IN THE SUPREME COURT OF PAKISTAN

(Original Jurisdiction)

PRESENT:
Mr. Justice Asif Saeed Khan Khosa
Mr. Justice Ejaz Afzal Khan
Mr. Justice Gulzar Ahmed
Mr. Justice Sh. Azmat Saeed
Mr. Justice Ijaz ul Ahsan

Constitution Petition No. 29 of 2016
(Panama Papers Scandal)

Imran Ahmad Khan Niazi *Petitioner*

versus

Mian Muhammad Nawaz Sharif, Prime Minister of Pakistan / Member National Assembly, Prime Minister's House, Islamabad and nine others *Respondents*

For the petitioner:	Syed Naeem Bokhari, ASC Mr. Sikandar Bashir Mohmad, ASC Mr. Fawad Hussain Ch., ASC Mr. Faisal Fareed Hussain, ASC Ch. Akhtar Ali, AOR with the petitioner in person Assisted by: Mr. Yousaf Anjum, Advocate Mr. Kashif Siddiqui, Advocate Mr. Imad Khan, Advocate Mr. Akbar Hussain, Advocate Barrister Maleeka Bokhari, Advocate Ms. Iman Shahid, Advocate,
For respondent No. 1:	Mr. Makhdoom Ali Khan, Sr. ASC Mr. Khurram M. Hashmi, ASC Mr. Feisal Naqvi, ASC Assisted by: Mr. Saad Hashmi, Advocate Mr. Sarmad Hani, Advocate Mr. Mustafa Mirza, Advocate
For the National Accountability Bureau (respondent No. 2):	Mr. Qamar Zaman Chaudhry, Chairman, National Accountability Bureau in person Mr. Waqas Qadeer Dar, Prosecutor-

	General Accountability Mr. Arshad Qayyum, Special Prosecutor Accountability Syed Ali Imran, Special Prosecutor Accountability Mr. Farid-ul-Hasan Ch., Special Prosecutor Accountability
For the Federation of Pakistan (respondents No. 3 & 4):	Mr. Ashtar Ausaf Ali, Attorney-General for Pakistan Mr. Nayyar Abbas Rizvi, Additional Attorney-General for Pakistan Mr. Gulfam Hameed, Deputy Solicitor, Ministry of Law & Justice Assisted by: Barrister Asad Rahim Khan Mr. Salaar Khan, Advocate Mr. Bilal Naseer, Advocate Mr. Shahzaib Khan, Advocate
For the Federal Board of Revenue (respondent No. 5):	Dr. Muhammad Irshad, Chairman, Federal Board of Revenue in person Mr. Muhammad Waqar Rana, ASC Mr. M. S. Khattak, AOR Kh. Tanvir Ahmed, Director-General (Intelligence) Mr. Shaukat Ali, Director-General Hafiz Muhammad Ali Indhar, Director (Legal) Dr. Muhammad Iqbal Khawaja, Member, Federal Board of Revenue
For respondents No. 6, 9 & 10:	Mr. Shahid Hamid, Sr. ASC Ms. Ayesha Hamid, ASC Syed Rifaqat Hussain Shah, AOR
For respondents No. 7 & 8:	Mr. Salman Akram Raja, ASC Syed Rifaqat Hussain Shah, AOR Assisted by: Malik Ahsan Mahmood, Advocate Malik Ghulam Sabir, Advocate Mr. Nadeem Shahzad Hashmi, Advocate Mr. Asad Ladha, Advocate Mr. Zeshaan Hashmi, Advocate Ms. Atira Ikram, Advocate Mr. Tariq Bashir, Advocate Mr. Muhammad Shakeel Mughal, Advocate

Constitution Petition No. 30 of 2016
(Panama Papers Scandal)

Sheikh Rasheed Ahmed *Petitioner*

versus

Federation of Pakistan through Secretary Law, Justice and Parliamentary Division and three others *Respondents*

For the petitioner:	In person
For the Federation of Pakistan (respondent No. 1):	Mr. Ashtar Ausaf Ali, Attorney-General for Pakistan Mr. Nayyar Abbas Rizvi, Additional Attorney-General for Pakistan Mr. Gulfam Hameed, Deputy Solicitor, Ministry of Law & Justice Assisted by: Barrister Asad Rahim Khan Mr. Salaar Khan, Advocate Mr. Bilal Naseer, Advocate Mr. Shahzaib Khan, Advocate
For the National Accountability Bureau (respondent No. 2):	Mr. Qamar Zaman Chaudhry, Chairman, National Accountability Bureau in person Mr. Waqas Qadeer Dar, Prosecutor-General Accountability Mr. Arshad Qayyum, Special Prosecutor Accountability Syed Ali Imran, Special Prosecutor Accountability Mr. Farid-ul-Hasan Ch., Special Prosecutor Accountability
For the Federal Board of Revenue (respondent No. 3):	Dr. Muhammad Irshad, Chairman, Federal Board of Revenue in person Mr. Muhammad Waqar Rana, ASC Mr. M. S. Khattak, AOR Kh. Tanvir Ahmed, Director-General (Intelligence) Mr. Shaukat Ali, Director General Hafiz Muhammad Ali Indhar, Director (Legal) Dr. Muhammad Iqbal Khawaja, Member, Federal Board of Revenue
For respondent No. 4:	Mr. Makhdoom Ali Khan, Sr. ASC Mr. Khurram M. Hashmi, ASC

Mr. Feisal Naqvi, ASC

Assisted by:
Mr. Saad Hashmi, Advocate
Mr. Sarmad Hani, Advocate
Mr. Mustafa Mirza, Advocate

Constitution Petition No. 03 of 2017
(Panama Papers Scandal)

Siraj-ul-Haq, Ameer Jamaat-e-Islami, Pakistan *Petitioner*

versus

Federation of Pakistan through Ministry of Parliamentary Affairs, Islamabad and three others *Respondents*

For the petitioner:	Mr. Taufiq Asif, ASC Sh. Ahsan-ud-Din, ASC Mr. Atif Ali Khan, ASC Mr. Mehmood A. Sheikh, AOR with the petitioner in person. Assisted by: Mr. Khan Afzal Khan, ASC Mr. Ajmal Ghaffar Toor, Advocate Mr. Saif Ullah Gondal, Advocate Mr. Sher Hamid Khan, Advocate Mr. Imran Shafiq, Advocate Mr. Asad Ullah Bhutto, Advocate
For the Federation of Pakistan (respondents No. 1 to 3):	Mr. Ashtar Ausaf Ali, Attorney-General for Pakistan Mr. Nayyar Abbas Rizvi, Additional Attorney-General for Pakistan Mr. Gulfam Hameed, Deputy Solicitor, Ministry of Law & Justice Assisted by: Barrister Asad Rahim Khan Mr. Salaar Khan, Advocate Mr. Bilal Naseer, Advocate Mr. Shahzaib Khan, Advocate
For respondent No. 4:	Mr. Makhdoom Ali Khan, Sr. ASC Mr. Khurram M. Hashmi, ASC Mr. Feisal Naqvi, ASC Assisted by: Mr. Saad Hashmi, Advocate

Mr. Sarmad Hani, Advocate
Mr. Mustafa Mirza, Advocate

Dates of hearing: 04.01.2017, 05.01.2017, 06.01.2017, 09.01.2017, 10.01.2017, 11.01.2017, 12.01.2017, 13.01.2017, 16.01.2017, 17.01.2017, 18.01.2017, 19.01.2017, 20.01.2017, 23.01.2017, 24.01.2017, 25.01.2017, 26.01.2017, 27.01.2017, 30.01.2017, 31.01.2017, 01.02.2017, 15.02.2017, 16.02.2017, 21.02.2017, 22.02.2017 & 23.02.2017.

JUDGMENT

Asif Saeed Khan Khosa, J.: 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 and its original version in French reads as follows:

> *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 case revolves around that very sentence attributed to Balzac as through Constitution Petition No. 29 of 2016 it has been alleged by the petitioner namely Imran Ahmad Khan Niazi, Chairman of a political party named Tehreek-e-Insaf, that while holding high public offices in the State of Pakistan over a stretched period of time respondent No. 1 namely Mian Muhammad Nawaz Sharif, the incumbent Prime Minister of Pakistan, and through him his

immediate family has amassed huge wealth and assets which have been acquired through means which were illegal and unfair, practices which were unlawful and corrupt and exercise of public authority which was misused and abused. Through Constitution Petition No. 30 of 2016 Sheikh Rasheed Ahmed petitioner, Chairman of a political party named Awami Muslim League, and through Constitution Petition No. 3 of 2017 Siraj-ul-Haq petitioner, Ameer of another political party named Jamaat-e-Islami, have also agitated the same issue. All the above mentioned petitioners have *inter alia* prayed that it may be declared by this Court that respondent No. 1 in Constitution Petition No. 29 of 2016 (who is respondent No. 4 in the other two petitions) is not "honest" and "ameen" within the purview of Article 62(1)(f) of the Constitution of the Islamic Republic of Pakistan, 1973 and, thus, he is disqualified from being a member of the Majlis-e-Shoora (Parliament). Some other reliefs have also been prayed for by the petitioners and the same shall also be dealt with by me at appropriate stages of the present judgment. For facility of reference Mian Muhammad Nawaz Sharif shall be referred to in this judgment as respondent No. 1, his daughter namely Mariam Safdar shall be referred to as respondent No. 6, his son-in-law namely Captain (Retired) Muhammad Safdar shall be referred to as respondent No. 9, his sons namely Mr. Hussain Nawaz Sharif and Mr. Hassan Nawaz Sharif shall be referred to as respondents No. 7 and 8 respectively and his *Samdhi* (father-in-law of one of his daughters) namely Mr. Muhammad Ishaq Dar shall be referred to as respondent No. 10 as arrayed in Constitution Petition No. 29 of 2016. We have been informed by the learned counsel for respondent No. 1 that the said respondent has so far held the following high public offices:

Minister for Finance, Excise and Taxation, Government of the Punjab
(from April 25, 1981 to February 28, 1985)

Chief Minister, Government of the Punjab
(from April 09, 1985 to May 30, 1988)

Caretaker Chief Minister, Government of the Punjab
(from May 31, 1988 to December 02, 1988)

Chief Minister, Government of the Punjab

(from December 02, 1988 to August 06, 1990)

Prime Minister of Pakistan
(from November 06, 1990 to April 18, 1993)

Prime Minister of Pakistan
(from May 26, 1993 to July 18, 1993)

Leader of the Opposition in the National Assembly
(from October 19, 1993 to November 05, 1996)

Prime Minister of Pakistan
(from February 17, 1997 to October 12, 1999)

Prime Minister of Pakistan
(from June 05, 2013 till date)

A younger brother of respondent No. 1 namely Mian Muhammad Shahbaz Sharif has also served in the past as Chief Minister, Government of the Punjab for many terms and even presently he is holding that high public office. A *Samdhi* of respondent No. 1 namely Mr. Muhammad Ishaq Dar, respondent No. 10 herein, has remained and is also the present Federal Minister for Finance and a nephew of respondent No. 1 is a Member of the National Assembly at present. In an interview with Mr. Hamid Mir and Mr. Sohail Warraich telecast on Geo News television on November 17, 2009 respondent No. 1 had maintained that he belonged to a business family and he had claimed that the members of his family who were in politics (including respondent No. 1 himself) had decided in the year 1997 to disassociate themselves from the family business. The contents of the said interview have never been denied or controverted by respondent No. 1 and nothing has been brought on the record of this case to show how and when the claimed disassociation had actually come about, if at all. It is, however, not disputed that between 1981 and 1997 respondent No. 1's public offices and his business interests coincided and coexisted.

2. In the last two and a half decades there had been a constant murmur nationally as well internationally about respondent No. 1 indulging in corruption, corrupt practices and money laundering, etc. with the active assistance and involvement of respondent No. 10 and some specified properties in London, United Kingdom had

been identified as having been acquired by respondent No. 1 through ill-gotten or laundered money. In that regard the British Broadcasting Corporation (BBC) had come out with a documentary, the British newspaper Guardian had published a story about it, Mr. Raymond W. Baker had mentioned some specific details about it in his book 'Capitalism's Achilles Heel' (published in 2005 by John Wiley & Sons, Inc., Hoboken, New Jersey) and some prosecutions had been launched against respondents No. 1 and 10 and others locally by the Federal Investigation Agency and the National Accountability Bureau. However, this time it all started ominously on April 03, 2016 when the International Consortium of Investigative Journalists (ICIJ) released some information leaked from the internal database of a law firm named Mossack Fonseca based in Panama. The said information was published in the print and electronic media worldwide on April 04, 2016 disclosing details of a large number of offshore companies established in different countries providing tax havens and owned or controlled by hundreds of persons and entities based in different countries of the world. The information so disclosed also revealed that many political and public figures in different countries and their families, including the children of respondent No. 1 herein, held or owned valuable assets in different parts of the world through such offshore companies. The political uproar that followed forced some political figures in the world to resign from high public offices and others to submit explanations in the parliaments whereas in some countries high powered bodies were constituted to inquire into the allegations of corruption, corrupt practices and money laundering, etc. adopted in the matter. Respondent No. 1 happens to be the elected Prime Minister of our country and the political tumult arising out of the so-called Panama Papers compelled him to explain his position by addressing the nation twice on radio and television and the National Assembly once, abortive attempts were made to constitute a Judicial Commission to inquire into the allegations leveled against respondent No. 1 and his immediate family and ultimately the present Constitution Petitions were filed before this Court

under Article 184(3) of the Constitution of the Islamic Republic of Pakistan, 1973. In the backdrop of an unfortunate refusal/failure on the part of all the relevant institutions in the country like the National Accountability Bureau, the Federal Investigation Agency, the State Bank of Pakistan, the Federal Board of Revenue, the Securities and Exchange Commission of Pakistan 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, who is the Chief Executive of the Federation, and his family it was decided by a Larger Bench of this Court on November 03, 2016 with reference to some precedent cases that these petitions involve some serious questions of public importance with reference to enforcement of some Fundamental Rights conferred by Chapter 1 of Part II of the Constitution and, therefore, the same are maintainable before this Court under Article 184(3) of the Constitution. On that occasion none of the parties to these petitions raised any objection to competence and maintainability of these petitions and even before the present reconstituted Larger Bench (which includes a majority of the members of the earlier Larger Bench) no such objection has been raised at any stage of the protracted hearings.

3. At the commencement of regular hearing of these petitions it had been decided by this Court with concurrence of the learned counsel for all the parties that it might not be possible for this Court to take stock of the entire gamut of the business activities and personal lives of respondent No. 1 and his family within the limited scope of these petitions and, therefore, these petitions would be decided by focusing mainly, but not exclusively, on the properties relevant to respondent No. 1 and his children which were revealed through the Panama Papers. The details of the said properties are as follows:

(i) Property No. 17, Avenfield House, Park Lane, London W1K 7AF, United Kingdom
(owned by a Panama based offshore company named Nescoll Limited since June 01, 1993),

(ii) Property No. 16, Avenfield House, Park Lane, London W1K 7AF, United Kingdom
(owned by a Panama based offshore company named Nielsen Enterprises Limited since July 31, 1995),

(iii) Property No. 16a, Avenfield House, Park Lane, London W1K 7AF, United Kingdom
(owned by a Panama based offshore company named Nielsen Enterprises Limited since July 31, 1995) and

(iv) Property No. 17a, Avenfield House, Park Lane, London W1K 7AF, United Kingdom
(owned by a Panama based offshore company named Nescoll Limited since July 23, 1996).

It may be pertinent to mention here that during the course of hearing of these petitions it has come to light that there have been and are many other properties and businesses owned by respondent No. 1's immediate family not only in Pakistan but also in many other countries the value of which statedly runs into billions of Rupees or US Dollars. The net worth of just the above mentioned four properties, situated in one of the most expensive areas of London, is stated to be many millions of Pounds Sterling and they had statedly come into the ownership of only one of the sons of respondent No. 1 namely Mr. Hussain Nawaz Sharif (respondent No. 7 herein). Another son of respondent No. 1 namely Mr. Hassan Nawaz Sharif (respondent No. 8 herein) separately owns many companies and properties worth millions of Pounds Sterling and a daughter of respondent No. 1 namely Mariam Nawaz Sharif, also known as Mariam Safdar, (respondent No. 6 herein) also holds some valuable properties in her own name. None of the children of respondent No. 1 has ever claimed that the businesses set up or the properties acquired in his/her name had initially been set up or acquired through any personal earning or resources of his/her own.

4. Concise statements/replies to these petitions had been filed by all the contesting respondents and elaborate arguments had been heard by us from all the sides on all the relevant issues. During the hearing of these petitions the following issues *inter alia* had primarily been debated before us:

(a) What is the scope of the proceedings before this Court under Article 184(3) of the Constitution and whether disputed or intricate questions of fact can be decided in such proceedings with or without recording of evidence?

(b) Whether the above mentioned four properties in London in particular, statedly acquired in the name of Mr. Hussain Nawaz Sharif, a son of respondent No. 1, had been acquired by respondent No. 1 and his family through funds legitimately generated and transferred and whether acquisition of those assets has duly and properly been explained and accounted for by respondent No. 1 or his children?

(c) Whether respondent No. 1 and his children have any decent explanation available for acquiring properties and setting up various businesses in general in different parts of the world?

(d) Whether respondent No. 1 is not "honest" or "ameen" as required by Article 62(1)(f) of the Constitution as he has failed to duly account for his and his immediate family's wealth and assets and his various explanations advanced before the nation, the National Assembly and this Court in that regard have been evasive, contradictory, unproved and untrue rendering him disqualified from being elected to or from being a member of the Majlis-e-Shoora (Parliament)?

(e) Whether Mariam Safdar, a daughter of respondent No. 1, was respondent No. 1's 'dependent' in the year 2013 and in his nomination papers filed for election to the National Assembly in the general elections held in that year respondent No. 1 had failed to disclose such dependency and had, thus, been guilty of suppression of a material fact for which the necessary legal consequences ought to follow?

(f) Whether respondent No. 1 had been evading taxes and he had thereby rendered himself disqualified from being elected to or from being a member of the Majlis-e-Shoora (Parliament)?

(g) Whether some allegations of indulging in corruption, corrupt practices and money laundering, etc. leveled against respondent No. 1, respondent No. 10 and some others in the past had unduly been scuttled through some judicial recourses and what would be the remedies available for reopening of those allegations and for their prosecution?

In the following paragraphs I intend to deal with all the above mentioned and other related issues with reference to the

contentions of the learned counsel for the parties and the material made available on the record.

5. Appearing for Mr. Imran Ahmad Khan Niazi petitioner in Constitution Petition No. 29 of 2016 Syed Naeem Bokhari, ASC read out the first speech made by respondent No. 1 namely Mian Muhammad Nawaz Sharif before the nation on radio and television on April 05, 2016 and maintained that in that speech respondent No. 1 had neither been honest nor truthful because in that speech the source of funds for purchase of the properties in London was stated to be the sale of a factory near Makkah whereas in his subsequent speech made before the National Assembly on May 16, 2016 he had introduced a factory in Dubai the sale of which was the initial source of funds and the factory near Makkah was described as a factory in Jeddah. He emphasized that in the speech made by respondent No. 1 before the National Assembly it had categorically been stated that all the record relevant to the factories in Dubai and Jeddah was available and would be produced before any forum inquiring into the matter but except for a few documents of sale no such record had been produced by him before this Court. He highlighted that on that occasion respondent No. 1 had proclaimed that those were the resources through which the properties in London had been "purchased" which was a claim that was contradicted before this Court by respondent No. 1's own children and was, thus, false and untrue.

6. Mr. Bokhari pointed out from the documents produced on the record by respondent No. 1 and his children that some land was obtained on lease in Dubai on March 28, 1974, permission to set up a factory was granted by the Government of Dubai on April 28, 1974, a rent agreement in that regard was executed on June 12, 1974, a factory was installed on that land through funds which were never properly explained, 75% shares of that factory were sold to the Ahli family through a Tripartite Agreement of Sale in the year 1978 and then through a Final Share Sale Agreement dated April 14, 1980 the remaining 25% shares of that factory were also

sold to the same family. He maintained that a bare perusal of the Tripartite Agreement of Sale of 1978 showed that no money became available to the seller on the basis of that sale as the proceeds of the sale were completely consumed in paying off debts, dues and liabilities which were much more than the sale proceeds inasmuch as the seller owed the Bank of Credit and Commerce International a sum of 27.6 million Dirhams and the outstanding liabilities of the company were to the tune of about 36 million Dirhams. He pointed out that it was claimed by respondent No. 1 and his children that an amount of 12 million Dirhams in cash had become available to the seller as a result of the Final Share Sale Agreement in the year 1980 but no independent proof had been produced in that respect. He also pointed out that the Agreement in the year 1980 had been signed by Mian Muhammad Shahbaz Sharif, a younger brother of respondent No. 1, as an authorized agent of one Mr. Tariq Shafi, a cousin of respondent No. 1, who was statedly a *Benami* owner of that factory on behalf of respondent No. 1's father namely Mian Muhammad Sharif and no independent proof had been brought on the record of this case to establish that Mian Muhammad Sharif was the actual owner of that factory, Mr. Tariq Shafi was his *Benamidar*, Mian Muhammad Shahbaz Sharif was an authorized agent of Mr. Tariq Shafi or 12 million Dirhams had actually been received in cash by the seller as a result of that sale. While referring to the signatures of Mr. Tariq Shafi available on his affidavit sworn on November 12, 2016 it was maintained by Mr. Bokhari that the signatures of Mr. Tariq Shafi on the Agreement signed in the year 1980 were fake. Mr. Bokhari emphasized that in his affidavit of November 12, 2016 Mr. Tariq Shafi had clearly maintained that no money had come into his hands from the sale of 75% shares of the factory in Dubai in the year 1978 but in the year 1980 a sum of 12 million Dirhams had been received by him in cash through the sale of the remaining 25% shares of the factory in the year 1980. Thus, Mr. Bokhari maintained that respondent No. 1 was not being truthful when he had stated before the National Assembly on May 16, 2016 that the

sale of the factory in Dubai had fetched the family a sum of 33.37 million Dirhams in the year 1980.

7. Mr. Bokhari forcefully argued that respondent No. 1 had never mentioned any investment by the family in the real estate business in Qatar in his speeches made before the nation or in the National Assembly and he had also failed to make any mention of the same in his concise statements filed before this Court whereas respondent No. 1's children had based their entire case upon the resources generated through the family's investment made in the real estate business in Qatar. According to Mr. Bokhari the contradictions between respondent No. 1 and his children in this regard were irreconcilable because according to respondent No. 1 the resources becoming available through sale of the factory in Dubai were used for setting up a factory in Jeddah whereas his children had maintained that the resources becoming available from the sale of the factory in Dubai were utilized for investment in the real estate business in Qatar and thereafter the properties in London had been acquired on the basis of a settlement of the business in Qatar! Referring to a statement of one Mr. Hamad Bin Jassim Bin Jaber Al-Thani of Qatar dated November 05, 2016 produced before this Court during the present proceedings Mr. Bokhari maintained that the said statement was nothing but an afterthought and a complete concoction which destroyed credibility of respondent No. 1 irretrievably. Mr. Bokhari asserted with vehemence that the relevant four properties in London had actually been purchased by respondent No. 1 between the years 1993 and 1996 through undisclosed resources and through money laundering.

8. Mr. Bokhari brought the statement of Mr. Hamad Bin Jassim Bin Jabir Al-Thani of Qatar dated November 05, 2016 (to be reproduced and discussed in the later part of this judgment) under scathing criticism and maintained that the said statement did not even qualify to be called evidence. According to him the contents of paragraph No. 1 of that statement were not based upon

personal knowledge of the maker of the statement; the contents of paragraph No. 2 of that statements were based upon nothing but hearsay; it was not disclosed in that paragraph as to who had disclosed the facts stated therein to the maker of the statement; it was not revealed in that paragraph as to who had disclosed the desire of late Mian Muhammad Sharif to the maker of the statement; it was not disclosed in paragraph No. 3 of that statement as to how and on what basis the maker of the statement had understood what he had claimed to have understood; it was not mentioned in that paragraph that the money invested by late Mian Muhammad Sharif in the real estate business in Qatar was the sale proceeds of a factory in Dubai; in paragraph No. 4 of the statement no detail of the real estate business in Qatar was disclosed; it was claimed in that paragraph that the bearer share certificates of the properties in London were kept at that time in Qatar but it was not claimed that the said certificates were in the custody of the Al-Thani family of Qatar; no detail of the settlement of the real estate business in Qatar, no detail of payment, no banking channel and no money trail from Qatar to London was provided in that paragraph of the statement; no detail about use of the properties in London had been mentioned in the said paragraph; in paragraph No. 5 of that statement it was not disclosed as to when and before whom late Mian Muhammad Sharif had made his stated wish, what was the proof of that wish and why all his heirs were kept out of the settlement of his real estate business in Qatar; in paragraph No. 6 of that statement a settlement between Mr. Hussain Nawaz Sharif (respondent No. 7) and Al-Thani family of Qatar was mentioned without any mention of a settlement with the maker of the statement, i.e. Mr. Hamad Bin Jassim Bin Jabir Al-Thani; and the said statement talked about the available records in Doha, Qatar but no such record had been mentioned. Mr. Bokhari stressed that the said statement from Qatar was a naked improvement upon the case of respondent No. 1 who had never mentioned any family investment in Qatar in all his speeches and his concise statements. According to Mr. Bokhari if the said statement of the gentleman from Qatar were to

be kept out of consideration then the entire defence of respondent No. 1 and his children collapsed to the ground because there was no banking transaction or movement of funds from Dubai to London, from Jeddah to London or even from Qatar to London for the purposes of acquisition or "purchase" of the four properties in London.

9. Mr. Bokhari then referred to various interviews given by respondent No. 1, his wife and three children on the issue of the four properties in London highlighting that in each such interview a different story had been narrated as to how the said properties had been acquired by the family. He pointed out that in his interview with Tim Sebastian on BBC's Hard Talk in November 1999 Mr. Hassan Nawaz Sharif (respondent No. 8) had stated that he was merely a student at that time with no income of his own. He had admitted that he was living in the relevant flats in London which were taken on "rent" and that the rent money came from Pakistan on a quarterly basis. Mr. Bokhari then referred to The Guardian newspaper of England dated April 10, 2000 wherein Mrs. Kulsoom Nawaz Sharif (wife of respondent No. 1) had been quoted as saying that the flats in London had been "bought" because the children were studying in London. Mr. Bokhari then pointed out that in her interview with Sana Bucha on Geo Television's Laikin on November 8, 2011 Mariam Safdar (Respondent No. 6) had categorically stated that she had no property of her own in Central London or any house in Pakistan or abroad. She had wondered as to from where her properties or of her brothers had been discovered by people. She had gone on to say that she lived with her father at his house. Mr. Bokhari also referred to an interview of respondent No. 7 namely Mr. Hussain Nawaz Sharif with Mr. Hamid Mir in Capital Talk on Geo News television on January 19, 2016 wherein respondent No. 7 had stated that the sale of the factory in Jeddah had fetched good money which had been "officially transferred" to England about eleven or twelve years ago and through that money he had acquired three properties there through "mortgage" for which payments were still being made. He

had gone on to state in that interview that the said properties had been “purchased” by him and they were still in possession of the family. Mr. Bokhari submitted that no record of the stated “official” transfer of money from Saudi Arabia to the United Kingdom had been produced before this Court. He also pointed out that the stance of respondent No. 7 regarding “purchase” of those properties through “mortgage” had subsequently been changed. He highlighted that no mention had been made in that interview to any investment in real estate business in Qatar and to the properties in London having been acquired as a result of any settlement of that investment. Mr. Bokhari also referred to an interview of Mr. Hussain Nawaz Sharif with Javed Chaudhry in Kal Tak on March 07, 2016 on Express News television wherein he admitted ownership of the two offshore companies and of the relevant properties in London besides stating that respondent No. 8 was doing business in London for the last 21 years. Mr. Bokhari pointed out that respondent No. 8 had said in his interview in the year 1999 referred to above that he was a student till then with no business or income of his own and that in his interview on March 07, 2016 respondent No. 7 had stated that the relevant properties in London belonged to “us” and no mention had been made by him in that interview to any investment in Qatar being the source of acquisition of those properties. Mr. Bokhari then drew the Court’s attention towards an interview of respondent No. 1 with Hamid Mir and Sohail Warraich on November 17, 2009 on Geo News television wherein he had stated that he had disassociated himself from the family business in the year 1997. Mr. Bokhari also referred to the speech made by respondent No. 1 on April 05, 2016 wherein he had stated that with the money becoming available through sale of the factory in Jeddah in June 2005 his sons had started their business which story had subsequently been changed by maintaining that it was with that money that the apartments in London had been purchased and still later the story had once again been changed to acquisition of those properties in London through a settlement of a real estate business in Qatar.

10. Mr. Bokhari then referred to paragraph No. 113 of the judgment of this Court in the case of *Syed Zafar Ali Shah and others v. General Pervez Musharraf Chief Executive of Pakistan and others* (PLD 2000 SC 869) wherein a reference had been made to a judgment passed by the High Court of Justice, Queen's Bench Division, London on March 16, 1999 in the case of *Al Towfeek Company v. Hudabiya Paper Mills Limited, etc.* followed by a decree dated November 05, 1999 against Hudabiya Paper Mills Limited, etc. for about 34 million US Dollars. According to the record Mariam Safdar (respondent No. 6 herein) and Mr. Hussain Nawaz Sharif (respondent No. 7 herein) were included in the Directors of Hudabiya Paper Mills Limited and Mian Shahbaz Sharif (a younger brother of respondent No. 1 herein), Mian Muhammad Sharif (father of respondent No. 1 herein) and Mian Muhammad Abbas Sharif (another younger brother of respondent No. 1 herein) had beneficial interest therein. In the year 1999 a caution was placed by the court upon the relevant four properties in London in connection with the decree passed and on February 21, 2000 that caution was lifted upon satisfaction of the decree. Mr. Bokhari maintained that lifting of the caution and release of the said properties upon satisfaction of that decree clearly established that the Sharif family owned those properties way back in the year 1999 and the claim of respondent No. 1 and his children before this Court that the said properties were acquired in the year 2006 was false. He went on to maintain that both the offshore companies, i.e. Nescoll Limited and Nielsen Enterprises Limited were in fact established by respondent No. 1 and the four properties in London were purchased by the said companies between 1993 and 1996 on behalf of respondent No. 1 and that his family is in physical possession of those properties ever since. He vehemently argued that the entire story about the said properties having been transferred to the ownership of Mr. Hussain Nawaz Sharif in the year 2006 as a result of a settlement of some real estate business in Qatar was a concoction incarnate.

11. Mr. Bokhari pointed out that respondent No. 7 namely Mr. Hussain Nawaz Sharif lives in Jeddah, Saudi Arabia since the year 2000 and till that year he had no income of his own to set up his own business. Respondent No. 8 namely Mr. Hassan Nawaz Sharif was a student in London, United Kingdom in the year 1999 with no income of his own and he had statedly started his own business in London on April 12, 2001 by setting up a company named Flagship Investments Limited. The Director's report of the said company for that year showed that respondent No. 8 had Pounds Sterling 705,071 to his credit as the Director of that company and respondent No. 8 never advanced any explanation of his own as to how and from where he came to have that kind of money. The Financial Statement of that company dated March 31, 2003 showed that respondent No. 8 had made a loan of Pounds Sterling 307,761 to that company with a balance of Pounds Sterling 990,244. The Financial Statement of that company dated March 31, 2004 showed that the said respondent had made a loan of Pounds Sterling 593,939 to that company with a balance of Pounds Sterling 1,606,771. The Financial Statement of that company dated March 31, 2005 also showed that the company owed that respondent a huge amount of money. Mr. Bokhari also pointed out that respondent No. 8 had also set up another company by the name of Que Holdings Limited and the Notes of Account of that company dated July 31, 2004 showed that the said respondent had 100% holding in that company to which he had given a loan of Pounds Sterling 99,999. The Financial Statement of that company dated July 31, 2005 showed that respondent No. 8 had given a loan to that company amounting to Pounds Sterling 541,694. Mr. Bokhari highlighted that respondent No. 8 owned about ten companies in London even prior to the sale of the factory in Jeddah by the family in June 2005 and the credit from respondent No. 8 to the companies controlled by him was Pounds Sterling 2,351,877 by the year 2005 for which he had offered no explanation whatsoever till the belated revelation regarding an investment in Qatar by way of an afterthought. According to Mr. Bokhari the money becoming available to respondent No. 8 in

London was nothing but money laundered by respondent No. 1 and the details of such money laundering were available in the report prepared by Mr. A. Rehman Malik of the Federal Investigation Agency of Pakistan in September 1998.

12. The next plank of the arguments advanced by Mr. Bokhari was that as a matter of fact respondent No. 6 namely Mariam Safdar, a daughter of respondent No. 1, was the beneficial owner of the relevant offshore companies owning the four properties in London. In this connection he referred to various emails exchanged in June 2012 between the Financial Investigation Agency of the British Virgin Islands, the law firm Mossack Fonseca and Minerva Trust & Corporate Services Limited, the administrator of the two companies, according to which there was no trust attached to the said companies and the beneficial owner of two of the properties in London was respondent No. 6. He also pointed out that in her Personal Information Form submitted before the law firm on October 14, 2011 respondent No. 6 had disclosed her source of wealth as the family's wealth and business spread over a period of sixty years. He also referred to a document dated December 03, 2005 which established respondent No. 6's connection with Minerva Financial Services Limited in the year 2005, prior to the claimed acquisition of the relevant properties in London in the year 2006, which document had statedly been signed by respondent No. 6 as the sole shareholder of one of the two offshore companies.

13. Mr. Bokhari also argued that the documents relied upon by respondents No. 6 and 7 as Trust Deeds establishing respondent No. 6 as a trustee of respondent No. 7 in respect of the four properties in London were sham. He pointed out that the said documents were purportedly signed by one party on February 02, 2006 in one country and by the other party on February 04, 2006 in another country, a seal was affixed on those documents on November 07, 2016 after about ten years and those documents were certified to be correct copies only. According to him there was

no attestation of the trust deeds and attestation appearing thereon was not of the documents but of the copies only.

14. It was conceded by Mr. Bokhari that through these petitions none of the petitioners has sought any declaration or relief against respondent No. 6 namely Mariam Safdar but he maintained that the said respondent was, is and remains a dependent of her father, i.e. respondent No. 1. According to him respondent No. 6 was the actual beneficial owner of the four properties in London and respondent No. 1 had not disclosed that fact in his declaration attached with the nomination forms filed for candidature in the general elections held in the country in the year 2013 which suppression of fact was sufficient to disqualify him as a Member of the National Assembly. He pointed out that in his Wealth Statement submitted with the income-tax return for the year 2011 respondent No. 1 had mentioned the land purchased by him in the name of respondent No. 6 in Column No. 12 meant for "spouse, minor children and other dependents" and, thus, he had acknowledged respondent No. 6 as his dependent. He went on to submit that respondent No. 6 had no independent means of income, her agricultural income was not sufficient to sustain her on her own, her traveling expenses were more than her declared income, she paid no bills and admittedly she was living with father who periodically gave her huge gifts in cash and kind. He referred to the definition of 'Dependent' in Black's Law Dictionary and maintained that respondent No. 6 had no independent source of income. In this connection he referred to the Wealth Statements submitted by respondent No. 6 showing that in the year 2011 she had received Rs. 3,17,00,000, in the year 2012 she had received Rs. 5,16,24,000 and in the year 2013 she had received Rs. 3,78,68,000 as gifts from respondent No. 1 besides receiving Rs. 4,23,04,310 as loans and advances from Chaudhry Sugar Mills in the year 2011 and a loan of Rs. 2,89,33,800 from respondent No. 8 in the year 2012. He also pointed out that the husband of respondent No. 6 had not paid any tax till the year 2013 and respondent No. 6 had admitted in an interview that she had no

house in Pakistan or abroad. Mr. Bokhari maintained that the properties standing in the names of respondent No. 6 were in fact *Benami* and actually owned by her father, i.e. respondent No. 1. He referred to the cases of *Muhammad Nawaz Minhas and others v. Mst. Surriya Sabir Minhas and others* (2009 SCMR 124), *Ch. Ghulam Rasool v. Mrs. Nusrat Rasool and 4 others* (PLD 2008 SC 146), *Abdul Majeed and others v. Amir Muhammad and others* (2005 SCMR 577), *Mst. Sharifan Bibi and others v. Abdul Majeed Rauf and others* (PLD 2012 Lahore 141), *Mv. MD. Abdul Majid and others v. MD. Jainul Abedin and others* (PLD 1970 Dacca 414), *Malik Muhammad Zubair and 2 others v. Malik Muhammad Anwar and 2 others* (PLD 2004 Lahore 515), *Syed Ansar Hussain and 2 others v. Khawaja Muhammad Kaleem and 4 others* (2006 CLC 732) and *S. Abid Ali and 3 others v. Syed Inayat Ali and 5 others* (2010 CLC 1633) and maintained that the requisite ingredients of a *Benami* transaction stood fully attracted to the acquisition of properties in the name of respondent No. 6 and as she had no independent source of income, therefore, respondent No. 1 was the actual owner of those properties and the same was true of even the four properties in London purchased between 1993 and 1996.

15. Mr. Bokhari further argued that respondent No. 1 had also been guilty of tax evasion. In this regard he submitted that respondent No. 1 had received Rs. 74 crores from his sons between the years 2011 and 2015 as gifts but no tax was paid by him on that amount. He referred to the Wealth Statement submitted by respondent No. 1 for the tax year 2011 in column No. 3(ii) whereof it was mentioned that the said respondent had received a gift of more than Rs. 12 crores from a son and he had gifted about Rs. 5 crores to R6 and R7. According to Mr. Bokhari total gifts received by respondent No. 1 from respondent No. 7 were for Rs. 81 crores. He referred to section 39 of the Income Tax Ordinance 2001 according to which all the loans and gifts received were to be declared but respondent No. 1 had not paid tax on such gifts. Mr. Bokhari questioned the capacity of respondent No. 7 to make such huge gifts to respondent No. 1 and maintained that money was

being rotated and laundered money was being made kosher through such gifts. According to Mr. Bokhari nearly Rs. 74 crores had admittedly been received by respondent No. 1 from respondents No. 7 & 8 which was income from other sources but no tax was paid on that amount. He submitted that the Federal Board of Revenue may be directed to recover the tax due and respondent No. 1 may be disqualified under Article 62(1)(f) of the Constitution even on that score.

16. Adverting to respondent No. 10 namely Mr. Muhammad Ishaq Dar, the incumbent Federal Minister for Finance and a *Samdhi* of respondent No. 1, Mr. Bokhari referred to a confessional statement made by him under section 164, Cr.P.C. before a Magistrate First Class, Lahore on April 25, 2000 wherein he had confessed to laundering money for the benefit of respondent No. 1 and others and on the basis of that Reference No. 5 of 2000 had been filed by the National Accountability Bureau before an Accountability Court against Hudabiya Paper Mills, three Sharif brothers, respondent No. 10 and others. That Reference was quashed by a learned Division Bench of the Lahore High Court, Lahore on March 11, 2014 upon acceptance of Writ Petition No. 2617 of 2011. After quashing of the Reference the two learned Judges of the High Court had disagreed with each other over the issue of reinvestigation of the case by the National Accountability Bureau and thus the said aspect of the case was referred to a learned Referee Judge who held that the case could not be allowed to be reinvestigated. We have been informed that the Chairman, National Accountability Bureau did not challenge that judgment of the Lahore High Court, Lahore before this Court through any petition/appeal. Mr. Bokhari maintained that the present Chairman, National Accountability Bureau had been appointed by respondent No. 1 himself and, therefore, he had returned the favour by not filing any petition/appeal in that case against respondent No. 1 and others. According to Mr. Bokhari the Chairman, National Accountability Bureau, respondent No. 2 herein, had failed in due performance of his duty in that regard

and, thus, he was liable to be proceeded against under Article 209 of the Constitution for his removal from office through the Supreme Judicial Council. Mr. Bokhari also prayed that this Court may issue a direction to the Chairman, National Accountability Bureau to file a petition/appeal in the above mentioned matter before this Court with a prayer for condoning of the delay in filing of such petition/appeal.

17. With the submissions made above Mr. Bokhari prayed that a declaration may be issued by this Court that respondent No. 1 is not "honest" and "ameen" within the purview of Article 62(1)(f) of the Constitution and on the basis of such a declaration he may be held to be disqualified from membership of the National Assembly; the closed cases of corruption, corrupt practices and money laundering, etc. against respondents No. 1, 10 and others may be reopened for fresh investigation and prosecution; and the Chairman, National Accountability Bureau and the Chairman, Federal Board of Revenue may be directed to take every step possible under the law to recover the plundered wealth of the nation and to bring the culprits to book.

18. Sheikh Rasheed Ahmed petitioner appearing in person in Constitution Petition No. 30 of 2016 also argued that respondent No. 1 in Constitution Petition No. 29 of 2016 (who is respondent No. 4 in Constitution Petition No. 30 of 2016) is liable to be disqualified from membership of the Majlis-e-Shoora (Parliament) because he is not "honest" and "ameen" within the purview of Article 62(1)(f) of the Constitution. He maintained that in his Wealth Statement submitted with the income-tax return for the year 2011 respondent No. 1 had mentioned the land purchased by him in the name of his daughter namely Mariam Safdar in Column No. 12 which was meant for "spouse, minor children and other dependents" and, thus, he had acknowledged that the said daughter of his was his dependent but in the same statement in the column relating to family members and dependents respondent

No. 1 had not shown her as his dependent which impinged upon his honesty.

19. The statements made by the gentleman from Qatar (to be reproduced and discussed in the later part of this judgment) were described by the said petitioner as hearsay and not based upon personal knowledge. The petitioner further maintained that the said statements of the gentleman from Qatar showed existence of business relations between Al-Thani family of Qatar and the family of respondent No. 1 since prior to the year 1980 but no disclosure in that regard had ever been made by respondent No. 1 at any stage which again reflected adversely upon his honesty.

20. Referring to the judgment and decree passed by the High Court of Justice, Queen's Bench Division, London in the year 1999 the petitioner submitted that the relevant four properties in London were placed under caution till satisfaction of the decree and as the said decree had later on been satisfied by respondent No. 1's family, therefore, the connection between respondent No. 1 and ownership of those properties clearly stood established way back in the year 2000.

21. Regarding the Trust Deed dated February 02, 2006 statedly executed between respondents No. 6 and 7 the petitioner pointed out that the document had not been attested by the Pakistani High Commission, it was not notarized and the witness of the document was not identifiable.

22. According to Mr. Sheikh some documents becoming available on the record showed that it was respondent No. 6 namely Mariam Safdar who was the actual beneficial owner of the relevant properties in London.

23. Adverting to the affidavits of Mr. Tariq Shafi brought on the record by the respondents the petitioner pointed out that Mr. Tariq Shafi was only nineteen years of age and admittedly a *Benamidar*

when the factory in Dubai was set up in his name which fitted into a pattern of respondent No. 1's family putting up a front man for its businesses and assets and the same pattern was also followed in acquisition of the four properties in London.

24. Mr. Sheikh vehemently argued that respondent No. 1 has not been "honest" with the nation, the National Assembly and this Court in the matter of explaining the mode of acquisition and the resources for acquisition of the properties in London and, thus, he has become disqualified from remaining a member of the National Assembly by virtue of the provisions of Article 62(1)(f) of the Constitution. In this regard he referred to the cases of *Muhammad Rizwan Gill v. Nadia Aziz and others* (PLD 2010 SC 828), *Mian Najeeb-ud-Din Owasi and another* v. *Amir Yar Waran and others* (PLD 2013 SC 482), *Malik Iqbal Ahmad Langrial v. Jamshed Alam and others* (PLD 2013 SC 179), *Mudassar Qayyum Nahra v. Ch. Bilal Ijaz and others* (2011 SCMR 80), *Malik Umar Aslam v. Mrs. Sumaira Malik and others* (2014 SCMR 45), *Sadiq Ali Memon v. Returning Officer, NA-237, Thatta-I and others* (2013 SCMR 1246), *Abdul Ghafoor Lehri v. Returning Officer, PB-29, Naseerabad–II and others* (2013 SCMR 1271) and *Imtiaz Ahmed Lali v. Ghulam Muhammad Lali* (PLD 2007 SC 369). He also maintained that the case in hand involves enforcement of the Fundamental Rights guaranteed by Articles 9, 14, 18, 23 and 24 of the Constitution besides attracting Articles 2A and 4 of the Constitution and that the matter is undeniably of great public importance sufficiently attracting the jurisdiction of this Court under Article 184(3) of the Constitution.

25. Mr. Taufiq Asif, ASC appearing for the petitioner in Constitution Petition No. 3 of 2017 argued that respondent No. 1 in Constitution Petition No. 29 of 2016 (who is respondent No. 4 in Constitution Petition No. 3 of 2017) may be disqualified under Article 62(1)(f) of the Constitution because he concealed property, made a false declaration in the nomination papers filed in the general elections held in the year 2013 and evaded wealth-tax and

income-tax by failing to disclose his properties in London. Referring to the case of *Workers' Party Pakistan through Akhtar Hussain, Advocate, General Secretary and 6 others v. Federation of Pakistan and 2 others* (PLD 2012 SC 681) he pointed out that in that case this Court had adverted to different definitions of "Honesty" and had held that the question of honesty could be decided on the basis of evidence or even with reference to "conduct" of a person.

26. Referring to the speech made by respondent No. 1 in the National Assembly on May 16, 2016 Mr. Asif pointed out that according to respondent No. 1 Ittefaq Foundries was returned to the family in the year 1980, it became profitable in the year 1983 and in the year 1985 many more factories had been established by the family without disclosing the actual funds becoming available. According to the learned counsel no source of funds for setting up the factory in Dubai had been disclosed in that speech. He maintained that the factory in Dubai was statedly sold in the year 1980 for 33.37 million Dirhams and then the factory in Jeddah was statedly sold in June 2005 for 64 million Riyals (about 17 million US Dollars) but no money trail or banking transaction in that regard had been shown by respondent No. 1. He also highlighted that in that speech respondent No. 1 had completely suppressed any information about any investment by his family in real estate business in Qatar or acquisition of the four properties in London in the name of one of his sons. While referring to different speeches made by respondent No. 1 he pointed out that contradictory stands had been taken by the said respondent regarding the sources of funds and the routes through which such funds had been channeled for acquisition of the relevant properties and assets and such contradictions had raised serious doubts about *bona fide* of his explanations.

27. The learned counsel for the petitioner also referred to the case of *Syed Zafar Ali Shah and others v. General Pervez Musharraf Chief Executive of Pakistan and others* (PLD 2000 SC 869) wherein

the submissions made on behalf of the Federation of Pakistan had been noted and in those submissions the judgment of the High Court of Justice, Queen's Bench Division, London dated November 05, 1999, placing of caution on the relevant four properties in London and lifting of that caution upon satisfaction of the decree for about 34 million US Dollars had been mentioned. According to the learned counsel for the petitioner no source of funds for satisfaction of that decree had been disclosed by respondent No. 1 and satisfaction of that decree by the said respondent's family and lifting of caution on the said properties clearly established a direct connection between those properties and the respondent's family in the year 2000.

28. Mr. Asif further argued that acquisition of the relevant four properties in London had been admitted by respondent No. 1 and his children, possession of those properties had not been denied and it was always maintained by them that the entire record in that respect was available but no such record had been produced before this Court. According to the learned counsel the initial onus of proof on the petitioners, thus, stood discharged and a heavier onus of proof shifted to respondent No. 1 and his children to explain that the said properties had been acquired through legitimate resources and lawful means but they had completely failed to discharge that onus of proof. He maintained that a fact admitted by a party may not be proved and that the onus of proof in such cases shifts to the person who admits ownership or possession of the property in issue. He referred in this regard to the provisions of Articles 30, 53, 114 and 122 of the Qanun-e-Shahadat Order, 1984.

29. The learned counsel for the petitioner went on to argue that the privilege in connection with a speech in the National Assembly contemplated by the provisions of Article 66 of the Constitution is not absolute and in support of that argument he referred to the case of *Syed Masroor Ahsan and others v. Ardeshir Cowasjee and others* (PLD 1998 SC 823). He also referred to the provisions of

Article 5(2) of the Constitution and to the oath of a Member of the National Assembly (Article 65) and of the Prime Minister (Article 91(5)) prescribed by the Constitution according to which he has to conduct himself honestly in all situations. In the context of Article 66 of the Constitution he pointed out that the Order of the Day for the National Assembly on May 16, 2016 did not mention any speech to be made by respondent No. 1 as the Prime Minister and that no such speech was a part of the agenda of the day. He maintained that although the speech made by respondent No. 1 on that day was something said in the proceedings of the National Assembly yet for the purposes of the privilege contemplated by Article 66 of the Constitution the speech of respondent No. 1 had to be relevant to the matter before the National Assembly and he referred to Rule 31 of the Rules of Procedure and Conduct of Business in the National Assembly, 2007. He pointed out Rule 50 of the said Rules dealing with classes of business and Rule 51 according to which a Tuesday is a private members' day and May 16, 2016 was a Tuesday. According to him the Speaker of the National Assembly ought not to have allowed respondent No. 1 to make a speech in the National Assembly on that day on a matter which was purely personal to him and if such speech was in fact allowed to be made then it was not a part of the proceedings of the National Assembly and, therefore, no privilege under Article 66 of the Constitution could be claimed for such speech. In the context of the privilege under Article 66 of the Constitution he also relied upon the case of *Zahur Ilahi, M.N.A. v. Mr. Zulfikar Ali Bhutto* (PLD 1975 SC 383) and referred to an article written by Dr. Ken Coghill captioned as "Why Parliamentary Privilege Matters".

30. Mr. Asif also argued that sanctity is attached to proceedings of the Parliament but by lying before the National Assembly respondent No. 1 had breached that sanctity as well. Regarding sanctity of the Parliament he referred to the cases of *Nawabzada Iftikhar Ahmad Khan Bar v. Chief Election Commissioner Islamabad and others* (PLD 2010 SC 817) and *Muhammad Rizwan Gill v. Nadia Aziz and others* (PLD 2010 SC 828). He pointed out

that in his speech in the National Assembly respondent No. 1 had stated that the entire record pertaining to setting up and sale of the factories in Dubai and Jeddah as well as the record pertaining to acquisition of the four properties in London was available and would be produced before any forum inquiring into the matter but no such record had been produced before this Court. He pointed out that respondent No. 1 had also stated before the National Assembly that no privilege or immunity would be claimed by him but before this Court the privilege under Article 66 of the Constitution had been claimed on his behalf. Referring to the oath of office of the Prime Minister he highlighted that respondent No. 1 had sworn that he would discharge his functions honestly and that he would not allow his personal interest to influence his official conduct but in his speech he had expressly stated that as the matter pertained to his family, therefore, he felt obliged to explain the matter.

31. On the issue of the scope of jurisdiction of this Court under Article 184(3) of the Constitution Mr. Asif referred to the cases of *Watan Party and another v. Federation of Pakistan and others* (PLD 2011 SC 997), *Workers' Party Pakistan through Akhtar Hussain, Advocate, General Secretary and 6 others v. Federation of Pakistan and 2 others* (PLD 2012 SC 681), *Muhammad Azhar Siddiqui and others v. Federation of Pakistan and others* (PLD 2012 SC 774), *Muhammad Yasin v. Federation of Pakistan through Secretary, Establishment Division, Islamabad and others* (PLD 2012 SC 132), *Watan Party and others v. Federation of Pakistan and others* (PLD 2012 SC 292) and *Pakistan Muslim League (N) through Khawaja Muhammad Asif, M.N.A. and others v. Federation of Pakistan through Secretary Ministry of Interior and others* (PLD 2007 SC 642). He maintained that in an appropriate case this Court may also record evidence so as to ascertain a fact and in that regard he referred to the case of *Air Marshal (Retd.) Muhammad Asghar Khan v. General (Retd.) Mirza Aslam Baig, Former Chief of Army Staff and others* (PLD 2013 SC 1).

32. Sheikh Ahsan-ud-Din, ASC also briefly addressed arguments on behalf of the petitioner in Constitution Petition No. 3 of 2017 and maintained that the jurisdiction of this Court under Article 184(3) of the Constitution is inquisitorial in nature and in an appropriate case this Court may inquire into a fact itself or may get it inquired into or investigated through an appropriate commission, body or agency before reaching a conclusion in the matter. On the issue of respondent No. 6 being a dependent of respondent No. 1 he referred to different definitions of the word 'dependent'. With reference to the jurisprudence developed in respect of the provisions of section 342, Cr.P.C. he maintained that the speech made by respondent No. 1 in the National Assembly was substantially untrue and, therefore, the same had to be treated as false in toto. He lastly argued that the statements of the gentleman from Qatar brought on the record of this case were nothing but an afterthought.

33. At the outset Mr. Makhdoom Ali Khan, Sr. ASC appearing for Prime Minister Mian Muhammad Nawaz Sharif, respondent No. 1 in Constitution Petition No. 29 of 2016 and respondent No. 4 in Constitution Petitions No. 30 of 2016 and 3 of 2017, submitted that respondent No. 1's name did not appear in the Panama Papers in any capacity whatsoever, no allegation was leveled against him therein and, thus, he did not have to answer for anything connected with the said issue. The learned counsel, however, hastened to add that some issues had been raised through the present petitions concerning respondent No. 1's children and in respect of some speeches made by him and, thus, the said respondent felt obliged to offer some explanations in that regard and to make submissions on some legal aspects relevant to the present petitions.

34. Regarding the speeches made by respondent No. 1 after leakage of the Panama Papers Mr. Khan maintained that no false statement had been made by respondent No. 1 in such speeches and the said speeches did not contain anything which could be

termed as a misstatement or a lie. According to him there could be some omissions in the said speeches which could be inadvertent or the fora at which those speeches had been made were not the fora obliging the respondent to make full disclosures. He maintained that in those speeches only a broad overview of the family's business and assets had been presented by the respondent which business was initially set up and commenced by the respondent's father in the year 1937, prior to the respondent's birth, and his father remained incharge of the expanding business till his demise in the year 2004. Mr. Khan submitted that in those speeches respondent No. 1 was not swearing an itemized affidavit or a petition and, thus, precision or correctness of the things stated in those speeches ought not to be judged on that standard. He emphasized that respondent No. 1 had no connection with the factory in Dubai, the factory in Jeddah or the relevant apartments in London and, therefore, some details regarding those properties might not be known to him at the time of making the relevant speeches. Mr. Khan contended that respondent No. 1 was not responsible for his children's businesses. He also stressed that some interviews given by others could not be utilized to contradict respondent No. 1 so as to be made a basis for his disqualification from membership of the Parliament because it had not been established before this Court as to who was right and who was wrong. He added that an inadvertent omission is to be treated differently from a deliberate suppression. Referring to the provisions of sections 78(3), 82 and 99 of the Representation of the People Act, 2006 Mr. Khan submitted that in the electoral laws of the country making of a false statement or a declaration is a cognizable offence and unless there is a prosecution and recording of a conviction on the basis of such an allegation no court can issue a declaration which may be made a basis of a disqualification under Article 62(1)(f) of the Constitution. He also referred to the case of *Aftab Shaban Mirani v. President of Pakistan and others* (1998 SCMR 1863) for maintaining that a mere press statement made by a person cannot be made a basis for disqualifying him even if making of such statement is not denied by him.

35. Mr. Khan also argued that the bar for disqualification under Article 62(1)(f) of the Constitution is higher than the bar for disqualification under section 99(1)(f) of the Representation of the People Act, 1976 because for the constitutional disqualification a prior declaration by a court of law is required whereas the said requirement is not there for the statutory disqualification. In support of this argument he referred to the cases of *Muhammad Ijaz Ahmad Chaudhry v. Mumtaz Ahmad Tarar and others* (2016 SCMR 1), *Malik Umar Aslam v. Mrs. Sumaira Malik and others* (2014 SCMR 45), *Malik Iqbal Ahmad Langrial v. Jamshed Alam and others* (PLD 2013 SC 179), *Muhammad Khan Junejo v. Federation of Pakistan through Secretary, M/O Law Justice and Parliamentary Affairs and others* (2013 SCMR 1328), *Abdul Ghafoor Lehri v. Returning Officer, PB-29, Naseerabad–II and others* (2013 SCMR 1271), *Allah Dino Khan Bhayo v. Election Commission of Pakistan, Islamabad and others* (2013 SCMR 1655), *Mian Najeeb-ud-Din Owasi and another v. Amir Yar Waran and others* (PLD 2013 SC 482), *Mudassar Qayyum Nahra v. Ch. Bilal Ijaz and others* (2011 SCMR 80), *Haji Nasir Mehmood v. Mian Imran Masood and others* (PLD 2010 SC 1089), *Nawabzada Iftikhar Ahmad Khan Bar v. Chief Election Commissioner Islamabad and others* (PLD 2010 SC 817), *Muhammad Rizwan Gill v. Nadia Aziz and others* (PLD 2010 SC 828), *Muhammad Khan Junejo v. Fida Hussain Dero and others* (PLD 2004 SC 452), *Rana Aftab Ahmad Khan v. Muhammad Ajmal* (PLD 2010 SC 1066), *Muhammad Siddique Baloch v. Jehangir Khan Tareen and others* (PLD 2016 SC 97), *General (R.) Pervez Musharraf v. Election Commission of Pakistan and another* (2013 CLC 1461), *Gohar Nawaz Sindhu v. Mian Muhammad Nawaz Sharif and others* (PLD 2014 Lahore 670) and *Ishaq Khan Khakwani and others v. Mian Muhammad Nawaz Sharif and others* (PLD 2015 SC 275). Referring to the cases of *Rana Aftab Ahmad Khan v. Muhammad Ajmal* (PLD 2010 SC 1066) and *Muhammad Siddique Baloch v. Jehangir Khan Tareen and others* (PLD 2016 SC 97) Mr. Khan maintained that affirmative evidence is required to establish dishonesty for the purposes of electoral disqualification

and that the threshold has to be very high for disqualifying a person on the basis of qualifications which are obscure and vague. He also contended that no declaration about honesty can be made without there being a prior adjudication made by a court on the subject and in this regard he relied upon the cases of *Suo Motu Case No. 4 of 2010 (Contempt proceedings against Syed Yousaf Raza Gillani, the Prime Minister of Pakistan)* (PLD 2012 SC 553) and *Muhammad Azhar Siddique and others v. Federation of Pakistan and others* (PLD 2012 SC 660). He pointed out that in the cases of *Umar Ahmad Ghumman v. Government of Pakistan and others* (PLD 2002 Lahore 521) and *Syed Mehmood Akhtar Naqvi v. Federation of Pakistan through Secretary Law and others* (PLD 2012 SC 1089) some persons were declared to be disqualified in exercise of the constitutional jurisdiction on the ground of holding dual nationality in the absence of a prior adjudication in that regard but in those cases the facts were either admitted/undisputed or the same were conveniently ascertainable with minimum inquiry. He also referred to the case of *Sadiq Ali Memon v. Returning Officer, NA-237, Thatta-I and others* (2013 SCMR 1246) wherein dual nationality was not disputed and was in fact admitted. He also referred to the case of *Dr. Sher Afgan Khan Niazi v. Mr. Imran Khan* (Reference No. 1 of 2007) wherein Imran Ahmad Khan Niazi, one of the present petitioners, had successfully maintained before the Election Commission of Pakistan that post-election disputes fell only under Article 63 and not under Article 62 of the Constitution. It was, however, conceded by Mr. Khan that a decision of the Election Commission of Pakistan is not binding upon this Court.

36. Adverting to the speech made by respondent No. 1 in the National Assembly on May 16, 2016 Mr. Khan referred to Article 66(1) of the Constitution which reads as under:

> "66. (1) Subject to the Constitution and to the rules of procedure of Majlis-e-Shoora (Parliament), there shall be freedom of speech in Majlis-e-Shoora (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 Majlis-e-Shoora (Parliament), and no person shall be so liable in respect of the publication by or under

> the authority of Majlis-e-Shoora (Parliament) of any report, paper, votes or proceedings."

He relied upon the universally acknowledged concept of parliamentary privilege recognized by the said provision of the Constitution for maintaining that respondent No. 1 cannot be "liable to any proceedings in any court" on the basis of any statement made by him on the floor of the National Assembly. He pointed out that the said privilege is subject to the Constitution and the only provisions of the Constitution relevant to the issue are those of Articles 68 and 204 placing restriction on discussing conduct of any Judge of the Supreme Court or of a High Court in the discharge of his duties and commission of contempt of court. For highlighting various aspects of the concept of parliamentary privilege Mr. Khan referred to the cases of *Lahore Development Authority through D. G. and others v. Ms. Imrana Tiwana and others* (2015 SCMR 1739), *Pakistan v. Ahmad Saeed Kirmani and others* (PLD 1958 SC (Pak) 397), *Regina v. Chaytor* (2011 UKSC 52), [2011] 1 A.C. 684, *Zahur Ilahi, M.N.A. v. Mr. Zulfikar Ali Bhutto* (PLD 1975 SC 383), *United States v. Thomas F. Johnson* (383 U.S. 169), *Gohar Nawaz Sindhu v. Mian Muhammad Nawaz Sharif and others* (PLD 2014 Lahore 670), *A v. United Kingdom (35373/97)* (2003) 36 E.H.R.R 51, *Tej Kiran Jain and others v. M. Sanjiva Reddy and others* (AIR 1970 SC 1573), *Dr. Suresh Chandra Banerji and others v. Punit Goala* (AIR 1951 Calcutta 176), *In the matter of Special Reference No. 1 of 1964* (AIR 1965 SC 745), *Wason, Ex parte* (1868-69) L.R. 4 Q.B. 573 and *Richard William Prebble v. Television New Zealand Ltd.* (1995) 1 A.C. 321. He also read out parts of some authoritative works and treatises on the subject and also referred to some similar provisions of the Indian Constitution and their interpretations by the courts of that country.

37. Mr. Khan pointed out that through these petitions allegations have been leveled against respondent No. 1 regarding evasion of tax on the sale proceeds of the factory in Dubai worth about 9 million US Dollars; regarding late filing of Wealth Statements for the years 2011 and 2012 (which allegation was not

pressed during the arguments); regarding the gifts of Rs. 31,700,000 by respondent No. 1 to respondent No. 6 and of Rs. 19,459,440 by respondent No. 1 to respondent No. 8 being sham and not disclosed; and in respect of the gifts received by respondent No. 1 from respondent No. 7 not having been treated as income from other sources. According to him the said allegations attract the provisions of Article 63(1)(o) of the Constitution and section 99(1A)(t) of the Representation of the People Act, 1976 but in terms of the facts of the present case the disqualification mentioned in those provisions is not relevant. He maintained that the crucial factors for the said disqualification are "default" and "dues" and it has already been clarified in the cases of *National Bank of Pakistan and 117 others v. SAF textile Ltd. and another* (PLD 2014 SC 283), *Messrs Summit Bank Limited through Manager v. Qasim & Co. through Muhammad Alam and another* (2015 SCMR 1341) and *Agricultural Development Bank of Pakistan v. Sanaullah and others* (PLD 1988 SC 67) that in the absence of any adjudication there cannot be any dues and, hence, no default can be alleged. According to him no determination had been made and no finding had been recorded by any tax authority against respondent No. 1 in respect of any tax due. He also clarified that respondent No. 1 was neither a Director nor a shareholder of the factory in Dubai. Mr. Khan went on to submit that the Wealth-Tax Act, 1963 was repealed in the year 2003, at the time of repeal of that law no proceeding was pending against respondent No. 1 and, therefore, at this stage no officer or machinery is available to determine any concealment, etc. by the said respondent rendering the issue dead. With reference to the record placed before this Court he pointed out that the gifts made by respondent No. 1 in favour of respondents No. 6 and 8 were actually disclosed by respondent No. 1 in his Wealth Statements and such payments had been made through cheques which had also been placed on the record. As regards the gifts made by respondent No. 7 in favour of respondent No. 1 it was submitted by him that respondent No. 7 had a National Tax Number in Pakistan and he was a non-resident Pakistani and, therefore, gifts made by him in favour of his father

could not be treated as income from other sources as is evident from the provisions of section 39(3) read with sections 81, 111, 114, 116, 120, 120(2) of the Income-Tax Ordinance, 2001. He also pointed out that by virtue of the provisions of sections 122(2) and 122(5) of the Income-Tax Ordinance, 2001 finality stood attached to the matter after five years of commencement of the assessment order even if there had been any concealment. In support of the submissions made above he relied upon the cases of *Commissioner Income-Tax Company Zone-II, Karachi v. Messrs Sindh Engineering (Pvt.) Limited* (2002 SCMR 527), *Income-Tax Officer and another v. M/s. Chappal Builders* (1993 SCMR 1108), *Federation of Pakistan through Secretary, Ministry of Law and Parliamentary Affairs and Justice, Islamabad v. Sindh High Court Bar Association through President and another* (PLD 2012 SC 1067), *Assistant Director, Intelligence and Investigation, Karachi v. M/s B. R. Herman and others* (PLD 1992 SC 485) and *Re State of Norway's Application (No.1)* (1989) 1 All ER 661.

38. On the issue of respondent No. 6 allegedly being a dependent of respondent No. 1 Mr. Khan argued that the nomination papers filed by respondent No. 1 for election to NA-120 before the general elections held in the country in the year 2013 had correctly been filled, no misstatement was made by him in the relevant solemn affirmation regarding the list of his dependents and the Wealth Statement filed by him for the year 2011 was quite correct. He explained that in Column No. 12 of the said Wealth Statement some land purchased by respondent No. 1 in the name of respondent No. 6 had been shown but actually respondent No. 1 was not his dependent and a mention to her had been made in Column No. 12 only because in the relevant form there was no other column for disclosure of the land purchased. He further clarified that respondent No. 6 had not been mentioned by respondent No. 1 in Column No. 18 of the same form in respect of dependents. He also pointed out that later on the income-tax form was amended and a new Column No. 14 was introduced therein for "Assets in others' name". Mr. Khan drew our attention towards a

clarification issued by a reputed firm of chartered accountants wherein it was asserted and opined that the land purchased by respondent No. 1 in the name of respondent No. 6 had been shown in Column No. 12 of the relevant form because the said form did not contain any other column wherein the above mentioned purchase by the father in the name of his daughter could be shown. According to Mr. Khan showing the relevant purchase by respondent No. 1, be it in a wrong column, established *bona fide* of the said respondent and that was surely better than suppressing the said information. He emphatically maintained that respondent No. 6 was a married lady having grown up children, she was a part of a joint family living in different houses situated in the same compound, she contributed towards some of the expenses incurred, submitted her independent tax returns, owned sizeable property in her own name, was capable of surviving on her own and she could not be termed a 'dependent' merely because she periodically received gifts from her father and brothers. He drew our attention toward a chart showing the details of the agricultural land owned by respondent No. 6 and referred to the cases of *M. A. Faheemuddin Farhum v. Managing Director/Member (Water) WAPDA, WAPDA House, Lahore and others* (2001 SCMR 1955), *In re Ball. Decd.* (1947) 1 Ch. 228 and *In Re Baden's Deed Trusts (No.2)* (1973) Ch. 9 wherein the term 'dependent' had been interpreted. He clarified that as far as some foreign judgments on the issue of dependence were concerned they were merely of persuasive value but where interpretation of some foreign law is involved there the foreign law is to be formally proved as a question of fact, as held in the case of *Atlantic Steamer's Supply Company v. M. V. Titisee and others* (PLD 1993 SC 88). He also referred to the definition of '*Benamidar*' contained in the National Accountability Ordinance, 1999 and to the cases of *Abdul Majeed and others v. Amir Muhammad and others* (2005 SCMR 577), *Ghani-ur-Rehman v. National Accountability Bureau and others* (PLD 2011 SC 1144) and *Mst. Asia Bibi v. Dr. Asif Ali Khan and others* (PLD 2011 SC 829) wherein the said term had been interpreted. In view of the interpretations of the terms 'dependent' and

'*Benamidar*' in the said precedent cases Mr. Khan argued that respondent No. 6 could not be treated or accepted as a dependent of respondent No. 1. He also maintained that very clear proof of dependence of one person on another is required before a court of law and in that connection he relied upon the cases of *Amir Bibi through legal heirs v. Muhammad Khurshid and others* (2003 SCMR 1261) and *Ch. Muhammad Siddique and another v. Mst. Faiz Mai and others* (PLD 2012 SC 211). Mr. Khan emphasized that the alleged dependence of respondent No. 6 on respondent No. 1, even if established, was relevant to the year 2011 and not to the year 2013 when nomination papers were filed by respondent No. 1 for contesting an election in the general elections. He also pointed out that the issue of respondent No. 6 allegedly being a dependent of respondent No. 1 is already pending before the Election Commission of Pakistan and, therefore, he submitted that this Court may withhold any comment on that issue in the present proceedings.

39. Mr. Khan categorically submitted that respondent No. 1 did not question competence and maintainability of the present petitions filed under Article 184(3) of the Constitution because they involved questions of public importance with reference to many Fundamental Rights conferred by Chapter 1 of Part II of the Constitution but he maintained that the scope of jurisdiction of this Court under Article 184(3) of the Constitution is limited and in exercise of such jurisdiction a person may not be disqualified from membership of the Parliament on the basis of disputed or unverified facts. In support of that submission he relied upon the cases of *Khuda Bakhsh v. Mir Zafarullah Khan Jamali* (1997 SCMR 561), *Syed Mehmood Akhtar Naqvi v. Federation of Pakistan through Secretary Law and others* (PLD 2012 SC 1089), *Pakistan Muslim League (N) through Khawaja Muhammad Asif, M.N.A. and others v. Federation of Pakistan through Secretary Ministry of Interior and others* (PLD 2007 SC 642), *Commissioner of Income Tax v. Eli Lilly Pakistan (Pvt.) Ltd.* (2009 SCMR 1279), *Islamic Republic of Pakistan through Secretary, Ministry of Interior and*

Kashmir Affairs, Islamabad v. Abdul Wali Khan, M.N.A., Former President of Defunct National Awami Party (PLD 1976 SC 57), *Begum Nusrat Bhutto v. Chief of Army Staff and Federation of Pakistan* (PLD 1977 SC 657), *Wattan Party through President v. Federation of Pakistan through Cabinet Committee of Privatization, Islamabad* (PLD 2006 SC 697), *Muhammad Saeed and 4 others v. Election Petitions Tribunal, Mehr Muhammad Arif, Ghulam Haider, West Pakistan Government and others* (PLD 1957 SC 91), *Saeed Hassan v. Pyar Ali and 7 others* (PLD 1976 SC 6), *Mohtarma Benazir Bhutto and another v. President of Pakistan and others* (PLD 1998 SC 388), *Mohtarma Benazir Bhutto v. President of Pakistan and 2 others* (PLD 2000 SC 77) and many other cases. In this context he also maintained that the book by Mr. Raymond W. Baker titled "Capitalism's Achilles Heel" relied upon by the learned counsel for one of the petitioners was not evidence but was merely an opinion of the author. He also argued that newspaper reports were not sufficient proof of the facts stated therein, as observed in the cases of *Messr Balagamwallah Cotton Ginning & Pressing Factory, Karachi v. Lalchand* (PLD 1961 Karachi 1), *Aftab Shaban Mirani v. President of Pakistan and others* (1998 SCMR 1863) and *Muhammad Azam v. Khalid Javed Gillani, etc.* (1981 SCMR 734). He pointed out that a Writ Petition was already pending before the Lahore High Court, Lahore on the same subject and three petitions were also pending before the Election Commission of Pakistan seeking disqualification of respondent No. 1 on the basis of the same issues and, therefore, this Court ought not to interfere in the matter at such a stage through exercise of its jurisdiction under Article 184(3) of the Constitution.

40. Mr. Shahid Hamid, Sr. ASC represented respondent No. 6 namely Mariam Safdar (daughter of respondent No. 1), respondent No. 9 namely Captain (Retd.) Muhammad Safdar (husband of respondent No. 6 and son-in-law of respondent No. 1) and respondent No. 10 namely Mr. Muhammad Ishaq Dar (a *Samdhi* of respondent No. 1 and the incumbent Finance Minister of Pakistan) before us and at the outset he adopted all the arguments of Mr.

Makhdoom Ali Khan, Sr. ASC representing respondent No. 1. He also pointed out in the beginning that no allegation had been leveled against respondent No. 6 in Constitution Petition No. 29 of 2016 but relief had been prayed therein regarding her disqualification under Article 63(1)(o) of the Constitution. He further pointed out that in Constitution Petition No. 30 of 2016 and also in Constitution Petition No. 3 of 2017 respondents No. 6, 9 and 10 had not been arrayed as parties and no relief had been prayed against them in those petitions. He submitted that the questions to be answered by him were in respect of respondent No. 9's tax returns, the assets of his wife, i.e. respondent No. 6, the asserted dependence of respondent No. 6 on respondent No. 1 and the allegations leveled against respondent No. 10.

41. Mr. Hamid pointed out that respondents No. 6 and 9 had placed on the record of these petitions copies of the tax returns of respondent No. 6 for the years 2011 and 2012, the tax returns of respondent No. 1 for the years 2011 and 2012, an opinion of a reputed tax consultancy firm about correctness of the tax returns filed by respondent No. 1, the license granted for setting up a factory in Dubai, the lease deed for obtaining land in Dubai for setting up a factory, the land rent agreement executed in Dubai, the tripartite sale agreement in respect of sale of 75% shares of the factory in Dubai, the shares sale certificate pertaining to sale of the remaining 25% shares of the factory in Dubai, a photograph taken at the time of inauguration of the factory in Dubai, two affidavits of Mr. Tariq Shafi who was the *Benamidar* owner of the factory in Dubai, incorporation certificates of Nescoll Limited and Nielsen Enterprises Limited, all the share certificates in favour of respondent No. 7, a trust deed *qua* a company named Coomber, a trust deed dated 02/04.02.2006, two statements of a gentleman from Qatar, income-tax returns of respondent No. 6 from the year 2011 to the year 2016, income-tax returns of respondent No. 6's grandmother from the year 2011 to the year 2016, wealth statement of respondent No. 1 for the year 2010 showing agricultural land in the ownership of respondent No. 6, bank

statements of respondent No. 1 showing that all the relevant transactions were carried out through banks, SRO No. 84(I)/2015 amending the income-tax return form and the nomination papers of respondent No. 1 showing that respondent No. 1 lived in his mother's house.

42. Mr. Hamid maintained that respondent No. 6's alleged beneficial ownership of the apartments in London was a disputed question of fact and the allegation leveled in that regard was based upon forged documents produced by the petitioners. He relied upon a book written by Dr. B. R. Sharma on the law relating to handwriting, etc. and also upon the case of *Syed Hafeezuddin v. Abdul Razzaq and others* (PLD 2016 SC 79) on the issue of forgery of signatures. He argued that in cases involving public interest litigation the petitioner must come to the court with clean hands and with concrete facts which are verifiable and in that regard he referred to the cases of *Muhammad Shafique Khan Sawati v. Federation Of Pakistan through Secretary Ministry of Water and Power, Islamabad and others* (2015 SCMR 851), *Syed Zafar Ali Shah and others v. General Pervez Musharraf Chief Executive of Pakistan and others* (PLD 2000 SC 869), *Echo West International (Pvt.) Ltd. Lahore v. Government of Punjab through Secretary and 4 others* (PLD 2009 SC 406), *Moulvi Iqbal Haider v. Capital Development Authority and others (PLD 2006 SC 394), Javed Ibrahim Paracha v. Federation of Pakistan* and others (PLD 2004 SC 482), *T. N. Godavarman Thirimulpad v. Union of India and Ors (*AIR 2006 SC 1774), *Janata Dal v. H. S. Chowdhary and Ors* (AIR 1993 SC 892), *S. P. Gupta v. President of India and Ors* (AIR 1982 SC 149), *Syed Hafeezuddin v. Abdul Razzaq and others* (PLD 2016 SC 79) and *M. A. Faheemuddin Farhum v. Managing Director/Member (Water) WAPDA, WAPDA House, Lahore and others* (2001 SCMR 1955). He categorically submitted that respondent No. 6 was a mere trustee of one of the two offshore companies on behalf of respondent No. 7 and she had no other interest in the said companies or the properties owned by them.

43. On the issue of the alleged dependence of respondent No. 6 on respondent No. 1 Mr. Hamid pointed out that there was no definition of 'dependent' provided in the Income-Tax Ordinance, 2001, section 2(33) of the said Ordinance provided for a "minor child" but section 90(8)(b) of that Ordinance provided that a "minor child" did not include a married daughter. He also pointed out that section 116(1)(b) of the said Ordinance referred to "other dependents" without defining them. He also referred in that context to section 116(2) of that Ordinance pertaining to a wealth statement, Rule 36 of the Income-Tax Rules, 2002 and Part IV of the Second Schedule containing the form of Wealth-Tax (amended on 26.8.2015) highlighting that assets in others' names were contemplated in the said provisions but such others had not been defined. He further referred to the Representation of the People Act, 1976 and pointed out that even the said Act did not contain any definition of the word 'dependent' although the word 'dependents' found a mention in section 12(2)(d) of the said Act. He also referred to section 14(3)(c) of that Act pertaining to scrutiny of nomination papers and to section 14(5) of the said Act relevant to an appeal in that regard and then drew our attention towards a form captioned 'Statement of Assets and Liabilities' provided in the Representation of the People (Conduct of Election) Rules, 1977 and pointed out that in the verification provided in that form the word 'dependents' is mentioned. He also read out section 5(e) of the Prevention of Corruption Act, 1947 in the Explanation whereof the word 'dependents' is mentioned without defining or elaborating the same. In the absence of any statutory definition of the word 'dependent' Mr. Hamid referred to the case of *M. A. Faheemuddin Farhum v. Managing Director/Member (Water) WAPDA, WAPDA House, Lahore and others* (2001 SCMR 1955) and Black's Law Dictionary in order to explain as to what the word 'dependent' meant. In that backdrop he vehemently argued that respondent No. 6 was not a dependent of respondent No. 1 at the time of filing of nomination papers by him on March 31, 2013. He maintained that the previous financial year had ended on June 30, 2012 whereas tax details of respondent No. 6 for the last 5 years till

June 30, 2012 provided to this Court clearly showed that she was a lady of means and not dependent on respondent No. 1 financially. He pointed out that through a sale deed dated October 13, 2010 land worth Rs. 47,52,000/- had been purchased by respondent No. 1 in the name of respondent No. 6, through a sale deed dated December 14, 2010 land worth Rs. 34,78,750/- had been purchased by respondent No. 1 in the name of respondent No. 6, through a sale deed dated March 01, 2011 land worth Rs. 22,76,000/- had been purchased by respondent No. 1 in the name of respondent No. 6 and through a sale deed dated February 07, 2011 land worth Rs. 1,33,93,000/- had been purchased by respondent No. 1 in the name of respondent No. 6 and all the above mentioned sales had been registered on April 14, 2011. It was, thus, maintained by Mr. Hamid that, irrespective of the fact that the above mentioned assets had been gifted to her by her father, respondent No. 6 was for all intents and purposes a lady owning considerable property and, therefore, she could not be said to be dependent on her father for her sustenance or survival. According to him, a lady owning property worth about Rs. 20 crores could not be termed as dependent on anybody. He went on to maintain that all the tax returns and statements submitted by respondent No. 6 had been accepted by the concerned taxation authorities and the same had never been challenged and, therefore, after a lapse of the five years' statutory period such returns and statements could not be reopened or questioned at any subsequent stage.

44. Adverting to the case against respondent No. 9 Mr. Hamid conceded that the said respondent had not filed any tax return before the year 2014 and that a National Tax Number had been issued in his name for the first time on January 28, 2014. He also admitted that for contesting the elections in the year 2013 respondent No. 9 had submitted the wealth statement and the tax return of his wife (respondent No. 6) with his nomination papers. While defending respondent No. 9 Mr. Hamid referred to sections 114 and 182 of the Income-Tax Ordinance, 2001 and also pointed

out that the same issue was already pending before the Election Commission of Pakistan through five different petitions filed before it by different persons and also before the Lahore High Court, Lahore through a Writ Petition filed before it by an interested person. He maintained that respondent No. 9 was just a member of the National Assembly against whom no relief had been prayed for in these petitions and respondent No. 6 did not even hold a public office and, therefore, the matters against them did not involve any question of public importance with reference to enforcement of the Fundamental Rights conferred by the Constitution so as to attract the jurisdiction of this Court under Article 184(3) of the Constitution.

45. As far as respondent No. 10 namely Mr. Muhammad Ishaq Dar (a *Samdhi* of respondent No. 1 and the incumbent Finance Minister of Pakistan) is concerned Mr. Hamid pointed out that respondent No. 1 and some members of his family, etc. had been implicated as accused persons in FIR No. 12 of 1994 registered at Police Station Federal Investigation Agency, SIU, Islamabad on November 10, 1994 and also in FIR No. 13 of 1994 registered at Police Station Federal Investigation Agency, SIU, Islamabad on November 12, 1994 wherein various allegations, including those of money laundering, had been leveled but after submission of the Challans in those cases Writ Petitions No. 12172 and 12173 of 1997 filed by a nephew of respondent No. 1 were allowed by the Lahore High Court, Lahore on May 27, 1997, the Challans were quashed and the accused persons were acquitted. He informed that respondent No. 10 was not an accused person in those criminal cases and the Lahore High Court, Lahore had decided the above mentioned Writ Petitions at a time when respondent No. 1 was the Prime Minister of Pakistan and the said decision of the High Court had not been challenged before this Court by the Federal Investigation Agency or the State.

46. Mr. Hamid then referred to Reference No. 5 of 2000 filed by the National Accountability Bureau before an Accountability Court

against respondents No. 1 and 10 and some others with allegations of money laundering, etc. to the tune of Rs. 1242.732 million (over Rs. 1.2 billion) and in that Reference reliance had also been placed upon a judicial confession made by respondent No. 10 before a Magistrate First Class, Lahore on April 25, 2000. He pointed out that initially respondent No. 10 was an accused person in the said Reference but on the basis of his judicial confession the said respondent was granted pardon by the Chairman, National Accountability Bureau and was not treated as an accused person in the final Reference wherein he had been cited as a prosecution witness. It was alleged in that Reference that respondent No. 10 was instrumental in laundering of 14.886 million US Dollars upon the instructions and for the benefit of respondent No. 1 by opening fake foreign currency accounts in different banks in the names of others. He pointed out that Writ Petition No. 2617 of 2011 filed before the Lahore High Court, Lahore in connection with that Reference was allowed by a learned Division Bench of the said Court on December 03, 2012 and the said Reference was quashed through a unanimous judgment but the learned Judges disagreed with each other over permissibility of reinvestigation of the matter whereupon the matter was referred to a learned Referee Judge who held on March 11, 2014 that reinvestigation of the case was not permissible. Even that judgment of the Lahore High Court, Lahore was not challenged by the National Accountability Bureau or the State before this Court and incidentally respondent No. 1 was again the Prime Minister of Pakistan at that time. He also submitted that a Writ Petition challenging respondent No. 10's election to the Senate on account of making of the above mentioned confessional statement by him was dismissed *in limine* by the Islamabad High Court, Islamabad because the writ-petitioner had not appended a copy of the confessional statement with the Writ Petition filed by him. He went on to submit that the allegations leveled against respondent No. 10 were over twenty-five years old and such allegations pertained to the year 1992 when the said respondent did not hold any public office. He further submitted that in the Challans quashed in the year 1997

respondent No. 10 was not an accused person and quashing of Reference No. 5 of 2000 had become final by now attracting the principle of *autrefois acquit* recognized by Article 13 of the Constitution, section 403, Cr.P.C. and section 26 of the General Clauses Act.

47. While representing respondents No. 7 and 8 namely Mr. Hussain Nawaz Sharif and Mr. Hassan Nawaz Sharif, both sons of respondent No. 1, Mr. Salman Akram Raja, ASC submitted at the outset that by comparison of their verbal or written statements respondents No. 7 and 8 are not to be treated as the standard to judge correctness and honesty of respondent No. 1 because it could well be that respondent No. 1 is correct and honest in the matter and respondents No. 7 and 8 are not. He pointed out that no relief has directly been prayed for against respondents No. 7 and 8 in these petitions. He also made a categorical statement that respondent No. 7 is the exclusive owner of the relevant four properties in London since the year 2006. He maintained that it was not possible to determine facts stretching over a period of about fifty years and that on the basis of the available record respondent No. 1 or his children could not be held culpable. He argued that in cases of corruption, and particularly those under section 9(a)(v) of the National Accountability Ordinance, 1999, the initial burden of proof is on the prosecution and then the burden of proof shifting to the accused person is only to explain to the satisfaction of the court and such burden is discharged if the offered defence falls in the realm of possibilities. He place reliance in that regard on the cases of *Khalid Aziz v. The State* (2011 SCMR 136) and *The State v. Anwar Saifullah Khan* (PLD 2016 SC 276). He maintained that no wrongdoing on the part of respondent No. 1 and his children had been established in this case and, thus, the defence offered by them is to accepted in toto in terms of the principle of criminal law reiterated in the case of *State* v. *Muhammad Hanif and 5 others* (1992 SCMR 2047). He emphasized that the explanations offered by respondent No. 7 do fall in the

realm of possibilities and, therefore, the same ought to be accepted.

48. Mr. Raja submitted that the relevant record in respect of setting up and sale of the factories in Dubai and Jeddah had been made available before this Court which sales had fetched 12 million Dirhams and 20,630,000 Riyals (about 17 million US Dollars). With reference to an affidavit of Mr. Abdul Raman Muhammad Abdullah Kayed Ahli and two affidavits of Mr. Tariq Shafi he maintained that receipt of 12 million Dirhams as sale proceeds of the remaining shares of the factory in Dubai and delivery of the said amount in cash in installments to Mr. Fahad Bin Jassim of Qatar (elder brother of Mr. Hamad Bin Jassim) had been established which money later on became the source of funds for acquisition of the four properties in London.

49. Mr. Raja stated that the family of respondent No. 1 has been in possession of the properties in London since the years 1993/1996 because respondents No. 7 and 8 were studying in England at that time. He submitted that apart from the judgment and decree of the High Court of Justice, Queen's Bench Division, London passed and issued in the year 1999 there was no link established between respondent No. 1's children and ownership of those properties before the year 2006. In that respect he referred to an affidavit of Mr. Shezi Nackvi (a representative of the decree holder Al-Towfeek Company) dated January 13, 2017 according to which no meeting or correspondence had ever taken place between respondent No. 1 and any representative of the decree holder till the decree was settled upon payment of 8 million US Dollars. He pointed out that the loan obtained from Al-Towfeek Company stood duly mentioned in the relevant Financial Statement of Hudabiya Paper Mills Limited of which some of respondent No. 1's children were Directors at that time. He also pointed out that according to the written statement of Mr. Shezi Nackvi filed before the High Court of Justice, Queen's Bench Division, London an attachment order in respect of the relevant four properties in London had been

sought by the decree holder on the basis of a report prepared by Mr. A. Rehman Malik of the Federal Investigation Agency of Pakistan whereas, according to Mr. Raja, Mr. A. Rehman Malik had prepared that report at a time when he was under suspension and he had compiled that report on his own and, thus, the report had no legal standing.

