017; the SC's five-member bench led by Justice Asif Saeed Khosa resumed hearing the Panama Leaks case; JI's counsel Taufiq Asif continued his arguments saying that parliamentary immunity was only for the legislative process while quoting that:

"The Prime Minister earlier said that he wanted to clarify everything. He should now appear before the court to explain everything and take the nation out of distress.

Justice Asif Saeed Khosa said that he [Taufiq Asif] was opposing his own petition while not elaborating as to what the PM was concealing.

Justice Azmat Saeed Sheikh once again reiterated that the PM's lawyer had refused to produce a money trail as he maintained that the London Flats were not owned by the PM. He added that in order to prove something wrong, one has to establish what the truth is.

Justice Gulzar asked the JI counsel to establish a link between the Prime Minister and the Sharif family business.

Justice Ijazul Ahsan said that Nawaz Sharif maintained that his name was not included in the Panama Papers.

Justice Khosa said that during proceedings **the judges asked questions to understand the case; the questions should not be taken as remarks.** The hearing was adjourned till next day; the Prime Minister's lawyer Makhdoom Ali Khan and PTI lawyer Naeem Bukhari had completed their arguments.

MARYAM'S STANCE REJECTED BY SC:

On 24th January 2017; the Supreme Court of Pakistan rejected the statement of Maryam Safdar as it did not bear her signature. As the proceedings resumed, Maryam submitted her statement in court. The Prime Minister's daughter claimed that costly presents that her father had given to her were merely a token of love for her from a father.

Maryam Safdar stated that she was a married woman and in December 1992, had tied the knot to a serving captain; later became the mother of three children, one son and two daughters she [Maryam Safdar], her father and husband were made a target of vengeance and reprisal due to which she left for Saudi Arabia with her parents.

Maryam further disclosed that in 2007 she returned to Pakistan to end her exile and adopted residence at Shamim Agri Farms; her paternal grandmother was the owner of those Farms; her husband had gotten elected as a Member of National Assembly [MNA] in both 2008 and 2013 and as a former employee of the government, he was receiving enough remuneration.

*Maryam claimed that her husband had been sacked illegally from office hence afterwards he had joined civil service; **her husband***

had been paying tax since 1986 and that she had never been dependent on her father since 1992.

Maryam further claimed that the gifts that her father had given her carried consents and love of her brothers and mother. ***Maryam's statement was, however, rejected by the Supreme Court since it did not bear her signature.***

On 26th January 2017: when that day's proceedings on Panama Leaks started, the counsel for Hassan and Hussain Nawaz placed their replies before the SC's august bench. Details of business interests were furnished along with Hassan Nawaz's reply which also mentioned business interests owned by the Qatari prince.

The detailed replies submitted to the apex court outlined the various business interests held by the Qatari prince Hamad bin Jassim along with [another] letter dated 22nd December 2016 which purportedly clarified the questions raised in connection with the prince's earlier letter.

The prince's letter outlined that business in Gulf at that time was conducted on cash basis and that the shares were distributed among the business partners in 2005.

Qatari prince's second letter was in fact a bombshell from Hussain Nawaz, the eldest son of Prime Minister Nawaz Sharif to reaffirm their earlier claim that his grandfather had invested 12 million dirham in the Al-Thani family's business in the 1980s.

[In November 2016, Mr Hussain had submitted the first Qatari letter, explaining how the rulers of the Gulf state had supported the Sharif family, which eventually led to him acquiring the four Park Lane flats in UK.]

The fresh one-page letter from Hamad bin Jassim said that:

"This investment was made by way of provision of cash, which was common practice in Gulf region at the time of investment and also given the longstanding relationship between my father and [Mian] Sharif, a customary way for them to do business."

Qatari prince's said letter was dated 22nd December 2016, duly attested by the Pakistan embassy in Doha, and was placed before the SC through Advocate Salman Akram Raja while adding that:

"In response to [the] queries, I wish to clarify that in 1980, Mian Mohammad Sharif, a longstanding and trusted business partner of my father, made an investment of approximately 12 million dirham in the real estate business of the Al-Thani family.

At the end of 2005, it was agreed that an amount of approximately \$8m was due to Mian Sharif in accordance with the later's wishes. This amount was settled in 2006 delivering bearer shares of Nescoll and Nielson Enterprises Limited, which had been kept in Qatar until then, to Hussain Nawaz's representative."

Included in the bundle of documents, placed before the apex court that day, was an affidavit by Tariq Shafi showing how the AED 12 million were deposited with Mr Fahad bin Jassim bin Jaber Al Thani of Qatar on instructions of his uncle Mian Sharif.