50. Giving the background of the relevant four properties in London Mr. Raja submitted that Al-Thani family of Qatar had acquired the two offshore companies owning the said properties in the years 1993, 1995 and 1996 and in January 2006 the Bearer Share Certificates of the two companies were handed over by Al-Thani family to a representative of respondent No. 7. He added that upon instructions of respondent No. 7 Minerva Holdings Limited took over management of the two offshore companies on January 26, 2006, Arrina Limited was entrusted with management service for the two companies on February 06, 2006, JPCA Corporate Accountants took over administration of the two companies from Minerva Holdings Limited and thereafter two of the relevant properties were mortgaged with Deutche Bank (Suisse) SA on September 02, 2008. He, however, went on to admit that the information supplied by respondents No. 6 and 7 in respect of the relevant four properties was "incomplete".

51. Adverting to the laws of the British Virgin Islands *vis-à-vis* companies and their ownership Mr. Raja informed that section 28 of the International Business Companies Act, 1984 provided for registered shares and bearer shares and section 31 provided that a bearer share was transferable by delivery of the certificate relating to the share. He also referred to the Financial Services Commission Act, 2001, the British Virgin Islands Business Companies Act, 2004 and an article on 'The BVI Bearer Shares Regime' and went on to inform that in July 2006 the bearer shares of the relevant two companies were cancelled and registered shares were issued in favour of Minerva Holdings Limited on behalf of respondent No. 7.

52. On the issue of the asserted dependence of respondent No. 6 on respondent No. 1 Mr. Raja maintained that no valid document had been produced by the petitioners before this Court to establish any proprietary interest of respondent No. 6 in the relevant four properties in London and, therefore, there was hardly any question of respondent No. 1 being declared disqualified on his stated failure to disclose respondent No. 6 as his dependent or failure to declare any property of respondent No. 6 as his property in his nomination papers filed in the general elections held in the country in the year 2013 or in his tax returns.

53. As far as the speeches made by respondent No. 1 before the nation and in the National Assembly were concerned Mr. Raja maintained that the "imperfections in the speeches" did not provide a valid basis for holding that an asserted fact or an allegation about respondent No. 1 not being honest was proved.

54. Addressing the Court on the scope of determining a fact in exercise of the jurisdiction under Article 184(3) of the Constitution Mr. Raja referred to the case of *Suo Motu action regarding allegation of business deal between Malik Riaz Hussain and Dr. Arsalan Iftikhar attempting to influence the judicial process* (PLD 2012 SC 664) wherein the scope of inquisitorial proceedings under Article 184(3) of the Constitution was discussed and in view of the "object" of those *suo motu* proceedings the relevant statutory authorities were activated under the supervision of this Court. On the said subject he also referred to the cases of *Muhammad Asghar Khan v. Mirza Aslam Baig, Former Chief of Army Staff* (PLD 2013 SC 1), *Watan Party and another v. Federation of Pakistan and others* (PLD 2011 SC 997), *Moulvi Iqbal Haider and others v. Federation of Pakistan through Secretary M/o Law and Justice and others* (2013 SCMR 1683), *General Secretary, West Pakistan Salt Miners Labour Union (CBA) Khewra, Jhelum v. The Director, Industries and Mineral Development, Punjab, Lahore* (1994 SCMR 2061), *Ms. Shehla Zia and others v. WAPDA* (PLD 1994 SC 693), *Mehr Zulfiqar Ali Babu and others v. Government of The Punjab and*

others (PLD 1997 SC 11) and *Watan Party and others v. Federation of Pakistan and others* (PLD 2012 SC 292). He also relied upon the case of *Emperor v. Khawaja Nazir Ahmed* (AIR 1945 Privy Council 18) to assert that independence of an investigating agency and the investigative process is as important and desirable as independence of the judiciary. He pointed out that the said aspect was also emphasized by this Court in the case of *Malik Shaukat Ali Dogar and 12 others v. Ghulam Qasim Khan Khakwani and others* (PLD 1994 SC 281). Relying upon the case of *State v. Muhammad Hanif and 5 others* (1992 SCMR 2047) he pointed out that in criminal cases the statement of an accused person recorded under section 342, Cr.P.C. has to be accepted or rejected in its entirety and, thus, while exercising this Court's jurisdiction under Article 184(3) of the Constitution in respect of a matter involving an alleged criminality the inculpatory part of the statement cannot be separated from the exculpatory part. Dilating upon meanings of the word "declaration" in the context of Article 184(3) of the Constitution he submitted that accusitory function cannot be resorted to before an administrative tribunal and in that context he referred to the cases of *Jenkins v. McKeithen* (395 U.S. 411 (1969)) and *Hannah Et Al v. Larche Et Al* (363 U.S. 420 (1960)) but conceded that the said judgments were not relevant to a declaration made under Article 184(3) of the Constitution of Pakistan. He further argued that no right of appeal was provided against a judgment delivered under Article 184(3) of the Constitution and, therefore, extra care is required to be taken while making a declaration under that jurisdiction and for that submission he relied upon the cases of *Khan Asfandyar Wali and others v. Federation of Pakistan through Cabinet Division, Islamabad and others* (PLD 2001 SC 607), *Pakistan through Secretary, Ministry of Defence v. The General Public* (PLD 1989 SC 6) and *Federation Of Pakistan through Secretary, Ministry of Religious Affairs/Minority Affairs, Government of Pakistan, Islamabad v. Mufti Iftikhar-ud-Din and another* (2000 SCMR 1). He went on to maintain that no fishing or roving inquiry can be made while exercising the jurisdiction of this Court under Article 184(3)

of the Constitution and he referred to the cases of *Jam Madad Ali v. Asghar Ali Junejo and others* (2016 SCMR 251) and *Dr. Akhtar Hassan Khan and others v. Federation of Pakistan and others* (2012 SCMR 455) in support of that submission. With reference to the Fundamental Right guaranteed by Article 19A of the Constitution he argued that the right to access to information does not extend to gathering of information from private persons and such right is relevant only where information already exists and not where the right is asserted for creating information. He lastly submitted that in exercise of this Court's jurisdiction under Article 184(3) of the Constitution ordinarily no evidence is recorded and no right of cross-examination of witnesses is available besides the absence of any right of appeal and, therefore, in an appropriate case it may be argued that rendering a finding of fact in exercise of such jurisdiction may militate against the Fundamental Right guaranteed by Article 10A of the Constitution regarding fair trial and due process.

55. Respondent No. 2 namely Qamar Zaman Chaudhry, Chairman, National Accountability Bureau appeared before the Court in person on February 21, 2017 along with the learned Prosecutor-General Accountability and he maintained that the National Accountability Bureau was cognizant of its duties and responsibilities in connection with the issues arising out of the Panama Papers but respondent No. 2 was waiting for the "regulators" to look into the matter first. We repeatedly asked him to elaborate as to who those "regulators" were and where did they figure in the National Accountability Ordinance, 1999 but he did not even bother to respond to those questions and conveniently kept quiet! When his attention was drawn towards the provisions of section 18 of the National Accountability Ordinance, 1999 according to which the Chairman, National Accountability Bureau could take cognizance of such a matter on his own he simply stated that he would take action in terms of the Ordinance. On that occasion the Court wondered who the referred to "regulators" could be because the same word had also been used in the two

statements of a gentleman from Qatar brought on the record of the case by the children of respondent No. 1. When asked by the Court as to whether he would consider challenging before this Court the judgment passed by the Lahore High Court, Lahore quashing Reference No. 5 of 2000 and barring reinvestigation into that matter by the National Accountability Bureau or not he categorically stated that at the relevant time he had decided not to file any petition/appeal against that judgment and he had no intention to do that at this stage either.

56. Respondent No. 5 namely Dr. Muhammad Irshad, Chairman, Federal Board of Revenue appeared before this Court in person along with his learned counsel on February 21, 2017 and apprised the Court that after disclosures made through the Panama Papers the Federal Board of Revenue approached the Ministry of Foreign Affairs for access to the Panaman authorities for obtaining information about the Pakistani citizens involved in the scam but it did not receive any response and then notices were issued by the Federal Board of Revenue on September 02, 2016 to 334 persons located out of the 444 persons named in connection with that scam through the print and electronic media. He informed that only a few out of those 334 persons responded to the notices and they included respondents No. 6, 7 and 8 herein. According to him in her response dated November 21, 2016 respondent No. 6 denied the allegations whereas through their response of the same date respondents No. 7 and 8 maintained that they were Non-resident Pakistanis and, thus, owning offshore companies by them did not fall within the jurisdiction of the Federal Board of Revenue. The Chairman stated before the Court in categorical terms that no further steps had been taken by him in the matter. Later on through a miscellaneous application filed on February 28, 2017 respondent No. 5 placed an formation before this Court that on February 22, 2017 notices had been issued to respondents No. 7 and 8 under section 176 of the Income-Tax Ordinance, 2001 requiring them to substantiate their claimed status of Non-resident Pakistanis. The Court was also informed through the same

application that the Immigration authorities had also been required by the Federal Board of Revenue to produce the travel record of the said respondents during the period between the years 2006 and 2016. It was assured through the said application that after receiving the necessary information from respondents No. 7 and 8 and the Immigration authorities the Federal Board of Revenue would take further necessary action in the matter. It is unfortunate that till passage of the final judgment of this case no further information has been received by this Court from the Chairman, Federal Board of Revenue regarding any progress made in the matter at his end.

57. Mr. Ashtar Ausaf Ali, the learned Attorney-General for Pakistan stated at the outset that although he had represented respondent No. 1 and some members of his family in many cases in the past before different courts of the country as a private practitioner yet in the present case he was appearing as the Attorney-General for Pakistan on Court's notice under Order XXVII-A Rule 1, CPC and, therefore, he would be assisting this Court in the present matter completely independently on some jurisdictional and legal aspects involved. He straightaway conceded that this Court has the requisite jurisdiction to entertain and hear these petitions and these petitions are maintainable under Article 184(3) of the Constitution but according to him the facts of the case do not warrant any interference in the matter by this Court through exercise of such jurisdiction. He pointed out that Constitution Petition No. 35 of 2016 filed before this Court seeking disqualification of one of the present petitioners from being a member of the Parliament on somewhat similar grounds was already pending before this Court and he was to assist this Court in that matter also in the same capacity. He submitted that the grey areas inherent in the constitutional disqualifications involved in the present petitions have already been commented upon by this Court in the case of *Ishaq Khan Khakwani and others v. Mian Muhammad Nawaz Sharif and others* (PLD 2015 SC 275). According to him the case in hand was a unique case wherein the

forum chosen was this Court, the jurisdiction invoked was that under Article 184(3) of the Constitution and the main prayer made was in the nature of a writ of *quo warranto*. He argued that it was not the practice of this Court to entertain and proceed with such a case involving election to the Parliament under its original jurisdiction in the first instance and such issues were generally entertained by this Court in its appellate jurisdiction. He maintained that a declaration made by this Court is to be binding on all the other courts and tribunals in the country and, therefore, determination of a fact by this Court in exercise of its original jurisdiction may sparingly be resorted to because this Court may not be in the best position to record evidence, there is no appeal provided against a decision rendered in the said jurisdiction and the Fundamental Right under Article 10A of the Constitution may be jeopardized in such a process. He argued that in the context of the facts of this case it was to be seen by this Court as to which Fundamental Rights were involved or breached, who was complaining of breach of Fundamental Rights, which facts needed to be established first and what was the legal obligation of the respondents non-performance of which was detrimental to the petitioners? The learned Attorney-General went on to argue that in order to issue a writ in the nature of *quo warranto* this Court was to be guided by the provisions of Article 199(1)(b)(ii) of the Constitution regarding a High Court's jurisdiction to issue a writ of *quo warranto* which can be issued only against a holder of a "public office" and, according to him, a Member of the National Assembly, which respondent No. 1 is, is not a holder of a "public office" in terms of the Constitution and the law. He, however, could not refer in this respect to any specific provision of the Constitution or the law or to any precedent of any court.

58. The learned Attorney-General also submitted that from the language of Article 62(1)(f) of the Constitution it was not clear as to which court was to give the requisite declaration and, at any rate, no sufficient material was available before this Court in the present proceedings to give a declaration of that nature. Suggesting an

alternate approach to the issues posed by the present petitions the learned Attorney-General submitted that under section 42-A of the Representation of the People Act, 1976 every member of the Parliament or a Provincial Assembly is required to submit yearly statements of assets and liabilities before the Election Commission of Pakistan and if such a statement is found to be false then it amounts to a corrupt practice under section 78(3)(d) punishable under section 82 of that Act and for such falsehood the concerned person is to be tried by a Court of Session under section 94 of that Act and if found guilty of such corrupt practice he stands disqualified under section 99(1A)(1) of the Act. According to him instead of entering into factual controversies while exercising jurisdiction under Article 184(3) of the Constitution the matter might be left to the Election Commission of Pakistan to attend to. He maintained that in the light of the issues highlighted about a declaration about honesty in the cases of *Ishaq Khan Khakwani and others v. Mian Muhammad Nawaz Sharif and others* (PLD 2015 SC 275) and *Rana Aftab Ahmad Khan v. Muhammad Ajmal* (PLD 2010 SC 1066) such issues ought not to be decided by this Court in the first instance or as a first and the only resort and the civil or criminal issues involved in the matter ought to be established through a trial before a court of plenary jurisdiction or an election tribunal. According to him a declaration by a court or tribunal of plenary jurisdiction ought to precede a finding by this Court about honesty of a person. He submitted that inquisitorial proceedings had been conducted by this Court in the past in exercise of its jurisdiction under Article 184(3) of the Constitution where public rights were involved or where issues raised could be resolved on the basis of admitted facts or official record as opposed to private records and in this respect he referred to the cases of *Sh. Riaz-ul-Haq and another v. Federation of Pakistan through Ministry of Law and others* (PLD 2013 SC 501), *Imran Khan and others v. Election Commission of Pakistan and others* (PLD 2013 SC 120), *Lahore Bachao Tehrik v. Dr. Iqbal Muhammad Chauhan and others* (2015 SCMR 1520), *Muhammad Asghar Khan v. Mirza Aslam Baig, Former Chief of Army Staff* (PLD 2013 SC 1), *Workers' Party*

Pakistan through Akhtar Hussain Advocate, General Secretary and 6 others v. Federation of Pakistan and 2 others (PLD 2012 SC 681), *Suo Motu action regarding allegation of business deal between Malik Riaz Hussain and Dr. Arsalan Iftikhar attempting to influence the judicial process* (PLD 2012 SC 664) and *Watan Party and others v. Federation of Pakistan and others* (PLD 2012 SC 292). He also referred to the case of *Rana Aftab Ahmad Khan v. Muhammad Ajmal* (PLD 2010 SC 1066) to urge that intricate questions of fact requiring recording of evidence may not be resolved by this Court in its jurisdiction under Article 184(3) of the Constitution.

59. Adverting to the matter of failure/refusal of the Chairman, National Accountability Bureau to challenge the judgment of the Lahore High Court, Lahore whereby Reference No. 5 of 2000 was quashed and reinvestigation of the matter was barred the learned Attorney-General submitted that the said matter did not attract filing of a statutory appeal before this Court and that the matter could have been brought before this Court by anybody, including the present petitioners, through filing of a civil petition for leave to appeal. He stated that if such a petition for leave to appeal is filed before this Court by any of the petitioners then the office of the Attorney-General would not question the *locus standi* of the petitioner in filing of such petition.

60. The learned Attorney-General went on to maintain that the remedies under Article 63(2) and (3) of the Constitution were the exclusive remedies for seeking post-election disqualification of a member of the Parliament or a Provincial Assembly and he placed reliance in that regard upon the cases of *Pir Sabir Shah v. Shad Muhammad Khan, Member Provincial Assembly, N.W.F.P and another* (PLD 1995 SC 66) and *Aftab Shaban Mirani v. President of Pakistan and others* (1998 SCMR 1863).

61. In respect of the alleged misstatement of facts by respondent No. 1 in his speeches the learned Attorney-General submitted that an omission in a statement does not necessarily constitute a

misstatement and in this regard he relied upon the cases of *Peek v. Gurney* (1873) LR 6 HL 377, *Hamilton and others v. Allied Domecq Plc (Scotland*) (2007) UKHL 33, 2007 SC (HL) 142 and *Shiromani Sugar Mills Ltd v. Debi Prasad* (AIR 1950 All 508). According to him a misstatement on the floor of the National Assembly is property of that house to be dealt with in the manner prescribed by the parliamentary practices and the rules regarding privilege of the house.

62. In his brief submissions in rebuttal Syed Naeem Bokhari, ASC for the petitioner in Constitution Petition No. 29 of 2016 submitted that respondent No. 7 was born on May 01, 1972, respondent No. 6 was born on October 28, 1973 and respondent No. 8 was born on January 21, 1976 and, thus, respondent No. 7 was about two years old, respondent No. 6 was less than one year old and respondent No. 8 was not even born when the factory in Dubai was stated to have been set up by their grandfather Mian Muhammad Sharif in June 1974. He also highlighted that even at the time of sale of 75% shares of that factory in the year 1978 and at the time of sale of the remaining 25% shares of that factory in the year 1980 all the said respondents were minors. He maintained that the entire story stated before this Court by the children of respondent No. 1 was based firstly upon hearsay and secondly upon two statements of a gentleman from Qatar who himself had no personal knowledge of the matter and, therefore, that story was simply to be discarded by this Court. He went on to submit that respondent No. 1 did not mention any investment made by his father in Qatar at all in his speeches or in his concise statements submitted before this Court. Mr. Bokhari stated that it was unbelievable that respondent No. 1's children knew about and remembered the investment made in Qatar despite their minority at the relevant time but respondent No. 1 did not! According to him that was a deliberate suppression of facts by respondent No. 1 clearly establishing that he was not an honest person. He added that with the collapse of the story about investment in Qatar the story about trusteeship of the relevant properties in London also

crumbled to the ground exposing respondent No. 1 as the actual owner of those properties which ownership he had knowingly and purposely concealed and suppressed. In the end Mr. Bokhari submitted that respondent No. 1 had not been truthful to the nation, to the National Assembly and to this Court in the matter of explaining his assets which were nothing but ill-gotten, he had not been truthful in respect of the money fetched by the sale of the factory in Dubai, he had not been truthful regarding beneficial ownership of the properties in London and while suppressing his Qatari connection he had been anything but honest.

63. Sheikh Rasheed Ahmed petitioner in Constitution Petition No. 30 of 2016 referred in his submissions in rebuttal to the case of *Abdul Waheed Chaudhry v. Abdul Jabbar and others* (decided by this Court on March 25, 2015) wherein the word 'honest' appearing in Article 62(1)(f) of the Constitution had been interpreted. On the issue of parliamentary privilege he referred to the cases of *Syed Masroor Ahsan and others v. Ardeshir Cowasjee and others* (PLD 1998 SC 823), *Regina v. Chaytor* (2011 UKSC 52), *Canada* (*House of Commons*) *v. Vaid*, (2005) 1 S.C.R. 667, *Zahur Ilahi, M.N.A. v. Mr. Zulfikar Ali Bhutto* (PLD 1975 SC 383), *Miss Benazir Bhutto v. Federation of Pakistan and another* (PLD 1988 SC 416), *Ch. Nisar Ali Khan v. Federation of Pakistan and others* (PLD 2013 SC 568), *Muhammad Yasin v. Federation of Pakistan through Secretary, Establishment Division, Islamabad and others* (PLD 2012 SC 132) and *Syed Mehmood Akhtar Naqvi v. Federation of Pakistan through Secretary Law and others* (PLD 2012 SC 1054). He maintained that this Court had the jurisdiction to grant any relief even beyond the reliefs prayed for in a petition and in this respect he relied upon the cases of *Pir Sabir Shah v. Shad Muhammad Khan, Member Provincial Assembly, N.W.F.P and another* (PLD 1995 SC 66), *Hitachi Limited and another v. Rupali Polyester and others* (1998 SCMR 1618), *Ch. Nisar Ali Khan v. Federation of Pakistan and others* (PLD 2013 SC 568), *Sindh High Court Bar Association through its Secretary v. Federation of Pakistan through Secretary, Ministry of Law and Justice, Islamabad* (PLD 2009 SC 879) and

Mst. Amina Begum and others v. Mehar Ghulam Dastgir (PLD 1978 SC 220). With reference to the case of *Muhammad Siddiq v. State* (1977 SCMR 503) he maintained that when stolen property is recovered from the custody of a person then it is for that person to explain such possession and the court is to presume his guilt as a thief.

64. Mr. Taufiq Asif, ASC for the petitioner in Constitution Petition No. 3 of 2017 submitted in rebuttal that the word 'honest' appearing in Article 62(1)(f) of the Constitution had been interpreted by this Court in the case of *Syed Mehmood Akhtar Naqvi v. Federation of Pakistan through Secretary Law and others* (PLD 2012 SC 1089) and it was held that an honest person ought not to be deceptive and he ought not to be given to cheating. In this context he also referred to the cases of *Watan Party and others v. Federation of Pakistan and others* (PLD 2012 SC 292) and *Allah Wasaya and 5 others v. Irshad Ahmad and 4 others* (1992 SCMR 2184).

65. I have attended to each and every argument advanced, have perused the entire documentary material produced and have also gone through all the precedent cases cited before the Court besides brooding over the diverse aspects of this case from all possible angles.

66. The questions most hotly debated by the learned counsel for the parties during the hearing of these petitions have been as to what is the scope of the proceedings before this Court under Article 184(3) of the Constitution and as to whether disputed or intricate questions of fact can be decided in such proceedings with or without recording of evidence or not. It was decided by this Court on November 03, 2016 with reference to some precedent cases that these petitions involved some serious questions of public importance with reference to enforcement of some Fundamental Rights conferred by Chapter 1 of Part II of the Constitution and, therefore, the same were maintainable before this Court under

Article 184(3) of the Constitution. On that occasion none of the parties to these petitions raised any objection to competence and maintainability of these petitions and even during the hearing of these petitions no such objection has been raised at any stage of the protracted hearings. In his two concise statements submitted by respondent No. 1 maintainability of these petitions under Article 184(3) of the Constitution had not been contested and even the immunity available to a Prime Minister in some matters under Article 248 of the Constitution was not claimed.

67. The jurisdiction of this Court under Article 184(3) of the Constitution has so far been invoked and utilized on diverse issues of public importance with reference to enforcement of different Fundamental Rights guaranteed by the Constitution. The issues of qualifications or disqualifications of persons who are candidates for election to or are members of the Majlis-e-Shoora (Parliament) or a Provincial Assembly have often cropped up before this Court in the context of Articles 62 and 63 of the Constitution which prescribe such qualifications and disqualifications and such issues have reached this Court either through the appellate jurisdiction of this Court under Article 185 of the Constitution or through its original jurisdiction under Article 184 of the Constitution. Article 62(1)(f) of the Constitution, as it stands today, deals with the qualifications and provides as under:

> "62. (1) A person shall not be qualified to be elected or chosen as a member of Majlis-e-Shoora (Parliament) unless-
> ----------
> (f) he is sagacious, righteous, non-profligate, honest and ameen, there being no declaration to the contrary by a court of law; and ----------"

It is true that on the issue of honesty of a candidate or a member a prior declaration by a court of law regarding lack of honesty is a prerequisite but in the cases initiated before an Election Tribunal a practice has developed that the same Tribunal first decides the issue of honesty on the basis of the evidence led before it and then while issuing a declaration regarding honesty or the lack of it simultaneously decides the matter of qualification or

disqualification. The plethora of case-law referred to by the learned counsel for the parties in this regard may not be reproduced here because that is the practice in vogue without any contest. The same is also the practice in cases wherein the issue of qualification or disqualification is raised before a High Court in its constitutional jurisdiction through a writ of *quo warranto* and then the matter reaches this Court through its appellate jurisdiction. In all such cases some fact finding by a court or tribunal below is involved and this Court then adjudicates upon the matter on the basis of the evidence or material which is already on the record. The issue involved in the present petitions is that the matter of qualification or disqualification on the basis of honesty of respondent No. 1 or the lack of it has been raised before this Court directly and the learned counsel for the private respondents have maintained that while exercising its original jurisdiction under Article 184(3) of the Constitution this Court ought to be extremely reluctant to receive evidence or material on the issue of honesty in the first instance in the absence of a proper evidentiary hearing and then simultaneously to issue a declaration on that issue and proceed to disqualify a person, particularly when no remedy of appeal is available against such adjudication and the disqualification is permanent. They have maintained that the issue of honesty or otherwise of respondent No. 1 involves disputed and intricate questions of fact which cannot adequately or satisfactorily be answered in the original jurisdiction of this Court. The stance of the learned counsel for the private respondents in this regard can be attended to after appreciating as to why these petitions had been entertained by this Court in its original jurisdiction under Article 184(3), is there any other court of law available at this stage to issue the prayed for declaration in the context of Article 62(1)(f) of the Constitution regarding lack of honesty of respondent No. 1 and are there disputed or intricate questions of fact really involved in these petitions or not.

68. According to Article 90(1) of the Constitution by virtue of his being the Prime Minister of the country respondent No. 1 is the

Chief Executive of the Federation and it is practically he who appoints the heads of all the institutions in the country which could have inquired into or investigated the allegations leveled against respondent No. 1 and his family on the basis of the Panama Papers. Even the Speaker of the National Assembly who could refer the matter to the Election Commission of Pakistan belongs to his political party and is his nominee. 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, the Federal Investigation Agency, the State Bank of Pakistan, the Federal Board of Revenue, the Securities and Exchange Commission of Pakistan 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. A High Court could have entertained a writ petition in the nature of *quo warranto* so as to attend to the matter but it is agreed at all hands that the matter is of immense public importance and involves enforcement of some Fundamental Rights guaranteed by the Constitution and that is why all the parties before this Court agree that the present petitions filed under Article 184(3) of the Constitution are competent and maintainable and also that the jurisdiction under Article 184(3) of the Constitution is free from the trappings of Article 199 of the Constitution. It is also not disputed that the remedy of filing an Election Petition before an Election Tribunal under Article 225 of the Constitution is not available at this juncture. The Speaker of the National Assembly could have referred the matter to the Election Commission of Pakistan under Article 63(2) of the Constitution but he has already dismissed various petitions filed before him in this regard by as many as twenty-two members of the National Assembly including one of the present petitioners. It is proverbial that there is no wrong without a remedy. It was in the above mentioned unfortunate background that this Court had entertained these petitions and now this Court cannot turn around and shy away from deciding the matter simply because it statedly involves some disputed or intricate questions of

fact which, as shall be discussed shortly, it does not. Apart from that 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/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 touchability or accountability and that surely would be nothing short of a disaster. It is said that how highsoever 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. leveled against him or where such inquiry involves ascertainment of some facts. It is not for nothing that Article 187(1) of the Constitution has empowered this Court to do "complete justice" where all other avenues of seeking justice are either unavailable or blocked. Apart from that I refuse to accept the contention that the petitions in hand involve disputed and intricate questions of fact which we cannot attend to or adjudicate upon in the present proceedings under Article 184(3) of the Constitution. The ownership and possession of the relevant four properties in London are not denied by respondent No. 1's family and the only question relevant to the issue before us is as to whether respondent No. 1's denial of any connection with acquisition of those properties is honest or not. It ought not to be lost sight of that it is not the property in London which is in issue before this Court but what is at issue is respondent No. 1's honesty for the purposes of a disqualification under Article 62(1)(f) of the Constitution. Therefore, in order to attend to the said core issue I have decided to keep aside the material produced by the petitioners regarding the four properties in London and to take into

consideration primarily the explanations offered and the material supplied by respondent No. 1 and his children in order to see whether their explanations *vis-à-vis* acquisition of the said properties are on the face of it honest or not. This approach adopted by me leaves me with no disputed or intricate questions of fact on the issue and focuses solely on the issue of honesty of respondent No. 1 with reference to the explanations advanced by him and his family only. Respondent No. 1 and his family cannot claim that their explanations offered on the issue are themselves disputed or intricate and this Court cannot even look at them!

69. Apart from what has been observed above in the case of *Lt.-Col. Farzand Ali and others v. Province of West Pakistan through the Secretary, Department of Agriculture, Government of West Pakistan, Lahore* (PLD 1970 SC 98) this Court had clarified that where the question is of a right to continue in public office the matter is of public interest and in the absence of any other adequate remedy this Court can interfere through proceedings not exactly as *quo warranto* but in the nature of *quo warranto* with a wider scope. In the present case respondent No. 1 is not just a serving member of the National Assembly but also the Prime Minister of the country and, thus, public interest in his right to continue in office is immense. In the case of *Muhammad Azhar Siddiqui and others v. Federation of Pakistan and others* (PLD 2012 SC 774) Prime Minster Syed Yousaf Raza Gillani was declared by this Court itself to be disqualified through proceedings conducted under Article 184(3) of the Constitution after his conviction had been recorded for committing contempt of court. In the case of *Syed Mehmood Akhtar Naqvi v. Federation of Pakistan through Secretary Law and others* (PLD 2012 SC 1089) numerous members of the Majlis-e-Shoora (Parliament) had been declared by this Court to be disqualified on the basis of their being holders of dual nationality and were shown the door through direct exercise of this Court's jurisdiction under Article 184(3) of the Constitution and on that occasion some factual inquiry had also been conducted by this Court. It had clearly been held in that case that this Court had the

jurisdiction to satisfy itself on a question of fact touching a disqualification notwithstanding any admission made by a party or not. It is settled by now that the jurisdiction of this Court under Article 184(3) of the Constitution is inquisitorial in nature rather than adversarial and while exercising such jurisdiction this Court can ascertain, collect and determine facts where needed or found necessary. In the case of *Pakistan Muslim League (N) through Khawaja Muhammad Asif, M.N.A. and others v. Federation of Pakistan through Secretary Ministry of Interior and others* (PLD 2007 SC 642) it was observed by this Court that there was a "judicial consensus" on the scope of proceedings under Article 184(3) of the Constitution and that even disputed questions of fact could be looked into where a Fundamental Right had been breached provided there was no voluminous evidence to be assessed and no intricate disputed questions of fact were involved. In the case of *Air Marshal (Retd.) Muhammad Asghar Khan v. General (Retd.) Mirza Aslam Baig, Former Chief of Army Staff and others* (PLD 2013 SC 1) some evidence was in fact recorded by this Court while hearing a petition filed under Article 184(3) of the Constitution. Even in the case of *General Secretary, West Pakistan Salt Miners Labour Union (CBA) Khewra, Jhelum v. The Director, Industries and Mineral Development, Punjab, Lahore* (1994 SCMR 2061) this Court had clearly held that an exercise of finding facts can be resorted to in proceedings under Article 184(3) of the Constitution. It is also a fact that while proceeding under Article 184(3) of the Constitution this Court had in many a case constituted Commissions tasked to inquire into some facts by recording evidence and to determine questions of fact on behalf of the Court and a reference in this respect may be made to the cases of *Ms. Shehla Zia and others v. WAPDA* (PLD 1994 SC 693), *Watan Party and others v. Federation of Pakistan and others* (PLD 2012 SC 292) and *Suo Motu case No. 16 of 2016* (Quetta lawyers' carnage case).

70. It was also argued before us that on September 02, 2016 a petition filed by Sheikh Rasheed Ahmed petitioner before the

Speaker of the National Assembly for referring the matter of disqualification of respondent No. 1 to the Election Commission of Pakistan under Article 63(2) of the Constitution was dismissed whereafter the said petitioner had challenged that order of the Speaker before the Lahore High Court, Lahore through Writ Petition No. 31193 of 2016 which is still pending before that Court and, therefore, the present petitions filed on the same subject before this Court under Article 184(3) of the Constitution are not maintainable or they may not be adjudicated upon for the time being. This argument, however, overlooks the law declared by this Court in the cases of *Miss Benazir Bhutto v. Federation of Pakistan and another* (PLD 1988 SC 416), *Mian Muhammad Nawaz Sharif v. President of Pakistan and others* (PLD 1993 SC 473), *Suo Motu Case No. 10 of 2009* (2010 SCMR 885), *Shahid Orakzai v. Pakistan through Secretary Law, Ministry of Law, Islamabad* (PLD 2011 SC 365), *Muhammad Yasin v. Federation of Pakistan through Secretary, Establishment Division, Islamabad and others* (PLD 2012 SC 132), *Khawaja Muhammad Asif v. Federation of Pakistan and others* (PLD 2014 SC 206) and *Jamshoro Joint Venture Ltd. and others v. Khawaja Muhammad Asif and others* (2014 SCMR 1858) wherein it had clearly been laid down that the jurisdiction of this Court under Article 184(3) of the Constitution is an independent and original jurisdiction which is not affected by pendency of any matter on the same subject before any other court or forum or even by a prior decision of the same issue by any other court or forum below.

71. It was also contended by the learned counsel for the private respondents that in exercise of this Court's jurisdiction under Article 184(3) of the Constitution ordinarily no evidence is recorded, no right of cross-examination of witnesses is available and no right of appeal exists against the decision rendered and, therefore, it can be argued that rendering a finding of fact in exercise of such jurisdiction may militate against the Fundamental Right guaranteed by Article 10A of the Constitution regarding fair

trial and due process. Article 10A of the Constitution provides as follows:

> "10A. For the determination of his civil rights and obligations or in any criminal charge against him a person shall be entitled to a fair trial and due process."

There is hardly any "determination" of civil rights of the private respondents involved in the present proceedings and no "trial" of the said respondents on any "criminal charge" is being conducted in these proceedings and, therefore, the said contention has failed to impress us. The case in hand is akin to the cases of *Mohtarma Benazir Bhutto and another v. President of Pakistan and others* (PLD 1998 SC 388) clarified in *Mohtarma Benazir Bhutto v. President of Pakistan and 2 others* (PLD 2000 SC 77) and *Air Marshal (Retd.) Muhammad Asghar Khan v. General (Retd.) Mirza Aslam Baig, Former Chief of Army Staff and others* (PLD 2013 SC 1) wherein the constitutional aspects of the cases were decided by this Court under Article 184(3) of the Constitution whereas the criminal aspects of the matters were left to be attended to by the appropriate investigation agencies or criminal courts.

72. The learned Attorney-General's objection that a member of the National Assembly does not hold a "public office" and, therefore, a Constitution Petition in the nature of *quo warranto* is not maintainable against him either before a High Court under Article 199(1)(b)(ii) or before this Court under Article 184(3) of the Constitution has also failed to find favour with me as it has already been held by this Court in the case of *Salahuddin and 2 others v. Frontier Sugar Mills and Distillery Ltd., Tokht Bhai and 10 others* (PLD 1975 SC 244) that the words "public office" are much wider than the words "service of Pakistan" and they include those who perform legislative function. A similar view was also taken by this Court in the case of *Syed Mehmood Akhtar Naqvi v. Federation of Pakistan through Secretary Law and others* (PLD 2012 SC 1089). Apart from that a "holder of a public office" can be proceeded against for an offence of corruption and corrupt practices under section 9 of the National Accountability Ordinance, 1999 and

scores of members of the Majlis-e-Shoora (Parliament) or of the Provincial Assemblies, including some Federal and Provincial Ministers, have already been successfully tried for that offence by the National Accountability Bureau and in none of such cases it was ever argued before or held by any court that a member of the Majlis-e-Shoora (Parliament) or of a Provincial Assembly does not hold a "public office".

73. The precedent cases cited before us by the learned counsel for the parties bear an ample testimony to the fact that the scope and practice regarding exercise of jurisdiction by this Court under Article 184(3) of the Constitution is still evolving and that no specific procedure for exercise of that jurisdiction has so far been laid down by this Court. The cases dealt with by this Court under that jurisdiction thus far have varied vastly in their subject and content and, therefore, this Court has consciously avoided to shut the door to any procedural modality which may be best suited to an effective and proper determination of an issue competently brought to this Court under that jurisdiction. It is for that reason that no hard and fast rule has so far been laid down by this Court regarding the mode, mechanism or modality through which the jurisdiction of this Court under Article 184(3) of the Constitution may be exercised and it has been left to the Court to decide as to which lawful procedure would suit the requirements of a given case best. It is the nature of the issue and the circumstances of the case which are to determine the procedure to be adopted. It may be pertinent to mention here that even interpretation of the words like "honest" and "ameen" used in Article 62(1)(f) of the Constitution is still not definite and precise and how to apply those words and provisions to the facts of a given case is also a question which has no certain answer as yet and that uncertainty gives this Court a lot of flexibility in the matter of interpretation and application besides keeping all possibilities of procedure to be adopted wide open. As far as the present petitions are concerned I have already mentioned above the circumstances in which this Court had entertained the same. It is not the normal function of this Court to

enter into questions of fact in the first instance but where a question of immense public importance with reference to enforcement of Fundamental Rights is involved and all the statutory and constitutional institutions or authorities that could deal with the matter have failed/refused to perform their statutory or constitutional duties in that regard there even questions of fact may be looked into by this Court in the interest of doing "complete justice". As already observed above, while attending to the questions of fact involved in the present petitions I have decided not to enter into disputed or intricate questions of fact and to confine my attention primarily to the facts asserted, explanations offered or the material placed on the record by respondent No. 1 and his family. It would surely be unreasonable on the part of respondent No. 1 and his family to maintain or contend that the facts asserted by them, the explanations offered by them or the material placed on the record by them are themselves disputed or intricate and, therefore, this Court ought not to attend to them!

74. At every step of the hearing of these petitions we had afforded ample opportunities to all the parties to bring any material on the record in support of their case. The petitioners have relied upon two speeches made by respondent No. 1 addressing the nation on radio and television and a speech made by him on the floor of the National Assembly explaining how funds had become available for acquiring the four properties in London and according to the petitioners the explanations advanced were evasive, contradictory, unproved and untrue. The petitioners have also placed on the record extracts of different interviews given by the wife and children of respondent No. 1 and some others close to the respondents wherein totally divergent stands had been taken regarding possession and ownership of the said properties. The petitioners have further relied upon some documents in order to establish that all the explanations advanced by respondent No. 1 and his children in respect of generation and availability of funds for acquisition of the relevant properties were factually incorrect and that the respondents' stand that respondent No. 1's son

namely Mr. Hussain Nawaz Sharif became the beneficial owner of the relevant properties in London in the year 2006 was factually incorrect because respondent No. 1's daughter namely Mariam Safdar was the actual beneficial owner of those properties since before the year 2006. It has also been maintained by the petitioners that the trust deed showing Mariam Safdar as a trustee of the said properties on behalf of Mr. Hussain Nawaz Sharif since the year 2006 was an unregistered document which was nothing but sham. As against that respondent No. 1 and his children have placed on the record some documents showing sale of a business concern in Dubai, some tax returns and some documents establishing as to how Mr. Hussain Nawaz Sharif, a son of respondent No. 1, had become the beneficial owner of the relevant properties in the year 2006. The children of respondent No. 1 have also brought on the record two statements made by one Mr. Hamad bin Jassim bin Jaber Al-Thani of Qatar and some other supporting statements and documents claiming that Mr. Hussain Nawaz Sharif had become the owner of the above mentioned two offshore companies and the relevant properties in London in the year 2006 as a result of a settlement of accounts between Al-Thani family of Qatar and Mr. Hussain Nawaz Sharif in respect of an investment made by the said respondent's grandfather namely Mian Muhammad Sharif in the real estate business of Al-Thani family in Qatar. All the above mentioned documents and material as well as the contentions and submissions of the learned counsel for the parties have been attended to and scrutinized by me with the necessary care that they deserved.

75. It may be advantageous to start the discussion about the relevant properties in London with the initial explanations volunteered by respondent No. 1. The Panama Papers came to surface through the print and electronic media on April 04, 2016. On April 05, 2016 respondent No. 1 addressed the nation on radio and television and he stated as follows:

وزیراعظم نواز شریف کا قوم سے خطاب

5اپریل2016ء

عزیزاہل وطن !السلام علیکم، میں اپنی پوری سیاسی زندگی میں آج پہلی بار ذاتی حوالے سے کچھ کہنے کیلئے آپ کی خدمت میں حاظر ہوا ہوں۔ مجھے ان گزارشات کی ضرورت اس لیے محسوس ہوئی کہ ایک بار پھر کچھ لوگ اپنے سیاسی مقاصد کیلئے مجھے اور میرے خاندان کو نشانہ بنا رہے ہیں۔25 سالوں سے بار بار دہرائے جانے والے الزامات کو ایک بار پھر میڈیا پر اچھالا جا رہا ہے۔ میں چند بنیادی حقائق آپ کے سامنے پیش کرنا چاہتا ہوں تا کہ آپ خود اندازہ لگا سکیں کہ ان الزامات کی حقیقت کیا ہے۔ قیام پاکستان سے کہیں سال قبل میرے والد صاحب نے لاہور سے کاروبار کا آغاز کیا اور اتفاق فاؤنڈری کی بنیاد ڈالی۔ قیام پاکستان تک یہ ایک ماشااللہ مستحکم اور مظبوط صنعتی ادارہ بن چکا تھا۔اس کی ایک شاخ ڈھاکہ میں یعنی مشرقی پاکستان میں بھی قائم ہو چکی تھی۔ یہ صنعتی ادارہ ہزاروں خاندانوں کو روزگار کی فراہمی کا ذریعہ بن چکا تھا اور قومی خزانے میں ٹیکسوں کی صورت اپنا حصہ ڈال رہا تھا۔16 دسمبر1971ء کو مشرقی پاکستان میں قائم اتفاق فاؤنڈریز سقوط ڈھاکہ کی نذر ہو گئی۔ اس کے ٹھیک 15 دن بعد 2 جنوری1972ء کو ذوالفقار علی بھٹو کی حکومت نے لاہور میں جو ہماری اتفاق فاؤنڈریز تھی اس پر بھی قبضہ کر لیا اور یہ اس وقت مغربی پاکستان میں سٹیل اور مشینری اور انجینئرنگ کی سب سے بڑی صنعت بن چکی تھی۔ یوں1936ء سے ہمارے بزرگوں کی محنت، سرمایہ کاری اور جمع پونجی ایک لمحے میں ختم کر دی گئی۔ یہ ظلم اور زیادتی ہمارے والد مرحوم کے عزم اور حوصلے میں کوئی کمزوری پیدا نہیں کر سکتی، الحمدللہ کوئی لمحہ ضائع کئے بغیر انہوں نے اللہ کا نام لے کر ایک بار پھر کمر باندھی اور بھٹو دور میں ہی 18 ماہ کے اندر اندر 6 نئی فیکٹریاں قائم کر لیں۔ یہ وطن کی مٹی سے محبت، لگن، عزم اور ہمت کی ایسی روشن داستان ہے جس کی مثال کم ہی ملے گی۔ اتفاق فاؤنڈریز جولائی1979ء میں ہمیں کھنڈرات کی شکل میں واپس ملی۔ ہمارے والد نے تباہ شدہ مالی حالت والے اس اجڑے ہوئے ڈھانچے کو دوبارہ ایک جاندار صنعتی ادارے کی شکل دی۔ انتہائی مشکل اور ناسازگار حالت میں عزم وہمت کی اس داستان کا تعلق اس دور سے ہے میرے ہم وطنو، جب میں یونیورسٹی کی تعلیم سے نیا نیا فارغ ہوا تھا۔ اور میرا یا میرے خاندان کے کسی فرد کا سیاست یا حکومت سے دور کا بھی تعلق نہیں تھا۔ اس عرصے کے دوران یہ ادارے ملک کی معاشی ترقی میں ایک توانا کردار ادا کرتے ہوئے ملکی خزانے میں کروڑوں کے ٹیکس اور محصولات جمع کراتے رہے اس زمانے میں۔ خواتین و حضرات جب ہم سیاست سے کوسوں دور تھے تو بھی آزمائش سے گزرنا پڑا اور سیاست میں آنے کے بعد بھی ہم سیاسی اور ذاتی انتقام کا نشانہ بنتے رہے۔ آپ میں سے بہت سے خواتین وحضرات کو یاد ہو گا کہ 1989ء میں ہماری فیکٹری کا خام مال لانے والے بحری جہاز جس کا نام (جوناتھن) تھا۔ اس کو ایک سال تک سامان اتارنے کی اجازت نہیں دی گئی۔ اس اکیلے جھٹکے سے ہمیں 50 کروڑ روپے کا نقصان برداشت کرنا پڑا۔ 1989ء کی بات کر رہا ہوں۔ اس وقت کا 50 کروڑ آج کے شاید 50 ارب روپے سے بھی زیادہ ہو گا۔ پیپلز پارٹی کے دوسرے دور میں بھی ہمارے کاروبار کی معاشی ناکہ بندی کی گئی اور مختلف ہتھکنڈوں کے ذریعے اتفاق فاؤنڈریز کی چمنیاں ٹھنڈی کر دی گئی اور پھر 1999ء کا دور آیا۔ جمہوری حکومت کا تختہ الٹنے کے بعد جو کچھ ہوا اس سے آپ سب اچھی طرح واقف ہیں۔ 14 ماہ تک ہمیں جیلوں میں ڈالے رکھا گیا ہمارے کاروبار کو ایک بار پھر مکمل طور پر تباہ کر دیا گیا۔ یہاں تک کہ ماڈل ٹاؤن میں ہم سے ہمارا آبائی گھر بھی چھین لیا۔ جہاں ہم، ہمارے والدین اور ہمارے بچے رہتے تھے اور ہمیں ملک بدر کر دیا گیا آپ کی آنکھوں کے سامنے یہ سب کچھ ہوا۔ ساری حکومتی مشینری کو ہمارے کاروبار، بینک کھاتوں، صنعتی یونٹس اور دیگر معاملات کے بے رحمانہ احتساب پر لگا دیا گیا۔ یہ کہنا بے جا نہ ہو گا کہ سالہا سال تک ہم اس یکطرفہ احتساب کی پل صراط پر چلتے رہیں۔ لیکن اللہ کے فضل وکرم سے ہمارے قدم نہ ڈگمائے کبھی بھی نہیں، الحمدللہ ہم قانون اور انصاف کے ہر معتبر فورم سے سرخرو ہو کر گزرے۔ کسی بھی عدالت میں ہمارے خلاف کوئی الزام ثابت نہ کیا جا سکا۔ جبری جلاوطنی کے ایام میں ہمارے والد محترم نے ایک بار پھر مکہ معظمہ کے قریب سٹیل کا ایک کارخانہ لگایا۔ اور یاد رکھیں کہ ہمیں وہاں ملک سے باہر 7 سال رہنا پڑا۔ یہ کارخانہ لگایا جس کیلئے سعودی بینکوں سے قرض حاصل کیا گیا اور پھر چند برس بعد یہ فیکٹری تمام اثاثوں سمیت فروخت کر دی گئی۔ اور یہ وسائل میرے بیٹوں حسن نواز اور حسین نواز نے اپنے نئے کاروبار کیلئے استعمال کیے۔ میں یہاں یہ بھی بتا دوں کہ حسن نواز1994ء سے لندن میں مقیم ہے۔ جبکہ حسین نواز 2000ء سے سعودی عرب میں رہائش پذیر ہے۔ دونوں ان ممالک کے قوانین اور قواعد وضوابط کے مطابق اپنا کاروبار کرتے ہیں۔ عجیب منطق ہے میرے ہم وطنو، کہ ہمارے بچے ملک کے اندر رزق کمائیں تو بھی تنقید اور اگر بیرون ملک محنت کر کے اپنا کاروبار قائم کریں اور اس کو چلائیں تو بھی الزامات کی زد میں رہتے ہیں۔ میں صرف اتنا کہوں گا کہ کرپشن یا ناجائز ذرائع سے دولت جمع کرنے والے نہ تو اپنے نام پر کمپنیاں رکھتے ہیں اور نہ اپنے اثاثے اپنے نام پر رکھتے ہیں۔ میرے عزیز اہل وطنو، میں آپ کے علم میں لانا چاہتا ہوں کہ مختلف ادوار میں اتفاق فاؤنڈریز کی مکمل تباہی کیلئے بار بار کے حملوں کے باوجود میرے خاندان کے واجب الادا قرضوں کی ایک ایک پائی ادا کی جس کی مالیت تقریباً پونے 6 ارب روپے بنتی ہے۔ ہمارے خاندان نے اصل زر کا ایک پیسہ بھی کبھی معاف نہیں کرایا۔ یہ کہنا غلط نہ ہو گا کہ ہم نے تو وہ قرض بھی اتارے ہیں جو ہم پر واجب بھی نہیں تھے اور اس سارے پس منظر کے باوجود ہمیں جیلوں میں ڈالا گیا، ملک سے

باہر بھیجا گیا اور ہمارے کاروبار کو بالکل روک دیا گیا، فیکٹریوں کو تالے لگا دئے گئے اور گھر لے لئے گئے اس کے باوجود کسی بینک سے ایک پائی کے بھی ہم ڈیفالٹ نہیں ہیں۔ مجھے امید ہے میرے ہم وطنو، کہ ہمارے کاروبار کا یہ سارا پس منظر اب آپ پر واضح ہو چکا ہو گا۔ میں نے اس سفر کے تمام اہم مراحل سے آپ کو آگاہ کر دیا ہے۔ صرف اتنا مزید کہوں گا کہ حکومت سے باہر یا حکومت کے اندر رہتے ہوئے میں نے یا میرے خاندان کے کسی فرد نے قومی امانت میں رتی بھر خیانت نہیں کی۔ اور کبھی اقتدار کو کاروبار سے منسلک نہیں کیا۔ خواتین و حضرات میں بہت کچھ کہنا چاہتا تھا لیکن انتہائی مختصر طور پر کچھ گزارشات پیش کی ہیں۔ میں نے وطن عزیز کو اندھیروں سے پاک کرنے اور تعمیر و ترقی کی نئی بلندیوں کی طرف لے جانے کا عہد کر رکھا ہے۔ میری تمام تر توجہ اس عہد پر مرکوز ہے۔ میرے پاس اتنا وقت نہیں کہ ہر روز الزامات کی یلغار کرنے والوں کو جواب دوں اور وضاحتیں پیش کروں۔ میں الزامات کی تازہ لہر کے مقاصد خوب سمجھتا ہوں لیکن اپنی توانائیاں اس کی نذر نہیں کرنا چاہتا۔ میرے بعض رفقاء کا مشورہ تھا کہ چونکہ میری ذات پر کوئی الزام نہیں ہے اور یہ کہ میرے دونوں بیٹے بالغ اور اپنے معاملات کے خود نگہبان ہیں اس لیے مجھے اس معاملے سے الگ رہنا چاہیے۔ بعض رفقاء کا خیال تھا کہ میرے خطاب سے اس معاملے کو غیر ضروری اہمیت حاصل ہو جائے گی، کچھ رفقاء کا کہنا تھا کہ میری ذات یا میرے خاندان کے کسی فرد پر کسی غیر قانونی یا ناجائز کام کا کوئی الزام نہیں لگا اس لیے مجھے اس معاملے میں پڑنے کی ضرورت نہیں۔ لیکن میرے عزیز اہل وطن، میں چاہتا ہوں کہ اصل حقائق پوری طرح قوم کے سامنے آجائیں۔ اور ہر پاکستانی الزامات کی اصل حقیقت سے آگاہ ہو جائے۔ عزیز اہل وطن، آج میں نے ایک اعلیٰ سطحی عدالتی کمیشن قائم کرنے کا فیصلہ کیا ہے۔ سپریم کورٹ کے ایک ریٹائرڈ جج اس کمیشن کے سربراہ ہوں گے۔ یہ کمیشن اپنی تحقیقات کے بعد فیصلہ دے گا کہ اصل حقیقت کیا ہے اور الزامات میں کتنا وزن ہے۔ میں گھسے پٹے الزامات دہرانے اور روز تماشہ لگانے والوں سے کہتا ہوں کہ وہ اس کمیشن کے سامنے جائیں اور اپنے الزامات ثابت کریں۔ اللہ تعالیٰ آپ کا حامی و ناصر ہو۔ پاکستان پائندہ باد۔

The gist of the explanations offered by respondent No. 1 in that speech is reproduced below:

> * My father had started his business by establishing Ittefaq Foundries in Lahore in the year 1936 prior to the creation of Pakistan.
> * In the year 1972 Ittefaq Foundries was nationalized obliterating and wiping out the hard work, investment and savings of our elders.
> * In the next 18 months my father established 6 new factories.
> * In July 1979 Ittefaq Foundries was returned to us in the shape of ruins but my father again turned it into a functional and vibrant industrial unit.
> * In the second tenure of the Pakistan Peoples Party's rule an economic blockade led to Ittefaq Foundries becoming dysfunctional.
> * In the year 1999 my government was toppled, we were imprisoned for 14 months and our business was completely destroyed. We were then thrown out of the country.

> * During our forced exile my father established a steel factory near Makkah in Saudi Arabia for which loan was obtained from Saudi banks.
> * The steel factory near Makkah was sold after a few years along with all its assets. Those resources were utilized by my sons Hassan Nawaz and Hussain Nawaz for setting up their business.
> * I hope that the entire background of our business is now clear to my fellow countrymen as I have informed you about all the important stages of our journey.
> * As we have not committed any illegality at any stage, therefore, I have decided to address you so that the true facts are fully brought to the knowledge of my dear countrymen.

It has pertinently been observed by me that in the above mentioned speech made by respondent No. 1 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.

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.

76. 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.

77. 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:

وزیراعظم نواز شریف کا قومی اسمبلی میں خطاب

16 مئی 2016ء

جناب اسپیکر! میں آپ کی اجازت اور آپ کی وساطت سے کچھ معروضات معزز اراکان ایوان کی خدمات میں پیش کرنا چاہتا ہوں۔ جناب اسپیکر! جیسا کہ آپ جانتے ہیں اپریل کے پہلے ہفتے میں ایک رپورٹ میڈیا میں آئی جسے پاناما پیپرز کا نام دیا گیا۔ اس رپورٹ میں پاناما میں قائم ایسی آف شور کمپنیوں کی نشاندہی کی گئی جن سے پاکستانی شہریوں اور پاکستان سے تعلق رکھنے والے سمندر پار پاکستانیوں کا تعلق بتایا گیا۔ اس رپورٹ میں یہ واضح کر دیا گیا کہ آف شور کمپنیوں سے تعلق کا مطلب یہ ہر گز نہیں کہ کوئی شخص بد عنوانی کا مرتکب ہوا ہو۔ اس رپورٹ میں میرے دو بیٹوں کا ذکر بھی آیا جو گزشتہ کئی سالوں سے بیرون ملک مقیم ہیں اور لاکھوں دیگر پاکستانیوں کی طرح وہاں کے قوانین اور ضابطوں کے تحت اپنا کاروبار کر رہے ہیں۔ جناب اسپیکر! میرے رفقاء کی یہ رائے تھی کیونکہ پاناما پیپرز میں میرا کوئی ذکر نہیں اس لئے مجھے پہل کرنے اور خود احتساب کیلئے پیش کر دینے کی ضرورت نہیں۔ میرا اپنا رد عمل یہ تھا کہ اگرچہ میری ذات کا ان پیپرز سے کوئی تعلق نہیں لیکن چونکہ میرے خاندان کا ذکر آیا ہے اس لئے مجھے یہ معاملہ ایک با اختیار اور خود مختار کمیشن کے سپرد کر دینا چاہیے جو سارے معاملے کی چھان بین کرے اور حقائق سامنے لائے۔ میں نے اپوزیشن کے کسی مطالبے سے بھی پہلے قوم سے خطاب کیا اور سپریم کورٹ کے ریٹائرڈ جج صاحب کی سربراہی میں ایک کمیشن کے قیام کا اعلان کر دیا۔ میں اس بات پر جناب اسپیکر پختہ یقین رکھتا ہوں کہ اپنی زندگیاں انصاف کے اعلیٰ ترین ایوانوں میں گزارنے والے جج صاحبان ریٹائرڈ ہونے کے بعد بھی امانت اور دیانت کے ساتھ منصفانہ، غیر جانبدارانہ اور بے لاگ انصاف کے تقاضے پورے کر سکتے ہیں۔ مجھے افسوس ہوا کہ میرے اس مخلصانہ اقدام پر مثبت رد عمل کے بجائے جج صاحبان کو نشانہ بناتے ہوئے ایسا ماحول پیدا کر دیا گیا کہ نہایت اچھی شہرت کے حامل چیف جسٹس صاحبان کیلئے بھی کمیشن کی سربراہی قبول کرنا مشکل ہو گیا۔ پھر اپوزیشن کی طرف سے پارلیمنٹ کے ارکان پر مشتمل ایک کمیٹی قائم کرنے کی تجویز سامنے آئی۔ حکومت نے اس تجویز پر بھی مثبت رد عمل کا اظہار کیا لیکن ہمارے رابطے کے باوجود کمیٹی کے قیام پر کوئی پیشرفت نہ ہو سکی۔ پھر کہا گیا کہ ایف آئی اے سے تحقیقات کرائی جائے، اس مطالبے کو تسلیم کرتے ہوئے ہم نے اپوزیشن سے کہا کہ وہ اپنے اعتماد کے افسران کو نامزد کریں۔ اس پیش کش کو بھی نظر انداز کر دیا گیا پھر واحد مطالبہ یہ آیا کہ صرف چیف جسٹس کے جج صاحبان پر مشتمل کمیشن کو ہی قبول کیا جائے گا جس کی سربراہی جناب چیف جسٹس خود کریں۔ میں نے 22 اپریل کو قوم سے خطاب کے دوران یہ مطالبہ بھی تسلیم کرنے کا اعلان کر دیا۔ جناب سپیکر مجھے یقین تھا کہ اپنا واحد مطالبہ تسلیم کر لینے کے بعد اپوزیشن

مطمئن ہو جائے گی اور تحقیقات کا انتظار کرے گی۔ لیکن ہوا یہ کہ اس کے بعد ٹی او آرز کو بھی متنازعہ بنا دیا گیا۔ ہماری 3 جامع ٹی او آرز کے جواب میں 15 ٹی او آرز پیش کر دی گئیں۔ میڈیا ان کا جائزہ لے چکا ہے اور آئینی و قانونی ماہرین اپنی رائے دے چکے ہیں۔ اس پر شاید ہی سنجیدہ پاکستانی کو یہ شک ہو کہ اپوزیشن کے ٹی او آرز کسی بد عنوانی اور کرپشن کے بجائے صرف اور صرف ایک ہی فرد کے گرد گھومتی ہیں۔ اور وہ فرد میں ہو۔ اور اس کی مزید تشریح کرتے ہوئے کہا گیا کہ اس کے معنی وزیر اعظم ہوں گے اور پھر یہ بھی کہہ دیا گیا ہے کہ جہاں جہاں وزیر اعظم کا لفظ آئے گا اس کے معنی صرف نواز شریف لیے جائیں گے۔ ان ٹی او آرز کا سب سے دلچسپ پہلو یہ ہے کہ جس شخص کا ہزاروں، لاکھوں صفحات پر مشتمل پاناما پیپرز میں ذکر تک نہیں۔ اس پر کمیشن کے قیام اور تحقیقات کے آغاز سے پہلے ہی باضابطہ فرد جرم عائد کر دی گئی ہے۔ جناب اسپیکر! میں اس ایوان کو یقین دلاتا ہوں کہ حکومت معاملے کی بلاتاخیر فوری اور جامع تحقیقات چاہتی ہے۔ ہم نہیں چاہتے کہ ایک بار پھر ملک کسی کشمکش کا یرغمال ہو جائے اور ایک بار پھر ہم دنیا کے سامنے تماشہ بن جائیں۔ ایسے معاملات میں غیر ضروری تحقیقات ہر گز ملک و قوم کے مفاد میں نہیں ہوتی۔ ہم اپنی توجہ ملک کی تعمیر و ترقی پر مرکوز رکھنے کیلئے نیک نیتی کے ساتھ معاملے کی بے لاگ چھان بین چاہتے ہیں۔ میرے وزراء مسلسل کہتے رہے اور میں بھی پورے دل کے ساتھ کہہ رہا ہوں کہ ہم کسی مسئلے کو انا کا مسئلہ نہیں بنانا چاہتے۔ ہم صرف پاکستان کی انا کا پرچم بلند رکھنا چاہتے ہیں۔ اللہ کے فضل سے ہمارا دامن صاف ہے۔ ہمیں کسی آئینی یا قانونی استثنیٰ کی ضرورت نہیں۔ ہم ماضی میں کئی کئی بار نہایت کڑے، یکطرفہ اور انتقامی احتساب سے گزرے ہیں اور آج بھی کسی بھی احتسابی عمل کا سامنا کرنے کیلئے تیار ہیں۔ اور ہم جناب اسپیکر یہ بھی چاہتے ہیں کہ بدعنوانی، اختیارات سے ناجائز فائدہ اٹھانے، ٹیکس چوری کرنے، کک بیکس لینے، پیسہ غیر قانونی طور پر پاکستان سے باہر بھیجنے اور سیاسی اثر و رسوخ سے اربوں روپے کے قرضے معاف کرانے والوں کی اصل کہانی بھی عوام کے سامنے آجائے۔ اگر ایک میڈیا رپورٹ کو کسی تحقیق کے بغیر محض سیاسی عداوت، شک اور بدگمانی کی بنیاد پر بدعنوانی اور جرم قرار دیا گیا ہے تو ان دستاویز اور مستند رپورٹس کو کیوں نہ دیکھا جائے جن میں ٹھوس ثبوتوں کے انبار ہیں۔ جناب اسپیکر! میں آپ کی اجازت سے ایوان کی توجہ ایک نہایت ہی اہم بات کی جانب مبذول کروانا چاہتا ہوں۔ میری گزارش ہے کہ یہ ایوان احتساب کے ایک جامع، موثر اور بے لاگ نظام پر غور کرے۔ ایسے نظام احتساب کی تشکیل اس میثاق جمہوریت کی ایک اہم شق ہے۔ جس پر آج سے کوئی دس سال قبل میں نے اور محترمہ بے نظیر بھٹو نے دستخط کیے تھے اور جس کی توثیق دیگر تمام قومی جماعتوں نے بھی کی تھی۔ میں جناب اسپیکر گزارش کرتا ہوں کہ اس ایوان میں ایسی مشاورت کا اہتمام کریں جو مروجہ نظام احتساب کی کمزوریوں پر نظر رکھتے ہوئے ایک ایسا جامع نظام وضع کرے جس پر پوری قوم کو اعتماد ہو اور جو وطن عزیز میں پگڑی اچھالنے، الزامات لگانے اور بہتان تراشی کے کلچر کو ہمیشہ کیلئے ختم کر دے۔ کسی تحقیق کے بغیر بے بنیاد الزامات لگانے سے سیاستدان ہی بے اعتبار نہیں ہوتے، سیاست بھی بے وقار ہو جاتی ہے اور پھر سیاست بے وقار ہو جائے تو جمہوریت بھی بے توقیر ہو جاتی ہے۔ جناب اسپیکر ایک مطالبہ یہ بھی سامنے آیا کہ میں پارلیمنٹ میں آکر حقائق پیش کروں تو جناب اسپیکر یہ معاملہ اب یوں ختم نہیں ہو سکتا۔ اور نہ ہی اسے ایسا ہونا چاہیے، بات چل ہی نکلی ہے تو دودھ کا دودھ اور پانی کا پانی ضرور ہونا چاہئے۔ قوم کو اصل حقائق کا پتا چلنا چاہیے۔ جناب اسپیکر میرے دل میں پارلیمنٹ کی بہت عزت ہے۔ یہ ایوان 20 کروڑ اہل وطن کی نمائندگی کرتا ہے۔ یہ ایوان آئین کی بالادستی، قانون کی حکمرانی اور جمہوریت کے استحکام کی تابندہ علامت ہے۔ تقریباً دو سال قبل شاہراہ دستور پر دیئے گئے دھرنوں کے دوران اس ایوان کا کردار ہماری جمہوری تاریخ کا سنہری باب ہے۔ اس ایوان کا نمائندہ ہونا میرے لیے بھی اعزاز کا باعث ہے۔ میں اس مقدس ایوان کو بتانا چاہتا ہوں کہ میرے پاس چھپانے کو نہ پہلے کچھ تھا اور نہ آج ہے۔ سب کچھ کھلی کتاب کی طرح ہے۔ میرا خاندان پاکستان کا واحد خاندان ہے جس نے سیاست سے کچھ بنایا یا کمایا تو نہیں البتہ گنوایا ضرور ہے۔ میں کاروبار سے سیاست میں داخل ہوا۔ سیاست سے کاروبار میں نہیں آیا۔ جناب اسپیکر! میں ایسی باتوں سے گریز کرنا چاہتا ہوں لیکن دوسروں پر کیچڑ اچھالنے والوں کو بتانا چاہتا ہوں کہ میں نے بطور وزیر اعلیٰ پنجاب اور بطور وزیر اعظم پاکستان عوامی فلاح و بہبود کے کام کرنے والے رفاحی اداروں اور ٹرسٹس کو مفت سرکاری زمینیں دی ہوں گی۔ مالی گرانٹس دی ہو گی۔ مشینری کی درآمد میں ٹیکسوں کی چھوٹ دی ہوں گی۔ ہمارے خاندان کے زیر انتظام چلنے والے اتفاق اسپتال یا شریف میڈیکل کمپلیکس بھی بڑے رفاحی ادارے ہیں لیکن جناب اسپیکر ان اداروں کیلئے ایک انچ سرکاری زمین دی گئی نہ کوئی مالی گرانٹس اور نہ ہی کوئی اور عنایت۔ کیا کرپشن کرنے اور سرکاری وسائل سے تجوریاں بھرنے والوں کا طرز عمل صحیح ہوتا ہے۔ جناب اسپیکر! اللہ کے فضل و کرم سے ہمارے کاروبار کی کہانی محنت، مشقت، عزم و ہمت اور رزق حلال کیلئے جدوجہد کی کہانی ہے۔ اس میں قبضہ، چوری، کمیشن، کک بیکس، پرمٹ، کوٹے یا کسی بھی قسم کے خیانت کا شائبہ تک نہیں۔ ہم نے کسی بھی کاروبار کیلئے حاصل کیے گئے قرضے کی پائی پائی ادا کی ہے۔ ہمارے کاروبار کا آغاز قیام پاکستان سے 11 سال اور آج سے کوئی 80 برس قبل اتفاق فاؤنڈری سے ہوا۔ ہمارے کاروبار کا سب سے قیمتی اثاثہ ہمارے والد محترم کا اللہ تعالیٰ پر پختہ ایمان، محنت، دیانت اور امانت تھا۔ وقت کے ساتھ ساتھ اس کاروبار نے ترقی کی۔۔ وقت کے ساتھ ساتھ اس کاروبار نے ترقی کی منازل طے کیں۔ 1970ء تک اتفاق فاؤنڈریز کو پاکستان میں اسٹیل اور انجینئرنگ کی سب سے بڑی صنعت کا مقام مل چکا تھا۔ اور 1972ء میں جناب اسپیکر اتفاق فاؤنڈریز کو حکومت نے قبضے میں لے لیا یعنی

نیشنلایز کر لیا۔ تو ہمیں مشینری، زمین دیگر اثاثوں کے معاوضے کے طور پر ایک پیسہ بھی ادا نہیں کیا گیا۔ نیشنلائزیشن سے قبل اتفاق فاؤنڈری کا سالانہ ٹرن اوور ساڑھے 4 کڑور روپے تھا۔ یہ میں 1971ء کی بات کر رہا ہوں جناب۔ اس کے پاس 1 کروڑ 80 لاکھ کے اسٹاکس موجود تھے اور فیکٹری کی زمین 700 کنال کے وسیع رقبے پر پھیلی ہوئی تھی۔ جناب اسپیکر میں آج سے 44 سال پہلے کا ذکر کر رہا ہوں۔ جب ڈالر کی قیمت 4 روپے تھی۔ سی ایس پی افسر کی تنخواہ 500 روپے تھی۔ اور جو سونا آج 50 ہزار روپے فی تولہ بک رہا ہے اس وقت اس کی قیمت صرف 155 روپے فی تولہ تھی۔ یہ سارے حقائق اس دور سے تعلق رکھتے ہیں جب میرا یا میرے خاندان کے کسی فرد کا سیاست سے دور دور کا کوئی واسطہ نہ تھا۔ جناب اسپیکر! 8 سال بعد اتفاق فاؤنڈریز ہمیں واپس کی گئیں تو یہ کھنڈر بن چکی تھیں۔ ان کی مشینری زنگ آلود اور ناکارہ ہو چکی تھیں۔ کروڑوں روپے منافع کمانے والی انڈسٹری 6 کروڑ روپے سالانہ کے خسارے میں جا چکی تھی۔ ہمارے والد نے اس تباہ حال ڈھانچے کو دوبارہ آباد کیا۔ یہ میرے والد گرامی کی محنت و مشقت کا نتیجہ تھا کہ صرف ایک سال کی قلیل مدت میں بے جان ڈھانچہ پھر سے متحرک اور فعال صنعتی یونٹ بن گیا۔ 1983ء تک اتفاق فاؤنڈریز کا ٹرن اوور 60 کروڑ روپے سالانہ سے تجاوز کر چکا تھا۔ اور یہ ادارہ 6 کروڑ روپے سالانہ خسارے سے نکل کر 7 کروڑ 57 لاکھ روپے سالانہ کا منافع کما رہا تھا۔ 1995ء تک اتفاق فاؤنڈریز کا دائرہ مزید کئی کمپنیوں تک پھیل چکا تھا۔ جناب اسپیکر! میں یہ تفصیل ان لوگوں کیلئے فراہم کر رہا ہوں جو حقائق کو جان بوجھ کر جھٹلا رہے ہیں۔ میں اس ایوان کو اور پوری قوم کو بتانا چاہتا ہوں کہ سیاست کے میدان میں قدم رکھنے سے پہلے میری اور میرے خاندان کی الحمد اللہ مالی حالت کیا تھی۔ میں اللہ تعالیٰ کے حضور احساسِ شکر کے ساتھ کہہ سکتا ہوں کہ مجھے وراثت میں ایک کامیاب ترقی کرتا اور پھلتا پھولتا ہوا کاروبار بھی ملا۔ میں نے پوری دیانتداری کے ساتھ اپنے خاندانی کاروبار اور مالی حیثیت کی تفصیل بیان کر دی گئی ہے لیکن آج عالیشان گاڑیوں میں گھومنے، بڑے بڑے قطع ہائے زمین پر پھیلے محلات میں رہنے والے، ہیلی کاپٹروں اور جہازوں میں اڑنے اور دنیا بھر کی سیر و سیاحت کرنے والے بھی مناسب سمجھیں تو اس ایوان و قوم کو آگاہ کر دیں کہ ان کے سفر کا آغاز کیسے ہوا۔ 1970ء اور 80ء کی دہائی میں وہ کہاں کھڑے تھے۔ اور آج ان کی شاہانہ زندگی کے ذرائع آمدنی کیا ہے۔ کچھ لوگ یہ الزام بھی لگاتے ہیں کہ جناب اسپیکر ہم ٹیکس نہیں دیتے۔ جناب اسپیکر! میں صرف اتنا بتا دوں کہ میرے خاندان کے صنعتی اور اداروں نے گزشتہ 23 سال کے دوران اس میں سے 7 سے 8 سال باہر کے بھی لگا لیں جب ہم اس ملک میں نہیں تھے۔ 23 سال کے کاروباری دوران تقریباً 10 ارب روپے کے ٹیکس اور حکومتی محصولات کی شکل میں ادا کیے۔ جناب اسپیکر! اس کو پوری تفصیل ایف بی آر کے ریکارڈ میں شامل ہے۔ میں یہ تفصیل آپ کی خدمت میں پیش کر رہا ہوں۔ "یہ اسپیکر صاحب کو دے دیں"۔ جناب میرے ذاتی ٹیکس کے حوالے سے بھی بے بنیاد کہانیاں تراشی گئیں۔ میں گزشتہ 23 سال کے دوران 8 برس جبری جلاوطنی پر تھا۔ باقی کے 15 برس میں ذاتی طور پر جناب اسپیکر ذاتی طور پر 3 کروڑ 60 لاکھ روپے ٹیکس ادا کر چکا ہوں۔ یہ تفصیل بھی میں آپ کی خدمت میں پیش کر رہا ہوں۔ "یہ بھی اسپیکر صاحب کو دے دیں" یہ بھی ایف بی آر کے ریکارڈ میں ہے۔ جناب اسپیکر! میں اب آتا ہوں لندن فلیٹس کے بارے میں پھیلائی جانے والی من گھڑت کہانیوں اور بے سروپا انسانوں کی طرف۔ کاش یہاں اسلام کی تعلیمات کے مطابق بغیر تحقیق الزام لگانے کا کلچر عام نہ ہوا ہوتا۔ جناب اسپیکر! 1972ء میں جب اتفاق فاؤنڈریز کو ایک پیسہ یا معاوضہ دیئے بغیر نیشنلائزیشن ہوئی۔ تو پاکستان کے بہت سے دوسرے کاروباری حضرات اور صنعتکاروں کی طرح ہمارے والد کے سامنے بھی یہ سوال آ کھڑا ہوا کہ اب کیا کیا جائے۔ پاکستان کے اندر پیدا ہو جانے والی بے یقینی اور بے بسی کے احساس نے بہت سے صنعتکاروں کو ہجرت پر مجبور کر دیا۔ ہمارے والد محترم بھی کاروبار کی خاطر دبئی پہنچے اور گلف اسٹیل کے نام سے ایک فیکٹری قائم کی جو 10 لاکھ مربع فٹ پر مشتمل تھی۔ اس فیکٹری کا افتتاح اس وقت کے دبئی کے حکمران شیخ راشد المکتوم مرحوم نے کیا موجودہ رورل کے وہ والد گرامی تھے۔ میں اس افتتاح کی یادگار تصویر آپ کی خدمت میں پیش کر رہا ہوں۔ جناب اسپیکر! یہ 4 یا 5 تصویریں ہیں یہ اس سے متعلقہ ہیں۔ جناب اسپیکر! یہ فیکٹری اپریل 1980ء میں تقریباً 33.37 ملین درہم میں فروخت ہوئی۔ یعنی 9 ملین ڈالرز میں فروخت ہوئی۔ اس وقت بھی میرا سیاست سے کوئی تعلق نہیں تھا۔ جناب اسپیکر! میں دوبارہ یہ بات بتانا چاہتا ہوں۔ ہمارے والد محترم نے عدم تحفظ کے جس احساس کے تحت دبئی میں سرمایہ کاری کی تھی وہ 1999ء میں درست ثابت ہوا جب ہمارے خاندان کا کاروبار ایک بار پھر مفلوج کر دیا گیا۔ ہمارے گھروں پر قبضہ کر لیا گیا، اولڈ ایج ہوم میرے گھر کو بنا دیا گیا اور ہمیں ملک بدر کر دیا گیا۔ جناب یہ وہ وقت تھا کہ گھروں، ہمارے دفتروں اور ہمارے کاروباری اداروں سے سارا ریکارڈ قبضے میں لے لیا۔ جو بار بار کے تحریری تقاضوں کے باوجود ہمیں واپس نہیں ملا۔ اس سارے ریکارڈ کا کئی کئی جگہ بڑی باریک بینی سے جائزہ لیا گیا اور ہمارے بینکوں کے کھاتوں کو کھنگالا گیا۔ ملک سے باہر بھی ٹیمیں بھیجی گئیں اور اس دوران ہم جیلوں میں بند تھے اور کرپشن، منی لانڈرنگ، ناجائز اثاثہ جات بنانے اور ریاستی وسائل کے ناجائز استعمال جیسے الزامات کی یلغار میں تھے۔ حکومت وقت نے سر توڑ کوشش کر لی لیکن اللہ کے فضل و کرم کسی بھی فورم پر ہمارے بارے میں رتی برابر بد عنوانی ثابت نہ ہو سکی۔ ہم ایک ایسے ظالمانہ اور یکطرفہ احتساب میں بھی سرخرو نکلے جس میں سے شاید ہی کوئی دوسرا خاندان گزرا ہو۔ جب حکومت کی سر توڑ کوششوں کے باوجود کرپشن تو کیا کوئی مالی بے ضابطگی بھی نہ مل سکی تو ہمیں سزا دینے کیلئے طیارہ اغواء کے مضحکہ خیز ڈرامے کا سہارا لیا

گیا۔ جناب اسپیکر! تب ہمارے والد محترم حیات تھے، انہوں نے جلاوطنی میں ایک بار پھر کمر باندھی اور جدہ میں ایک اسٹیل مل لگائی۔ اس کی بنیادی سرمایہ کاری کیلئے دبئی فیکٹری کے فروخت سے حاصل ہونے والے سرمائے نے بھی مدد کی، جدہ کی یہ فیکٹری جون 2005ء میں اپنی مشینری وسیع قطع اراضی اور دیگر اثاثوں سمیت تقریباً 64 ملین ریال یعنی 17 ملین ڈالرز میں فروخت ہوئی۔ جناب اسپیکر! دبئی اور جدہ کی فیکٹری کے حوالے سے تمام ریکارڈ اور دستاویز موجود ہیں۔ یہ ہیں وہ ذرائع اور وسائل جن سے لندن کے فلیٹس خریدے گئے۔ جناب اسپیکر! میں بلاخوف تردید حتمی طور پر واضح اور دوٹوک الفاظ میں کہہ سکتا ہوں کہ جدہ مل اسٹیل مل ہو یا لندن کے فلیٹس یا اور کوئی ادائیگی، پاکستان سے ان کیلئے ایک روپیہ بھی باہر نہیں گیا۔ کمیشن کے قیام کے بارے میں جناب اسپیکر محترم چیف جسٹس صاحب کا خط حکومت کو موصول ہو گیا۔ ہمارے قانونی ماہرین اس کا جائزہ لے رہے ہیں۔ اگر مقصد حقیقی معنوں میں بدعنوانی کا تدارک اور بدعنوان عناصر کو بے نقاب کرنا ہے تو ہمیں جناب چیف جسٹس کے خط کی روشنی میں ایک قابل عمل طریقہ کار طے کرنے میں کوئی مشکل پیش نہیں آنی چاہئے۔ جناب اسپیکر میری درخواست ہے کہ آپ قائد حزب اختلاف جناب خورشید شاہ صاحب اور دیگر پارلیمنٹری لیڈرز کی مشاورت سے ایک پارلیمانی کمیٹی بنائیں جو اتفاق رائے سے جامع ٹرمز آف ریفرنس اور دیگر معاملات کو حتمی شکل دیں۔ تاکہ بدعنوانی کا ارتکاب کرنے والوں کا تعین اور معاسبہ کیا جاسکے۔ جناب اسپیکر میں یہاں یہ بھی کہنا چاہتا ہوں کہ ایوان کی مجوزہ کمیٹی جو بھی فورم اور طریقہ کار طے کرے گی میرے بیان کردہ حقائق کی مزید تفصیل تمام شواہد کے ساتھ اس کے سامنے رکھ دی جائے گی۔ تاکہ الزام اور بہتان کا سلسلہ ختم ہو۔ اور یہ تاثر نہ دیا جاسکے کہ کچھ تو گناہوں میں لت پت ہیں اور کچھ ایسے بھی ہیں جن کے لباس سے فرشتوں کی خوشبو آتی ہے۔ جناب اسپیکر! اصولوں، اخلاقیات اور احتساب کی بات کرنی ہے تو پھر الگ الگ معیار اور الگ الگ پیمانے نہیں چلیں گے۔ تولنا ہے تو سب کو ایک ہی ترازو میں تولنا ہو گا۔ جناب اسپیکر! 70 برس قوم کے مقدر کو ایسے ہی تماشوں کے بھینٹ چڑھایا جاتا رہا ہے۔ خدا خدا کر کے ہم سنبھلے ہیں ہم نے واضح منزلوں کیلئے واضح راستوں کا تعین کر لیا ہے۔ بڑی مشکل سے نوجوانوں کی مایوس آنکھوں میں امید کے چراغ روشن ہو رہے ہیں۔ ہماری معشیت مستحکم ہو رہی ہے۔ ہمارے شہروں کا امن واپس آرہا ہے۔ قومی سطح پر ہمارے وقار اور اعتماد میں اضافہ ہو رہا ہے۔ ہر پاکستانی تسلیم کرتا ہے جناب اسپیکر کہ آج کا پاکستان 3 سال پہلے کے پاکستان سے زیادہ روشن، زیادہ توانا اور زیادہ مستحکم ہے۔ اور جناب اسپیکر میرا دل گواہی دے رہا ہے کی اللہ کے فضل و کرم 2018ء کا پاکستان آج کے پاکستان سے بھی کہیں زیادہ روشن، کہیں زیادہ توانا، کہیں زیادہ پرامن اور کہیں زیادہ مستحکم ہو گا۔ انشاءاللہ۔ پاکستان پائندہ باد۔

The salient points of that speech are reproduced below:

* I want the allegations against my family to be inquired into. We are ready for accountability and we do not need any constitutional or legal immunity.
* I have nothing to hide and everything is like an open book.
* Upon nationalization of Ittefaq Foundries not a single Paisa was paid to us as compensation for the machinery, land or other assets.
* After 8 years Ittefaq Foundries was returned to us and it was in ruins. My father turned it around in just one year and made it into an active and vibrant industrial unit.
* By the year 1983 Ittefaq Foundries was yielding profit of Rupees 7 crores and 57 lacs per annum and by the year 1995 it had expanded to many other companies.
* Before my entry into politics our family was quite prosperous and I inherited a successful and growing business.

* In the last about 23 years my family's businesses have paid about 10 billion Rupees in taxes and government dues.
* In the last 23 years, excluding 8 years of forced exile, I have personally paid Rupees 3 crores and 60 lacs as tax.
* After nationalization of Ittefaq Foundries in the year 1972, for which no compensation was paid, my father proceeded to Dubai for doing business and established a factory by the name of Gulf Steel. That factory was sold in April 1980 for about 33.37 million Dirhams (about 9 million US Dollars).
* In the year 1999 our business was again crippled, our houses were taken over and we were exiled from the country. At that time the entire record was taken away from our homes, offices and business concerns which was not returned to us despite repeated efforts.
* Despite an exhaustive scrutiny of that record and our bank accounts no illegality or corruption had been found by the concerned quarters.
* While in exile my father set up a steel factory in Jeddah, Saudi Arabia and for such investment the proceeds of sale of the factory in Dubai also helped.
* The steel factory in Jeddah was sold along with its machinery, land and other assets in June 2005 for about 64 million Riyals (about 17 million US Dollars).
* The entire record and documents pertaining to the Dubai and Jeddah factories are available.
* These are the means and resources with which the flats in London had been "purchased".
* No money was sent out of Pakistan for any payment for the factory in Jeddah or the flats in London.
* The entire evidence and other details in support of the facts stated by me shall be produced before any committee or forum.

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 had been 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! 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. 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. The transcript of that interview is available on the record of this Court and none from either side of this case has disputed the authenticity of that transcript. 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.

79. Respondent No. 1 and his children have maintained before this Court that a factory in Dubai was set up by respondent No. 1's father namely Mian Muhammad Sharif through his *Benamidar* and nephew namely Mr. Tariq Shafi in the year 1974 and then it was sold by him in parts in the years 1978 and 1980 through the said Mr. Tariq Shafi fetching about 33.37 million Dirhams (about 9 million US Dollars) and it is claimed by respondent No. 1 and his children that the relevant properties in London had been acquired in the year 2006. No record has been produced before us to show how much money was available for setting up the factory in Dubai, how that money was transferred to or arranged in Dubai, what happened to the 33.37 million Dirhams received by respondent No. 1's father upon sale of the factory in Dubai, how funds were generated for setting up the factory in Jeddah, what happened to the 64 million Riyals (about 17 million US Dollars) received upon

sale of the factory in Jeddah in June 2005, how funds were transferred to London for "purchase" of the relevant properties in London and through which legal instrument the said properties or the offshore companies owning them were acquired. It is ironical that on the one hand respondent No. 1 as well as respondent No. 7 had claimed that the entire relevant record was available and the same would be produced when required but on the other hand except for a copy of a Share Sale Contract in the year 1978, a copy of the Tripartite Sale Agreement pertaining to the factory in Dubai in the year 1980 and an affidavit of Mr. Tariq Shafi dated November 12, 2016 no record whatsoever had initially been produced establishing any connection between the proceeds of such sale in the years 1978 and 1980 and acquisition of the relevant properties in London in the year 2006. Apart from that the money fetched by sale of the factory in Dubai belonged to respondent No. 1's father who had a reasonably large family consisting of his own children and nephews who were all statedly involved in almost all the businesses of the family. How much share of the money received in the years 1978 and 1980 fell to the share of respondent No. 1 and then to the share of his children and was that share enough to "purchase" the relevant properties in London in the year 2006, i.e. after 26 years are also questions which have remained abeging an answer in this case. Some material was subsequently brought on the record of this case by the children of respondent No. 1 but the same shall be attended to a little later in this judgment. Another remarkable feature of this case is that the whole case is about legitimate acquisition of some properties but no detail of any bank account, any banking transaction or any money trail has been brought on the record of the case by respondent No. 1 or his children. We have been informed that Mr. Hussain Nawaz Sharif started doing his own business after the year 2000 when respondent No. 1 had gone in exile to Saudi Arabia. Nothing has been brought on the record of this case by Mr. Hussain Nawaz Sharif to show as to when he had started his own business and as to how sufficient funds generated through his own business were available with him in the year 2006

so as to "purchase" the relevant four properties in London. It may be pertinent to mention here that respondent No. 1 had categorically maintained before the National Assembly that the said properties in London had been "purchased" through proceeds of sales of the factories in Dubai and Jeddah (and not through any private resources of Mr. Hussain Nawaz Sharif or through any settlement of an investment of his grandfather in Qatar). Respondent No. 1's father namely Mian Muhammad Sharif had died in the year 2004 and the relevant properties in London had statedly been acquired in the name of Mr. Hussain Nawaz Sharif in the year 2006. Upon the death of Mian Muhammad Sharif in the year 2004 all his assets had automatically devolved upon all his legal heirs including respondent No. 1 and if the properties in London had been acquired through the funds generated through sale of the factories in Dubai and Jeddah then the said funds belonged to respondent No. 1 and the other heirs of late Mian Muhammad Sharif. It is, thus, evident from the stands of respondent No. 1 and his children themselves that funds belonging at that time to respondent No. 1 had been utilized for acquisition of the said properties in London in the year 2006 establishing an undeniable connection between respondent No. 1 and the relevant properties, a connection which has not been explained by the said respondent at all. The record produced before the Court shows that inheritance of Mian Muhammad Sharif was settled amongst his heirs through an agreement dated January 01, 2009. Respondent No. 7 namely Mr. Hussain Nawaz Sharif was not an heir of his grandfather namely Mian Muhammad Sharif.

80. The only concrete material produced by respondent No. 1 before this Court in respect of generation of funds outside Pakistan is in the shape of copies of the above mentioned Share Sale Contract and Tripartite Sale Agreement through which the factory in Dubai was sold in the years 1978 and 1980 and the supporting affidavit of Mr. Tariq Shafi sworn on November 12, 2016. The learned counsel for the petitioners have dug holes in the said documents and have pointed out that through the sale of 75%

shares of that factory in the year 1978 not a single Dirham had become available to respondent No. 1's father as the entire proceeds of the sale had to be adjusted towards some admitted outstanding liabilities. With reference to clauses (4)(B), (4)(C), (4)(D) and (5) of the Share Sale Contract mentioned above it has been pointed out by the learned counsel for the petitioners that at the time of sale of 75% shares of the factory in Dubai in the year 1978 Mr. Tariq Shafi's liability as the ostensible owner was more than 36 million Dirhams and at that time an amount of 6 million Dirhams was still due to the Bank of Credit and Commerce International (BCCI). They have also pointed out from the above mentioned document that at that time Mr. Tariq Shafi was still to discharge some liabilities towards Dubai Electricity Company to the tune of about 3 million Dirhams. On April 14, 1980 Mr. Tariq Shafi had sold his remaining 25% shares in the said factory in Dubai for 12 million Dirhams. It has, thus, been demonstrated before us that the assertion of respondent No. 1 that 33.37 million Dirhams had been received by respondent No. 1's father upon sale of the factory in Dubai in the year 1980 which money was later on utilized for "purchase" of the properties in London in the year 2006 was an assertion which was untrue. Referring to the affidavit sworn by Mr. Tariq Shafi on November 12, 2016 the learned counsel for the petitioners have submitted that Mr. Tariq Shafi had admitted that he was only about 19 years of age at the relevant time, he was an ostensible owner of the factory in Dubai and as a matter of fact he was only a *Benamidar* for respondent No. 1's father namely Mian Muhammad Sharif. Mr. Tariq Shafi had also stated in that affidavit that upon the sale of the factory in Dubai he had received 12 million Dirhams which amount had been received by him on behalf of respondent No. 1's father. It has, thus, been maintained by the learned counsel for the petitioners that the documents brought on the record of this petition by respondent No. 1 himself clearly established that the assertion of respondent No. 1 in the National Assembly that an amount of 33.37 million Dirhams had been received by his father upon sale of the factory in Dubai was factually incorrect and, therefore, even the assertions that the

factory in Jeddah had been set up through that amount and then the properties in London had been "purchased" through those resources were also untrue.

81. I have further noticed that while concluding the above mentioned Tripartite Sale Agreement respondent No. 1's father had acted through his attorney and nephew namely Mr. Tariq Shafi. A bare look at the affidavit statedly sworn by Mr. Tariq Shafi on November 12, 2016 and referred to above makes it apparent to a naked eye that the signatures of Mr. Tariq Shafi on the said affidavit are clearly different from the signatures on the Tripartite Sale Agreement attributed to him. I may, therefore, be justified in observing that either the copy of the Tripartite Sale Agreement produced before the Court is bogus or the affidavit attributed to Mr. Tariq Shafi is not genuine.

82. On account of the facts mentioned above I have entertained serious doubts about the claim of respondent No. 1 and his family that the relevant properties in London had legitimately and lawfully been acquired by them through the resources and funds stated by them and such doubts have been compounded by some interviews given by them to the local and international print and electronic media. The authenticity of the reports regarding such interviews has never been denied by the persons giving the interviews nor the learned counsel for the respondents have contested the same when specifically asked by the Court. Respondent No. 8 namely Mr. Hassan Nawaz Sharif, a son of respondent No. 1, had admitted in an interview with Tim Sebastian on BBC's programme Hard Talk in November 1999, about seven years prior to the stated acquisition of the properties in London, that he was a student with no earnings of his own, he did not own those properties but he was living in the same on rent and the money for his living in those properties came from Pakistan on a quarterly basis. The newspaper Guardian, London had quoted Mrs. Kulsoom Nawaz Sharif, the lady wife of respondent No. 1, on April 10, 2000 as saying that the properties in London had been

"bought" by the family because the children were studying in England. Respondent No. 6 namely Mariam Safdar, a daughter of respondent No. 1, had stated in her interview with Ms. Sana Bucha on Geo News television on November 08, 2011 that she lived with her father, she had no house in Pakistan, she had no property in Central London and she had no connection with any property in Pakistan or abroad. If a trust deed statedly executed between her and Mr. Hussain Nawaz Sharif in respect of the properties in London had existed since the year 2006 then she would have mentioned that in that interview given in the year 2011. Respondent No. 7 namely Mr. Hussain Nawaz Sharif, a son of respondent No. 1, had stated in his interview with Mr. Hamid Mir in Capital Talk on Geo News television on January 19, 2016 that sale of the factory in Jeddah had fetched good money which had been "officially transferred" to England about eleven or twelve years ago and through that money he had acquired three properties there through "mortgages" for which payments were still being made. He had gone on to state in that interview that the said properties had been "purchased" by him and they were still in possession of the family. Unfortunately no record of the stated "official" transfer of money from Saudi Arabia to the United Kingdom had been produced before this Court. That stance of respondent No. 7 regarding "purchase" of those properties through "mortgages" had subsequently been changed. No mention had been made in that interview to any investment made by Mian Muhammad Sharif in real estate business in Qatar and to the properties in London having been acquired as a result of any settlement of that investment. Respondent No. 7 namely Mr. Hussain Nawaz Sharif had also stated in his interview with Mr. Javed Chaudhry on Express News television on March 07, 2016 that he owned the offshore companies which owned the properties in London, the said properties were "ours" (the family) and respondent No. 8, his brother, was doing business in London for the last 21 years, i.e. since the year 1995. It has already been noticed above that respondent No. 8 had stated in the year 1999 that he was a student and he had no earnings of his own till then.

In the said interview too respondent No. 7 had made no mention of any investment made by his grandfather in Qatar the settlement of which investment had statedly provided the funds for acquisition of the properties in London in the year 2006. 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. At least one thing is quite clearly established from the above mentioned undisputed and uncontroverted interviews that respondent No. 1 and his family are in possession of the properties in London since early 1990s. Except for two statements of a gentleman belonging to Al-Thani family of Qatar, which statements shall be discussed shortly, absolutely nothing has been brought on the record of these petitions by respondent No. 1 and his children explaining as to when and how they had come in possession of the said properties in London. The interviews detailed above also paint a very confusing picture of when and how the said properties had been "purchased" by respondent No. 1 or one of his sons and all the stories advanced are not only contradictory to each other but also incompatible with the stands taken by respondent No. 1 before the nation, the National Assembly and this Court.

83. A chart reproduced below highlights the serious contradictions in the stands taken by respondent No. 1 and his immediate family from time to time in the matter of acquisition of the relevant four properties in London which contradictions may reflect upon their lack of honesty on the issue:

Respondents	Medium	Stance	Problems
Respondent No. 1: **Mian Muhammad Nawaz Sharif**	Address to the nation: April 05, 2016	During the days of forced exile our father once again established a steel factory near the city of Makkah. This factory was established, for which loans were obtained from Saudi Banks, and then after a few years the factory was sold with all its assets. These resources were used by my sons Hassan Nawaz and Hussain Nawaz for their new business.	* Did not mention setting up and sale of the factory in Dubai at all. * Did not explicitly mention any particular resource for acquisition of the properties in London. * Did not mention that the sale proceeds of the factory in Jeddah were used to acquire the properties in London but maintained that the proceeds were used by his two sons for their new business. * Did not even hint at any investment made in Qatar and the subsequent settlement upon which the whole edifice was built by his children. * Proceeds of sale of the factory in Jeddah mentioned as the source of funds for his two son's business but the said sons maintained that investment with Al-Thani family of Qatar was the source of funds for Hassan Nawaz Sharif's business.
	Speech in the National Assembly: May16, 2016	Our father also reached Dubai for the purpose of business and established a factory with the name of Gulf Steel comprising of 10 lac square feet of area. Mr. Speaker! This factory, in 1980, was sold for 33.37 million Dirhams or for 9 million Dollars. Mr. Speaker! Our father was alive then. He once	* Setting up and sale of a factory in Dubai mentioned for the first time. * No reference made to any investment in Qatar. * Clearly stated that no money for the factory in Jeddah or the flats in London went from Pakistan. However, it was not clearly stated that no money went from Pakistan for the factory in Dubai. * The stance about

		again, in exile, established a steel factory in Jeddah. Among the primary source of funds which helped in establishing Jeddah factory was the funds received from the sale of Gulf factory. In June 2005, Jeddah factory was sold for approximately 64 million Riyals or 17 million Dollars along with its machinery, land and other assets. Mr. Speaker! All the record and documents regarding sale of Gulf factory and Jeddah factory are available. <u>These are the means and resources which were used to "**purchase**" the flats in London</u>. Mr. Speaker! Let me say this in clear and unambiguous terms that whether it was Jeddah factory, London flats or any other payment, not a single Rupee from Pakistan had been transferred for them. The insecurity because of which our father invested in Dubai was proved to be well founded in 1999 when our family business was once again crippled.	"purchase" of the flats in London was not supported by his children and he produced nothing before the nation, the National Assembly or this Court to explain or justify the claimed purchase. * In his address to the nation he stated that sale of the factory in Jeddah was the source of funds for his sons' business but in this address he stated that proceeds of sale of the factory in Jeddah were used to purchase the flats in London.
	All concise statements filed by	Denied ownership of any of the four properties in	* Never denied possession of the four properties in London.

	Mian Muhammad Nawaz Sharif before this Court	London.	* Never said that the said four properties belong to his children. * Did not mention sale of the factory in Jeddah being the sources of funds for acquisition of the flats in London as mentioned in his speech in the National Assembly. * No mention of the factory in Dubai, the factory in Jeddah or any investment in Qatar.
	Mrs. Kulsoom Nawaz Sharif quoted by Guardian, London: April 10, 2000.	"Park Lane flats were **bought** because the children were studying in London."	* Children were studying in London in the 1990's. * Supported her husband's stance that the flats in London had been "purchased". * Contradicted the stance of her children that the flats were acquired in 2006.
Respondent No. 6: **Mariam Safdar**	Interview: Lekin, Geo News: November 08, 2011	I do not have any property in Central London, in fact far from it, I do not own any property even in Pakistan. I live with my father. I fail to understand from where they have dug out properties belonging to me, my mother, my sister or my brothers.	* In 2011 she denied that she or her siblings owned any property in London whereas her stance before this Court is that her brother Hussain Nawaz Sharif owns the relevant four properties in Central London since 2006 and she is a trustee of those properties for the said brother since 2006.
	Joint concise statement filed by respondents No. 6, 7 and 8: November 07, 2016	"Respondent No. 6 is only a trustee for Respondent No. 7 in relation to Nescoll."	* Did not mention that she was a trustee for respondent No. 7 in relation to Nielsen Enterprise Limited also.

	Additional statement filed by respondent No. 6: January 24, 2017	She came to know of the settlement in Qatar regarding the flats in London in 2005 when she was asked to become a trustee for her brother.	* That meant that she knew about acquisition of the flats in London by one of her brothers since 2005 but in her interview in 2011 she categorically denied knowledge of any property of his brothers or sister in London. * She maintained that she had been asked to become a trustee for her brothers in respect of the flats in London in 2005 whereas the flats had statedly been transferred in favour of her brother in 2006. This established that the flats were already owned by the brother since before the so-called settlement of business in Qatar.
Respondent No. 7: **Mr. Hussain Nawaz Sharif**	Interview: Capital Talk, Geo News: January 19, 2016	<u>Stance 1</u>: The sale of the factory in Saudi Arabia fetched "**us**" a very good amount and that money was then "officially transferred" to Britain. <u>Stance 2</u>: From that officially transferred money to Britain I had obtained three properties in London through "**mortgage"**. Those properties are still mortgaged and the mortgage amount is still being paid for them gradually. "**We**", again said "I", had "**purchased**" those properties in 2006. <u>Stance 3</u>:	* No document produced to show that any amount was officially transferred from Saudi Arabia to the United Kingdom after sale of the factory in Jeddah. * No proof of any mortgage created for acquisition of the properties in London has been produced. * The story about mortgage was a totally new story and completely contradictory to the other stories based upon purchase or settlement in Qatar. * A document produced by respondent No. 1 before the Court showed that after the death of Mian Muhammad Sharif in 2004 his inheritance had been settled in 2009 with distribution of assets. * Under Shariah respondent No. 7 was not an heir of his

		All the assets were distributed in 2005 whereafter my father ceased to have any "legal" connection with his sons' businesses but according to Shariah "**everything belonging to me is his**" and even I am owned by him.	grandfather Mian Muhammad Sharif and, thus, he did not inherit anything from him in 2004. After the death of the grandfather in 2004 all his assets, including any investment in Qatar, automatically devolved upon his heirs including respondent No. 1. So, respondent No. 1 was one of the owners of the assets which were statedly transferred in favour of respondent No. 7 in 2006 and that is why respondent No. 7 might have said that "everything belonging to me is his".
	Interview: Hum Dekhaingay 92 News: April 04, 2016.	In 2005 I sold a factory in Saudi Arabia and proceeds of that factory were used to **purchase** these properties. ----- **This is the source and there is nothing except this.** The factory that was installed in Saudi Arabia was sold in 2005 by **us** and a part of those proceeds was used to **purchase** the properties in London. The companies that were holding those properties were **purchased**.	* The subsequent stand that the properties in London had been acquired through a settlement of an investment in Qatar stood completely destroyed. * The subsequent statement of the gentleman from Qatar to the effect that bearer shares of the relevant companies were delivered to respondent No. 7 in exchange of settling approximately 8 million US Dollars from an investment in Qatar was completely belied.
	Joint concise statement filed by respondents No. 6, 7 and 8: November 07, 2016	"Source of funds, resulting in vesting of beneficial ownership of the entities and, consequently the properties in Respondent No. 7, in January 2006, was the investment made	* The first statement of the gentleman from Qatar was dated November 05, 2016 but that was not mentioned in this concise statement filed two days later. * A case of obvious and deliberate suppression of facts. Qatar was not even mentioned.

		by late Mian Muhammad Sharif, in the year 1980, from the sale proceeds of his steel business in Dubai."	* The statement of the gentleman from Qatar dated November 05, 2016 mentioned the amount of investment but this concise statement did not. * Did not mention setting up or sale of the factory in Jeddah which, according to respondent No. 7's interviews, was the source of funds for purchase of the properties in London.
	Joint supplement -ary concise statement filed by respondents No. 6, 7 and 8: November 15, 2016	The four flats in London had been purchased by Al-Thani family of Qatar through two offshore companies, the said family had allowed late Mian Muhammad Sharif and his family to use the said properties whilst bearing all the expenses relating to them including ground rent and service charges and ultimately in 2006 the account between Al-Thani family and Respondent No.7 was settled through which the properties were transferred to him by delivery of the bearer shares of the companies to a nominee of respondent No. 7.	* Within 8 days between filing of the joint concise statement on November 07, 2016 and filing of the joint supplementary concise statement on November 15, 2016 the story jointly put forward by the children of respondent No. 1 underwent a sea change. Al-Thani family and investment in Qatar was introduced and permissive user of the properties in London was disclosed. * Contradicted by respondent No. 8's interview with BBC in 1999 according to which he was then a student living in these flats which had been taken on rent and the rent for the same was sent from Pakistan on a quarterly basis. * Contradicted by both the parents of respondents No. 6, 7 and 8 who have consistently maintained that the said properties had been "purchased" or "bought". * No material produced to show who paid the utility bills and taxes, etc. relevant to the said properties before 2006.

	Further statement filed by respondents No. 7 and 8 jointly: January 26, 2017	After a settlement of the investment of Mian Muhammad Sharif a balance amount of over 8 million US Dollars was determined as payable by the Al-Thani family of Qatar to respondent No. 7. It was agreed that the balance amount payable would be considered discharged upon transfer to respondent No. 7 of the shares of two companies, M/s Nielsen Enterprises Limited and Nescoll Limited that held title to the four flats in London.	* Contradicted by respondent No. 7's stance in different interviews wherein he had maintained that the properties in London had been "bought" by him through using the proceeds of sale of the factory in Jeddah. * Contradicted by both the parents of respondents No. 6, 7 and 8 who have consistently maintained that the said properties had been "purchased" or "bought".
Respondent No. 8: **Mr. Hassan Nawaz Sharif**	Interview on Hard Talk, BBC London: November 1999	Categorically stated that he was a student with no earnings of his own, he did not own the relevant flats in London but he was living in the same on rent and the money for his living in those properties came from Pakistan on a quarterly basis.	* Contradicted by his mother who had told Guardian newspaper of London that the said flats had been "bought" because the children were studying in London. * Contradicted by his father who never talked about taking the relevant flats on rent. * Contradicted by two statements of the gentleman from Qatar who maintained that permissive possession of the flats had been given to the family of Mian Muhammad Sharif with no charge.

The facts mentioned above are neither disputed nor intricate. The material referred to above is not controverted by respondent No. 1 or his children and the same material is in fact also relied upon by the petitioners. None of the parties has asked us to record any

evidence or to call for any evidence. No detailed assessment of such material is required because the material speaks for itself. *Res ipsa loquitur* (the thing speaks for itself). 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. However, that is not all as much more is still to follow.

84. On one of the dates of hearing of these petitions Mr. Muhammad Akram Sheikh, Sr. ASC, the then learned counsel for the children of respondent No. 1, dramatically, and with theatrical impact, took out an envelope from his brief and produced before the Court a document containing a statement of one Mr. Hamad Bin Jassim Bin Jaber Al-Thani who statedly belongs to the royal family of Qatar and had remained a Prime Minister of that country in the past. That statement was made on November 05, 2016 and the signatures of the gentleman on that statement had been attested by the Ambassador of Pakistan to Qatar on the same day. That statement was not an affidavit nor the contents of the same had been attested by any authority or authorized person. The contents of that document are reproduced below for facility of reference:

> "***Hamad Bin Jassim Bin Jaber Al-Thani***
>
> 5 November 2016
>
> I, the undersigned, do hereby state the following:
>
> 1. My father had longstanding business relations with Mr. Mian Muhammad Sharif, which were coordinated through my eldest brother. Our Families enjoyed and continue to enjoy personal relations.
>
> 2. I was informed that during the year 1980, Mr. Mian Muhammad Sharif expressed his desire to invest a certain amount of money in real estate business of Al Thani family in Qatar.

3. I understood at that time, that an aggregate sum of around 12 Million Dirhams (AED 12,000,000) was contributed by Mr. Mian Muhammad Sharif, originating from the sale of business in Dubai, UAE.

4. The properties Flat # 17, Flat # 17a, Flat # 16, Flat # 16a at Avenfield House, Park Lane, London were registered in the ownership of two offshore companies, bearer share certificates of which were kept during that time in Qatar. These were purchased from the proceeds of the real estate business.

   On account of relationship between the families, Mr. Mian Muhammad Sharif and his family used the Properties whilst bearing all expenses relating to the Properties, including the ground rent and service charges.

5. I can recall that during his life time, Mr. Mian Muhammad Sharif wished that the beneficiary of his investment and returns in the real estate business is his Grandson, Mr. Hussain Nawaz Sharif.

6. In the year 2006, the accounts in relation to the above investment were settled between Mr. Hussain Nawaz Sharif & Al Thani family, who then delivered the bearer shares of the companies referred in para 4 above to a representative of Mr. Hussain Nawaz Sharif.

The foregoing, as far as my recollection of events and the available records in Doha, depicts the relationship between the families.

This statement is private and confidential; it cannot be used or disclosed to any party without my prior written consent, except to the benefit of the courts and regulators of the Islamic Republic of Pakistan.

(signed)
Hamad bin Jassim bin Jaber Al Thani

Signature of H. E. Sheikh Hamad bin Jassim bin Jaber Al Thani is ATTESTED.
(signed)
(Shahzad Ahmad)
Ambassador of Pakistan
Doha-Qatar
(seal)"

That document was dropped on the Court like a bombshell hoping that the same would destroy the allegations leveled in the present petitions by explaining as to how the properties in London had come in possession of respondent No. 1's family and in the ownership of Mr. Hussain Nawaz Sharif, a son of respondent No. 1, and putting to rest the controversy about availability as well as

legitimacy of the resources for acquisition of those properties. It is, however, ironical that the said bombshell has caused more damage to the case of respondent No. 1 and his children than to the case of the petitioners. In fact the devastation wreaked by that document upon the case of respondent No. 1 and his children may be incalculable and beyond their contemplation.

85. The first thought that comes to mind in the context of the said statement of Mr. Al-Thani is about its timing. In the first address to the nation respondent No. 1 talked about a factory near Makkah but not about any factory in Dubai and certainly not about any real estate business in Qatar as the source of funds for acquisition of the properties in London. In his second address to the nation respondent No. 1 did not talk about any specific source of funds for such acquisition at all. In his speech in the National Assembly respondent No. 1 introduced the factory in Dubai and the proceeds of its sale besides the purchase and sale of a factory in Jeddah (not near Makkah) but uttered no word about any investment in Qatar or any resource becoming available through any real estate business in Qatar. In those speeches respondent No. 1 had categorically said that those were the funds and resources through which the properties in London had been "purchased" and also that he had given the entire background of his family's business and he had informed his countrymen about all the important stages of his family's journey in business. He had maintained on that occasion that the "true" facts had been fully brought to the knowledge of his dear countrymen. He had also claimed that nothing had been concealed by him and that everything was like an "open book". The subsequently introduced statement from Qatar, however, established beyond doubt that the speeches made by respondent No. 1 before the nation or its representatives in the National Assembly were not the whole truth and the book presented by him had many missing pages. When the speeches made by respondent No. 1 before the nation or its representatives in the National Assembly are juxtaposed with the above mentioned statement received from Qatar it becomes

obvious that they are mutually destructive and cannot coexist simultaneously as the truth. The speeches spoke of "purchase" of the properties in London whereas the statement from Qatar spoke of transfer of those properties as a result of a "settlement" in the backdrop of an earlier investment in real estate business in Qatar. The speeches spoke of a route of funds which was Makkah-London or Dubai-Jeddah-London but the statement from Qatar disclosed a totally different route, i.e. Dubai-Doha-London. An impression is, thus, unavoidable that all was not well with the divergent explanations being advanced and it was not just the resources and the routes of resources which were being changed from time to time but it was the "truth" which was being improved, moulded and sacrificed at the altar of expedience. It is of critical importance to mention here that even in his concise statements submitted by respondent No. 1 before this Court in connection with the present petitions the said respondent has not said a word about any investment in real estate business in Qatar or about some funds becoming available through a settlement in respect of such business!

86. The above mentioned statement from Qatar has multiple other problems with it as well. It is obvious from that statement itself that the maker of the statement did not have personal knowledge of most of the critical things stated therein and even for the remaining things stated he was evasive at best. He had failed to disclose how the requisite funds were transferred by respondent No. 1's father from Dubai to Qatar. He had not referred to any date or place of the transactions mentioned. He had failed to state about any document executed in furtherance of such transactions and he had also omitted to mention as to how the relevant funds were dealt with. No detail of the real estate business of Al-Thani family in Qatar was provided nor any record of investment in such business by respondent No. 1's father had been referred to. The stated settlement of accounts in the year 2006 was mentioned in most unspecific terms with no details thereof having been provided and even the representative of Mr. Hussain Nawaz Sharif

mentioned in the statement was not identified. The stated wish of respondent No. 1's father regarding his grandson being the beneficiary of the investment was spoken about in that statement in most generalized terms without any exactitude and without reference to any formal or informal instrument having been executed in that respect. As already mentioned above, respondent No. 1's father namely Mian Muhammad Sharif had died in the year 2004. If that were so then no will of late Mian Muhammad Sharif was brought on the record of this case on the basis of which his investment in Qatar could be settled in the year 2006 in favour of one of his grandsons to the exclusion of all the legal heirs, particularly when that grandson was not even an heir. The maker of the above mentioned statement had never claimed in that statement that the two offshore companies which owned the relevant four properties in London were owned by Al-Thani family of Qatar and all that had been maintained in that statement was that the bearer share certificates of such companies were kept at that time in Qatar. No record of the relevant offshore companies was produced to show as to how and when Al-Thani family of Qatar had allowed the family of respondent No. 1 to use the said properties and then how those companies and properties were transferred to the ownership of a son of respondent No. 1. As already observed above, the said statement from Qatar has gone a long way in irretrievably damaging the earlier stands of respondent No. 1 and in fortifying the impression that he has not made a clean breast of himself and with every varying stance he has exposed himself further.

87. The learned counsel for the petitioners had referred to a judgment dated March 16, 1999 handed down by the High Court of Justice, Queen's Bench Division, London whereby a huge sum of money was decreed on November 05, 1999 in favour of Al Towfeek Company and against Hudabiya Paper Mills Limited, Mian Muhammad Shahbaz Sharif (a younger brother of respondent No. 1), Mian Muhammad Sharif (the father of respondent No. 1) and Mian Muhammad Abbas Sharif (another younger brother of

respondent No. 1). The record pertaining to the said judgment and decree shows that for satisfaction of the decree the same four properties in London which are also the subject matter of the present petitions had been attached and subsequently on February 21, 2000 the charge/caution on those four properties was lifted by the court upon satisfaction of the decree which was to the tune of about 34 million US Dollars. The Directors of Hudabiya Paper Mills Limited included Mr. Hussain Nawaz Sharif and Mariam Safdar, respondents No. 6 and 7 herein. The said respondents and the other defendants would not have paid such a huge amount to get the charge/caution lifted from the four properties in London if they had nothing to do with the ownership of those properties in the years 1999 and 2000. Mr. Hussain Nawaz Sharif was aged about 28 years and had no business of his own till then, Mr. Hassan Nawaz Sharif was a student with no personal earnings and Mariam Safdar did not own any property at that time, as disclosed by themselves in their interviews mentioned above. The details of that case in London had found a specific mention in paragraph No. 113 of the judgment passed by this Court in the case of *Syed Zafar Ali Shah and others v. General Pervez Musharraf, Chief Executive of Pakistan and others* (PLD 2000 SC 869). Apart from that the source of funds available for making a huge payment of about 34 million US Dollars in the year 2000 towards satisfaction of the above mentioned decree had not been disclosed by respondent No. 1 and his children before this Court till another statement of the same gentleman from Qatar was filed before the Court later on.

88. The petitioners had brought on the record of these petitions some emails and documents based upon some correspondence between the Financial Investigation Agency of the British Virgin Islands and the relevant law firm namely Mossack Fonseca. The said correspondence had taken place in the year 2012 and the emails and documents brought on the record tended to reveal that according to the records maintained by that law firm and the administrator (Minerva Trust & Corporate Services Limited) of the two offshore companies owning the relevant four properties in

London in the year 2012 Mariam Safdar was the beneficial owner of two of such properties, there was no trust connected with the said four properties, Mariam Safdar was a client of Minerva Financial Services Limited at least since the year 2005 and in her signed Personal Information Form she had maintained that the source of her wealth was the family's wealth and business spread over a period of 60 years. That material had *prima facie* seriously damaged the case of respondent No. 1 and his children regarding Mr. Hussain Nawaz Sharif being the sole beneficial owner of all the four properties in London, the said properties having been acquired in the year 2006 and the settlement in Qatar in the year 2006 being the source of funds for acquisition of those properties. The said material brought on the record of these petitions by the petitioners had, however, been denied before us by Mariam Safdar and her brothers by maintaining that the material produced by the petitioners was fake and bogus. As the information in the above mentioned regards was found by us to be of some importance, therefore, we had repeatedly required respondent No. 1 and his children, i.e. respondents No. 6, 7 and 8 to produce before the Court the record of both the offshore companies owning the relevant four properties in London showing when and how the said companies came to be owned by respondent No. 1 and/or his children, or by any of them, when and how respondent No. 1 and/or his family got possession of the said properties, when and how the said properties were acquired by respondent No. 1 and/or his children and was any trust connected with those properties existed on the record of the relevant companies or their administrator or not. It is unfortunate that the relevant record was not produced before the Court and the sketchy material actually produced was not of much assistance. Be that as it may, as the said issues highlighted through the above mentioned emails involved some disputed questions of fact, therefore, I have decided not to adjudicate upon the same in the present proceedings under Article 184(3) of the Constitution. I am mindful of the fact that the issue in the present proceedings before this Court is not any property or who owns it but the issue is resources for acquisition

of some property and honesty of a person in explaining availability of such resources in the constitutional context of Article 62(1)(f) thereof.

89. Respondent No. 8 namely Mr. Hassan Nawaz Sharif had maintained in his interview mentioned above that he was a student in the year 1999, he had no earnings of his own and the money required for his stay and studies in England used to come from Pakistan. However, in the Joint Concise Statement (Civil Miscellaneous Application No. 7319 of 2016 filed by respondents No. 6, 7 and 8 on November 7, 2016) respondent No. 8 had maintained that he was conducting his own business for the last about 22 years (since the year 1994) which was not what he had stated in his interview with Tim Sebastian of BBC in the year 1999. The history of his independent business brought on the record of this case starts in the year 2001 and it appears that he might have concealed his business and income between the years 1994 and 2001. Respondent No. 7 namely Mr. Hussain Nawaz Sharif had stated in his interview referred to above that his brother Mr. Hassan Nawaz Sharif was doing business in England since the year 1995. Their father namely Mian Muhammad Nawaz Sharif, respondent No. 1, had stated in his first address to the nation on April 05, 2016 that the proceeds of sale of the factory in Jeddah in June 2005 had been utilized for setting up of his sons' business. Was respondent No. 1 being honest when he said that his sons set up their business in the year 2005? Some uncontroverted documents brought on the record of these petitions show that respondent No. 8 namely Mr. Hassan Nawaz Sharif had started his business on April 12, 2001 as Director of a British company named Flagship Investment Limited and according to the Director's Report of that company dated March 31, 2002 respondent No. 8 had Pounds Sterling 705,071 as the Director of that company. The Financial Statement of that company dated March 31, 2003 showed that respondent No. 8 had made a loan to the company to the tune of Pounds Sterling 307,761 with a balance of Pounds Sterling 990,244 to his credit. The Financial Statement of that

company dated March 31, 2004 manifested that respondent No. 8 had made a loan to the company amounting to Pounds Sterling 593,939 with a balance of Pounds Sterling 1,606,771 to his credit. The Financial Statement of that company dated March 31, 2005 showed that respondent No. 8 had again made a huge loan to the company with a balance of Pounds Sterling 1,418,321 to his credit. There was another British company by the name of Que Holdings Limited and respondent No. 8 namely Mr. Hassan Nawaz Sharif had 100% holding in that company. The Notes of Account of that company dated July 31, 2004 showed that respondent No. 8 had made a loan to the company to the tune of Pounds Sterling 99,999 and the Financial Statement of that company dated July 31, 2005 showed that respondent No. 8 had made a loan to the company to the tune of Pounds Sterling 541,694. A chart appended with one of these petitions shows that respondent No. 8 had about ten companies in England before the year 2006 and the credit contributed by him to those companies amounted to Pounds Sterling 2,351,877. In her Separate Concise Statement (Civil Miscellaneous Application No. 394 of 2017 filed on January 24, 2017) respondent No. 6 had maintained that respondent No. 7 was operating Coomber Group Inc. Company for various business ventures of respondent No. 8. All those businesses of respondent No. 8 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, 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.

90. It is of significance to mention here that in his speeches made before the nation and in the National Assembly respondent No. 1 had never stated in black and white that he had nothing to do with ownership of the two offshore companies or the relevant properties in London. However, in his concise statements submitted by respondent No. 1 before this Court it had been so asserted and his learned counsel argued before us with vehemence

that the said respondent was neither a Director, share holder or a beneficial owner of the relevant offshore companies nor had he any connection with ownership of the relevant properties. I note that the varying assertions of the children of respondent No. 1 regarding the said companies and properties have remained without any support from any record of those companies and properties. No record has been produced by them to establish that Mr. Hussain Nawaz Sharif had become the owner of those companies and properties in the year 2006. The source of funds for payment of about 34 million US Dollars in the year 2000 for lifting of the charge on the relevant four properties in London upon satisfaction of a judicial decree had not been explained by them or even by respondent No. 1 till belated filing of another statement of the gentleman from Qatar which shall be discussed a little later. No explanation had been offered as to why such a huge amount had been paid by or on behalf of some of the respondents and their relatives for lifting of the charge on those properties if they had nothing to do with the ownership of the said properties. It had never been explained before us till belated filing of the second statement of the gentleman from Qatar as to how Mr. Hassan Nawaz Sharif who was a student in the year 1999 suddenly started rolling in money in England in the year 2001. No money trail or record of any banking transaction was placed on the record of this case by respondent No. 1 and his children. The inconsistencies and gaps between the stands adopted by respondent No. 1 and his children have remained unexplained and unfilled and the chains of events stated by them have remained clearly broken. Respondent No. 1 had never said anything about any investment in real estate business in Qatar and his children's case was based exclusively on that investment in Qatar. All this is sufficient to convince a prudent man that all was not well with the explanations advanced by respondent No.1 and that such explanations cannot be termed as honest.

91. It has already been observed by me above that in his speeches made before the nation and in the National Assembly

respondent No. 1 had never stated in black and white that he had nothing to do with ownership of the two offshore companies or the relevant properties in London. In his speeches and the concise statements respondent No. 1 had also failed to take a specific and categorical stand that his children, or one of them, had acquired those properties through their/his own funds. Nothing has been produced before this Court to show or establish that respondent No. 1's children, or any of them, were/was in a position to purchase the said expensive properties in the year 2006 as no proof whatsoever has been produced about their businesses or financial conditions at that stage. If Mr. Hassan Nawaz Sharif had started doing business in England in the year 2001 with undisclosed sources of income then he could have claimed that it was with his financial support that his brother Mr. Hussain Nawaz Sharif had purchased the relevant properties in London in the year 2006 but that was never the stand taken by Mr. Hassan Nawaz Sharif, Mr. Hussain Nawaz Sharif or even respondent No. 1. In his above mentioned interview dated March 07, 2016 Mr. Hussain Nawaz Sharif had stated that "I have three offshore companies in London" and "I admit that the apartments in Park Lane are *ours*." In other words he had admitted that the offshore companies owning the relevant properties might have been owned in his name but the said properties belonged to the family! The Guardian, London had quoted respondent No. 1's lady wife namely Mrs. Kulsoom Nawaz Sharif on April 10, 2000 as saying that the relevant properties in London had been "bought" because her children were studying in England at that time. The explanation advanced by respondent No. 1's children that the said properties had been acquired from the proceeds of a settlement of real estate business in Qatar was not an explanation advanced by respondent No. 1 and the sole basis of that explanation was a statement of a gentleman from Qatar which statement was, as discussed earlier, nothing but an apology of an explanation. Apart from that all the explanations put forward by respondent No. 1 and his children, even if accepted at their face value, show that all the funds of the family in Dubai, Jeddah and Qatar belonged to respondent No. 1's

father namely Mian Muhammad Sharif who had passed away in the year 2004. If that were so then all his assets and funds would have automatically devolved upon his heirs including respondent No. 1 and if the properties in London had been acquired through those assets and funds in the year 2006 then the said assets and funds included respondent No. 1's share of inheritance and such share had contributed towards acquisition of the properties in London. No will of Mian Muhammad Sharif has been brought on the record by respondent No. 1 and his children to show as to why and how the entire proceeds of the stated settlement of real estate business of late Mian Muhammad Sharif in Qatar had been handed over to his grandson who was not his heir and all the heirs of the deceased had been deprived of such proceeds. The family settlement *qua* inheritance of late Mian Muhammad Sharif had come about in the year 2009. There was, thus, a real likelihood that the relevant properties in London had actually been purchased or acquired by respondent No. 1 but ownership of the same had been shown in the name of one of his sons namely Mr. Hussain Nawaz Sharif and that respondent No. 1 has not been honest in his oscillating and vacillating explanations advanced in that respect at different stages.

92. When the above mentioned issues were highlighted by the Court during the hearing of these petitions there landed another statement of the same gentleman from Qatar and this time he had the following to tell the Court:

> "***Hamad Bin Jassim Bin Jaber Al-Thani***
>
> 22 December 2016
>
> It has come to my attention that certain queries have been raised with respect to my statement dated 5 November 2016.
>
> In response to such queries, I wish to clarify that in 1980, Mr. Mian Muhammad Sharif (**Mr. Sharif**), a longstanding and trusted business partner of my father, made an investment (the **Investment**) of approximately twelve million AED in the real estate business of the Al-Thani family. This investment was made by way of provision of cash, which was common practice in the Gulf region at the time of the investment and also, given the longstanding relationship between my father and Mr. Sharif, a customary way for them to do business as between themselves.

> At the end of 2005, after reconciling all accruals and other distributions made over the term of the investment, it was agreed that an amount of approximately $ 8,000,000 was due to Mr. Sharif. In accordance with Mr. Sharif's wishes, the amount due to him was settled in 2006 by way of the delivery to Mr. Hussain Nawaz Sharif's representative of bearer shares of Nescoll Limited and Nielsen Enterprises Limited, which had been kept during that time in Qatar.
>
> This statement is private and confidential; it cannot be used or disclosed to any party without my prior written consent, except to the benefit of the courts and regulators of the Islamic Republic of Pakistan.
>
> (signed)
> Hamad bin Jassim bin Jaber Al Thani
>
> Signature of H. E. Sheikh Hamad Bin Jassim Bin Jaber Al-Thani is ATTESTED.
> (signed) 10th January 2017.
> (Shahzad Ahmad)
> Ambassador of Pakistan
> Doha-Qatar
> (seal)"

It is noteworthy that both the statements of the gentleman from Qatar produced before this Court talked about longstanding business relations and partnership between the said gentleman's father and the father of respondent No. 1 which relationship and partnership existed even prior to the investment made by respondent No. 1's father in Qatar in the year 1980 after sale of the factory in Dubai. No details of the previous business dealings have been provided to this Court and, therefore, it is not clear as to where such business was conducted, any money for such business was generated out of Pakistan or money for such business was laundered from Pakistan through illegal means or unofficial channels.

93. The first statement of the gentleman from Qatar showed that the final settlement of the investment made by Mian Muhammad Sharif took place with Al-Thani family and not with Mr. Hamad Bin Jassim Bin Jaber Al-Thani and the said gentleman did not claim to be the person dealing with the matter of the settlement personally and he was not the one who had handed over the bearer share certificates of the two offshore companies owning the relevant

properties in London personally to anybody. In both the statements of that gentleman it had not been disclosed as to how 12 million Dirhams had been delivered to the gentleman's father on behalf of respondent No. 1's father and who was the representative of respondent No. 7 who had received the bearer share certificates of the two offshore companies. In the first affidavit of Mr. Tariq Shafi dated November 12, 2016 Qatar was not mentioned at all despite the fact that by that time the first statement of the gentleman from Qatar was already available but in his second affidavit sworn on January 20, 2017 and placed before the Court subsequently Mr. Tariq Shafi maintained as follows:

> "3. That the sum of UAE Dirhams twelve million was deposited by me in cash with Mr. Fahad Bin Jassim Bin Jaber Al Thani of Qatar after receipt of each installment from Mr. Muhammad Abdullah Kayed Ahli. This deposit was made by me on the instructions of my uncle, late Mian Muhammad Sharif.
>
> 4. That at that time Mr. Fahad Bin Jassim Bin Jaber Al Thani was frequently present in Dubai in connection with his business activities and received the net aggregate cash payment of UAE Dirhams twelve millions from me in Dubai."

No independent proof has, however, been produced before this Court in this regard, no statement of Mr. Fahad Bin Jassim Bin Jaber Al-Thani has been brought on the record and we have found it hard to believe that a sum of 12 million Dirhams in cash had been handed over to another without obtaining any receipt or keeping any record. Through filing of a Joint Further Statement by respondents No. 7 and 8 the Court was informed that one Waqar Ahmad had collected the bearer share certificates from one Nasir Khamis in London in January 2006 for their delivery to respondent No. 7 but no independent proof in that regard has been produced before this Court either.

94. 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 Bin Jaber 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!

95. In all his relevant speeches or his concise statements filed before this Court respondent No. 1 never mentioned Qatar or any investment made by the family in that country. The first statement of the gentleman from Qatar is dated November 05, 2016 but in their Joint Concise Statement filed by respondent No. 1's three children on November 07, 2016 they did not mention Qatar or any investment made by their elders in Qatar at all. Even in all the above mentioned interviews given by respondent No. 1's lady wife and children Qatar or any family investment in that country had failed to find any mention. It was at a later stage that Qatar and the family investment in that country suddenly emerged on the scene and respondent No. 1's children then adopted that as the only source through which the relevant properties in London had been acquired. If that story is correct then the investment in Qatar was made when respondent No. 1's children were toddlers, or at best minors, and they remembered about that investment but unfortunately respondent No. 1 had completely forgotten about the same and he still continues to do so! Such loss of memory, and that too about the most crucial aspect of the present case, cannot be presumed by the Court and it, therefore, appears that

respondent No. 1 has deliberately suppressed the relevant facts or he has conveniently allowed himself to go along with a false story advanced by his children. Apart from that the alternate story about "purchase" of the relevant properties in London propounded by him, which runs completely contrary to the story about acquisition of the said properties on the basis of a settlement of the business in Qatar, had not been substantiated by respondent No. 1 through any tangible material. He has failed to produce anything before this Court as to how money was generated and transferred to Dubai for setting up a factory there, where were the proceeds of sale of the factory in Dubai kept or utilized between the years 1980 and 2000, how was the money generated and transferred to Jeddah for setting up a factory there and then how the proceeds of sale of the factory in Jeddah were transferred to London for "purchase" of the relevant properties there. No banking transaction and no money trail has been referred to or established by him. Respondent No. 1 is our elected representative and our Prime Minister and we expected him to take us into confidence in the above mentioned matters so that he could come out clean in the matter but unfortunately he has done nothing before us so as to clear his name or confirm his probity. Apart from that when a court of law requires a person to explain his position in respect of something, particularly when he had himself repeatedly volunteered to explain his position before any court or forum inquiring into the same, his silence before the court or adopting an evasive approach reflects adversely upon his *bona fide* and honesty in the matter.

96. In two of his speeches respondent No. 1 had talked about setting up of a factory in Jeddah but the sources of funds for that venture had also remained an enigma and the following chart highlights the same:

Respondents	Medium	Stance	Problems
Respondent No. 1:	Address to the nation:	During the days of forced exile	* Sale of the factory in Dubai was not mentioned

Mian Muhammad Nawaz Sharif	April 05, 2016	our father once again established a steel factory near the city of Makkah. This factory was established for which loans were obtained from Saudi banks.	in that speech the proceeds of which were apparently used in establishment of the factory in Jeddah. * Loan from friends not mentioned by respondent No. 1 as mentioned by respondent No. 7 in his interviews on January 19, 2016 and March 7, 2016.
	Speech in the National Assembly: May 16, 2016	In exile our father once again established a steel factory in Jeddah. Among the primary source of funds which helped in establishing that factory was the funds received from the sale of the factory in Dubai.	* Mentioned funds from sale of the factory in Dubai which funds were not mentioned in the earlier address to the nation.
Respondent No. 7: **Mr. Hussain Nawaz Sharif**	Interview on Capital Talk, Geo News television: January 19, 2016	"Our good old friends gave us loan, which was later paid off".	* Did not mention the settlement of investment in Qatar as the source of funds for setting up the factory in Jeddah as was subsequently disclosed through the worksheet from Qatar.
	Interview on Kal Tak, Express News television: March 7, 2016	"We were given loans by friends and Saudi banks." "Their loans have been returned." "Personal friends gave us loans. Those have been paid back before the agreed time".	* Did not mention the returns from 12 million Dirham investment in Qatar as the source of funds for setting up the factory in Jeddah. * Stance clearly showed that loans were obtained from friends which were paid back. * Money given by Al-Thani family was not loans. If loans were obtained from friends and were returned then the story about settlement of investment in Qatar and some part of it being adjusted for setting up a factory in Jeddah was

			false.
	Joint Concise Statement (CMA No. 3719 of 2016)	No stance taken regarding the source of funds for setting up the factory in Jeddah.	
	Joint Supplement -ary Concise Statement filed by respondents No. 6, 7 and 8 (CMA No. 7531 of 2016) on November 15, 2016	No stance taken regarding the source of funds for setting up the factory in Jeddah.	* In this concise statement the investment in Qatar was introduced for the first time but there was no mention of any money received from the investment in Qatar having been utilized for setting up the factory in Jeddah. * In the subsequent CMA No. 432 of 2017 it was maintained by respondents No. 7 and 8 that in 2005 respondent No. 7 was told that the money he received for setting up the factory in Jeddah was from returns of the investment in Qatar!
	Further Statement filed by respondents No. 7 and 8 (CMA No. 432 of 2017) on January 23, 2017	"7. That over the period 2001 to 2003 the late Grandfather of Respondent no. 7 arranged for the benefit of Respondent No. 7 US dollars 5.41 million for investing in the setting up of Al Azizia Steel Company Limited. These transfer of funds were caused by the Al-Thani family on the request of Respondent No. 7's grandfather Mian Muhammad Sharif. This fact was stated to Respondent No. 7 by Sheikh Hamad bin	* This source contradicted respondent No. 7's interviews wherein he mentioned the source of funds for setting up the factory in Jeddah as loans from friends and Saudi banks. * This source was not mentioned in the initial concise statement (CMA No. 3719 of 2016). * It is incredible that respondent No. 7 was said to have set up the factory in Jeddah but for many years after setting up the factory he did not know where the funds for setting up that factory had come from until he was told about it by one Nasir Khamis in 2005! * The worksheet about the investment in Qatar and disbursement of the relevant amounts showed

		Jassim bin Jaber Al Thani's representative, Nasir Khamis, at the time of an overall settlement in late 2005. The equity caused to be injected by the Late Mian Muhammad Sharif, along with borrowings from financial institutions, was utilized for the setting up of the aforesaid steel manufacturing plant near Makkah, Kingdom of Saudi Arabia."	that the funds for setting up the factory in Jeddah had been transferred directly in favour of respondent No. 7 in his own name. * It is unbelievable that respondent No. 7's father (respondent No. 1) or his grandfather did not tell him about those funds but one Nasir Khamis of Qatar told him about it in 2005. * This information about the source of funds for setting up the factory in Jeddah was available with respondent No. 7 when he gave the above mentioned interviews but he did not mention it even then. * According to the interviews given by respondent No. 7 the funds for setting up the factory in Jeddah had come from Saudi banks and loans given by friends whereas in his speech in the National Assembly respondent No. 1 had maintained that the basic investment for setting up the factory in Jeddah came from proceeds of sale of the factory in Dubai.

A bare look at this chart makes one wonder where truth and honesty stand in the list of priorities of respondent No. 1 and his children. The most unbelievable part of the story about setting up of the factory in Jeddah is told through the second statement of the gentleman from Qatar dated December 22, 2016 wherein it is maintained that between the years 2001 and 2003 Al-Thani family of Qatar had transferred 5.41 million US Dollars in favour of respondent No. 7 for investing in setting up a factory in Jeddah and that information was supplied to respondent No. 7 by one Nasir Khamis, a representative of Mr. Hamad Bin Jassim Bin Jaber Al-Thani, at the time of over all settlement of the investment at the end of the year 2005. The said story wants this Court to

believe that respondent No. 7 was given a huge sum of 5.41 million US Dollars between the years 2001 and 2003 but he was told about it in the year 2005! As against that in one of his interviews given much later than 2005 respondent No. 7 had maintained that loans had been obtained from friends and banks for setting up the factory in Jeddah which loans had then been repaid before the time due. We have also been told that the said factory in Jeddah had been sold in the year 2005 and it had fetched 20,630,000 Riyals (about 17 million US Dollars) but no banking transaction or money trail in that regard has been produced before this Court showing from where did that money come and then where did it go.

97. Invoking the concept of parliamentary privilege the learned counsel for respondent No. 1 had argued that the said respondent could not be held liable for anything said by him in a speech made in the National Assembly on May 16, 2016 and in this context he relied upon Article 66(1) of the Constitution which reads as under:

> "66. (1) Subject to the Constitution and to the rules of procedure of Majlis-e-Shoora (Parliament), there shall be freedom of speech in Majlis-e-Shoora (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 Majlis-e-Shoora (Parliament), and no person shall be so liable in respect of the publication by or under the authority of Majlis-e-Shoora (Parliament) of any report, paper, votes or proceedings."

He maintained that the historical and universally acknowledged parliamentary privilege recognized by the said Article of the Constitution is subject only to two provisions of the Constitution and they are Article 68 and Article 204 which deal with restriction on discussion in the Majlis-e-Shoora (Parliament) with respect to conduct of a Judge of the Supreme Court or of a High Court in the discharge of his duties and commission of contempt of court. I have, however, found that for various reasons the issue of parliamentary privilege is not relevant to the case in hand. To start with, the relevant speech made by respondent No. 1 was not just a speech made in the National Assembly but it was also an address to the nation because of live radio and television coverage of it. It is not denied that at least four or five microphones of different

television companies including the official Pakistan Television were placed on the desk of respondent No. 1 and a television camera was placed right in front of him when he had made that speech and that speech was broadcast and telecast live on the national hookup. Apart from that by making that speech respondent No. 1 had merely utilized the floor of the National Assembly for advancing a personal explanation regarding a matter which was not even on the agenda of the National Assembly on the relevant day and was personal to himself and his family. This Court in the cases of *Zahur Ilahi, M.N.A. v. Mr. Zulfikar Ali Bhutto* (PLD 1975 SC 383) and *Syed Masroor Ahsan and others v. Ardeshir Cowasjee and others* (PLD 1998 SC 823) and the United Kingdom Supreme Court in the case of *Regina v. Chaytor* (2011 UKSC 52), [2011] 1 A.C. 684 SC-UK have already clarified that parliamentary privilege is relevant to "the core or essential business of Parliament, which consists of collective deliberation and decision making" or "which relates in any way to the legislative or deliberative processes" of the Parliament "or of its Members, however widely construed" and parliamentary privilege does not protect criminal acts merely because such acts are committed within the precincts of the Parliament. The argument of the learned counsel for respondent No. 1 that the parliamentary privilege recognized by Article 66(1) of the Constitution is subject only to Articles 68 and 204 of the Constitution has not been found by me to be correct because Article 66(1) is subject to all the other provisions of the Constitution and not just the two provisions indicated by the learned counsel. In an appropriate case it may be argued that Article 66(1) of the Constitution is also subject to Article 62(1)(f) thereof requiring a member of the Parliament to be 'honest' in everything stated by him in the Parliament and there being no parliamentary privilege in respect of stating something which is untrue. It had been held by this Court in the case of *Syed Masroor Ahsan and others v. Ardeshir Cowasjee and others* (PLD 1998 SC 823) that parliamentary privilege under Art 66 of the Constitution was not absolute and exceptions to the same existed. It was also held in that case that no immunity or privilege existed against

criminal, illegal or unconstitutional acts committed in the Parliament. It is also pertinent to note that the parliamentary privilege under Article 66(1) of the Constitution is in respect of liability to any proceedings in any court in respect of anything said in the Parliament but in the present case the speech made by respondent No. 1 is not the basis of any liability to any proceeding in a court and that speech is being referred to in the present proceedings only as a circumstance in a series of circumstances showing lack of honesty of the said respondent before the nation, before the representatives of the nation in the National Assembly and before this Court. Surely, respondent No. 1 is not being proceeded against for making that speech and the said speech is being utilized in the present proceedings only for a collateral purpose to determine as to whether the said respondent had been making divergent statements on the same issue at different occasions or not and as to whether he had been honest in the matter or not. It had been held in the case of *Buchanan v. Jennings* [2005] 1 A.C. 115, [2004] UKPC 36, [2005] 2 All ER 273 (Privy Council) that a speech in the Parliament could be used to establish some fact as evidence rather than making it the basis of the proceedings.

98. The matter of payment of about 34 million US Dollars to Al-Towfeek Company towards satisfaction of the decree in London, mentioned above, is equally bizarre. In his Supplementary Concise Statement respondent No. 7 namely Mr. Hussain Nawaz Sharif had maintained that he was informed by a representative of Al-Thani family of Qatar that 8 million US Dollars had been paid by that family to Al-Towfeek Company in the year 2002 for satisfaction of the relevant decree and he was further informed that the said payment had been made on the instructions of Mian Muhammad Sharif. No record of such payment has been produced before this Court and even the person informing respondent No. 7 in that regard has not been identified. Both the statements of the gentleman from Qatar produced before this Court had failed even to refer to any such payment of 8 million US Dollars by Al-Thani

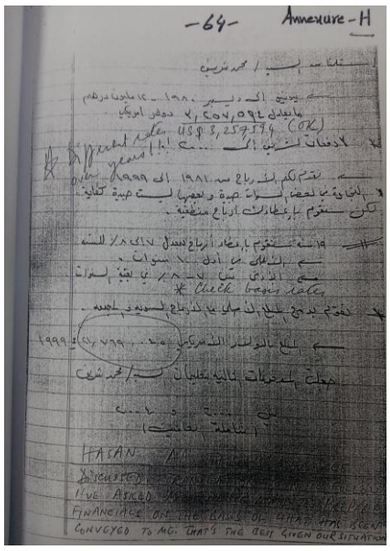
family of Qatar towards satisfaction of the decree in London through which the relevant four properties in London, which were in occupation of respondent No. 1 and his family at that time, were got released from the caution placed on them. Apart from that the decree was for about 34 million US Dollars but it was maintained that the decree was satisfied by paying Al-Towfeek Company only 8 million US Dollars. No documentary proof was produced before us to show as to how much amount was actually paid and who paid it. No record of the concerned court was produced and it was not shown what mode or channel was utilized for making the payment.

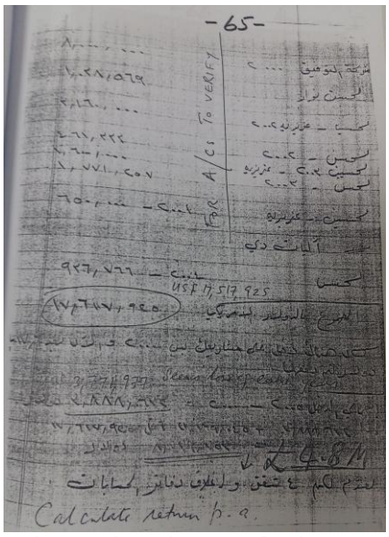
99. The bottom line is that according to the sons of respondent No. 1, as is evident from the their Joint Further Statement (Civil Miscellaneous Application No. 432 of 2017 filed on January 23, 2017) the **12 million Dirhams** "placed" with Al-Thani family of Qatar by their grandfather late Mian Muhammad Sharif and "retained" by that family (which was no longer called by the sons of respondent No. 1 as an "investment" in real estate business in Qatar) were utilized in the following manner till the time that chapter was finally closed and wound up in the year 2005:

> (i) **8 million US Dollars** paid by Al-Thani family to Al-Towfeek Company in the year 2002 towards satisfaction of the decree in London,
>
> (ii) **5.4 million US Dollars** given to respondent No. 7 for setting up a factory in Jeddah between 2001 and 2004,
>
> (iii) **4.2 million US Dollars** given to respondent No. 8 for setting up his business in the United Kingdom between 2001 and 2004 and
>
> (iv) the remaining about **8 million US Dollars** adjusted and settled by delivering bearer share certificates to a representative of respondent No. 7 and thereby transferring ownership of the two offshore companies and the relevant four properties in London in favour of respondent No. 7.

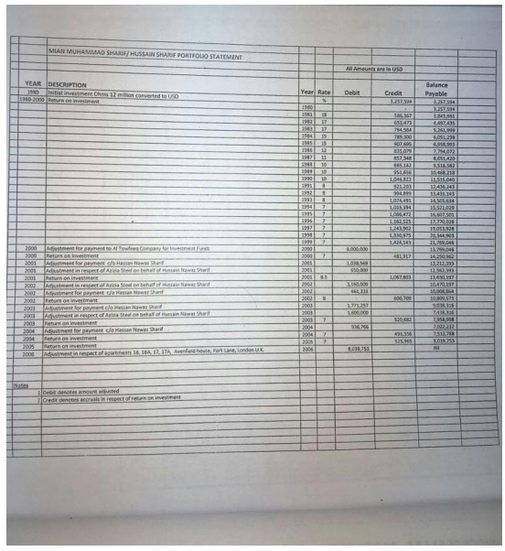
And what was the evidence produced before this Court in respect of all those millions of US Dollars rolling around? It is amazing and

unbelievable. The following two handwritten documents were all that had been produced before this Court in support of all those transactions:





We have been told that the last of the said documents is a worksheet which reads in English language as follows:



MIAN MUHAMMAD SHARIF/ HUSSAIN SHARIF PORTFOLIO STATEMENT

All Amounts are in USD

YEAR	DESCRIPTION	Year	Rate	Debit	Credit	Balance Payable
1980-2000	Initial Investment Dhms 12 million converted to USD		%		3,257,594	3,257,594
	Return on investment	1980			-	3,257,594
		1981	18		586,367	3,843,961
		1982	17		653,473	4,497,435
		1983	17		764,564	5,261,999
		1984	15		789,300	6,051,299
		1985	15		907,695	6,958,993
		1986	12		835,079	7,794,072
		1987	11		857,348	8,651,420
		1988	10		865,142	9,516,562
		1989	10		951,856	10,468,218
		1990	10		1,046,822	11,515,040
		1991	8		921,103	12,436,143
		1992	8		994,899	13,431,143
		1993	8		1,074,491	14,505,634
		1994	7		1,015,184	15,521,028
		1995	7		1,086,472	16,607,501
		1996	7		1,162,525	17,770,026
		1997	7		1,243,902	19,013,928
		1998	7		1,330,975	20,344,903
		1999	7		1,424,145	21,769,046
2000	Adjustment for payment to Al Towfeeq Company for Investment Funds	2000		8,000,000		13,769,046
2000	Return on investment	2000	7		481,917	14,250,962
2001	Adjustment for payment c/o Hassan Nawaz Sharif	2001		1,038,569		13,212,393
2001	Adjustment in respect of Azizia Steel on behalf of Hussain Nawaz Sharif	2001		650,000		12,562,393
2001	Return on investment	2001	8.5		1,067,803	13,630,197
2002	Adjustment in respect of Azizia Steel on behalf of Hussain Nawaz Sharif	2002		3,160,000		10,470,197
2002	Adjustment for payment c/o Hassan Nawaz Sharif	2002		461,333		10,008,864
2002	Return on investment	2002	8		800,709	10,809,573
2003	Adjustment for payment c/o Hassan Nawaz Sharif	2003		1,771,257		9,038,316
2003	Adjustment in respect of Azizia Steel on behalf of Hussain Nawaz Sharif	2003		1,900,000		7,138,316
2003	Return on investment	2003	7		520,682	7,958,998
2003	Adjustment for payment c/o Hassan Nawaz Sharif	2004		938,766		7,020,232
2004	Adjustment for payment c/o Hassan Nawaz Sharif	2004	7		491,556	7,511,788
2004	Return on investment	2005	7		526,965	8,038,753
2005	Return on investment	3006		8,038,753		Nil
2006	Adjustment in respect of apartments 16, 16A, 17, 17A, Avenfield house, Park Lane, London U.K.					

Notes

1 Debit denotes amount adjusted
2 Credit denotes accruals in respect of return on investment

Nothing has been produced before this Court to establish or even indicate as to who had prepared those documents, where those documents were kept, what was the authenticity of those documents, how the relevant amounts were disbursed and by whom. The said documents are not backed by any banking transaction and no money trail has even been hinted at. The claim regarding handling of some money in cash may be accepted with a pinch of salt as far as the transactions taking place in the Middle Eastern countries are concerned but cash running in millions of US Dollars being transferred to the United Kingdom and then utilization of such cash in some business in that country or for acquisition of property there may be very hard to believe or accept in the absence of any legitimate transfer, a banking transaction, a money trail or a proper and lawful disclosure. If that is how it all actually happened then it would be nothing but money laundering.

100. Money laundering is an allegation which is not new to respondent No. 1 and his close relative respondent No. 10. The learned counsel for the petitioners had drawn our attention towards a very detailed and documented report prepared and submitted by Mr. A. Rehman Malik in September 1998 in his capacity as an Additional Director, Federal Investigation Agency, Islamabad and that report tended to establish the money trail through which the relevant four properties in London and many

other properties and businesses had been purchased or set up by respondent No. 1 in the names of his children through opening of fake and fictitious bank accounts, clandestine money transfers amounting to money laundering and use of huge unaccounted for money. According to that report all that had happened in the 1990s and much prior to sale of the factory in Jeddah in June 2005 and the claimed settlement of the real estate business in Qatar in the year 2005. Almost all the transactions mentioned in that report were supported by the names of the concerned banks, the numbers of bank accounts, the numbers of the cheques issued and the origin and the destination of the money transferred. I understand that a lot of effort must have gone into digging out the relevant details and a lot of resources of the State must have been consumed in the entire exercise. I have, however, felt agonized by the fact that the matter had later on been hushed up, brushed under the carpet and never pursued by any quarter with the result that the facts asserted in that report could not be ascertained or verified by any court of competent jurisdiction. I have, therefore, abstained from referring to the contents of that report or from relying upon that report in the present proceedings. We have been informed that the same Mr. A. Rehman Malik who had prepared the above mentioned report had later on joined politics and had served the country as the Minister for Interior, Government of Pakistan for many years but he never took any step to pursue the matter against respondents No. 1 and 10 at all. It appears that politics had trumped accountability and discretion had the better of public interest.

101. Respondent No. 1's brush with criminal law is also not new. 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. In the case of *Mian Muhammad Nawaz Sharif v. The State* (PLD 2009 SC 814) respondent No. 1 had been convicted and sentenced on April 06, 2000 by an Anti-Terrorism Court for offences under section 402-B, PPC and section 7(f) of the Anti-Terrorism Act, 1997 on the allegation of highjacking a commercial aeroplane and thereby committing the offence of terrorism but later on he was acquitted of the charge by this Court on July 17, 2009. In the case of *Air Marshal (Retd.) Muhammad Asghar Khan v. General (Retd.) Mirza Aslam Baig, Former Chief of Army Staff and others* (PLD 2013 SC 1) a declaration was recorded by this Court in exercise of its jurisdiction under Article 184(3) of the Constitution to the effect that corruption and corrupt practices had been committed in the holding of a general election in the country and in the judgment passed in that case respondent No. 1's stated involvement in the matter had been referred to twice in that context and the matter of criminality of respondent No. 1 and others in that connection was required to be investigated by the Federal Investigation Agency. Unfortunately no investigation in that matter has so far been conducted for obvious reasons. In the case of *Mian Muhammad Nawaz Sharif v. The State* (PLD 2010 Lahore 81) respondent No. 1 had been convicted and sentenced by an Accountability Court on July 22, 2000 but subsequently his conviction and sentence had been set aside by the Lahore High Court on June 26, 2009. In that case the allegation was that in October 1993 respondent No. 1 had purchased a helicopter and had used and maintained the same for his election campaign whereas the costs and maintenance expenses incurred by respondent No. 1 were beyond his known sources of income. Respondent No. 1 had been acquitted in that case because it had

been shown that the helicopter was actually purchased by one Abdul Rehman Bin Nasir Al-Thani of Qatar. The said gentleman from Al-Thani family of Qatar is statedly a close relative of Mr. Hamad Bin Jassim Bin Jaber Al-Thani whose two statements have been produced before this Court in the present proceedings in support of respondent No. 1 and his children. 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 and the same is reproduced below without making any comment of my own on the same: (https://en.wikipedia.org/wiki/Hamad_bin_Jassim_bin_Jaber_Al_Thani)

> "Legal issues
>
> **BAE Systems**
> Following courting by Michael Portillo, Qatar entered into an arms deal worth £500 million with BAE Systems.[15] £7 million was transferred into two trusts in Jersey of which Hamad was named as a beneficiary. In an attempt to prevent money laundering, the funds were frozen from 16 July 2000 by the Jersey Financial Services Commission, who then began a court case and investigation.[14] Hamad paid the Jersey authorities £6 million as a "voluntary reparation" as "the structures put in place by his advisers may have contributed to the cost and complexity of the inquiry." The case was then dropped by the Jersey authorities.[5]
>
> **Fawaz Al-Attiya**
> HBJ is facing a lawsuit brought on by Fawaz Al-Attiya, former official spokesman for Qatar, who says that agents acting on behalf of HBJ imprisoned and tortured him in Doha for 15 months from 2009-2011. Al-Attiya says that he was kept in solitary confinement, only let out of handcuffs to be interrogated, subjected to sleep deprivation, and denied proper access to food, water, and sunlight.[16] Al-Attiya also alleged that he was not adequately compensated for his Qatari land that was expropriated by the state.[17] Documents submitted by Al-Attiya's lawyers state that in 1997, HBJ offered to buy 20,000 square meters of land from Al-Attiya in west Doha. Al-Attiya says that he refused the offer because he felt that the land was worth more than HBJ's offer, a move that angered HBJ. He alleges that HBJ then seized the land and subjected Al-Attiya to "increasing harassment, threats, and surveillance". A decade later in 2007, HBJ allegedly tried to have Al-Attiya arrested in Dubai. Al-Attiya then moved to Saudi Arabia in 2008 when a series of legal cases were filed against him, including one that alleged that he leaked state secrets during his tenure serving in public office. Court documents state that Al-Attiya was "forcibly taken from Saudi Arabia to Qatar" in October 2009. From then until January 2011,

> Al-Attiya was held in various prisons around Qatar. Attiya was told by Qatar's assistant attorney during this time that "he was being detained at the behest of the prime minister (Hamad bin Jassim), that there was no intention to release him and that any attempt to secure release through securing a court order…would either be prevented or any such order would not be carried out". Attiya was ultimately released on orders of the crown prince.[5]
> After his release, HBJ filed another case against Attiya claiming that he had forged a check worth 3 million riyals and as a result owed money to Qatar National Bank. This case was also dropped due to intervention by the crown prince.[16]
> HBJ denies all claims against him in regards to Fawaz Al-Attiya and says that he has diplomatic immunity and state immunity given his diplomatic position in London, leaving London's High Court without jurisdiction. No decision has been made yet as to whether his diplomatic immunity will extend to this case.[16][18]
>
> **Heritage Oil**
> In June 2014, HBJ acquired 80% of Heritage Oil, which was listed as a London exploration and production company. At the same time, he was listed as a "Counsellor" at the Qatari embassy and as such was privileged to legal immunity under the 1961 Vienna Convention. Article 42 of this convention states that "a diplomat shall not in the receiving State practise for personal profit any professional or commercial activity" thereby disallowing the acquisition in which HBJ engaged. The stake, valued at £924 million and dated April 30, 2014, transferred to a "wholly owned subsidiary" of Al-Mirqab Capital, an investment company privately owned by HBJ and his family. HBJ's lawyers maintain that the fact that the company was listed in London is not sufficient evidence to determine that Article 42 had been violated.[19]
>
> **Controversies**
> A May 2008 diplomatic cable sent by then U.S. chargé d'affaires in Doha, alluded to a dispute between HBJ and the Qatari intelligence officials over a Qatari senior bank official imprisoned for 6 months over his role in funding Khalid Sheikh Mohammed (KSM), the al-Qaeda mastermind of September 11. The senior bank official was Khalifa Muhammad Turki al-Subaiy who financed KSM while working at Qatar Central Bank.[14]
> In November 2016, Pakistani Prime Minister produced a letter from Hamad Bin Jassim to claim that the properties identified as owned by his daughter in Panama Leaks are actually are result of a settlement that happened in 2006. The letter was mostly based on hearsay and soon after the first letter second letter was produced which tried to cover up holes left in the first letter. The properties were purchased by Sharif family from 1992-1996 through off shore companies Nescoll and Nielson. The beneficial owner of those four flats is Maryam Safdar (daughter of Prime Minister Nawaz Sharif) according to leaked Panama papers. If the court calls Hamad Bin Jassim to stand as the witness to prove the worth of his letter, he could be sent to prison for lying. Pakistan is a poor country but will definitely imprison frauds who could help making black money white. It is alleged that Hamad bin Jassim's companies got lucrative LNG deal worth Billions of dollars with Pakistan through his connection with Nawaz Sharif."

102. While dwelling on the issue of money laundering I may observe that it was argued before us by the learned counsel for the petitioners that a number of so-called gifts made by respondent

No. 7 namely Mr. Hussain Nawaz Sharif to his father also hinted at concealment of assets, rotation of money and money laundering by respondent No. 1 and his family. The uncontested record produced before us showed that respondent No. 7 had sent the following amounts of money from Saudi Arabia to respondent No. 1 as gifts:

Tax year 2011:	Rs. 129,836,905
Tax year 2012:	Rs. 26,610,800
Tax year 2013:	Rs. 190,445,024
Tax year 2014:	Rs. 197,499,348
Total:	Rs. 544,392,077

Respondent No. 7 had claimed before us that he had sold the factory in Jeddah in the year 2005 and initially he had not disclosed that he had another factory in Saudi Arabia by the name of Hill Metals and it was through the income generated from that factory that he was sending gifts to his father. Respondent No. 1 and the gentleman from Qatar had never stated that the money for setting up that factory had been provided to respondent No. 7 by them and respondent No. 7 never disclosed before us as to how that factory was set up or purchased by him and when. It had not even been disclosed or established that the said factory was actually owned by him or not. In their Joint Further Statement (Civil Miscellaneous Application No. 432 of 2017 filed on January 23, 2017) respondents No. 7 and 8 had maintained that in the year 2006 respondent No. 7 had set up a new steel manufacturing business in Jeddah by utilizing proceeds of sale of the earlier factory in Jeddah. Respondent No. 1 had, however, maintained in his speech in the National Assembly that the proceeds of sale of the factory in Jeddah had been utilized for “purchase” of the relevant properties in London! In one of his interviews mentioned above respondent No. 7 had categorically stated that the proceeds of sale of the factory in Jeddah had been “officially transferred” to London for purchase of the relevant properties in that city. Even when considered in the context of the claimed investment in Qatar and its settlement in the year 2006 the new factory in Jeddah did not stand explained because, according to the family of respondent No. 1, the adjusted remaining amount of 3.2 million US Dollars

was settled with Al-Thani family in the year 2006 through transfer of ownership of the two offshore companies and the relevant properties in London in favour of respondent No. 7. With that claimed final settlement of the investment in Qatar no money was left in that folder to be utilized for setting up a new factory in Jeddah by the name of Hill Metals! One thing is, however, quite clear that the money received by respondent No. 1 through the earnings from that factory make respondent No. 1 a beneficiary of that business. It could well be that the said factory in Saudi Arabia belongs to respondent No. 1, respondent No. 7 runs that factory on behalf of respondent No. 1 and through respondent No. 7 the income generated by that business is periodically sent to respondent No. 1 in the shape of gifts. There has been no disclosure about that asset or business before this Court and, like many other assets and businesses worth millions of US Dollars mentioned above, the said asset or business also stands unaccounted for. A son settled in Saudi Arabia and having two wives and about half a dozen children sending gifts of crores of Rupees in cash to his father on a regular basis and that too to a father who is quite rich and very famous in his own right is a phenomenon which is difficult to comprehend and surely out of the ordinary.

103. The record produced before the Court also discloses another pattern showing that crores of Rupees in cash are sent from Saudi Arabia by a son (respondent No. 7) to his father (respondent No. 1), the father purchases landed property in the name of his daughter (respondent No. 6), some money is gifted by the father to the daughter and then the daughter pays the father the amount spent by him on such purchases and becomes owner of such property in her own right. According to the record an amount of Rs. 24,851,526 had been paid by the daughter (respondent No. 6) to her father (respondent No. 1) out of the money gifted by the father to the daughter by following the same pattern! The pattern may be mindboggling to some but we are told that those versed well with taxation laws know of such ways of rotating money and in the

process whitening money which may otherwise be black. In the above mentioned report prepared by Mr. A. Rehman Malik of the Federal Investigation Agency some specified persons had actually been named and some evidence in that regard had been mentioned establishing how through *Havala/Hundi* some unaccounted for money available with respondent No. 1 was siphoned off abroad and then the same money was brought back to the country as white money through gifts.

104. At every stage of the hearing of these petitions the question regarding onus of proof kept on recurring before the Court. According to the learned counsel for the petitioners the initial onus on the petitioners had been discharged by them through producing sufficient material to show that the relevant four properties in London were owned by respondent No. 1's family, the said respondent and his family acknowledged ownership and possession of those properties, the children of the said respondent did not possess sufficient means of their own to acquire the said properties at the relevant time and respondent No. 1 and his family had failed to account for the funds utilized for acquisition of such properties which factors had shifted the onus of proof to respondent No. 1 and his family requiring them to account for the relevant acquisitions to the satisfaction of the Court and to establish that respondent No. 1 had been honest in his explanations advanced in that regard before the nation, the National Assembly and this Court. As against that the learned counsel for respondents No. 1, 6, 7 and 8 had maintained that the allegations leveled against the said respondents were essentially of *quasi* criminal nature and, therefore, the onus was always upon the petitioners to establish their allegations before the Court through positive and admissible evidence and it was not for the said respondents to disprove those allegations. I have attended to this controversy with reference to the relevant statutory provisions and a brief reference to such provisions is being made in the following paragraphs.

105. The present case brought before this Court by invoking Article 184(3) of the Constitution is not a case of a civil wrong or of commission of a criminal offence but it is essentially a case of a constitutional qualification for and disqualification from becoming or remaining a member of the Majlis-e-Shoora (Parliament) mainly on the ground of lack of honesty on the part of respondent No. 1. Proceedings of this Court under Article 184(3) of the Constitution are essentially civil in nature. The allegations leveled by the petitioners are largely based upon some material disclosed by the International Consortium of Investigative Journalists (ICIJ) which material had been put to respondents No. 1, 6, 7 and 8 by ICIJ before it was made public and the said respondents had failed to rebut or even contest the same at that stage. The material so disclosed did have a tendency to incriminate those respondents and to raise serious questions *qua* their honesty and integrity. In their private capacities the petitioners had no means to inquire into or investigate the matter or to penetrate the multiple veils of offshore companies. Like the ICIJ the petitioners have acted in the matter as whistleblowers. Because of respondent No. 1 being the Prime Minister of the country and the Chief Executive of the Federation besides being the appointing authority of the heads of all the relevant institutions tasked to inquire into, investigate or prosecute such matters nobody even initiated any inquiry or investigation against respondent No. 1 and his children in respect of the allegations leveled. The initial onus of proof on the petitioners stood discharged when the relevant respondents admitted their possession and ownership of the relevant properties in London. Thereafter it was for the said respondents to account for those properties. Respondent No. 1 and his children had the special knowledge of all the relevant facts and only they could bring on the record material establishing their *bona fide* in the matter. In view of the factors discussed in the preceding paragraphs there was a lot of explaining to be done by respondent No. 1 and his children and, therefore, the onus of proof had indeed shifted to them. We have been guided in this respect by the following statutory provisions relating to corruption and corrupt

practices and the jurisprudence developed on the subject in this country:

Section 5-C of the Prevention of Corruption Act, 1947:

> "5-C. **Possession of property disproportionate to known sources of income.-**
>
> (1) Any public servant who has in his possession any property, movable or immovable either in his own name or in the name of any other person, which there is reason to believe to have been acquired by improper means and which is proved to be disproportionate to the known sources of income of such public servant shall, if he fails to account for such possession to the satisfaction of the Court trying him, be punishable with imprisonment for a term which may extend to seven years and with fine, and on such conviction the property found to be disproportionate to the known sources of income of the accused by the Court shall be forfeited to the Provincial Government.
>
> (2) The reference in subsection (1) to property acquired by improper means shall be construed as a reference to property acquired by means which are contrary to law or to any rule or instrument having the force of law or by coercion, undue influence, fraud or misrepresentation within the meaning of the Contract Act, 1872."

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, which he cannot reasonably account for or maintains a standard of living beyond that which is commensurate with his sources of income ---"

Section 14(c) of the National Accountability Ordinance, 1999:

> "In any trial of an offence punishable under clause (v) of sub-section (a) of Section 9 of this Ordinance, the fact that the accused person or any other person on his behalf, is in possession for which the accused person cannot satisfactorily account, of assets or pecuniary resources disproportionate to his known sources of income, or that such person has, at or about the time of the commission of the offence with which he is charged, obtained an accretion to his pecuniary resources or property for which he cannot satisfactorily account, the Court shall presume, unless the contrary is proved, that the accused person is guilty of the offence of corruption and corrupt practices and his conviction therefor shall not be invalid by reason only that it is based solely on such presumption."

(*underlining has been supplied for emphasis*)

It is a fact not disputed in this case by any party that respondent No. 1 was, and he still is, a holder of a public office when he and his children came in possession of the relevant properties in London between the years 1993 and 1996 and they are still in admitted possession of those assets which are claimed to be owned by one of the children of respondent No. 1 since the year 2006. It is again an uncontroverted fact that at the time of taking over possession of the said properties all the children of respondent No. 1 were non-earning students and his wife was a household lady with no independent sources of income of their own and, thus, they were dependents of respondent No. 1 at that time. No other claimant to those assets has surfaced anywhere ever since. The issue of corruption and corrupt practices is essentially a criminal law issue but when it arises in the electoral context of a constitutional or statutory qualification or disqualification then such issue becomes a *quasi* criminal issue. When dealing with a *quasi* criminal issue it is impossible not to be guided in the matter by the broader principles applicable to the criminal law relating to corruption and corrupt practices which are inseparably linked with the issue of honesty of a person. As seen above, one of the basic features governing this field of the law is that where a public servant or a holder of a public office is in possession of an asset either directly or through his dependents or *Benamidars* then it is for him to account for that asset which is disproportionate to his known sources of income and a court dealing with the issue is to presume the absence of a satisfactory explanation.

106. The law of evidence in vogue in the country is the Qanun-e-Shahadat Order, 1984 and the following provisions of that law are quite relevant to the case in hand:

Article 122 of the Qanun-e-Shahadat Order, 1984:

> "122. **Burden of proving fact especially within knowledge.** When any fact is especially within the knowledge of any person the burden of proving that fact is upon him.
>
> **Illustrations**

(a) ----------

(b) A is charged with traveling on a railway without a ticket. The burden of proving that he had a ticket is on him."

Article 117 of the Qanun-e-Shahadat Order, 1984:

"117. **Burden of proof.** (1) Whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exist.

(2) When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person."

Article 129 of the Qanun-e-Shahadat Order, 1984:

"129. **Court may presume existence of certain facts.** The Court may presume the existence of any fact, which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case.

Illustrations

The Court may presume:

(a) that a man who is in possession of stolen goods soon after the theft is either the thief or has received the goods knowing them to be stolen, unless he can account for his possession;"

Article 2(4), (7) and (8) of the Qanun-e-Shahadat Order, 1984:

Definition of "proved":

"(4) A fact is said to be proved when, after considering the matters before it, the Court either believes it to exist, or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists.

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(7) Whenever it is provided by this Order that this Court may presume a fact, it may either regard such fact as proved, unless and until it is disproved, or may call for proof of it.

(8) Whenever it is directed by this Order that the Court shall presume a fact, it shall regard such fact as proved, unless and until it is disproved."

The facts about generation and availability of the requisite funds for taking over or setting up the relevant offshore companies and acquisition of the relevant properties in London, about transfer of such funds to Panama or England, about the modes of payment, about how, when and from whom possession of the relevant

properties was obtained and about who became the beneficial owner of the said properties were all especially within the knowledge of respondent No. 1 and his children and, thus, the burden of proving those facts was upon them (Article 122). Respondent No. 1 and his children have always maintained that the relevant properties had been acquired through lawful money generated and transferred through legitimate means and that the matter ought to be decided by a court of law before which they would establish their claim by producing all the relevant record which was in their possession. The burden of proof in that respect, therefore, lied on them (Article 117). Respondent No. 1 and his children admit being in possession of the relevant properties which are being alleged to have been acquired through corruption, corrupt practices and money laundering, etc. and, thus, a court may presume correctness of the allegations (Article 129) and it was for respondent No. 1 and his children to establish otherwise (Article 2(7) and (8)). Apart from that a finding by a court that a fact exists and stands proved is not always dependent upon direct or positive proof led by the parties in support of their rival claims and in an appropriate case even the circumstances of a given case may convince the court that a fact exists and stands proved, as is evident from the provisions of Article 2(4) of the Qanun-e-Shahadat Order, 1984 according to which "A fact is said to be proved when, after considering the matters before it, the Court either believes it to exist, or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists". Instead of giving any straight answer the learned counsel for respondent No. 1 maintained before this Court that the said respondent had nothing to do with acquisition of the relevant properties in London and the Court should ask the said respondent's children about those properties. The learned counsel for respondent No. 6 maintained that even that respondent had nothing to do with acquisition of the said properties and the Court should ask her brothers about the same. When the Court asked the learned counsel for respondents No. 7 and 8 about acquisition of the relevant properties he simply

maintained that such a question could satisfactorily be answered only by the said respondents' grandfather who had died in the year 2004! Upon receipt of such responses from the learned counsel for respondents No. 1, 6, 7 and 8 the Court had repeatedly observed that the 'strategy' adopted by the said respondents to conceal the relevant facts from the Court amounted to taking of a big 'gamble' because the onus to account for the relevant properties was on respondent No. 1 whose children were admittedly in possession of the said properties since their being dependents of respondent No. 1 and failure of respondent No. 1 to account for those properties could activate a legal presumption against him. Alas, despite those observations of the Court respondent No. 1 persisted with that strategy and continued with the gamble till the end of hearing of these petitions.

107. Corruption at high places is not a new phenomenon but the methods of corruption and concealing the proceeds of corruption have seen a dramatic change in recent times. Previously a corrupt official would make illegal money and then put the amount in his bank account or a bank account of someone close to him or would convert that amount into property. Such proceeds of corruption and the property acquired through the same were not difficult to detect and, therefore, the normal onus and standard of proof required in a criminal case, i.e. the prosecution to prove its allegations beyond reasonable doubt and the accused person presumed to be innocent till proved guilty were applicable to the cases of corruption as well. Things have, however, changed now. There are now tax havens available in different parts of the world and through creation of offshore companies not only tax is being evaded by concealing wealth but even ill-gotten money is parked behind multiple veils of secrecy which are extremely difficult to lift or penetrate. This new development has forced legislatures around the world to modify the laws about onus and standard of proof in cases of corruption and even the courts and tribunals in different parts of the world are adopting different approaches for concluding as to whether the allegations of corruption leveled against an

accused person have been established or not. In Pakistan, as already noticed above, section 5-C of the Prevention of Corruption Act, 1947 places a light initial onus of proof on the prosecution to establish that the accused person is in possession of some movable or immovable property and there is reason to believe that such property had been acquired by improper means and the same is disproportionate to his known sources of income and then a heavier onus shifts to the accused person to account for possession of the relevant properties to the satisfaction of the court. Again, section 9(a)(v) of the National Accountability Ordinance, 1999 places a light initial onus of proof on the prosecution to establish that a holder of a public office, or any other person, or his dependent or *Benamidar* owns, possesses, or has acquired right or title in any asset or holds irrevocable power of attorney in respect of any asset or pecuniary resource disproportionate to his known sources of income or maintains a standard of living beyond that which is commensurate with his sources of income and thereafter a heavier onus shifts to the accused person to reasonably account for his ownership, possession, acquiring of right or title or holding irrevocable power of attorney in respect of such assets or pecuniary resources. Section 14(c) of the National Accountability Ordinance, 1999 goes a step further and provides that "In any trial of an offence punishable under clause (v) of sub-section (a) of Section 9 of this Ordinance, the fact that the accused person or any other person on his behalf, is in possession for which the accused person cannot satisfactorily account, of assets or pecuniary resources disproportionate to his known sources of income, or that such person has, at or about the time of the commission of the offence with which he is charged, obtained an accretion to his pecuniary resources or property for which he cannot satisfactorily account, the Court shall presume, unless the contrary is proved, that the accused person is guilty of the offence of corruption and corrupt practices and his conviction therefor shall not be invalid by reason only that it is based solely on such presumption." This change of approach in cases of corruption and corrupt practices is not just

confined to Pakistan but there is also some international arbitral and common law authority available now showing that when it comes to establishing corruption and corrupt practices in civil proceedings the standard of proof required is the balance of probabilities and understanding of a prudent man and not beyond reasonable doubt and that such an issue can even be clinched on the basis of circumstantial evidence. It has already been observed by us above that proceedings of this Court under Article 184(3) of the Constitution are essentially civil in nature. A survey of the following cases would demonstrate that in civil proceedings at the international level the standard of proof in relation to corruption and corrupt practices is 'balance of probabilities' (allowing inferences from circumstantial evidence) and not 'beyond reasonable doubt'.

108. In the field of international commercial arbitration we note that in the case of *Agrima Ltd. v. Republic of Zambia* (ICC Case No. 12732) [(2011) 22 ICC International Court of Arbitration Bulletin at page 78] a distinguished ICC Tribunal was asked to address claims that the contract in issue was part of a corrupt transaction and had entailed illegal conduct under the applicable English law. The Tribunal observed that it was of the view that:

> "the standard of proof need not be, and should not be, weakened, nor that it need be or should be strengthened. The same standard of proof, namely one based upon the balance of probability, should be applied. That standard does not require "certainty", or even "likelihood beyond a reasonable doubt". Nor does it require conclusive, direct evidence. It requires evidence, to be sure, but such evidence may be indirect or circumstantial, to the extent it is sufficient, in the context of the surrounding circumstances, to tip the balance of probability."

Similarly, in ICC Case No 8891 [(2000) 127 Journal du droit international at pages 1076, 1079] another learned ICC Tribunal concluded, by drawing on circumstantial evidence, described by the Tribunal as "indicia", that corruption had taken place. The Tribunal set out and applied the following test (translated from the original French text):

> "According to the traditional rules concerning the standard of proof, it is incumbent on the party that alleges a wrongful act to prove it. This often turns out to be difficult in practice. The illicit object is generally hidden behind contractual dispositions which appear on their face to be anodyne. That is why arbitrators often have no choice but to base themselves on indicia. Those indicia must be serious."

In the case of *Argentine Engineer v. British Company* (ICC Case No 1110) [Award of 1963 (Lagergren) (1996) 47 Yearbook of International Arbitration 47] the Sole Arbitrator Lagergren (a Judge of the International Court of Justice) held on the basis of circumstantial evidence and adverse inferences that the contracts there at issue had been entered into through corruption.

109. In the field of international investment arbitration (Investor-State Arbitration) the ICSID Tribunals (tribunals formed under the auspices of the International Centre for the Settlement of Investment Disputes) have also been alive to the difficulties that practically persist in trying to prove corruption and the consequences that must perforce have for the applicable standard of proof. In the case of *Oostergetel v. The Slovak Republic* [UNCITRAL Final Award (23 April 2012)] the Tribunal held that whilst

> "[f]or obvious reasons, it is generally difficult to bring positive proof of corruption ---------- corruption can also be proven by circumstantial evidence."

In the case of *Metal-Tech Ltd. v. Uzbekistan* (ICSID Case No. ARB/10/3, Award, 4 October 2013) the Tribunal observed that:

> "the Tribunal will determine on the basis of the evidence before it whether corruption has been established with reasonable certainty. In this context, it notes that corruption is by essence difficult to establish and that it is thus generally admitted that it can be shown through circumstantial evidence."

In the case of *Tokios Tokeles v. Ukraine* (Case No. ARB/02/18, Award, 26 July 2007) the Tribunal said that in relation to government corruption-like activities the standard of proof was whether the assertion "is more likely than not to be true", that is, balance of probabilities.

110. Similar conclusions can be drawn from the jurisprudence of the International Court of Justice which in the case of *Corfu Channel* (ICJ Rep 1949 at page 18) laid down the rule that, where an allegation is particularly difficult to prove, the party which is trying to prove the allegation at issue

> "should be allowed a more liberal recourse to inferences of fact and circumstantial evidence. This indirect evidence is admitted in all systems of law, and its use is recognized by international decisions. It must be regarded as of special weight when it is based on a series of facts linked together and leading logically to a single conclusion."