Along with other related details, ***a transcript of Maryam Safdar's TV interview was also submitted to the Supreme Court.***

On that day; Hussain Nawaz also submitted a profile of Hamad bin Jassim, copy of documents concerning sale of their Dubai factory in 1980, copy of a letter of credit from dated 15th August 2001, copy of the sale and purchase agreement for the Azizia Steel Plant dated 20th March 2005, copy of the settlement signed for the investment made by Mian Sharif, an affidavit from Shezi Nackvi pertaining to the Al Towfeek debt and many other documents, including audit reports of the Hudaibiya Paper Mills.

The **affidavit of Shezi Nackvi** — the authorised representative of the Al Towfeek Company for Investment Funds Limited — stated that neither he nor any company official had any dealings, correspondence or meeting with Nawaz Sharif at any point in time during the entire period, commencing with the negotiation of the loan and culminating in the settlement, when the company made a commercial decision to settle the claim for \$8m and the London's High Court was duly informed.

Shezi Nackvi's affidavit further clarified that the four London properties mentioned in his statement before the High Court of Justice Queen's Bench Division London were not mortgaged and were never offered as collateral for the amount advanced to [late] Mian Sharif, Shahbaz Sharif and [late] Abbas Sharif, the defendants in the said suit.

Shezi's affidavit stated that in September 1998, FIA's investigation reports [*that the Sharif family owned the Avenfield Properties through offshore companies*] provided him the basis of his witness statement to seek the attachment of the properties in the **AI Towfeek case**.

[Even though the above facts were known to all but Hussain Nawaz's counsel continued to deny that the properties in London were purchased between 1993 and 1996 by any member of the Sharif family, directly or indirectly.]

Sharifs held that the said properties were acquired by Hussain in 2006 on account of the settlement with the Al-Thani family of Qatar, whereby a sum equivalent to \$3.2 million, entrusted to the Al-Thani family, was adjusted after other distributions, consisting of a payment of \$8 million to the AI Towfeek company in 2000, provision of over \$5.4 million to Hussain and \$4.2 million to Hassan Nawaz for their businesses in the UK between 2001 and 2004.

Hussain Nawaz affirmed that he was the holder of a national tax number [NTN] in Pakistan and that the gifts given by him did qualify as gifts in terms of the Income Tax Ordinance 1979. He also contended that his sister Maryam had correctly maintained that she owned no property abroad.

In the context of gifts Hussain Nawaz gave to his father, Hussain explained that the annual cash flow as remittances to his father [Nawaz Sharif] in Pakistan was aimed at freeing his father from any financial constraints, given his full-time involvement in politics.

Hussain Nawaz also stated that his brother Hassan had correctly stated that the London properties where they resided during their time as students were not owned by any member of the Sharif family at the time, while maintaining that **the quote attributed to Mrs Kulsoom Nawaz [*that she used to send rent of the said flats quarterly from Pakistan*] was incorrect**.

The same day [26th January 2017] Lawyer Shahid Hamid, representing Maryam Safdar, contended that Imran Khan [*Mr Khan was sitting in the first row of Courtroom at the time*] had not come before the court "**with clean hands**". To substantiate, he argued that the petitioner [Mr Khan] had a longstanding political feud with his client [Nawaz Sharif], citing newspaper clippings where Imran Khan had welcomed Gen Musharraf's coup of 12th October 1999 when Nawaz Sharif was sent home.

Justice Khosa reminded the counsel that former JI chief Qazi Hussain Ahmed had also welcomed the military intervention at that time; adding that it was a past and closed transaction – also that **'political blood feud'** was too strong a word. Justice Azmat Saeed remarked that

'You will see after half an hour whether it is a blood feud or a political rivalry between different political parties - see the daily bitter press talks by the parties involved in the Panama-gate.'

With Hassan and Hussain Nawaz's replies and a new letter from the Qatari Prince addressing the questions raised on the Prince's earlier statement, PTI's leadership cried declaring it as foul and stating that instead of evidence, letters were being placed before the bench, and fraudulent documents were being prepared and presented instead of proof – to satisfy the apex court.

There was much hue & cry in the court-room that sometimes the PM presented himself as dependent in his tax returns and somewhere Maryam became dependent upon his father PM; however, continuing his arguments before the SC's bench, Maryam's counsel Shahid Hamid said **'married women are not dependents of their parents'**.

On 27th January 2017; the Supreme Court resumed the Panama Leaks case hearing during which **Finance Minister Ishaq Dar withdrew / rejected his confessional statement of Sharif's money laundering in Hudaibiya Paper Mills case;** on 25th April 2000 he had given a handwritten statement before a magistrate alleging that Sharifs used the Hudaibiya Mills as cover for money laundering during the late 1990s.