111. Even in the English law it was incisively observed by the Appellate Committee of the House of Lords in the case of *Secretary of State for the Home Department v. Rehman* [2001] UKHL 47, [2002] 1 All ER 122 that:

> "The civil standard of proof always means more likely than not. The only higher degree of probability required by the law is the criminal standard. But, as Lord Nicholls of Birkenhead explained in In re H (Sexual Abuse, Standard of Proof) (Minors) [1996] AC 563 at 586, some things are inherently more likely than others. It would need more cogent evidence to satisfy one that the creature seen walking in Regent's Park was more likely than not to have been a lioness than to be satisfied to the same standard of probability that it was an Alsatian [dog]. ---------- cogent evidence is generally required to satisfy a civil tribunal that a person has been fraudulent or behaved in some other reprehensible manner. But the question is always whether the tribunal thinks it more probable than not."

112. The present case before us is not a criminal case and nobody has prayed that respondent No. 1 or his children may be convicted by this Court of corruption, corrupt practices or money laundering, etc. The petitioners have called upon this Court mainly to examine as to whether in the matter of his explanations in respect of acquisition of the relevant properties and assets respondent No. 1 has been honest to the nation, the National Assembly and this Court or not. A lot of circumstances have become available on the record which circumstances have already been discussed in the earlier part of this judgment. Article 2(4) of the Qanun-e-Shahadat Order, 1984 reproduced above speaks of the "matters" before the court and not just the "evidence" produced and it visualizes that

there may be cases where a fact may be found by the court to exist and proved on the basis of the circumstances of the case even if no direct or positive evidence is available before it. Setting up an offshore company and concealment of ill-gotten wealth and assets behind its multiple veils of secrecy which may be extremely difficult to lift or penetrate pose new challenges to administration of justice worldwide and in the absence of direct or positive evidence such cases of corruption, corrupt practices and money laundering, etc. may be solved through strong circumstantial evidence or material. The circumstances of a given case may also convince a court or tribunal that the explanations advanced by a person trying to justify his wealth and assets held in the name of another are not true or correct which factor may impinge upon his honesty, particularly when he holds a high public office of authority. In the present case we are only seized of the issue of respondent No. 1's honesty in the constitutional context and not the allegations of corruption, corrupt practices or money laundering, etc. leveled against him and, therefore, the said aspect of the matter can validly be determined by us on the basis of the circumstances of the case as made permissible by the provisions of Article 2(4) of the Qanun-e-Shahadat Order, 1984 reproduced above. Legal sages down the ages have maintained *Jura novit curia* (the court determines for itself what the law is) or as Darling J. put it in *Gray v. Gee* (1923) 39 TLR 429, 430: "It used to be said that the common law of England resided in the breasts of His Majesty's Judges". It is by now settled that the jurisdiction of this Court under Article 184(3) of the Constitution, which has been invoked in the present case, is inquisitorial and not adversarial. The common law concept of justice, equity and good conscience now finds translated into a jurisdiction conferred upon this Court by Article 187(1) of the Constitution according to which in a case or matter pending before it this Court has the power to issue such directions, orders or decrees as may be necessary for doing complete justice. This unique and extraordinary jurisdiction has been conferred by the Constitution only upon this Court which sits at the apex of judicial administration and not upon any other court in the

country because it could be visualized that there might be cases wherein the rigours of the codified law or strict compliance of the same may create a situation which might be unjust or oppressive in the circumstances of the case. All the other courts in this country are courts of law whereas this Court is not just a court of law but also the court of ultimate justice. It is obvious that when it comes to exercise of the said jurisdiction of this Court to do complete justice a strict application of the black letter law may not stand between this Court and the noble cause of justice if the circumstances of the case so warrant.

113. 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. Respondent No. 1 has categorically distanced himself from the four properties in London by maintaining that he is not a Director, shareholder or beneficial owner of the offshore companies which own those properties. He has, however, taken up divergent and contradictory stands at different stages in his bids to show how money belonging to his family had been utilized for "purchase" of those properties. In none of such stands he had ever mentioned any investment made in real estate business in Qatar but his children had taken up a totally different stand according to which the four properties in London had been acquired through funds becoming available from a "settlement" of a real estate business in Qatar. Except for two elusive, vague and obscure statements of a gentleman from Qatar, which statements are based upon nothing but hearsay, no

independent evidence or material has been produced by respondent No. 1's children to show that there in fact was any investment in real estate business in Qatar, there in fact was anything due to the family of respondent No. 1 when that business was finally settled and the funds generated through such settlement had then in fact been utilized for acquisition of the relevant properties in London. The story about any such investment in real estate business in Qatar was not the original story of respondent No. 1's children, it had been introduced in midstream and at the end it was ditched by advancing another story and both the documents produced in support of the new story were far from being satisfactory or reliable. In different interviews, which were never denied or controverted, different members of respondent No. 1's family including his wife, sons and daughter had talked about purchasing, mortgaging or hiring of those properties on rent for which no evidence or material whatsoever had been produced by them. It is now being claimed that the said properties are owned by respondent No. 1's son namely Mr. Hussain Nawaz Sharif since the year 2006 but nothing has been produced before the Court in support of such a claim. The only document being relied upon in that respect is a Trust Deed showing Mr. Hussain Nawaz Sharif as the beneficial owner and Mariam Safdar as the trustee of those properties since the year 2006 which document is a private document not notarized by any official. It is not denied before us that the trust so created is not recorded in any official record relevant to the two offshore companies owning the said properties or in the record of the administrator of the said companies. No record of the two offshore companies or of their administrator has been produced by respondent No. 1 and his children before this Court showing any legal connection between them and the two offshore companies and their administrator or when such connection had been established, if at all. We had repeated asked the learned counsel for respondent No. 1 and his children to produce any record establishing that Mr. Hussain Nawaz Sharif became the owner of the said offshore companies in the year 2006, as claimed by him,

and that respondent No. 1 and his children had nothing to do with their ownership before the year 2006 but no such record had been produced by them despite having exclusive possession of the same, as claimed. Respondent No. 1, his wife, their children and their chief financial advisor had categorically maintained at different stages that the entire relevant record was available with them and the same would be produced before any court or forum inquiring into the allegations but that commitment or claim was never honoured. Through their Joint Further Statement filed before this Court on January 23, 2017 (Civil Miscellaneous Application No. 432 of 2017) respondents No. 7 and 8 had placed on the record a letter written to their learned counsel Mr. Salman Akram Raja by one Mr. Lawrence Radley Solicitor on January 17, 2017 maintaining therein that he had acted as a Solicitor in purchases of the relevant four properties in London between the years 1993 and 1996 and that according to his "recollection" his "instructions to purchase were not provided by any member of the Sharif family". Nothing has been produced before this Court to confirm or establish that Mr. Lawrence Radley was in fact a Solicitor, he had indeed been associated with purchases of the said properties between the years 1993 and 1996 or the letter referred to above is a genuine document. The facts of the case show, and show quite clearly, that very valuable properties had statedly been acquired by respondent No. 1's children and many businesses had been set up and run by them in different parts of the world since the time when they had no independent sources of income and respondent No. 1 and his children have miserably failed to even *prima facie* account for the same. No definite source of income has been disclosed, no bank account has been identified, no receipt has been produced, no money trail has been established and no document relating to transfer of interest in any of the companies or properties has been supplied by them and all their explanations in respect of businesses and assets are elusive and evasive at best. Apart from that the shifting stands taken, the divergent and contradictory explanations advanced and the prevarication and concealment resorted to by them at different stages of the matter

unmistakably point towards a guilty mind and conscience as observed by this Court in the case of *S. M. Hayat v. Federal Service Tribunal and 3 others* (1989 SCMR 218) in the following words:

> "It is apparent from the record of inquiry that in preliminary inquiry the appellant has categorically admitted in his statement that Mr. I. M. Tariq Supr 'B' alongwith members of F. S. Team visited his residence and he also confirmed in his cross-examination that he recognizes Mr. Imam Tariq. The appellant also admitted his travel in the car of the representative of the Textile Mills from Cyanide Factory to the Mohajir Camp Chowk alongwith Mr. Kaleem-uz-Zaman. But in his statement at a later stage the appellant has totally denied the visit of Mr. I. M. Tariq alongwith the members of F. S. Team, to his residence as well as his travel in the Mills representative's car on 22.2.1982. These contradictory statements on the part of the appellant show his guilty conscience by his own conduct which clearly makes him responsible for commission of the alleged offence beyond any doubt."

In the case of *Dr. Aftab Shah v. Pakistan Employees Cooperative Society Limited and 5 others* (2006 CLC 342) the High Court of Sindh had observed as follows:

> "15. ---------- When one stand is taken at one point of time and a different stand at another, and both stands do not reconcile with each other, then this act by itself leads to the presumption that such person does not have a genuine cause of action. The conflicting stands amount to destroying one's own cause of action and, therefore, the entire foundation of plaintiff's claim is to be treated as false."

In another case of *Asif Mowjee v. Zaheer Abbas and others* (2015 CLC 877) the High Court of Sindh had observed as under:

> "52. The stand taken by learned counsel for the Applicant is not only self-destructive but also self-clashing. Not only this the applicant is also guilty of approbation and reprobation by taking inconsistent pleas. Of course, which leads to the conclusion that the applicant [defendant No. 1 – judgment debtor] does not have any genuine case."

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.

114. It has already been mentioned in the opening part of this judgment that respondent No. 1 has held the highest public offices since the year 1981 and such offices include those of the Finance Minister, Chief Minister and Prime Minister and in one of his interviews he had stated that he had decided to disassociate himself from the family business in the year 1997 although no material has been produced before us in support of such claim. There is no denying the fact that at least between 1981 and 1997 the said respondent was actively engaged with his family business and was simultaneously enjoying the above mentioned highest public offices. It is also an admitted fact that the relevant two offshore companies own the four properties in London from the years 1993/1996 which offshore companies are statedly owned by respondent No. 1's son namely Mr. Hussain Nawaz Sharif at least since the year 2006. The dependent and non-earning children of respondent No. 1 are admittedly in possession of the said properties in London since the years 1993/1996 and, thus, it is respondent No. 1 who is deemed to be in possession of those properties since the years 1993/1996. Nothing has been produced before this Court either by respondent No. 1 or his son to show that before the year 2006 the said offshore companies and the relevant properties were owned by somebody else. It is, therefore, more likely than not that the said companies and properties were set up or taken over at a time when respondent No. 1 was holding the above mentioned highest public offices in Pakistan. His asserted business relations with Al-Thani family of Qatar and the commonly known blessings received by his businesses from the royal families of the United Arab Emirates and the Kingdom of Saudi Arabia may also point towards his public offices in Pakistan having inseparable connections with his businesses in other parts of the world. In that backdrop a serious issue arises as to whether

respondent No. 1 has been an 'ameen' while in charge of the resources of the motherland or not. Plato is universally acknowledged as one of the greatest philosophers of all times and in his book 'Republic' he had concluded many thousand years ago that for the position of the king he would prefer a philosopher over a merchant because a philosopher is a visionary thinking about the future whereas a merchant may find it impossible not to keep his mundane business and property interests in mind even when administering the republic. Plato was indeed a wise man.

115. The main relief prayed for by the petitioners through the present petitions is regarding a declaration that respondent No. 1 is not 'honest' and 'ameen' and consequently he is not qualified to be elected to or remain a member of the Majlis-e-Shoora (Parliament) and for seeking such relief a wholehearted reliance is placed upon the provisions of Article 62(1)(f) of the Constitution which are reproduced below:

> "62. (1) A person shall not be qualified to be elected or chosen as a member of Majlis-e-Shoora (Parliament) unless-
> (a) ----------
> (b) ----------
> (c) ----------
> (d) he is of good character and is not commonly known as one who violates Islamic Injunctions;
> (e) he has adequate knowledge of Islamic teachings and practices obligatory duties prescribed by Islam as well as abstains from major sins;
> (f) he is sagacious, righteous, non-profligate, honest and ameen, there being no declaration to the contrary by a court of law; and
> ----------."

It appears that while prescribing the said qualifications guidance must have been sought from the Holy Qur'an wherein the qualifications for a domestic servant indicated are "*alqavi ul ameen*" (physically strong and reliable/trustworthy) [Surah *Al-Qasas*: verse No. 26] and those for being placed over resources of the land are "*hafeez un aleem*" (reliable custodian/protector and knowledgeable) [Surah *Yusuf*: verse No. 55]. It is probably in those contexts that the qualifications of being "honest" and "ameen" prescribed in Article 62(1)(f) of the Constitution are to be understood, interpreted and applied. The reasons why such

stringent qualifications for the elected representatives found their way into the Constitution and the difficulties likely to be faced by a court or tribunal in interpreting and applying such abstract qualifications to real cases were commented upon by me in my separate concurring judgment delivered in the case of *Ishaq Khan Khakwani and others v. Mian Muhammad Nawaz Sharif and others* (PLD 2015 SC 275). In the said judgment a number of ambiguities and impracticalities were highlighted and observations were made how it was difficult for a court or tribunal to apply the above mentioned requirements of Article 62 of the Constitution. The relevant part of that judgment reads as follows:

> "Similarly clause (f) of Article 62 of the Constitution provides a feast of legal obscurities. It lays down that a person shall not be qualified to be elected or chosen as a member of Majlis-e-Shoora (Parliament) unless:
>
> > "(f) he is sagacious, righteous and non-profligate and honest and ameen[, there being no declaration to the contrary by a court of law]."
>
> Whether a person is 'sagacious' or not depends upon a comprehensive study of his mind which is not possible within the limited scope of election authorities or courts involved in election disputes. The acumen or sagacity of a man cannot be fathomed. The same is true of being 'righteous' and 'non-profligate'. These factors relate to a man's state of mind and cannot be properly encompassed without a detailed and in-depth study of his entire life. It is proverbial that Devil himself knoweth not the intention of man. So, why to have such requirements in the law, nay, the Constitution, which cannot even be defined, not to talk of proof. The other requirement qua being 'honest' and 'ameen' have a clear reference towards the Holy Prophet's (p.b.u.h.) attributes as 'Sadiq' and 'Ameen'. This as well as other requirements envisaged by the preceding clauses of Article 62, if applied strictly, are probably incorporated in the Constitution to ensure that only the pure and pious Muslims (living upto the standard of a prophet of God Almighty) should be elected to our Assemblies so that, as provided in the Preamble, the sovereignty of God Almighty could be exercised by them in the State of Pakistan as a sacred trust. But, instead of being idealistic, the Constitution of a country should be more practicable. The line of prophethood has long been discontinued and now we are left with sinful mortals. The political arena in our country is full of heavyweights whose social and political credentials outweigh their moral or religious credentials. Even the electorate in our country has also repeatedly demonstrated their preference for practical wisdom and utility over religious puritanism. Thus, the inclusion of unrealistic and ill-defined requirements in the Basic Law of the Land renders the same impracticable and detracts from the sanctity which the Constitution otherwise deserves."

That judgment had concluded with the following remarks made by me which may be of some relevance and interest in the present context:

> "4. It is unfortunate that the nightmares of interpretation and application apprehended and anticipated by me as a young lawyer more than a quarter of a century ago are presently gnawing the Returning Officers, Election Tribunals and the superior courts of the country in the face but those responsible for rationalizing the troublesome provisions of the Constitution through appropriate amendments of the Constitution have slept over the matter for so long and they still demonstrate no sign of waking up. As long as the highlighted obscurities and impracticalities are not addressed and remedied nobody should complain that the Returning Officers, Election Tribunals and the superior courts of the country are generally unsuccessful in catching the candidates with bad character or antecedents in the net of Articles 62 and 63 of the Constitution, particularly when the electorate is quite happy to elect such candidates with sweeping majorities while in full knowledge of their character and antecedents. Let us not shy away from acknowledging the hard reality that there is a disconnect between our constitutional morality and our political ethos. There are no qualms of conscience when through a constitutional and legal process a person is ousted from an elected chamber on account of his academic degree being fake and forged but he is returned by the electorate to the same chamber with a bigger majority and he triumphantly re-enters that chamber while flashing a sign of victory. The sign so shown or flaunted proclaims victory of political expediency over constitutional values and such attitudes of our society call for serious reflection and soul-searching.
>
> 5. This reminds me of George Bernard Shaw who had observed that "Democracy is a device that ensures we shall be governed no better than we deserve." Abraham Lincoln had once remarked: "Let me not be understood as saying that there are no bad laws, nor that grievances may not arise for the redress of which no legal provisions have been made. I mean to say no such thing. But I do mean to say that although bad laws, if they exist, should be repealed as soon as possible, still, while they continue in force, for the sake of example they should be religiously observed." If the constitutional provisions discussed above cannot be put to practical use due to their obscurities or impracticalities then we may pay heed to Baron de Montesquieu who had declared that "Useless laws weaken necessary laws". It may be well to remember that laws and institutions, like clocks, must occasionally be cleaned, wound up and set to true time. Even the old bard William Shakespeare had written in 'Measure for Measure':
>
> > "We must not make a scarecrow of the law,
> > Setting it up to fear the birds of prey,
> > And let it keep one shape, till custom make it,
> > Their perch and not their terror."
>
> In the end I may observe that insistence upon complete virtue in an ordinary mortal may be unrealistic and puritanical behaviour of an ordinary human may have a tendency of making him inhuman. It may be true that humans are the best of Almighty Allah's creations but the divine structural design never intended an ordinary human being to be perfect and free from all failings, frailties or impurities. There may, thus, be some food for thought

> in what Abraham Lincoln had said about ordinary folks when he had observed that "It has been my experience that folks who have no vices have very few virtues.""

116. It may be true that the provisions of Article 62(1)(f) and the likes of them had been inserted in the Constitution through an amendment by an unrepresentative regime of a military ruler but at the same time it is equally true that all the subsequent democratic regimes and popularly elected Parliaments did nothing either to delete such obscure provisions from the Constitution or to define them properly so that any court or tribunal required to apply them may be provided some guidance as to how to interpret and apply them. Be that as it may the fact remains that the said provisions are still very much a part of the Constitution and when they are invoked in a given case the courts and tribunals seized of the matter have no other option but to make some practical sense of them and to apply them as best as can be done. Before application of those provisions to real cases it is imperative to understand as to why such provisions were made a part of the Constitution and where do they stand in the larger design of the Constitution.

117. There is no denying the fact that it was in the name of Islam that Pakistan emerged on the map of the world and the *grund norm* of the new State and its society, which came to be known as the Ideology of Pakistan, was nothing but Muslim faith. Before embarking upon the task of framing of our first Constitution this ideology was translated into words in precise form by the first Constituent Assembly of Pakistan in a resolution passed by it in the year 1949. That resolution, known as the "Objectives Resolution", *inter alia*, provided as follows:

> "Whereas sovereignty over the entire universe belongs to Allah Almighty alone and the authority which He has delegated to the State of Pakistan, through its people for being exercised within the limits prescribed by Him is a sacred trust;"
>
> "Wherein the State shall exercise its powers and authority through the chosen representatives of the people;"

> "Wherein the principles of democracy, freedom, equality, tolerance and social justice as enunciated by Islam shall be fully observed;"
>
> "Wherein the Muslims shall be enabled to order their lives in the individual and collective spheres in accordance with the teachings and requirements of Islam as set out in the Holy Quran and the Sunnah;"

In the successive Constitutions that were adopted by the people of Pakistan from time to time the principles and provisions of that Objectives Resolution were added as a Preamble thereto till the year 1985 when, through insertion of Article 2A in the Constitution of the Islamic Republic of Pakistan, 1973, it was categorically provided that "The principles and provisions set out in the Objectives Resolution reproduced in the Annex are hereby made substantive part of the Constitution and shall have effect accordingly". There are certain remarkable Islamic features of the Objectives Resolution, now a substantive part of our Constitution, which are hard to escape notice. For instance a new dimension has been given therein to the concept of sovereignty of the Parliament. Although sovereignty of Almighty Allah over the entire universe has been acknowledged yet the State has been recognized as the delegatee thereof which is to exercise that sovereignty through chosen representatives of the people within the limits prescribed by Almighty Allah as a sacred trust. Thus, while conceding sovereignty to a democratically elected Parliament the Constitution simultaneously circumscribes that sovereignty by confining it to the limits prescribed by Almighty Allah. This is in exact conformity with a Muslim's belief that he may be free to make his own choices in life but he may not overstep the limits prescribed by his Creator. Looked at in this perspective the Pakistani Constitution, conforming to the Islamic perceptions, recognizes democracy as the only mode of governance, but a democracy which does not come in conflict with a Muslim's faith. To an outsider this may appear to be enigmatic but we the Muslims of Pakistan have no difficulty in understanding and applying this concept. It, therefore, fits into the scheme when the Objectives Resolution refers to "the principles of democracy, freedom, equality, tolerance and social justice *as enunciated by Islam*" and envisions a State "wherein the Muslims

shall be enabled to order their lives in the individual and collective spheres *in accordance with the teachings and requirements of Islam* as set out in the Holy Quran and the Sunnah". The scheme, unmistakably, is the establishment of a modern and democratic Islamic State in fulfillment of the wishes of the Muslims of this region and the manifestations of this scheme are to be found spread over the entire Constitution of Pakistan. Article 1(1) of the Constitution of the Islamic Republic of Pakistan, 1973 provides that "Pakistan shall be a Federal Republic to be known as the Islamic Republic of Pakistan, hereinafter referred to as Pakistan". It may be pertinent to point out that Pakistan has been the first country in modern history to introduce the concept of an *"Islamic Republic"* which was later on also adopted by some other Muslim countries. Not only the name of the country itself but also the political system of its governance incorporated therein shows the wishes of its people to blend modernity with their faith. Article 2 of the Constitution, providing that "Islam shall be the State religion of Pakistan", again highlights the same theme and accomplishes the very object of creation of Pakistan. Under Article 41(2) of the Constitution the President, who is to be the Head of State of this Islamic Republic, has to be a Muslim. Under Article 50 of the Constitution the Parliament of the State is to be called the "Majlis-e-Shoora" after the Islamic traditions. It is in this context that the qualifications prescribed for membership of the Majlis-e-Shoora (Parliament) or a Provincial Assembly and also for holding some other high offices of the State have a distinct Islamic overtone and the following provisions of Article 62 of the Constitution bear an ample testimony to that:

> "(d) he is of good character and is not commonly known as one who violates Islamic Injunctions;
>
> (e) he has adequate knowledge of Islamic teachings and practices obligatory duties prescribed by Islam as well as abstains from major sins;
>
> (f) he is sagacious, righteous an non-profligate and honest and ameen, there being no declaration to the contrary by a court of law;
>
> (g) he has not been convicted for a crime involving moral turpitude or for giving false evidence;

> (h) he has not, after the establishment of Pakistan, worked against the integrity of the country or opposed the Ideology of Pakistan:
>
> Provided that the disqualifications specified in paragraphs (d) and (e) shall not apply to a person who is a non-Muslim, but such a person shall have good moral reputation;"

These qualifications for the Federal and Provincial legislators and high officers of the State may be quite onerous and hard to meet but, at the same time, understandable if it is kept in mind that such "chosen representatives of the people" and officers, while exercising the powers and authority of the State, are to exercise the sovereignty of Almighty Allah as His delegatees by way of a "sacred trust". In the context of the issue of corruption by elected representatives in the Majlis-e-Shoora (Parliament) or Provincial Assemblies it may be observed that a faithful adherence to the provisions of Article 62 of the Constitution provides a recipe for cleansing the fountainhead of authority of the State so that the trickled down authority may also become unpolluted. If this is achieved then the legislative and executive limbs of the State are purified at the top and such purity at the top necessarily trickles down to the bottom as well. This recipe ensures clean leadership at the top which may legislate for and administer this "land of the pure" (Pakistan) as true delegatees of the sovereignty and authority of Almighty Allah. That appears to be the constitutional design and as long as the above mentioned provisions are a part of the Constitution the courts of the country are under a sworn commitment to enforce them.

118. The courts and tribunals in the country seized of issues regarding interpretation and application of the provisions of Article 62 of the Constitution have generally been quite circumspect and careful but over time jurisprudence on such issues has evolved and the potential and purpose of the said provisions is being grasped and achieved with a realization that notwithstanding many obscurities and impracticalities ingrained in such provisions the same have to be interpreted, applied and enforced as a command

and mandate of the Constitution. In some cases persons were held not to be qualified for being candidates or disqualified from being or remaining as members of the Majlis-e-Shoora (Parliament) or Provincial Assemblies where they had claimed to possess educational qualifications which were fake and bogus, where they had practised cheating and fraud in obtaining the requisite educational qualifications or where they had submitted false declarations and had suppressed the information regarding their holding dual nationalities and a reference in this respect may be made to the cases of *Muhammad Khan Junejo v. Fida Hussain Dero and others* (PLD 2004 SC 452), *Nawabzada Iftikhar Ahmad Khan Bar v. Chief Election Commissioner Islamabad and others* (PLD 2010 SC 817), *Muhammad Rizwan Gill v. Nadia Aziz and others* (PLD 2010 SC 828), *Rana Aftab Ahmad Khan v. Muhammad Ajmal and another* (PLD 2010 SC 1066), *Haji Nasir Mehmood v. Mian Imran Masood and others* (PLD 2010 SC 1089), *Mudassar Qayyum Nahra v. Ch. Bilal Ijaz* (2011 SCMR 80), *Syed Mehmood Akhtar Naqvi v. Federation of Pakistan and others* (2012 SCMR 1101), *Malik Iqbal Ahmad Langrial v. Jamshed Alam and others* (PLD 2013 SC 179), *Mian Najeeb-ud-Din Owasi and another v. Amir Yar Waran and others* (PLD 2013 SC 482), *Sadiq Ali Memon v. Returning Officer and others* (2013 SCMR 1246), *Abdul Ghafoor Lehri v. Returning Officer and others* (2013 SCMR 1271), *Muhammad Khan Junejo v. Federation of Pakistan through Secretary, M/o Law, Justice and Parliamentary Affairs and others* (2013 SCMR 1328), *General (R.) Pervez Musharraf v. Election Commission of Pakistan and another* (2013 CLC 1461), *Allah Dino Khan Bhayo v. Election Commission of Pakistan, Islamabad and others* (2013 SCMR 1655), *Malik Umar Aslam v. Mrs. Sumaira Malik and others* (2014 SCMR 45), *Gohar Nawaz Sindhu v. Mian Muhammad Nawaz Sharif* (PLD 2014 Lahore 670), *Muhammad Ijaz Ahmad Chaudhry v. Mumtaz Ahmad Tarar and others* (2016 SCMR 1), *Muhammad Siddique Baloch v. Jehangir Khan Tareen and others* (PLD 2016 SC 97) and *Rai Hassan Nawaz v. Haji Muhammad Ayub & others* (PLD 2017 SC 70).

119. In all the above mentioned cases the relevant courts and tribunals were cognizant of the constitutional scheme peculiar to the Islamic Republic of Pakistan wherein the delegated sovereignty of Almighty Allah is to be exercised by the chosen representatives of the people as a sacred trust and, hence, the need to ensure that only those who are 'honest' and 'ameen' enter into or remain in the highest elected chambers. In the case of *Nawabzada Iftikhar Ahmad Khan Bar v. Chief Election Commissioner Islamabad and others* (PLD 2010 SC 817) this Court had observed as follows:

> "14. The Parliament of any country is one of its noblest, honourable and important institutions making not only the policies and the laws for the nation but in fact shaping and carving its very destiny. And here is a man who being constitutionally and legally debarred from being its member, managed to sneak into it by making a false statement on oath and by using bogus, fake and forged documents polluting the piety of this pious body. His said conduct demonstrates not only his callous contempt for the basic norms of honesty, integrity and even for his own oath but also undermines the sanctity, the dignity and the majesty of the said august House. He is guilty, inter alia, of impersonation --- posing to be what he was not i.e. a graduate. He is also guilty of having been a party to the making of false documents and then dishonestly using them for his benefit knowing them to be false. He is further guilty of cheating --- cheating not only his own constituents but the nation at large."

Similarly in the case of *Muhammad Rizwan Gill v. Nadia Aziz and others* (PLD 2010 SC 828) this Court had observed as under:

> "13. And it was to preserve the pureness, the piety and the virtuousness of such-like eminent and exalted institutions that, inter-alia, Articles 62 and 63 of the Constitution and section 99 of the Representation of the People Act, 1976 had declared that, amongst others, the persons who were not of good character; who indulged in commission of major sins; who were not honest; who were removed, dismissed or compulsorily retired from service of Pakistan; who had obtained loans from banks and had not re-paid the same or who had indulged in corrupt practices during the course of elections, would not be allowed to pollute the clearness of these legislative institutions."

In the case of *Muhammad Ijaz Ahmad Chaudhry v. Mumtaz Ahmad Tarar and others* (2016 SCMR 1) it was held by this Court that on account of his submitting a false declaration about his educational qualification

> "the appellant failed the requirements of rectitude and integrity prescribed in Article 62(1)(f) of the Constitution."

The case of *Muhammad Siddique Baloch v. Jehangir Khan Tareen and others* (PLD 2016 SC 97) was no different and this Court had observed therein as follows:

> "26. The loss of qualification under Article 62(1)(f) of the Constitution has been visited with removal from elected office under the Constitution in a number of cases including ----------. Weighty reasons have been assigned for adopting and implementing the constitutional mandate as a bar on membership in Parliament. Firstly, the qualifications of a candidate set out in Article 62 of the Constitution are a sine qua non for eligibility to be elected as a Member of Parliament. No time limit for eligibility on this score is given in the Constitution. A person who is untruthful or dishonest or profligate has no place in discharging the noble task of law making and administering the affairs of State in government office. Such faults in character or disposition, if duly established, cannot be treated as transient for the purpose of reposing trust and faith of the electorate and the Constitution in the holder of an elected office under the Constitution. The trusteeship attendant upon the discharge of every public office under the Constitution, whether Legislative, Executive or Judicial is a universally recognized norm. However, our Constitution emphasizes upon it expressly for an elected parliamentary office. The Constitutional norm must be respected and therefore implemented."

The latest reported case on the subject is that of *Rai Hassan Nawaz v. Haji Muhammad Ayub & others* (PLD 2017 SC 70) wherein this Court had held as under:

> "7. An honest and truthful declaration of assets and liabilities by a returned candidate in his nomination papers furnishes a benchmark for reviewing his integrity and probity in the discharge of his duties and functions as an elected legislator. ----------
>
> 8. ---------- Where assets, liabilities, earnings and income of an elected or contesting candidate are camouflaged or concealed by resort to different legal devices including *benami*, trustee, nominee, etc. arrangements for constituting holders of title, it would be appropriate for a learned Election Tribunal to probe whether the beneficial interest in such assets or income resides in the elected or contesting candidate in order to ascertain if his false or incorrect statement of declaration under Section 12(2) of the ROPA is intentional or otherwise. ---------- It is to ensure integrity and probity of contesting candidates and therefore all legislators. ----------
>
> 15. The object of Section 76A *ibid* is clearly to promote public interest by ensuring that elected public representatives have untainted financial credentials of integrity, probity and good faith. ----------
>
> 16. Indeed, honesty, integrity, probity and *bona fide* dealings of a returned candidate are matters of public interest because these standards of rectitude and propriety are made the touchstone in the constitutional qualifications of legislators laid

> down in Articles 62 and 63 of the Constitution of Islamic Republic of Pakistan."

120. There may possibly be yet another reason why the qualifications regarding being 'honest' and 'ameen' and the likes of them had to be incorporated in Article 62 of the Constitution of our country through an amendment of the Constitution. In the parts of the world where democracy is entrenched for a long time the requirements of honesty, integrity, rectitude and probity in those who aspire for or hold representative public offices or other positions of high public authority are well understood and insisted upon. In such parts of the world public morality is treated differently from private morality and a person in high public office found or caught indulging in an immoral behaviour or undesirable conduct is seldom spared and that is why in order to avoid the ensuing shame and dishonour he/she, more often than not, resigns or withdraws from the scene on his/her own. Unfortunately that kind of character is generally not demonstrated in our part of the world as yet and that is why qualifications like 'honest' and 'ameen' and the likes of them had been codified and incorporated in our Constitution and the relevant election laws so as to provide a constitutional and legal basis and mechanism for getting rid of such elements. Lack of honesty, suppression of truth and conduct unbecoming of a gentleman have often been considered in the civilized world as valid grounds for high public officers or personalities to quit the office or scene voluntarily and some of such instances are mentioned below:

> In Iceland Prime Minister Sigmundur David Gunnlaugsson resigned on April 05, 2016 when the **Panama Papers**, published in newspapers around the world, showed that the 41-year-old premier and his wife had investments placed in the British Virgin Islands, which included debt in Iceland's three failed banks. The International Consortium of Investigative Journalists (ICIJ) had uncovered that he and his wife had an offshore account to manage an inheritance.
>
> In Spain the acting Industry Minister Jose Manuel Soria resigned after his alleged links to offshore dealings emerged through the **Panama Papers**. After initially denying having links to tax havens he resigned on April 15, 2016.
>
> In the United States of America President Richard M. Nixon had resigned from his office after it was established that he had

misled the nation and the concerned authorities in the matter of involvement of his administration in the Watergate scandal and its subsequent cover-up. President Bill Clinton narrowly survived impeachment on the ground of lying in the matter of his sexual relationship with an intern in his office. Representative (R-GA) and leader of the Republican Revolution of 1994 resigned from the House of Representatives after admitting in 1998 to having had an affair with his intern while he was married to his second wife. In the night of July 18, 1969, shortly after leaving a party on Chappaquiddick Island, Senator Edward "Ted" Kennedy of Massachusetts drove an Oldsmobile off a wooden bridge into a tide-swept pond. Kennedy escaped the submerged car but his passenger, 28-year-old Mary Jo Kopechne, did not. The senator did not report the fatal car accident for 10 hours. The incident on Chappaquiddick Island helped to derail his presidential hopes and he pulled out of the race. Strom Thurmond, Senator (R-SC), a noted segregationist, fathered a child, Essie Mae Washington-Williams, with a 15-year-old African American in the year 1925 who was employed by the Thurmond family. The embarrassment caused by the scandal forced him to resign. Anthony Weiner (D-NY), a newly married U.S. Representative, admitted to sending sexually suggestive photographs of himself to several women through his Twitter account. He resigned from the Congress in June 2011. Elliot Spitzer, a Democratic governor of New York, had patronized an elite escort service run by Emperors Club VIP. The New York Times broke the story in March 2008 and the ensuing scandal led to Spitzer's resignation as Governor within the next few days. John Edwards, Senator (D-NC) admitted to an extramarital affair with actor and film producer Rielle Hunter, which produced a child, seriously undercutting his 2008 presidential campaign. Bob Livingston, Representative (R-LA) called for resignation of Bill Clinton and when his own extramarital affairs were leaked his wife urged him to resign and urged Clinton to do likewise. Livingston announced that he would vacate his House seat in May 1999 and withdrew his candidacy for the office of Speaker.

In the United Kingdom Andrew Mitchell, Conservative government's Chief Whip resigned after admitting swearing at the police at the gates of Downing Street, London. Chris Huhne, Energy Secretary, resigned in February 2012 and pleaded guilty to the charge of perverting the course of justice. He was clocked speeding on the road but to avoid a driving ban he falsely said that it was his wife who was driving. In the Members of Parliament expenses scandal many claimed that expenses were legal and within the rule but in the words of David Cameron they were not always up to "highest ethical standards". Michael Martin, Speaker at the time, made efforts to cover up the scandal resulting in him being forced to resign in January 2009. He was the first Speaker in the last 300 years to be forced to resign. Ron Davies, Secretary of State for Wales, resigned in October 1998 after being robbed by a man he met at Clapham Common and then lying about it. Clapham Common is a known gay meeting place in London. Scotland's First Minister Henry McLeish resigned in November 2001 when he was found to have sub-let a part of his constituency office in Glenrothes, in Fife, and had failed to register the income he received with the House of Commons authorities. David McLetchie CBE, Member of the Scottish Parliament and leader of the Scottish Conservative and Unionist Party, was forced to resign in the year 2005 after claiming the highest taxi expenses of any Member of the Scottish Parliament. Northern Ireland Minister Michael Mates resigned in the year 1993 over his links with fugitive tycoon Asil Nadir. Peter Mandelson, a Cabinet Minister, bought a home in Notting Hill in

the year 1996 partly with an interest-free loan of £373,000 from Geoffrey Robinson, a cabinet colleague and millionaire whose business dealings were subject to an inquiry by Mandelson's department. Mandelson contended that he had deliberately not taken part in any decisions relating to Robinson. However, he had not declared the loan in the Register of Members' Interests and he resigned in December 1998. In January 2001 Mandelson resigned from the Government for a second time following accusations of using his position to influence a passport application. He had contacted Home Office Minister Mike O'Brien on behalf of Srichand Hinduja, an Indian businessman who was seeking British citizenship, and whose family firm was to become the main sponsor of the "Faith Zone" in the Millennium Dome. Jeffrey Howard Archer, Baron Archer of Weston-super-Mare's perjury trial began on 30 May 2001, a month after one Monica Coghlan's death in a road traffic accident. One Ted Francis claimed that Archer had asked him to provide a false alibi for the night Archer was alleged to have been with Monica Coghlan. Angela Peppiatt, Archer's former personal assistant, also claimed Archer had fabricated an alibi in the 1987 trial. Archer resigned.

In Japan in June 2010 Yukio Hatoyama announced his resignation as the Prime Minister before a meeting of the Japanese Democratic Party. He cited breaking a campaign promise to close an American military base on the island of Okinawa as the main reason for the move. Toshikatsu Matsuoka, the agriculture minister, committed suicide in May 2003 after being accused of misusing political funds. Akira Amari, Economy Minister, resigned in the year 2016 after admitting receipt of money from a construction company executive which he claimed to have received as political donation. Trade Minister Obuchi and Justice Minister Matsushima resigned in October 2014 when Obuchi was accused of funneling campaign money to her sister and brother-in-law and to improperly subsidizing entertainment junkets for supporters whereas Matsushima stepped down for improperly distributing more than $100,000 worth of paper fans to constituents.

Premier Barry O'Farrell, Minister for Western Sydney, Australia resigned in April 2014 after a corruption inquiry obtained a handwritten note that contradicted his claims that he had not received a $3000 bottle of wine from the head of a company linked to the Obeid family. The Independent Commission Against Corruption heard that Mr. O'Farrell was sent the Penfolds Grange Hermitage by Nick Di Girolamo as a congratulatory gift following his March 2011 election victory.

In the Czech Republic Prime Minister Peter Necas resigned in June 2013 after prosecutors charged his chief of staff with corruption and abuse of power. The Prime Minister's chief of staff, Jana Nagyova, was suspected of bribing the former MPs with offers of posts in state-owned firms. It is alleged that this was in exchange for them giving up their parliamentary seats. Ms. Nagyova - a close colleague of Mr. Necas for nearly a decade - was also suspected of illegally ordering military intelligence to spy on three people.

Although President Chen Shui-bian of Taiwan wanted to see a strong and independent Taiwan his family's (and his own) lack of self control managed to undermine many of his positions. His son-in-law was caught money laundering and insider trading, his wife wired over $21 million to various banks in the world, and he was arrested after his resignation for embezzlement of funds and receiving bribes.

When persons in high public offices brazenly and unabashedly cling on to offices or power despite having been involved or implicated in serious scandals of corruption or immoral conduct impairing their high moral authority then the only way to oust or drive them out is to provide for a legal mechanism for their ouster and this is probably why in our country suitable provisions had been introduced in Article 62 of the Constitution and the relevant election laws through appropriate amendments. For a court or tribunal to get involved in such matters may not be the most desirable thing to do but as long as the Constitution and the law command or warrant such intervention there may not be any occasion for them to shy away from performance of such duty.

121. In the above mentioned case of *Ishaq Khan Khakwani and others v. Mian Muhammad Nawaz Sharif and others* (PLD 2015 SC 275) I had described the words “honest” and “ameen” appearing in Article 62(1)(f) of the Constitution as obscure and impracticable and had also talked about the nightmares of interpretation and application that they involved. However, as the Majlis-e-Shoora (Parliament) has so far not found any time to consider the said issue, therefore, the courts in the country are under an obligation not only to make some practical sense of those words by suitably interpreting them as clearly as is possible and practicable but also to apply them to real cases without losing their spirit and utility. An appropriate and safe approach towards interpretation of words used in the realm of morality which are not defined is to adopt a limiting and restrictive approach and this is what had been done by a Full Bench of the High Court of Balochistan in the case of *Molvi Muhammad Sarwar and others v. Returning Officer PB-15, Musa Khail and others* (2013 CLC 1583). Writing for the Full Bench in that case Qazi Faez Isa, CJ (now an Honourable Judge of this Court) had observed as follows:

> “12. Section 12(2)(a) of the Representation of the People Act, 1976 ("the Act") stipulates that every nomination form shall be accompanied by a declaration made on a solemn affirmation by the person seeking to contest elections, that, he/she, "fulfils the

qualification specified in Article 62 and is not subject to any of the disqualifications specified in Article 63 or any other law". Section 99(1)(d) of the Act requires a candidate to be of "good character" and one who does not violate Islamic Injunctions. Section 99(1)(e) requires a candidate to abstain "from major sins". Section 99(1)(f) requires him to be "sagacious, righteous, non-profligate, honest and ameen". Section 99(1)(d) of the Act is identical to Article 62(1)(d) of the Constitution, and section 99(1)(e) of the Act is identical to Article 62(1)(e) of the Constitution, whereas section 99(1)(f) of the Act is similar to Article 62(1)(f) of the Constitution. Article 62 of the Constitution commences by stating that, "a person shall not be qualified to be elected or chosen" as a Member of Parliament unless he complies with the provisions of Article 62. The framers of the Constitution wanted parliamentarians to possess high moral integrity and prescribed certain pre-conditions for them.

13. A person, who is of good character, does not violate Islamic Injunctions, abstains from major sins, is sagacious, righteous, non-profligate, and honest and ameen may be too high a qualification-bar to surmount. Moreover, sincere and practising Muslims in their humility, as slaves of God, may be reluctant to proclaim their sagacity, righteousness and honesty ever fearful that they fall short; whilst on the other hand lesser beings boldly swearing theirs. We are also cognizant of the fact that the language of Articles 62(1)(d), (e) and (f) of the Constitution (which is identical/similar to the language of sections 99(1)(d), (e) and (f) of the Act) is very wide and generalized, and may therefore be abused.

14. However, the present case is not one involving any subjective assessment of the stipulated criteria in Article 62 of the Constitution. The Hon'ble Supreme Court has decided that the petitioner was not qualified to contest the 2008 General Elections, but he did so, was elected, and became a Member of the Balochistan Assembly and a Minister in the Cabinet. The petitioner gained an advantage which he was not otherwise entitled to. And as a Member of the Assembly and a Cabinet Minister the petitioner diverted to his personal use funds from the public exchequer. The petitioner used moneys from the Provincial Consolidated Fund and such private use of public money was categorized as a 'development scheme'. Needless to state money for the schooling of ones own children and family members cannot be dressed up as a 'development scheme' and pocketed.

15. In view of the above mentioned conduct of the petitioner he cannot be stated to be of good character or one who does not violate Islamic Injunctions or who is righteous or honest or ameen. Articles 62(1)(d), (e) and (f) of the Constitution and sections 99(1)(d), (e) and (f) of the Act forbid such a person to be elected or chosen as a Member of Parliament. The petitioner however audaciously stated on oath that he "fulfils the qualifications specified in Article 62 and is not subject to any of the disqualifications specified in Article 63 or any other law". Simply put, the petitioner lied.

16. Lies fall into two different categories, those uttered to deceive and to gain an advantage, in the present case to be able to contest elections, and innocent lies without malice or any intended deception and where no benefit or gain accrues. Almighty Allah states in the Holy Qur'an "... break not the oaths after you have confirmed them" (Surah 16, An-Nahl, Verse 91). "And be not like her who undoes the thread which she has spun after it has become strong, by taking your oaths a means of

deception among yourselves..." (Surah 16, An-Nahl, Verse 92). "And make not your oaths, a means of deception among yourselves, lest a foot may slip after being firmly planted, and you may have to taste the evil of having hindered from the Path of Allah and yours will be a great torment" (Surah 16, An-Nahl, Verse 94). "... Whosoever breaks his pledge, breaks only to his own harm, and whosoever fulfils what he has covenanted with Allah, He will bestow on him a great reward" (Surah 48, Al-Fath, Verse 10). "Allah will not punish you for what is unintentional in your oaths, but He will punish you for your deliberate oaths" [if false] (Surah 5, Al-Mai'dah, Verse 89). Whilst liars are castigated the doors of Heaven open to the truthful. "And those who keep their trusts and covenants... shall dwell in Paradise" (Surah 70, Al-Ma'arij, Verses 32-35). "Those who are faithfully true to their trusts and to their covenants ... who shall inherit Paradise" (Surah 23, Al-Mu'minun, Verses 8-11). "Allah said: 'This is a Day on which the truthful will profit from their truth" (Surah 5, Al-Maidah, Verse 119). "0 you who believe! Be afraid of Allah, and be with those who are true" (Surah 9, At-Taubah, Verse 119).

17. The cited provisions from the Constitution and the Act may however be misused for ulterior motives. For instance, a Muslim may not be saying his/her prayers or fasting and it be alleged that he/she is not qualified to contest elections. The Creator in His Infinite Wisdom and Mercy has created the distinction between those matters which do not adversely affect others and those that do; two separate obligations or huqooq, those that a person owes to others and those which God demands of man, respectively Huqooq-ul-lbad and Huqooq-ul-Allah. In the Huqooq-ul-lbad category are obligations owed to fellow men and women, such as not gaining an advantage on the basis of fraud. The Huqooq-ul-Allah category includes rituals, such as fasting, praying and performing Hajj. The non-observance of a ritual of the Faith is a matter between the created (abd or slave) and the Creator (Allah Taa'la or Almighty God). Almighty Allah tells us through the Holy Qur'an, "There is no compulsion in religion" (Surah 2, Al-Bakrah, Verse 256). The Messengers of Almighty Allah were given the task to simply convey the Message (Surah 3, Al-Imran, Verse 20 and Surah 5, Al-Mai'dah, Verse 99). Whilst the people may or may not abide by the prescriptions of the Faith they do not have the liberty to violate the rights of others. Since, Articles 62(1)(d), (e) and (f) of the Constitution and sections 99(1)(d), (e) and (f) of the Act refer to Islam, therefore, these may be interpreted in the light of Shariah. A Muslim may or may not be saying his/her prayers and may not be fasting in the month of Ramadan, but these are matters which, in the light of Shariah, cannot be investigated into either by the State or by any individual. Islam does not stipulate punishment in this world for non-observance of rituals; these are matters within the exclusive domain of Almighty Allah. Therefore, by analogy non-observance of rituals by a man or woman cannot be made a pretext to exclude him/her from Parliament. To hold otherwise would be in negation of Islam, and the Constitution. Article 277(1) of the Constitution requires that, "All existing laws shall be brought in conformity with the Injunctions of Islam." Consequently, if Articles 62(1)(d), (e) and (f) of the Constitution and Sections 99 (1) (d), (e) and (f) of the Act are interpreted on the touchstone of Islamic Shariah there remains no doubt that personal matters of the Faith remain immune from examination or consequence in this world.

18. However, the provisions of the Constitution and the Act must be given full effect to when attending to the rights and obligations due to the people or Huqooq-ul-Ibad. Such an

> interpretation is in accordance with the language of the Constitution and the Act, and does not conflict with what Almighty Allah states in the Holy Qur'an nor the directions/teachings of Prophet Muhammad (peace and blessings be upon him). The petitioner gained entry into the Balochistan Assembly deceitfully; by violating the Act and the Constitution. Islam requires that a person abides by the laws of the place he/she lives. In addition, Islam does not permit encroachment upon the rights of others. By putting himself forward as a candidate, when the petitioner was not qualified, he violated the law, and the rights of those who had abided by the law. The rights of the voters too were violated as they were deceived into believing that he had the requisite educational qualifications. The petitioner also lied on oath, and gained an advantage by his lie, which is yet another contravention of Islam's stipulated rights of the people or Huqooq-ul-Ibad. The petitioner also diverted public funds for his personal use, which neither the law nor Islam permits. The petitioner, therefore, to use the language of the Constitution, cannot be stated to be qualified to be elected or chosen as a member of Majlis-e-Shoora (Parliament).
>
> 19. The Hon'ble Tribunal held that, "the petitioner, does not/did not fulfil the qualifications that are provided in Article 62 of the Constitution of Islamic Republic of Pakistan for a candidate to fulfil while going to contest the elections." The Hon'ble Tribunal further held that, "Similarly, the allegation of payment of more than Rs. 2,281,000/- (Rupees Two Million Two Hundred Eighty One Thousand Only) to his two sons and other relatives is again adversely affects the bona fides, militates and offends the claim of respondent No.1 [petitioner herein] being Ameen, sagacious, truthful an non-profligate." We are in complete agreement with the findings of the Hon'ble Tribunal and the judgment of the Hon'ble Tribunal does not suffer from any illegality."

In an earlier case of *Obaidullah v. Senator Mir Muhammad Ali Rind and 2 others* (PLD 2012 Balochistan 1) the same Honourable Chief Justice of the High Court of Balochistan had written for a Division Bench as under:

> "12. There is also another aspect to consider. In view of the convictions of Mr. Rind for corruption and embezzling/stealing from the public exchequer, which allegations he has accepted, the question arises whether, being a Muslim, he can be categorized to be "of good character" or someone who "is not commonly known as one who violates Islamic Injunctions" and thus attract the bar contained in Article 62(1)(d) of the Constitution. This provision has not been changed by the Eighteenth Amendment. The disqualification under this provision is not time-related, but perpetual. Quranic teachings promote an ethical framework for human behaviour. Almighty Allah describes believers as, "Those who are faithfully true to their Amanat and to their covenants" (Surah al-Mu'minun, 23:8). The Almighty directs, "...give full measure and full weight with equity, and defraud not people of their things and commit not iniquity in the earth, causing corruption." (Surah Hud, 11.85). Theft or misappropriating or converting to ones own use property given in trust or amanat is haram and a hadd according to the Quran and Sunnah. Allah has condemned this action and decreed an appropriate punishment for it (Surah al-Maa'idah, 5:38). The Prophet (peace and

blessings of Allah be upon him) cursed the thief because he is a corrupt element in society, and if he is left un-punished, his corruption will spread and infect the body of the ummah (Bukhari, al-Hudood, 6285). What indicates that this ruling is definitive is that fact that a Makhzoomi noblewoman stole at the time of the Prophet (peace and blessings of Allah be upon him), and, Usamah ibn Zayd wanted to intercede for her. The Prophet (peace and blessings of Allah be upon him) became angry and said, "Do you intercede concerning one of the hadd punishments set by Allah? Those who came before you were destroyed because if a rich man among them stole, they would let him off but if a lowly person stole, they would carry out the punishment on him. By Allah, if Fatimah bint Muhammad were to steal, I would cut of her hand," (Bukhaari, Ahadith al-Anbiya, 3216).

13. In the Nomination Form submitted by Mr. Rind he suppressed the fact of his two convictions. The suppression was not something Mr.Rind could have forgotten, overlooked or was an insignificant matter. Thus his declaration on oath, that, "I fulfil the qualifications specified in Article 62, of the Constitution and I am not subject to any of the disqualifications specified in Article 63 of the Constitution or any other law for the time being in force for being elected as a member of the Senate" was clearly false. The question arises whether in making such a blatantly false declaration he "violates Islamic Injunctions" to attract Article 62(1)(d) of the Constitution.

14. Almighty Allah states in the Holy Quran, "... break not the oaths after you have confirmed them" (Surah An-Nahal, 16:91). "And be not like her who undoes the thread which she has spun after it has become strong, by taking your oaths a means of deception among yourselves, lest a nation may be more numerous than another nation. Allah only tests you by this" (Surah An-Nahal, 16:92). "And make not your oaths, a means of deception among yourselves, lest a foot may slip after being firmly planted, and you may have to taste the evil of having hindered (men) from the Path of Allah and yours will be a great torment" (Sarah An-Nahal, 16:94). "... Whosoever breaks his pledge, breaks only to his own harm and whosoever fulfils what he has covenanted with Allah, He will bestow on him a great reward" (Surah Al-Fath, 48:10). "Allah will not punish you for what is unintentional in your oaths, but he will punish you for your deliberate oaths [if false]" (Surah Al-Maidah, 5:89). "And those who keep their trusts and covenants .... shall dwell in Paradise" (Surah Al-Ma'arij, 70:32). "Those who are faithfully true to their trusts and to their covenants ... who shall inherit Paradise" (Surah Al-Mu'minun, 23:8), "Allah said: 'This is a Day on which the truthful will profit from their truth' "(Surah Al-Maidah, 5:119). "0 you who believe! Be afraid of Allah, and be with those who are true" (Surah At-Taubah, 9:119).

15. Lies fall into two distinct categories. Those uttered to deceive and to gain an advantage, in the present case to be able to contest elections, and innocent lies without malice or any intended deception. In this case Mr. Rind in reply to the question in the Nomination Form, “Have you ever been indicted in criminal proceedings or convicted for the violation of any law (excluding minor traffic violations)?” responded by stating “No” which was an admittedly false statement and made on “Declaration and Oath. Legal and Constitutional consequences follow from making such

a false declaration on oath and are clearly not permissible in Islam and thus Mr. Rind would run foul of Article 62(1)(d) as well.

16. The Legislature in its wisdom has incorporated Article 62(1)(d) and it is therefore the duty of the courts to interpret and apply it. We are however cognizant that the same may be misused for ulterior motives, for instance a Muslim may not be saying his prayers or fasting and it be alleged that he stands disqualified under Article 62(1)(d). However, the Creator in His Infinite Wisdom and Mercy has created a distinction between those disobediences which do not adversely affect others and those that do, and thus haqooq-ul-Allah and haqooq ul-abad. The observances of ritual finds favour with our Lord and may also determine whether an individual gains entry into Paradise, however, "There is no compulsion in religion" (Surah al-Baqarah, 2:256). Even the Messengers of Allah were given the task of simply conveying the message (Surah al-Imran, 3:20 and Surah al-Mai'dah, 5:99) and it was left for the people to believe or not or abide by the prescriptions of the Faith or not, but the people do not have the liberty to resort to crimes, including murder, theft, misappropriation of entrusted property et cetera, which adversely affect the rights of others. It is also reasonable to presume that the Legislature only wanted to restrict entry of criminals (thieves, embezzlers et cetera) into the portals of Parliament and not those who were not observing the rituals of their Faith; the probability of the former category would not detract from them being good law makers, ministers, chief ministers or even Prime Minister, but the nation cannot be entrusted into the hands of the latter category. Unfortunately, Mr. Rind by his criminal conduct has himself ensured that the doors of Parliament are closed to him.

17. In view of the abovementioned two convictions for corruption, embezzlement and misappropriation of public property and for knowingly making a false declaration on oath Mr. Rind cannot be stated to be "of good character" or someone who "is not commonly known as one who violates Islamic Injunctions" in terms of Article 62(1)(d). Therefore, on this count too he does not qualify to be elected, chosen or continue as member of Parliament of the Islamic Republic of Pakistan.

18. Individuals must take responsibility for their actions. The court has been empowered to ensure implementation of the Constitution and the weight of its responsibility if individuals are unable to do so themselves. Mr. Rind manipulated his position for personal benefit and committed crimes. He did not stay away from public office, as the law required, but proceeded to file a false Nomination Form to again acquire it. Ethically, morally and constitutionally he betrayed himself and the people of Pakistan. Consequently this court is left with no option but to declare that Mr. Rind cannot hold the public office of Senator under Article 62(1)(d) and (g) and Article 63(1)(h) of the Constitution of Pakistan and the writ of quo warranto is issued against him as he has usurped, intruded into and is unlawfully holding the public office of Senator. For the foregoing reasons Mr. Rind is also permanently disqualified to be elected or chosen as, and forever being a member of Parliament and respondents Nos. 2 and 3 are directed to ensure the same."

The approach adopted in the above mentioned two cases towards interpretation of the relevant provisions of Article 62 of the

Constitution restricting their applicability to public conduct of a person affecting others rather than his private conduct not affecting generality of the populace has been found by me to be quite useful and the same is, therefore, approved as it renders the said provisions more capable of being applied and enforced by a court or tribunal with some degree of clarity and certainty. In the present case respondent No. 1 has been in public life for the last about thirty-six years, he has been holding the highest elected public offices in the country for most of the said period and the allegations leveled against him pertain to corruption, corrupt practices and money laundering, etc. Such allegations leveled against the said respondent, thus, surely attract the provisions of Article 62(1)(f) of the Constitution even when the above mentioned restrictive approach of interpretation is adopted.

122. Concluding the discussion about the relevant four properties in London I hold that all the varying and ever changing stories about acquisition of the said properties advanced by the children of respondent No. 1 have remained unestablished from the flimsy, sketchy and inadequate record relied upon by them and such stories have even otherwise been found by me to be fantastic and unbelievable. We had been informed that Mr. Hussain Nawaz Sharif, respondent No. 7, had studied in England between the years 1992 and 1996, Mr. Hassan Nawaz Sharif, respondent No. 8, had studied in that country between the years 1994 and 1999 and the relevant properties had admittedly come in possession of respondent No. 1 and his family between the years 1993 and 1996. Two young students in occupation of four residential properties in one of the most expensive areas of London was surely extraordinary. Admittedly those two boys were not earning hands at that time and they had no independent source of income and were, thus, dependents of their father, respondent No. 1, till then. Instead of telling the truth the children of respondent No. 1 decided to hide behind divergent and conflicting stories which in the financial world were nothing but fairytales. All such stories and explanations, including those of investment, placement or

retention of some funds belonging to their grandfather namely Mian Muhammad Sharif with Al-Thani family of Qatar in the year 1980 and settlement of such investment, placement or retention in the year 2005, are, therefore, categorically and unreservedly rejected by me. Even Mr. Salman Akram Raja, the learned counsel for the sons of respondent No. 1, had admitted before us in so many words that the information supplied by the children of respondent 1 regarding acquisition of the relevant properties in London was "incomplete". On the authority of Lord Reid in the case of *Haughton v. Smith* (1975 A.C. 476, 500) it is said that the law may sometimes be an ass but it cannot be so asinine as that. This Court had observed in the case of *Rashad Ehsan and others v. Bashir Ahmad and another* (PLD 1989 SC 146) that "The law sometimes is called an ass but the Judge should, as far as it is possible, try not to become one". Similarly in the case of *Mst. Aziz Begum v. Federation of Pakistan and others* (PLD 1990 SC 899) this Court had reiterated "the principle" that the "law may be blind but the Judge is not". The case in hand is not about asininity or blindness of any law but respondent No. 1 and his children wanted an asinine and blindfolded acceptance of their explanations in respect of acquisition of the relevant properties which I refuse to do. As regards respondent No. 1 he held very high public offices when his dependent children, and through them he himself, came in possession of the relevant very expensive properties in London and, thus, he was under a legal, moral and political obligation to account for and explain his position in that regard. He offered no explanation in respect of possession or acquisition of those properties in his two addresses to the nation, he claimed before the representatives of the nation in the National Assembly that the said properties had been "purchased" by the family and before this Court he went into a mode of complete denial. In the year 2010 the then Prime Minister Manmohan Singh of India, in an unprecedented move to clear his name from the shadow of the 2G scandal, had offered: "I shall be happy to appear before the Public Accounts Committee if it chooses to ask me to do so. I sincerely believe that like Caesar's wife, the Prime Minister should be above

suspicion." In all his speeches mentioned above respondent No. 1 had claimed that the entire record in respect of acquisition of the relevant properties was available and would be produced when asked for in any inquiry but before this Court he not only detached himself from his children in respect of those properties but also failed to produce any record explaining how the relevant properties had been "purchased" or acquired as claimed by him. The learned counsel for respondent No. 1 was repeatedly reminded by us that by adopting that mode the said respondent was taking a big gamble but the respondent persisted with the same little realizing that when a court of law, and that too the highest Court of the land, asks for an explanation then there is no room left for gambling and one is under a legal obligation to come out clean which the said respondent did not or decided not to. Protection against self-incrimination available under Article 13 of the Constitution is relevant only to a criminal case which the present proceedings are not. Even otherwise, no such protection has been claimed by respondent No. 1 before us probably realizing that claiming such protection impliedly acknowledges criminality in the matter. 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.

123. Article 62(1)(f) of the Constitution provides as under:

> "62. (1) A person shall not be qualified to be elected or chosen as a member of Majlis-e-Shoora (Parliament) unless-
> ----------
> (f) he is sagacious, righteous, non-profligate, honest and ameen, there being no declaration to the contrary by a court of law; and ----------"

Article 63 of the Constitution provides as follows:

> "63. (1) A person shall be disqualified from being elected or chosen as, and from being, a member of the Majlis-e-Shoora (Parliament), if

> ----------
> (p) he is for the time being disqualified from being elected or chosen as a member of the Majlis-e-Shoora (parliament) or of a Provincial Assembly under any law for the time being in force.
>
> *Explanation.*– For the purposes of this paragraph "law" shall not include an Ordinance promulgated under Article 89 or Article 128.
> ----------
> (2) If any question arises whether a member of the Majlis-e-Shoora (Parliament) has become disqualified from being a member, Speaker or, as the case may be, the Chairman shall, unless he decides that no such question has arisen, refer the question to the Election Commission within thirty days and if he fails to do so within the aforesaid period it shall be deemed to have been referred to the Election Commission.
>
> (3) The Election Commission shall decide the question within ninety days from its receipt or deemed to have been received and if it is of the opinion that the member has become disqualified, he shall cease to be a member and his seat shall become vacant."

Section 99(1)(f) of the Representation of the People Act, 1976 provides that

> "99. Qualifications and disqualifications.- (1) A person shall not be qualified to be elected or chosen as a member of an Assembly unless-
> ----------
> (f) he is sagacious, righteous and non-profligate and honest and ameen;"

If a court of law declares a person to be otherwise than honest then he is no longer qualified to be elected or chosen as a member of the Majlis-e-Shoora (Parliament) and if he has already been elected or chosen as a member of the Majlis-e-Shoora (Parliament) then through loss of the requisite qualification he necessarily becomes disqualified from being a member of the Majlis-e-Shoora (Parliament). Articles 62 and 63 of the Constitution dealing with qualifications and disqualifications are overlapping in many ways and I find it difficult to accept the notion that Article 62 deals only with pre-election qualifications and Article 63 deals with post-election disqualifications only. The negative terminology used in Article 62(1) ["A person shall *not be qualified* to be elected or chosen"] and use of the word "*disqualifications*" in Article 62(2) besides the words "*disqualified from being elected or chosen*" used in Article 63(1) render the distinction between qualifications and disqualifications contained in Articles 62 and 63 quite illusory. Be that as it may, that issue is not strictly relevant to the case in

hand. The declaration by this Court through the present judgment regarding lack of honesty of respondent No. 1 cannot by undone or ignored by the Speaker/Chairman or the Election Commission of Pakistan and such a declaration has to have an automatic effect. In the case of *Muhammad Azhar Siddique and others v. Federation of Pakistan and others* (PLD 2012 SC 774) this Court had clarified the legal position as follows:

> "43. Now we turn to the argument of the learned counsel for Syed Yousaf Raza Gillani that every conviction, *ipso facto*, does not disqualify a person from being a Member of the Parliament. ---------- It is to be seen that the respondent has been found guilty of contempt of Court ----------. Exactly, the same word i.e. 'ridicule' has been used in Article 63(1)(g) of the Constitution. Thus, it has attracted the provision of disqualification. The 7-member Bench seized with the matter could have passed order of his disqualification at that time, but it seems that judicial restraint was exercised knowing that the convict had a right of appeal and review. ---------- And as now a good number of petitions have been filed seeking enforcement of Fundamental Rights enshrined in Articles 9, 10A, 14, 17 and 25 of the Constitution as Syed Yousaf Raza Gillani has continued his position as Prime Minister instead of resorting to the remedy available to him under the law, it is held that after having been convicted and sentenced for contempt of Court he has been disqualified, *ipso facto*, from being a Member of the Parliament. ----------
>
> 48. Here, a word may also be said about the role and functions of the Election Commission after a question has been referred, or is deemed to have been referred to it, by the Speaker under Article 63(2). Article 63(3) provides that the Election Commission shall decide the question within ninety days from its receipt or deemed to have been received and if it is of the opinion that the member has become disqualified, he shall cease to be a member and his seat shall become vacant. Like the Speaker, the Election Commission also cannot sit in appeal over a concluded judgment of a superior court, and has to decide the question in the affirmative that the convicted person has become disqualified, therefore, his seat shall become vacant. As has been noted above, there is a clear distinction in respect of other disqualifications mentioned in Article 63(1), in respect whereof information is laid before the Speaker involving determination of controversial facts. Therefore, the Election Commission may, after a reference from the Speaker, undertake a scrutiny in such matters. But where there is a conviction recorded by a competent Court against a person, who is a Member of the Parliament, which has attained finality, the role and function of the Election Commission is confined to issuing notification of disqualification of the concerned Member on the basis of verdict of the Court."
>
> (*underlining has been supplied for emphasis*)

The same principle applies with equal force to a declaration made by a court of law regarding lack of honesty on the part of a member

of the Majlis-e-Shoora (Parliament) as it is not possible for either the Speaker/Chairman or the Election Commission of Pakistan to override or sit in judgment over a judgment of a court in that regard.

124. The learned counsel for the private respondents repeatedly urged before us that this Court ought to be slow in entering into issues which relate to morality as the primary domain of a court of law is legality of actions rather than their morality. We can appreciate the concerns voiced in that regard but at the same time we are bound by the oath of our office which requires us to "preserve, protect and defend the Constitution" and to discharge our duties "in accordance with the Constitution". Some provisions of Article 62 of the Constitution certainly contain strong moral overtones but those provisions introduced into the Constitution by a military dictator have not been undone by the popularly elected parliaments in the last many decades. As long as the said provisions are a part of the Constitution the courts of the country are obliged not only to decide matters according to the same but also to enforce them whenever called upon to do so. Apart from that if honesty in holders of public offices is a moral issue then one need not be apologetic about enforcing such a constitutional obligation and if the people at large start ignoring the moral prerequisites in public life then there would be no better forum than the courts of the country to insist upon the values and ethos of the Constitution. We must not forget that the so-called moral provisions of Articles 62 and 63 of the Constitution are meant to be enforced even against those who claim to have popular support or who have already demonstrated their popular endorsement and, thus, popular support or endorsement of the person concerned has absolutely nothing to do with enforcement of those provisions of the Constitution. The said provisions of the Constitution lay down the threshold for entering into or retaining an elective public office and the courts of the country are mandated to apply and enforce the said thresholds. Sitting at the apex of judicial authority in the country this Court is the ultimate guardian not only of the letter

but also the spirit of the Constitution even where a section of the society may have some reservations against some provisions of the Constitution. William O. Douglas, the longest serving Judge of the United States Supreme Court in the history of that country, stated in his interview with Time magazine on November 12, 1973 that "The Court's great power is its ability to educate, to provide moral leadership". He was, obviously, not talking of private morality but of social, political and constitutional morality.

125. It has also been argued before us by all the learned counsel appearing for the private respondents that invoking jurisdiction of this Court under Article 184(3) of the Constitution and issuance of declarations and directions by this Court in exercise of that jurisdiction in matters of disqualification of elected representatives as a first and the final resort shall set a dangerous precedent and, therefore, this Court may not like to open the door to such a perilous course. This argument, however, conveniently overlooks the fact that, as already observed above, the present 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, the Federal Investigation Agency, the State Bank of Pakistan, the Federal Board of Revenue, the Securities and Exchange Commission of Pakistan 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. Under Article 90(1) of the Constitution by virtue of his being the Prime Minister of the country respondent No. 1 is the Chief Executive of the Federation and it is practically he who appoints the heads of all the institutions in the country which could have inquired into or investigated the allegations leveled against respondent No. 1 and his family on the basis of the Panama Papers. The remedy of filing an Election Petition before an Election Tribunal under Article 225 of the Constitution is not available at this juncture. The Speaker of the National Assembly could have referred the matter to the Election Commission of Pakistan under Article 63(2) of the

Constitution but he has already dismissed various petitions filed before him in that regard by as many as twenty-two members of the National Assembly. It is proverbial that there is no wrong without a remedy. It was in the above mentioned unfortunate background that this Court had entertained these petitions and now this Court cannot turn around and shy away from deciding the matter simply because it may set a dangerous precedent. As a matter of fact it shall be a more dangerous precedent to set if this Court declines to attend to the issue with a message 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 immune from accountability. The precedent to be set by this Court through the present petitions shall in fact be dangerous only for those Prime Ministers/Chief Executives of the Federation who try to capture or render ineffective all the institutions of accountability in the country in order to protect themselves leaving no other option with a whistleblower or an aggrieved or interested person but to approach this Court for interference in the matter as a first, and the only, resort. The precedent to be set by this Court through the present petitions should in fact be a warning to all those rulers who try to subjugate all the organs of power, enslave the institutions of accountability and then in a false sense of security and invincibility proclaim as Christopher Marlowe's '*Tamburlaine*' did by boasting that

> "I hold the Fates bound fast in iron chains,
> And with my hand turn Fortune's wheel about,
> And sooner shall the sun fall from his sphere
> Than Tamburlaine be slain or overcome."

While dwelling on the subject of setting a dangerous precedent by a court of law I am also reminded of the old bard William Shakespeare. The power of literature for commenting upon a

reality through the medium of fiction is fascinating and an amazing example of the same is the following part of Shakespeare's play *Merchant of Venice* which, though written hundreds of years ago in foreign climes, appears to have been written for nothing but the present case being handled by us in a different millennium and in a different continent. While trying to avoid execution of an oppressive judicial decree regarding payment of money by another Bassanio beseeched the Duke as follows:

> "Yes, here I tender it for him in the court;
> Yea, twice the sum: if that will not suffice,
> I will be bound to pay it ten times o'er,
> On forfeit of my hands, my head, my heart:
> If this will not suffice, it must appear
> That malice bears down truth. And I beseech you,
> Wrest once the law to your authority:
> To do a great right, do a little wrong,
> And curb this cruel devil of his will."

which imploring was immediately retorted by Portia in the following strong words:

> "It must not be; there is no power in Venice
> Can alter a decree established:
> 'Twill be recorded for a precedent,
> And many an error by the same example
> Will rush into the state: it cannot be."

and then what happened to that decree is another story. The punch lines in the above mentioned excerpt appear to be "Wrest once the law to your authority: To do a great right, do a little wrong". Fortunately for me, there is no wresting the law to my authority and no little wrong is to be done by me to do a great right in the matter of issuing a declaration against respondent No. 1 because the original jurisdiction of this Court under Article 184(3) of the Constitution has already been exercised by this Court in such matters in the cases of *Muhammad Azhar Siddique and others v. Federation of Pakistan and others* (PLD 2012 SC 774) and *Syed Mehmood Akhtar Naqvi v. Federation of Pakistan through Secretary Law and others* (PLD 2012 SC 1089) and, thus, no new or dangerous precedent is being set by me. I may, however, clarify that the jurisdiction of this Court under Article 184(3) of the Constitution has been exercised by me in the present case in the

backdrop of the peculiar and extraordinary circumstances of the case mentioned above and that this Court shall continue to be slow and circumspect in this regard where it is satisfied that the normal constitutional or statutory courts/tribunals/fora can conveniently, adequately and efficaciously attend to the relevant issues or where the existing institutions of inquiry, investigation, prosecution and accountability can do the job properly or can satisfactorily be activated for the purpose.

126. As far as the issue regarding respondent No. 6 namely Mariam Safdar allegedly being a 'dependent' of her father namely Mian Muhammad Nawaz Sharif is concerned I have found that the material produced before us sufficiently established that respondent No. 6 was a married lady having grown up children, she was a part of a joint family living in different houses situated in the same compound, she contributed towards some of the expenses incurred by the joint family, she submitted her independent tax returns, she owned sizeable and valuable property in her own name, she was capable of surviving on her own and, thus, she could not be termed or treated as a 'dependent' of her father merely because she periodically received gifts from her father and brothers. In this view of the matter nothing turned on respondent No. 1 not mentioning respondent No. 6 as his dependent in the nomination papers filed by him for election to NA-120 before the general elections held in the country in the year 2013.

127. Through these petitions allegations had also been leveled against respondent No. 1 regarding evasion of tax on the proceeds of sale of the factory in Dubai which was sold for about 9 million US Dollars, regarding late filing of Wealth Statements for the years 2011 and 2012 (which allegation was not pressed during the arguments), regarding the gifts of Rs. 31,700,000 made by respondent No. 1 in favour of respondent No. 6 and of Rs. 19,459,440 by respondent No. 1 in favour of respondent No. 8 being sham and not disclosed, and in respect of the gifts received

by respondent No. 1 from respondent No. 7 not having been treated as income from other sources. The learned counsel for respondent No. 1 explained before us that the said allegations attracted the provisions of Article 63(1)(o) of the Constitution and section 99(1A)(t) of the Representation of the People Act, 1976 but in terms of the facts of the present case the disqualification mentioned in those provisions was not relevant. He maintained that the crucial factors for the said disqualification were "default" and "dues" and it had already been clarified by this Court in many a case referred to by him that in the absence of any adjudication there could not be any dues and, hence, no default could be alleged. According to him no determination had been made and no finding had been recorded by any tax authority against respondent No. 1 in respect of any tax due. He also clarified that respondent No. 1 was neither a Director nor a shareholder of the factory in Dubai. He had gone on to submit that the Wealth-Tax Act, 1963 was repealed in the year 2003, at the time of repeal of that law no proceeding was pending against respondent No. 1 and, therefore, at the present stage no officer or machinery was available to determine any concealment, etc. by the said respondent rendering the issue dead. With reference to the record placed before this Court he pointed out that the gifts made by respondent No. 1 in favour of respondents No. 6 and 8 were actually disclosed by respondent No. 1 in his Wealth Statements and such payments had been made through cheques which had also been placed on the record. As regards the gifts made by respondent No. 7 in favour of respondent No. 1 it was submitted by him that respondent No. 7 had a National Tax Number in Pakistan and he was a non-resident Pakistani and, therefore, gifts made by him in favour of his father could not be treated as income from other sources as was evident from the provisions of section 39(3) read with sections 81, 111, 114, 116, 120, 120(2) of the Income-Tax Ordinance, 2001. He also pointed out that by virtue of the provisions of sections 122(2) and 122(5) of the Income-Tax Ordinance, 2001 finality stood attached to the matter after five years of commencement of the assessment order even if there had been any concealment. In support of the

submissions made above he had relied upon many cases decided by this Court. The above mentioned submissions of the learned counsel for respondent No. 1 have been found by me to be valid and, hence, acceptable. The allegations leveled by the petitioners regarding evasion of taxes by respondent No. 1 are, therefore, held not to have been established within the limited scope of the present petitions.

128. Adverting to the two FIRs registered by the Federal Investigation Agency and a Reference filed by the National Accountability Bureau against respondent No. 1, respondent No. 10 and others I note that all those criminal proceedings had been quashed by the Lahore High Court, Lahore at a time when respondent No. 1 was serving as the Prime Minister of the country and the manner in which such proceedings were quashed, it is observed with respect, had left much to be desired. To top it all, neither the Federal Investigation Agency nor the National Accountability Bureau challenged such quashing of criminal proceedings before this Court.

129. FIR No. 12 was registered at Police Station FIA/SIU, Islamabad on November 10, 1994 in respect of offences under sections 419, 420, 468, 471 and 109, PPC read with section 5(2) of the Prevention of Corruption Act, 1947 and Article 3 of the Holders of Representative Office (Punishment for Misconduct) Order, 1977 against Mukhtar Hussain and four Directors of Hudabiya Engineering (Pvt.) Limited. The final Challan was submitted in that case before a Special Court constituted under section 3 of the Offences in respect of Banks (Special Courts) Ordinance, 1984. The allegations in that case were that on August 26, 1993 two fake accounts were opened in the names of two persons namely Suleman Zia and Muhammad Ramzan in Habib Bank, A. G. Zurich, Lahore with small amounts and subsequently both were issued Dollar Bearer Certificates worth 750,000 US Dollars by the Union Bank Limited against cash receipt of Travelers Cheques encashed through American Express, New York. Allegedly the

amount from these accounts was transferred to an account in the name of one Kashif Masood Zia at Bank of America, Lahore. Later on another account was opened in the name of Mrs. Nuzhat Gohar Qazi in Bank of America, Lahore and an amount of .05 million US Dollars was also transferred from her account to the account of the above mentioned persons. All those accounts were allegedly found to be fictitious. It was alleged that the accused persons Mukhtar Hussain and four Directors of Hudabiya Engineering (Pvt.) Limited, in collaboration with the officials of Habib Bank A. G. Zurich, Lahore and Bank of America, Lahore under the influence of Mian Muhammad Nawaz Sharif, the then Prime Minister of Pakistan, managed to draw, by opening three fake accounts, an amount of Rs. 60 million by raising loan against the account of Kashif Masood Qazi. It was alleged that it was the accused persons' black money which was fraudulently utilized by them to procure further wrongful gains. Respondent No. 1 was an accused person in that case. FIR No. 13 was registered at Police Station FIA/SIU, Islamabad on November 12, 1994 in respect of offences under sections 419, 420, 468 and 471, PPC, section 5(2) of the Prevention of Corruption Act, 1947 and Article 3 of the Holders of Representative Office (Punishment for Misconduct) Order, 1977 and the final Challan was submitted in that case before a Special Court constituted under section 3 of the Offences in respect of Banks (Special Courts) Ordinance, 1984. The allegations leveled in that case were that two fake accounts were opened in the names of two persons namely Muhammad Ramzan and Asghar Ali in Habib Bank A. G. Zurich, Lahore by depositing Travelers Cheques amounting to 2 million US Dollars in those accounts and on the request of the account-holders they were issued Dollar Bearer Certificates for the above two amounts. Subsequently another fake account was opened in Citi Bank, Lahore in the name of one Mrs. Sikandara Masood Qazi by depositing Dollar Bearer Certificate amounting to 150 million US Dollars. Later on Dollar Bearer Certificate for another amount of 1 million US Dollars was also deposited in her account. Another allegation leveled in that case was that Citi Bank, Karachi created a loan of Rs. 40 million in

favour of Messers Hudabiya Paper Mills against the deposit of account of Mrs. Sikandara Masood Qazi against weak/inadequate security, which loan was still outstanding. Allegedly, during inquiry none of the above named account-holders could be traced at the given addresses. It was alleged that the accused persons, with the blessings of Prime Minister Mian Muhammad Nawaz Sharif, had not only indulged in money laundering but had also cheated the government. After submission of the Challans in connection with the above mentioned criminal cases before the trial court Writ Petitions No. 1361 and 1362 of 1994 were filed by the accused party seeking quashing of the FIRs but both those writ petitions were dismissed by the Lahore High Court, Rawalpindi Bench, Rawalpindi. Subsequently two bail applications (Criminal Miscellaneous Nos. 846/B and 847/B of 1994) were filed by the accused persons which were converted into Writ Petitions No. 1376 and 1377 of 1994 and were dismissed by a learned Division Bench of the Lahore High Court, Rawalpindi Bench, Rawalpindi on December 28, 1994 [Reference: *Mian Muhammad Abbas Sharif and 2 others v. Federation of Pakistan through Secretary, Ministry of Interior and 2 others* (1995 P.Cr.L.J. 1224)]. Subsequently another Writ Petition No. 14532 of 1994 was filed at the Principal Seat of the Lahore High Court, Lahore seeking a direction to the investigating agency to refrain from taking any proceedings under the aforementioned two FIRs which writ petition was dismissed by a learned Judge-in-Chamber of that Court on December 19, 1994. An Intra-Court Appeal No. 16 of 1995 filed against that order of dismissal of the writ petition was pending before a Full Bench of the Lahore High Court, Lahore comprising of five Honourable Judges when two fresh writ petitions were filed by the accused party seeking saving the accused party from the agony of the trials which would be an exercise in futility. Admittedly no application had been filed by the accused party before the trial court under section 265-K, Cr.P.C. seeking their premature acquittal and the pretext for filing the writ petitions was that the trial court was proceeding with matters pending before it at a very slow pace! Without waiting for the decision of the Intra-Court Appeal pending

before a 5-member Bench of the same Court, ignoring that two earlier writ petitions seeking quashing of the FIRs had been dismissed by the High Court itself, irrespective of the fact that two bail applications of the accused persons had already been dismissed by the High Court holding that *prima facie* reasonable grounds existed in believing in involvement of the accused persons in the offences in issue, disregarding dismissal of a writ petition seeking stoppage of proceedings of the FIRs and in the absence of any application having been filed before the trial court under section 265-K, Cr.P.C. the fresh writ petitions were allowed by a learned Division Bench of the Lahore High Court, Lahore, the Challans submitted in both the criminal cases were quashed and the accused persons were acquitted by invoking section 561-A, Cr.P.C. [Reference: *Mian Hamza Shahbaz Sharif v. Federation of Pakistan and others* (1999 P.Cr.L.J. 1584)]. Section 561-A, Cr.P.C. could not have been invoked by the High Court on that occasion because it had already been settled by this Court that the remedy under section 561-A, Cr.P.C. was not an additional or alternate remedy and if the jurisdiction under section 561-A, Cr.P.C. was available to the High Court then a writ petition was not competent. A novel course had been adopted in the matter by the High Court by allowing a writ petition by invoking and exercising its jurisdiction under section 561-A, Cr.P.C. and adoption of such a course by the High Court was nothing but extraordinary. Apart from that under section 561-A, Cr.P.C. the High Court could at best have ordered quashing of the criminal proceedings but it could not have ordered acquittal of the accused persons as the accused persons had never applied for their acquittal before the trial court under section 265-K, Cr.P.C. and the earlier writ petitions seeking quashing of the relevant FIRs had already been dismissed by the High Court itself. The High Court had not only quashed the Challans submitted in those two criminal cases but had also proceeded to take the extraordinary step of acquitting the accused persons in exercise of writ jurisdiction of that Court under Article 199 of the Constitution foreclosing any possibility of any fresh trial of the accused persons in view of the principle of

autrefois acquit and astonishingly the Federal Investigation Agency or the State never bothered to challenge that judgment of the High Court before this Court. Respondent No. 1 was the Prime Minister of Pakistan and the Chief Executive of the Federation at that time and, thus, inaction of the Federal Investigation Agency or the State in the matter was quite understandable and in the process a financial scam involving millions of US Dollars was prematurely buried without any possibility of its resurrection unless at some future stage the State or the Federal Investigation Agency decides to challenge the said judgment of the High Court before this Court through a time-barred petition/appeal. Keeping in view the glaring and extraordinary circumstances mentioned above I might have been tempted to issue a direction to the State or the Federal Investigation Agency in that regard but inappropriateness of such a step has restrained me from doing that. An appellate court directing a party to a case to file a petition or an appeal before it in a matter decided by a Court below would surely be quite objectionable and offensive to judicial impartiality which I cannot allow to be compromised at any cost.

130. Reference No. 5 of 2000 had been filed against respondents No. 1 and 10 and some others by the National Accountability Bureau before an Accountability Court with allegations of money laundering, etc. to the tune of Rs. 1242.732 million (over Rs. 1.2 billion) and in that Reference reliance had also been placed upon a judicial confession made by respondent No. 10 before a Magistrate First Class, Lahore on April 25, 2000. It was alleged in that Reference that respondent No. 10 was instrumental in laundering of 14.886 million US Dollars upon the instructions and for the benefit of respondent No. 1 by opening fake foreign currency accounts in different banks in the names of others. Writ Petition No. 2617 of 2011 filed before the Lahore High Court, Lahore in connection with that Reference was allowed by a learned Division Bench of the said Court on December 03, 2012 and the said Reference was quashed through a unanimous judgment but the learned Judges disagreed with each other over permissibility of

reinvestigation of the matter whereupon the matter was referred to a learned Referee Judge who held on March 11, 2014 that reinvestigation of the case was not permissible [Reference: *Hudabiya Paper Mills Ltd. v. Federation of Pakistan* (PLD 2016 Lahore 667)]. There was an apparent flaw in the judgment rendered in that case by the learned Referee Judge because the reference to the learned Referee Judge was as to whether an observation could be made or not regarding reinvestigation of the case and the reference was not as to whether reinvestigation could be carried out or not! Even that judgment of the Lahore High Court, Lahore was not challenged by the National Accountability Bureau or the State before this Court and incidentally respondent No. 1 was again the Prime Minister of Pakistan at that time. The said Reference had been quashed by the Lahore High Court, Lahore because in the investigation preceding filing of the Reference the accused persons had not been associated and a confessional statement made by respondent No. 10 had been made before a Magistrate and not before the Accountability Court which was the trial court. I may observe with respect that soundness of both the said reasons prevailing with the High Court for quashing the relevant Reference was quite suspect. The relevant record produced before us shows that on April 20, 2000 a written application had been submitted by respondent No. 10 before the Chairman, National Accountability Bureau volunteering to make a confession and seeking tender of pardon. Respondent No. 10 personally appeared before the Chairman, National Accountability Bureau in that connection on April 21, 2000 and on the same day full pardon was tendered by the Chairman to him under section 26 of the National Accountability Ordinance, 1999 whereafter respondent No. 10 made a confessional statement before a Magistrate First Class, Lahore on April 25, 2000. In view of this development in the Final Reference filed by the National Accountability Bureau on November 16, 2000 respondent No. 10 was referred to as a prosecution witness and not an accused person. In the said confessional statement made by respondent No. 10 under section 164, Cr.P.C. he had confessed to being a party to

money laundering of 14.886 million US Dollars on the instructions and for the benefit of respondent No. 1 and also to opening of fake foreign currency accounts in different banks in the names of others. It is not denied that making of the said confessional statement and signing of the same had never been denied by respondent No. 10 and he had never approached any court seeking setting aside or annulment of that statement made by him and it was the accused persons in the above mentioned Reference who had maintained before the High Court that respondent No. 10 had made his confessional statement under coercion of the military regime of that time after remaining in custody for more than six months (from October 15, 1999 to April 25, 2000). Be that as it may the fact remains that in the Final Reference which was quashed by the High Court respondent No. 10 was not arrayed as an accused person and his status in that Reference was that of merely a prosecution witness and, thus, quashing of that Reference by the High Court did not entail respondent No. 10's acquittal or smothering of any possibility of his trial on the said charges at any subsequent stage. It is also quite obvious that with quashing of the Reference and setting aside of the confessional statement of respondent No. 10 the pardon tendered to respondent No. 10 by the Chairman, National Accountability Bureau under section 26 of the National Accountability Ordinance, 1999 *ipso facto* disappeared with an automatic revival of the said respondent's status as an accused person who had never been acquitted and against whom no Reference had been quashed. As respondent No. 10 was not an accused person in the relevant Reference when it was quashed and reinvestigation of which was declared by the High Court to be impermissible, therefore, I see no reason why after restoration of respondent No. 10's status as an accused person in that case reinvestigation to his extent and filing of a Reference against him cannot be undertaken or resorted to. This is more so because the reasons prevailing with the Lahore High Court, Lahore for quashing the Reference were not applicable to the case of respondent No. 10 as he had been associated with the investigation and there was evidence available against him

other than his confessional statement. The stark reality is that the allegations of corruption, corrupt practices and money laundering, etc. involving over Rs. 1.2 billion and prosecution on the basis of such allegations had been scuttled by the High Court and this Court would not like to stand in the way of reopening of the said investigation or prosecution where even the smallest opening for such investigation or prosecution is available or legally possible. One of the prayers made before this Court by the petitioner in Constitution Petition No. 29 of 2016 is that the Chairman, National Accountability Bureau may be directed to file a petition/appeal before this Court against the judgment of the Lahore High Court, Lahore whereby Reference No. 5 of 2000 filed by the National Accountability Bureau had been quashed and reinvestigation of the matter was held to be impermissible and also that proceedings may be initiated before the Supreme Judicial Council against the Chairman, National Accountability Bureau under Article 209 of the Constitution for his removal from office. The circumstances in which Reference No. 5 of 2000 filed by the National Accountability Bureau had been quashed and reinvestigation of the matter was held by the High Court to be impermissible might have tempted me to issue a direction to the State or the National Accountability Bureau to challenge the said judgment of the High Court before this Court through a time-barred petition/appeal but I have found it to be inappropriate for an appellate court to direct a party to a case to file a petition or an appeal before it in a matter decided by a Court below. Issuance of such a direction can have the effect of compromising the impartiality of the appellate court and clouding its neutrality and, thus, I have restrained myself from issuing the direction prayed for. Initiating proceedings against the Chairman, National Accountability Bureau under Article 209 of the Constitution may involve some jurisdictional issues and the same may also be inappropriate for this Bench of the Court to order because two of the Members of this Bench are also Members of the Supreme Judicial Council and such Members may feel embarrassed in the matter. Apart from that we have been informed that the term of office of the present Chairman, National

Accountability Bureau is about to expire in the next few months and his term of office is non-extendable.

131. It may be true that the Challans in the above mentioned two FIRs registered with the Federal Investigation Agency had been quashed and the accused persons therein had been acquitted by the Lahore High Court, Lahore and Reference No. 5 of 2000 filed by the National Accountability Bureau before an Accountability Court had also been quashed by the said Court and thereby the allegations leveled against respondents No. 1 and 10 and some others in those matters had remained without a trial but the fact remains that the evidence collected or the material gathered by the investigating agencies in connection with those cases does not stand vanished and the same remains available and can be usefully utilized if such evidence or material is also relevant to some other allegations leveled against the said respondents or others.

132. From the stands taken and the material produced by respondent No. 1 and his children before this Court it has emerged as an admitted position that respondent No. 1 was, and he still is, a holder of a public office when he and his children came in possession of the relevant properties in London between the years 1993 and 1996 and they are still in admitted possession of those assets which are claimed to be owned by one of the children of respondent No. 1 since the year 2006. It is again an undisputed fact that at the time of taking over possession of the said properties all the children of respondent No. 1 were non-earning students and his wife was a household lady with no independent sources of income of their own and, thus, they were dependents of respondent No. 1 at that time. No other claimant to those assets has surfaced anywhere so far. Section 9(a)(v) of the National Accountability Ordinance, 1999 provides as follows:

> "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, which he cannot reasonably account for or maintains a standard of living beyond that which is commensurate with his sources of income ---"

Section 14(c) of the National Accountability Ordinance, 1999 lays down as under:

> "In any trial of an offence punishable under clause (v) of sub-section (a) of Section 9 of this Ordinance, the fact that the accused person or any other person on his behalf, is in possession for which the accused person cannot satisfactorily account, of assets or pecuniary resources disproportionate to his known sources of income, or that such person has, at or about the time of the commission of the offence with which he is charged, obtained an accretion to his pecuniary resources or property for which he cannot satisfactorily account, the Court shall presume, unless the contrary is proved, that the accused person is guilty of the offence of corruption and corrupt practices and his conviction therefor shall not be invalid by reason only that it is based solely on such presumption."

The value of the relevant assets in London is ostensibly disproportionate to the declared and known sources of respondent No. 1's income when his tax returns produced before this Court are kept in view. Even when repeatedly required by this Court respondent No. 1 has refused to account for the said assets in London and has adopted a mode of complete denial *vis-à-vis* his connection with those assets. Adoption of such mode of denial and refusal/failure on the part of respondent No. 1 to produce any record *prima facie* amounts to failure to account for those assets and the matter, therefore, clearly and squarely attracts the provisions of section 9(a)(v) as well as section 14(c) of the National Accountability Ordinance, 1999. Hence, the need for the National Accountability Bureau to proceed against respondent No. 1 on the allegation of committing the offence of corruption and corrupt practices. It goes without saying that while proceeding against respondent No. 1 under section 9(a)(v) of the National Accountability Ordinance, 1999 the evidence and material collected by the Federal Investigation Agency in connection with the above mentioned two FIRs and by the National Accountability

Bureau in connection with its Reference No. 5 of 2000 mentioned above may also be utilized by the National Accountability Bureau and the Accountability Court if any such evidence or material is relevant to acquisition of the four properties in London. Quashing of the Challans and doubtful and premature acquittal in the cases registered with the Federal Investigation Agency or quashing of the National Accountability Bureau's Reference by the Lahore High Court, Lahore did not mean that the evidence or material collected in those cases had disappeared or had been rendered unutilizable for any other purpose. Even the above mentioned report prepared by Mr. A. Rehman Malik of the Federal Investigation Agency may be utilized by the National Accountability Bureau and the Accountability Court while proceeding against respondent No. 1 and others under section 9(a)(v) of the National Accountability Ordinance, 1999 if the said report and the evidence and material appended therewith or referred to therein has any nexus with acquisition of the relevant four properties in London. Similarly, the other assets acquired and the businesses set up by respondent No. 1's children in Pakistan and abroad also need to be probed into by the National Accountability Bureau to find out whether respondent No. 1's children have acted as *Benamidars* of respondent No. 1 in those assets and businesses or not and if so whether respondent No. 1 can satisfactorily account for those assets and businesses or not if he is discovered to be their actual owner.

133. It is unfortunate that despite a passage of over one year since surfacing of the Panama Papers the Chairman, Federal Board of Revenue, respondent No. 5, has taken no serious step and has made no meaningful effort towards playing his due role in probing into the matter so as to find out whether any illegality had been committed by anybody in the matter or not. Except for issuing a few notices and writing a few letters the Federal Board of Revenue has not pursued the matter at all and such inaction and apathy can only be attributed to lack of will and dereliction of duty. The same is the case with respondent No. 2 namely Mr. Qamar Zaman Chaudhry, Chairman, National Accountability Bureau who

appeared before this Court and maintained that the National Accountability Bureau was cognizant of its duties and responsibilities in connection with the issues arising out of the Panama Papers but respondent No. 2 was waiting for the "regulators" to look into the matter first. We repeatedly asked him to elaborate as to who those "regulators" were and where did they figure in the National Accountability Ordinance, 1999 but he did not even bother to respond to those questions and conveniently kept quiet! When his attention was drawn towards the provisions of section 18 of the National Accountability Ordinance, 1999 according to which the Chairman, National Accountability Bureau could take cognizance of such a matter on his own he simply stated that he would take action in terms of the Ordinance. On that occasion the Court wondered who the referred to "regulators" could be because the same word had also been used in the two statements of the gentleman from Qatar brought on the record of the case by the children of respondent No. 1. When asked by the Court as to whether he would consider challenging before this Court the judgment passed by the Lahore High Court, Lahore quashing Reference No. 5 of 2000 and barring reinvestigation into that matter by the National Accountability Bureau or not he categorically stated that at the relevant time he had decided not to file any petition/appeal against that judgment and he had no intention to do that at this stage either. That stance of respondent No. 2 was found by me to be quite disturbing, to say the least, because the Reference quashed by the High Court involved allegations of corruption, corrupt practices and money laundering, etc. to the tune of over Rs. 1.2 billion and the split decision rendered by the High Court in that matter was, as discussed above, ostensibly not free from infirmities. It is admitted at all hands that it was respondent No. 1 who had appointed respondent No. 2 as the Chairman, National Accountability Bureau in consultation with the Leader of the Opposition in the National Assembly. In Christopher Marlowe's play '*Doctor Faustus*' Doctor Faustus had sold his soul to Lucifer (the Devil) for a temporary worldly gain which had ultimately led to his perpetual damnation

and it appears that in the present case respondent No. 2 had also decided to act similarly for the purpose of repaying his benefactor. Such a possibility of the Chairman, National Accountability Bureau being beholden to the Prime Minister and the Leader of the Opposition in the National Assembly for his appointment and thereby extending favours to them and refusing to proceed against them when otherwise required to do so had been commented upon by me in the case of *Shahid Orakzai v. Pakistan through Secretary Law, Ministry of Law, Islamabad* (PLD 2011 SC 365) as follows:

> "36. ---------- In the past not too distant complaints of persecution of the political opposition in the country by the government of the day through utilization of the National Accountability Bureau or its predecessor institutions had unfortunately been too many and willingness of the heads of such institutions to slavishly carry out and execute the vendetta of the government of the day against its opponents had also been shamefully rampant. It was in that background that at a time when there was no Parliament in existence this Court had recommended in the case of *Khan Asfandyar Wali and others v. Federation of Pakistan and others* (PLD 2001 SC 607) that in the matter of appointment of Chairman, National Accountability Bureau consultation ought to be made by the President with the Chief Justice of Pakistan and that recommendation had been given effect to through the National Accountability Bureau (Amendment) Ordinance XXXV of 2001 but subsequently through the National Accountability Bureau (Amendment) Ordinance CXXXIII of 2002 the Chief Justice of Pakistan had been excluded from the consultees and he was substituted by the Leader of the House and the Leader of the Opposition in the National Assembly who were to be consulted by the President before making an appointment of Chairman, National Accountability Bureau. That deletion had come about because by that time the Parliament had once again come into existence and consultation with the Leader of the Opposition in the National Assembly was expected to go a long way in allaying fears and apprehensions of the political opposition regarding its possible persecution and victimization by the government of the day through the National Accountability Bureau and its Chairman. The spirit of the amended provisions, thus, was that the Leader of the Opposition in the National Assembly would be taken on board, his opinion would be given due weight and consideration and he would have an effective say in the matter of appointment of Chairman, National Accountability Bureau so that the political opposition in the country may not have an occasion to cry foul in the matter.
>
> 37. As time progressed another dimension stood added to the issue when, apart from apprehended persecution of the political opposition, the National Accountability Bureau, which happens to be a premier and high-profile anti-corruption institution of the country, started being perceived as an institution which was possibly being misused for covering up corruption at high places and such cover up was perceived to be controlled and managed through appointment of its handpicked Chairman. It was in that backdrop that in the case of *Dr. Mobashir Hassan and others v. Federation of Pakistan and others* (PLD 2010 SC 265) this Court

> reiterated its earlier recommendation and suggestion with regard to consultation with the Chief Justice of Pakistan in the matter of appointment of Chairman, National Accountability Bureau. That recommendation and suggestion was once again repeated by this Court in the case of *The Bank of Punjab v. Haris Steel Industries (Pvt.) Ltd. and others* (*supra*). It must be appreciated that consultation with the Leader of the Opposition in the National Assembly and consultation with the Chief Justice of Pakistan are, in the developing scenario, essentially meant for separate noble and laudable purposes which are both directed towards achieving the very objects for which the National Accountability Bureau was established, i.e. elimination of corruption by persons holding public offices and achievement of such objects through a process which is just, fair, impartial and evenhanded. ---------- Similarly, corruption being an unfortunate bane of our society in the current phase of our history and even the high public offices being not immune from serious allegations in that regard, leaving the matter of appointment of the head of the most important anti-corruption institution in the country in the hands only of those very persons who could possibly, in future or present, be a subject of inquiries, investigations or trials for corruption would, apart from giving rise to the issue of conflict of interest, defeat the very object of the relevant law and would, thus, also prejudicially affect, directly or indirectly, the Fundamental Rights of the citizens at large. ---------- ”
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> (*underlining has been supplied for emphasis*)

As neutrality and impartiality of respondent No. 2 in the matter of proceeding against respondent No. 1 for commission of the offence under section 9(a)(v) of the National Accountability Ordinance, 1999 stands visibly and demonstrably compromised, therefore, it would be in the fitness of things if he is restrained from exercising any power, authority or function of the Chairman, National Accountability Bureau in relation to the proceedings to be initiated by the said Bureau against respondent No. 1 and in respect of such proceedings all the powers, authority and functions of the Chairman, National Accountability Bureau may be exercised by an Implementation Bench of this Court to be constituted by the Honourable Chief Justice of Pakistan for which a request is being made through the present judgment.

134. In the case of *Air Marshal (Retd.) Muhammad Asghar Khan v. General (Retd.) Mirza Aslam Baig, Former Chief of Army Staff and others* (PLD 2013 SC 1) a declaration was made by this Court in exercise of its jurisdiction under Article 184(3) of the Constitution to the effect that corruption and corrupt practices had been committed in the holding of a general election in the country

and in the judgment passed in that case respondent No. 1's stated involvement in the matter had been referred to twice in that context and the matter of criminality of respondent No. 1 and others in that connection was required to be investigated by the Federal Investigation Agency. Similarly in the case of *Mohtarma Benazir Bhutto and another v. President of Pakistan and others* (PLD 1998 SC 388) the constitutional issue regarding dissolution of the National Assembly by the President of Pakistan had been decided by this Court with reference to different grounds of dissolution including the allegation of rampant corruption but later on it had been clarified by this Court in *Mohtarma Benazir Bhutto v. President of Pakistan and 2 others* (PLD 2000 SC 77) through a review petition that the constitutional aspects of the case had been decided by this Court only upon a tentative appraisal of the material produced on the issue of corruption, the conclusions arrived at by the Court were restricted only to the constitutional context of dissolution of the National Assembly and, therefore, the observations recorded in the constitutional matter were not to be treated as proof of the charges for any other purpose. I would, therefore, like to clarify in the present case in advance that the declarations and the observations made by me in the constitutional context shall not influence or prejudice the inquiry, investigation or prosecution of any criminal activity or conduct involved in the matter and that the Accountability Court to be seized of the case shall adjudicate upon the criminal aspect of this case without being influenced or prejudiced by anything observed or done by this Court in the present proceedings.

135. For what has been discussed above these petitions are allowed and it is declared by me as follows:

(i) All the versions advanced by respondent No. 1's children explaining how the relevant four properties in London (Properties No. 16, 16a, 17 and 17a, Avenfield House, Park Lane, London W1K 7AF, United Kingdom) had come in possession of respondent No. 1's immediate family or how the said properties had been acquired

by the family have been found by me to be conflicting and unbelievable and the same are, therefore, rejected.

(ii) Respondent No. 1 namely Mian Muhammad Nawaz Sharif, Prime Minister of Pakistan/Member of the National Assembly 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 properties in London.

(iii) As a consequence of the declaration issued regarding lack of honesty on the part of respondent No. 1 the said respondent has become disqualified from being a member of the Majlis-e-Shoora (Parliament) in terms of Article 62(1)(f) of the Constitution and section 99(1)(f) of the Representation of the People Act, 1976 and, therefore, he is liable to be denotified by the Election Commission of Pakistan as a member of the National Assembly forthwith with a consequence that he ceases to be the Prime Minister of Pakistan from the date of denotification.

(iv) Respondent No. 1 was, and he still is, a holder of a public office and his children have admittedly been in possession of the relevant properties in London since the years 1993 and 1996 when they were dependents of respondent No. 1; the value of the relevant assets in London is ostensibly disproportionate to the declared and known sources of respondent No. 1's income when his tax returns produced before this Court are kept in view; respondent No. 1 has failed/refused to account for the said assets in London and has adopted a mode of complete denial *vis-à-vis* his connection with those assets which *prima facie* amounts to failure/refusal to account for those assets; and the matter, therefore, clearly and squarely attracts the provisions of section 9(a)(v) as well as section 14(c) of the National Accountability Ordinance, 1999 necessitating the National Accountability Bureau to proceed against respondent No. 1 and any other person connected with him in that regard.

(v) While proceeding against respondent No. 1 and any other person connected with him in respect of the offence under section 9(a)(v) of the National Accountability Ordinance, 1999 the evidence and material collected by the Federal Investigation Agency in connection with FIRs No. 12 and 13 dated November 10, 1994 and November 12, 1994 respectively and by the National Accountability Bureau in connection with its Reference No. 5 of 2000 can also be utilized by the National Accountability Bureau and the Accountability Court if any such evidence or material is relevant to possession or acquisition of the relevant properties in London. Even the report prepared by Mr. A. Rehman Malik of the Federal Investigation Agency in September 1998 and the evidence and material appended therewith or referred to therein can be utilized by the National Accountability Bureau and the Accountability Court while proceeding against respondent No. 1 and any other person connected with him in respect of the said offence if the said report and the evidence and material appended therewith or referred to therein has any nexus with possession or acquisition of the relevant properties in London.

(vi) Similarly, the other assets acquired and the businesses set up by respondent No. 1's children in Pakistan and abroad also need to be probed into by the National Accountability Bureau to find out whether respondent No. 1's children have acted as *Benamidars* of respondent No. 1 in those assets and businesses or not and if so whether respondent No. 1 can satisfactorily account for those assets and businesses or not if he is discovered to be their actual owner.

(vii) Respondent No. 10 namely Mr. Muhammad Ishaq Dar was not arrayed as an accused person in the Final Reference No. 5 of 2000 filed by the National Accountability Bureau and his status in that Reference was merely that of a prosecution witness when the said Reference was quashed against the accused persons therein by the Lahore High Court, Lahore and reinvestigation *qua* them was barred and, thus, quashing of that Reference by the High

Court did not entail respondent No. 10's acquittal or smothering of any possibility of his trial on the said charges at any subsequent stage. Upon quashing of that Reference and setting aside of the confessional statement of respondent No. 10 by the High Court the pardon tendered to respondent No. 10 by the Chairman, National Accountability Bureau under section 26 of the National Accountability Ordinance, 1999 *ipso facto* disappeared with an automatic revival of the said respondent's status as an accused person in that Reference who had never been acquitted and against whom no Reference had been quashed. It is, therefore, declared that after restoration of respondent No. 10's status as an accused person in that case reinvestigation to his extent and filing of a Reference against him can be undertaken or resorted to by the National Accountability Bureau.

136. On the basis of the declarations made above the following directions are hereby issued by me:

(i) The Election Commission of Pakistan is directed to issue a notification of disqualification of respondent No. 1 namely Mian Muhammad Nawaz Sharif from being a member of the Majlis-e-Shoora (Parliament) with effect from the date of announcement of the present judgment.

(ii) The President of Pakistan is required to take necessary steps under the Constitution to ensure continuation of the democratic process through parliamentary system of government in the country.

(iii) The National Accountability Bureau is directed to proceed against respondent No. 1 and any other person connected with him in respect of the offence of corruption and corrupt practices under section 9(a)(v) of the National Accountability Ordinance, 1999 and during such proceedings the evidence and material collected by the Federal Investigation Agency in connection with FIRs No. 12 and 13 dated November 10, 1994 and November 12, 1994

respectively and by the National Accountability Bureau in connection with its Reference No. 5 of 2000 besides the report prepared by Mr. A. Rehman Malik of the Federal Investigation Agency in September 1998 and the evidence and material appended therewith or referred to therein may also be utilized by the National Accountability Bureau if any such evidence or material is relevant to or has nexus with possession or acquisition of the relevant properties in London.

(iv) The National Accountability Bureau is also directed to probe into the other assets acquired and businesses set up by respondent No. 1's children in Pakistan and abroad to find out whether respondent No. 1's children have acted as *Benamidars* of respondent No. 1 in those assets and businesses or not and if so whether respondent No. 1 can satisfactorily account for those assets and businesses or not if he is discovered to be their actual owner.

(v) As neutrality and impartiality of the incumbent Chairman, National Accountability Bureau Mr. Qamar Zaman Chaudhry has been found by me to be compromised in the matters of respondent No. 1, therefore, he is directed not to exercise any power, authority or function in respect of the matters directed above. The Honourable Chief Justice of Pakistan is requested to constitute an Implementation Bench of this Court in the above mentioned regard and in the interest of doing complete justice it is ordered that all the powers, authority and functions of the Chairman, National Accountability Bureau in the above mentioned matters of respondents No. 1 shall henceforth be exercised by the said Implementation Bench and the relevant officials of the National Accountability Bureau shall seek all the necessary orders in those matters from the Implementation Bench till Mr. Qamar Zaman Chaudhry completes his current non-extendable term of office. The Implementation Bench shall also monitor the progress made by the National Accountability Bureau in the matters referred to above and it shall also supervise the investigation being conducted by it

in the matters as and when found necessary and called for besides issuing any order deemed expedient in the interest of justice.

(vi) The National Accountability Bureau is directed to proceed against respondent No. 10 namely Mr. Muhammad Ishaq Dar in connection with its Reference No. 5 of 2000 wherein the said respondent was not an accused person when the said Reference was quashed by the Lahore High Court, Lahore and reinvestigation against the accused persons therein was barred because after quashing of that Reference against the accused persons therein and after setting aside of the confessional statement of respondent No. 10 his status in that Reference stood revived as an accused person against whom no Reference had been quashed and reinvestigation *qua* him was never ordered to be barred.

(Asif Saeed Khan Khosa)
Judge

EJAZ AFZAL KHAN, J.- Petitioner in Const. P. No. 29 of 2016 seeks: disqualification of respondents No. 1, 9 and 10; recovery of money laundered alongwith properties purchased through the British Virgin Islands Companies and Companies in other safe havens; issuance of a direction against respondent No. 2 to discharge his obligation under Section 9 and 18 of the National Accountability Ordinance, 1999 by taking the investigation in mega corruption cases to their logical end; placement of the name of Mian Nawaz Sharif and his family members named in the Panama Leaks on the Exit Control List (ECL); issuance of an order to initiate claims on behalf of the Government of Pakistan for recovery of properties in question and direction against the Chairman Federal Board of Revenue to scan and scrutinize the tax returns and assets declaration of respondent No. 1 and his family.

2. The case of the petitioner, so to speak, is that respondent No. 1 in his address to the nation on 05.04.2016 and to the Parliament on 16.05.2016 made false statements which are not only contradictory but also in conflict with the statements made by his sons, respondent No. 7 and 8 herein; that he tried to explain the assets of his family members but omitted to mention what they invested and earned in Dubai; that a tripartite agreement witnessing the sale of 75% shares in Gulf Steel Mill at Dubai has been brought on the record but a look at the said agreement would reveal that the sale did not bring them any cash, as its proceeds amounting to AED 21 Million were adjusted against the debt liability of BCCI Bank; that the remaining 25% shares were sold subsequently to the same vendee but how its proceeds swelled up to AED 12 Million is anybody's guess; that how did this money, irrespective of its source, reach Jeddah, Qatar and the U.K. is again anybody's guess; that respondent No. 7 pretended to become the owner of flats No. 16, 16-A, 17 and 17-A

at Avenfield House Park Lane London in 2006 but according to the order of the High Court of Justice, Queen's Bench Division in the case of **Al-Taufeeq Company for Investment Funds Limited. Vs. Hudaibia Paper Mills Limited and three others,** 2nd, 3rd and 4th defendants had a beneficial interest in the assets specified in the schedule thereto; that respondent No. 1 has consistently evaded income tax on the sums remitted to him as gift by his son Hussain Nawaz, respondent No. 7 herein, with the connivance of the Chairman FBR; that frank admission of respondent No. 6 in her interview that she is still dependent on her father and the fact that she is husbanded by a person who has neither any source of income nor pays any taxes leave no doubt that she is a dependent of respondent No. 1 for all legal and practical purposes; that the correspondence between Mr. Errol George, Director FIA, British Virgin Islands and Mossack Fonseca & Co. (B.V.I.) Limited shows that respondent No. 6 is the beneficial owner of the flats in London; that when it has been established on the record that respondent No. 6 is a dependent of respondent No. 1 and the correspondence between Mr. Errol George, Director FIA and Mossack reveals that respondent No. 6 is the beneficial owner of the flats, respondent No. 1 was duty bound to disclose her assets in his tax returns and that his failure to do so would expose him to disqualification under Articles 62(1)(f) and 63(1)(o) of the Constitution of the Islamic Republic of Pakistan; that even if it is assumed that respondent No. 6 by virtue of owning the flats worth millions cannot be termed as a dependent of respondent No. 1, the latter cannot lay his hands off the ownership of the flats as respondent No. 6 had no means to purchase them in 1993-1994; that it would still be a case of concealment of assets which would expose respondent No. 1 to disqualification in terms of the provisions of the Constitution mentioned above; that how did the Sharif family establish

Azizia Steel Mill at Jeddah, where did they get the means of investment from, how long did it remain functional and when did the Sharif family dispose it of are the questions shrouded in mystery inasmuch as they have not been witnessed by anything in black and white; that how did its sale proceeds reach the U.K. without involving any banking channel is another dark spot of the story where no light has been shed by respondents No. 1, 7 and 8; that the other sums running into millions gifted by respondent No. 7 to respondent No. 1 also raise questions about the legitimacy of their source and vulnerability of respondent No.1 to tax liability notwithstanding the sums have been transmitted through banking channels; that the tax and the wealth tax statements of respondent No. 6 for the years 2011-2012 reflect her shareholding in six companies without disclosing the source enabling her to acquire them; that expenses incurred by respondent No. 6 on travelling and acquisition of a valuable car have not been accounted for; that it has never been the case of respondent No. 6, nor can it be that her husband catered therefor when he paid no tax prior to 2013; that where no explanation for her princely extravagance is coming forth it can safely be deduced that she is still a dependent of respondent No. 1; that even the purpose of establishing offshore companies in the British Virgin Islands is no other but to protect the looted and laundered money which is an offence of the gravest form and that the people indulging in such activities have no right to hold the highest office of the Prime Minister; that the document purported to be the trust deed showing respondent No. 7 as beneficiary and respondent No. 6 as the trustee does not fit in with the story set up by respondent No.1 when considered in the light of the orders passed by the High Court of Justice Queen's Bench Division in the case cited above; that respondents No. 6, 7 or 8 could not claim the ownership of flats purchased in 1993 when they being 20, 21 and 17 years old

respectively at the time had no independent sources of income; that interview of respondent No. 8 with Tim Sebastien in November, 1999 belies the story thus set up in the trust deed; that nothing would turn much on establishment of the Jeddah Steel Mill, its sale and transmission of its sale proceeds to the U.K. in 2005 when none of the events has been witnessed by any documentary evidence; that the report of Mr. A. Rehman Malik, he submitted as Additional Director General, FIA to the then President of Pakistan is replete with details as to how the Sharif family laundered money, how it opened foreign currency accounts in the names of fake persons for converting black money into white and what was the design behind forming offshore companies in the British Virgin Islands and Jersey Island; that the confessional statement of Mr. Ishaq Dar respondent No.10 herein is another piece of evidence giving the details of the money laundered by the Sharif family; that the case involving respondents No. 1 and 10 has been quashed by the Lahore High Court on flimsy and fanciful grounds; that respondent No. 2 despite knowing that the case has been quashed on flimsy and fanciful grounds did not file an appeal against the judgment of the Lahore High Court and thus failed to do what he was required by law to do; that where did the Working Capital Fund provided to Flagship Investments Limited come from as is indicated in its financial statement for the period ending on 31st March, 2002 has neither been explained by respondent No. 1 nor respondent No. 8; that the stance of respondent No. 1 that the money went to the hands of respondents No. 7 and 8 after the sale of Jeddah Steel Mills is also belied by the financial statements of the aforesaid company as it already had sufficient capital in its accounts before the said sale; that even the bearer share certificates cannot bring respondents No. 1 and 6 out of the slimy soil unless they are proved to have been registered in conformity

with Section 41 of the BVI Business Companies Act, 2004; that a bearer share in a company is disabled for a period during which it is held by a person other than a custodian who is approved by the Commission in terms of Section 50-A(1) and 50-B of the Financial Services Commission Act, 2001; that transfer or purported transfer of an interest in the bearer share certificate is void if effected during the period it is disabled as it does not carry any of the entitlement which it would otherwise carry subject to sub-section 3 of Section 68 of the Act; that whether the bearer share was transferred to Hussain Nawaz or any other person in accordance with Section 68 of the BVI Business Companies Act is for him to prove and that where he fails to prove it, transfer of any interest in the bearer share certificates shall be void.

3. The case of the petitioner in Civil Petition No. 30 of 2016 in nutshell is that respondent No. 1 looted and laundered the money, formed British Virgin Island Companies, purchased as many as four flats at Avenfield House Park Lane London in the names of his dependents who at that time had no source of income; that he failed to declare their assets in his tax returns; that in his speech addressing the nation and the speech addressing the Parliament he stated many things which being false, incorrect and in conflict with the statement of respondent No. 7 expose him to disqualification under Articles 62(1)(f) and 63(1)(o) of the Constitution of the Islamic Republic of Pakistan; that the letter of Hamad Bin Jassim Bin Jaber Al-Thani being concocted and based on hearsay cannot come to his rescue nor can it save him from disqualification in terms of the Articles mentioned above. To support his contentions the petitioner placed reliance on the cases of **Imtiaz Ahmed Lali. Vs. Ghulam Muhammad Lali (PLD 2007 SC 369)**, **Mian Najeeb-ud-Din Owasi and another. Vs. Amir Yar Waran and others (PLD 2013 SC 482)**, **Muhammad**

Rizwan Gill. Vs. Nadia Aziz and others (PLD 2010 SC 828), Muddasar Qayyum Nahra. Vs. Ch. Bilal Ijaz and others (2011 SCMR 80), Malik Umar Aslam. Vs. Mrs. Sumaira Malik and others (2014 SCMR 45) and Sadiq Ali Memon. Vs. Returning Officer, NA-237, Thatta-I and others (2013 SCMR 1246).

4. Case of respondent No. 1 is that prayers made in the petition are vague and generalized; that issuance of a direction is sought against the Chairman NAB to discharge his obligations under the NAB Ordinance, 1999 but the cases pending investigation in mega corruption events have not been mentioned; that direction against respondent No. 4 for placing the name of Mian Nawaz Sharif and his family members named in Panama Leaks on the ECL is sought but no argument has been addressed in support of this prayer; that an order is sought to be passed against respondents No. 2 and 3 directing them to initiate claims on behalf of the Government of Pakistan for recovery of the properties but none of them has been identified; that yet another direction is sought to be issued against respondent No. 5 to probe and scrutinize the tax returns and assets declaration of respondent No. 1 and his entire family but none of its members has been named in the petition; that the last prayer tends to stretch the gamut of controversy to an extreme which is unworkable altogether; that with the prayer of this nature nothing can be pinned on respondent No. 1 when he has no BVI Company or any other company of the sort; that respondent No. 1 cannot be dragged in the controversy stirred in the petition stemming from the Panama Leaks when he is neither a director nor a shareholder nor a beneficial owner nor a guarantor in any of the BVI Companies; that the speeches addressing the nation and the Parliament respectively giving broad outlines of the business established and pursued by late Mian Muhammad Sharif cannot be construed like

pleadings nor could they be considered as item-wise replies to the allegations sworn on an affidavit; that conflict between the statements of respondent No. 1 and that of respondents No. 7 and 8 cannot be blown out of proportion so long as the latter have not been proved to be correct; that respondent No. 1 giving the outlines of the business of his father in his speech may have made errors or omissions, but when there is nothing on the record to show that intention behind them was suppression of truth, they cannot be used to his detriment in any proceeding; that after the amendment in clause 1(f) of Article 62 of the Constitution, every person shall be deemed to be sagacious, righteous, non-profligate, honest and ameen unless a declaration to the contrary has been given by a court of law; that since no such declaration has been given by any court of law it cannot be given by this Court in exercise of its jurisdiction under Article 184(3) of the Constitution, that too, when it is sought on the basis of the facts which are seriously disputed; that no finding about disqualification under Article 62(1)(f) of the Constitution or Sections 78(1)(d) or 99(1)(f) of the Representation of the People Act, 1976 could be given unless the facts constituting such disqualification are proved or admitted; that this is what has been held by this Court in the judgments rendered in the cases of **Muhammad Ijaz Ahmad Chaudhry. Vs. Mumtaz Ahmad Tarar and others (2016 SCMR 1), Malik Iqbal Ahmad Langrial. Vs. Jamshed Alam and others (PLD 2013 SC 179), Muhammad Khan Junejo. Vs. Federation of Pakistan through Secretary, M/o Law Justice and Parliamentary Affairs and others (2013 SCMR 1328), Allah Dino Khan Bhayo. Vs. Election Commission of Pakistan, Islamabad and others (2013 SCMR 1655), Abdul Ghafoor Lehri. Vs. Returning Officer, PB-29, Naseerabad-II and others (2013 SCMR 1271) Muhammad Siddique and another Vs. Federation of Pakistan (2013 SCMR 1665), Sadiq Ali Memon Vs.**

Returning Officer, NA-237, Thatta-1 and others (2013 SCMR 1246), Mian Najeeb-ud-Din Owasi and another Vs. Amir Yar Waran and another (PLD 2013 SC 482), Mudassar Qayyum Nahra Vs. Ch. Bilal Ijaz and others (2011 SCMR 80), Rana Aftab Ahmad Khan Vs. Muhammad Ajmal and another (PLD 2010 SC 1066), Haji Nasir Mehmood Vs. Mian Imran Masood and others (PLD 2010 SC 1089), Nawabzada Iftikhar Ahmed Khan Bar Vs. Chief Election Commissioner, Islamabad and others (PLD 2010 SC 817), Muhammad Rizwan Gill Vs. Nadia Aziz and others (PLD 2010 SC 828), Muhammad Siddique Baloch Vs. Jehangir Khan Tareen (PLD 2016 SC 97), Rai Hassan Nawaz Vs. Haji Muhammad Ayub and another (Civil Appeal No.532 of 2015 decided on 25.5.2016) and Ishaq Khan Khakwani Vs. Mian Muhammad Nawaz Sharif (PLD 2015 SC 275); that where Article 63(2) of the Constitution itself provides a mode and even a forum for deciding about the fate of a person who has become disqualified from being a member, this Court while exercising jurisdiction under Article 184(3) of the Constitution could not usurp the functions of such forum; that where no nexus of respondent No. 1 has been established with the Panama Leaks, his disqualification cannot be sought on the basis of his speech in the parliament or an omission therein, as it being privileged by virtue of Article 66 of the Constitution cannot be used against him in any proceeding of any court; that there is no equation between this case and that of **Syed Yousuf Raza Gillani, Prime Minister of Pakistan. Vs. Assistant Registrar, Supreme Court of Pakistan and others (PLD 2012 SC 466)** as in the latter case the charge of defying the judgments of this Court against the then Prime Minister, culminating in his disqualification, was proved to the hilt whereas nothing of that sort is available against respondent No.1 in this case; that where no documentary or any other aboveboard evidence pointing to the involvement of respondent No. 1 in acquisition of the flats is

available on the record nothing can be fished out of his speech delivered in the Parliament; that the privilege extended to the Members of Parliament has been recognized the world over and even in the neighbouring countries as is evident from Section 6 of the Constitution of the USA and Article 105 of the Constitution of India notwithstanding they are phrased and punctuated a bit differently; that Erskine May in his monumental work titled as the Law, Privileges, Proceedings and Usage of Parliament cites a line of precedents recognizing such a right; that what is the stature of this treatise in our jurisprudence can well be gathered from the words used by his lordship Mr. Justice A. R. Cornelius, as he then was, in the judgment rendered in the case of **Pakistan. Vs. Ahmed Saeed Kirmani (PLD 1958 SC 397)** when he said "I, therefore, need make no apology for referring to this work in this judgment as an authority upon point of procedure in the conduct of Parliament or legislative Assembly, which are not dealt with in detail in the Rules of Procedure of that Parliament or Assembly"; that this privilege has to be respected notwithstanding it is an exemption from the general law because the House cannot perform its functions without unimpeded use of the services of its Members; that even the Constitution of Bangladesh recognizes the unqualified and absolute privilege of a Member of Parliament in respect of any speech made by him in Parliament or any Committee thereof; that such privilege is not lost merely because the speech is telecast or published in newspapers; that the Court has no jurisdiction to proceed against him for what he said in Parliament or any Committee of Parliament, whether the statement is true or false and whether the statement is made in good faith or maliciously; that case of **Owen Robert Jennings. Vs. Rojer Edward Wyndham (2004 UK PC 36)**, **Regina. Vs. Chaytor [2011] 1 A.C. 684] A. Vs. United Kingdom [2003] 36 E.H.R.R. 51** and **Prebble**

Vs. Television New Zealand Ltd. [1995] 1 AC 321 are the luminous examples from the U.K. jurisdiction; that the dicta rendered in the cases of **The Commissioner of Income Tax, Kolkata Vs. Padam Chand Ram Gopal (AIR 1970 SC 1577)** and **In re Under Article 143 of the Constitution of India (AIR 1965 SC 745)** radiate recognition of this privilege; that the words used in Article 66 being clear and unambiguous need no precedent, all the same the judgment rendered in the case of **Syed Masroor Ahsan and others. Vs. Ardeshir Cowasjee and others (PLD 1998 SC 823)** is quite illustrative and enlightening on the subject; that the petitioner failed to make out a case for disqualification of respondent No. 1 in terms of Articles 62(1)(f) and 63(1)(o) of the Constitution as he neither defaulted nor delayed payment of any wealth tax; that if at all any part of the wealth of respondent No. 1 escaped assessment, the Wealth Tax Officer on receipt of a definite information could reopen the matter in accordance with Section 17 of the Wealth Tax Act, 1963; that the petitioner has no locus standi to say even a word in this behalf before this Court when it has never been his case that the competent officer despite receipt of a definite information in this behalf remained unmoved; that prayers No. 1 and 6 being inconsistent with each other cannot be countenanced when the fate of the former is dependent on the fate of the latter; that para 18(xi) of Constitution Petition No. 29 of 2016 is incorrect when the amounts remitted and received through gifts are fully reflected in the debit and credit entries of the respective accounts; that the amount remitted through gifts by respondent No. 7 to respondent No. 1 is not liable to be taxed when it clearly and squarely falls within the purview of Section 39(3) of the Income Tax Ordinance, 2001; that when respondent No. 6 has been living on her own and has independent sources of income none of the definitions given in the Black's Law Dictionary, Oxford English Dictionary, Workman's

Compensation Act, 1923, Provident Funds Act, 1925, Prevention of Corruption Act, 1947, Employees Social Insurance Ordinance, 1992, Immigration Ordinance, 1979, Federal National Foundation Ordinance, 2002 or any other law could make her a dependent; that reference to the judgments rendered in the cases of **Fahim ud Din Farhum Vs. Managing Director Member WAPDA, WAPDA House, Lahore and another (2001 SCMR 1955), Hand. Vs. Ball and others [1947](1) Chancery 228)** and **Re Baden's Deed Trusts Baden and others. Vs. Smith and others (1969 1 ALL. E.R. (1016)** are instructive and advantageous on the point; that where the controversy emerging in this case is factual and cannot be resolved without recording evidence, this Court in view of the dictum rendered in the case of **Pakistan Muslim League (N) Vs. Federation of Pakistan (PLD 2007 SC 642)** would desist from giving any decision on it while hearing a petition under Article 184(3) of the Constitution; that in the case of **Muhammad Asif. Vs. Federation of Pakistan (PLD 2014 SC 206)** this Court, no doubt, intervened and handed down a verdict but on the basis of the documents and the record which went undisputed; that this Court in view of Articles 184(3) and 187 of the Constitution has power to issue such direction, order or decree as may be necessary for doing complete justice in any case or matter pending before it but where a matter involving the same issue is pending before a forum having power and competence to grant the desired relief, this Court does not interfere; that the matter raised in this petition also calls for the same treatment where Writ Petition No. 31193/16 filed in the Lahore High Court and as many as four petitions raising the same issues filed in the Election Commission against respondent No. 1 and one against respondent No. 9 are pending adjudication and the fora mentioned above have the power and competence to grant the desired relief.

5. The case of the petitioner in Const. P. No. 03/2017 is that where respondent No. 4 in the said petition admitted that he and his family members set up Gulf Steel Mill in Dubai, disposed it of, set up Azizia Steel Mill in Jeddah and disposed that of, it is for him to prove the trail of money and legitimacy of means whereby he and his dependents purchased flats No. 16, 16-A, 17 and 17-A at Avenfield House Park Lane London; that where he did not prove either of them nor did he disclose the assets of his dependents, he is liable to be disqualified under Articles 62(1)(f) and 63(1)(o) of the Constitution; that where respondent No. 4 has also violated the Oath of his Office in his capacity as MNA as well as the Prime Minister, he is no more honest and ameen, therefore, he is also liable to be disqualified on this score; that respondent No. 4 in CP. No. 03 of 2017 cannot claim any privilege or even immunity under Articles 66 and 248 of the Constitution respectively when his speech is studded with lies and distortions and related to the matters which are essentially personal; that respondent No.4 while explaining the assets of his family used first person plural in his speeches in and outside the Parliament but while defending himself in the Court he denied to have any nexus with the assets of respondents No. 6, 7 and 8; that where respondents No.6, 7 and 8 have no sources of income, it is for respondent No.4 to explain where did they come from and what was the channel they were taken through for investment abroad; that where no evidence comes forth it shall be presumed that the flats were purchased with the money having spurious origin; that an inquiry in this behalf can be undertaken by this Court even while hearing a petition under Article 184(3) of the Constitution in view of the judgments rendered in the cases of **Nawabzada Iftikhar Ahmed Khan Bar Vs. Chief Election Commissioner, Islamabad and others (PLD 2010 SC 817), Muhammad Yasin Vs. Federation of Pakistan through Secretary**

Establishment Division Islamabad and others (PLD 2012 SC 132), Workers Party Pakistan through Akhtar Hussain Advocate, General Secretary and 6 others Vs. Federation of Pakistan and two others (PLD 2012 SC 681), Muhammad Azhar Siddiqui and others Vs. Federation of Pakistan and others (PLD 2012 SC 774), Watan Party and another Vs. Federation of Pakistan and another (PLD 2011 SC 997) and Muhammad Azhar Siddique and others Vs. Federation of Pakistan and others (PLD 2012 SC 660).

6. The case of respondent No. 6 as set up in her concise statement, supplementary concise statement and yet another statement is that she, ever since her marriage, has been living on her own with her husband in one of the houses in Shamim Agri Farms, Raiwind owned by her grandmother; that whatever she received, purchased, spent gifted or disposed of has been fully indicated in her tax returns, therefore, nothing adverse could be fished therefrom to make out a case of disqualification of respondents No. 1 and 9; that whatever her father gifted to her in any form was out of his abundant love and affection for her; that she has never been a beneficial owner of any of the flats at Avenfield House Park Lane London; that she independently owns assets, pays taxes thereon and holds a National Tax Number as is fully evident from her tax returns; that respondent No. 1 disclosed in column 12 of his wealth statement for the year 2011, an immovable property purchased in her name but that could not be construed to make her a dependent as no other column for mentioning such property was available in the relevant forms till the issuance of SRO No. 841(1) of 2015 dated Islamabad the 26th August, 2015; that failure of respondent No. 9 to disclose in his tax returns the gift of Rs.31,700000/- to respondent No. 6 would not entail anything adverse to him when he annexed the wealth statement of respondent No. 6 with his nomination papers; that no relief whatever has been sought against

respondent No. 6; that when respondent No. 6 is not a dependent of respondent No. 1, the latter's failure to disclose her assets in his wealth tax returns would not entail any liability against him; that her contribution to the Shamim Agri Farms can well be noticed from the returns for tax years 2013, 2014 and 2015 submitted by Mst. Shamim Akhtar would also go a long way to prove her status as being independent; that she lent and not borrowed from Chaudhry Sugar Mills Ltd; that her assets even on 30th June, 2010 were Rs.73,510431/- and that if the figures mentioned have not been read by the petitioner in their correct perspective, she could not be blamed for that; that she paid the amount to respondent No.1 in the tax year, 2012 for the land he purchased for her in tax year 2011 through a banking channel as is evident from the entries made at page Nos. 251 and 258 of CMA. No. 7530 of 2016; that if at all there has been any misstatement or tax evasion it could be inquired into by the competent forum and not by this Court; that respondent No. 6 in her interview with Sana Bucha denied to have owned anything in and outside the country but this statement cannot be treated as an admission or denial aimed at concealing anything when she has disclosed all of her income and assets in her tax returns; that the documents filed by the petitioner in CMA. No. 7511 of 2016 appearing to be a company resolution sent through as an email with the purported signature of respondent No. 6 is forged on the face of it as the signature thereon does not tally with any of the admitted signatures of respondent No. 6; that the correspondence between Mr. Errol George, Director FIA, British Virgin Islands and Mossack Fonseca & Co. (B.V.I.) Limited also appears to be a fabrication when respondent No. 6 at no stage has been a beneficial owner of the flats; that in all matters relating to public interest litigation this Court has to guard against entertainment of a petition on the basis of an information whose

authenticity is open to serious doubt; that since the expression dependent has not been defined by Income Tax Ordinance, Representation of People Act or NAB Ordinance recourse could be had to Black's Law Dictionary which defines it as 'one who relies on another for support or is not able to exist or sustain oneself' and that respondent No. 6 does not fall within the definition of the word 'dependent' when she lives on her own and has independent means of sustenance; that if at any rate the question whether she lives on her own and has independent means of existence is disputed it being disputed cannot be inquired into in a proceeding under Article 184(3) of the Constitution of Pakistan; that there is nothing baffling in the gift of a BMW car by respondent No. 8 to respondent No. 6 costing her Rs.35,000,00/- in the form of Customs Duty and Taxes and bringing her a profit of Rs.19,664,955/- on its having been traded in; that where many documents brought on the record to justify initiation of an inquiry are fake and forged, the petitioner is liable to be proceeded against under Section 469 of the Cr.P.C.; that when respondent No. 6 has disputed the document purported to have been signed by her it is worth nothing unless proved in accordance with law; that even the opinion of the handwriting expert given on comparison of her disputed and admitted signatures is worth nothing unless he affirms his opinion on oath in the Court and faces the test of cross-examination; that where the petitions appear to be malafide and the purpose behind them is to settle personal score or to gain a political mileage they cannot be entertained under Article 184(3) of the Constitution in view of the judgments rendered in the cases of **Hafeez-ud-Din. Vs. Abdur Razzak (PLD 2016 SC 79)**, **Janta Dal. Vs. H.S. Chowdary (AIR 1993 SC 829)**, **S.P. Gupta. Vs. President of India (AIR 1982 SC 149)**, **T.N.Godavarman Thirumulpad. Vs. Union of India and others (AIR 2006 SC 1774)**; that the principles and the

provisions of law regulating the jurisdiction of different courts and their hierarchies shall disappear where a lis which could adequately be decided by such courts is entertained and inquired into by this Court under Article 184(3) of the Constitution simply because it has been given the garb of public importance with reference to the enforcement of fundamental right.

7. The case of respondent No. 10 is that the confessional statement attributed to him is a result of inducement, coercion and torture spread over a period of almost six months; that it is by no stretch of imagination willed and voluntary; that the criminal transaction sought to be reopened through the confessional statement is past and closed as the same matter has been set at rest by the Lahore High Court in its judgment rendered in the case of **Hudabiya Engineering (Pvt) Limited. Vs. Pakistan through Secretary, Ministry of Interior, Government of Pakistan and six others (PLD 1998 Lahore 90)**; that even if the confessional statement is assumed to have been made voluntarily, it cannot be used against respondent No. 10 when it was recorded pursuant to the pardon granted to him by the Chairman NAB under Section 26 of the National Accountability Ordinance, 1999; that his status would remain that of an approver unless the pardon granted is forfeited which is not the case here; that a re-investigation of the case or yet another trial of respondent No. 10 shall be barred by Article 13 of the Constitution of Pakistan and Section 403 of the Cr.P.C.; that no parallel can be drawn between this case and the case of **Muhammad Yasin. Vs. Federation of Pakistan through Secretary, Establishment Division, Islamabad and others (PLD 2012 SC 132)** as in that case the core issue was not discussed and decided by the High Court; that where this case has been set at rest by a Bench of the Lahore High Court in the case of **Messrs Hudaibya Paper Mills Ltd and**

others. Vs. Federation of Pakistan and others (PLD 2016 Lahore 667) and the Chairman NAB has not filed an appeal against the judgment of the High Court, even in the second round of litigation, it cannot be reopened through a proceeding under Article 184(3) of the Constitution of Pakistan.

8. The case of respondent No. 7 is that neither respondent No. 1 has any nexus with flats No. 16, 16-A, 17 and 17-A at Avenfield House Park Lane London, nor any documentary evidence has been brought on the record to establish it; that where no such documentary evidence has been brought on the record to establish his nexus with the aforesaid flats, the assertion that the statement of respondent No. 1 runs counter to the statements of respondents No. 7 and 8 would prove nothing; that there is nothing in the tax returns, wealth statement or even in the nomination papers of respondent No. 1 to show that he defaulted or delayed the payment of any taxes or concealed any of his assets, therefore, the prayer of the petitioner to disqualify respondent No. 1 is just a cry for the Moon; that as the entire business inside and outside the country was in the hands of late Mian Muhammad Sharif, it is impossible for respondent No. 7 to trace the trail of money; that it is all the more impossible when more than three decades have passed and the record of such transactions has either been lost or taken away by the mercenaries of General Pervez Musharraf in the wake of October, 1999 *coup d'etat*; that whatever trail he could trace to is, that the Gulf Steel Mill was established by late Mian Muhammad Sharif in early seventies by availing loan from a Bank and land from the Municipality; that since the Mill hardly proved to be a success, its 75% shares were sold in 1978 through a tripartite agreement; that the money thus obtained was adjusted against its outstanding liabilities; that the remaining 25% shares were sold in 1980 against a sum of AED 12 millions; that the money so received by Tariq Shafi, as per his

statement sworn on an affidavit, was entrusted to Sheikh Fahad Bin Jasim Bin Jabir Al-Thani on the instructions of late Mian Muhammad Sharif in view of his longstanding business relations with the Al-Thani family; that Mian Muhammad Sharif, after his exile from Pakistan in December, 2000, advised Althani family to credit the amount so entrusted together with its cumulative returns in the account of respondent No. 7; that eventually the needful was done and pursuant thereto Hamad Bin Jassim Bin Jaber Al-Thani delivered the bearer shares of Neilsen and Nescoll to respondent No. 7; that the money as per the available record may not have been sent through the banking channel but there is nothing unusual about it as an amount to the tune of AED 12 millions could be carried in a small handbag; that the orders passed by the High Court of Justice Queen's Bench Division do not tend to negate the version set forth by respondent No. 7 as the orders bringing the flats under the charge were passed on the basis of a statement sworn on an affidavit by Shezi Nackvi as is clear by the tenor of the orders mentioned above; that the affidavit of the said Mr. Shezi Nackvi dated 13.01.2017 gives added strength to the version; that the documents relied upon by the petitioner are disputed and so are the facts averred in the petition, therefore, no sweeping opinion, one way or the other, could be given unless the documents are proved in accordance with law and statements of the petitioner and his witnesses, if any, are recorded on oath and subjected to the test of cross-examination; that where the petitioner failed to prove the accusation, failure of respondents No. 7 and 8 to substantiate any of their stances would not expose them to any liability under any law; that the judgment rendered in the case of **The State. Vs. Muhammad Hanif and 5 others (1992 SCMR 2047)** would be quite relevant to the case in hand; that this Court in the case of **Dr. Arsalan Iftikhar. Vs. Malik Riaz Hussain and others**

(PLD 2012 SC 903) while dealing with a similar situation left determination of the disputed questions of fact to a competent Court of law; that there is nothing in the version set up by respondents No. 7 and 8 as could be held to be incapable of having happened; that the bearer shares remained with Al-Thani and the day they were delivered to respondent No. 7 he became owner of the flats; that there is no missing link in the trail of money; that if at all there is any that was supplied by the letters written by Hamad Bin Jassim Bin Jaber Al-Thani; that respondents No. 7 and 8 cannot be equated with a person who travelled from rags to riches overnight as they belong to a family which has been deep in business ever since late 30s and made fortune in it, therefore, none of the assets acquired or owned by any member of the Sharif family can be held to be out of proportion to their known means and resources; that at times respondents No. 6 and 7 may fall short of the documents witnessing business transactions at different stages but that is partly due to lapse of time and partly due to loss of the record in the pandemonium of the coup d'état; that whatever record is available does not show that respondent No. 6 ever held any proprietary interest in the property; that the documents showing her to be the beneficial owner are not worthy of reliance firstly because the signature thereon neither appears to be of respondent No. 6 nor it tallies with her admitted signature and secondly because it has not been owned by Minerva; that the letter dated 6.2.2006 of Arrina Limited addressed to respondent No. 7 shows that the former would liaise on his behalf with service providers for Nescol Limited and Neilson Enterprises Limited; that the correspondence between Arrina Limited and Minerva Trust and Corporate Services Limited shows that the documents projecting respondent No. 6 as beneficial owner of the flats is not believed to be the latter's authorship; that there are gaps in the

version set up by respondents No. 7 and 8 but they cannot be used to make up the deficiencies in the case of the petitioner; that none of the respondents on the basis of the documents produced by the petitioners could be condemned when they have neither come from proper custody nor they have been authenticated; that this Court in the cases of **Air Marshal (Retd.) Muhammad Asghar Khan. Vs. General (Retd.) Mirza Aslam Baig, Former Chief of Army Staff and others (PLD 2013 SC 1), Watan Party and another. Vs. Federation of Pakistan and others (PLD 2011 SC 997) and Moulvi Iqbal Haider and others. Vs. Federation of Pakistan through Secretary M/o Law and Justice and others (2013 SCMR 1683)** gave a declaration in a proceedings under Article 184(3) of the Constitution chiefly because the material forming basis of judgments was admitted; that where no such material is available and the dispute raised before this Court requires a probe, it could well be made by a machinery or a Court of law provided by the normal law of the land as was held in **Suo Motu Case No. 05 of 2012 (PLD 2012 SC 664)** regarding allegation of business deal between Malik Riaz Hussain and Dr. Arsalan Iftikhar attempting to influence the judicial process.

9. The learned Attorney General appearing on behalf of the Federation contended that form of the petition and the forum chosen by the petitioner have to be looked at with reference to the context; that the form of the petition may suggest that it is in the nature of quo warranto but it partakes more of an election petition; that the issues raised in the petitions being interconnected and intertwined with personal political issues take it outside the scope of Article 184(3) of the Constitution; that this Court can entertain a petition under Article 184(3) of the Constitution if it involves a question of public importance with reference to the enforcement of a fundamental rights but in that event it has to be shown

that the question raised in fact involves a question of public importance and that one of the fundamental rights guaranteed by the Constitution has been breached; that when it has not been averred in any of the petitions as to what is the question of public importance and where has the breach of any of the fundamental rights taken place, all of them would merit outright dismissal; that it has been settled in the case of **Ishaq Khan Khakwani and others Vs. Mian Muhammad Nawaz Sharif and others (PLD 2015 SC 275)** that the expression honest and ameen being incapable of being defined in clear terms cannot be left to the determination of a court where except allegations and counter allegations, no undisputed material in oral or documentary form is available; that every person is sagacious, righteous, non-profligate, honest and ameen unless a declaration to the contrary is given by a Court of law; that such declaration can neither be given under Article 199 nor Article 184(3) of the Constitution as was held in the case of **Aftab Ahmed Khan. Vs. Muhammad Ajmal (PLD 2010 SC 1066)**; that where this dispute has already been raised before the Election Commission and could also be raised in terms of Article 63 of the Constitution before an appropriate forum, this Court cannot step in; that even if a Member of Parliament incurs a disqualification on account of his failure to submit a statement of his assets and liabilities or those of his spouse and dependents, he could be proceeded against under Section 42-A and punished under Section 82 of the Representation of the People Act; that where disqualification of a Member of Parliament is sought on the basis of a material which is disputed, this Court as a matter of course leaves it to the determination of a Court of law; that in no situation this Court will act as an investigator or a Trial Court by arrogating to itself a power or jurisdiction which has not been conferred on it by the Constitution or an act of the Parliament.

10. The learned ASC for the petitioner in CP. No. 29 of 2016 while exercising the right of rebuttal reiterated that respondents No. 6, 7 and 8 in view of their tender ages could not acquire the flats nor could they know anything about the trail of money, its growth, tripartite agreement and its implications, therefore, their statements explaining the events culminating in the acquisition of the flats do not deserve any serious consideration; that where respondent No. 1 in his speeches in and outside the Parliament himself undertook to explain the acquisition of the flats he was bound to explain it, and that when he did not, it could well be gathered that he is not honest and ameen, therefore, he is liable to be disqualified.

11. Sheikh Rashid Ahmed, petitioner in Civil Petition No.30 of 2016 reiterated the same argument by submitting that Qatri letter being outcome of an afterthought cannot be taken into account especially when it is based on hearsay; that this Court has ample power to do complete justice and as such can pass an order even beyond what has been averred and prayed in the petitions. The petitioner to support his contentions placed reliance on the judgments rendered in the cases of **Ch. Zahur Ilahi, M.N.A. Vs. Mr. Zulfikar Ali Bhutto and 2 others (PLD 1975 SC 383), Syed Masroor Ahsan and others. Vs. Ardeshir Cowasjee and others (PLD 1998 SC 248), Miss Benazir Bhutto. Vs. Federation of Pakistan and another (PLD 1988 SC 416), Ch. Nisar Ali Khan. Vs. Federation of Pakistan and others (PLD 2013 SC 568), Muhammad Ashraf Tiwana and others. Vs. Pakistan and others (2013 SCMR 1159), Muhammad Yasin. Vs. Federation of Pakistan through Secretary, Establishment Division, Islamabad and others (PLD 2012 SC 132), Pir Sabir Shah. Vs. Shad Muhammad Khan, Member Provincial Assembly, N.W.F.P. and another (PLD 1995 SC 66), Hitachi Limited and another. Vs. Rupali Polyester and others (1998 SCMR**

1618), Sindh High Court Bar Association through its Secretary and another. Vs. Federation of Pakistan through Secretary, Ministry of Law and Justice, Islamabad and others (PLD 2009 SC 879), Pakistan Muslim League (N) through Khawaja Muhammad Asif, M.N.A. and others (PLD 2007 SC 642) and **Mian Muhammad Nawaz Sharif. Vs. The State (PLD 2010 Lahore 81).** With regard to the privilege claimed by respondent No.1 the petitioner urged that it could only be claimed when the speech or the subject matter of speech relates to the businesses of the Parliament and the person of the speaker. He to support his contention placed reliance on the cases of **Canada (House of Common) Vs. Vaid [2005] 1 S.C.R. 667, 2005 SCC 30)** and **R Vs. Chaytor and others (2010 UKSC 52)**.

12. Learned ASC appearing for the petitioner in Civil Petition No.3 of 2017 also reiterated the same arguments. He while defining the expression 'honest' referred to the definitions reproduced in the case of **Fazal Muhammad. Vs. Mst. Chohara and others (1992 SCMR 2182).**

13. We have gone through the record carefully and considered the submissions of learned ASCs for the parties as well as the learned Attorney General for Pakistan.

14. The controversy urged before us relates to the ownership of flats No. 16, 16-A, 17 and 17-A at Avenfield House Park Lane London acquired under the aegis of offshore entities. It came to the limelight in the wake of the Panama Leaks. The leaks kicked off a storm the world over which also spilled over the shores of this country. The immediate reaction of respondent No. 1 to the leaks was that he delivered a speech inside and another outside the Parliament. He in the said speeches admitted the ownership of the flats and alluded to the means whereby he and his family purchased them. However, in his concise statement he denied to have owned the flats. Respondent No. 7 in his concise

statement claimed to have owned them. To explain the trail of money he introduced the letters of Hamad Bin Jassim Bin Jaber Al-Thani. But how did it end up in the ownership of the flats still clamors for an explanation. A bulk of unauthenticated documents brought on the record by the petitioners is pitched against another bulk of unauthenticated documents brought on the record by the respondents. The questions arising out of the petitions, the bulk of documents and the arguments addressed at the bar are summed up as under :-

i) whether respondent No. 6 could be held to be a dependent of respondent No. 1 on 30th June, 2013 and whether respondent No. 1 has failed to disclose his assets and liabilities and those of his spouse and dependents in Form-XXI of the nomination papers as required by Section 12(2)(f) of the Representation of the People Act and as such is liable to be disqualified;

ii) whether respondent No. 1 or any of his dependents or benamidars owns, possesses or has acquired any assets or pecuniary resources disproportionate to his known means of income;

iii) what a person is required to do and whether Articles 62, 63 of the Constitution or Section 99 of the Representation of People Act requires any member of Parliament to account for his assets or those of his dependents disproportionate to his known means of income and whether his failure to account for such assets calls for his disqualification;

iv) what would be liability of a holder of public office if he or any of his dependents or benamidars owns, possesses or has acquired right or title in any assets or pecuniary resources disproportionate to his known means of income which he cannot account for;

v) what are the fora provided by the Constitution and the law to deal with the questions emerging from Articles 62(1)(f) and 63(2) of the Constitution; and

vi) whether a case for disqualification of respondent No. 1 in terms of Article 62(1)(f) of the Constitution is spelt out by the speeches he delivered in and outside the Parliament and whether such speeches in view of the provision contained in Article 66 of the Constitution could be used to his detriment in any proceeding in any Court of law.

15. We would take up the first question first. What the petitioners sought to canvass at the bar is that respondent No. 6 being a dependent of respondent No. 1, is the beneficial owner of the flats at Avenfield House Park Lane London, that the latter was bound to disclose her assets and liabilities in his nomination form submitted on 30th June, 2013 in terms of Section 12(2)(f) of the ROPA and that when he did not do he is liable to be disqualified. This question on the face of it is a disputed question of fact. At the very outset, we asked the learned ASC for the petitioners whether this question could be decided by this Court under Article 184(3) of the Constitution of Pakistan when no undisputed evidence has been brought on the record to show that respondent No. 1 or respondent No. 6 owns the flats mentioned above. The learned ASC to answer the question cited the judgment rendered in the case of **Syed Yousuf Raza Gillani, Prime Minister of Pakistan. Vs. Assistant Registrar, Supreme Court of Pakistan and others (supra).** But a huge difference lies between this case and that of Syed Yousuf Raza Gillani. In this case the allegations leveled against respondent No. 1 are yet to be proved while in the latter case, Syed Yousuf Raza Gillani was proceeded against and convicted under Article 204(2) of the Constitution of the Islamic Republic of Pakistan read with Section 3 of the Contempt of Court Ordinance for defying not only paragraphs No. 177 and 178 of the judgment rendered in the case of **Dr. Mobashir Hassan and**

others. Vs. Federation of Pakistan and others (PLD 2010 SC 265), but many other orders of this Court directing him to write a letter for the revival of the Government's request to the Swiss Authorities. When despite the conviction of Syed Yousuf Raza Gillani the Speaker declined to refer the question to the Election Commission within 30 days, this Court in the case of **Muhammad Azhar Siddique and others Vs. Federation of Pakistan and others (supra)** held that since no appeal was filed by Syed Yousuf Raza Gillani against the said judgment, the conviction attained finality; therefore, he has become disqualified from being a Member of the Parliament in terms of Article 63(1)(g) of the Constitution. The ratio of the cases of **Imtiaz Ahmed Lali. Vs. Ghulam Muhammad Lali**, **Muhammad Rizwan Gill. Vs. Nadia Aziz and others**, **Muddasar Qayyum Nahra. Vs. Ch. Bilal Ijaz and others**, **Malik Umar Aslam. Vs. Mrs. Sumaira Malik and others** and **Sadiq Ali Memon. Vs. Returning Officer, NA-237, Thatta-I and others (supra)** cited by petitioner in CP. No. 30 of 2016 is not applicable to the case in hand as in those cases disqualification of the candidates or the Members of Parliament was established through evidence on the record. The case of **Ch. Zahur Ilahi, M.N.A. Vs. Mr. Zulfikar Ali Bhutto and 2 others (supra)** too has no relevance to the case in hand as no issue relating to Articles 204 or 248 of the Constitution of Pakistan has been raised in this case. The case of **Mian Najeeb-ud-Din Owasi and another. Vs. Amir Yar Waran and others (supra)** deals with implementation of the judgment rendered in the case of **Muhammad Rizwan Gill Vs. Nadia Aziz and others (supra)**, therefore, it does not apply to this case. In the cases of **Muhammad Ijaz Ahmad Chaudhry. Vs. Mumtaz Ahmad Tarar and others**, **Malik Iqbal Ahmad Langrial. Vs. Jamshed Alam and others**, **Muhammad Khan Junejo. Vs. Federation of Pakistan through Secretary, M/o Law Justice and Parliamentary Affairs and others**, **Allah Dino Khan Bhayo. Vs.**

Election Commission of Pakistan, Islamabad and others, **Abdul Ghafoor Lehri. Vs. Returning Officer, PB-29, Naseerabad-II and others**, **Muhammad Siddique and another Vs. Federation of Pakistan**, **Sadiq Ali Memon Vs. Returning Officer, NA-237, Thatta-1 and others**, **Mian Najeeb-ud-Din Owasi and another Vs. Amir Yar Waran and another**, **Mudassar Qayyum Nahra Vs. Ch. Bilal Ijaz and others**, **Rana Aftab Ahmad Khan Vs. Muhammad Ajmal and another**, **Haji Nasir Mehmood Vs. Mian Imran Masood and others**, **Nawabzada Iftikhar Ahmed Khan Bar Vs. Chief Election Commissioner, Islamabad and others**, **Muhammad Rizwan Gill Vs. Nadia Aziz and others**, **Muhammad Siddique Baloch Vs. Jehangir Khan Tareen**, **Rai Hassan Nawaz Vs. Haji Muhammad Ayub and another** and **Ishaq Khan Khakwani Vs. Mian Muhammad Nawaz Sharif** **(supra)** this Court proceeded to disqualify a good number of persons under Articles 62(1)(f) and 63(1)(c) of the Constitution where the facts constituting such disqualification were proved and admitted on the record. The judgments rendered in the cases of **Nawabzada Iftikhar Ahmed Khan Bar Vs. Chief Election Commissioner, Islamabad and others**, **Muhammad Yasin Vs. Federation of Pakistan through Secretary Establishment Division Islamabad and others**, **Muhammad Azhar Siddiqui and others Vs. Federation of Pakistan and others**, **Watan Party and another Vs. Federation of Pakistan and another** and **Muhammad Azhar Siddique and others Vs. Federation of Pakistan and others** **(supra)** cited by learned ASC appearing in C.P. No. 03 of 2017 too are not applicable to the case in hand when the decisions in the said cases were based on undisputed material on the record. The case of **Workers Party Pakistan through Akhtar Hussain Advocate, General Secretary and 6 others Vs. Federation of Pakistan and two others** **(supra)** dealing with different questions has no perceptible relevance to the case in hand. We, therefore, have no hesitation to hold that a question of this

nature in the absence of an undisputed evidence cannot be decided by this Court in exercise of its jurisdiction under Article 184(3) of the Constitution.

16. The second question in the seriatim is whether respondent No. 1 or any of his dependents or benamidars owns, possesses or has acquired any assets or pecuniary resources disproportionate to his known means of income? The learned ASCs for the petitioners in their efforts to persuade us to answer this question in affirmative referred to a number of documents showing the establishment of Gulf Steel Mill at Dubai, its sale, establishment of Azizia Steel Mill at Jeddah, its sale and incorporation of Nescol Limited and Neilson Enterprises Limited in British Virgin Islands. Under the veil of the aforesaid companies, respondent No. 1 has been alleged to have acquired flats No. 16, 16-A, 17 and 17-A at Avenfield House Park Lane London. The personal information form dated 14.10.2011 purportedly issued by Minerva Trust and Corporate Services Limited shows respondent No. 6 as the beneficial owner of the flats. This document has been purportedly signed by the said respondent, but she disputed its genuineness and even her signatures thereon. Another document showing respondent No. 6 as the beneficial owner of the flats is the alleged correspondence between Mr. Errol George, Director FIA, British Virgin Islands and Money Laundering Reporting Officer of Mossack Fonseca & Co. (B.V.I.) Limited. A photocopy of an extract from the clients register of Director, Minerva Trust and Corporate Services Limited, according to the learned ASC for the petitioner, is yet another document proving respondent No. 6 as the beneficial owner of the flats. 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 U.K.; 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 where did 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 clamor for answers to be found by the investigation agency and then by the Accountability Court established under the National Accountability Bureau Ordinance.

17. The third question requiring consideration of this Court is what a person is required to do under the Constitution and the law and whether Articles 62, 63 of the Constitution and Section 99 of the Representation of People Act require any member of Parliament to account for his assets or those of his dependents if they are disproportionate to his known means of income and whether his failure to account for such assets could call for his disqualification. Before we answer this question it is worthwhile to refer to Articles 4, 62 and 63 of the Constitution and Section 99 of the Representation of the People Act which read as under:

> "***4.*** *To enjoy the protection of law and to be treated in accordance with law is the inalienable right of every citizen. Wherever he may be, and of every other person for the time being within Pakistan.---*
>
> *(2) In particular*
>
> *(a) no action detrimental to the life, liberty, body, reputation or property of any person shall be taken except in accordance with law;*
>
> *(b) no person shall be prevented from or be hindered in doing that which is not prohibited by law; and*
>
> *(c) no person shall be compelled to do that which the law does not required him to do."*
>
> ***"62. Qualifications for membership of Majlis-e-Shoora (Parliament)****.—(l) A person shall not be qualified to be elected or chosen as a member of Majlis-e-Shoora (Parliament) unless—*
>
> *(a) he is a citizen of Pakistan;*

(b) he is, in the case of the National Assembly, not less than twenty- five years of age and is enrolled as a voter in any - electoral roll in—

(i) any part of Pakistan, for election to a general seat or a seat reserved for a non-Muslims; and

(ii) any area in a Province from which she seeks membership for election to a seat reserved for women.

(c) he is, in the case of the Senate, not less than thirty years of age and is enrolled as a voter in any area in a Province or, as the case may be, the Federal Capital or the Federally Administered Tribal Areas, from where he seeks membership;

(d) he is of good character and is not commonly known as one who violates Islamic Injunctions;

(e) he has adequate knowledge of Islamic teachings and practices obligatory duties prescribed by Islam as well as well abstains from major sins;

(f) he is sagacious, righteous, non-profligate, honest and ameen, there being no declaration to the contrary by a court of law; and

(g) he has not, after the establishment of Pakistan, worked against the integrity of the country or opposed the ideology of Pakistan:

(2) The disqualifications specified in paragraphs (d) and (e) shall not apply to a person who is a non-Muslim, but such a person shall have good moral reputation.]

63. Disqualifications for membership of Majlis-e-Shoora (Parliament).—

(1) A person shall be disqualified from being elected or chosen as, and from being, a member of the Majlis-e-Shoora (Parliament), if—

(a) he is of unsound mind and has been so declared by a competent court; or

(b) he is an undischarged insolvent; or

(c) he ceases to be a citizen of Pakistan, or acquires the citizenship of a foreign State; or

(d) he holds an office of profit in the service of Pakistan other than an office declared by law not to disqualify its holder; or

(e) he is in the service of any statutory body or any body which is owned or controlled by the Government or in which the Government has a controlling share or interest; or

(f) being a citizen of Pakistan by virtue of section 14B of the Pakistan Citizenship Act, 1951 (II of 1951), he is for the time being disqualified under any law in force in Azad Jammu and Kashmir from being elected as a member of the Legislative Assembly of Azad Jammu and Kashmir; or

(g) he has been convicted by a court of competent jurisdiction for propagating any opinion, or acting in any manner, prejudicial to the ideology of Pakistan, or the sovereignty, integrity or security of Pakistan, or the integrity or independence of the judiciary of Pakistan, or which defames or brings into ridicule the judiciary or the Armed Forces of Pakistan, unless a period of five years has elapsed since his release; or

h) he has been, on conviction for any offence involving moral turpitude, sentenced to imprisonment for a term of not less than two years, unless a period of five years has elapsed since his release; or

i) he has been dismissed from the service of Pakistan or service of a corporation or office set up or, controlled, by the Federal Government, Provincial Government or a Local Government on the ground of misconduct, unless a period of five years has elapsed since his dismissal; or

j) he has been removed or compulsorily retired from the service of Pakistan or service of a corporation or office set up or controlled by the Federal Government, Provincial Government or a Local Government on the ground of misconduct, unless a period of three years has elapsed since his removal or compulsory retirement; or

k) he has been in the service of Pakistan or of any statutory body or any body which is owned or controlled by the Government or in which the Government has a controlling share or interest, unless a period of two years has elapsed since he ceased to be in such service; or

(l) he, whether by himself or by any person or body of persons in trust for him or for his benefit or on his account or as a member of a Hindu undivided family, has any share or interest in a contract, not being a contract between a cooperative society and Government, for the supply of goods to, or for the execution of any contract or for the performance of any service undertaken by, Government:

Provided that the disqualification under this paragraph shall not apply to a person—

(i) where the share or interest in the contract devolves on him by inheritance or succession or as a legatee, executor or administrator, until the expiration of six months after it has so devolved on him;

(ii) where the contract has been entered into by or on behalf of a public company as defined in the Companies Ordinance, 1984 (XL VII of 1984), of which he is a shareholder but is not a director holding an office of profit under the company; or

(iii) where he is a member of a Hindu undivided family and the contract has been entered into by any other member of that family in the course of carrying on a separate business in which he has no share or interest;

Explanation.—In this Article "goods" does not include agricultural produce or commodity grown or produced by him or such goods as he is, under any directive of Government or any law for the time being in force, under a duty or obligation supply; or

(m) he holds any office of profit in the service of Pakistan other than the following offices, namely:—

(i) an office which is not whole time office remunerated either by salary or by fee;

(ii) the office of Lumbardar, whether called by this or any other title;

(iii) the Qaumi Razakars;

(iv) any office the holder whereof, by virtue of such office, is liable to be called up for military training or military service under any law providing for the constitution or raising of a Force; or

(n) he has obtained a loan for an amount of two million rupees or more, from any bank, financial institution, cooperative society or cooperative body in his own name or in the name of his spouse or any of his dependents, which remains unpaid for more than one year from the due date, or has got such loan written off; or

(o) he or his spouse or any of his dependents has defaulted in payment of government dues and utility expenses, including telephone, electricity, gas and water charges in excess of ten thousand rupees, for over six months, at the time of filing his nomination papers; or

(p) he is for the time being disqualified from being elected or chosen as a member of a Majlis-e-Shoora (Parliament) or of Provincial Assembly under any law for the time being inforce.

Explanation.-For the purposes of this paragraph "law" shall not include an Ordinance promulgated under Article 89 or Article 128.

(2) If any question arises whether a member of the Majlis-e-Shoora (Parliament) has become disqualified from being a member, the Speaker or, as the case may be, the Chairman shall, unless he decides that no such question has arisen, refer the question to the Election Commission within thirty days and if he fail to do so within the aforesaid period it shall be deemed to have been referred to the Election Commission. .

(3) The Election Commission shall decide the question within ninety days from its receipt or deemed to have been received and if it is of the opinion that the member has become disqualified, he shall cease to be a member and his seat shall become vacant."

AND

"**99.** *Qualifications and disqualifications.–(1)A person shall not be qualified to be elected or chosen as a member of an Assembly unless*

(a) he is a citizen of Pakistan;

[(b) he is, in the case of National Assembly, not less than twenty-five years of age and is enrolled as a voter in any electoral roll:

(i) in any part of Pakistan, for election to a general seat and minority seat;

and

(ii) in a Province, from where such person seeks membership for election to a seat reserved for women];

(c) he is, in the case of Provincial Assembly, not less than twenty-five years of age and is enrolled as a voter in any electoral roll [as a voter in any area in a Province from where he seeks membership for] that Assembly;

[(cc) xxxxxxx]

(d) he is of good character and is not commonly known as one who violates Islamic Injunctions ;

(e) he has adequate knowledge of Islamic teachings and practices obligatory duties prescribed by Islam as well as abstains from major sins ;

(f) he is sagacious, righteous and non-profligate and honest and ameen ;

(g) he has not been convicted for a crime involving moral turpitude or for giving false evidence; and

(h) he has not, after the establishment of Pakistan, worked against the integrity of the country or opposed the ideology of Pakistan: Provided that the disqualifications specified in clauses (d) and (e) shall not apply to a person who is a non-Muslim, but such a person shall have good moral reputation.

(IA) A person shall be disqualified from being elected as, and from being, a member of an Assembly, if

(a) he is of unsound mind and has been so declared by a competent court; or

(b) he is an un-discharged insolvent; or

(c) he ceases to be a citizen of Pakistan, or acquires the citizenship of a foreign State; or

(d) he holds an office of profit in the service of Pakistan other than an office declared by law not to disqualify its holder; or

(e) he is in the service of any statutory body or any body which is owned or controlled by the Government or in which the Government has a controlling share or interest; or

(f) being a citizen of Pakistan by virtue of section 14B of the Pakistan Citizenship Act,1951(11 of 1951),he is for the time being disqualified under any law in force in Azad Jammu and Kashmir from being elected as a member of the Legislative Assembly of Azad Jammu and Kashmir; or

(g) he is propagating any opinion, or acting in any manner, prejudicial to the Ideology of Pakistan, or the sovereignty, integrity or security of Pakistan, or morality, or the maintenance of public order, or the integrity or independence of the judiciary of Pakistan, or which defames or brings into ridicule the judiciary or the Armed Forces of Pakistan, or

[(h) has been convicted by a court of competent jurisdiction on a charge of corrupt practice, moral turpitude or misuse of power or authority under any law for the time being in force; or

(i) has been dismissed from the service of Pakistan or service of a corporation or office set up or controlled by the Federal Government, Provincial Government or a local government on grounds of misconduct or moral turpitude; or

(j) has been removed or compulsorily retired from the service of Pakistan or service of a corporation or office set up or controlled by the Federal Government, Provincial Government or a local government on grounds of misconduct or moral turpitude; or]

(k) he has been in the service of Pakistan or of any statutory body or any body which is owned or controlled by the Government or in which the Government has a controlling share or interest, unless a period of two years has elapsed since he ceased to be in such service; or

(l) he is found guilty of a corrupt or illegal practice under any law for the time being in force, unless a period of five years has elapsed from the date on which that order takes effect; or

[(m) Omitted.

(n) he, whether by himself or by any person or body of persons in trust for him or for his benefit or on his account or as a member of a Hindu undivided family has any share or interest in a contract, not being a contract between a cooperative society and Government, for the supply of goods to, or for the execution of any contract or for the performance of any service undertaken by, Government:

Provided that the disqualification under this clause shall not apply to a person---

(i) where the share or interest in the contract devolves on him by inheritance or succession or as a legatee, executor or administrator, until the expiration of six months after it has so devolved on him;

(ii) where the contract has been entered into by or on behalf of a public company as defined in the Companies Ordinance,1984 (XLV II of 1984),of which he is a shareholder but is not a director holding an office of profit under the company; or

(iii) where he is a member of a Hindu undivided family and the contract has been entered into by any other member of that family in the course of carrying on a separate business in which he has no share or interest; or

Explanation.-In this section "goods " does not include agricultural produce or commodity grown or produced by him or such goods as he is, under any directive of Government or any law for the time being in force, under a duty or obligation to supply;

(o) he holds any office of profit in the service of Pakistan other than the following offices, namely:

(i) an office which is not whole time office remunerated either by salary or by fee;

(ii) the office of Lumbardar, whether called by this or any other title;.

(iii) the Qaumi Razakars;

(iv) any office the holder whereof, by virtue of such office, is liable to be called up for military training or military service under any law providing for the constitution or raising of a Force; or

(p) having, whether by himself or by any person in trust for him or for his benefit or on his account, any share or interest in a contract for

(i) the supply of goods to, or

(ii) the execution of any work, or the performance of any service, undertaken by, the Government, or a local authority or an autonomous body in which the Government has a controlling share or interest, he does not, after his election as a member but within thirty days of his making oath as such make a declaration in writing to the Commission that he has such share or interest, unless a period of five years has elapsed since his failure to do so; or

(q) being a managing agent, manager or secretary of, or holding any other office carrying the right to remuneration in, any company or corporation (other than a cooperative society)in the capital of which the Government has not less than twenty-five per cent share or which is managed by the Government, he does not, after his election as a member but within thirty days of his making oath as such, make a declaration in writing to the Commissioner that he is such managing agent, manager or secretary, or holds such office, unless a period of five years has elapsed since his failure to do so; or

[(r) has been convicted and sentenced to imprisonment for having absconded by a competent court under any law for the time being in force; or

(s) has obtained a loan for an amount of two million rupees or more, from any bank, financial institution, cooperative society or cooperative body in his own name or in the name of his spouse or any of his dependents, which remains unpaid for more than one year from the due date, or has had such loan written off; or

(t) he or his spouse or any of his dependents is in default in payment of government dues or utility expenses, including telephone, electricity, gas and water charges of an amount in excess of ten thousand rupees, for over six months, at the time of filing of nomination papers of such person.]

Explanation I.-In this sub-section, service of Pakistan has the same meaning as in Article 260.

(2) Omitted]."

A reading of Article 4 of the Constitution would reveal that no person shall be compelled to do that which the law does not require him to do. While a reading of Articles 62 and 63 of the Constitution and

Section 99 of the ROPA would reveal that none of them requires any member of Parliament to account for his assets or those of his dependents even if they are disproportionate to his known means of income. Section 12(2)(f) of the ROPA requires him to disclose his assets and those of his spouse and dependents and not the means whereby such assets are acquired. Where none of the provisions of the Constitution or the Act dealing with disqualifications requires a member of Parliament to account for his assets and those of his dependents, even if they are disproportionate to his known means of income, how could this Court on its own or on a petition of any person under Article 184(3) of the Constitution require him to do that, and declare that he is not honest and ameen if he does not account for such assets. Given Section 9(a)(v) of the Ordinance requires him to account for his assets and those of his dependents and benamidars if they are disproportionate to his known means of income in a trial before an Accountability Court but not in a proceeding under Article 184(3) of the Constitution. Therefore, failure of respondent No. 1 to do that which he is not required by law to do would not be of any consequence. It, thus, cannot call for his disqualification at least at this stage.

18. The fifth question focuses on the liability of a holder of public office if he or any of his dependents or benamidars owns, possesses or has acquired right or title in any assets or pecuniary resources disproportionate to his known means of income which he cannot account for. The answer is provided by Sections 9(a)(v), 10 and 15 of the National Accountability Bureau Ordinance which read as under:-

> *"**S.9... Corruption and Corrupt Practices: (a)** 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:*
> *i) .....*
> *ii) .....*

iii) ……
iv) ……..
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, which he cannot [reasonably] account for [or maintains a standard of living beyond that which is commensurate with his sources of income].

10. Punishment for corruption and corrupt practices.--*(a) [A holder of public office or any other person] who commits the offence of corruption and corrupt practices shall be punishable with [rigorous] imprisonment for a term which may extend to 14 years, [and with fine] and such of the assets and [pecuniary sources] of such [holder of public office or person as are] found to be disproportionate to the known sources of his income or which are acquired by money obtained through corruption and corrupt practices whether in his name or in the name of any of his dependents, or benamidars shall be [***] forfeited to the appropriate government, [or the concerned bank or financial institution as the case maybe].*

[(b) The offences specified in the Schedule to this Ordinance shall be punishable in the manner specified therein.

(c) The Federal Government may, by notification in the official Gazette, amend the Schedule so as to add any entry thereto or modify or omit any entry therein.

(d) Notwithstanding anything to the contrary contained in any other law for the time being in force an accused, convicted by the Courts of an offence under this Ordinance, shall not be entitled to any remission in his sentence.]

15. Disqualification to contest elections [or to hold public office]:-- *(a) [Where an accused person is convicted [of an offence under Section 9 of this Ordinance], he shall forthwith cease to hold public, office, if any, held by him and further he shall stand disqualified for a period of ten years, to be reckoned from the date he is released after serving the sentence, for seeking or from being elected, chosen, appointed or nominated as a member or representative of any public body or any statutory or local authority or in service of Pakistan or of any Province :*

Provided that any accused person who has availed the benefit of [sub-section (b) of Section] 25 shall also be deemed to have been convicted for an offence under this Ordinance, and shall forthwith cease to hold public office, if any, held by him and further he shall stand disqualified for a period of ten years, to be reckoned from the date he has discharged his liabilities relating to the matter or transaction in issue, for seeking or from being

> *elected, chosen, appointed or nominated as a member or representative of any public body or any statutory or local authority or in service of Pakistan or of any Province.]*
>
> *(b) Any person convicted of an offence [under Section 9 of the Ordinance] shall not be allowed to apply for or be granted or allowed any financial facilities in the form of any loan or advances [or other financial accommodation by] any Bank or Financial Institution [owned or controlled by Government], for a period of 10 years from the date of conviction."*

Any liability arising out of these Sections has its own trappings. Any allegation leveled against a holder of public office under these provisions of law requires an investigation and collection of evidence showing that he or any of his dependents or benamidars owns, possesses or has acquired assets etc disproportionate to his known means of income. Such investigation is followed by a full-fledged trial before an Accountability Court for determination of such liability. But where neither the Investigation Agency investigated the case, nor any of the witnesses has been examined and cross-examined in an Accountability Court nor any of the documents incriminating the person accused has been produced and proved in accordance with the requirements of Qanoon-e-Shahadat Order, 1984, nor any oral or documentary pieces of evidence incriminating the person accused has been sifted, no verdict disqualifying a holder of public office could be given by this Court in a proceeding under Article 184(3) of the Constitution on the basis of a record which is yet to be authenticated. We must draw a line of distinction between the scope of jurisdiction of this Court under Article 184(3) of the Constitution and that of the Accountability Court under the Ordinance and between the disqualifications envisioned by Articles 62 and 63 of the Constitution and Section 99 of the ROPA and the criminal liabilities envisioned by Sections 9, 10 and 15 of the Ordinance lest we condemn any member of Parliament on assumptions by defying the requirements of a fair trial and

due process. We cannot make a hotchpotch of the Constitution and the law by reading Sections 9 and 15 of the Ordinance in Articles 62, 63 of the Constitution and Section 99 of the Act and pass a judgment in a proceeding under Article 184(3) of the Constitution which could well be passed by an Accountability Court after a full-fledged trial. Nor could we lift Sections 9 and 15 of the Ordinance, graft them onto Article 63 of the Constitution, construe them disqualifications and proceed to declare that the member of Parliament so proceeded against is not honest and ameen and as such is liable to be disqualified. A verdict of this nature would not only be unjust but coram non judice for want of jurisdiction and lawful authority. If a person is sought to be proceeded against under Section 9(a)(v) and 15 of the NAB Ordinance resort could be had to the mode, mechanism and machinery provided thereunder. Let the law, the Investigation Agency and the Accountability Court and other Courts in the hierarchy take their own course. Let respondent No. 1 go through all the phases of investigation, trial and appeal. We would not leap over such phases in gross violation of Article 25 of the Constitution which is the heart and the soul of the rule of law. We also don't feel inclined to arrogate to ourselves a power or exercise a jurisdiction which has not been conferred on us by any of the acts of the Parliament or even by Article 184(3) of the Constitution. Who does not know that making of a statement on oath in a trial lends it an element of solemnity; cross-examination provides safeguards against insinuation of falsehood in the testimony; provisions of Qanoon-e-Shahadat Order regulate relevancy of facts, admissibility of evidence and mode of proof through oral and documentary evidence and thus ensure due process of law. We for an individual case would not dispense with due process and thereby undo,

obliterate and annihilate our jurisprudence which we built up in centuries in our sweat, in our toil, in our blood.