Mr Dar discarded his own hand-written confessional statement saying he was forced to sign a pre-written statement. The court directed Prosecutor General NAB to present complete record of Hudaibiya Paper Mills on next hearing. Justice Khosa inquired about the pardon given to Ishaq Dar under Section 26E and asked:

"Inform the court whether the pardon was conditional or not and whether the confession was recorded before the pardon or after it."

The PM's counsel sought time till next hearing to provide details about the division of Sharif family property after the death of Mian Sharif.

On 30th January 2017; the five-member SC's bench headed by Justice Asif Saeed Khosa resumed hearing that day and the National Accountability Bureau [NAB] submitted the record of Finance Minister Ishaq Dar's statement to the judges; the bench had in previous hearing ordered the NAB to submit the record.

NAB, however, confirmed that on 20th April 2000, the minister [Ishaq Dar] had requested for forgiveness and after due consideration his confessional statement was recorded on 25th April [2000].

Shahid Hamid, the counsel for PM's daughter Maryam, Capt Safdar and Ishaq Dar presented his arguments in that context. Makhdoom Ali Khan, the counsel of Prime Minister Sharif, submitted before the bench details about the properties and their settlement amongst the family members of the premier; the arguments contained certain details of gifts received and the division of properties within the family.

On 1st February 2017; the SC Proceedings for the Panama Leaks case were adjourned for a week after Justice Sheikh Azmat Saeed fell ill and was hospitalized; he was admitted to the Rawalpindi Institute of Cardiology a day before following chest pain. The judge underwent angiography in the hospital and was advised to take rest.

Justice Azmat Saeed as usual was quite active during the Panama Leaks case proceedings on 31st January 2017, posing a volley of questions to the counsel for prime minister's sons but in the evening he suffered an attack. The bench adjourned the proceedings till Justice Saeed recovers from ailment because no fresh bench could be constituted for hearing.

During Salman Akram Raja's arguments that day Justice Khosa cautioned him that ***he was taking a big gamble by withholding evidence behind the Sharifs' acquisition of the four London flats.***

After a break of 14 days, a five-judge Supreme Court bench was likely to resume the hearing of the Panama Leaks case on 15th February. PTI's Advocate Naeem Bokhari, PM's counsel Makhdoom Ali Khan, Shahid Hamid, appearing on behalf of Maryam Safdar, her husband Capt Safdar and Finance Minister Ishaq Dar; and JJ's Taufiq Asif had already completed their arguments till that day. Advocate Salman Akram Raja, the counsel for the PM's sons Hussain and Hassan Nawaz, was on his legs when the hearing had to be postponed abruptly.

PANAMA CASE ON FINAL STAGE:

On 15th February 2017; the Supreme Court resumed hearing the Panama Leaks case, Advocate Salman Akram Raja picked up his arguments where he had left them off. He welcomed Justice Sh Azmat Saeed — whose sudden illness had forced a suspension in the case's daily hearings — reminded the apex court that:

"....this is neither a trial, nor the defendant a witness. I will only argue this case based on the evidence present. The record for the Sharif family's business dealings for the last 40 to 45 years cannot be reproduced as it was lost during the 1999 martial law.

The court cannot reach a just conclusion in the case without first conducting a judicial inquiry. The matter can be sent to relevant departments for inquiry as the Arsalan Iftikhar case determined that trials for cases can be held at corresponding forums."

Counsel for PM's sons Mr Raja argued that a court had never conducted an independent inquiry in any criminal case; that Article 10 of the Constitution says that every citizen of this country deserves a fair trial and that units formed under the law should be allowed to do their job. He stressed that ***there was no charge against the Prime Minister, so there was no charge against his children either;*** while adding that:

"If we suppose that the PM's children are his employees, according to the National Accountability Bureau's laws, then the burden of proof does not fall on the defendants.

This is not a criminal court, so even if Hassan and Hussain Nawaz are suspects, there is no proof against them."

There were **eight questions** that the court posed to defendants, including the relationship between Mian Sharif and the Al Thani family, the shares in Nielsen and Nescoll, and the profits the family gained from them, the counsel recalled. The counsel said that Sharifs had ties with more than one Qatari royal family but he was not going to disclose the name of other royal families before the court due to certain reasons.

Justice Khosa advised Raja that he should first finish his arguments before answering the court's questions.

Moving on to the **matter of the London flats**, Mr Raja argued that:

"The flats were bought by the Al Thani family between 1993 and 1996. The Sharif family did not own the flats in 1999, as Hussain Nawaz was given the bearer certificate to the flats by the Al Thani family - the shares for the flats were given to Minerva Financial Services in 2006."

Upon hearing this argument, Justice Azmat Saeed asked the counsel to provide a paper trail for these transactions and said:

"You have been moving from one point to the other since the beginning, but have failed to provide any evidence in this regard."