19. Yes, the officers at the peak of NAB and FIA may not cast their prying eyes on the misdeeds and lay their arresting hands on the shoulders of the elites on account of their being amenable to the influence of the latter or because of their being beholden to the persons calling the shots in the matters of their appointment posting and transfer. But it does not mean that this Court should exercise a jurisdiction not conferred on it and act in derogation of the provisions of the Constitution and the law regulating trichotomy of power and conferment of jurisdiction on the courts of law. Any deviation from the recognized course would be a recipe for chaos. Having seen a deviation of such type, tomorrow, an Accountability Court could exercise jurisdiction under Article 184(3) of the Constitution and a trigger happy investigation officer while investigating the case could do away with the life of an accused if convinced that the latter is guilty of a heinous crime and that his trial in the Court of competent jurisdiction might result in delay or denial of justice. Courts of law decide the cases on the basis of the facts admitted or established on the record. Surmises and speculations have no place in the administration of justice. Any departure from such course, however well-intentioned it may be, would be a precursor of doom and disaster for the society. It as such would not be a solution to the problem nor would it be a step forward. It would indeed be a giant stride nay a long leap backward. The solution lies not in bypassing but in activating the institutions by having recourse to Article 190 of the Constitution. Political excitement, political adventure or even popular sentiments real or contrived may drive any or many to an aberrant course but we have to go by the law and the book. Let us stay and act within the parameters of the Constitution and the law

as they stand, till the time they are changed or altered through an amendment therein.

20. The next question emerging for the consideration of this Court is what are the fora provided by the Constitution and the law to deal with the questions emerging from Articles 62(1)(f) and 63(2) of the Constitution. To answer this question we will have to fall back upon Articles 62 and 63 of the Constitution. A careful reading of the said Articles would reveal that the one deals with qualifications of a person to be elected or chosen as a member of Parliament while the other deals with disqualifications of a person not only from being elected or chosen but also from being a member of Parliament. If a candidate is not qualified or is disqualified from being elected or chosen as a member of Parliament in terms of Articles 62 and 63 of the Constitution, his nomination could be rejected by the Returning Officer or any other forum functioning in the hierarchy. But where the returned candidate was not, on the nomination day, qualified for or disqualified from being elected or chosen as a member, his election could be declared void by the Election Tribunal constituted under Article 225 of the Constitution. While election of a member whose disqualification was overlooked, illegally condoned or went unquestioned on the nomination day before the Returning Officer or before the Election Tribunal, could still be challenged under Article 199(1)(b)(ii) or Article 184(3) of the Constitution of Pakistan, 1973 as was held in the cases of **Lt. Col. Farzand Ali and others. Vs. Province of West Pakistan through the Secretary, Department of Agriculture, Government of West Pakistan, Lahore (PLD 1970 SC 98)** and **Syed Mehmood Akhtar Naqvi. Vs. Federation of Pakistan through Secretary Law and others (PLD 2012 S.C. 1054)**. However, disqualifications envisaged by Article 62(1)(f) and Article 63(2) of the Constitution in view of words used therein have to

be dealt with differently. In the former case the Returning Officer or any other fora in the hierarchy would not reject the nomination of a person from being elected as a member of Parliament unless a court of law has given a declaration that he is not sagacious, righteous, non-profligate, honest and ameen. Even the Election Tribunal, unless it itself proceeds to give the requisite declaration on the basis of the material before it, would not disqualify the returned candidate where no declaration, as mentioned above, has been given by a court of law. The expression "a court of law" has not been defined in Article 62 or any other provision of the Constitution but it essentially means a court of plenary jurisdiction, which has the power to record evidence and give a declaration on the basis of the evidence so recorded. Such a court would include a court exercising original, appellate or revisional jurisdiction in civil and criminal cases. But in any case a court or a forum lacking plenary jurisdiction cannot decide questions of this nature at least when disputed. In the latter case when any question arises whether a member of Parliament has become disqualified it shall be dealt with only by the Election Commission on a reference from the Speaker of the Parliament in terms of Article 63(2) and 63(3) of the Constitution. (Emphasis supplied). We would have sent this case to the Speaker in terms of 63(2) or the Election Commission in terms of Article 63(3) of the Constitution but we do not think a question of such nature has arisen in this case as respondent No. 1 has been alleged to be disqualified even on the nomination day on account of having failed to disclose his assets and those of his dependents.

21. Now we take up the question whether a case for disqualification of respondent No. 1 in terms of Article 62(1)(f) of the

Constitution is spelt out by the speeches he delivered inside and outside the Parliament and whether such speeches in view of the provisions contained in Article 66 of the Constitution could be used to his detriment. The case of the petitioners is that speeches delivered by respondent No. 1 inside and outside the Parliament are false because of their being in conflict with the statements of respondents No. 7 and 8 and contradictory to his own stance taken in his concise statement and that the privilege in terms of Article 66 of the Constitution is not available to him when the matter addressed in his speech delivered in the Parliament was essentially personal. But mere contradiction between the speeches of respondent No. 1 and statements of respondents No. 7 and 8 does not prove any of his speeches false or untrue unless it is determined after examining and cross-examining both of them that their statements are correct and true. Where it is not determined that statements of respondents No. 7 and 8 are correct and true, no falsity could be attributed to the speeches of respondent No. 1. If at all, the speeches of respondent No. 1 are sought to be used to incriminate him for declaring that he is not honest and ameen, he has to be confronted therewith. Where no effort was made to prove the statements of respondents No. 7 and 8 to be true and correct, nor was respondent No. 1 confronted with his speeches, it would be against the cannons of law of evidence to use such speeches against him. Once we hold that neither of the speeches of respondent No. 1 could be used against him, the question of availability of privilege under Article 66 of the Constitution shall become irrelevant.

22. Many other arguments have been addressed and many other judgments have been cited at the bar by the learned ASCs for the petitioners as well as the respondents but as we have held above that the allegations leveled against respondent No. 1 require investigation by the

investigation agency and determination by an Accountability Court, we need not comment on them at this stage lest it prejudices the case of any of the parties.

23. Having thus considered we sum up the case as under:

no aboveboard or undisputed documentary evidence has been brought on the record to show that respondent No. 1 defaulted in the payment of tax as far as his assets as declared in the tax returns are concerned; nothing significant has come forth against respondents No. 9 and 10 as could justify the issuance of the direction asked for. However, sufficient material, as highlighted in para 16 above, has surfaced on the record which prima facie shows that respondent No. 1, 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. 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 Hudaibya'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) which would consist of the following members:

i) a senior Officer of the Federal Investigation Agency (FIA), not below the rank of Additional Director General who shall head the team having firsthand experience of investigation of white collar crime and related matters;

ii) a representative of the National Accountability Bureau (NAB);

iii) a nominee of the Security & Exchange Commission of Pakistan (SECP) familiar with the issues of money laundering and white collar crimes;

iv) a nominee of the State Bank of Pakistan (SBP);

v) a seasoned Officer of Inter Services Intelligence (ISI) nominated by its Director General; and

vi) a seasoned Officer of Military Intelligence (M.I.) nominated by its Director General.

24. The Heads of the aforesaid departments/ institutions shall recommend the names of their nominees for the JIT within seven days from today which shall be placed before us in chambers for nomination and approval. The JIT shall investigate the case and collect evidence, if any, showing that respondent No. 1 or any of his dependents or benamidars owns, possesses or has acquired assets or any interest therein disproportionate to his known means of income. Respondents No. 1, 7 and 8 are directed to appear and associate themselves with the JIT as and when required. The JIT may also examine the evidence and material, if any, already available with the FIA and NAB relating to or having any nexus with the possession or acquisition of the aforesaid flats or any other assets or pecuniary resources and their origin. The JIT shall submit its periodical reports every two weeks before a Bench of this Court constituted in this behalf. The JIT shall complete the investigation and submit its final report before the said Bench within a period of sixty days from the date of its constitution. The Bench thereupon may pass appropriate orders in exercise of its powers under Articles 184(3), 187(2) and 190 of the Constitution including an order for filing a reference against respondent No. 1 and any other person having nexus with the crime if justified on the basis of the material thus brought on the record before it.

25. It is further held that upon receipt of the reports, periodic or final of the JIT, as the case may be, the matter of disqualification of respondent No. 1 shall be considered and appropriate orders, in this behalf, be passed, if so required.

26. We would request the Hon'ble Chief Justice to constitute a Special Bench to ensure implementation of this judgment so that the investigation into the allegations may not be left in a blind alley.

JUDGE

Gulzar Ahmed, J.— I have read the proposed judgment authored by my learned brother Asif Saeed Khan Khosa, J. and observe that his lordship in his usual way has very elaborately and eloquently dealt with all the matters and points raised during hearing of these Constitution Petitions and has given a very able and well reasoned judgment to which I agree. I, however, wish to add my own note dealing with singular point which in my estimation is the most crucial and much central to all the questions which have been raised during the course of arguments before us.

2. I may, at the outset, clarify and emphasize that this Court under Article 184(3) of the Constitution has all the jurisdiction to give any sort of declaration and to pass any consequential order that may be the need of the case which may arise out of any of the given facts and circumstances. In this regard, this Court has given its judgments time and again in which this matter has specifically been dealt with and answered to which I will be making reference and discussing them herein below.

3. What is the nature of jurisdiction that has been conferred upon this Court under Article 184(3) of the Constitution of the Islamic Republic of Pakistan, 1973 (hereinafter called "**the Constitution**"). Such Article is reproduced as follows:-

> *"184(3) Without prejudice to the provisions of Article 199, the Supreme Court shall, if it considers*

> *that a question of public importance with reference to the enforcement of any of the Fundamental Rights conferred by Chapter 1 of Part II is involved, have the power to make an order of the nature mentioned in the said Article."*

On reading of this very Article, it is clear that this Court has been conferred with a power to make an order of nature mentioned in Article 199 of the Constitution and such power is without prejudice to the said Article meaning that this Court is not constrained with any of the technicalities or any of the conditions that may have been imposed on the High Court for exercising jurisdiction under Article 199 of the Constitution. This Court has been given free and unbridled powers to make an order of a nature, as mentioned above, if it considers that the question of public importance with reference to enforcement of any of the Fundamental Rights conferred by Chapter 1 of Part II of the Constitution is involved. In the case of Shahid Pervaiz & others **v** Ejaz Ahmad & others [2017 SCMR 206], this Court has held that where any of the provisions of law made by the Parliament or otherwise comes in direct conflict with the Fundamental Rights of the citizen conferred by Chapter 1 Part II of the Constitution, the same can be declared as non-est. In the case of Lahore Bachao Tehrik **v** Dr. Iqbal Muhammad Chauhan & others [2015 SCMR 1520] this Court has held that the rules of acquiescence, waiver, estoppels and past and closed transaction or any other rule having nexus to such concepts would not at all be relevant when this Court is exercising jurisdiction under

Article 184(3) of the Constitution. In the case of Anjum Aqeel Khan & others **v** National Police Foundation through M.D & others [2015 SCMR 1348], while considering power of the Chairman, National Accountability Bureau, this Court observed that under Article 184(3) of the Constitution it has very wide and vast powers and if the Court considers that a question of public importance with reference to the enforcement of the Fundamental Rights conferred by the Constitution was involved it has jurisdiction to pass appropriate orders. In the case of Ali Azhar Khan Baloch & others **v** Province of Sindh & others [2015 SCMR 456], this Court has observed that in order to exercise jurisdiction under Article 184(3) of the Constitution, requirement of the Constitution is that this Court has to consider that question of public importance with reference to enforcement of Fundamental Rights conferred by Chapter 1 Part II of the Constitution is involved, it has jurisdiction to pass appropriate orders notwithstanding that there might be an alternate remedy. Observing that the word "consider" being related to the subjective assessment of this Court and this Court is the final authority upon the matter affecting judicial determination on the scope of constitutional provisions thus once the Supreme Court arrived at a conclusion that the question of public importance, having nexus with the Fundamental Rights guaranteed by the Constitution, has been raised the exercise of its jurisdiction under Article 184(3) of the Constitution cannot be objected to

either by the Government or by any other party. This Court , in the case of Khalid Iqbal & 2 others **v** Mirza Khan & others [PLD 2015 Supreme Court 50] has observed that power of the Supreme Court to revisit its earlier decision or depart from it and while dealing with the scope stated that the Constitution did not impose any restriction or bar on the Supreme Court to revisit its earlier decisions or even to depart from them nor the doctrine of *stare decisis* would come in its way so long as revisiting of the judgment was warranted in view of the significant impact of the Fundamental Rights of the citizen or in the interest of public good. This Court has absolute powers to revisit, review or set aside its earlier judgments and orders by invoking its suo motu jurisdiction under Articles 184(3), 187 or 188 of the Constitution and that for exercising such inherent jurisdiction, the Court is not dependent upon an application being made by a party. In the case of Jamshoro Joint Venture Limitted & others **v** Khawaja Muhammad Asif & others [2014 SCMR 1858], this Court has held that under Article 184(3) of the Constitution, the scope of powers of the Court is that suit pending before a Court containing a matter raised in the Constitution Petition this Court has held as follows:

> *"This Court while exercising jurisdiction under Article 184(3) of the Constitution has ample power to adjudicate upon and consider the question of public importance with reference to the enforcement of any of the Fundamental Rights conferred by the Constitution and the jurisdiction of this Court will not be fettered or restricted merely for the reason that some suit is pending on any of the questions involved in the matter for that would be of*

> *subordinate consideration when dealing with the question of public importance with reference to the enforcement of any of the Fundamental Rights which are of supreme importance and have a much wider connotation and implication to the public at large."*

In the case of Asaf Fasihuddin Khan Vardag **v** Government of Pakistan & others [2014 SCMR 676], while dealing with the question of appointments made by the Government without adverting to the merits, this Court has observed that under Article 184(3) of the Constitution it has wide powers to ensure that acts, actions of other organs of the State namely executive, legislature did not breach the Fundamental Rights guaranteed by the Constitution under the principle of trichotomy of powers, the judiciary was entrusted with the responsibility of enforcement of Fundamental Rights which called for independent and vigilant system of judicial administration so that all acts and actions leading to infringement of Fundamental Rights were nullified and the rule of law was upheld in the society. In Human Rights case No.14392 of 2013 etc [2014 SCMR 220], this Court exercising jurisdiction under Article 184(3) of the Constitution on newspaper clipping regarding unprecedented load-shedding in the country and increase in electricity prices, lack of availability of gas for production of electricity, gas load management policy of the Government, priority of supply of gas to different sectors, supply of gas to fertilizer companies on subsidized rates in bulk, under Article 184(3) of the Constitution gave directions to the Government for regularizing supply of gas etc. In the case of

Abdul Wahab & others **v** HBL & others [2013 SCMR 1383], this Court has dealt with the scope under Article 184(3) of the Constitution and held that the restraints, constraints and limitations, if any, in Article 199 of the Constitution might not *stricto sensu* be attracted to the jurisdiction of the Supreme Court under Article 184(3) of the Constitution in view of the expression "without prejudice" appearing at the very opening of Article 184(3) meaning thereby "without any detriment" (i.e. without being harmed or damaged or hurt). However, the Supreme Court has the powers and jurisdiction to lay down the rules for the purposes of regulating its own jurisdiction and apply to rules of restraints besides Article 184(3) of the Constitution itself has its own limitations and conditions which are that matter before the Supreme Court should be for the enforcement of any of the Fundamental Rights conferred by Chapter 1 Part-II of the Constitution and the question involved should be of public importance and that they are *sine qua non* i.e. both conditions must be first established and the case must be established by the petitioner in the case and shown to co-exist before enabling the Court to exercise its jurisdiction in terms of Article 184(3) of the Constitution. In the case of Maulana Abdul Haque Baloch & others **v** Government of Balochistan through Secretary Industries & Mineral Development & others [PLD 2013 Supreme Court 641], this Court dealt with the matter of Cooper and Gold reserves in Reko Diq area of the Province of Balochistan and

examined the Joint Venture Exploration agreement between the Provincial Development Authority and respondent company and highlighted irregularities and illegalities committed in the execution of said agreement and on grounds including non-transparency, violation of law/rules considered as curtailment of the Fundamental Rights of the general public and thus was declared illegal, void and non-est and the very exploration licence was also held to be non-est. In the case of Air Marshal (Retd) Muhammad Asghar Khan **v** General (Retd) Mirza Aslam Baig, Former Chief of Army Staff & others [PLD 2013 Supreme Court 1], this Court was dealing with a Human Rights case under Article 184(3) of the Constitution concerning creation of an Election Cell in the Presidency with the aid of Chief of Army Staff and officials of intelligence agencies to provide financial assistance from public exchequer to favoured candidates or a group of political parties to achieve desired results in the elections held in the year 1990. Looking at the seriousness of the case and its implication affecting the Fundamental Rights of the citizen and question of public importance, it was registered under Article 184(3) of the Constitution. The Court, after elaborate hearing of the case passed its judgment making the following declaration :-

> *(1) "That citizens of Pakistan as a matter of right are free to elect their representatives in an election process being conducted honestly, justly, fairly and in accordance with law.*
>
> *(2) The general election held in the year 1990 was*

subjected to corruption and corrupt practices as in view of the overwhelming material produced by the parties during hearing it has been established that an "Election Cell" had been created in the Presidency, which was functioning to provide financial assistance to the favoured candidates, or a group of political parties to achieve desired result by polluting election process and to deprive the people of Pakistan from being represented by their chosen representatives.

(3) A President of Pakistan, in Parliamentary system of government, being head of the State represents the unity of the Republic under Article 41 of the Constitution. And as per the oath of his office in all circumstances, he will do right to all manner of people, according to law, without fear or favour, affection or ill-will. Thus, holder of office of President of Pakistan, violates the Constitution, if he fails to treat all manner of people equally and without favouring any set, according to law, and as such, creates/provides an occasion which may lead to an action against him under the Constitution and the Law.

(4) The President of Pakistan, Chief of Army Staff, DG ISI or their subordinates certainly are not supposed to create an Election Cell or to support a political party/group of political parties, because if they do so, the citizens would fail to elect their representatives in an honest, fair and free process of election, and their actions would negate the constitutional mandate on the subject.

(5) However, in the instant case it has been established that in the general elections of 1990 an Election Cell was established in the Presidency to influence the elections and was aided by General ® Mirza Aslam Beg, who was the Chief of Army Staff and by General ® Asad Durrani, the then Director General ISI and they participated in the unlawful activities of the Election Cell in violation of the responsibilities of the Army and ISI as institution which is an

act of individuals but nor of institutions represented by them respectively, noted hereinabove.

(6) ISI or MI may perform their duties as per the laws to safeguard the borders of Pakistan or to provide civil aid to the Federal Government, but such organizations have no role to play in the political activities/politics, for formulation or destabilization of political Governments, nor can they facilitate or show favour to a political party or group of political parties or politicians individually, in any manner, which may lead in his or their success.

(7) It has also been established that the Ghulam Ishaq Khan, the then President of Pakistan with the support of General ® Aslam Beg, General ® Asad Durrani and others, who were serving in M.I. and now either have passed away or have retired, were supporting the functioning of the 'Election Cell', established illegally.

(8) Mr. M. Yunus A. Habib, the then Chief Executive of Habib Bank Ltd. at the direction and behest of above noted functionaries, arranged/provided Rs.140 million belonging to public exchequer, out of which an amount of Rs.60 million was distributed to politicians, whose incomplete details have been furnished by General ® Asad Durrani, however, without a thorough probe no adverse order can be passed against them in these proceedings.

(9) The Armed Forces of Pakistan, under the directions of Federal Government, defend Pakistan against external aggression or threat of war and, subject to law, are to act in aid of civil power when called upon to do so under Article 245 of the Constitution, thus, any extra-constitutional act, calls for action in accordance with the Constitution of Pakistan and the law against the officers/officials of Armed Forces without any discrimination.

(10) The Armed Forces have always sacrificed their lives for the country to defend any external or internal aggression for which it being an institution is deeply respected by the nation.

(11) The Armed Forces, in discharge of their functions, seek intelligence and support from ISI, MI, etc., and on account of security threats to the country on its frontiers or to control internal situations in aid of civil power when called upon to do so. However, ISI, MI or any other Agency like IB have no role to play in the political affairs of the country such as formation or destabilization of government, or interfere in the holding of honest, free and fair elections by Election Commission of Pakistan. Involvement of the officer/members of secret agencies i.e. ISI, MI, IB, etc in unlawful activities, individually or collectively calls for strict action being, violative of oath of their offices, and if involved, they are liable to be dealt with under the Constitution and the Law.

(12) Any election Cell/Political Cell in Presidency or ISI or MI or within their formations shall be abolished immediately and any letter/notification to the extent of creating any such Cell/Department (by any name whatsoever, explained herein, shall stand cancelled forthwith.

(13) Late Ghulam Ishaq Khan, the then President of Pakistan, General ® Aslam Beg and General ® Asad Durrani acted in violation of the Constitution by facilitating a group of politicians and political parties, etc., to ensure their success against the rival candidates in the general election of 1990, for which they secured funds from Mr. Yunus Habib. Their acts have brought a bad name to Pakistan and its Armed Forces as well as secret agencies in the eyes of the nation, therefore, notwithstanding that they may have retired from service, the Federal Government shall

take necessary steps under the Constitution and Law against them.

(14) Similarly, legal proceedings shall be initiated against the politicians, who allegedly have received donations to spend on election campaigns in the general election of 1990, therefore, transparent investigation on the criminal side shall be initiated by the FIA against all of them and if sufficient evidence is collected, they shall be sent up to face the trial, according to law.

Mr. Yunus Habib shall also be dealt with in the same manner.

(15) Proceedings shall also be launched against the persons specified hereinabove for affecting the recovery of sums received by them with profit thereon by initiating civil proceedings, according to law.

(16) *An amount of Rs.80 million, statedly, has been deposited in Account No.313 titled Survey and Construction Group Karachi, maintained by MI, therefore, this amount with profit shall be transferred to Habib Bank Ltd. if the liability of HBL has not been adjusted so far, otherwise, the same may be deposited in the treasury account of Government of Pakistan."*

This Court also exercised jurisdiction in the matter of Law & Order situation in the Province of Balochistan. In the case of President Balochistan High Court Bar Association **v** Federation of Pakistan & others [2012 SCMR 1958], held that the Constitution Petition under Article 184(3) of the Constitution is maintainable and passed the declaration. This Court also in the case of Muhammad Yasin **v** Federation of Pakistan through Secretary, Establishment Division, Islamabad & others [PLD 2012 Supreme

Court 132] took up the question of appointment of Chairman OGRA and by exercising power under Article 184(3) of the Constitution, declared such appointment being a question of public importance with reference to the enforcement of Fundamental Rights to be *void ab initio*. In Suo Motu Case No.18 of 2010 [PLD 2011 Supreme Court 927], Suo Motu action has been taken by the Court regarding violation of Public Procurement Rules, 2004 and the matter related to investigation of a corruption case of huge amount of money of people of Pakistan and held that jurisdiction to control investigation of criminal case and the reason offered in support of the contention that such a control over the investigation of criminal case by the Supreme Court could be prejudicial to the accused. The Court held that approach of a Court of law while dealing with the criminal matter had to be dynamic keeping in view the facts and circumstances of each case and also the surrounding situation prevailing in the country and it would be a felonious and unconscionable on the part of the Supreme Court if it had refused to intervene to defend the Fundamental Rights of such a large section of the public and leaving it only to the concerned officials who had done nothing at all in the matter for almost two years and who had remained only silent spectators of entire drama and had only witnessed the escape of the accused persons to foreign lands, it was to check and cater for such kind of gross negligence, nonfeasance and malfeasance that the

framers of the Constitution had obligated the High Court under Article 199 of the Constitution and the Supreme Court under Article 184(3) of the Constitution to intervene in the matters exercising their power to review the administrative and executive actions. In the case of Watan Party & another **v** Federation of Pakistan & others [PLD 2011 Supreme Court 997], it was held that Supreme Court in exercise of jurisdiction under Article 184(3) of the Constitution, which is in the nature of inquisitorial proceedings, has the same powers as are available to the High Court under Article 199 of the Constitution and it is not dependent only at the instance of the aggrieved party in the context of adversarial proceedings while dealing with the case Court is neither bound by the procedural trapping of Article 199 nor by limitations mentioned in the said Article. In Suo Motu Case No.24 of 2010 [PLD 2011 Supreme Court 963], this Court while considering Hajj Corruption case observed that power under Article 199 and 184(3) of the Constitution is categorized as power of judicial review. Every executive or administrative action of the State or other statutory or public bodies is open to judicial scrutiny and the Court in exercise of power of judicial review under the Constitution quashed the executive action or decision which is contrary to law or is violative of Fundamental Rights guaranteed by the Constitution and further observed that with the expanding horizon of Articles of the Constitution dealing with Fundamental Rights, every executive action of the

government or other public bodies, if arbitrary, unreasonable or contrary to law is now amenable to the writ jurisdiction of the superior Courts and can be validly scrutinized on the touchstone of the Constitutional mandate. In the case of Bank of Punjab & another **v** Haris Steel Industries (Pvt) Ltd & others [PLD 2010 Supreme Court 1109], while dealing with financial fraud with innocent people, this Court while examining Article 184(3) of the Constitution, observed that the matter in present case related to one of the gravest financial scams in the banking history of Pakistan as a result of which the bank stood cheated of an enormous amount of around eleven billion rupees which amount of money in fact belonged to around one million innocent depositors holding small amounts of money whose life savings and property had come under serious threat causing thus an obligation on the Supreme Court to move into to protect and defend the rights of such large population. In Suo Motu Case No.10 of 2007 [PLD 2008 Supreme Court 673], this Court held that in exercise of its power under Article 184(3) of the Constitution it was not supposed to interfere in the policy decisions of administrative nature and to control the administrative affairs of the government but the interference of the Supreme Court in the matters relating to breach and enforcement of Fundamental Rights of people at large scale was always justified and must not act in departure to the settled principles of judicial norms or in the aid of administrative policy

of executive authority or as social reformer rather must confine itself within the domain of law and mandate of the Constitution. Failure of the Government to have proper control on the prices particularly of articles of daily use and essential commodities related to enforcement of Fundamental Rights of the people and of public importance, responsibilities of the Government in that behalf were identified. In the case of Pakistan Muslim League (N) through Khawaja Muhammad Asif, MNA & others **v** Federation of Pakistan through Secretary Ministry of Interior & others [PLD 2007 Supreme Court 642], it was observed that jurisdiction of the Supreme Court to entertain petition under Article 184(3) of the Constitution in the matters relating to disputed questions of facts which do not required voluminous evidence can be looked into where Fundamental Rights have been breached. However, where disputed questions of fact involving voluminous evidence are involved, the Supreme Court will desist from entering into such controversies. In the case of Wattan Party through President **v** Federation of Pakistan through Cabinet Committee of Privatization, Islamabad & others [PLD 2006 Supreme Court 697], which was a case of Privatization of Pakistan Steel Mills Limited, a Government owned industry and it was observed that cases arising out of public interest litigation shall not be covered under Section 28 of the Privatization Commission Ordinance, 2000 for in such cases Court has been called upon to exercise constitutional jurisdiction on the basis of

the information laid before it that the matter involves question of public importance relating to the Fundamental Rights, individual or collective, and for such like litigation Section 28 provides no remedy for redresssal of their grievance. Vires of Privatization Commission Ordinance, 2000 having been challenged in the present case, it would not be fair to compel the petitioner to avail the remedy under the same law as the High Court within its limited jurisdiction under Section 28 of the Ordinance cannot strike down any of the provisions of the said Ordinance and petitioner having raised issues of great public importance falling within the constitutional domain of the Supreme Court which could not have been adequately addressed to by the High Court in terms of Section 28 of the Ordinance and ultimately what the Court held was that the process of privatizing of Pakistan Steel Mills was not in accordance with law and thus set-aside the same. In the case of Moulvi Iqbal Haider **v** Capital Development Authority & others [PLD 2006 Supreme Court 394], which is a case of conversion of public park into commercial park by the CDA in violation of Fundamental Rights involving question of public importance. In the case of Javed Jabbar & 14 others **v** Federation of Pakistan & others [PLD 2003 Supreme Court 955], this Court while exercising jurisdiction under Article 184(3) of the Constitution declared Article 8AA of the Conduct of General Elections Order, 2002 providing disqualification from being Member of the Senate, as violative of the provisions of Article 25

of the Constitution and was struck down. In the case of Sardar Farooq Ahmad Khan Leghari & others **v** Federation of Pakistan & others [PLD 1999 Supreme Court 57], where Petitions under Article 184(3) of the Constitution were filed in which, *inter alia*, Article 233(1) and 233(2) of the Constitution suspending enforcement of Fundamental Rights were challenged. This Court, after considering all relevant issues including the material placed before it concluded that the President's Order dated 28.05.1998 suspending Fundamental Rights under clause (2) of Article 233 of the Constitution and further Order dated 13.07.1998 under the same clause and Article of the Constitution were not justified and were declared to be without lawful authority and of no legal effect. In the elections matters also this Court has entertained Petitions under Article 184(3) of the Constitution and has considered the material placed before it by the parties and thereafter proceeded to pass declaration.

4. Having considered the vast variety of subject on which this Court has exercised jurisdiction and gave declarations and directions under Article 184(3) of the Constitution, the facts and circumstances of the present case need to be examined and considered as to whether they are sufficient and comprise of enough material where this Court can proceed to make an order in terms of Article 184(3) of the Constitution.

5. In all the above three Constitution Petitions, Mian Muhammad Nawaz Sharif, sitting Prime Minister of Pakistan who

is also an elected Member of the National Assembly of Pakistan has been made respondent. The central allegation made in the three Constitution Petitions relates to four London Flats and it is alleged that these Flats were purchased by incorporating offshore companies by the name of Nescoll Limited and Nielsen Enterprises Limited and in the following manner:

- *Flat No.17, Avenfield House, Park Lane, London was registered in the name of Nescoll, British Virgin Island Company in June 1992;*
- *Flats No.16 & 16A, Avenfield House, Park Lane, London were registered in the name of Nielsen, a British Virgin Island Company on 31.07.1995;*
- *Flat No.17A, Avenfield House, Park Lane, London was registered in the name of Nescoll, British Virgin Island Company on 23.07.1996.*

That these companies being in the ownership of Hussain Nawaz Sharif who was a minor at the time of acquiring all these properties by these companies, they belong to Mian Muhammad Nawaz Sharif and he has altogether failed to make a declaration of these properties in his income tax returns, so also in the declaration of assets submitted to the Election Commission of Pakistan. It is further asserted that Mian Muhammad Nawaz Sharif as a Prime Minister of Pakistan has made two speeches; one to the Nation dated 05.04.2016 and the other which was a written speech in the National Assembly on 16.05.2016 and in both these speeches Mian Muhammad Nawaz Sharif did not disown these properties rather in his speech on the floor of the House has categorically admitted the ownership of the four

London Flats but altogether failed to disclose the source of funds from which these four London Flats were purchased. It is alleged that in his two speeches Mian Muhammad Nawaz Sharif has lied to the Nation and on the floor of the House in that he has asserted that these four London Flats were purchased from the funds generated out of sale of Gulf Steel Mills, Dubai and Al-Azizia Steel Mills, Jeddah; out of which the Gulf Steel Mills was sold in the year 1980 while Al-Azizia Steel Mills was sold in the year 2005 whereas the four London Flats were purchased during 1992 to 1996. Mian Muhammad Nawaz Sharif, as respondent in the three Constitution Petitions, has filed his own replies. In Constitution Petition No.29 of 2016, he filed concise statement by way of CMA No.7244 of 2016 and has denied ownership (legal or beneficial) of four London Flats No.16, 16A, 17 & 17A and has also denied ownership (legal or beneficial) of any offshore entities and that his name does not appear in the Panama Papers nor any accusation has been made against him in the said Papers. He has asserted that he is a regular tax payer and files his returns as well as wealth tax statements in accordance with the provisions of applicable law and entire income, assets and liabilities of his are declared. He has also stated that the entire income, assets and liabilities of his as well as of his spouse are duly declared in the nomination form of General Elections 2013 as well as in the statement of assets and liabilities filed with the Election Commission of Pakistan (ECP) and none of his

children is dependant nor any of them has been declared to be a dependant on him and that he fulfills the requirements of Article 62 and 63 of the Constitution and is fully compliant with his obligation of declaration of assets and liabilities within the provision of ROPA. He has further asserted that for grant of relief prayed in the petition there are pre-conditions that a valid, final and binding declaration has to be made by a competent Court in respect of the allegations leveled in the petition and such determination, declaration requires proof beyond reasonable doubt and no such proceedings before the competent Court has been initiated nor there exist any valid or final binding declaration. He has further asserted that post election qualification in terms of Article 63(2) has to be referred to the ECP by the Speaker of National Assembly and that no such reference has been filed by the petitioner nor any reference to ECP has been made and that reference(s) filed by Member of PTI and others has been rejected by the Speaker of the National Assembly. It was further asserted that pre-election qualification, as provided in Article 62(1)(f) of the Constitution after a Member of Parliament has been elected and notified, such election can only be challenged by way of an Election Petition under Article 225 of the Constitution. The allegations as to the facts stated in the petitions were denied. He has also filed separate concise statements in Constitution Petition No.30 of 2016 by way of CMA No.7245 of 2016 & CMA No.908 of 2017 as well as in

Constitution Petition No.3 of 2017 by way of CMA No.433 of 2017, which replies are more or less similar to the one as filed in Constitution Petition No.29 of 2016.

6. The submission of Syed Naeem Bokhari, the learned ASC for the petitioner in Constitution Petition No.29 of 2016 before this Court was that pursuant to the issuance of Panama Papers by the International Consortium of Investigative Journalists (ICIJ) and various interviews given by Mariam Safdar, Hussain Nawaz Sharif and Hassan Nawaz Sharif and the two speeches of Mian Muhammad Nawaz Sharif himself in unequivocal terms establish that the four London Flats were owned, possessed and are being in use of Mian Muhammad Nawaz Sharif and his family members since 1992 but Mian Muhammad Nawaz Sharif himself did not disclose the real facts about the ownership of four London Flats rather has contradicted himself in that in his speech to the Nation dated 05.04.2016 so also on the floor of National Assembly dated 16.05.2016 while admitting the fact of ownership of four London Flats, he still when called upon by this Court to make response to the allegations made against him about such ownership, has merely chosen the path of making a barefaced denial. He contended that such conduct of Mian Muhammad Nawaz Sharif who not only is a Member of the National Assembly of Pakistan but also the sitting Prime Minister of Pakistan is unbecoming for a person holding such high Public Office and it establishes that he is not Honest and Ameen in

terms of Article 62(1)(f) of the Constitution and is accordingly required to be adjudged and declared by this Court and removed from office. He contended that the people of Pakistan has the Fundamental Right to know true facts about their Members of National Assembly and also Prime Minister regarding four London Flats which is also question of great public importance with reference to enforcement of Fundamental Rights.

7. Sheikh Rasheed Ahmad appearing for himself in Constitution Petition No.30 of 2016, M/s Taufeeq Asif, learned ASC and Sh. Ahsanuddin, learned ASC for the petitioner in Constitution Petition No.3 of 2017 referred to the material filed before the Court and contended that the material so placed is sufficient to establish that Mian Muhammad Nawaz Sharif is not Honest and Ameen in terms of Article 62(1)(f) of the Constitution and is liable to be removed from office.

8. On the other hand, Mr. Makhdoom Ali Khan, learned Senior ASC for Mian Muhammad Nawaz Sharif in his arguments has confined himself to same line as is adopted in the concise statements of Mian Muhammad Nawaz Sharif that of denial of ownership of four London Flats and offshore companies. Mr. Shahid Hamid, learned Senior ASC and Mr. Salman Akram Raja, learned ASC for the remaining private respondents have in their arguments contended that Mian Muhammad Nawaz Sharif has nothing to do with four London Flats and the two offshore

companies. The learned Attorney General for Pakistan appearing for the Federation conceded that the Court has power to make order as sought by the petitioners in the Constitution Petitions but contended that such power be not exercised as it is likely to affect pending proceeding in Tribunal so also the elections of other Parliamentarians. He further contended that no rights of the petitioners have been violated and no case for relief claimed in the three Constitution Petitions is made out.

9. Admitted facts appear on the record are that after the nationalization of the Ittefaq Foundary in the year 1972 it is the case of Mian Muhammad Nawaz Sharif himself that his father Mian Muhammad Sharif had proceeded to Dubai where he has established Gulf Steel Mills and 75% of the shares of Gulf Steel Mills were sold in the year 1978 through tripartite share sale contract in which the first party was Muhammad Abdullah Kaid Ahli, a UAE national as 'Buyer'; second party Muhammad Tariq Shafi, a Pakistani national as 'Seller'; and third party Bank of Credit & Commerce International (BCCI), Deira Dubai as a 'Creditor' of the second party. Pursuant to this contract Muhammad Tariq Shafi as the owner of Gulf Steel Mills factory sold to the first party 75% share of the factory for a total consideration of Dirhams 21,375,000/- the whole of this amount was paid to the third party i.e. BCCI in payment of liability of Gulf Steel Mills. The remaining liabilities of Gulf Steel Mills towards BCCI Dirhams 6,289,589/-, Dubai Electricity Company

Dirhams 2,852,659/- and Dubai Water Supply were taken over exclusively by Muhammad Tariq Shafi, as his own liabilities. The name of Gulf Steel Mills was changed to that of Ahli Steel Mills Company and a partnership agreement was made in the year 1978 where Ahli Steel Mills Company was formed with a capital of Dirham 28,500,000/- of which 75% share was of Muhammad Abdullah Kaid Ahli and the remaining 25% share was of Muhammad Tariq Shafi. The distribution of the capital of Ahli Steel Mills Company, comes as follows:

- *Muhammad Abdullah Kaid Ahli, 75% = Dirhams 21,375,000/-*
- *Muhammad Tariq Shafi, 25% = Dirhams 7,125,000/-*

It is obvious that 75% share reflecting payment of Dirhams 21,375,000/- which Muhammad Abdulllah Kaid Ahli made to BCCI for purchasing of 75% share of Gulf Steel Mills. Thus while Muhammad Tariq Shafi owned 25% share in Ahli Steel Mills Company amounting to Dirhams 7,125,000/- he also had with him the liabilities towards payment of remaining Gulf Steel Mills dues to BCCI, Dubai Electric Company and Dubai Water Supply. Apparently where liabilities of Gulf Steel Mills and the share of Muhammad Tariq Shafi in Ahli Steel Mills Company are put together, the share of Muhammad Tariq Shafi will come to NIL amount. However, on selling of 25% shares of Ahli Steel Mills Company by Muhammad Tariq Shafi to Muhammad Abdullah Kaid Ahli vide agreement dated 14.04.1980 it is alleged that it

has generated Dirhams 12 million which are said to have been paid in installments over a period of six months from 15.05.1980. It is really intriguing and almost a mystery as to how in the first place the 25% shares of Dirhams 7,125,000/- in the year 1978 appreciated to Dirhams 12 million. Nothing on the record to show that capital value of Ahli Steel Mills Company had increased and further what happened to the liabilities of Gulf Steel Mills taken over by Muhammad Tariq Shafi. Hussain Nawaz Sharif, in his interview dated 07.03.2016 to Express News in Program 'Kal Tak', has said that Mian Muhammad Sharif when he came from Jati Umra was penniless and when Hussain Nawaz Sharif himself went to Saudi Arabia he did not had much treasure with him but had two sources of funds i.e. by way of loan from foreign friends and the loan from Saudi Banks from which a small mill was established for which he himself purchased scrape of Ahli Steel Mills on very low price as the owner of Mills was thinking that this will never be sold as it has become scrape and this scrape was reconditioned at Jeddah and the very fact that Ahli Steel Mills was lying closed and has become scrape negates the fact that its capital value had increased to make 25% shares in the amount of Dirhams 12 million.

10. On termination of the ownership of Gulf Steel Mills and sale of its remaining 25% shares in 1980 there is lull in between of almost 21 years, when in 2001 Al-Azizia Steel Mills is said to

have been established in Jeddah. It was asserted by Hussain Nawaz Sharif in his interview dated 07.03.2016 that he had no treasure when he came to Saudi Arabia and no funds were available, he has drawn on two sources; one that of foreign friends from whom loans were obtained and secondly the loans obtained from Saudi Banks for establishing Al-Azizia Steel Mills. Now, as the case has been put up before the Court, there was a treasure trove of Dirhams 12 million available to Mian Muhammad Nawaz Sharif and his family but why this treasure trove was not tapped, it could be inferred and inferred well that it did not exist. Be that as it may, admittedly Al-Azizia Steel Mills was sold in the year 2005 for an amount of US$17 million. What happened to its own loans and how they were paid, nothing is said about them. It may be relevant here to mention as a fact that Hussain Nawaz Sharif, the first son of Mian Muhammad Nawaz Sharif was born on 01.05.1972 and the daughter Mariam Safdar on 28.10.1973 while Hassan Nawaz Sharif the other son was born on 21.01.1976. It is obvious from these dates of their birth that when Gulf Steel Mills was established none of the above named three children was major. At the best Hussain Nawaz Sharif the eldest son must be a suckling child yet again when 75% shares of Gulf Steel Mills were sold and thereafter in 1980 the remaining 25% shares were sold still all the three above named children were minors and of tender ages. It is admitted that Hussain Nawaz Sharif

went to London in 1992 for the purpose of his education while Hassan Nawaz Sharif went to London in 1993/94 for his education purpose. It is admitted that both the sons of Mian Muhammad Nawaz Sharif had occupied the London Flats while they were purely students. Photocopy of Certificate of Incorporation of Nescoll Limited has been filed by respondents No.6 to 8 with CMA No.7531 of 2016 which is dated 27.01.1993 and of Nielsen Enterprises Limited is dated 04.08.1994. The land registry shows the ownership of four London Flats as follows:-

- *Flat No.16, 31.07.1995, Proprietor Nielsen Enterprises Limited;*
- *Flat No.16A, 31.07.1995, Proprietor Nielsen Enterprises Limited;*
- *Flat No.17, 01.06.1993, Proprietor Nescoll Limited;*
- *Flat No.17A, 23.07.996, Proprietor Nescoll Limited.*

11. During the course of arguments, it was contended by Mr. Shahid Hamid, learned Senior ASC so also by Mr. Salman Akram Raja, learned ASC that both Nescoll and Nielsen have issued one Bearer Certificate each of US$ 1 each and custodian of these Bearer Share Certificate was the owner of the two companies and owner of the properties comprised of four London Flats. In this respect the Nescoll Limited is issued Bearer Certificate No.1,

number of shares 1 par value of US$1 dated 29.04.1993, a photocopy of which has been filed at page 69 of CMA No.7531 of 2016 filed by Mr. Muhammad Akram Sheikh, learned Senior ASC for respondents No.6 to 8. At page 65 of this very CMA, there is Bearer Certificate No.1, number of shares 1 par value of US$1 dated 22.11.1994 issued in respect of Nielsen Enterprises Limited. It was contended by the learned ASC for the respondents that these were the only Bearer Share Certificates issued by the two companies and their bearer was the owner of the two companies so also the owner of four London Flats. In this very CMA it was claimed that both these Bearer Share Certificates were cancelled and registered shares were issued i.e. two shares of Nescoll Limited Share Certificate No.2, number of share 1 of US$1 dated 04.07.2006 issued to Minerva Nominees Limited and Share Certificate Number 3, number of share 1 of US$1 dated 04.07.2006 to Minerva Services Limited. Yet again two shares of Nescoll Limited of US$1 each are issued to Trustees Services Corporation on 09.06.2014. As regards Nielsen Enterprises Limited Share Certificate No.2, number of share 1 of US$ 1 was issued to Minerva Nominees Limited on 04.07.2006 and Certificate No.3, number of share 1 of US$1 was issued to Minerva Services Limited on 04.07.2006. Two shares of Nielsen Enterprises Limited of US$ 1 each are issued to Trustee Services Corporation on 09.01.2014. It is worth to point out here that there existed one Bearer Share Certificate each of

the two companies, however, in 2006, each of the company is shown to have two share certificates each registered in the name of companies, noted above. This anomaly of increase in the number of shares of the two companies is not explained. Further, I find that the Bearer Share Certificates of the two companies separately mentioned authorized capital of each of the company to be US$ 50,000 divided into 50,000 shares of par value US$1 each. No record is made available on the basis of which it can be ascertained as to what number of shares in each of the company were issued either bearer or registered. The Bearer Share Certificate of Nescoll Limited is dated 29.04.1993 while that of Nielsen Enterprises Limited is dated 22.01.1994 Mian Muhammad Nawaz Sharif and his family does not claim that these Bearer Share Certificates were in their custody from their respective dates. Prince Al-Thani of Qatar, in his two statements, has not said that the Bearer Share Certificates of the two companies were in the custody of Al-Thani family or that of himself. So from 1993/94 to 2006 nobody has come before us claiming custody of two Bearer Share Certificates. What does this mean? It cannot, however, be said that the two Bearer Share Certificates of the two companies were not in the custody of someone. Who that someone could be? Overall circumstance leads only to Mian Muhammad Nawaz Sharif and his family who are in possession and occupation of the four London Flats from the dates of Bearer Share Certificates and as per their own

admission, are paying rents and all charges of the four London Flats including that of maintenance. Being in possession and occupation of the said four London Flats and by paying their dues and maintaining them like an owner does, it heavily rested upon Mian Muhammad Nawaz Sharif to explain in a very clear and unambiguous terms with supporting material about his and his family connection with the four London Flats, more so when he himself from his own mouth stated that he has nothing to hide and that there are all records available with him. This was an obligation cast upon him and duty towards the people of Pakistan, who had Fundamental Right to know about the standing of their chosen representative and Prime Minister of Pakistan which is also a question of great public importance. He when called upon by the highest Court of the country to explain, what Mian Muhammad Nawaz Sharif chose was to remain silent and gave bare statement that he is not owner of the four London Flats and of the two offshore companies. This evasive attitude of Mian Muhammad Nawaz Sharif, more so before the highest Court of the country, to me, did not appear to be justified or *bonafide* rather its purpose appears to throw the Court in altogether a dark alley where it is left groping without realizing that this very act of his will cast a substantial shadow upon him, more so when the Court is considering the very question of his being Honest and Ameen in holding office of the Member of National Assembly and the Prime Minister of Pakistan.

12. The people of Pakistan have a Fundamental Right under the Constitution to know about the standing of their chosen representative and the Prime Minister vis-à-vis his connection with the four London Flats which has so much been highlighted in the print and electronic media not only in Pakistan but all over the world. The Prime Minister of Iceland was named in the Panama Paper Leaks so also the Spanish Industry Minister and Prime Minister of Ukraine, they all have resigned from their offices owing to such leaks. The British Prime Minister so also the President of Russian Federation, who were named in Panama Paper Leaks, have stated their positions and got themselves cleared. Against many other functionaries of the World, matters on the basis of Panama Paper Leaks are stated to be pending. Such major scandalous news needed a careful and very thoughtful consideration and to me, Mian Muhammad Nawaz Sharif ought to have given all details regarding the ownership of four London Flats, more so when the same being in his own personal knowledge as he has claimed to have purchased the four London Flats. I, however, note with dismay that Mian Muhammad Nawaz Sharif did not make a clean breast and provided nothing to the Court where it could have fairly concluded that yes Mian Muhammad Nawaz Sharif had nothing to do with these four London Flats.

13. The principle of pleading is that the written statement must deal specifically with each allegation of fact in the plaint

and when the defendant denies any such fact, he must not do so evasively but answer the point with substance and in case denial of fact is not specific but evasive, the fact shall be taken to be admitted. This is the most general and well entrenched legal principle of pleading in our jurisdiction and the reference in this regard may be made to the cases of Karachi Metropolitan Corporation, Karachi & another **v.** Raheel Ghayas & 3 others [PLD 2002 Supreme Court 446]; Secretary to Government (West Pakistan) now NWFP Department of Agriculture and Forests, Peshawar & 4 others **v** Kazi Abdul Kafil [PLD 1978 Supreme Court 242] and Muhammad Akhtar **v** Mst. Manna & 3 others [2001 SCMR 1700]. In his speech dated 16.05.2016 Mian Muhammad Nawaz Sharif has claimed that four London Flats were purchased from the funds made available from sale of Gulf Steel Mills and Al-Azizia Steel Mills but admitted material placed before us altogether give a different story regarding the source of funds for the purchase of four London Flats. Prince Al-Thani of Qatar in his two private statements has no where stated that the four London Flats were in fact purchased by Al-Thani family and that the Bearer Share Certificates of Nescoll and Nielsen were in the custody of Al-Thani family. No particulars in this respect are available in the two statements as to on what date these four London Flats were purchased, for what consideration amount and from whom they were purchased. It is also not in his two private statements as to how and by what mode and

means consideration amount of four London Flats was paid. Not a shred of bank papers is available on record in this respect. In this backdrop, the scenario unfolds before us is that:

(i) Who formed and got the two companies i.e. Nescoll Limited and Nielsen Enterprises Limited incorporated is not known;

(ii) Who had the custody of two Bearer Share Certificates of Nescoll Limited and Nielsen Enterprises Limited from the date of their incorporation and issue is not known;

(iii) There is total vacuum of ownership of the two companies namely Nescoll Limited and Nielsen Enterprises Limited from the day they were formed upto the day of their Bearer Share Certificates are stated to have been given to Hussain Nawaz Sharif in the year 2006;

(iv) The Nescoll Limited and Nielsen Enterprises Limited, the owner of four London Flats, the very ownership of these London Flats from the period they were acquired by Nescoll Limited and Nielsen Enterprises Limited upto the years 2006 also remained in vacuum.

This scenario, as has unfolded before us, obviously cannot be believed. The central reason for it is that the four London Flats remained in possession and occupation of Mian Muhammad Nawaz Sharif and his family since the year 1992/93 and all this time they have been paying their rent and all other dues and charges so also maintaining them and all such things were being done as the owner does towards his property. While the four London Flats remained in possession and occupation of Mian Muhammad Nawaz Sharif and his family, Managers/Agents of the two companies namely Nescoll Limited and Nielsen Enterprises

Limited were changed and successive companies were appointed for maintaining the four London Flats. Who did this, it remained unexplained by Mian Muhammad Nawaz Sharif.

14. Another glaring circumstance that connects Mian Muhammad Nawaz Sharif and his family with the four London Flats in the year 1999, is the order dated 05.11.1999 of the High Court of Justice Queen's Bench Division, London in the Suit filed by Al-Towfeek Company for Investment Funds Limited against Hudabiya Paper Mills Limited, Mian Muhammad Shehbaz Sharif, Mian Muhammad Sharif and Mian Muhammad Abbas Sharif by which to secure the payment of decretal amount of US$34 million, the Court charged the four London Flats to the extent of the interest in the said asset of Mian Muhammad Shehbaz Sharif, Mian Muhammad Sharif and Mian Muhammad Abbas Sharif. It is admitted that the liability under the decree of Al-Towfeek Company was discharged by the defendants and the charge on these four London Flats was got vacated but available record does not show remittance or payment of US$34 million to Al-Towfeek Company. Further the defendants never before the High Court of Justice Queen’s Bench Division, London raised plea of they having no interest in the four London Flats charged nor any other person or entity seems to have filed objection in Court claiming ownership of the four London Flats.

15. The other important circumstance is the conduct of Mian

Muhammad Nawaz Sharif himself on the publication of Panama Paper Leaks, he himself felt compelled to come up with his own version about the four London Flats. On close examination of his two speeches first dated 05.04.2016 to the Nation and the other dated 16.05.2016 on the floor of National Assembly, he has not disowned the ownership of the four London Flats by him and his family rather in categorical terms has admitted of having acquired/ purchased the four London Flats albeit from sources of sale of Gulf Steel Mills, Dubai and Al-Azizia Steel Mills, Jeddah. Had he or his family nothing to do with the four London Flats, there would have been no occasion for him to appear and give response to it. Yet another fact that seems to be established on record is the very interview of Hassan Nawaz Sharif to Tim Sebastian in BBC program 'Hard Talk' where the interviewer/ anchor asked him a direct question that does he know who owns the flats he is living in, his answer to this question was that it is not the question right now. Again he was asked by the interviewer that does he know who owns the flats he lives in, he again answered by saying I am not the right person to ask that. These were total evasive replies and one can imagine as to why and for what reason and on what account such evasiveness has been displayed. He could not have been so innocent or naive as not to know the owner of the Flats in which he has been continuously living for almost more than six years. The innocence has its limits. He could have named the owner of the

four London Flats but he chose not to do so. Even when he was specifically asked that the London Flats are illegally bought by his father, he chose not to deny but again replied evasively. Hussain Nawaz Sharif, in his interview dated 07.03.2016 in Program 'Kal Tak' at Express News stated that he has three offshore companies in London and he has also categorically stated that London Flats are his properties; Nescoll and Nielsen companies own those Flats and he is the owner of Nescoll and Nielsen. In this very interview, he has neither given the date on which he become owner of the three companies and the four London Flats nor did he mention about the source of funds from which these properties were acquired by him and how he paid them. No income purported to be generated from businesses of Hussain Nawaz Sharif and Hassan Nawaz Sharif has been brought on record. One document of Aldar Audit Bureau dated 19.01.2017 addressed to Hussain Nawaz Sharif as the owner of Hill Metals Establishment Jeddah has been filed at page 133 of CMA No.432 of 2017 by Mr. Salman Akram Raja, learned ASC. With this letter is attached a summary showing net profit after tax of Hill Metals Establishment in the years 2010 to 2014. Apart from this letter, no other record has been made available to the Court regarding Hill Metals Establishment and it is even not disclosed as to when Hill Metals was established and from what funds and what business it was doing. Even the certificate showing registration of Hill Metals Establishment is not filed. The

figures, as per letter has been traced and it is not stated that as to from where and from what sources they have been traced. No bank document showing the financial transactions of Hill Metals Establishment has been placed on record. This very letter, therefore, does not establish anything. Hussain Nawaz Sharif in his interview dated 07.03.2016 in Program 'Kal Tak' has specifically stated as follows:

"میاں نواز شریف کا میری پراپرٹی کے ساتھ کوئی قانونی تعلق نہیں ہے۔ مگر شرعی طور پر میرے اثاثے ہیں چاہے وہ پاکستان میں ہیں یا لندن یا دوبئی یا سعودی عرب میں ہیں وہ سب جتنے بھی ان کے ہیں۔"

This statement of Hussain Nawaz Sharif is altogether contradictory as they cannot stand together. If Mian Muhammad Nawaz Sharif is not the owner of properties then in Sharia also he will not own the properties. However, in the second sentence while asserting that in Sharia all his properties belong to his father Mian Muhammad Nawaz Sharif appears to be true fact for that had it not been true he would have not spoken so, more so looking at the background of his education i.e. Barrister from Lincoln's Inn since 1996 and also having his own family that of two wives and children. It may be noted here that none of the interviews are disputed or denied rather they all are admitted.

16. Mr. Makhdoom Ali Khan, learned Senior ASC for Mian Muhammad Nawaz Sharif has contended that privilege under Article 248 of the Constitution is not claimed by Mian Muhammad Nawaz Sharif as Prime Minister of Pakistan rather he claims

privilege of his speech made on floor of the House in terms of Article 66 of the Constitution. He has cited many cases to show that this privilege cannot be abridged or taken away from the Parliamentarians and the only restriction placed on the Parliamentarian is provided under Articles 68 and 204 of the Constitution. To the extent the submission of the learned Senior ASC for Mian Muhammad Nawaz Sharif goes there cannot be any cavil, however, Mian Muhammad Nawaz Sharif time and again stated that he will not claim any privilege in this matter. Even in his concise statement while referring to speech in the Parliament, he himself has relied upon his speech on floor of the House and did not out rightly claim privilege. However, I am not altogether basing my note on mere speech of Mian Muhammad Nawaz Sharif on the floor of the House.

17. Mr. Makhdoom Ali Khan, learned Senior ASC for Mian Muhammad Nawaz Sharif has vociferously argued that standard of proof which was actually required for proving qualifications for membership of Majlis-e-Shoora after 18th amendment was substantially raised and it is not the same as is applicable to ordinary cases. Mr. Taufeeq Asif, learned ASC however contended that standard of proof was not raised but remained ordinary. The provision of Article 62 of the Constitution, prior to 18th amendment was as follows:

> *"**62. Qualifications for membership of Majlis-e-Shoora (Parliament),-** A person shall not be qualified to be elected or chosen as a member of Majlis-e-Shoora (Parliament) unless-*

(a) ***.....***
(b) ***.....***
(c) ***.....***
(d) ***.....***
(e) ***.....***
(f) *he is sagacious, righteous and non-profligate and honest and ameen;*

The provision of Article 62 of the Constitution, after 18th amendment is as follows:

62(1) *A person shall not be qualified to be elected or chosen as a member of Majlis-e-Shoora (Parliament) unless-*
(a) ***.....***
(b) ***.....***
(c) ***.....***
(d) ***.....***
(e) ***.....***
(f) *he is sagacious, righteous, non-profligate, honest and ameen, there being no declaration to the contrary by a court of law.*

The difference that has been made in clause (f) of this Article after 18th amendment is the addition of words *"there being no declaration to the contrary by a Court of law"*. This only means that the qualification of candidate of Majlis-e-Shoora (Parliament) under clause (f) previous to the 18th amendment was capable of being challenged without any hurdle in that the challenger only had to establish that the candidate is not sagacious, righteous, non-profligate and honest and ameen.

However, after 18th amendment this open ended provision was circumscribed by addition that *'there being no declaration to the contrary by a Court of law'*. It was conceded by Mr. Makhdoom Ali Khan, learned Senior ASC during the course of arguments that the Supreme Court is the Court of law and also competent to give declaration but contended that there has to be a trial by way of recording evidence before the Court of appropriate jurisdiction. There may not be two views about this submission of the learned Senior ASC but at the same time it is also well established that the question of trial do arise when there are disputed questions about the given facts and yet again the High Court under Article 199 of the Constitution so also this Court under Article 184(3) of the Constitution has ample power to pass declaration where the matter is based on practically admitted facts. Although large number of cases have come before this Court where challenge under Article 62(1)(f) of the Constitution were adjudicated and determined in the lower forums. Incidently, a direct Petition under Article 184(3) of the Constitution was filed before this Court in the case of Syed Mehmood Akhtar Naqvi **v** Federation of Pakistan through Secretary Law & others [PLD 2012 Supreme Court 1054] where the election of Parliamentarian was challenged on the ground of their having dual citizenship and after elaborate discussion on the issue this Court passed the declaration as follows:

> *"(a) Ch. Zahid Iqbal, MNA, Ms. Farah Naz Isfahani, MNA, Mr.Farhat Mehmood Khan, MNA, Mr. Jamil Ahmad Malik, MNA, Mr. Muhammad Akhlaq, MPA*

(Punjab), Dr. Muhammad Ashraf Chohan, MPA (Punjab), Ms. Nadia Gabol, MPA (Sindh), Ch. Waseem Qadir, MPA (Punjab), Ch. Nadeem Khadim, MPA(Punjab), Ms. Amna Buttar, MPA (Punjab), Dr. Ahmad Ali Shah, MPA (Sindh) have been found disqualified from being members of Majlis-e-Shoora (Parliament) and Provincial Assemblies because of their disqualification under Article 63(1)(c) of the Constitution.

(b) The Parliamentarians/Members of Provincial Assemblies, who have been declared to be disqualified, in view of the established fact that they have acquired the citizenship of Foreign States, therefore, no question has arisen, which is to be determined by the Chairman/Speaker. Thus, no reference under Article 63(2) is being made.

(c) The Election Commission is directed to de-notify the respective memberships of Parliament/Assemblies of aforesaid persons.

(d) All the Members of the Parliament/Provincial Assemblies noted above had made false declarations before the Election Commission while filing their nomination papers and as such appear to be guilty of corrupt practice in terms of Section 78 of Representation of Peoples Act, 1976, therefore, the Election Commission is directed to institute legal proceedings against them under section 82 of the Act read with sections 193, 196, 197, 198 and 199 PPC in accordance with law.

(e) The members of Parliament/Provincial Assemblies noted hereinabove, being disqualified persons are directed to refund all monetary benefits drawn by them for the period during which they occupied the public office and had drawn their emoluments etc. from the public exchequer including monthly remunerations, TA/DA, facilities of accommodation along with other perks which shall be calculated in terms of money by the Secretaries of the Senate, National Assembly and Provincial Assemblies accordingly.

(f) The amount, so recovered from all of them by respective Secretaries shall be deposited in the public exchequer within a period of two weeks and compliance report shall be sent to the Registrar.

(g) As regards the case of Senator A. Rehman Malik,

it may be noted that at the time of filing of nomination papers for election to the Senate held in the year 2008, he had made a false declaration to the effect that he was not subject to any of the disqualifications specified in Article 63 of the Constitution or any other law for the time being in force for being elected as a member of the Parliament/Provincial Assembly, therefore, reference will be required to be made to the Chairman Senate under Article 63(2) in view of the provision of section 99(1)(f) of the Act of 1976, which lays down that a person shall not be qualified from being elected or chosen as a member of an Assembly unless he is sagacious, righteous and non-profligate and honest and ameen. Mr. A. Rahman Malik, in view of the false declaration filed by him at the time of contesting the election to the Senate held in the year 2008, wherein he was elected, cannot be considered sagacious, righteous, honest and ameen within the contemplation of section 99(1)(f) of the Act of 1976. Therefore, for such purposes Article 63(1)(p) is to be adhered to because the disqualification incurred by him is envisaged under the law, referred to hereinabove in view of his own statement that he had renounced his citizenshipof UK whereas the fact remains that such renunciation along with declaration can only be seen as having been made on 29-5-2012.

(h) Senator A. Rehman Malik is directed to refund all monetary benefits drawn by him up to 11-7-2012 for the period during which he occupied the public office in the same manner as directed in the case of other Parliamentarians noted above.

(i) As Mr. A. Rehman Malik had made false declarations while filing his nomination papers before the Election Commission in the election held in the year 2008, therefore, the Election Commission is directed to institute legal proceedings against him as it has been directed in the case of above said parliamentarians."

18. I may also observe here that this Court while dealing with Constitution Petition under Article 184(3) of the Constitution

neither acts as a Civil Court conducting trial of the case nor does it act as a Criminal Court conducting trial of an accused person in a criminal offence rather the Court purely decide such Constitution Petition on matters and facts stated and brought before this Court purely on the basis of constitutional provision that being a case of public importance with reference to enforcement of Fundamental Rights as conferred in Chapter 1 Part II of the Constitution.

19. This being the legal position, Mian Muhammad Nawaz Sharif against whom in the very Constitution Petitions before us allegation was made that he and his family own four London Flats and the sources of acquiring all these properties have not been declared, to me as is said earlier, there was a duty cast upon Mian Muhammad Nawaz Sharif as holder of Public Office to satisfy this Court and the Nation of the country (*which being their Fundamental Right*) about the true facts regarding four London Flats, which he miserably failed to do so and thus what emerges is that he has not been Honest and Ameen in terms of Article 62(1)(f) of the Constitution. Being faced with this scenario, the Court cannot be expected to sit as a toothless body and become a mere spectator but it has to rise above screen of technicalities and to give positive verdict for meeting the ends of justice and also to safeguard the Fundamental Rights of the people of Pakistan. It is thus declared that Mian Muhammad Nawaz Sharif has not been Honest and Ameen in terms of Article

62(1)(f) of the Constitution and thus rendered himself disqualified from holding the office of a Member of National Assembly of Pakistan and ceasing to be the Prime Minister of Pakistan. I will accept the three Constitution Petitions to the above extent.

JUDGE

SH. AZMAT SAEED, J.- I have had the privilege of reading the judgments of my learned brothers Ejaz Afzal Khan and Ijaz ul Ahsan, JJ. I find myself, in principle, in agreement with the conclusions drawn in the said judgments. However, in order to elaborate the reasons, which have prevailed with me, I have added my following additional note.

2. The instant matter attracted more public interest and media attention than anyone expected. Some of such attention unfortunately was contaminated with factually incorrect opinions, legally fallacious concepts and predicted decisions, which were bounced around on the airwaves every evening. The temptation to restrain such media coverage and public comments was resisted. Freedom of expression and press is a right enshrined in Article 19 of the Constitution of the Islamic Republic of Pakistan, 1973 and this Court is bound to defend the same. An open Court is the essence of our Legal System. Restraining comments on the Court proceedings would perhaps negate the very concept of an open Court. Being insulted from all criticism, it can do more harm to an Institution than a little unfair criticism. In the instant cases, strong emotions were unleashed from both sides of the aisle but this Court cannot allow itself to succumb to populism and must remain steadfast to its oath. We cannot be tempted to pronounce a popular decision but must decide all cases in accordance with law without fear or favour, affection or ill-will.

3. Tragically, some of such legal fallacies of the often ill-informed and misguided public debate penetrated into the Courtroom, hence, it has become imperative to address the same even at the risk of stating the obvious.

4. Constitution Petitions Nos.29 and 30 of 2016, under Article 184(3) of the Constitution of the Islamic Republic of Pakistan, 1973, have been variously filed by the two Members of the National Assembly, who are also the Heads of

their respective Political Parties currently in the Opposition. It has been alleged that in the first week of April, 2016, documents, purportedly the record of a Panama based Law Firm, Mossack-Fonseca were leaked, released and published in the International Media, the world over. The said Law Firm was apparently involved in establishing, structuring and managing Offshore Companies on behalf of its clients from all over the world, including Pakistan. It is in the above backdrop, the Petitioners filed the aforesaid two Constitution Petitions.

5. In pith and substance, it is the case of the Petitioners in Constitution Petitions Nos.29 and 30 of 2016 that, primarily, as per the information in the public domain, purportedly emanating from the aforesaid leaks, commonly referred to as the Panama Papers, various assets, properties and businesses held in the name of Offshore Companies and other entities are, in fact, owned by Respondent No.1 i.e. the Prime Minister of Pakistan and the members of his family, including Respondents Nos.6 to 8. It is alleged that such assets have neither been declared in the Nomination Papers of Respondent No.1 nor the source of funds for the acquisition thereof disclosed.

6. Initially, the Respondents did not take any objection to the maintainability of the instant petitions under Article 184(3) of the Constitution. This Court vide its order dated 03.11.2016 passed in Constitution Petition No.29 of 2016 held that the questions raised were of public importance and involved, the enforcement of Fundamental Rights. The precedent law on the subject as laid down by this Court was cited and relied upon. However, during the course of the proceedings, on behalf of the Attorney General for Pakistan, a question was raised to the effect that there is no issue regarding the enforcement of Fundamental Rights involved in these proceedings. Furthermore, the learned counsels for Respondents also contended that disputed questions of facts had emerged, which could not be adjudicated upon by this Court in exercise of its jurisdiction under

Article 184(3) of the Constitution.

7. The foundation of our Constitutional dispensation as is evident from the Constitutional provisions, more particularly, the opening lines of its Preamble is that the Sovereignty vests in Almighty Allah and authority is to be exercised by the people of Pakistan through their chosen representatives. This is the heart and soul of our Constitution, which is also reflected in Article 17, the Fundamental Right of "Freedom of association". It is an unalienable right of the people of Pakistan to be governed by and under the authority of their chosen representatives. A right on which the entire edifice of our Constitutional and Legal Framework rests. This aspect of the matter in the context of the jurisdiction of the Court under Article 184(3) of the Constitution has been considered in various judgments of this Court, including the judgment, reported as Air Marshal (Retd) Muhammad Asghar Khan v. General (Retd) Mirza Aslam Baig, Former Chief of Army Staff and others (PLD 2013 SC 1), wherein it has been observed, *inter alia,* as follows:-

> "102. Above are the reasons for our short order of even date whereby the instant petition was disposed of as under:–
>
> > "The Constitution of the Islamic Republic of Pakistan commands that it is the will of the people of Pakistan to establish an order wherein the State shall exercise its powers and authority through the chosen representatives of the people, wherein the principles of democracy, freedom, equality, etc., shall be fully observed, so that the people of Pakistan may prosper and attain their rightful and honoured place amongst the nations of the world, and make their full contribution towards international peace and progress and happiness of humanity.

> People of Pakistan had been struggling to establish a parliamentary and democratic order since long within the framework of the Constitution and now they foresee a strong system which is established by the passage of time without any threat and which is subject to the constitution and rule of law.
>
> 2. The essence of this Human Rights case is based on the fundamental right of citizens enshrined in Article 17 of the Constitution. It raises an important question of public importance to enforce the fundamental rights, inter alia, noted hereinabove, therefore, in accordance with the provisions of Article 184(3) of the Constitution, jurisdiction has been assumed and exercised to declare, for the reasons to be recorded later, as under:-
>
> > (1) That citizens of Pakistan as a matter of right are free to elect their representatives in an election process being conducted honestly, justly, fairly and in accordance with law. …"

8. If the authority is exercised by an alien body i.e. other than the chosen representatives of the people of Pakistan then will the laws made by some alien body qualify as "law" in terms of Article 5 of the Constitution and will the citizens of the Pakistan be under any legal obligation to obey the same?

9. Thus, to exercise authority on their behalf by their chosen representatives is the most foundational of all the Constitutional rights of the people of Pakistan, if a disqualified person, as alleged, usurps such role and thereafter becomes the Prime Minister surely such right of the people is effected and is liable to be enforced by this Court. The contentions of the learned Attorney General for Pakistan to the contrary cannot be accepted and it is reiterated that these Petitions under Article 184(3) of the Constitution are maintainable.

10. A close scrutiny of the case of the Petitioners, more particularly, as is obvious from the contents of Constitution Petitions No.29 & 30 of 2016 and the prayers made therein reveals that a two pronged attack has been made. On the one hand, it is the case of the Petitioners that Respondent No.1 Mian Muhammad Nawaz Sharif is disqualified from being a Member of the Majlis-e-Shoora in view of non-disclosure of the properties i.e. Flats. No 16, 16-A, 17 and 17-A, Avenfield House, Park Lane, London owned by him through his dependent daughter Maryam Safdar i.e. Respondent No.6, in his Nomination Papers. It is also prayed that Respondents Nos.9 and 10 are also disqualified from holding such public office and liable to be prosecuted for abetting the other private Respondents.

11. Furthermore, it is alleged that Respondent No.1 and the other private Respondents in their various public statements and interviews have neither honestly nor successfully explained the source of funds for the acquisition of the properties in question i.e. Flats No.16, 16-A, 17 and 17-A, Avenfield House, Park Lane, London, hence, are guilty of an offence under Section 9(a)(v) of the National Accountability Bureau Ordinance, 1999, hence, they are liable to be prosecuted and punished thereunder.

12. Disqualification from being a Member of the Majlis-e-Shoora on account of non-declaration or false declaration of assets and prosecution and punishment for inability to explain the source of funds for acquisition of such assets have their genesis in two separate sets of Statutes with different principles of law involving distinct and separate jurisprudence, hence, intermingling the two would be illogical, patently illegal and may lead to a gross miscarriage of justice.

13. The elections to the Majlis-e-Shoora, as ordained by the Constitution are conducted in accordance with the provisions of the Representation of the People Act, 1976 (ROPA). The scheme of the law, includes financial disclosures with a declaration of assets and liabilities by each candidate. Such disclosure is critical and failure, in this behalf, has painful consequences.

14. Every candidate for the National Assembly is required to file his Nomination Papers in terms of Section 12 of ROPA and the relevant provision of Section 12(2)(f) thereof reads as follows:-

> **"12**(2)(f) a statement of his assets and liabilities and those of his spouse and dependents on the prescribed form as on the preceding thirtieth day of June;"

15. The Nomination Papers are subjected to scrutiny in terms of Section 14 of the ROPA and if the financial disclosures, as made, are found to be false, the Nomination Papers are rejected and the candidate is not permitted to contest the election, as is obvious from the provisions of Section 14(3)(c) of ROPA, which reads as under:-

> "**14. Scrutiny.–**(3) The Returning Officer may, either of his own motion or upon any objection, [either by an elector or] [by any person referred to in sub–section (1),] conduct such summary enquiry as he may think fit and may reject nomination paper if he is satisfied that-
>
> (a)

> ……
> .;
>
> (b)
> ……
> ….;
>
> (c) any provision of section 12 or section 13 has not been complied with [or submits any false or incorrect declaration or statement in any material particular] ; or
>
> (d)
> ……
> ;".

16. The election of a Returned Candidate can be declared void by the Election Tribunal under Section 68 of ROPA, if the Returned Candidate has not correctly disclosed his own assets and liabilities or that of his spouse or dependants and false statement has been made in this behalf. Such an omission also constitutes an offence of corrupt practices in terms of Section 78(3) of ROPA with an exposure to criminal prosecution.

17. In the event of an election dispute, more particularly, after the election, reaching the Election Tribunal strict procedural requirements have been prescribed, which are rigorously enforced at the cost of the Election Petitioner. However, an exception has been made in terms of Section 76A of ROPA, whereby even if the Election Petitioner is to fail on account of non-fulfillment of the aforesaid procedural requirements, the Election Tribunal is vested with the inherent jurisdiction to nullify the election, where, *inter alia*, a Returned Candidate has failed to faithfully disclose his assets (or liabilities) of himself, his spouse or dependents. Section 76A of ROPA is reproduced hereunder for ease of reference:-

> "**76A. Additional powers of Election**

Tribunal.-(1) If an Election Tribunal, on the basis of any material coming to its knowledge from any source or information laid before it, is of the opinion that a returned candidate was a defaulter of loan, taxes, government dues or utility charges, or has submitted a false or incorrect declaration regarding payment of loans, taxes, government dues or utility charges, or has submitted a false or incorrect statement of assets and liabilities of his own, his spouse or his dependents under section 12, it may, on its own motion or otherwise, call upon such candidate to show cause why his election should not be declared void and, if it is satisfied that such candidate is a defaulter or has submitted false or incorrect declaration or statement, as aforesaid, it may, without prejudice to any order that may be, or has been made on an election petition, or any other punishment, penalty or liability which such candidate may have incurred under this Act or under any other law for the time being in force, make an order—

(a) declaring the election of the returned candidate to be void; and

(b) declaring any other contesting candidate to have been duly elected.

(2) If on examining the material or information referred to in sub-section (1), an Election Tribunal finds that there appear reasonable grounds for believing that a returned candidate is a defaulter or has submitted a false or incorrect declaration referred to in subsection (1) it may, pending

> decision of the motion under subsection (1), direct that the result of the returned candidate shall not be published in the official Gazette.
>
> (3) No order under sub-section (1) or sub-section (2) shall be made unless the returned candidate is provided an opportunity of, being heard.]"

18. A bare reading of the aforesaid provisions of the Representation of the People Act, 1976 makes it clear and obvious that if a person fails to disclose any asset owned by him, his spouse or dependent in his Nomination Papers in terms of Section 12 of ROPA, he exposes himself not only to disqualification but also prosecution for corrupt practices under Section 78 of ROPA besides any other liability prescribed by the law.

19. In the aforesaid provisions reference to the source of funds for acquisition of such undisclosed assets is conspicuous by its absence, hence; wholly irrelevant. Even, if a delinquent person offers a perfect, legally acceptable explanation for the source of funds for acquiring the undeclared assets, he cannot escape the penalty of rejection of his Nomination Papers or annulment of his election. Such is the law of the land and as has been repeatedly and consistently interpreted by this Court, including in the judgments, reported as (1) Muhammad Jamil v. Munawar Khan and others (PLD 2006 SC 24), (2) Khaleefa Muhammad Munawar Butt and another v. Hafiz Muhammad Jamil Nasir and others (2008 SCMR 504) and (3) Muhammad Ahmad Chatta v. Iftikhar Ahmad Cheema and others (2016 SCMR 763).

20. In all the above cases, the candidates were de-seated for non-disclosure of assets belonging to them, their spouses or their dependants. No explanation as to the source of funds for acquisition of such assets was asked for, offered, accepted or rejected.

21. On the other hand, with regard to a criminal offence under Section 9(a)(v) of the National Accountability Bureau Ordinance, 1999 (NAB Ordinance), the law is equally settled. The relevant provisions read as under:-

> **9. Corruption and corrupt practices.** (a) 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—
>
> (i) ……
>
> (ii) ……
>
> (iii) ……
>
> (iv) ……
>
> (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, which he cannot reasonably account for or maintains a standard of living beyond that which is commensurate with his sources of income or;"
>
> ……
>
> ……

22. It is evident from a bare reading of the aforesaid provisions that the prosecution must establish that a person or his spouse or dependent or *benamidar* owns or possesses a property. If the aforesaid allegation is proved then the accused must give an explanation as to the source of legal funds for acquiring such property and upon his failure to do so, he becomes liable for punishment under the aforesaid law. Such punishment not only includes fine and imprisonment but also disqualification from holding a public Office, including

that of Member of the Majlis-e-Shoora for a period of 10 years under Section 15 of the NAB Ordinance, 1999. Reference, in this behalf, can be made to the judgments, reported as (1) Iqbal Ahmed Turabi and others v. The State (PLD 2004 SC 830), (2) Ghani-ur-Rehman v. National Accountability Bureau and others (PLD 2011 SC 1144), (3) Abdul Aziz Memon and others v. The State and others (PLD 2013 SC 594), (4) The State through Prosecutor General Accountability, National Accountability Bureau, Islamabad v. Misbahuddin Farid (2003 SCMR 150), (5) Syed Zahir Shah and others v. National Accountability Bureau and another (2010 SCMR 713), (6) Muhammad Hashim Babar v. The State and another (2010 SCMR 1697) and (7) Khalid Aziz v. The State (2011 SCMR 136).

23. In none of the aforesaid cases was any person convicted without a definitive finding that the assets were in fact owned or possessed by the accused, his spouse, his dependents or *benamidars*. And thereafter, the accused had failed to account for the source of funds for acquiring the said property and if the explanation was found unsatisfactory, conviction followed.

24. The explanation of the source of funds for acquiring the property is a requirement of Section 9(a)(v) of the NAB Ordinance, which cannot *ipso facto* migrate into ROPA or the Constitutional provisions pertaining to elections especially in the absence of any legislation by the Reformers. Any effort, in this behalf, would not only be without any jurisprudential basis but be illegal.

25. In the above backdrop to hold that an MNA, who may (or may not) own an undeclared property yet his explanation for the source of the funds for acquiring such property, though legally irrelevant, is not acceptable, hence, such MNA is disqualified, is a legal absurdity under the laws of the Islamic Republic of Pakistan.

26. We cannot resort to exceptionalisim by making a departure from

the settled law and inventing a new set of rules merely because Respondent No.1 holds the Office of the Prime Minister. The last time in our legal history, when such a course of action was followed, it had tragic consequences.

27. There is a possibility that the alleged grounds for disqualification and the allegations constituting an offence under Section 9(a)(v) of the NAB Ordinance may partially overlap. However, it is a legal impossibility to disqualify a person merely upon allegations. Though, such allegations may be sufficient for initiation of criminal proceedings under the NAB Ordinance. To disqualify a person in such an eventuality would require turning our entire Legal System on its head and would constitute an act of jurisprudential heresy.

28. The Petitioners in an attempt to advance their case laid great emphasis on Article 62(1)(f) of the Constitution. It was canvassed at the bar, on their behalf, that the explanation offered by Respondent No.1 for acquisition of the four Flats in London was "not honest".

29. The provisions of Article 62(1)(f) of the Constitution are reproduced herein below for ease of reference:-

> "**62.** (1) A person shall not be qualified to be elected or chosen as a member of Majlis-e-Shoora (Parliament) unless—
>
> (a) ……
>
> (b) ……
>
> (c) ……
>
> (d) ……
>
> (e) ……
>
> (f) he is sagacious, righteous, non-profligate, honest and ameen, there being no declaration to the contrary by a court of law; and

(g) ……”

30. Before the said provisions can be pressed into service, there must be a declaration by Court of law. At the risk of stating the obvious, it may be clarified that the Courts of law are concerned with the matters of law not morality. There can be no manner of doubt that the term “honest” as employed in Article 62(1)(f) refers to legal honesty, an objective concept and not mere moral or ethical honesty, which is subjective. The Courts have never wandered into the realm of morality, in this behalf.

31. In the instant case, the issue agitated pertains not to any incorrect statement made by the Respondents but rather the alleged failure to disclose the entire facts. In the circumstances, a legal obligation to disclose such facts appears to be a *sine qua non* to attract the provisions of Article 62(1)(f) of the Constitution.

32. The election disputes pertaining to disqualification, including in view of Article 62(1)(f) of the Constitution, may crop up before, after or during the elections. It may originate at the time of scrutiny of the Nomination Papers by the Returning Officer, during the course of election and immediately thereafter in disputes before the Election Commission of Pakistan. But most often Election Petitions are filed before the Election Tribunal eventually constituted under ROPA. And occasionally through Constitutional Petitions in the nature of *quo warranto* filed before the High Court under Article 199 or before this Court under Article 184(3) of the Constitution of the Islamic Republic of Pakistan, 1973. Such proceedings may or may not result in disqualification of a person or annulment of his election or a part thereof. In some of such matters, which have come up before this Court Article 62(1)(f) of the Constitution required interpretation.

33. The provisions of Article 62(1)(f) of the Constitution in not too

dissimilar circumstances were invoked earlier seeking disqualification of Respondent No.1. A Writ Petition was filed in the Lahore High Court wherein it was contended that Respondent No.1 was liable to be disqualified on the allegations that he had made a misstatement before the National Assembly. The Writ Petition was dismissed vide Order dated 02.09.2014. An Intra Court Appeal bearing No.865 of 2014 was also filed, which was also dismissed vide judgment dated 8th September, 2014, reported as Gohar Nawaz Sindhu v. Mian Muhammad Nawaz Sharif and others (PLD 2014 Lahore 670). The Appeal was dismissed by, *inter alia*, holding that a political question was involved, further the allegations of misstatement have not been established on the material available on the record and such statement on the floor of the House was protected by the privilege under Article 66 of the Constitution, as it did not fall within the ambit of any of the exception thereto as set down by this Court in its various judgments.

34. The aforesaid judgment was challenged before this Court through a Civil Petition for Leave to Appeal. Simultaneously, several Constitutional Petitions under Article 184(3) of the Constitution were also filed seeking a similar relief which were heard along with the said Civil Petition for Leave to Appeal. The aforesaid Civil Petition for Leave to Appeal and the Constitutional Petitions were heard by a Larger Bench of this Court and were dismissed vide judgment, reported as Ishaq Khan Khakwani and others v. Mian Muhammad Nawaz Sharif and others (PLD 2015 SC 275). This Court held that the question involved before the learned High Court was not of a nature which could not be adjudicated upon, hence, the judgment of the learned High Court only to the extent that the Writ Petitions being not maintainable, were set aside. However, the judgment dismissing the Writ Petition was maintained and the Constitutional Petitions under Article 184(3) of the Constitution were also dismissed. The legal questions, which floated to the surface, were not answered.

35. However, Article 62(1)(f) of the Constitution also came up in the cases, reported as (1) Ghaznafar Ali Gull v. Ch. Tajammul Hussain and others (1997 CLC 1628), (2) Nawabzada Iftikhar Ahmed Khan Bar v. Chief Election Commissioner, Islamabad and others (PLD 2010 SC 817), (3) Muhammad Rizwan Gill v. Nadia Aziz and others (PLD 2010 SC 828), (4) Rana Aftab Ahmad Khan v. Muhammad Ajmal and another (PLD 2010 SC 1066), (5) Muddasar Qayyum Nahra v. Ch. Bilal Ijaz and others (2011 SCMR 80), (6) Mian Najeeb-ud-Din Owaisi v. Aamir Yar and 7 others (2011 SCMR 180), (7) Malik Iqbal Ahmad Langrial v. Jamshed Alam and others (PLD 2013 SC 179), (8) Mian Najeeb-ud-din Owasi and another v. Amir Yar Waran and others (PLD 2013 SC 482), (9) Sadiq Ali Memon v. Returning Officer, NA-237 Thatta-I and others (2013 SCMR 1246), (10) Abdul Ghafoor Lehari v. Returning Officer PB-29, Naseerabad-II and others (2013 SCMR 1271), (11) Muhammad Khan Junejo v. Federation of Pakistan through Secretary, M/o Law, Justice and Parliamentary Affairs and others (2013 SCMR 1328), (12) Allah Dino Khan Bhayo v. Election Commission of Pakistan (2013 SCMR 1655), (13) Molvi Muhammad Sarwar and others v. Returning Officer PB-15 Musa Khail and others (2013 CLC 1583), (14) Malik Umar Aslam v. Mrs. Sumaira Malik and others (2014 SCMR 45), (15) Muhammad Siddique Baloch v. Jehangir Khan Tareen and others (PLD 2016 SC 97) and (16) Muhammad Ijaz Ahmed Chaudhry v. Mumtaz Ahmed Tarar and others (2016 SCMR 1).

36. In all the aforesaid cases, the applicability of Article 62(1)(f) of the Constitution was considered. In no case, any person was disqualified under the said Article in the absence of an established and proved breach of a legal obligation or violation of a law. In no case, the question of Article 62(1)(f) was even seriously considered in the absence of at least specific allegations of breach of a legal obligation or violation of law. No judgment of this Court has been cited

at the bar where a person has been disqualified under Article 62(1)(f) for being dishonest where such alleged dishonesty did not offend against the law or involve a breach or non-fulfillment of a legal obligation.

37. Such is the true and obvious import of Article 62(1)(f) of the Constitution, as has been consistently without any exception interpreted and applied by this Court. Article 62(1)(f) of the Constitution cannot be permitted to be used as a tool for political engineering by this Court nor should this Court arrogation unto itself the power to vet candidates on moral grounds, like a Council of Elders as is done in a neighbouring Country. Under our Constitutional dispensation, Pakistan is to be governed by the Representatives chosen by the people and not chosen by any Institution or a few individuals.

38. The Petitioners have laid great emphasis on the various speeches on the subject in question made by Respondent No.1 as well as interviews given by him and Respondents Nos.6 to 8 at various points of time. The learned counsel went to great lengths in an attempt to show contradictions and improvements in explanations offered by the said Respondents with regard to the assets attributed to them. The aforesaid speeches and interviews are, at best, previous statements with which the makers thereof could be confronted in the event of an evidentiary hearing, especially as the said Respondents were under no legal obligation to make such statements or give such interviews. The compulsion was political and so to its effect.

39. Be that as it may, there can be no escape from the fact that the statements made in the speeches and interviews given by Respondents No.1 and 6 to 8 do not appear to be in sync with each other.

40. At best periodically and incrementally small pieces of a jigsaw puzzle were made public, which do not really fit in with each other. Had the explanations been clear, satisfactory and acceptable, no one would have been

allowed to come knocking at our door.

41. Emphasis was laid on behalf of the Petitioners upon the alleged contradictions between the statements/interviews of Respondent No.1 and those of Respondents Nos.6 to 8. The response of the counsel for the Respondents No.7 and 8, in this behalf, was not without force. He contended that there is no basis for the assumption that the statements/interviews of Respondent No.7 are the gospel truth and, therefore, the statements/ interviews of Respondent No.1 in purported deviation thereof are untrue as is alleged by the Petitioners.

There is another aspect of the matter that true facts in respect of the title to and the source of funds for the acquisition of the properties in question has not been consecutively established through cogent, undisputed or reliable evidence, therefore, truthfulness or otherwise of the statements/ interviews of Respondents No.1 or 7 cannot be ascertained.

42. It has been noticed that the learned counsel for the Petitioners had attempted to present their case for disqualification of Respondent No.1 on the alleged lack of probity in statements/interviews of Respondent No.7. Vicarious liability has a precarious existence on the periphery of our Legal System as an extreme exception to the general principle that a person is responsible for his own acts and omissions and not that of others. Such vicarious liability must be specifically set forth in clear-cut terms and cannot be assumed. Such vicarious liability has no place in our Election Laws, including the Constitutional provisions of Articles 62 and 63 pertaining to the qualification and the disqualification of candidates. A father cannot be disqualified if his son is of unsound mind [Article 63(1)(a)]. Similarly, a father cannot be disqualified if his son has been convicted for an offence involving moral turpitude or such son has been dismissed from the service of Pakistan (Article 63(1)(h) & (i). Thus, obviously a father cannot be disqualified if his son is allegedly dishonest [Article 62(1)(f)].

43. To rely upon the statements/interviews of Respondents No.7 and 8, in the above context, would require rewriting the Laws pertains to Elections, including Articles 62 and 63 of the Constitution and the corresponding provisions of ROPA, 1976. In the current legal dispensation attributing vicarious liability to a father for the acts and omissions of his son, more particularly, oral statements would result in a legal farce, which cannot be contemplated.

44. The learned counsel for Respondent No.1 with his usual professional dexterity pleaded privilege under Article 66 of the Constitution regarding the speech on 16th May, 2016 made on the floor of the House by Respondent No.1. We are aware of the "speech and debate" clause and the protection available to the Members of the Parliament thereunder and also the limitations of such protection and privilege. The speech dated 16th May, 2016, on its own is not a ground for culpability, hence, it is not necessary to decide such privilege.

45. In pith and substance, the case of the Petitioners in Constitution Petitions Nos.29 & 30 of 2016, was focused on the four flats i.e. Flats Nos.16, 16-A, 17 and 17-A, Avenfield House, Park Lane, London, in respect whereof, it was contended that the same were in the beneficial ownership of Respondent No.6 Maryam Safdar, who allegedly was legally dependant of Respondent No.1 Mian Muhammad Nawaz Sharif and the said Respondent No.1 had not disclosed the ownership of the said flats in his Nomination Papers and in the periodic statement of assets submitted to the Speaker, hence, was disqualified. The case of the Petitioners in Constitution Petitions Nos.29 & 30 of 2016 hinged on the allegation that Respondent No.6 Maryam Safdar was a dependant of Respondent No.1 and, in this behalf, reliance was placed upon the Income Tax Return of Respondent No.1 for the year 2011, in which Respondent No.6 had been mentioned in Column No.12 pertaining to the assets held in the name of, *inter alia,* a

dependant. It was also alleged that the said Respondent No.6 had no independent source of income. Reference, in this behalf, was made to her Income Tax Returns and that of her husband Muhammad Safdar, Respondent No.9.

46. The record reveals that Respondent No.6 was mentioned in the aforesaid terms only in one Income Tax Return i.e. for the year 2011, while it is not so mentioned in the preceding or succeeding Financial Years in the Income Tax Returns by Respondent No.1.

47. The learned counsels for Respondents Nos.1 & 6 also stated that if property was held in someone else's name whether a dependant or not, it could only be mentioned in the said Column at that point of time. Since land had been purchased by Respondent No.1 in the name of Respondent No.6, hence, her name was mentioned in respect of the said land in the relevant Column in the relevant year and upon receipt of consideration subsequently with regard to the said land from Respondent No.6 Maryam Safdar through Banking Channels, her name was excluded in the next year from the said Column.

48. The learned counsel also brought to the notice of this Court a subsequent Notification dated 03.7.2015 issued by the Federal Board of Revenue amending the Income Tax Form wherein property if held in someone else's name would be specifically mentioned without showing the said person, as a dependant.

49. It is also evident from the public record, copies whereof were filed by the Petitioners that a large number of shares of various companies were owned by Respondent No.6.

50. It was also found strange that on one hand, the Petitioners claimed that Respondent No.6 owned four very valuable flats in Central London worth millions of dollars, yet, it was alleged, she was a dependant of Respondent No.1.

51. In the above circumstances, it is not possible to determine conclusively on the basis of the material produced by the Petitioners or which had

otherwise become available that Respondent No.6 was a dependant of Respondent No.1 and the property, if any, in her name, was required to be disclosed by Respondent No.1 in his Nomination Papers.

52. The primary basis of the case of the Petitioners are the series of documents, which allegedly formed a part of the record of a Panamian Law Firm Mossack-Fonseca, which was leaked and are commonly referred to as the Panama Papers. The said documents are, in fact, copies, including of e-mails and are by and large unsigned. Furthermore, the said documents to the extent that the same pertains to the private Respondents are, in fact, denied. In the circumstances, only an innocent simpleton could expect this Court to give a finding or pronounce judgment based upon the copies of unsigned documents, which are disputed and have not come from proper custody. This is a legal impossibility in view of the provisions of Qanun-e-Shahadat Order, 1984. Such documents cannot form the basis of a judicial pronouncement in any civilized country with a developed or even a developing Legal System. There is no legal precedent, in this behalf.

53. The documents in question are the purported result of the efforts of investigative journalists. Such efforts should never be underestimated. Exposure by such journalists has resulted in the crumbling of many an alabaster pedestal and the fall of political icons. Such is the political not the legal consequence of the reports of the journalists. We are also witnesses to the fact that such reports have resulted in initiation of criminal prosecutions and launch of the proceedings for the disqualification or impeachment of the high and mighty but mere publication of such reports of material discovered by investigative journalists on its own, do not *ipso facto* result in the convictions or impeachment.

54. The source of incriminating information is usually not official and is fiercely guarded by such journalists with their liberty and occasionally with their lives. The documents usually, as in the instant case, are copies and not duly

certified nor in a form acceptable in a Court of law. The whistle blower, who can perhaps prove the documents may or may not be available. Immediate fall out is political. However, for legal purposes, the efforts of such journalists should not be discounted. Their reports are the vital key, which is used by investigators and prosecutors to gather and collect material and evidence in a form acceptable to the Court so that the facts can be ascertained and the law applied thereto. Investigative journalists are not a substitute for investigators and prosecutors.

55. In the instant case, upon release of the Panama Papers, the Opposition Parties and the Civil Society started demanding that the allegations against the Members of the Sharif Family arising from the Panama Papers be inquired into and the facts be ascertained. It was understood between the Government and the Opposition that the allegations emanating the Panama Papers would require to be established. In fact, there was consensus between the lawman and layman alike that no punitive action could be taken against Respondent No.1, any member of his family or any other person without at least some ascertainment of facts through investigation or inquiry perhaps by a Commission. In the above backdrop, a demand was made that a Commission consisting of a Judge of this Court be appointed to conduct an inquiry, gather the evidence and ascertain the facts. The Government, in principle, perhaps reluctantly, accepted the demand. However, a serious dispute arose as to the Terms of Reference (TORs) for such Commission. Despite many a meetings and photo opportunity, the matter of the TORs could not be resolved. The Government accused the Opposition of seeking a Prime Minister centric TOR, while the Opposition claimed that the Government wished to expand the scope on TORs to such an extent that no conclusion would be possible.

56. However, it appeared to be a common ground between all the parties concerned that the contents of the Panama Papers raised serious issues

forming the basis of a host of allegations against Respondent No.1 and his family and such allegations needed to be inquired into and established so that an action in law, if justified, would be taken against Respondent No.1 be it disqualification or prosecution for a criminal offence.

57. Such revelations regardless of the credibility of the journalists responsible therefor, legally, at best, would form the basis of allegations until proved through admission or evidence before the Court of Law. In 60 years touching from 1957 to 2017, the proceedings, seeking disqualification of a candidate or an elected member, have repeatedly come up before this Court from various subordinate forums including the cases reported as (1) Muhammad Saeed and 4 others v. Election Petitions Tribunal, West Pakistan and others [PLD 1957 SC (Pak.) 91], (2) Muhammad Khan Junejo v. Fida Hussain Dero (PLD 2004 SC 452), (3) Imtiaz Ahmed Lali v. Ghulam Muhammad Lali (PLD 2007 SC 369), (4) Nawabzada Iftikhar Ahmed Khan v. Chief Election Commissioner (PLD 2010 SC 817), (5) Muhammad Rizwan Gill v. Nadia Aziz and others (PLD 2010 SC 828), (6) Rana Aftab Ahmed v. Muhammad Ajmal (PLD 2010 SC 1066), (7) Haji Nasir Mehmood v. Mian Imran Masood (PLD 2010 SC 1089), (8) Malik Iqbal Ahmad Langrial v. Jamshed Alam and others (PLD 2013 SC 179), (9) Mian Najeeb-ud-din Owaise v. Amir Yar Waran (PLD 2013 SC 482), (10) Muhammad Siddique Baloch v. Jehangir Khan Tareen and others (PLD 2016 SC 97), (11) Muhammad Yousaf Kaselia v. Peer Ghulam (PLD 2016 SC 689), (12) Rai Hassan Nawaz v. Haji Muhammad Ayub and others (PLD 2017 SC 70), (13) Muddasar Qayyum Nahra v. Ch. Bilal Ijaz and others (2011 SCMR 80), (14) Mian Najeeb-ud-Din Owaisi v. Aamir Yar and 7 others (2011 SCMR 180), (15) Sadiq Ali Memon v. Returning Officer, NA-237 Thatta-I and others (2013 SCMR 1246), (16) Abdul Ghafoor Lehari v. Returning Officer PB-29, Naseerabad-II and others (2013 SCMR 1271), (17) Muhammad Khan Junejo v. Federation of Pakistan through

Secretary, M/o Law, Justice and Parliamentary Affairs and others (2013 SCMR 1328), (18) Dilawar Hussain v. The State (2013 SCMR 1582), (19) Allah Dino Khan Bhayo v. Election Commission of Pakistan (2013 SCMR 1655), (20) Malik Umar Aslam v. Mrs. Sumaira Malik and others (2014 SCMR 45), (21) Muhammad Ijaz Ahmed Chaudhry v. Mumtaz Ahmed Tarar and others (2016 SCMR 1), (22) Muhammad Ahmed Chatta v. Iftikhar Ahmed Cheema (2016 SCMR 763), (23) Shamuna Badshah Qaisrani v. Muhammad Dawood (2016 SCMR 1420) and (24) Molvi Muhammad Sarwar and others v. Returning Officer PB-15 Musa Khail and others (2013 CLC 1583).

58. In none of the above cases, any person was disqualified or unseated on the basis of allegations alone without such allegations being duly proved or the relevant facts duly ascertained before the Competent Legal Forum.

59. It is in the above perspective that the instant Petitions were filed before this Court. The parties were initially heard in an effort to narrow down the controversy and formulate fair and result oriented TORs. Proposed TORs were filed by all the sides. It was understood between the parties that a Commission would be appointed, as is obvious from the order of this Court dated 07.11.2016, which is reproduced hereunder for ease of reference:-

> "2. Be that as it may, we deem it appropriate

> to direct all the parties to these proceedings to place on record all the documents on which they intend to rely in support of their respective cases. No further opportunity in this regard will be available to them during the proceedings before the Commission. It is all the more necessary for the reason that this Court may also be able to go through these documents before deciding the question of appointment of Commission or otherwise. It is, however, clarified here that in case the Commission is appointed, this order will not prejudice or curtail its authority to call for any record from any source."

However, on 09.12.2016 Mr. Naeem Bokhari, learned counsel for the Petitioner in Constitution Petition No.29 of 2016 on instructions, in a rather belligerent tone, stated that a Commission by a Judge of this Court was not acceptable and the matter be decided by this Court on the existing record. The relief of the opposite side could barely be concealed. One of the unsolved mysteries of the case is this sudden change of heart by the Petitioners and more importantly what persuaded the Petitioners to believe that a definitive finding could be given by this Court on the photocopies of disputed unsigned documents not coming from a proper custody or Respondent No.1 could be disqualified on mere allegations emanating out of the Panama Papers.

60. However, in order to initiate proceedings for an alleged offence under Section 9(a)(v) of the NAB Ordinance, the allegations seriously leveled may be sufficient. On its Constitutional jurisdiction being invoked, this Court and the High Court may direct initiation of such criminal proceedings. Obviously, neither this Court nor the High Court can directly convict a person, while exercising its Constitutional original jurisdiction that too without recording any evidence.

61. Adverting now to the Constitution Petition No.3 of 2017 filed by

Senator Siraj-ul-Haq, Ameer Jamat-e-Islami, who also sought the disqualification of Respondent No.1 Mian Muhammad Nawaz Sharif. The main thrust of the arguments of the learned counsel for the Petitioner (In Constitution Petition No.3 of 2017) was that the corruption and holding of assets beyond his known sources of income by Respondent No.1 had been conclusively established in view of the judgment of this Court in Syed Zafar Ali Shah's case, reported as Syed Zafar Ali Shah and others v. General Pervaiz Musharaf, Chief Executive of Pakistan and others (2000 SCMR 869). It was contended that the allegations, in this behalf, were leveled by the State against Respondent No.1 Mian Muhammad Nawaz Sharif but his counsel Mr. Khalid Anwar, learned Sr. ASC did not controvert the said allegations. The record of the said case was summoned and examined and it was discovered that Mr. Khalid Anwar, learned Sr. ASC was not the counsel of Respondent No.1 Mian Muhammad Nawaz Sharif in the aforesaid case, hence, the entire contention of the learned counsel is based on a misunderstanding.

62. Furthermore in the said case, the overthrow of a Democratic Government through extra-Constitutional means was unfortunately upheld but no findings of fact with regard to Respondent No.1 Mian Muhammad Nawaz Sharif, were or could have been recorded. A mere mention that a large number of references are pending against Respondent No.1 Mian Muhammad Nawaz Sharif cannot form the basis of his disqualification.

63. Thus, the case, as canvassed by the Petitioners, more particularly, in Constitution Petition No.29 of 2016 could not succeed as the allegations therein could not be proved to the satisfaction of this Court. However, in view of the nature of the jurisdiction invoked i.e. under Article 184(3) of the Constitution of the Islamic Republic of Pakistan, 1973, which is inquisitorial in nature rather than merely adversarial the Petitioners cannot be tied down merely to their pleadings. The entire material available on the record must necessarily be examined in the

context of the applicable law.

64. We are confronted with a matter consisting of rather interesting legal propositions and complicated facts. We cannot afford the luxury of over simplification or intellectual lethargy. The questions raised will need to be analyzed in their true, factual and legal perspective. Even the question of the source of funds may become relevant but in a totally different context and perspective.

65. In order to ascertain the real matter in controversy, which has floated to the surface, it is necessary to avoid being distracted by the sound and fury raised by all sides in equal measures both inside and outside of the Courtroom. Having distanced ourselves from the irrelevant, the illogical and the non-legal, we must now come to the grips with the real matter in issue before us, whose seriousness and importance should not be underestimated. It is an admitted fact between the parties that the said four Flats are owned by two Offshore Companies i.e. M/s. Nielsen Enterprises Limited and Nescoll Limited registered in the British Virgin Islands (BVI). It is also evident from the record and not disputed between the parties that the said Flats were acquired by the two aforesaid BVI Companies, between the years 1993-1995 for a total consideration of US$ 1.9 million.

66. It is the case of Respondents No.1 and 6 to 8 that the aforesaid two BVI Companies i.e. M/s. Nielsen Enterprises Limited and Nescoll Limited (hence the Flats) are owned by Respondent No.7 Hussain Nawaz since June 2006. Prior to 2006, the two Companies had issued Bearer Share Certificates not in the name of any particular person and the Companies, (and the Flats) vested in the person(s), who had possession of such shares. It is the case of Respondents No.1 and 6 to 8 that Respondent No.7 had acquired the two Companies in June, 2006 from the Al-Thani Family of Qatar, which had the custody of the Bearer Share

Certificates. It was their case that an investment had been made by Mian Muhammad Sharif, the father of Respondent No.1 with the Al-Thani Family and, as per the wishes of Mian Muhammad Sharif, upon settlement of accounts of such investment, the Bearer Share Certificates of the two Companies, hence, the Flats in question were given to Respondent No.7. It is also their case that upon obtaining custody of Bearer Share Certificates of the two companies, Respondent No.7 Hussain Nawaz Sharif nominated his sister i.e. Respondent No.6 Maryam Safdar, as a Trustee of the two companies in June, 2006.

67. Respondent No.7 through CMA No.7531 of 2016 has made available some of the documents pertaining to the two BVI Companies i.e. M/s. Nielson Enterprises Limited and Nescoll Limited. It appears from the record appended with the said CMA that M/s. Nielson Enterprises Limited was incorporated on 04.8.1994. A Certificate of Incorporation in this respect was issued by the Registrar of the Companies of British Virgin Island (BVI). On 22.11.1994, one Bearer Share Certificate was issued i.e. Bearer Share Certificate No.001 (available at page 65 of CMA No.7531 of 2016). The said Share Certificate was eventually cancelled as is noted thereupon. On 04.7.2006 another share Certificate bearing No.0002 was issued in the name of M/s. Minerva Nominees Limited. Also on 04.7.2006, another Share Certificate bearing No.0003 was issued in the name of M/s. Minerva Services Limited. On 09.6.2014, Share Certificate No.4 was issued pertaining to two Ordinary Shares issued in the name of M/s. Trustee Service Corporation.

68. With regard to M/s. Nescoll Limited, the documents appended with CMA No.7531 of 2016 reveal that it was incorporated on 27.01.1993 as is evident from the Certificate of Incorporation issued by the Registrar of Companies BVI. On 29.4.1993, one Bearer Share Certificate was issued bearing No.1. The said Certificate was subsequently cancelled. On 04.7.2006, one Share

Certificate bearing No.0002 was issued in the name of M/s. Minerva Nominees Limited. On 04.7.2006, yet another Share Certificate No.0003 was issued in the name of M/s. Minerva Services Limited. Subsequently, on 09.6.2014, two Ordinary Shares bearing Certificate No.4 was issued in the name of M/s. Trustee Service Corporation.

69. A perusal of the aforesaid record reveals that originally Bearer Shares Certificates were issued, which vested in the person, who had custody and possession thereof. Such person owned the Companies, hence the flats. However, subsequently in 2006 shares were issued in the name of two entities M/s. Minerva Nominees Limited and Minerva Services Limited. It was obvious and not disputed by the parties that M/s. Minerva is a service provider. Such relationship continued till 2014, when M/s. Minerva was replaced by M/s. Trustee Service Corporation, obviously another service provider for Offshore Companies. In the circumstances, it is clear and obvious that the person, who instructed M/s. Minerva Nominees Limited and M/s. Minerva Services Limited in 2006 and M/s. Trustee Service Corporation in June 2014 to provide services for the two companies M/s. Nielsen Enterprises Limited and Nescoll Limited, is the real beneficial owner of two companies. The said documents were not provided. This aspect of the matter was pointed out to the learned counsel for the Respondents, more particularly, Respondent No.7.

70. In the above backdrop, CMA No.432 of 2017 was filed on behalf of Respondents Nos.7 and 8 appended therewith were various letters procured during pendency of the case originating from M/s. Minerva, Trustee Service Corporation and JPCA Limited indicating that they were providing services for the two companies M/s. Nielsen Enterprises Limited and Nescoll Limited. Reference was also made to some meetings with Respondent Hussain Nawaz Sharif but what was not filed were the agreements or any other document

instructing M/s. Minerva, Trustee Service Corporation or JPCA Limited to provide the services in respect of the said Offshore Companies, which should have indentified the real beneficial owner of the said Companies.

71. During the course of proceedings, an attempt was also made by Respondent No.7 to suggest that Respondent No.6 was only an authorized signatory *qua* of two Companies rather than its beneficial owner or trustee. The record, in this behalf, was also appended with CMA No.432 of 2017.

72. There is no document available on the record in favour of Respondent No.7 Hussain Nawaz to show that he (Respondent No.7) is a shareholder i.e. owner of the two BVI Companies. The Trust Deed dated 2nd/4th June, 2006 is not the evidence of Respondent No.7's title. It pre-supposes that the shares vest in Respondent No.7 Hussain Nawaz Sharif and, at best, is an admission in one's own favour, which is legally irrelevant.

73. In case of dispute or lack of clarity as to the true title, legal, equitable or beneficial of a property, it may be necessary to identify the source of funds for acquisition thereof. In the instant case, it has been presented before us that the father of Respondent No.1, Mian Muhammad Sharif setup Gulf Steel Mills in 1972 in Dubai. It was sold through two separate agreements of 1975 and 1980. The funds realized therefrom were invested with the Al-Thani Family in Qatar and the proceeds of such funds and the profit therefrom upon mutual settlement, as per the desire of Mian Muhammad Sharif, made available to Respondent No.7 and accounted for the Flats in question the Steel Mills/businesses set up in Saudi Arabia and various businesses commenced in London by Respondent No.8 Hassan Nawaz. In support of said contentions, Respondent No.7 had filed a Tripartite Agreement of 1978 for sale of 75% shares of Gulf Steel Mills and Agreement dated 14.4.1980 for sale of remaining 25% shares. Two letters dated 05.11.2016 and dated 22.12.2016 issued by a member of

the Al-Thani Family were filed and relied upon, in this behalf.

74. A perusal of the aforesaid documents reveals that the Gulf Steel Mills, Dubai, the alleged mother source of all the assets, had a negative equity at the time of its sale i.e. its liabilities exceeded its assets. A fact mentioned in clause (viii) of the Tripartite Agreement of 1978. Through the Tripartite Agreement, 75% of the shares allegedly held by Mian Muhammad Sharif in the name of his nephew Tariq Shafi, were sold and all funds received paid directly to BCCI towards repayment in partial satisfaction of an existing loan. The entire remaining liability of the company was taken over by said Tariq Shafi, the proxy of Mian Muhammad Sharif, as per clause viii(a). Subsequently, vide Agreement dated 14.4.1980, the balance of 25% shares were sold and the funds released, it was claimed, were invested with the Al-Thani Family in Qatar. However, no explanation for payment of the remaining obviously outstanding liabilities of Gulf Steel Mills has been offered. The learned counsel for Respondents Nos.7 and 8 frankly conceded that there are "gaps", in this behalf, which could not be explained.

75. It has also been noticed that the entire narrative, in this behalf, was disclosed incrementally by Respondents No.1 and 7.

76. However, the most critical aspects of the matter are the documents, which have not been filed. No agreement of deposit or investment by Mian Muhammad Sharif with Al-Thani Family of Qatar has been filed. No formal document of alleged settlement of accounts, in this behalf, has been filed.

77. No receipt for the alleged periodic "withdrawal" by the Respondents is available on the record. The transactions, as alleged, in the normal course involved investment, withdrawal and transfer of large amounts from one country to another country, yet, no banking documents evidencing such transactions have made available. The failure to underpin even one of the

transactions through banking documents is neither strange.

78. The narrative, as presented by Respondents, does not seem confidence inspiring in view of what has been said in the preceding paragraphs. A counter narrative also surfaced at various points of time and criminal proceedings on the basis of said counter narrative were initiated, firstly in year 1994, when two FIRs were registered, which were quashed and the accused therein were acquitted vide judgment dated 27.5.1997 passed in Writ Petitions Nos.12172 & 12173 of 1997 on the basis of the Economic Reforms Order of 1992 and subsequently, the proceedings under the NAB Ordinance were initiated through Reference No.5 of 2000. However, the said Reference was quashed on the ground that since Respondent No.1 and his family were not in Pakistan and, therefore, they had no opportunity to explain the source of funds for the assets in question, which, *inter alia,* included the four Flats in question. The two learned Judges of the Lahore High Court, having concurred in this aspect of the matter, differed on the future course of action available to the NAB. One was of the view that in future, the investigation could take place, while the other expressed his opinion that the matter stood concluded. The case was referred to a third learned Judge, who also held vide judgment dated 11.3.2014, reported as M/s. Hudaibya Papers Mills Ltd and others v. Federation of Pakistan and others (PLD 2016 Lahore 667) that further investigations were not legally possible. We have examined the said judgments, which have been placed on record and are surprised by the conclusions drawn but we are not surprised by the failure of NAB to file an appeal against the aforesaid judgments before this Court. The Chairman, NAB shamelessly defended the decision of not filing an appeal. Interestingly, appeals are filed by the NAB before this Court in routine but not in this case. We believe that a population census is in progress. It is expected that the population of Pakistan would be more or less 200 million. 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 legalize corruption.

79. In this day and age, when Offshore Companies and Special Purpose Vehicles are employed to disguise ownership as in the instant case, the title of a person in a property is not necessarily in black or white. Such title, legal equitable and/or beneficial needs to be discovered in the various shades of grey. This Court in the case, reported as Rai Hasan Nawaz v. Haji Muhammad Ayub and others (PLD 2017 SC 70) observed as follows:-

> "… Where assets, liabilities, earnings and income of an elected or contesting candidate are camouflaged or concealed by resort to different legal devices including benami, trustee, nominee, etc. arrangements for constituting holders of title, it would be appropriate for a learned Election Tribunal to probe whether the beneficial interest in such assets or income resides in the elected or contesting candidate in order to ascertain if his false or incorrect statement of declaration under Section 12(2) of the ROPA is intentional or otherwise. …"

The instant case involves various properties not only the four Flats in London owned through two BVI Companies but also Gulf Steel Mills, Dubai and Azizia Steel Mills near Jeddah and the Hill Metal Establishment, which is currently functioning in Jeddah.

80. A clear cut explanation for the title thereof and all the obvious documents in support thereof should be in the custody of the private Respondent, who claims to be the owner. Such documents have been deliberately withheld from this Court. The Flats have been in occupation of the Sharif Family since early 90s through Respondent No.8, who was a student and was a dependent upon Respondent No.1 at that point of time. The alleged source of funds through which the various properties were acquired is shrouded in mystery and no clear cut

transparent transactions have been shown. Respondent No.1 has admittedly benefitted from such assets, including Hill Metal Establishment through various "gifts" totaling an amount of Rs.84 corers as is mentioned in CMA No.432 of 2017. The stand of Respondent No.7, in this behalf, was also interesting and is reproduced herein below:-

> "The purpose of these remittances has been to free his father form any financial constraints given his full time involvement in politics."

81. In the above circumstances, I find myself unable to conclude that the assets in question, more particularly, the four flats i.e. Flats No.16, 16-A, 17 and 17-A, Avenfield House, Park Lane, London, businesses in London and Hill Metal Establishment in Kingdom of Saudi Arabia have no nexus with Respondent No.1 and the possibility of his equitable or beneficial interest therein cannot be ruled out.

82. We are dealing with the first Family of the country. Respondent No.1 is the Prime Minister of Pakistan. The questions regarding properties of his family members outside Pakistan have remained unanswered. Such an inconclusive state of affairs is not acceptable. The people of Pakistan have a right to know the truth.

83. No doubt, ordinarily this Court in exercise of its jurisdiction under Article 184(3) of the Constitution tends to avoid deciding the disputed questions of facts. However, this is not an absolute rule. In exceptional circumstances, this Court on more than one occasion has undertaken such an exercise.

84. In the case, reported as Syed Mehmood Akhtar Naqvi v. Federation of Pakistan through Secretary Law and others (PLD 2012 SC 1089),

this Court in order to determine whether the Respondent Parliamentarians held dual nationality, summoned and examined the various official records and reports, in this behalf, and gave a finding of fact that some of such Parliamentarians were foreign nationals, hence, disqualified. In the case, reported as Pakistan Muslim League (N) through Khawaja Muhammad Asif, MNA and others v. Federation of Pakistan through Secretary Ministry of Interior and others (PLD 2007 SC 642), this Court while examining the nature of jurisdiction of this Court under Article 184(3) observed as follows:

> "20. (vii) That even the disputed questions of facts which do not require voluminous evidence can be looked into where Fundamental Right has been breached. However, in case where intricate disputed questions of facts involving voluminous evidence are involved the Court will desist from entering into such controversies."

85. As far back as in the year 1994, this Court, in the case, reported as General Secretary, West Pakistan Salt Miners Labour Union (CBA) Khewra, Jhelum v. the Director Industries and Mineral Development, Punjab, Lahore (1994 SCMR 2061) appointed a Commission to determine whether water supply was being polluted, which fact was disputed between the parties.

86. We are aware of the provisions of Article 225 of the Constitution, whereby an election can be called into question only through the Election Tribunals constituted thereunder. Such Election Tribunals can also examine, *inter alia*, the qualification and disqualification of the candidates if challenged before them. The legal possibility of referring the matter to the Election Commission of Pakistan under Article 63(2) of the Constitution, was also considered. The aforesaid provision reads as under:

> "**63.**(2)If any question arises whether a member of the Majlis-e-Shoora (Parliament) has become disqualified from being a member, the Speaker

> or, as the case may be, the Chairman shall, unless he decides that no such question has arisen, refer the question to the Election Commission within thirty days and if he fails to do so within the aforesaid period it shall be deemed to have been referred to the Election Commission."

A bare reading of the aforesaid provision makes it clear and obvious that the same is attracted when a sitting Member by virtue of events subsequent to the election has become disqualified. It pertains to post-election disqualification. The said provision has been interpreted by this Court in the case, reported as Muhammad Azhar Siddiqui and others v. Federation of Pakistan and others (PLD 2012 SC 774) in the following terms:

> "40. … If a question of post-election disqualification arises under any sub-clause of Art. 63(1) the matter must be referred to the Speaker or Chairman of the House of Parliament under Art. 63(2). …"

In the instant case, the allegations against Respondent No.1 primarily pertain to the alleged non-declaration of his assets in the Nomination Papers. Even though such allegations surfaced after the elections, the same would not qualify as a post-election disqualification, hence, the matter cannot be referred to the Election Commission of Pakistan through the Speaker or otherwise.

However, it is now settled law and has been so settled through a series of judgments of this Court including Farzand Ali v. Province of West Pakistan (PLD 1970 SC 98) and Muhammad Azhar Siddiqui v. Federation of Pakistan and others (PLD 2012 SC 774) that a Constitution Petition in the nature of a writ of *quo warranto* is

maintainable against a Member of the Majlis-e-Shoora, if he is disqualified or did not possess or has lost his qualification, in this behalf. Such Constitutional Petitions can always be filed before the learned High Court under Article 199 of the Constitution and before this Court under Article 184(3) of the Constitution, as has been filed in the instant case.

87. In the instant case, the allegations against Respondent No.1 were not conclusively established, yet, sufficient suspicious circumstances, detailed above, have come to light, which require to be investigated to facilitate the discovery of the true facts. Such investigation appears to be necessary before we can proceed further in the matter. Despite the jurisdiction to determine the disputed questions of facts and the tools, in this behalf, available to this Court mentioned above, this Court does not have the powers under Article 184(3) of the Constitution to investigate a matter. Reference, in this behalf, may be made to the judgment of this Court, reported as Suo Motu Action regarding allegation of business deal between Malik Riaz Hussain and Dr. Arsalan Iftikhar attempting to influence the judicial process (PLD 2012 SC 664).

88. When the matter relates to the persons in high places, special measures need to be taken to ensure an impartial, fair and effective investigation and inquiry. To achieve such end, in unexceptional circumstances, the Court keeps a vigilant eye over the investigation by keeping itself abreast of the

progress thereof. The most significant case in hand is the "Hawala case" of Indian Supreme Court, reported as Vineet Narain and others v. Union of Indian and another (AIR 1998 SC 889). This Court also on more than one occasion has passed similar orders with regard to the investigation, including the cases, reported as Corruption in Hajj Arrangements in 2010 (PLD 2011 SC 963) and Suo Motu action regarding violation of Public Procurement Rules, 2004 in procurement loss of billions of Rupees of exchequer caused by National Insurance Company Ltd. [2012 PLC (CS) 394].

89. Since, the primary Anti-Corruption Agency appears to be neither able nor willing to fulfill its legal obligations, we are constrained to look elsewhere. In India, an issue pertaining to foreign accounts of Indian Nationals organizing in Brazil with information in respect thereof available in Germany came up before its Supreme Court in the case, reported as Ram Jethmalani and others v. Union of India and others [(2011) 8 Supreme Court Cases 1]. The Government was allegedly dragging its feet and not even disclosing the names of individuals involved. The Supreme Court of India constituted a Special Investigation Team. The relevant portion of this case is reproduced hereunder for ease of reference:

> "49. In light of the above we herewith order:
>
> (i) That the High Level Committee constituted by the Union of India, comprising of (i) Secretary, Department of Revenue; (ii) Deputy Governor, Reserve Bank of India; (iii) Director (IB); (iv) Director, Enforcement; (v) Director, CBI; (vi) Chairman, CBDT; (vii) DG, Narcotics Control

> Bureau; (vii) DG, Revenue Intelligence; (ix) Director, Financial Intelligence Unit; and (x) JS (FT & TR-I), CBDT be forthwith appointed with immediate effect as a Special Investigation Team;
>
> (ii) That the Special Investigation Team, so constituted, also include Director, Research and Analysis Wing;
>
> (iii) That the above Special Investigation Team, so constituted, be headed by and include the following former eminent judges of this Court: (a) Hon'ble Mr. Justice B.P. Jeevan Reddy as Chairman; and (b) Hon'ble Mr. Justice M.B. Shah as Vice-Chairman; and that the Special Investigation Team function under their guidance and direction;"

In the instant case, in order to ensure that every possible effort is made to discover the truth and place it before the people of Pakistan and also to ensure that the legal consequences, if any, follow. It appears that the help and assistance must be sought from similar institutions of the State of Pakistan. Involvement of such institutions for the purposes of investigation in criminal matters is not alien to our Law in Pakistan. Reference, in this behalf, may be made to Section 19(i)(1) of Anti-Terrorism, Act, 1997.

90. Consequently, it is appropriate that the matter be investigated by a Joint Investigating Team (JIT) headed by a Senior Officer not below the rank of Additional Director General, Federal Investigation Agency (FIA), and consisting of Representatives of Intelligence Bureau (IB), Inter Services Intelligence (ISI), Military Intelligence (MI), State Bank of Pakistan (SBP), Security & Exchange Commission of Pakistan (SECP) and National Accountability Bureau (NAB). The Heads of the aforesaid Institutions shall nominate the Members of the Joint Investigation Team (JIT) and communicate such names to us in Chambers within one week for our information and approval.

91. We have been constrained to cast a wide net as regard to the institution, the Offices whereof are to form the Members of the JIT. The attitude of NAB has gone a long way in pushing us in this direction. Furthermore, it has been alleged that some of other investigating institutions are also under the influence of Respondent No.1 and under his direct or indirect control. Such sweeping allegations may or may not be wholly true but do not appear to be unfounded. Furthermore, the nature of expertise require in the instant investigation is not confined to any one institution and the several institutions

may be able to supplement such expertise.

92. The matter, in issue, in this case requiring investigation and eventually adjudication is whether Respondent No.1 directly or indirectly owns the properties and assets, which has not been disclosed in his Nomination Papers, more particularly, the flats in question i.e. Flats Nos. 16, 16-A, 17 and 17-A, Avenfield House, Park Lane, London and the current business known as Hill Metal Establishment, being currently conducted in the Kingdom of Saudi Arabia. The sources of funds for acquisition of such properties would also need to be identified as they may be relevant for identifying the true ownership of the property and assets, and if such sources are unexplained or beyond the known sources of income of the owner of such assets, criminal proceedings may follow.

93. The Joint Investigation Team (JIT) will

submit its periodic Reports after every two weeks to this Court and a final Report will be submitted within sixty days from its constitution. This Court will examine the matter of disqualification of Respondent No.1 on the basis of such Reports and if at any point of time, it is found necessary that Respondent No.1 and Respondents No.6 to 10 or any one or all of them or any other person may be summoned for recording of the statement before this Court, appropriate orders may be passed.

94. If the conclusions of the investigation by the Joint Investigation Team (JIT), so justify, appropriate orders may be passed for initiation of criminal proceedings under Section 9(a)(v) of the NAB Ordinance against the private Respondents, some of them or any other person, as the case may be.

Judge

IJAZ UL AHSAN, J-. I have had the privilege of going through the scholarly judgments handed down by my learned brothers Ejaz Afzal Khan and Sh. Azmat Saeed, JJ. I agree with the conclusions drawn by them. However, considering the importance of the issues raised in the matter, I have recorded my own opinion.

2. Through these petitions filed under Article 184(3) of the Constitution of Islamic Republic of Pakistan, 1973 *(hereinafter referred to as the Constitution)*, the Petitioners seek *inter alia* a declaration from this Court to the effect that Respondents No.1, 9 and 10 are disqualified to be Members of the National Assembly. Directions are also sought to Respondents No.2, 3, 4 & 5 to discharge their legal obligation with reference to the allegations of involvement of Respondents No.1, 9 & 10 in corruption, money laundering and owning assets beyond their known means.

3. The allegations stem from information coming into public domain on the basis of documents recovered from the database of Mossack Fonseca, a law firm operating in Panama. It appears to be engaged in the business of setting up and structuring offshore companies. The documents were placed on the website of International Council of Investigative

Journalists (ICIJ) and are commonly referred to as the 'Panama Papers'. The case of the petitioners is primarily based on information and documents downloaded from the said website. It is alleged that Respondent No.1 who is the Prime Minister of Pakistan and members of his family i.e. Respondents No.6, 7 & 8 namely Mrs. Maryam Safdar, Mr. Hussain Nawaz Sharif and Mr. Hasan Nawaz Sharif own various offshore companies including *Nescol Limited and* Nielsen Enterprises Limited. These companies are registered in the British Virgin Islands (BVI) and are special purposes vehicles for ownership of four residential flats bearing Nos.16, 16-a, 17 & 17-a, Avenfield House No.118, Park Lane, London (Mayfair Properties). It is also alleged that the properties in question, ostensibly owned by Respondent No.6, are in fact owned by Respondent No.1, in addition to other businesses being run by Respondents No.6 & 7. Such assets and businesses having been acquired / started when Respondents No.6 & 7 were in their early 20's and had no independent sources of income. Respondent No.6 is the daughter of Respondent No.1 and is his dependent and has been so declared in his Wealth Tax Returns of 2011. However, Respondent No.1 had failed to declare assets of his dependent daughter in the Nomination Papers filed by him for his election to the National Assembly his annual Statement of

Assets and Liabilities required to be filed under the Representation of People Act, 1976 (RoPA) and the Rules framed thereunder as well his Tax Returns. Such concealment of facts, it is averred must lead to his disqualification in terms of the RoPA read with Article 62 of the Constitution. It is further alleged that Respondents No.7 & 8 who are sons of Respondent No.1 are also conducting businesses through offshore companies. The sources of funding for the Mayfair Properties as well as other businesses of the children of Respondent No.1 has been questioned.

4. Additionally, it has been alleged that Respondent No.1 is involved in tax evasion and has failed to declare/pay tax on amounts received by way of purported gifts in foreign exchange from Respondent No.7. It has also been alleged that when the aforesaid information was highlighted by the local as well as the international media, Respondent No.1 addressed the Nation on the television on 05.04.2016 and also delivered a speech in the National Assembly on 16.05.2016 to clear his position. He denied having committed any wrongdoing and took the stance that his children were doing legitimate businesses with legitimate funds and that the Mayfair Properties had been acquired with funds generated from business transactions in Dubai/Saudi Arabia. He also

stated that all requisite information/records were available and will be produced before the appropriate *fora* as and when required.

5. Considering that ownership of the offshore companies/Mayfair Properties had not been denied and *prima facie* questions of public importance had been raised, we entertained these petitions.

6. Notices were issued to the Respondents who filed their concise statements/supplementary concise statements and a large number of documents during the course of proceedings before us. These have been carefully examined and considered. The stance taken by Respondents No.1, 6, 7 & 8 with regard to their businesses, Mayfair Properties/offshore companies and source of funds was more or less the same as taken by Respondent No.1 in his aforesaid speeches. However, during the course of proceedings before us, the above stated position was abruptly changed and a position was taken that Mayfair Properties had been acquired by Respondent No.7 by way of a business settlement with Al Thani Family of Qatar (Thani Family) with whom the late father of Respondent No.1 had longstanding personal and business relationship. It was therefore stated that proceeds of sale of family business of

Respondent No.1 in Dubai (Gulf Steel) had been invested in the real estate business of the Thani Family in Qatar which culminated in the afore-noted settlement/acquisition of shares in the offshore companies/Mayfair Properties. A letter dated 05.11.2016 purportedly written by Sheikh Hamad bin Jassim bin Jaber Al Thani (Sheikh Hamad) was initially produced before us. This was followed by another letter dated 22.12.2016. Likewise, to counter the allegation that Respondent No.6 owned the Mayfair Properties and that Respondent No.1 had failed to disclose the same in his nomination papers, a 'declaration of trust document' dated 2/4 February, 2006 was also produced before us claiming that Respondent No.6 was a trustee of Respondent No.7 to hold bearer shares in the Nescol Limited and Nielsen Enterprises Limited, the special purposes vehicles which own the Mayfair Properties. The parties have attached copies of various other documents with their respective pleadings.

7. Syed Naeem Bukhari, learned ASC, appearing for the petitioner in Constitution Petition No.29 of 2016 has made the following submissions to support his case:-

i. That Respondent No.1 *(Mian Muhammad Nawaz Sharif)* addressed the Nation on 05.04.2016 in response to the allegations that he and his family had indulged in money

laundering & corruption and had illegally acquired assets and properties including Mayfair Properties which were the subject matter of Panama Papers. In the said speech, he had stated that when he and his family were forcibly exiled, his father *(Mian Muhammad Sharif)* had set up a Steel Mill in Saudi Arabia. Funds for the said project were provided by the Saudi Banks by way of loans. A few years later the said Steel Mills along with all its assets, was sold and the funds thus generated were utilized by his two sons namely Hussain Nawaz Sharif and Hassan Nawaz Sharif i.e. Respondents No.7 & 8 herein, for setting up their new businesses. It was disclosed by Respondent No.1 that Respondent No.8 had been residing in London since 1994 while Respondent No.7 was residing in Saudi Arabia since the year 2000. In this regard, the learned counsel has pointed out that although it was claimed by Respondent No.1 that the factory in Saudi Arabia was set up with loans obtained from Saudi Banks, no documentation to substantiate such assertion has been placed on record. Further, there is neither any mention of the sale price for which the factory in Saudi Arabia was sold nor has any document been placed on record in this regard. He has also emphasized the fact that there is no mention of any investment in Dubai in the afore-noted address of Respondent No.1. He has also stressed the point that no money

trail has been shown either orally or through any documentation.

ii. That Respondent No.1 thereafter addressed the National Assembly on 16.05.2016. In this address, he (Respondent No.1) improved upon his earlier speech and gave further details regarding the sources of funds allegedly generated from business of his family. It was stated by Respondent No.1 that in April, 1980 a Steel Mill operating under the name and style of Gulf Steel Mill which had earlier been established by his father with funds obtained from Banks in Dubai was sold for a sum of Rs.33.37 Million Dirhams equivalent to 9 Million US$. Respondent No.1 stated that funds generated from the sale of Gulf Steel Mill also helped his family in setting up the factory at Jeddah, Saudi Arabia.

iii. That it was claimed by Respondent No.1 that the factory at Jeddah was sold in June, 2005 for a sum of 64 Million Riyals equivalent to 17 Million US$. The Respondent No.1 also claimed that all records regarding Dubai and Jeddah factories were available and would be presented as and when required by the competent authorities. He further claimed that the above were the sources and means from which the Mayfair Properties were purchased.

iv. That Respondent No.7 in an interview, transcript whereof has been placed on record through

CMA No.7319 of 2016 filed on 07.11.2016, took the stance that the source of funds for purchase of the Mayfair Properties was the investment made by his late grandfather *(Mian Muhammad Sharif)* in the year 1980 from the sale proceeds of his steel business in Dubai. The petitioner urges that there is a clear contradiction between the statements of Respondent No.1 and Respondent No.7 in so far as Respondent No.1 claims that the funds generated from sale of Gulf Steel Mill were utilized in setting up of the Steel Mill in Jeddah while Respondent No.7 claims that the said funds were invested and utilized for purchase of the Mayfair Properties.

v. Learned ASC has vehemently argued that neither Respondent No.1 nor Respondents No.6 to 8 have disclosed the true facts before this Court. He maintains that the documents presented before this Court including the Tripartite Contract of 1978 for sale of shares clearly indicate that Gulf Steel Mill was a financial disaster, there were huge outstanding dues and the entire sale price received from sale of 75% shares in the company was utilized in clearing the amounts owed to the creditors. He further submits that even after settlement of dues of BCCI, there were other liabilities in substantial amounts which were required to be cleared by the family of Respondent No.1. It

appears that the said liabilities may have been cleared, however, the resources which were utilized for such clearance are shrouded in mystery. The learned counsel maintains that the only logical explanation for settlement of the dues is that this was done through undeclared wealth.

vi. That the Mayfair Properties were held in the names of two offshore companies namely *Nescol Limited and* Nielsen Enterprises Limited. The beneficial owner of the properties in question was Respondent No.6 who is the daughter of Respondent No.1 and she at all relevant times was and continues to be a dependent of the latter. As such he was obliged to declare her beneficial ownership of the Mayfair Properties not only in his Wealth Statements but also in his Nomination Papers filed with the Election Commission of Pakistan for contesting the General Election, 2013 and his annual Statement of Assets and Liabilities. Adds that by concealment, withholding and mis-declaration made by him in his Nomination Papers, the Respondent No.1 had been proved to be neither "sadiq" nor "Ameen" and rendered himself liable to be disqualified in terms of Article 62 read with Article 63 of the Constitution.

vii. Learned counsel submits that *Nescol Limited was incorporated in British Virgin Islands (BVI) as*

an International Business Company on 27.01.1993. It holds Flats No.17 & 17-a, and Nielsen Holdings Limited later renamed as Nielsen Enterprises Limited was registered on 04.08.1994 and holds Flats No.16 & 16-a. On 22.11.1994 bearer certificate of Nielsen Enterprises Limited was issued in the denomination of 1US$ which was subsequently cancelled. Likewise a bearer certificate was also issued by *Nescol Limited which was also cancelled. Subsequently, in 2006 shares were issued in favour of* Minerva Nominees Limited which became the shareholder of both BVI Companies. He has argued that holding of shares in the said companies was changed from time to time in order to hide the real ownership of the companies beneath layers of shadow companies.

viii. Learned counsel has vehemently questioned the letters produced on behalf of Respondents No.6 to 8. The said letters which were purportedly issued by Sheikh Hamad on 05.11.2016 and 22.12.2016 (Qatari Letters) state that since his father had a business relationship with the father of Respondent No.1 and grandfather of Respondents No.6 to 8 (Mian Muhammad Sharif), the funds generated from sale of 25% shares in the Gulf Steel in the sum of 12 Million Dirhams, were invested in the business of the Thani family in Qatar which had

instructions from Mian Muhammad Sharif that the beneficiary of these funds will be his grandson namely Respondent No.7. According to the Qatari letters, in the year 2006 accounts of the business were settled, and by way of settlement it is claimed that bearer certificates of *Nescol Limited and* Nielsen Enterprises Limited, the two companies which held the Mayfair Properties, were handed over to the representative of Respondent No.7. He further submits that the letters of the Sheikh Hamad are fabrications and concoctions, the same have been produced by way of an afterthought in order to cover up the illegalities and money laundering. He has been pointed out that even otherwise, there was no mention of any business in Qatar either in the address of the Respondent No.1 to the Nation or in his speech in the National Assembly a month later.

ix. The learned ASC submits that the Mayfair Properties were purchased by the family of Respondent No.1 between the period from 1993-96 through funds which were not legitimate and were the result of corrupt and illegal practices including money laundering. He has also drawn our attention to the Wealth Statements of Respondent No.6 for the year 2011, in Column No.12 at page 68 of CP#29 of 2016 under title "*Assets, if any, standing in the name of spouse, minor children & other*

dependents" whereof Respondent No.1 had mentioned that there was land in the name of his daughter Maryam Safdar (Respondent No.6) valuing Rs.24,851,526/-. He has further pointed out that Respondent No.1 by way of gift received a sum of Rs.129,836,905/- in the year 2011 from Respondent No.7. Out of the said amount, a sum of Rs.31,700,000/- was gifted by Respondent No.1 to Respondent No.6 while an amount of Rs.19,459,440/- was presumably gifted to his son Hasan Nawaz. Further stated that 13 Crores of Rupees were received by Respondent No.1 from his sons between 2011 to 2016. He submits that the sources of funds to finance business of Respondents No.7&8 are also shrouded in mystery. It has nowhere been explained how Respondents No.7&8 had such large sums of money available to them which could finance the steel business of Respondent No.7 in Saudi Arabia and real estate business of Respondent No.8 in the UK.

x. That neither the Respondent No.6 nor Respondent No.9 who is her husband have any independent source of income and are solely dependent upon funds made available to them by Respondent No.1 and Respondents No.7 & 8 by way of gifts. He therefore maintains that for all intents and purposes, Respondent No.6 continues to be a dependent of Respondent No.1. Adds that having concealed the said

facts and failed to disclose beneficial ownership of the Mayfair Properties, Respondent No.1 has been guilty of concealment, mis-declaration and dishonesty, and is therefore liable to be disqualified from being Member of the Parliament and holding the office of Prime Minister.

xi. That between the years 2011-15 Respondent No.1 received an aggregated sum of Rs.741,298,44/- by way of gifts from Respondents No.7 & 8. He argues that the said gifts constituted income from other sources and were taxable. But he did not pay any taxes on the said gifts which exposes him to the mischief of Article 63 of the Constitution. He further maintains that there is no indication regarding the sources and the accounts from which Respondents No.7 & 8 remitted such huge amounts to Respondent No.1. In this regard, reference has been made to Section 39(3) of the Income Tax Ordinance, 2001.

xii. As far as Respondent No.6 is concerned, learned counsel has reiterated that neither she nor her husband have any independent source of income. Her Income Tax Returns/Wealth Statements show ownership of assets either by way of gifts or loans without disclosing any other source of income. He therefore relies on the meaning of word "dependent" as defined in Oxford English Dictionary and submits that a

person who relies on another for support and sustenance falls within the definition of "dependent".

xiii. That since Respondent No.6 is a dependent of Respondent No.1 he was obliged to disclose her beneficial ownership of *Nescol Limited and* Nielsen Enterprises Limited, BVI Companies which own the Mayfair Properties. He relies on a letter issued by Errol George dated 12.06.2012 and the replies sent by Mossack Fonseca which state that the beneficial ownership of both Companies is with Respondent No.6.

xiv. Learned counsel has raised serious doubts about the Trust Deed dated 02.02.2006 signed by Respondent No.6 on the same date and Respondent No.7 on 04.02.2006 according to which Respondent No.7 is the beneficial owner of both Companies and hence the Mayfair Properties are held by Respondent No.6 on trust for Respondent No.7. Further submits that the said document is fake, fabricated and not worthy of any reliance.

xv. Learned ASC has also drawn our attention to an interview given by Respondent No.8 namely Hassan Nawaz to a British Journalist in November, 1999. In the said interview, Respondent No.8 allegedly stated that he was residing in one of the Mayfair Properties on rent; was a student and earning nothing; was not

aware who was the real owner; and rent for the said properties was sent to him by his family from Pakistan. Submits that Respondent No.8 became a Director of Flagship Investments Limited on 12.04.2001 much before the sale of Al Azizia Steel Mills, Jeddah in June 2005 injecting substantial sums of money in his company.

xvi. Learned counsel has vehemently argued that while Respondent No.1 asserts that it was the sale of Saudi factory in June 2005 which provided funds for his sons to start their businesses yet the interview given by his son to the British Journalist completely negates that story. Adds that even otherwise, there is no explanation of funds becoming available to Respondent No.8 for setting up of Flagship Investments Limited and availability of funds to undertake real estate business in the UK. He therefore submits that stories given by Respondent No.1 in his first and second addresses and the interviews given by members of his family to various media outlets clearly contradict each other.

xvii. Referring to the Trust Deed whereby Respondent No.6 has been shown as trustee on behalf of Respondent No.7, it is argued that the document in question has neither been stamped nor attested as required by law. Further, creation of the Trust was never communicated to Mossack Fonseca which on

22.06.2012 confirmed, after making the requisite inquiries that Respondent No.6 was the beneficial owner of *Nescol Limited and* Nielsen Enterprises Limited.

xviii. Learned ASC has also drawn our attention to a copy of judgment and decree passed by the London High Court on 18.03.1999 against Hudaibiya Paper Mills Limited (HPML). He submits that Respondents No.6 to 8 are included in the list of Directors of the said Company which borrowed funds from Al-Tawfeeq Investment Company in London. HPML defaulted on its loan which led Al-Tawfeeq Investment Company to file a suit for recovery of its dues which was decreed. Under the decree, Mian Muhammad Sharif, Mian Muhammad Shahbaz Sharif, Mian Muhammad Abbas Sharif and HPML were required to pay about 34 Million US$ to the decree holder. The said amount was not paid which led to an order dated 05.11.1999 whereby attachment of the Mayfair Properties was ordered for recovery of the decretal amount. Further, the record indicates that the attachment was not implemented in so far as the amount of 34 Million US$ was apparently paid which led to an application for withdrawal of caution / attachment on the aforesaid flats by the Bank. Learned counsel submits that in case the family of Respondent No.1 did not have any right, title or interest in the flats in

question why and from what source the decretal amount was paid leading to withdrawal of the caution and release of charge on the Mayfair Properties.

xix. That the debacle of HPML also led to filing of a Reference by the National Accountability Bureau (NAB) against the family of Respondent No.1 in the Accountability Court. However, the said Reference lay dormant for about 10 years. In the said Reference, a statement was made by Respondent No.10 disclosing details of money laundering on part of Respondent No.1 and his family. However, the said Reference was quashed by the Lahore High Court without leaving an option with the NAB to reinvestigate the matter. He maintains that the Chairman, NAB Respondent No.2 herein in connivance with the private Respondents did not challenge the order of the Lahore High Court before this Court and deliberately allowed the judgment of the High Court to remain in the field in order to help the accused. He therefore seeks a direction to the Chairman, NAB to perform his duties in accordance with law.

xx. Learned counsel maintains that Respondent No.1 has neither been just nor honest to the Nation either in his speech on the electronic media or on the floor of the National Assembly. That a series of false statements made by the Prime Minister stand established which shows

that he is neither just nor honest and is disqualified to be a Member of the Parliament or to hold the office of the Prime Minister. In support of his contention, the learned counsel relies on Workers' Party Pakistan v. Federation of Pakistan (PLD 2012 SC 681), Watan Party v. Federation of Pakistan (PLD 2011 SC 997) and All Pakistan Newspapers Society v. Federation of Pakistan (PLD 2012 SC 1).

xxi. That the Prime Minister has evaded taxes which were payable on gifts received by him from his sons. He is therefore hit by the provisions of Article 63 of the Constitution. Further, that Respondent No.1 has been untruthful in denying that Respondent No.6 was his dependent and has failed to disclose his beneficial ownership of the Mayfair Properties. He points out that Respondents No.6 to 8 repeatedly contradicted Respondent No.1 and have come out with totally contradictory versions in the matter. He maintains that the letters issued by the Sheikh Hamad dated 05.11.2016 and 22.12.2016 are desperate attempts to cover up money laundering and acquisition of assets with such money. Even otherwise, the document in question is not worthy of reliance.

xxii. That the Mayfair Properties were purchased by the Prime Minister and his family in 1993/96, their purchase could only materialize through money

laundering which stands established from the record. He finally submits that Respondent No.1 has evaded taxes on a sum of Rs.74 Crores which was admittedly received as gifts from his sons which renders him ineligible to be Member of the Parliament or to hold the office of the Prime Minister.

xxiii. Lastly, he submits that the Federal Board of Revenue (FBR) as well as the NAB should be directed to proceed against Respondent No.1 in accordance with law.

8. Mr. Muhammad Taufiq Asif, learned ASC for the petitioner in Constitution Petition No.3 of 2017, has submitted that a declaration was being sought to the effect that Respondent No.1 was not *sadiq* and *ameen* in terms of Article 62 read with Article 63 of the Constitution of Islamic Republic of Pakistan, 1973. In this regard, he has made the following submissions:-

i. That the contents of speech of Respondent No.1 in the National Assembly on 16.05.2016 were misleading and incorrect. That twice in the said speech it was stated that he (Respondent No.1) and his family had been sent into forced exile against their will and that subsequent events had proved that he (Respondent No.1) had left the country voluntarily as a result of a deal. At this juncture, it was pointed out to the learned

counsel that the question whether or not Respondent No.1 had been sent into exile against his will had been dealt with by this Court in a judgment reported as Muhammad Nawaz Sharif v. State [PLD 2002 SC 814] in which while dealing with the question of condonation of delay this Court recorded a finding that Respondent No.1 had been exiled against his will and was not allowed to return. This being the position, in collateral proceedings, we were not inclined to revisit and reexamine the aforesaid findings of this Court.

ii. That Respondent No.1 had made certain admissions in his speech in so far as he admitted that Gulf Steel was established in UAE and the same was sold in 1980 for a sum of US $ 9 Million. He submits that no explanation has been forthcoming regarding source of the funds which were utilized to set up the said project. He further submits that there is no money trail showing how the sale proceeds were moved from UAE to Qatar and Saudi Arabia.

iii. The learned counsel has pointed out that Respondent No.1 had made a categoric statement that the funds generated from sale of Steel Mill in Saudi Arabia were utilized for purchase of the Mayfair Properties. In this regard, he (Respondent No.1) also made a statement in the National Assembly during his address on 16.05.2016 that all relevant records

regarding sale of Gulf Steel and Jeddah business were available and will be produced before the competent *fora*. However, according to the learned counsel, the said record has not been produced by the Respondent No.1.

iv. The learned ASC has contended that the Prime Minister in his address had stated that neither he nor his family would claim any immunity before any forum. However, contrary to his commitment, he has claimed privilege under Article 66 of the Constitution. In this regard, he has relied on Zahur Ilahi v. Mr. Zulfikar Ali Bhutto [PLD 1975 SC 383 @ 395] and Masroor Ahsan v. Ardeshir Cowasjee [PLD 1998 SC 823] to argue that immunity/privilege can be claimed in accordance with law and the Constitution; no one is above the law; and in case, the Respondent No.1 had committed any illegality or made a false statement during his address in the National Assembly, he can neither claim any immunity nor privilege.

v. Learned counsel has further contended that Respondent No.1 had opted to defend himself and his family against the allegations coming to light on the basis of documents discovered through the *Panama Papers*. That Respondent No.1 had claimed that all transactions including purchase of Mayfair Properties were legitimate and all requisite record would be produced

which has not been done by him or his family. He maintains that after having lied to the Parliament he cannot claim immunity or privilege. In addition privilege can be claimed only in situations where a statement is made while participating in the parliamentary business. However, in the instant case, the statement was made by the Prime Minister in his personal capacity to explain transactions involving his family which had nothing to do with any matter involving parliamentary business. He, therefore, submits that no privilege can be claimed by Respondent No.1 for his private actions.

vi. The learned counsel for the petitioner has further argued that Respondent No.1 had taken two Oaths. One as a Member of the National Assembly and the other as Prime Minister of Pakistan. In both the said oaths, he had sworn to perform his functions honestly, to the best of his ability, faithfully, in accordance with the law and the Constitution and the Rules of Business of the National Assembly. Further he had sworn to preserve, protect and defend the Constitution. He further maintains that in terms of Article 5 of the Constitution loyalty to the State is the basic duty of every citizen. He, therefore, submits that by failing to disclose the correct facts and producing the relevant records before the Parliament or before this Court, Respondent No.1 had been guilty of dishonesty giving

preference to his personal interests over and above the national interests and as such he has not only violated his oath of office but has also been guilty of dishonesty which attracts the penal consequences of Article 62 read with Article 63 of the Constitution.

vii. Learned ASC has also produced a copy of the order of the day issued by the Secretariat of National Assembly for 16.05.2016 to point out that the speech of Respondent No.1 was not on the agenda of the National Assembly for that day. He has also referred to Rules 31 (1), 50 & 51 of the Rules of Procedure & Conduct of Business in the National Assembly, 2007 to argue that since the speech of the Prime Minister was not a part of the order of the day it cannot be termed as participation in the parliamentary business. Secondly, no privilege can be claimed for a statement made by Respondent No.1 of his own accord and volition before the National Assembly. Reliance in this regard has been placed on Zahur Ilahi v. Mr. Zulfikar Ali Bhutto [PLD 1975 SC 383]; Masroor Ahsan v. Ardeshir Cowasjee [PLD 1998 SC 823] and Iftikhar Ahmad Khan Bar v. Chief Election Commissioner [PLD 2010 SC 817 @ 826 (para 14)]. He also submits that it has repeatedly been held by this Court that there is sanctity attached to the parliamentary proceedings and business but such sanctity does not extend to personal matters voluntarily discussed in the Assembly

chambers without being part of the parliamentary business.

viii. Learned counsel has drawn our attention to Article 119 of the Qanun-e-Shahadat Order, 1984 to argue that burden of proof as to any particular fact lies on the person who wishes the Court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any other person. He submits that as a whistleblower the only responsibility on the shoulders of the petitioner was to bring to the notice of this Court certain facts of public importance where-after the burden of proof was on the Respondent No.1 to establish that he had neither acted dishonestly nor in any other manner that would expose him to the penal consequences of Article 62 read with Article 63 of the Constitution. Reference in this regard has been placed on Workers' Party Pakistan v. Federation of Pakistan [PLD 2012 SC 681 (para 32)].

ix. It is further contended that under Article 184(3) of the Constitution, the jurisdiction of this Court is in the nature of inquisitorial proceedings and this Court can delve into the arena of any fact finding so as to promote public interest. In support of his contention, the learned counsel has relied on Watan Party v. Federation of Pakistan [PLD 2011 SC 997 @ paras 50 & 52]; Philips Electrical Industries of Pakistan Ltd. V

Pakistan [2000 YLR 2724]; People's Union for Democratic Rights v. Union of India [AIR 1982 SC 1473]; Workers' Party Pakistan v. Federation of Pakistan [PLD 2012 SC 681]; Muhammad Azhar Siddiqui v. Federation of Pakistan [PLD 2012 SC 774 @ 806 (paras 14 & 15)]; and Watan Party v. Federation of Pakistan [PLD 2012 SC 292 @ 365].

x. The learned ASC has also referred to Articles 53 & 122 of the Qanun-e-Shahadat Order, 1984 to argue that facts within the special knowledge of a person need to be proved by him. He maintains that admittedly, the Mayfair Properties are held by offshore companies which are owned and controlled by the children of Respondent No.1. Documents and records relating to the said properties are not and cannot be available to the petitioner. However, the Respondents have access to such records and documents and are therefore liable to produce the same before this Court. He further submits that this Court is neither averse to nor is its jurisdiction restricted in relation to undertaking factual inquiries or even recording evidence in order to uncover the truth to do complete justice. Reliance in this regard has been placed on Pakistan Muslim League (N) v. Federation of Pakistan [PLD 2007 SC 642].

xi. The learned counsel for the petitioner has referred to Zafar Ali Shah v. Pervez Musharraf, Chief Executive of Pakistan [PLD 2000 SC 869]

and read certain portions appearing at page 1207 thereof to argue that although there were specific allegations relating to ownership of the Mayfair Properties, Mr. Khalid Anwar, learned Sr.ASC, who allegedly represented Respondent No.1 in the said matter did not specifically rebut the said allegations. He submits that failure to rebut the allegations amounts to admission and necessary legal consequence for the same should follow. At this stage, the record of the case was summoned and seen by the Court and it was observed that Respondent No.1 was neither a party to the said proceedings nor was Mr. Khalid Anwar representing him in the said case. Although in one of the related matters, Respondent No.1 was a party, however, the judgment in Zafar Ali Shah's case *(supra)* did not contain any finding recorded by this Court regarding the allegations involving ownership of the Flats in question. Confronted with this position, the learned counsel for the petitioner did not further press the point.

xii. The learned ASC has argued that it was an admitted position that the London High Court had passed a decree in the case of HPML as well as Mian Muhammad Sharif, Mian Muhammad Shahbaz Sharif and Mian Muhammad Abbas Sharif. He further submits that documents available on record also indicate that the said properties were attached

under orders of the London High Court. However, such attachment was removed apparently on satisfaction of the decree. He maintains that there is no evidence on record or money trail explaining how the decree in access of US$ 34 Million was satisfied. He further submits that this raises a serious question which needs to be answered by Respondent No.1. The learned counsel has also submitted that in his speech in the National Assembly on 16.05.2016, Respondent No.1 had given certain facts relating to sale of the Gulf Steel at Dubai and thereafter setting up and sale of Steel Mills at Jeddah. However, no further details were provided either in the National Assembly or before this Court to indicate how the sale proceeds were utilized and whether or not the amount generated from the said sales were utilized for purchase of the Mayfair Properties.

xiii. The learned ASC further maintains that the petitioner has discharged the onus by alleging that the Mayfair Properties are owned by Respondent No.1 and now the onus is on him to establish either that the properties in question were not owned by him or that the same were not procured with funds which were illegally transferred from Pakistan to other countries. He also maintains that in order to establish the truth, this Court has the power to record evidence and even summon the Prime Minister if the need

arises in exercise of its powers under Article 184(3) of the Constitution.

9. Mr. Ehsan ud Din Sheikh, learned ASC was allowed on his request to make certain additional submissions on behalf of the petitioner. He submitted that the powers being exercised by this Court were inquisitorial in nature and the Court was expected to act as Prosecutor, Defender and Judge at the same time. He was, however, reminded that inquisitorial jurisdiction of this Court was to be understood in the context of being different from adversarial proceedings and the same was not necessarily to be equated with the inquest Tribunals set up in different countries including Spain for special reasons. He, however, referred to the definition of inquisitorial proceedings as given in Black's Law Dictionary to argue that the jurisdiction of this Court extends to taking such steps as may be necessary to uncover the true facts. He further argued that Respondent No.6 was a dependent of Respondent No.1 who had failed to disclose her status in his Nomination Papers filed with the Election Commission during the General Elections of 2013. He was therefore liable to be disqualified. The learned counsel placed on record photocopies of the definition of 'dependent' taken from Oxford English Dictionary, Merriam Webster Dictionary and

some legal treatises.

10. Sheikh Rashid Ahmed, petitioner in person in Constitution Petition No.30 of 2016 also addressed the following arguments:

i. He referred to the speeches of Respondent No.1 to submit that he had not disclosed the correct information either before the people of the country or before this Court. He maintained that there were contradictions in the statements made by Respondent No.1, his sons and wife which show that he had been untruthful and was liable to be disqualified in terms of Article 62(1)(f) of the Constitution. He further submitted that the privilege claimed by Respondent No.1 in terms of Article 66 of the Constitution was not available to him in view of the fact that he had raised a private matter on the floor of the house which was neither in the agenda nor a part of the business of the house. In this context, he relied upon Chaytor v. House of Lords (2010 UK SC 52 *(paras 62, 118, 121 & 122)* and Canada v. Vaid, [2005] 1 S.C.R. 667, 2005 SCC 30 *(paras 29, 37 to 40 & 46 to 48)*. He also referred to Masroor Ahsan v. Ardeshir Cowasjee [PLD 1998 SC 823 @ 1018] and Zahur Ilahi v. Mr. Zulfikar Ali Bhutto [PLD 1975 SC 383]. He made reference to a portion of the judgment handed down by *Hamdoor ur Rehman, J* in Masroor Ahsan's case spelling out the parameters of immunity /

privilege.

ii. He further submitted that in terms of Article 184(3) of the Constitution, this Court can mold the relief and can grant the reliefs which have not even been prayed for. He maintained that this Court has to be dynamic in rendering a judgment to do complete justice in the facts and circumstances of this case. He places reliance on Benazir Bhutto v. Federation of Pakistan [PLD 1988 Supreme Court 416], Nasir Ali Khan v. Federation of Pakistan [PLD 2013 Supreme Court 568], Muhammad Ashraf Tiwana v. Pakistan (2013 SCMR 1159), Muhammad Yasin v. Federation of Pakistan (PLD 2012 Supreme Court 132) and Mehmood Akhtar Naqvi v. Federation of Pakistan (PLD 2012 Supreme Court 1054).

iii. Sheikh Rashid Ahmed further submitted that the letters allegedly issued by Sheikh Hamad are contradictory and it is apparent that by issuing successive letters an attempt has been made to fill the gaps and answer the questions raised by this Court. He pointed out that in an earlier case reported as Muhammad Nawaz Sharif v. State (PLD 2010 Lahore 81), the same person had come to the rescue of Respondent No.1. He further submitted that Mian Muhammad Tariq Shafi had also improved his statement as in his first affidavit there was no mention of the Qatari investment while in the second one after certain

questions were raised by this Court, the story of investment of 22 Million Dirhams in Qatar and names of the persons to whom the said money had allegedly been handed over for investment in the real estate business of Thani Family in Qatar were added. He maintained that if the two letters were to be disbelieved the entire defence of the Respondents would fall to the ground. He also submitted that burden of proof that the Mayfair Properties were acquired through lawful means was upon the Respondents who have failed to discharge such onus.

11. Mr. Makhdoom Ali Khan, learned ASC appearing for Respondent No.1 (Mian Muhammad Nawaz Sharif), made the following submissions:-

i. At the very outset, learned counsel has read the prayer clauses of Constitution Petition No.29 of 2016 and submitted that Respondent No.1 does not and never had any company registered in the BVI or any other safe heaven. Further, he was not a Director / Shareholder or beneficial owner of any such company. He submits that the grounds on which disqualification of Respondent No.1 is sought can be broadly categorized into following categories:

(a) Address of Respondent No.1 to the Nation on television on 05.04.2016;

(b) Speech made by Respondent No.1 on

the floor of the National Assembly on 16.05.2016.

ii. That the petitioner alleges that in the said speeches Respondent No.1 had lied to the Nation, in consequence of which he had ceased to be honest and *ameen* in terms of Article 62(1)(f) of the Constitution and was therefore liable to be disqualified.

iii. That the second ground on which disqualification has been sought is that Respondent No.1 had received large sums of money as gifts from Respondent No.7. The said amounts were required to be treated as other income within the contemplation of Section 39 of the Income Tax Ordinance. The said amount was neither declared as such nor was the requisite income tax paid on it. Consequently, he was liable to be disqualified in terms of Article 63(2)(o) of the Constitution.

iv. The learned counsel points out that the treatment of any amount received by way of gift is different depending upon whether or not the donor has a tax number in terms of Section 39 of the Income Tax Ordinance, 2001. He submits that the petitioner has incorrectly stated that Respondent No.7 does not have a tax number. The factual position is that Respondent No.7 has a tax number and therefore any amount received from him by Respondent No.1 by way of gift was exempt from payment of

income tax. He further submits that Article 63 (1)(o) of the Constitution is attracted only where default/non-payment of government dues is determined either by the competent authorities or by a Court of law and after such determination it remains unpaid.

v. The third ground for seeking disqualification is that Respondent No.6 (Maryam Safdar) is a dependent of Respondent No.1. Therefore, assets of Respondent No.6 should have been declared by Respondent No.1 in his nomination papers for election to a seat in the National Assembly from NA.120. In view of the fact that Respondent No.1 had failed to declare Respondent No.6 as his dependent and to disclose her assets in his nomination papers and annual statement of assets, the disqualification clause of Article 62(1)(f) of the Constitution was attracted. He submits that Respondent No.6 has independent sources of income and owns valuable immovable property. Therefore, she cannot be termed as a dependent of Respondent No.1.

vi. Learned counsel for the Respondent No.1 while responding to the aforesaid allegations has read the speech made by Respondent No.1 to the Nation as well as his speech made on the floor of the House. He has vehemently denied the allegation that Respondent No.1 had lied either to the Nation or during his address on the

floor of the House. He submits that the contents of the speeches are factually correct in all respects including statements relating to setting up of Gulf Steel Mill at Dubai, its sale, the sale price, setting up of a Steel Mill in Saudi Arabia in the year 2000, the same having been set up from finances provided by the Saudi Banks and sale of the same at a price stated by Respondent No.1 in his address. He has however stated that in both the addresses, Respondent No.1 had given a broad overview of the activities of his family regarding a business which was set up in the year 1937 prior to his birth on which, as long as his father Mian Muhammad Sharif was alive, he was Incharge and solely running the business. He has further submitted that the speeches made by Respondent No.1 were not in the nature of an item wise response or an affidavit of facts setting out in detail, in a chronological order generation and use of the funds as they were utilized and invested in the lifetime of his father. The learned counsel has also referred to the affidavit of Mian Muhammad Tariq Shafi which has been placed on record through CMA No.735 of 2016 narrating substantially the same facts. He submits that Mian Muhammad Tariq Shafi has in his affidavit stated that the business in Dubai had been set up by Mian Muhammad Sharif in the name of Mian Muhammad Tariq Shafi. The Tripartite Agreement for sale of Gulf Steel was

signed on behalf of Mian Muhammad Tariq Shafi who received the sale price in various tranches from Dubai and had utilized the funds received according to the instructions of Mian Muhammad Sharif. The learned counsel has categorically stated that Respondent No.1 was not a Shareholder/Director/Guarantor of Gulf Steel nor was he a recipient of the whole or any part of the sale proceeds.

vii. It is further submitted that in the case of Al Azizia Steel Mill in Saudi Arabia, the position was the same. Respondent No.1 was not a Director or Shareholder of the said company nor did he receive any part of the sale proceeds. He has stated that the facts known to Respondent No.1 were shared in order to give a broad overview of the business activities of his family in which he was not personally involved. Further, in case there was any omission in the speeches the same was not deliberate and could not furnish basis for disqualification. There was neither any reason nor intention to misstate the facts or provide incorrect or wrong information either to the Members of National Assembly or to the citizens of the country.

viii. Learned counsel submits that in case an elected Prime Minister is to be removed from office, the Constitution and the law provide a procedure for doing so namely a 'vote of no confidence' or a declaration by a Court of

competent jurisdiction in terms of Article 62(1)(f) of the Constitution or on a judgment/order to that effect being passed by the relevant *fora* under the provisions of the RoPA. He further submits that in terms of Article 63(2) of the Constitution where a question arises whether a Member of the Majlis-e-Shoora (Parliament) has become disqualified from being a member, the Speaker may refer the question to the Election Commission by way of a Reference within 30 days, where after the Election Commission has the jurisdiction to decide whether or not the Member has become disqualified to be a Member of the Parliament. He submits that an application in this regard relating to Respondent No.1 was moved before the Speaker of the National Assembly which was rejected on 02.09.2016. The ruling of the Speaker has been challenged before the Lahore High Court by way of Writ Petition No.31193 of 2016 which is being heard by the said High Court.

ix. The learned counsel has further stated that in terms of Article 62(1)(f) of the Constitution read with various provisions of the RoPA, a declaration issued by a Court of competent jurisdiction is required to the effect that a holder of public office is not sagacious, righteous, non-profligate, honest or *ameen*. He submits that there is no declaration against Respondent No.1 in the field therefore, he cannot be disqualified.

He further submits that in a large number of cases this Court has upheld the decisions of Election Tribunals and / or other Courts which have issued declarations but has seldom entertained matters in exercise of its powers under Article 184(3) of the Constitution and proceeded to issue declarations and then disqualified the holder of public office.

x. The learned counsel has relied upon Muhammad Ijaz Ahmad Chaudhry v. Mumtaz Ahmad Tarar (2016 SCMR 1); D.G. Customs Valuation v. Trade International Lahore (2014 SCMR 15); Iqbal Ahmad Landrail v. Jamshed Alam (PLD 2013 SC 179); Muhammad Khan Junejo v. Federation of Pakistan (2013 SCMR 1328); 2013 SCMR 1279; Allah Dino Khan Bhayo v. Election Commission of Pakistan (2013 SCMR 1655); PLD 2013 SC 282; Mudassar Qayyum Nahra v. Bilal Ijaz (2011 SCMR 80); Nasir Mehmood v. Imran Masood (PLD 2010 SC 1089); Iftikhar Ahmad Khan Bar v. Chief Election Commissioner (PLD 2010 SC 817); Muhammad Rizwan Gill v. Nadia Aziz (PLD 2010 SC 828); Muhammad Khan Junejo v. Fida Hussain Junejo (PLD 2004 SC 452) and Aftab Ahmad Khan v. Muhammad Ajmal (PLD 2010 SC 1066).

xi. On the basis of the afore-noted judgments, the learned counsel has vehemently argued that a prior declaration / determination is required before the holder of a public office can be

disqualified by this Court in exercise of its powers under the Constitution. Referring to the case of Mr. Yousuf Raza Gillani, Former Prime Minister, he submits that the said case originated from the NRO case reported as Mobashir Hassan v. Federation of Pakistan (PLD 2010 Supreme Court 265) in which a direction was issued to the Federal Government to write a letter to certain Swiss authorities which was not complied with. A five member Bench of this Court therefore issued a notice to Mr. Gillani for contempt of this Court where after, he was convicted and sentenced to imprisonment till rising of the Court vide order dated 02.02.2012. However, in view of the fact that the Speaker of the National Assembly refused to send the matter to the Election Commission for denotification of Mr. Gillani, he was disqualified by this Court. He therefore submits that the said case is distinguishable on facts as well as the law and cannot be used as a precedent in the instant case.

xii. The learned counsel further submits that another set of cases arose out of dual nationality held by certain holders of public offices, Tassaduq Hussain Jillani, J as he then was in his judgment reported as Umar Ahmad Ghumman v. Government of Pakistan (PLD 2002 Lahore 521) had held that a person holding dual nationality could not hold a public office. On the basis of aforesaid judgment which had been upheld by

this Court, various petitions were entertained and holders of public offices were either disqualified on admitted facts and official documents or where there was no written denial of the allegations of dual nationality. In none of the cases, did this Court investigate the matter/held a factual inquiry, conduct a trial and record findings of fact.

xiii. Making his submission with reference to powers of this Court under Article 184(3) of the Constitution, the learned counsel submits that bulk of authorities and previous judgments of this Court point towards prior declaration by a Court of competent jurisdiction before this Court can proceed to disqualify the holder of a public office. He further submits that in the limited number of cases where such powers have been exercised directly, the said course was adopted either because there were admitted facts / documents or there was no need to go into an exercise of recording voluminous evidence.

xiv. Learned counsel for Respondent No.1 submits that the petitioner seeks disqualification of Respondent No.1 on the basis of speeches made on the television and on the floor of the House. He maintains that in the first place it has not been established that Respondent No.1 had lied in either of the two speeches or had made a false statement. If at all there was any omission, the same cannot be termed as a

misstatement. He further submits that if a comparison is to be made between the facts narrated by Respondent No.1 in his speeches and those disclosed by other members of his family in their interviews which have appeared on the Electronic and Print Media, the said exercise cannot be undertaken by this Court in exercise of its jurisdiction under Article 184 of the Constitution because the same would require examination of voluminous record and an opportunity being provided to all concerned to meet the allegations against them.

xv. Without prejudice to the fact that Respondent No.1 did not lie or make any false statement in his speeches, the learned counsel submits that the speech made by him before the National Assembly is covered by the privilege available to members of Parliament provided under Article 66 of the Constitution. He submits that the Constitution provides for freedom of speech in the Parliament and protects speeches made on the floor of the House against liability in any proceedings in any Court in respect of anything said by such Member. Learned counsel maintains that parliamentary privilege is a concept recognized all over the world and it is an accepted norm all over the world that speeches made in the Parliament cannot be used as evidence before any Court, authority or Tribunal against the maker of such speeches. In

this regard, the learned ASC has referred to Halsbury's Laws of England, Wade & Bradley on Constitution and Administrative Law; and case of Regina v. Chaytor [2010] UK SC 52].

xvi. The learned counsel has also referred to various judgments of the Indian Courts to stress that parliamentary privilege protects speeches made on the floor of the House which cannot be used against the maker of such speeches as evidence in any Court or Tribunal. He further maintains that parliamentary privilege is equally available to all members of the Parliament and no exception applies to the Prime Minister by reason of his office.

xvii. The learned ASC for Respondent No.1 has next taken up the allegation of tax evasion. He submits that disqualification of Respondent No.1 is sought on the basis of provisions of Article 63(1)(o) of the Constitution read with Section 99 (1)(a)(d) of the RoPA. In this regard, he submits that the petitioners have leveled the following allegations against Respondent No.1:-

a) *That a sum of US$ 9 Million had been received from sale of Gulf Steel Mill. Respondent No.1 should have declared the said sum in his Wealth Tax Statement and paid wealth tax on the same.*

b) *The Wealth Tax Statements for the years 2011-15 were filed late by Respondent No.1. The said act is an offence which must lead to his disqualification.*

c) *Respondent No.1 had given gifts in the*

sum of Rs.31,700,000/- to Respondent No.6 and Rs.19,459,400/- to Respondent No.8 which were sham transactions and were not given through normal banking channels.

d) That the gifts received by Respondent No.1 from Respondent No.7 should have been treated as income from other sources and tax should have been paid on the same.

xviii. As far as late filing of Wealth Tax Statements is concerned, the learned counsel for Respondent No.1 submits that the allegation was utterly baseless in view of the fact that the Wealth Tax Statements were filed on 29.11.2011 & 09.12.2012 which were well within time. Even otherwise, he submits that the said grounds were not pressed by the learned counsel for the petitioner in his arguments and had abandoned the same. As far as the question of disqualification in terms of Article 63(1)(o) of the Constitution is concerned, the learned counsel submits that it is settled law that such disqualification cannot be pressed into services unless there is a finding by a Court of competent jurisdiction that the holder of a public office had defaulted in payment of government dues. He maintains that there is nothing on record nor a finding handed down by any Court, Tribunal or authority that Respondent No.1 had committed default of any nature involving payment of government dues. In support of his contentions, the learned

counsel has relied on National Bank of Pakistan v. SAF Textile Mills Ltd (PLD 2014 SC 283); Summit Bank Limited v. Qasim and Co. (2015 SCMR 1341) and Agril D. B. of Pak v. Sanaullah Khan (PLD 1988 SC 67).

xix. The learned counsel has further submitted that the petitioner seeks disqualification of Respondent No.1 in terms of clause 1 of his prayer. However, in clause 6 of the prayer, he seeks a direction to the FBR to reopen the Tax Returns of Respondent No.6 and scrutinize the same. On the basis of prayer clause 1 and prayer clause 6, the learned counsel for Respondent No.1 submits that if prayer clause 6 of the petitioner is granted, prayer No.1 cannot be granted. Likewise, he maintains that prayer clause 6 itself shows that no determination of government dues has been undertaken by any competent Court, authority or Tribunal. Further, if prayer clause 6 is denied, the prayer clause 1 cannot be granted either.

xx. As far as payment of wealth tax is concerned, the learned counsel has argued that the Wealth Tax Act, 1963 was repealed in 2003. In terms of Sections 17 & 17A of the Wealth Tax Act, a limitation of 4 to 5 years has been provided within which Wealth Tax Officer can reopen the Returns and make a determination regarding short payment / default, if any. The learned counsel submits that the period of limitation has

since expired and no officer or machinery is available for implementation of the Act. Even otherwise, relying on Section 6(a) of the General Clauses Act, the learned counsel maintains that once a statute has been repealed and during its subsistence no liability has been determined, no such liability can now be determined especially so where a period of limitation as provided in the Act itself has expired. He further maintains that Respondent No.1 is to be judged on the same standards as other citizens of the country and he cannot be judged on any higher standard by reason of the fact that he is the Prime Minister of the country.

xxi. Learned counsel further submits that it is an admitted fact that Gulf Steel was set up from funds generated through loans obtained from Banks. The Respondent No.1 was not a Shareholder or Director or Guarantor of the said business. Even otherwise, according to the case of the petitioner himself, the sale of said business did not generate any profits which could have necessitated disclosure of the same by the Respondent in any of his Returns. He maintains that this is without prejudice to the stance of Respondent No.1 that he had no nexus or connection with the said businesses.

xxii. The learned counsel for Respondent No.1 refers to paragraph No.18 (xxi) of Constitution Petition No.29 of 2016 and submits that there were

assertions in the said paragraph, that a sum of Rs.31,700,000/- had been gifted by Respondent No.1 to Maryam Safdar (Respondent No.6) and a sum of Rs.19,459,400/- had been gifted by him to his son Hassan Nawaz (Respondent No.8). He further submits that Respondent No.1 admits the said transactions and the same have duly been reflected in the Return filed by him for the financial year 2011. He also submits that corresponding entries in the accounts statement have been made which are being placed on record. The said transactions were undertaken through banking channels and the allegation that the transactions were merely devices to evade payment of income tax is patently incorrect. He also submits that various sums of money including a sum of US$1,914,054/- received by Respondent No.1 from his son Hussain Nawaz which was duly reflected in the Tax Returns of Respondent No.1 for the year 2011. He submits that the argument of the learned counsel for the petitioner that amounts received by Respondent No.1 by way of gift should have been treated as income from other sources and were therefore, liable to be taxed is not supported by the law. In this regard the learned counsel has drawn our attention to Section 39(3) and (4) of the Income Tax Ordinance, 2001 which provides that where a person receives a gift through banking channels from a person who has a National Tax Number

(NTN), he is not required to pay tax on the amount received. He states that Mr. Hussain Nawaz, despite being a non-resident, possesses an NTN, therefore, the said gift from him to Respondent No.1 is neither liable to be treated as 'Income from Other Sources' nor is it taxable. Explaining the transaction, the learned counsel submits that the funds originated from Saudi Arabia which were sent through banking channels to the account of Respondent No.1 who encashed the same at the official exchange rate of the State Bank of Pakistan and the concerned Bank duly issued a certificate of encashment to claim the benefit of Section 111 of the Income Tax Ordinance, 2001 (the Ordinance). He has also referred to Section 111(4) of the Ordinance to argue that no tax is payable on foreign remittances received through banking channels. Referring to the Tax Returns filed by Respondent No.1, the learned counsel submits that under the new tax regime under the Ordinance a scheme of self-assessment was introduced. An assessee can file his Return on the basis of self-assessment with the Taxation Officer under Section 114 of the Ordinance. On expiry of the statutory period, the Return so filed is treated as a Final Assessment Order of the Commissioner by operation of law. He submits that although the Taxation Officer has the jurisdiction on receipt of definite information regarding tax evasion to

reopen the matter, no such, "definite information" was provided to the Taxation Officer that may have furnished justification to reopen, reexamine or re-scrutinize the Returns filed by Respondent No.1. In support of his contention, the learned counsel has relied on the cases of Commissioner of Income-Tax v. Sindh Engineering (Pvt.) Ltd. [2002 SCMR 527 at 535(F)], Income-tax Officer v. Chappal Builders [1993 SCMR 1108 at 1112 and 1113]; and Commissioner of Income-Tax v. Sindh Engineering (Pvt.) Ltd. [2002 SCMR 527].

xxiii. The learned counsel further submits that according to the law laid down by this Court, tax evasion has to be specifically alleged and proved, whereas the same cannot be presumed. Reliance has been placed on the case Federation of Pakistan v. Sindh High Court Bar Association [PLD 2012 SC 1067 at 1071, 1072 and 1074]. He further submits that the law discourages fishing and roving inquiries and insists upon definite information regarding tax evasion before the tax record of an assessee can be reopened. Reference has been made to the cases of Assistant Director, Intelligence and Investigation v. M/s. B.R. Herman [PLD 1992 SC 485 at 491 (C)] and Re State of Norway's Application (No. 1) [1989 1-AER 661 at 684, 685 and 691].

xxiv. The learned counsel for Respondent No.1 further

submits that the following amounts were received by Respondent No.1 from Mr. Hussain Nawaz from 2011 to 2014: -

i) *Rs.129,836,905/- (Tax Year 2011);*
ii) Rs.26,610,800/- (Tax Year 2012);
iii) Rs.190,445,024/- (Tax Year 2013); and
iv) Rs.197,499,348/- (Tax Year 2014)

xxv. He submits that all the aforesaid gifts were sent and received through banking channels, were duly declared to the authorities by filing the requisite Returns and were not liable to any tax in view of the fact that the same had been sent by holder of a National Tax Number. Consequently, there was neither concealment nor tax evasion on the part of Respondent No.1.

xxvi. Concluding his arguments on the question of tax evasion, the learned counsel submits that disqualification of Respondent No.1 is being sought *inter alia* on the basis of Article 63(1)(o) of the Constitution read with relevant provisions of the RoPA. Both the said provisions require liability of a person being determined by a competent forum and such determined liability remaining unpaid. He submits that it is neither alleged nor established from the record that any determination of tax liability of Respondent No.1 has been made by a competent forum and that the same has remained unpaid. The learned counsel submits that even otherwise in prayer clause 6, the petitioner he has admitted that no determination has so far been made by the

competent authorities against Respondent No.1. As a necessary corollary, it can safely be said that in the absence of determination of liability regarding payment of Government dues the provisions of Article 63(1)(o) of the Constitution cannot be invoked.

xxvii. The learned ASC for Respondent No.1 has read paragraph 18 (ix) and (xxiii) of the petition to point out that it has been asserted in the said paragraphs that, "admittedly" Ms. Maryam Nawaz is a dependent of Respondent No.1. By alleging that Respondent No.1 had failed to disclose the said fact in his nomination papers for the General Election, 2013, Respondent No.1 was guilty of concealment and signing a false declaration and was therefore, liable to be disqualified. The learned counsel submits that in the first place it is not admitted that Respondent No.6 was / is a dependent of Respondent No.1. He has taken us through the Wealth Statement filed by Respondent No.1 for the tax year 2011 which shows that land worth Rs.24,851,526/- was shown to be held in the name of Ms. Maryam Safdar, Respondent No.6 in the column for spouse, minor children and other dependents. He submits that the land in question was owned by Respondent No.1 and was held in the name of Respondent No.6. In the absence of any specific column to disclose *Benami* transactions, the name of Respondent No.6 was mentioned in

Column No.12 which deals with assets owned by spouse, minor children and other dependents. He however, maintains that merely by reason of the name of Respondent No.6 being mentioned in Column No.12 would not make her a dependent especially so where the property was clearly mentioned as being held "in the name of" Respondent No.6. In order to substantiate his contention, the learned counsel has drawn our attention to Notification dated 26.8.2015 issued by the Federal Board of Revenue through which the anomaly in the Wealth Statement Form was removed by inserting a column for assets held in the name of others. He has also referred to an opinion rendered by A.F. Ferguson & Company, Chartered Accountants which supports the aforesaid contentions.

xxviii. He further submits that the price / value of the land in question (Rs.24,851,526/-) was subsequently paid by Respondent No.6 to Respondent No.1 through banking channels and the said transaction was duly reflected in the wealth statement of Respondent No.6 for the tax years 2011-13. Likewise since the agricultural property in question had been purchased by Respondent No.6 on payment of sale consideration, the said property was not mentioned in the wealth statement of Respondent No.1 for the years 2012-13. However, the cash received in lieu of

transfer of the property was duly reflected in the accounts statement of Respondent No.1.

xxix. On the question whether or not Respondent No.6 is a dependent of Respondent No.1, learned counsel submits that Respondent No.6 has independent sources of income and notwithstanding gifts made by Respondent No.1 in favour of Respondent No.6 involving cash and immovable properties, status of Respondent No.6 as an independent adult has remained unchanged. In this regard, he has placed reliance on M. A. Faheemuddin Farhum v. Managing Director/Member (Water) [2001 SCMR 1955], in which the definition of dependent as given in the Black's Law Dictionary was cited with approval. The learned counsel also refers to Ball, Decd., *In re*. Hand v. Ball [1947 1 Chancery 228] and *In re* Baden's Trusts [1973 Chancery 9]. In the earlier judgment, it was held that the word "*dependent*" was a vague term and the Court declined to define the same, however, in the subsequent judgment it was held that dependency was a question of fact which was required to be decided on case to case basis.

xxx. As far as legal value of the Trust Deed produced by Respondent No.6 is concerned, the learned counsel submits that the said document was governed by the English Law. He maintains that it is settled law that questions arising out of foreign law are to be treated as questions of

fact which need to be proved through the various modes provided in law including production of expert witnesses. In this regard, he refers to Articles 52, 94 & 112 of the Qanun-e-Shahadat Order, 1984. Reference was also made to Order VII Rule 1(e) of the Code of Civil Procedure, 1908. The learned counsel also relies upon Atlantic Steamer's Supply Co. v. M.V. Titisee [PLD 1993 SC 88 @ 94(B) and 97].

xxxi. The learned ASC submits that this Court has, over time set standards and criteria which may be applied by it while dealing with questions of disqualification of elected holders of public offices in exercise of powers under Article 184(3) of the Constitution. In this regard, he made the following submissions:-

i) *In most cases where elected Parliamentarians were disqualified in exercise of powers under Article 184(3) of the Constitution, this Court relied on material which was either admitted or not denied or decisions of Courts / Tribunals were not appealed against. In some cases, involving fake degrees and dual nationality, the material/documents available before this Court were either undisputed or undisputable, therefore, this Court relied on such material and recorded its findings on the same;*

ii) Where there were disputed questions of fact requiring recording of evidence, or there was voluminous record that needed to be proved, involving intricate questions of law and facts this Court declined to interfere. In support of his contention, the learned counsel has placed reliance on Farzand Ali v. Province of West Pak [PLD

1970 SC 98 @ 113]; Khuda Bakhsh v. Zafarullah Khan Jamali [1997 SCMR 561]; Mehmood Akhtar Naqvi v. Federation of Pakistan [PLD 2012 SC 1089].

xxxii. Referring to the material placed by the petitioner on the record, the learned counsel submits that the petitioner has relied upon certain passages of a book titled *Capitalism's Achilles Heel* authored by Raymond W. Booker. He submits that at best the text of the book represents an opinion of the author and unless the said author appears before this Court, is examined and subjected to cross-examination, his opinion cannot be read in evidence or taken as gospel truth. In this regard, reference has been made to Article 78 of the Qanun-e-Shahadat Order, 1984 to argue that unless the author/ signatory of a document appears as a witness and is subjected to cross-examination, such document cannot be read in evidence. He further stated that in a few exceptional cases where this Court has recorded findings on the basis of unproved documents, such documents had been admitted by both sides on the basis whereof the Court recorded its findings. In this regard, reference has been made to Muhammad Asif v. Federation of Pakistan [PLD 2014 SC 206 @ 227].

xxxiii. As far as the use of newspaper clippings and articles are concerned, the learned counsel submits that the general law on the subject is

that such cuttings, reports and news items cannot be read as evidence. He has referred to Aftab Shaban Mirani v. President of Pakistan [1998 SCMR 1863 @ 1874(E)] and Muhammad Azam v. Khalid Javed Gillan [1981 SCMR 734 @ 736(B)] and Pakistan Muslim League (N) v. Federation of Pakistan [PLD 2007 SC 642 @ 668(H) and 669]. He maintains that although in some cases, this Court relied upon newspaper clippings and articles, such cases were exceptions to the general rule in so far as in such cases, this Court was called upon to examine the validity of executive actions to see whether there was any material available before the executive authority to take executive action and whether such executive actions had not been taken arbitrarily and without any justifiable basis. In such case, this Court had held that it was not sitting in appeal against exercise of powers by the executive authority but was examining the validity of such exercise to see whether or not there was any material before the executive authority which furnished basis for exercise of such authority. He further maintains that most of these cases related to exercise of executive powers by the President of Pakistan under the erstwhile Article 58(2)(b) of the Constitution. In this regard, he referred to Islamic Republic of Pakistan v. Abdul Wali Khan [PLD 1976 SC 57 @ 112 (LL)]; Begum Nusrat Bhutto v. Chief of Army Staff [PLD 1977 SC 657]; and

Wattan Party v. Federation of Pakistan [PLD 2006 SC 697].

xxxiv. He further maintains that the general policy of law as well as the view of this Court has been that efforts should be made to uphold executive actions. Unless it is shown that such actions were taken maliciously, arbitrarily and without sufficient and adequate material, this Court has desisted from interference in such cases. Reference has been made to Chairman, Railways Board v. Abdul Majid Sardar [PLD 1966 SC 725 @ 730]; Lahore Improvement Trust v. Custodian of Evacuee Property [PLD 1971 SC 811 @ 837(J)]; Saghir Ahmed v. Province of Punjab [PLD 2004 SC 261 @ 267(B)]; and Benazir Bhutto v. President of Pakistan [PLD 2000 SC 77 @ 84].

xxxv. In the case of Benazir Bhutto v. President of Pakistan [PLD 2000 SC 77], the matter arose out of dismissal of the Government of Mohtarma Benazir Bhutto by the then President of Pakistan in exercise of powers conferred on him under Article 58(2)(b) of the Constitution. This Court dismissed the petitions challenging the executive action taken by the President of Pakistan in which *inter alia* allegations of corruption were also leveled. However, on an application moved by the petitioner in the said case, this Court clarified that the material and evidence examined and findings recorded by it

were limited to the legality and validity of an executive action under Article 58(2)(b) of the Constitution and the same would not be used against the petitioner in any other proceedings initiated against her on charges of corruption.

xxxvi. The learned counsel for Respondent No.1 specifically stated that he did not challenge the maintainability of the petition or the powers of this Court in terms of Article 184(3) of the Constitution to entertain the same. Relying on the cases of Murree Brewery Co. Ltd v. Pakistan [PLD 1972 Supreme Court 279] as well as CIT v. Eli Lilly Pakistan (Pvt) Ltd [2009 SCMR 1279], the learned counsel submits that by now it is settled law that even if an alternate remedy is available this Court may in exercise of its constitutional jurisdiction entertain the matter. He, however, pointed out that it has also been held by this Court that where a party has chosen to avail an alternate remedy, and is in the process of doing so, this Court will exercise powers (despite availability of alternate remedy and the fact that it is being availed) only in cases where the matter involves fundamental rights and has been pending in the High Court for a number of years without any effective order having been passed. He further submits that on the doctrine of "*effective pendency*" mere pendency would not preclude this Court from exercising its jurisdiction under Article 184(3) of the

Constitution. Reference in this regard has been made to Benazir Bhutto v. Federation of Pakistan [PLD 1988 SC 416]. He, however, maintains that the aforesaid preconditions for exercise of jurisdiction by this Court are not present in the instant case.

xxxvii. In the above context, the learned counsel has referred to CMA#320 of 2017 which provides details of a number of References filed by the Members of Political Parties headed by the petitioners and others which are presently pending before the Election Commission. It is also pointed out that a constitutional petition (Writ Petition No.31193 of 2015) filed by a Member of the Political Party headed by the petitioner is also pending before the Lahore High Court which raises identical questions of law and fact. Other References have been filed before the Speaker of the National Assembly which are presently pending before him.

xxxviii. The learned counsel for Respondent No.1 submits that in matters involving disqualification, this Court has set standards of evidence which are required to be met in order to disqualify an elected Member of the Parliament. He maintains that one such standard is that the evidence must meet the requirements of a criminal trial and the benefit of any doubt that may arise must go to the accused. In this regard, he has referred to Muhammad Saeed v.