The allegation was that Maryam Safdar had contacted Minerva Services Ltd, Raja retorted. The bench again asked that ***evidence should be proved that Hussain Nawaz was the beneficial owner of the offshore companies.***

Meanwhile PTI spokesman Fawad Chaudhry told in a press conference that:

"We are submitting three more documents — one from PTI chairman Imran Khan that authenticates all previous documents presented by the party, the expert opinion of UK-based lawyers and a document that proves that Maryam Safdar is the owner of UK-based firms Minerva, Nielson and Nescoll.

Imran Khan would submit an affidavit stating that all documents previously submitted by the party were credible and authentic."

On 16th February 2017; Salman Akram Raja, the counsel for PM's family continued with his arguments before the SC's august bench. During the proceedings, he provided the service records of Minerva firm pointing that Faisal Tiwana, a representative of Hussain Nawaz, made an agreement with the Arena Company.

Justice Azmat Saeed inquired further as to who was director for Neilson and Nescoll. The PM Family's counsel submitted the transaction records which were conducted by the Minerva Company and also provided the receipts of the Barclay Bank.

Mr Raja provided the defendant's case details by stating that Maryam Safdar remained trustee shareholder after she kept bearer certificates with her till July 2006. Further, he emphasised the defendant's position by revealing that registered shares were issued for the firm in July 2016 - however, after the bearer certificates were suspended, Maryam Safdar's trustee status became invalid.

The SC summoned NAB and Federal Bureau of Revenue [FBR] chiefs to the court on 21st February 2017. and the court was adjourned till then. NAB Chairman Qamar Zaman Chaudhry and FBR Chairman Dr Mohammad Irshad were advised to appear in personal capacity before the apex court with relevant record.

Counsel for the premier's children, ***Salman Akram Raja concluded his arguments regarding the ownership of London flats and offshore firms.*** That day he kicked off his arguments by stating that the details regarding payments to Minerva Services had also been submitted to apex court. All the documents were retrieved last night from London and the response submitted jointly.

Justice Azmat remarked that the actual question was as to who was the director of Neilson and Nescoll companies. He told Raja Salman that the documents which he was presenting were related to offshore firms; also insisted that it needed to be proved through documentary evidence that Hussain Nawaz was actually operating those firms.

Salman argued that Maryam Safdar remained shareholder as trustee from February 2006 to July 2006 and then registered shares were issued in Minerva's name and maintained that Minerva Financial Services appointed its own directors for Neilson and Nescoll. Maryam's position as shareholder got finished as the bearer certificates were cancelled.

J Ejaz Afzal inquired about source of income of Hussain Nawaz for buying the expensive London flats to which Salman Raja replied that Qatari investment helped Hussain establish his business and purchase said flats.

Justice Azmat Saeed expressed that the bench would be at fault by ignoring the speeches made by Sharif family members. Justice Asif Saeed Khosa inquired whether it was a strategic move by Sharif family not to present the documents. To this Salman replied that he didn't follow any such strategy.'

Meanwhile, talking to newsmen outside the Supreme Court, PTI's Imran Khan said that Sharif family was trying to sabotage the hearing; Sharifs

entire argument revolved around two things; **'the bench is qualified or not and the case is inadmissible'**.

Justice Ejaz Afzal questioned how the children of Nawaz Sharif purchased London flats. Salman replied that Hussain Nawaz purchased London flats through the business of his grandfather Mian Sharif. **'According to NAB's law, the onus of proof rests with the plaintiff and not the premier'** said Salman Raja.

Mr Raja expressed that the apex court could constitute a judicial commission because the court investigated NICL and Hajj corruption scam as well - also argued that Minerva Financial Services received barrier certificates in 2006. He reaffirmed that Al-Thani family purchased the flats between 1993 - 96 and Sharif family was not the owner of said flats even in 1999.

Justice Ejaz Afzal inquired as to who would provide the documents **as the scenario was becoming complicated** - also remarked that the larger bench could not wind up the matter as the plaintiff as well as respondent failed to submit any documents.

Justice Ejaz also inquired as to who instructed Arena firm to get in touch with Minerva. To this, Salman replied that Hussain Nawaz might have passed on the instruction – and actually it was so.

Justice Ejaz inquired as to who and when the documents regarding mortgage were signed - also remarked that new hypothetical assumptions were being put forth with each passing day possibly due to barrage of questions by the larger bench; **'No one is presenting the whole truth'**.

Salman Akram Raja claimed that Minerva Financial Services detached itself from the documents that date back to 2005. He maintained that he was neither an accused, nor a witness.

Justice Asif Khosa in his remarks said that Hussain Nawaz claimed to submit money against mortgage till date.

Counsel for PTI Naeem Bukhari and counsel for *Jamaat-e-Islami* Taufeeq Asad had already completed their arguments before the apex court.