Election Tribunal, West Pakistan, etc [PLD 1957 SC 91 @ 123 & 124]; Saeed Hassan v. Pyar Ali [PLD 1976 SC 6 @ 25] and Hafeezuddin v. Abdul Razzaq [PLD 2016 SC79 @ 93].

xxxix. The learned counsel submits that in order to disqualify a holder of public office under Article 62(1)(f) of the Constitution a declaration of a Court of law is required. Although, this Court is a Court of law, the declaration visualized under Article 62 of the Constitution has to be given effect by complying with the requirements of Articles 10A, 17 & 25 of the Constitution. He maintains that unless provisions of Article 10A of the Constitution are adhered to, the requirements of justice and equality before the law would not be met. He therefore maintains that the allegations against Respondent No.1 must be judged on the same standards as set by this Court for disqualification of ordinary Members of the Parliament as there are no separate and / or special rules for disqualification of the Prime Minister of the country.

12. Mr. Shahid Hamid, learned Sr.ASC, appearing on behalf of Respondents No.6, 9 & 10 made the following submissions:-

i. At the very outset, the learned counsel stated that he adopts the arguments of Mr. Makhdoom Ali Khan, learned Sr.ASC for Respondent No.1.

He has also placed on record a statement of Respondent No.6 which was duly signed by him on her behalf. He submitted that the petitioners had alleged that the Respondents had not submitted any documents in order to substantiate their defence. He pointed out that Respondents No.6 to 8 had submitted a number of documents and if necessary more documents would be submitted on behalf of Respondents No.7 & 8. In this regard, he gave a list of documents that had been submitted on behalf of Respondents No.6 to 8 in view of the fact that at the relevant time all three Respondents were being represented by one learned counsel (Mr. Muhammad Akram Sheikh). However, on a subsequent stage the team of Lawyers representing the said Respondents was changed and now Respondents No.6, 9 & 10 were being represented by him (Mr. Shahid Hamid, Sr.ASC) while Respondents No.7 & 8 were being represented by Mr. Salman Akram Raja, ASC. The list of documents is as follows:-

i) Concise statement on behalf of Respondents No.6 to 8 (CMA#7391 of 2016);

ii) Supplementary concise statement (CMA#7531 of 2016);

iii) Letter issued by Sheikh Hamad (CMA#7638 of 2016);

iv) Response to CMA#7511 of 2016 filed by the petitioner (CMA#7646 of 2016);

v) Trust Deed dated 02.02.2006 relating to London Flats (CMA#7661 of 2016);

vi) Copies of land record Registry relating to London Flats (CMA#7953 of 2016) [total cost of the Four Flats was amounting to £1.905 Million at the relevant time];

vii) Tax Returns of Respondent No.6 from 2011-16;

viii) Tax Returns of Mst. Shamim Akhtar, grandmother of Respondent No.6 (CMA#8116 of 2016);

ix) Wealth Tax Statements of the father of Respondent No.6, Bank Statements and related documents (CMA#2519 of 2017);

x) Copies of five References pending before the Election Commission of Pakistan and a Constitutional Petition pending before the Lahore High Court (CMA#320 of 2017); and

xi) Documents in support of establishing that Respondent No.6 was not beneficial owner of the London Flats (CMA#394 of 2017).

ii. The learned counsel submits that there were mainly three allegations against Respondent No.6 as spelt out in paragraph 18(ix), (xi) & (xiii) of Constitution Petition No.29 of 2016. He further submits that the first allegation is that Respondent No.1 did not declare the assets of Respondent No.6 in his Nomination Form filed for NA-120 during General Election, 2013. The second allegation is that the amounts gifted by Respondent No.1 to Respondent No.6 were not

through a crossed cheque. And the third allegation (xiii) is that Respondent No.1 had declared Respondent No.6 as his dependent in his Wealth Tax Statements for the year 2011.

iii. The learned counsel submits that there is no prayer against Respondent No.6 made in the petition. He further points out that neither in Constitution Petition No.30 of 2016 filed by Sheikh Rashid Ahmed nor in Constitution Petition No.3 of 2017 filed by Ameer, Jamaat-e-Islami, Respondents No.6 to 10 have been impleaded.

iv. As far as Respondent No.9 is concerned, the learned counsel states that in paragraph 18(xii) of Constitution Petition No.29 of 2016, it has been alleged that he had not disclosed the gift of Rs.31,700,000/- received by his wife (Respondent No.6) in his Tax Returns and on this basis alone disqualification of the said Respondent was being sought as a Member of the National Assembly.

v. Giving an outline of his submissions, the learned counsel for Respondents No.6, 9 & 10 has submitted that he would focus his arguments on the following aspects:-

i) That on the basis of pleadings before the Court, no case is made out against Respondent No.6. Further no relief is sought against her;

ii) That he would submit arguments with reference to the Income Tax Ordinance,

2001 (the Ordinance); Representation of People Act, 1977 (the RoPA); and Section 5(e) of the Prevention of Corruption Act, 1947 (the Act);

iii) That he would make submissions relating to the concept of dependent / dependency with reference to the provisions of the RoPA and the Ordinance;

iv) That arguments would be addressed by him with reference to CMA No.2519 of 2017 to establish that neither in fact nor in law was Respondent No.6 a dependent of Respondent No.1;

v) That he would discuss and analyze the interview of Respondent No.6 with Sana Bucha an Anchor Person of Geo Television Network;

vi) That the concept of beneficial ownership would be discussed and arguments would be addressed to establish that Respondent No.6 is and never was a beneficial owner of the Mayfair Properties *(CMA#394 of 2017); and*

vii) *That arguments would be addressed relating to the scope and extent of jurisdiction of this Court under Article 184(3) of the Constitution and exercise of such powers against private parties.*

vi. The learned counsel submits that during the course of his arguments, he would also rely on the following documents:-

i) Income Tax Returns of Respondent No.6 from 2011-12 (CMA#7319 of 2016);

ii) Income Tax Returns of Respondent No.6 for the year 2011-12; and

iii) An opinion rendered by A.F. Ferguson & Company, Chartered Accountants

CMA#7531 of 2016.

vii. He states that the following documents have been placed on record with the aforesaid CMA which would be relied upon:-

a) *License issued in favour of Gulf Steel by the Dubai Municipality;*

b) *Lease Agreement in favour of Gulf Steel;*

c) *Land Rent Agreement with Gulf Steel;*

d) *Contract for sale of 75% share of Gulf Steel in favour of Al-Ahli;*

e) *Agreement to Sell for transfer of remaining 25% share in Gulf Steel;*

f) *Photographs showing inauguration of Gulf Steel by the Ruler of Dubai;*

g) *Affidavits of Mian Muhammad Tariq Shafi;*

h) *Incorporation Certificates of Nescol Limited and* Nielsen Enterprises Limited;

i) *Shares Certificate issued from time to time regarding ownership of Nescol Limited and* Nielsen Enterprises Limited *(pages 65 to 70);*

j) *Trust Deed dated 02.02.2006 relating to Coomber Enterprises;*

k) *Income Tax Returns of Respondent No.6 from 2011-16 [CMA#8116 of 2016 (pages 2 to 100)];*

l) *Income Tax Returns of Mst. Shamim Akhtar, grandmother of Respondent No.6 for the years 2011-16 (pages 100 to 177);*

m) *Wealth Tax Statements of Respondent No.1 and that of Mst. Shamim Akhtar for*

the year 2010 (CMA#2519 of 2016); and

n) *Accounts Statements of Respondent No.1 relating to his accounts with Standard Chartered Bank and Habib Bank Limited showing entries dated 15.02.2011 indicating debit and credit entries to reflect payment by Respondent No.6 to Respondent No.1 for price of land held in the name of Respondent No.6.*

viii. Learned counsel appearing on behalf of Respondents No.6, 9 & 10 has submitted that the allegation that Respondent No.9 had not disclosed the gift of Rs.31,700,000/- received by his wife (Respondents No.6) in his Tax Returns is misconceived. He has stated that in the first place, Respondent No.9 did not file his Tax Returns during the period between 2011-14, in view of the fact that he did not have an NTN till 28.01.2014 and tax payable by him was deducted at source. However, the gift received by Respondent No.6 from her father was disclosed in her Returns and copies of her Returns were filed with the nomination papers of Respondent No.9. This being the situation, there was no question of any concealment on the part of Respondent No.9 or violation of any laws on his part, attracting the penalty of disqualification. He submits that even if for the sake of argument it is admitted that for the years 2011-14, Respondent No.9 was required to file Income Tax Returns and having failed to do so was liable to pay penalties in terms of Section

114(2) read with Section 82 of the Ordinance, neither a show cause notice was issued to him by the Income Tax authorities nor were any penalties imposed on him which may have remained unpaid. Therefore, Respondent No.9 cannot by any stretch of language be termed as a defaulter.

ix. Learned counsel has also informed us that a number of References on the same subject as this petition are pending before the Election Commission of Pakistan. In one case where the Speaker of the National Assembly had declined to forward a Reference to the Election Commission, the order of the Speaker is under challenge before the Lahore High Court under Article 199 of the Constitution. He submits that although he does not challenge the maintainability of these petitions, this fact needs to be kept in mind while adjudicating these petitions.

x. The learned counsel has formulated the following questions with reference to the scope of jurisdiction of this Court under Article 184(3) of the Constitution:-

a) *Enforcement of which Fundamental Rights requires a declaration that Respondent No.6, who is a private citizen, is a dependent of her father and the owner of a property in a foreign country;*

b) *How a question whether Respondent*

No.6 is a dependent of her father is a matter of public importance;

c) Can disputed questions of fact i.e. whether Respondent No.6, a private citizen, is a dependent of Respondent No.1 and whether she is the owner of a foreign property, be determined by this Court in exercise of its powers under Article 184(3) of the Constitution without recording evidence; and

d) Whether the petition is bona fide or based upon political animosity and forged documents. If it is found that the petition is based upon forged documents, what is the effect?

xi. Learned counsel has drawn our attention to the document produced by the petitioner and appended with CMA#7511 of 2016 which is a board resolution purportedly passed on 07.02.2016 bearing the signatures of Respondent No.6 (Mrs. Maryam Safdar). He submits that the document in question is patently a forged document as the signatures appearing on the said document are not those of Respondent No.6. He refers to the admitted signatures of Respondent No.6 (Mrs. Maryam Safdar) on the documents available on page 244 of CMA#7530 of 2016 and page 5 of CMA No.7661 of 2016. He submits that even to a naked eye, it is apparent that the admitted signatures of Respondent No.6 differ in material aspects from the signatures appearing on the afore-noted board resolution. Likewise, he has referred to the

personal information form produced by the petitioner appended with CMA#4 of 2016 at page 17 and submitted that the said signatures are *ex facie* not those of the Respondent No.6 as the same are clearly different from her admitted signatures. In this context, the learned counsel has relied on Hafeezuddin v. Abdul Razzaq [PLD 2016 SC 79 @ 95]. He has also referred to, "the law relating to handwriting, signatures etc by Dr. B. R. Sharma".

xii. He further submits that the document in question is a forged document, as there was neither reason nor occasion for Respondent No.6 to appoint LZ Nominee Limited as a Nominee Director of Nescol Limited retrospectively with effect from 13.05.2004.

xiii. At this stage, the learned counsel read the concise statement filed on behalf of Respondent No.6. It was noticed that the said concise statement was filed on 07.11.2016. It may be noted that the letter sent by Sheikh Hamad was dated 05.11.2016, while the concise statement was filed two days later, yet there was no mention in the concise statement filed on behalf of Respondents No.6 to 8 that a part of the funds generated from sale of Gulf Steel was invested in the real estate business of Thani Family in Qatar *(as*

has been stated in the letter of Sheikh Hamad). No explanation has been offered by the learned counsel for Respondent No.6 for the said omission.

xiv. It also appears that in paragraph 5(c) at page 6 of the concise statement, Respondent No.6 has stated that she is only a Trustee for Respondent No.7 in relation to Nescol Limited. Learned counsel was asked to explain why there is no mention of Nielsen Enterprises despite the fact that Respondent No.6 also claims to be a Trustee for the said company. The learned counsel attempted to argue that the lapse was on account of *bona fide* error/lapse in view of the fact that Trust Deed dated 02.02.2006 clearly indicates that Respondent No.6 is a Trustee for both companies.

xv. The learned counsel for Respondents No.6, 9 & 10 while addressing arguments on the question of dependency of Respondent No.6 on Respondent No.1 submitted that she had indeed received gifts from Respondent No.1 i.e. her father from time to time in various amounts and in the form of immovable property, but there was nothing unusual about it. In our society, it is a common practice for fathers to give gifts to their married daughters. The said fact does not

make her dependent on Respondent No.1. He maintained that the term 'dependency' is not defined in the Ordinance. In this context, he referred to Section 2(33) which defines a minor child; Section 19(8)(b) which states that a minor child shall not include a married daughter; and Section 116(1)(b) of the Ordinance, which refers to other dependents. He submitted that in the absence of any specific definition of dependent one would have to rely on the ordinary meaning of the said word. In this regard, he referred to Black's Law Dictionary as well as a judgment of this Court reported as M. A. Faheemuddin Farhum v. Managing Director/Member (Water) [2001 SCMR 1955] in which the definition of dependent as given in Black's Law Dictionary have been relied upon.

xvi. The learned counsel further referred to Section 116(2) of the Ordinance read with Rule 36 of the Income Tax Rules and the form of Wealth Tax Statement as given in part 4 of the 2nd Schedule of the Income Tax Rules which provide for filing of Wealth Statements and Wealth Reconciliation Statements. He submitted that Item#12 of the said form requires a disclosure of assets held in the name of spouse, minor children and other dependents. In view of the fact that immovable property was purchased by

Respondent No.1 in the name of Respondent No.6 and there was no separate column to disclose the same, it was mentioned in the only available column provided in the form. He, however, emphasized the fact that mere mentioning of Respondent No.6 in the said column did not mean that she was a dependent of Respondent No.1. In fact it was *bona fide* disclosure of a property held by Respondent No.1 in the name of Respondent No.6. He has substantiated his argument by referring to SRO No.184/2015 through which a new column was added to the aforesaid form by substituting Column#12 with Column#14 which provides for disclosure of assets held in, "others names". He further maintains that in view of the fact that price of the said property was paid by Respondent No.6 to Respondent No.1 through banking channels, the said property was not mentioned in the Wealth Tax Returns or the nomination papers of Respondent No.1 in the year 2013. He has further pointed out that copies of the accounts statements of Respondent No.6 as well as Respondent No.1 indicate that a sum of Rs.24,851,526/- was debited from the account of Respondent No.6 and credited to the account of Respondent No.1 during the tax year 2012. He therefore submits that there is no substance in the argument of the learned counsel for the petitioner that

Respondent No.6 was a dependent of Respondent No.1.

xvii. Learned counsel submits that the word 'dependency' has different connotations in different laws and the definition used in one law cannot be transposed / transferred to another law. He maintains that the question of dependency along with its extent is to be determined keeping in view the facts and circumstances of each case.

xviii. Learned counsel has referred to the Wealth Statements filed by Respondent No.1 and Respondent No.6 to show that as of 31st March 2013 when Respondent No.1 filed his nomination papers, Respondent No.6 had sufficient income and assets of her own, generated from various sources including agricultural income, sale of assets and receipt of gifts from various sources and therefore she could not be termed as a dependent of Respondent No.1. The learned counsel also took us through four sale deeds on the basis of which agricultural land was purchased by Respondent No.1 in the name of Respondent No.6. He emphasized the fact that at the relevant time, consideration for said sale deed was paid by Respondent No.1 while ostensible owner was Respondent No.6. However, subsequently the entire sale consideration of

Rs.24,851,526/- was paid by Respondent No.6 to Respondent No.1 through banking channels where-after she became real owner of the said assets which were duly reflected in her Wealth Statements and Wealth Reconciliation Statements.

xix. The learned counsel also drew our attention to various documents indicating that she and her family had been contributing their due shares in the pool of household expenses maintained by Mst. Shamim Akhtar, the grandmother of Respondents No.6, 7 & 8 who owns all five properties in the compound in which Respondent No.6 resides along with her family.

xx. While rebutting the allegation of the petitioner that the gifts received by Respondent No.1 and thereafter partly transferred to his children including Respondent No.6 constituted income from other sources and was therefore taxable, the learned counsel for the Respondents pointed out that the funds were sent by Respondent No.7 who holds an NTN, in favour of Respondent No.1 who also holds a Tax Number therefore the same did not constitute income from other sources and was not liable to be taxed. He further pointed out that the amounts given by Respondent No.1 to Respondent No.6 were transferred

through banking channels and were not liable to be taxed. He further maintains that according to Wealth Statements of Respondent No.6, she owned assets in access of 200 Million Rupees between 2013-16 therefore by no stretch of the language she could be termed as a 'dependent'.

xxi. Learned counsel maintained that while exercising jurisdiction under Article 184(3) of the Constitution, this Court must establish the *bona fides* of the petitioners. He argued that the present petitions were the result of political differences and rivalries, the petitioners had approached this Court with unclean hands and were therefore not entitled to any relief in the present proceedings. In this context, he also referred to T. N. Godavarman Thirumulpad v. Union of India (AIR 2006 SC 1774); Janata Dal v. H. S. Chowdhry (AIR 1993 SC 892); and S.P. Gupta and others v. President of India and others (AIR 1982 SC 149).

xxii. Learned counsel also made submissions regarding the case against Respondent No.10. Referring to paragraph 18(xvi) of Constitution Petition No.29 of 2016, he submitted that the allegation against Respondent No.10 is that he had admitted to the charge of money laundering to the tune

of US$ 14.886 Million in a confessional statement made by him before the Judicial Magistrate on 25.04.2000. Further, that Respondent No.1 and his brother, the current Chief Minister of the Province of Punjab had instructed Respondent No.10 to open foreign currency accounts in the names of Mst. Sikandra Masood Kazi, etc and Mr. Talat Masood Kazi in the Bank of America and many other banks with foreign currency/funds provided by Respondents No.1 and his brother. He pointed out that it is alleged that in order to meet financial needs of HPML, fake foreign currency accounts were opened in Emirate Banks with US$ 3.725 Million, and Al Faysal Bank with US $ 8.539 Million and US$ 2.622 Million. In this regard, the learned counsel submits that the confessional statement constituted basis for lodging of two FIRs, one bearing No.12 of 1994 lodged on 10.11.1994 and the other bearing No.13 of 1994 dated 12.11.1994 with FIA and SIU, Islamabad. He submits that Respondent No.10 was arrested on 15.10.1999 and the confession was forcibly procured from him while he was in custody on 25.04.2000. Even after the confession, he remained in custody till September, 2001. He submits that in the first place, the statement has nothing to do with the Panama Papers. Further, the FIRs were quashed and all the accused were acquitted

by a Bench of Lahore High Court in Writ Petitions No.12172 of 1997 and 12173 of 1997 vide a judgment reported as Hamza Shahbaz Sharif v. Federation of Pakistan (1999 P. Cr. L. J 1584).

xxiii. Subsequently, a Reference was filed by the NAB on the same facts which were narrated in the FIRs in the year 2000. However, the proceedings in the Reference were adjourned *sine die* in view of the fact that the accused had in the meantime left the country and were not available to face the Reference. However, pursuant to a Writ Petition filed before the Lahore High Court, a learned Division Bench of the High Court quashed the Reference. There was disagreement between Members of the Bench on the question whether or not the matter could be reinvestigated by the NAB. One learned Member of the Bench held that despite quashment of the Reference, NAB was not barred from reinvestigating the matter and proceeding further in accordance with the law. However, the other learned Member of the Bench held that the matter could not be reinvestigated. In order to resolve the difference of opinion, the matter was referred to a Referee Judge who agreed that the matter could not be reinvestigated. The learned counsel pointed

out that since the said judgment of the High Court was never challenged before this Court, the same had attained finality and the confessional statement on which the Reference was based had lost its legal value. He maintained that even otherwise, the confession of Respondent No.10 had been procured under coercion and was not worthy of any reliance.

xxiv. The learned counsel was asked whether this Court could pass an appropriate order to interfere in the judgment of the Lahore High Court whereby the Reference against Respondent No.10 and others was quashed and the NAB was restrained from reinvestigating the matter on the principles laid down in Tauqeer Sadiq's case (PLD 2012 SC 132), the learned counsel submitted that the allegation against Respondent No.10 had withstood scrutiny before various superior Courts of the country and it would be unjust and unfair to reopen the matter after a lapse of more than 16 years.

xxv. The learned counsel further pointed out that when Respondent No.10 was elected as a Senator in 2014, his election was challenged by way of a constitutional petition before the Islamabad High Court raising the same allegations as earlier leveled in the FIRs and

the References. The Islamabad High Court dismissed the Writ Petition No.4818 of 2014 and the Intra Court Appeal filed against the judgment of the learned Single Judge was also dismissed. The matter was never agitated before this Court, which therefore also attained finality.

xxvi. As far as the questions of money laundering and fake foreign currency accounts are concerned, the learned counsel also drew our attention to a judgment of Full Bench of the Lahore High Court reported as Hudabiya Engg. (Pvt) Ltd. v. Pakistan [PLD 1998 Lahore 90 (paragraph 30)] in which relying on the Economic Reforms Ordinance, 1992 the Full Bench had held that foreign currency accounts and transactions undertaken by the petitioner therein enjoyed complete immunity and protection in terms of the said Ordinance. He, therefore, maintained that the relief sought against Respondent No.10 could not be granted.

xxvii. The learned counsel further submitted that disqualification of Respondent No.10 is sought on grounds which have already been repelled by the Islamabad High Court as well as the Lahore High Court where a learned Division Bench unanimously quashed the Reference and one of the grounds which

prevailed with the learned Division Bench was that the alleged confession of Respondent No.10 was not admissible having been made before the wrong forum. He contended that although there was disagreement amongst the learned Judges of the Division Bench on the question whether or not NAB could reinvestigate the matter and proceed thereafter, such disagreement was resolved by the learned Referee Judge who held that the matter could not be reinvestigated for reasons recorded by one of the Members of the Division Bench. He, therefore, submitted that the matter stood settled and could not be reopened at this stage, especially so, where the judgment of the Lahore High Court was not challenged before this Court. He further submitted that the prayer of the petitioner that NAB be directed to file an appeal against the judgment of the Lahore High Court and the order of the Referee Judge in Writ Petition No.2617 of 2011 could not be granted because the same was barred by time.

xxviii. The learned counsel for Respondent No.10 summarized his formulations as follows:-

i) The disqualification of Respondent No.10 is being sought on the basis of allegations leveled in 1992 i.e. over 25 years ago. It would, therefore, neither be just nor proper to reopen the matter at this stage.

ii) The allegations against Respondent No.10 pertain to a period of time when he did not hold a public office. In 1992, Respondent No.10 was the Chief Executive of First Hajveri Modaraba which was a non-banking financial institution. He further submits that he held a public office for the first time with effect from 15.09.1992 when he was appointed as Chairman, Pakistan Board of Investment. He resigned from the said post on 19.04.1993.

iii) *Over the past 25 years many superior Courts adjudicated upon the matters directly or indirectly involving Respondent No.10. He was not convicted of any wrongdoing..*

xxix. On our query, the learned counsel conceded that the acquittal order passed by a learned Division Bench of the Lahore High Court and the order passed by a five Members Bench of the Lahore High Court were passed in proceedings in which Respondent No.10 was not a party. He, however, submitted that both judgments emerged from the same set of facts and a five Members Bench of the Lahore High Court held that FIA had no jurisdiction to investigate transactions and foreign currency accounts which were protected by the Economic Reforms Ordinance, 2002.

xxx. Making his submissions regarding validity of the confessional statement allegedly made by Respondent No.10, the learned counsel

submitted that it had repeatedly been held by different Courts that the confessional statement of Respondent No.10 had no evidentiary value, firstly because it was not made before the competent forum and secondly, because he was not an accused in the Reference filed against Directors/Shareholders of Hudaibiya Paper and Board Mills Limited. The record indicates that Respondent No.10 was granted pardon under Section 26 of the National Accountability Bureau Ordinance, 1999 (NAB Ordinance) on 21.04.2000 where-after his confessional statement was recorded under the NAB Ordinance. The learned ASC submits that in terms of Section 26(b) of the NAB Ordinance in its original form an accused was required to be examined as a witness. He, however, submits that the said Section of the NAB Ordinance was subsequently amended to incorporate a provision that the accused was required to be produced before a Magistrate to make a confessional statement. He submits that it is settled law as was held by a learned Division Bench of the Lahore High Court that amendment in the law could not be given retrospective effect. Therefore, the confessional statement allegedly made by Respondent No.10 before a Magistrate had no legal value. He further submits that since after the grant of pardon

Respondent No.10, was no longer an accused and was not named as an accused in the Reference, as such, his confessional statement can neither be used against him nor any 3rd party. He also submits that the confessional statement can only be used as a statement of a witness if he appears as a witness in the trial of others. He submits that since no trial was conducted, there is no question of confessional statement being used against the Respondent No.10 or any 3rd party.

xxxi. The learned counsel contended that Respondent No.10 was arrested on 15.10.1999 and his confessional statement was recorded while he was in custody in Attock Fort in April, 2000. It is clear and obvious from the surrounding circumstances that the confession had not been made freely, was obtained while Respondent No.10 was under duress, and as such, it cannot constitute basis for any conviction. He further points out that no Court has so far assigned any value to the said alleged confession. He has referred to the provisions of Article 13 of the Constitution, Section 403 of the Code of Criminal Procedure (Cr.PC) and Section 26 of the General Clauses Act to argue that said provisions provide protection against double jeopardy. The learned counsel however did

not press this point any further.

xxxii. The attention of the learned counsel was drawn to a judgment reported as Muhammad Yasin v. Federation of Pakistan (PLD 2012 Supreme Court 132) in which this Court had held that even if a judgment of a High Court is not challenged before this Court, it can in exercise of its jurisdiction under Article 184(3) of the Constitution interfere in the matter in public interest and for enforcement of Fundamental Rights. The learned counsel referred to paragraph 8 of the judgment to argue that the judgment in question was distinguishable in so far as this Court has held that the Islamabad High Court had only examined transfer orders passed by the Chairman, OGRA and had not examined the validity of his appointment which is not the case before this Court. He emphasized the fact that the judgment was distinguishable and this was not a fit case for this Court to exercise its jurisdiction under Article 184(3) of the Constitution to resurrect a matter which had been laid to rest in 2014 by a judgment of the Lahore High Court.

13. Respondents No.7 & 8 are represented by Mr. Salman Akram Raja, learned ASC. He made the following submissions:-

i. The case against Respondents No.7 & 8 has three broad aspects. Firstly, the speeches and interviews given by Respondent No.1 and members of his family including Respondents No.7 & 8 and the inconsistencies which are being attempted to be shown. He submits that statements of Respondents No.7 & 8 are being taken as a standard against which correctness of statements and speeches made by Respondent No.1 are sought to be judged. Secondly, the official records, Income Tax Returns and Nomination Papers filed by Respondent No.1 are being used to build a case of default / nonpayment of government dues / evasion of taxes on the part of Respondent No.1. He submits that an attempt is being made to show that Respondent No.7 had made gifts to Respondent No.1 which should have been treated as, "income from other sources" and tax was required to be paid on such income. He stated that it was being argued by petitioners' learned counsel that since neither the gifts were disclosed as income from other sources nor was tax paid on the same, Respondent No.1 was liable to be disqualified.

ii. Thirdly, this Court is being called upon to determine facts, compare the speeches, statements and interviews of Respondent No.1 with such facts and on the basis thereof disqualification of Respondent No.1 is being

sought under Articles 62 & 63 of the Constitution.

iii. He further submits that status of Respondents No.6 & 7 is being canvassed as that of beneficiaries holding assets acquired through illegal means by Respondent No.1. He further submits that this requires a detailed factual inquiry which cannot be undertaken by this Court in exercise of its powers under Article 184(3) of the Constitution. He also submits that even if for the sake of argument, Respondents No.7 & 8 are beneficiaries in terms of Section 9(a)(v) of the NAB Ordinance or Section 5 of the Prevention of Corruption Act, 1947, the said exercise requires a full trial before a Court of competent jurisdiction and is beyond the scope of Article 184(3) of the Constitution.

iv. The learned counsel has read prayer clause 2 of Constitution Petition No.29 of 2016 to point out that it seeks direction for recovery of looted/laundered money along with properties purchased through BVI Companies. He submits that since Respondent No.7 is the beneficial owner of the Mayfair Properties through offshore companies, the prayer can be interpreted to be against him. He further submits that the prayer as well as the averments made in the Constitution Petition are vague and without an evidentiary hearing, the said prayer cannot be granted. He maintains that it would have to be established through cogent and reliable

evidence that the properties in question have been acquired through looted money which was then laundered and utilized to purchase the said properties. He contends that grant of such prayer inherently requires investigation and trial which cannot be undertaken under Article 184(3) of the Constitution. He further submits that prayer clauses 1 & 6 are self-contradictory as on the one hand disqualification of Respondents No.1, 9 & 10 is sought while on the other a direction to probe and minutely scrutinize the Tax Returns and Assets Declarations of Respondent No.1 and his entire family is prayed for. He, therefore, submits that prayer clause 1 cannot be granted unless the process sought in prayer clause 6 is completed.

v. He further submits that the offence of money laundering is covered under the Prevention of Money Laundering Act, 2002 which provides a mechanism for its investigation and trial. He maintains that although the jurisdiction of this Court under Article 184(3) of the Constitution is vast, it does not take away the jurisdiction of the statutory authorities to exercise their functions. He further maintains that hearing before this Court cannot be termed as an evidentiary hearing, as such, no convictions / declarations can be recorded in the facts and circumstances of the present case. He also refers to Article 19A of the Constitution to argue

that the right to have access to information is defined and structured. Since Respondents No.7 & 8 are not public servants nor do they hold public offices their private affairs are not subject to scrutiny under the provisions of Article 19A of the Constitution.

vi. As far as the question of burden of proof is concerned, the learned ASC has relied upon a judgment of this Court reported as Khalid Aziz v. State [2011 SCMR 136]. He argued that in cases where a departure is made from the general rule (i.e. the onus of proof lies upon the prosecution) and the onus is placed on the accused (by legislative instrument), the standard of proof is considerably reduced and if he provides a plausible explanation, the same is deemed to be sufficient. In such situations, he submits that an accused is not required to prove his innocence beyond reasonable doubt. He further maintains that where a person is accused of holding properties beyond his means or holding properties through "ostensible owners/Benami", the initial onus is on the prosecution to prove that the properties are being held Benami and the same have been purchased with funds which are in excess of known means of the accused and the said factors have to be established beyond reasonable doubt. The onus then shifts to the accused who is required to provide a plausible

explanation and if he succeeds in doing so, the onus of proof stands discharged. He has emphasized the fact that benchmark of onus of proof is much higher on the prosecution which is beyond reasonable doubt while the benchmark of onus of proof on the accused is much lower and is confined to provision of plausible explanation. He maintains that the explanation being provided by Respondents No.7 & 8 regarding Mayfair Properties and the funds utilized to purchase the said properties constitutes a plausible explanation within the realm of possibilities, therefore, this Court should hold that they have successfully discharged the onus of proof placed on them.

vii. Learned counsel also read paragraphs 2 and 11 of the petition which contain allegations against Respondents No.7 & 8. As far as paragraph 2 is concerned, the learned counsel submits that the said paragraph consists of general allegations as there is no specific allegation leveled against Respondents No.7 & 8. As regards paragraph 11, he submits that the same consists of an interview of Respondent No.7 in which he allegedly stated the properties in London were purchased from the sale of Steel Mills in Jeddah which had been set up with loans from Banks and friends. He submits that the said statement was a general statement regarding the family businesses of Respondent

No.1 and did not constitute a misstatement. He further maintains that the statement of Respondent No.8 in the BBC Program "Hard Talk" was being misinterpreted and taken out of context. He has pointed out that a statement has been attributed to the first lady, who allegedly stated that her family had purchased the Mayfair Properties in 2000 for its children. He submits that remarks attributed to the first lady are part of an article and it is not even claimed that the article correctly and faithfully reflects what the first lady had allegedly said. He further submits that the said article cannot be relied upon in order to place any responsibility or liability on the first lady, who in any event is not a party before this Court.

viii. The learned ASC further referred to paragraph 18 (vii & viii) of the Petition to point out that generalized allegations had been made regarding setting up of Gulf Steel Mills in 1980, the amounts received on sale of the same and the alleged non-disclosure of the sum US $ 9 Million which was allegedly received from such sale. The learned counsel further pointed out that the said assertion is self-contradictory in view of the fact that according to the petitioners the entire sale price of Gulf Steel was utilized towards settlement of liabilities of BCCI and as such, no disclosure in the Wealth Tax Statements was required. He further submits that

even if any disclosure was required to be made, the same had to be made by the father of Respondent No.1 and not Respondent No.1 or his family. Likewise it was being alleged without any proof that the Mayfair Properties were purchased between 1993-96 and Respondent No.1 did not disclose the source of such funds.

ix. Learned counsel submits that in first place, the properties were not purchased by any of the present Respondents during the period 1993-96 and secondly, the same were received by Respondent No.7 by way of a business settlement with Thani Family of Qatar where funds had been invested by his late grandfather (Mian Muhammad Sharif). In this view of the matter, he contends that neither Respondents No.7 & 8 nor Respondent No.1 can be held liable or responsible on any count.

x. Going to the factual narration of his case, the learned counsel submitted that Gulf Steel was established in 1973 in the backdrop of losses suffered by the family of Mian Muhammad Sharif after the fall of Dhaka and nationalization of Ittefaq Foundry in 1972. In the year 1973, Mian Muhammad Sharif decided to set up a business in Dubai and offered his services to set up a steel manufacturing Unit in Dubai. The Royal Family of Dubai agreed to grant a lease of land and a licence to Mian Muhammad Sharif to conduct such business which was set up with a

loan given by the Banks including BCCI. He has frankly conceded that no documents have been placed on record to show how, when and against what security the loan was obtained. He further submits that the loan was taken as far back as 1974 and when the factories and houses of Respondent No.1 and his family were raided in 1999 all records and documents were taken away by various agencies, the same were never returned.

xi. The learned ASC has pointed out that in 1978 Mian Muhammad Sharif decided to sell 75% of his shareholdings in the company in favour of Muhammad Abdallah Kaid Ahli (Ahli Family) for a consideration of AED 21,375,000. In this regard, a Tripartite Sale Agreement was executed which has been placed on record. He submits that it is an admitted position that the entire sale price was paid directly to BCCI which was the main creditor of the company to settle its outstanding dues. He further submits that subsequently a partnership agreement was executed between the Ahli Family and Mian Muhammad Tariq Shafi through which a new set up called Ahli Steel Mills Company was established having 25% shareholding of Mian Muhammad Tariq Shafi who was acting on behalf of Mian Muhammad Sharif. The said 25% shareholdings were subsequently sold on 14.04.1980 by Mian Muhammad Tariq Shafi to

Ahli Family for an aggregated sum of AED 12 Million which was to be paid over a period of 6 months in installments. In this regard, he referred to the affidavits filed by Mian Muhammad Tariq Shafi, the first of which was sworn on 12.11.2016 stating the facts and mentioning that AED 12 Million received by way of sale price of 25% shareholdings was used by him as per instructions of Mian Muhammad Sharif. He further submits that in a subsequently filed affidavit before this Court with CMA No.434 of 2017 on 20.1.2017, Mr. Tariq Shafi stated that he had handed over various installments to Sheikh Fahad Bin Jassim bin Jaber (Sheikh Fahad), who was the brother of Hamad *bin Jassim bin* Jaber, for investment in the real estate business of the Thani Family in Qatar. It was further stated that he delivered the funds in cash on instructions of Mian Muhammad Sharif and that such amounts were handed over to Sheikh Fahad in Dubai, the place which he frequently visited in connection with his business activities. He, therefore, submits that since the transactions were made in cash and were handed over in person to Sheikh Fahad, no account statements or money trail is available to establish transfer of such funds.

xii. The learned ASC for Respondents No.7 & 8 submitted that admittedly, the sale price of 75% share in Gulf Steel was AED 21,375,000 while it

owed AED 27,664,584 to BCCI. There was an obvious shortfall. He also admits that other than the amounts owed to BCCI there were amounts owed to Dubai Electric Company and others. He further submits that he is unaware of the source of funds from where the above liabilities may have been settled. He, however, submits that there is nothing on record to suggest that the amount of AED 12 Million which was received by Mian Muhammad Tariq Shafi in 1980 from sale of the remaining 25% shareholdings in Ahli Steel Mills was used for the purpose of settlement of the aforesaid liabilities. He has frankly admitted that he can offer no definitive information as to how the above liabilities were settled.

xiii. The learned counsel also submits that in 1980 Ittefaq Foundries were returned to the Sharif Family. He points out that not only Ittefaq Foundries once again became profitable earning huge profits between the period 1981-90 but during this period the Sharif Family became one of the most established business groups in the country having multiple Units involving Textiles, Sugar and Steel Manufacturing. He further submits that in 1990 Sharif Family was victimized by the new government which disallowed a ship containing scrap meant to be used in Steel Factories of Sharif Family. To offload its cargo at the Karachi

Port, it remained anchored at sea for over a year which caused a loss of about Rs.500,000,000/- to the Sharif Family. The family was however able to absorb the said loss and continued to operate as a viable and profit bearing Group. Therefore, the allegation that the Sharif Family could ill afford to purchase four Flats at a price of £1.905 Million which translated into about Rs.70,000,000/- at the then prevalent exchange rates has no basis. He further submits that although Respondents No.7 & 8 did not own the Mayfair Properties, they occupied the same because the properties in question were owned by Thani Family with which their grandfather (Mian Muhammad Sharif) had longstanding personal and business relations. On our query, the learned counsel informed us that Respondent No.7 completed his education in 1996 from the UK while Respondent No.8 graduated from the London School of Economics in 1999 and continued to live in the same properties.

xiv. The learned counsel referred to the report prepared by Mr. Abdul Rahman Malik in 1998 and pointed out that according to the said report a company titled Ansbacher & Company was managing Nescol Limited and Nielsen Enterprises Limited in 1993-96 when the properties appeared to have been purchased by Thani Family through two offshore companies

namely Nescol Limited and Nielsen Enterprises Limited. He further submits that Respondents No.7 & 8 had nothing to do with Ansbacher & Company, Nescol Limited or Nielsen Enterprises Limited at the relevant time and were merely occupying the properties in question as students.

xv. The learned counsel further submits that one of the pillars of the case built by the petitioners is that the Mayfair Properties were placed under a charge by the High Court of London in the year 2000. He maintains that in the first place, the said properties were never mortgaged with Al-Tawfeeq Investment Company. The said company had managed to obtain an *ex parte* decree against members of Sharif Family who were Directors / Guarantors of HPML and were at the relevant time incarcerated in Pakistan. In execution proceedings, Mr. Shezi Nackvi filed an affidavit stating that Mian Muhammad Sharif, Mian Muhammad Shahbaz Sharif and Mian Muhammad Abbas Sharif who were defendants in the said suit had beneficial interests in the properties in question and sought their attachment. This was done by the London High Court on the basis of affidavit in question and in the absence of any counter affidavit on record. He has also referred to the affidavit of Mr. Shezi Nackvi which has been filed before this Court through CMA No.432 of 2017 (page 17) to show

that Mr. Nackvi had no independent information regarding ownership and title of the defendants in the properties in question and had filed the affidavit merely on the basis of the report of Mr. Rahman A. Malik in which it was alleged that the Mayfair Flats were owned by the Sharif Family. He maintains that the charge on the properties was removed in February / March, 2000 when the liability of HPML was settled on payment of US $ 8 Million. This amount was paid by the Al-Thani Family out of the amounts owed to Mian Muhammad Sharif from an investment made by him on the basis of sale price of 25% shareholdings in the Ahli Steel Mills amounting to AED 12 Million.

xvi. The learned counsel also referred to the financial statements of HPML *(attached at pages 80, 84, 93 and 98 of CMA No.432 of 2017)* which indicated the liability of the company towards Al-Tawfeeq Investment Company and its settlement through payment of US $ 8 Million. He further submits that the decree of the London High Court has wrongly been considered to mean that the decree was for a sum of US $ 34 Million which figure has been arrived at by aggregating the amounts appearing against the name each of the defendants in the suit. He states that the decree was in the sum of around US $ 16 Million and the defendants No.3, 4 and 5 were required in their

respective capacities as guarantors to pay the said sums in accordance with the Guarantees executed by them in favour of Al-Tawfeeq Investment Company. However, in view of the fact that the principal liability was that of the company which discharged the said liability through a settlement sum of US $ 8 Million, there was no personal liability enforceable against the guarantors. Learned counsel further submits that there is nothing on record to show that prior to 2006 there was any ownership/proprietary links of Respondents No.6 or 8 with the Mayfair Properties.

xvii. Learned ASC next made submissions regarding the nature of fact finding proceedings under Article 184(3) of the Constitution. He submitted that a substantial body of jurisprudence had developed in the past few years in which this Court had delivered various judgments in exercise of powers under Article 184(3) of the Constitution. He further submits that although in some cases factual inquiries were undertaken but such exercise was limited to reliance on admitted facts or admitted documents. He also submits that the jurisdiction of this Court under Article 184(3) read with Article 187 is subject to Article 175 of the Constitution and the jurisdiction of other Courts or Government Agencies charged with performance of certain functions cannot be taken away in exercise of

such powers. In support of his contention, the learned counsel has placed reliance on Suo Motu Case No.5 of 2012 (PLD 2012 Supreme Court 664); Mehmood Akhtar Naqvi v. Federation of Pakistan (PLD 2013 Supreme Court 195); Contempt of Court against General (Retd) Mirza Aslam Beg (PLD 1994 Supreme Court 574); and Pakistan Muslim League (N) v. Federation of Pakistan (PLD 2007 Supreme Court 642) in which it was held that evidence could be recorded provided it did not involve voluminous record and intricate questions of law.

xviii. Learned counsel submitted that in the facts and circumstances of the present case a trial cannot be conducted and a conviction cannot be recorded either against Respondents No.1, 7 or 8 without proper investigation. In this regard, he referred to Arslan Iftikhar case to point out that even in that case the matter was referred to NAB for investigation which shows that investigative machinery of the State cannot be ignored to proceed in a matter where an exercise of investigation and collection of evidence is required. He further submits that the doctrine of continuous mandamus can also be resorted to where State functionaries/ investigative machinery can be adverted to for investigation and collection of evidence while remaining under the continuous supervision of this Court.

xix. Learned counsel for Respondents No.7 & 8 submits that on the material available on record, this Court has to determine whether there are irreconcilable differences between the speeches made by Respondent No.1 and the material on record and on that basis decide the question whether or not the difference are fatal/irreconcilable and what would be consequences of the same. He further submits that there is no undisputed record available against Respondents No.6 & 7 on the basis of which such decision could be taken or a conclusion arrived at.

xx. Learned counsel further submits that in the worst case scenario the speeches of Respondent No.1 can be treated at par with a statement under Section 342 Cr.P.C in a situation where the prosecution has failed to produce any evidence to convict the accused. He further submits that it is settled law that if the prosecution evidence is rejected, the defence evidence cannot be relied upon to convict an accused. Another principle in this regard is that the defence evidence is to be accepted or rejected as a whole. He therefore maintains that in the absence of any positive evidence produced by the petitioners to establish any wrongdoing on the part of the Respondents their defence ought to be accepted. He further maintains that unless the defence set up by Respondents No.1

or 7 and 8 is inherently defective and beyond the realm of probabilities or possibilities, their version cannot out rightly be rejected.

xxi. Mr. Salman Akram Raja, learned ASC, appearing on behalf of Respondents No.6, 7 & 8 submitted that there are three main aspects of the case set up by the petitioners namely, (i) verbal aspects which include speeches and interviews of Respondent No.1 and Respondents No.6, 7 & 8 in which an effort has been made to show that contradictions exist with relation to ownership of the properties, source of funds and identity of the person who owns such properties; (ii) official records including Tax Returns, Nomination Forms etc. Although an effort has been made to show that there is tax evasion or mis-declaration in Nomination Forms, the petitioners have not been able to make out a case either for disqualification of Respondent No.1 or any wrongdoing on the part of Respondents No.6, 7 & 8; and (iii) discovery of acts or omissions on the part of Respondent No.1 which could lead to legal consequences including disqualification in terms of Articles 62 & 63 of the Constitution.

xxii. He submitted that during the course of hearing of these petitions, the focus of this Court has been on the following eight questions: -

1) How was the outstanding debt liability of Gulf Steel settled?

2) *Why did Tariq Shafi not state in his affidavit that he received 12 Million Dirhams in cash from Mr. Ahli?*

3) *Why did Mian Muhammad Sharif cause cash deposits to be made with the Al Thani Family when he used bank accounts to obtain business loans?*

4) *Where is the record of the communications between Mian Muhammad Sharif and Shaikh Jassim bin Jaber (father of Sheikh Fahad and Sheikh Hamad) over the period 1980 to 1999? Was the family aware of the entrustment/deposit by Mian Muhammad Sharif?*

5) *Is there any record of the ownership of the shares of Nielsen and Nescol that could have been made available to the Hon'ble Court by Respondent No.7?*

6) *What is the basis of Respondent No.7's beneficial ownership of the shares of Nielsen and Nescol? What was the role of Respondent No.6? What is nature of beneficial ownership, as opposed to legal title, under English law? What are the requirements for a valid trust?*

7) *Why was the balance amount that was payable by the Al Thani Family to Mian Muhammad Sharif not made a part of the estate of Mian Sharif for distribution amongst his heirs?*

8) *If the* Mayfair Properties *were purchased by the Al Thani Family from the proceeds of the real estate business in which Mian Muhammad Sharif had invested, could Mian Sharif be said to have acquired a proprietary interest in these flats at the time of the purchases by Nielsen and Nescol in 1993, 1995 and 1996?*

xxiii. Learned counsel submits that although an effort has been made to answer all questions, it has to be understood that the Respondents are being asked to account for a period of more than forty years, and every act and transaction undertaken by their grandfather cannot be established through documentation. He frankly conceded that there are records which are missing and there are gaps in the narration of facts and events which are on account of lapse of time and death of grandfather of the Respondents who was the patriarch of the family and sole Incharge of its businesses as well. Further, he was at the helm of affairs when misfortunes befell the family of the Respondents including nationalization of family business in 1972 and the military takeover of 1999 when Respondent No.1 as well as Respondent No.7 and various other members of their family were incarcerated, their houses and offices taken over and all relevant records taken away. He further submits that nevertheless every possible effort has been made to produce before this Court the relevant records which do not establish any wrongdoing either on the part of Respondents No.6, 7 & 8 or Respondent No.1. He maintains that no relief has been sought against the Respondents No.6, 7 & 8 and even otherwise, Respondent No.1 cannot be penalized for any alleged wrongdoing on the part of Respondents No.1, 7 or 8. He further

maintains that even if Respondents No.6, 7 & 8 are charged with the offence of having assets beyond their known means in terms of Section 9 (v) of the National Accountability Ordinance, 1999 read with Section 45 of the Prevention of Corruption Act, 1945, they cannot be held liable on the basis of evidence and material available on record. Further, even if, for the sake of argument the Respondents were held liable such liability cannot be used against Respondent No.1.

xxiv. Elaborating the above arguments, the learned ASC submits that any culpability of the Respondents would have to be examined in light of the following circumstances:-

i) Even if the Respondents were charged under Section 9 (a)(v) of the Ordinance, they are not required to prove without reasonable doubt that the assets owned by them are not beyond their known sources of income. Even if they offer a plausible and reasonable explanation regarding the source of funds from where such assets were acquired, the onus then shifts on the petitioners to establish a case of possession of assets beyond known sources of income. In this context, he relied upon Khalid Aziz v. State (2011 SCMR 136).

ii) *Secondly, the learned ASC submits that even if the Respondents were treated as accused in a criminal trial and their statements were to be treated as statements under Section 342 Cr. P.C, it is settled law that such statements are to be taken as a whole including the inculpatory and exculpatory portions. On the basis of such criteria, the learned counsel submits that there is no evidence to record a conviction against Respondent No.1 or Respondents No.6, 7 & 8. Reliance in this regard has been placed on State v. Muhammad Hanif (1992 SCMR 2047).*

iii) *Thirdly, the learned counsel submits that jurisdiction of this Court in terms of Article 184(3) and Article 187 of the Constitution is inquisitorial in nature. However, this Court has desisted from recording findings of guilt or innocence on its own accord and has traditionally left the matters of investigation and inquiry to appropriate State organs and trial Courts which may record their findings after hearing all sides and fulfilling the requirements of a fair trial as enshrined in Article 10A of the Constitution. He maintains that there is precedent to follow such course of action by directing State functionaries to*

undertake inquiry and investigation under the direct supervision of this Court. In this regard, he referred to the cases of NICL (Suo Motu Case No.18 of 2010) and Hajj Corruption (Corruption in Hajj Arrangements in 2010). He, however, maintains that even a commission cannot undertake the job of investigator and thereafter record findings of guilt or innocence. The right of a fair trial and requirements of Article 10A of the Constitution would be violated if a commission is empowered to conduct an investigation and record a conviction.

xxv. The learned counsel submits that the first question on the factual aspect of the case is whether the Mayfair Properties were acquired by Respondent No.7. He submits that in the first place it has to be kept in mind that the Respondent No.7 belongs to a family which has a long history of being in the Steel business. Father/grandfather of Respondents was running a big and successful business even prior to partition and the entire family had substantial financial resources. He further submits that the Mayfair Properties were acquired by Respondent No.7 by way of a settlement in 2005/2006 and prior to that the same were held by Al-Thani Family through bearer certificates in two offshore companies namely, *Nescol Limited*

and Nielsen Enterprises. He pointed out that the only document relied upon by the petitioners to establish that the properties in question were owned by Respondent No.7 in 1999 is the judgment of the London High Court on the basis of which the said properties were attached. He further pointed out that it is evident that the order of the London High Court was based upon an affidavit of Mr. Shezi Nackvi in which it had categorically been stated that according to his information certain members of the Sharif Family had proprietary interests in the said properties. He further submits that the affidavit was based upon the information contained in a report prepared by Mr. Rehman A. Malik in his personal capacity. He maintains that the report contained baseless and unsubstantiated allegations and even otherwise it was not an official report prepared under any authorization from any quarter. In this regard, he referred to paragraphs 12 and 26 of the affidavit of Mr. Nackvi. The learned counsel further submitted that other than the affidavit there was nothing on record to show that any member of the Sharif Family owned the said flats prior to 2006. He further maintains that the case set up against the Sharif Family on the basis of allegations of money laundering and acquisition of assets in London was quashed in 1999 by the Lahore High Court in a case reported as Hamza Shahbaz Sharif v. Federation of Pakistan (1999 P. Cr. L. J

1584).

xxvi. The learned counsel further submits that the Mayfair Properties were originally acquired by Al-Thani Family through two offshore companies namely Nescol Limited and Nielsen Enterprises Limited. The said family was in possession of bearer certificates of the said companies which were subsequently handed over to a representative of Respondent No.7 pursuant to settlement of accounts of the investment of AED 12 Million made by the grandfather of the Respondents in 1980 in the business of Al-Thani family in Qatar. These funds were received pursuant to sale of 25% shares held by Mr. Tariq Shafi on behalf of Mian Muhammad Sharif in Gulf Steel *(later renamed as Ahli Steel)*. Settlement of accounts of the said investment in the business of the Thani Family took place in 2006 and as a part of settlement, Al-Thani Family paid US$ 8 Million to Al-Tawfeeq Investment Bank to settle the liabilities of HPML, handed over bearer certificates of two companies as well as title document of the London properties to representative of Respondent No.7. Certain sums were earlier paid by the Thani family as returns on the said investment during the life time of Mian Muhammad Sharif which were utilized by Respondent No.7 for his business in Saudi Arabia and Respondent No.8 for his business in the UK in 2001.

xxvii. The said bearer certificates were surrendered and registered in June 2006 in accordance with the changed law in the name of Minerva Holdings and Minerva Officers, which were service providers appointed by Respondent No. 7. He stated that earlier, by virtue of Trust Deed dated 02.02.2006 Respondent No.7 appointed Respondent No.6 as a trustee/authorized signatory on behalf of Respondent No.7 who remained beneficial owner of the properties.

xxviii. The learned counsel submits that the only question regarding the status of Respondent No.6 with reference to the Mayfair Properties that has any relevance to Respondent No.1 is whether Respondent No.6 is a dependent of Respondent No.1. He maintains the entire case of the petitioners hinges on the argument that Respondent No.6 is a dependent of Respondent No.1, she holds beneficial interest in the Mayfair Properties, and that Respondent No.1 failed to disclose the assets held by his dependent in his Nomination Papers, and had been guilty of mis-declaration of assets. He was therefore liable to be disqualified in terms of Articles 62 & 63 of the Constitution. The learned counsel submits that there is not an iota of evidence available on the record to show that Respondent No.6 is the beneficial owner of the Mayfair Properties or is a dependent of Respondent No.1. He therefore maintains that the Income Tax Returns filed by

Respondent No.6 in 2012 would indicate that she had agricultural income of Rupees 2.2 Million, her husband earned Rupees 1.8 Million by way of salary as a Member of the National Assembly and she owned assets worth more than Rupees 50 Million. He argues that with this income and assets, she could have independently lived with her husband and the fact that she was, by choice living in a compound owned by her grandmother is not enough to establish that she was a dependent of Respondent No.1. The learned counsel therefore submits that the question whether the Respondent No.6 is a trustee, authorized signatory or beneficial owner of the Mayfair Properties is of no significance in so far as it relates to the case against Respondent No.1 on account of the fact that she was not his dependent at the relevant time i.e. when he filed his Nomination Papers or at any time thereafter.

xxix. The learned ASC further submits that two letters issued by Sheikh Hamad establish a number of things including the fact that the grandfather of Respondent No.7 had invested AED 12 Million in the real estate business of Thani Family in 1980, there was a settlement of accounts in 2005/2006 and as a part of the settlement, the bearer certificates of two companies which held the Mayfair Properties were delivered to a

representative of Respondent No.6 namely Waqar Ahmad by a representative of the Sheikh Hamad namely Nasir Khamis.

xxx. He further submits that version of facts and circumstances given by the Respondents is possible and plausible, cannot be discarded out rightly and despite gaps for obvious reasons of lapse of time and death of various people involved, the material available on record supports the stance taken by the Respondents. The learned counsel referred to various assertions made and documents appended with CMA No.432 of 2017 to point out that for the first time, the shares in *Nescol Limited and* Nielsen Enterprises Limited were registered in favour of Minerva Holdings/Minerva Officers in 2006 on the instructions of Respondent No.7 who is the beneficial owner of the two companies as well as the properties held by them. Subsequently in 2014, Minerva Holdings / Minerva Officers were replaced by Trustee Services Corporation Limited which is an in-house corporate Trust company of JPCA Limited on instructions of Respondent No.7.

xxxi. The learned counsel submits that although it has been admitted at various stages in their interviews by Respondents No.7 & 8 that were in possession of the Mayfair Properties since 1993, such possession was not in the capacity of owners. The real owners i.e. Royal Family of

Qatar, had on account of their businesses and personal association with the grandfather of the Respondents, permitted them to use the said properties as a courtesy because at the relevant time the said Respondents were studying in London and required the accommodation to stay there to pursue their education.

xxxii. The learned counsel took us through the provisions of International Business Companies Act, 1984 to submit that in terms of Section 28 of the said Act, the companies could issue bearer certificates which were not required to be registered anywhere. He pointed out that in terms of Section 31(a) of the Act, the bearer certificates could be transferred by delivery. He maintains that although the law was reenacted in 2004, requiring the holders of bearer certificates to register such certificates, the deadline for registration of the certificates was 31st December, 2009. The learned counsel submits that the two offshore companies namely *Nescol Limited and* Nielsen Enterprises Limited were voluntarily re-registered in July 2006, under the new law, the bearer share certificates initially held by the Thani Family, delivered to the representative of Respondent No.7 in 2006 were cancelled and on his instructions the same were registered in the names of Minerva Holdings / Minerva Officers,

the service providers appointed by Respondent No.7.

xxxiii. The learned counsel further submitted that the only documents that establish the alleged beneficial ownership of Respondent No.6 of the two companies are two letters purportedly written by Mossack Fonseca to the Financial Investigation Agency of BVI which indicate that Respondent No.6 was the beneficial owner of the two companies. Such information appears to be based upon correspondence conducted between Mossack Fonseca and Minerva Holdings / Minerva Officers which was apparently based upon the information available with Minerva Holdings / Minerva Officers at the relevant time. He submits that neither the records of Minerva Holdings / Minerva Officers are presently available nor is he presently in a position to explain on what basis Minerva Holdings / Minerva Officers took the position that Respondent No.6 was the beneficial owner of the two companies. He submits that the said information is incorrect and contrary to the record. He, however, drew our attention to CMA No.432 of 2017 to submit that the alleged Board Resolution dated 7.2.2006 signed by Respondent No.6 whereby LZ Nominee Limited was reappointed as Nominee Director of Nescol Limited with effect from 13.05.2004 has been disowned by Minerva Holdings / Minerva Officers. He further submits

that the document in question is fake and Minerva Holdings / Minerva Officers has specifically stated that the same was not prepared by it. He vehemently argued that Respondent No.6 had specifically denied her signatures on the said document. As such, he maintains that any attempt on the part of the petitioners to connect Respondent No.6 with the two companies in her capacity as a beneficial owner is a futile exercise not supported by any record.

xxxiv. The learned ASC for Respondents No.6, 7 & 8 took us through fresh documents filed through CMA No.856 of 2017 to show that Respondent No.7 had appointed Arrina Limited to provide full management services with reference to the Mayfair Properties. Further, the Arrina Limited had undertaken to liaise on his behalf with the service providers for *Nescol Limited and* Nielsen Enterprises Limited to provide such services. He drew our attention to some sample receipts issued by Barclays Bank confirming that Arrina Limited had paid certain amounts to Minerva Trust and Corporate Services Limited for their professional services. He also drew our attention to letters containing terms of engagement issued by JPCA Limited Chartered Accountants dated 01.08.2014 whereby an agreement for provision of secretarial services regarding *Nescol Limited and* Nielsen Enterprises Limited was put

in place.

xxxv. Turning to his legal submissions, the learned ASC submitted that the trust document on the basis of which Respondent No.6 was appointed as a Trustee of Respondent No.7 is a valid document and there is nothing available on record to show that she had any beneficial interest either in the two companies or the Mayfair Properties owned by the said companies. In this regard, he pointed out that a legal opinion provided by Mr. Stephen Moverley Smith QC dated 12.01.2017 has already been placed on record.

xxxvi. The learned ASC further submits that powers of this Court under Article 184(3) of the Constitution have been subject matter of a large number of judgments rendered by it in the past five years. He further submits that the settled principle of law is that where intricate questions requiring recording of voluminous evidence is required, this Court has refrained from taking up such exercise and left the matter for the statutory authorities to undertake such exercise. Learned counsel relies on the case of Muhammad Ashgar Khan v. Mirza Aslam Baig (PLD 2013 SC 1) to argue that the Court called upon the parties to file affidavits, no oral statements were recorded and decision was given on the basis of facts admitted by the parties. He has vehemently argued that no evidence was recorded in the said case.

xxxvii. The learned counsel has emphasized the fact that this Court has on various occasions examined the scope of inquisitorial proceedings and came to the conclusion that in such proceedings, the Court cannot record any findings of fact, as such an exercise would prejudice the trial of the case before a Court of competent jurisdiction and thereby violate the due process right of a party as guaranteed under Article 10A of the Constitution. In this regard, learned counsel relied upon Watan Party v. Federation of Pakistan [PLD 2011 SC 997 (@ 1053 to 1055, 1060 & 1088)]. He has also referred to 2013 SCMR 683 (@1687).

xxxviii. Referring to General Secretary v. Director, Industries (1994 SCMR 2061), Zulfiqar Ali Babu v. Government of the Punjab (PLD 1997 SC 11) and Watan Party v. Federation of Pakistan (PLD 2012 SC 292), it was argued that a detailed inquiry cannot be undertaken in exercise of powers under Article 184(3) of the Constitution, the only exception being limited to findings of constitutional violations recorded on the basis of admitted facts. He maintains that there is a distinction between a declaration and conviction and submitted that while a declaration can be given by this Court under limited circumstances on the basis of admitted or uncontroverted facts, a conviction cannot be recorded by this Court in exercise of its

constitutional jurisdiction. He maintains that such exercise would be violative of the foundational principles of independence of investigation and independence of Courts which are two mutually exclusive domains and cannot be intermingled. Reference in this regard has been made to Emperor v. Nazir Ahmed [AIR 1945 PC 18] and Shaukat Ali Dogar v. Ghulam Qasim [PLD 1994 SC 281].

xxxix. The learned counsel next contended that a right to due process and fair trial is enshrined in the Constitution and any finding recorded or declaration given by this Court under Article 184(3) of the Constitution or by any Commission appointed by this Court for the said purpose would seriously violate such right. He maintains that in the limited number of cases where declarations have been issued in exercise of powers under Article 184(3) of the Constitution, such declarations have invariably been issued on the basis of admitted facts and or documents.

xl. The learned ASC has referred to various judgments rendered by US Courts to argue that even in foreign jurisdictions, while commissions have been appointed to record findings of fact, such jurisdiction has been termed as an accusatory jurisdiction which does not extend to recording convictions or issuing declarations.

xli. The learned counsel has further maintained that this Court has repeatedly held in a number of cases that this Court would not embark upon fishing and roving inquiries in exercise of its jurisdiction under Article 184(3) of the Constitution. In support of his arguments, the learned counsel has relied upon Jam Madad Ali v. Asghar Ali Junejo [2016 SCMR 251] and Akhtar Hassan Khan v. Federation of Pakistan [2012 SCMR 455].

xlii. The learned ASC has summed up his submissions by stating that even if the entire stance of the Respondents is disbelieved by this Court, the matter requires a factual inquiry which has to be undertaken by the statutory bodies set up under the law and the Constitution for the said purpose. Once the facts have been uncovered and evidence has been collected, the matters need to be placed before a Court of competent jurisdiction for trial in accordance with the law and in line with the rights guaranteed under Article 10A of the Constitution. It is only after such an exercise has been undertaken that a person found guilty can be convicted and visited with various penalties and punishments provided by the law and the Constitution.

14. On conclusion of the arguments of learned counsel representing Respondents No.1 & 6 to 10, the Prosecutor

General, NAB was directed to inform this Court as to why the aforesaid judgment of the High Court was not challenged before this Court. Tracing the sequence of events, the learned Prosecutor General informed us that Respondent No.10 had moved an application for grant of pardon on 20.04.2000. The Chairman, NAB granted full pardon to him vide letter dated 21.04.2000 in exercise of powers under Section 26 of the National Accountability Bureau Ordinance, 1999 (NAB Ordinance). He further pointed out that although an interim Reference was filed on 27.03.2004 wherein Respondent No.10 was arrayed as accused No.7, since he was granted pardon on his request on 21.04.2000 and his confessional statement was recorded on 25.04.2000 by a Magistrate under Section 164, Cr.PC he was shown as a witness and not as an accused in the final Reference. He points out that the final Reference was filed on 16.11.2000 which was quashed by the Lahore High Court on a Writ Petition filed by HPML and its Directors. He submits that the judgment of the Lahore High Court was not challenged before this Court because the competent authorities in the NAB had decided that since the Lahore High Court had unanimously quashed the Reference, it would be a futile exercise to approach this Court by way of an appeal.

15. On being summoned by us, the Chairman,

National Accountability Bureau, (NAB) also appeared before us along with the Prosecutor General, NAB. We asked him whether NAB had taken any action or conducted any inquiry or investigation on the basis of the information that had come in the public domain indicating a number of citizens including Respondents No.6, 7 & 8 held offshore companies and properties worth Millions of Dollars for which there were no verifiable sources of income and there were serious allegations of corruption and money laundering had been levelled against Respondent No.1. The Chairman, NAB informed us that the NAB was awaiting initial inquiry and investigation by the "Regulators", before proceeding with the matter. He submitted that the same stance was taken by him before the Public Accounts Committee of the National Assembly. He further submitted that in terms of Section 18 read with Section 20 of the NAB Ordinance, the NAB could only initiate investigations on receipt of a complaint from State functionaries including Securities & Exchange Commission of Pakistan and State Bank of Pakistan, etc. His attention was drawn by us to Section 9(v) and certain other provisions of the Ordinance which provide independent powers to NAB to initiate inquiries, investigations and proceedings in situations where a person is alleged to be in possession of assets beyond

his known means. At this, the Chairman, NAB stated that certain preliminary steps had been taken by collecting the requisite information and as soon as it was finalized, he would proceed further in accordance with the law.

16. It is interesting to note that NAB had initiated a Reference bearing No.5 of 2000 involving HPML and its Directors which included some of the Respondents and other members of their families. The said Reference and other proceedings initiated by NAB as well as the confessional statement made by Respondent No.10 contained information which was found sufficient by NAB to initiate the Reference. However, despite the fact that information available with NAB had direct nexus with the issues raised in these proceedings, no steps were taken by NAB to investigate and inquire into the allegations that the offshore companies and properties/businesses owned by Respondents No.7 & 8 were acquired through laundered funds or ill-gotten gains and could have a connection with Respondent No.1. He was further asked to explain why a judgment of the Lahore High Court in which reinvestigation of matters contained in the Reference was disallowed was not appealed before this Court. He responded that as a matter of internal policy, he had sought opinion of its own Law Officers who had opined

that in view of the fact that since two Judges of the Lahore High Court had recorded findings against the NAB, chances of success of an appeal before this Court were limited. On the basis of such opinion, it was decided not to file an appeal against the judgment of the Lahore High Court. On being asked by us whether the NAB wished to revisit its decision and reconsider the matter in changed circumstances, and in view of fresh evidence becoming available, the Chairman, NAB submitted that he would stand by his earlier views.

17. The Chairman, Federal Board of Revenue, (FBR) also appeared in accordance with the directions issued by us. He was assisted by Mr. Muhammad Waqar Rana, Additional Attorney General for Pakistan. At the very outset, we asked the Chairman, FBR to update us qua the steps taken by him pursuant to the Panama Papers and the information contained therein becoming public. He informed us that as soon as the Panama Leaks appeared in April 2016, the FBR immediately took up the matter and started investigations / measures to collect information regarding the persons, about 400 in numbers, who allegedly owned offshore companies. He stated that there were practical and procedural difficulties in finding the full names and addresses of the persons whose names appeared in the Panama Papers. On being pressed to

disclose when such information was sought, the Chairman, FBR hesitatingly informed us that the first notice / correspondence was initiated in October 2016. We cannot help but notice that even the initial steps were halfheartedly initiated six months after the afore-noted information came to light. It is astonishing to see that while the matter was being widely agitated and discussed in the Print and Electronic Media and the Courts were being approached by different parties who were clamoring for investigation and probe, the FBR had gone into deep slumber and failed to initiate even the preliminary steps towards ascertaining the identities and other antecedents of the persons named in the Panama Papers, let alone taking any action against them.

18. The complete and utter apathy shown by the State functionaries / Departments including the FBR in this matter besides being shocking has raised many questions and the constant foot dragging on their part shows complete and utter lack of interest and a desire to sweep the matters under carpet. This is obviously at the behest of those likely to be affected by deeper probe and investigation into the matter. The Chairman, FBR informed us that since a large number of persons named in the Panama Papers were either non-filers or non-residents, information and data regarding the said

persons was not available in the database of FBR. However, the matter had to be coordinated with NADRA and other State agencies charged with the responsibility of maintaining the records of citizens to collect the requisite information in order to have access to such persons. Further, since the record and information relating to offshore companies was beyond the territorial jurisdiction of Pakistan and located in a number of tax havens including British Virgin Islands, letters were written to the Foreign Office of Pakistan to coordinate with their counterparts in the British Virgin Islands etc. in order to collect the requisite information. However, so far no appreciable progress has been made in this regard.

19. With reference to the Respondents in these Constitution Petitions, the Chairman, FBR pointed out that Respondents No.7 & 8 are non-residents and therefore not amenable to the jurisdiction of the tax authorities in Pakistan. He submits that although the said persons were issued notices, they filed their replies on 21.11.2016 in which the position taken by them was that since they were non-resident Pakistanis, they were under no obligation to file Returns or pay taxes on income generated outside Pakistan. He, however, stated that the matter had not been closed and if any material came to light which necessitated any action on the part of the FBR

against Respondents No.7 & 8, the same shall be initiated immediately in accordance with the law.

20. The Chairman, FBR was asked to explain how Respondent No.7 claimed to have an NTN when the same was issued in 1995 and according to a Circular issued by the FBR itself, all Tax Numbers issued upto 1998 stood cancelled and fresh tax numbers could be obtained by filing appropriate applications before the competent authorities which had apparently not been done. His response was that he had no specific information in this regard. However, the learned Additional Attorney General submitted that according to the records of FBR, Respondent No.7 was the holder of an NTN which appeared in the Database of FBR. He later confirmed that the earlier had subsequently withdrawn and all tax numbers initially issued by the FBR had been restored/revived.

21. As far as Respondent No.6 is concerned, the Chairman, FBR submitted that she had also filed her response on 21.11.2016 in which she had categorically denied ownership of any foreign property or offshore company. According to her stance, her brother (Respondent No.7) had authorized her to deal with offshore companies owned by him on his behalf.

22. After hearing the Chairman, FBR we are constrained to express our dissatisfaction and extreme disappointment on the mode and manner in which the premier taxation authority of the country has dealt with the matter.

23. The learned Attorney General for Pakistan was called upon to assist the Court on the legal issues raised in these proceedings. In this regard, he made the following submissions:-

i. There are three main cases pending before this Court filed by *Pakistan Tehreek-e-Insaf;* Awami Muslim League Pakistan; and Jamaat-e-Islami Pakistan, respectively. These are opposition parties and seek disqualification of the Leader of the House (Prime Minister). He maintains that earlier challenges of the same nature have already been dealt by this Court in the judgment reported as Ishaq Khan Khakwani v. Mian Muhammad Nawaz Sharif (PLD 2015 Supreme Court 275). He has pointed out that a similar case *(Constitution Petition No.35 of 2016 titled as Muhammad Hanif Abbasi v. Imran Khan Niazi & others)* on the basis of similar allegations has been filed against one of the petitioners which is pending before this Court and has not been heard so far.

ii. This is a unique case in many respects including the forum chosen and the form of proceedings initiated. He argues that by way of these proceedings, the petitioners seek a writ of *quo warranto and also reliefs which are generally prayed for in election petitions. He maintains that these are not proceedings in the normal course and it is neither the function nor practice of this Court to entertain and proceed in matters of such nature in exercise of its powers under Article 184(3) of the Constitution. He further maintains that in pith and substance, the matter relates to a challenge to the election of a Member of the National Assembly and a declaration is being sought in terms of Article 62(1)(f) of the Constitution. He also maintains that it has to be kept in mind that any declaration granted by this Court will be binding on all Courts and Tribunals which would get guidance from how this Court proceeds in the matter. He states that the law laid down by this Court would be applicable to about 1045 MNAs & MPAs who would henceforth be governed by the same.*

iii. *The Attorney General for Pakistan submits that he would restrict his formulations to the following points:-*

(a) What is the scope of Article 184(3) of the Constitution with reference to the facts and circumstances of the present case; and

(b) Should this Court exercise jurisdiction even if the case falls within the purview of Article 184(3) of the Constitution.

In this regard, the learned Attorney General submits that jurisdiction of this Court can be inquisitorial or adversarial. However, where the inquisitorial jurisdiction is to be exercised, it has to be established that a matter of public importance requiring enforcement of fundamental rights is involved. He maintains that generally this jurisdiction is exercised where relief is to be granted for benefit of the society and or to protect under privileged classes.

iv. He further states that although in Farzand Ali v. Province of West Pakistan (PLD 1970 Supreme Court 98) and Muhammad Nawaz Sharif v. President of Pakistan (PLD 1993 Supreme Court 473), this Court had held that jurisdiction under Article 184(3) of the Constitution can be exercised to issue orders in the nature of *quo warranto*, the person seeking such disqualification must prove the same in adversarial proceedings. In this context, he has also referred to the cases reported as Ishaq Khan Khakwani v. Mian Muhammad Nawaz Sharif (PLD 2015 Supreme Court 275) as well as Mahmood Akhtar Naqvi v. Government of Sindh

(2015 SCMR 810) wherein this Court has exercised its powers under Article 184(3) of the Constitution.

v. The learned Law Officer questioned whether this Court is an appropriate forum to issue a declaration under Article 62(1)(f) of the Constitution considering that in making such declaration, provisions of Article 10A of the Constitution would also be applicable. He further submits that this Court must also consider the fact that a declaration issued by this Court under Article 62(1)(f) of the Constitution, the mode and manner in which such declaration is issued will be binding on all Courts and Tribunals which would be called upon to issue such declarations in future.

vi. Elaborating his first formulation, the learned Attorney General submitted that it has to be determined which fundamental rights are under threat or have actually been breached, who is the complainant of the alleged breach and in this regard which facts need to be proved. He further submits that the burden of proof that a fundamental right has been breached is on the person complaining of such breach and once such breach has been proved to the satisfaction of this Court, an appropriate order can be passed for enforcement of such right. He, however, maintains that the person

complaining of a breach of fundamental right must first establish a legal obligation which if not performed has led to the alleged breach of a Fundamental Right.

vii. In the context of this case, the learned Attorney General submitted that in the first place the petitioners have not shown which of their Fundamental Rights have been breached by Respondent No.1. He further submits that the petitioners have neither alleged nor established that Respondent No.1 was under any obligation to disclose certain facts which obligation, the latter has failed to fulfill which has led to breach of some Fundamental Right available to the petitioners.

viii. The learned Attorney General for Pakistan further submitted that in order for this Court to exercise powers under Article 184(3) of the Constitution, it must be established that in addition of enforcement of fundamental rights a question of public importance is involved in the matter. In this context, it was pointed out to the learned Attorney General that vide order dated 03.11.2016, this Court had already passed an order with the consent of all concerned that a petition under Article 184(3) of the Constitution was maintainable in the facts and circumstances of the present case and all requirements of the said Article had been met.

Confronted with this situation, he submitted that even if this Court determines that it has jurisdiction in the matter, it would have to be seen whether or not jurisdiction ought to be exercised to grant the relief sought in the petitions.

ix. Referring to the case of Farzand Ali v. Province of West Pakistan (PLD 1970 Supreme Court 98), the learned Law Officer submitted that the same was no longer good law in view of the fact that the judgment was rendered under the provisions of Constitution of Pakistan, 1962 without mentioning that the High Courts had power to issue a writ of *quo warranto* against the holder of public office as defined in Article 242 of the said Constitution. The said definition included Members of the National Assembly and Provincial Assemblies. He maintains that under the Constitution of Pakistan, 1973 a writ in the nature of *quo warranto* cannot be issued against Members of the National or Provincial Assemblies in view of the fact that such persons are not included in the definition of holder of public office. He submits that since the Parliamentarians hold elected offices, the mechanisms provided in Articles 62 and 63 of the Constitution and provisions of the Representation of People Act, 1976 (RoPA) have to be resorted to. The argument of the learned Attorney General is farfetched, self-

contradictory and contrary to our judicial precedents and has not impressed us.

x. The learned Attorney General further submitted that a declaration as visualized in Article 62 of the Constitution cannot be issued by this Court in view of the fact that such declaration requires an evidentiary hearing. He pointed out that in a few cases where such declarations were issued by this Court, the same were issued on the basis of admitted facts or undisputed material available on record. In this context, he referred to the cases reported as Ishaq Khan Khakwani v. Mian Muhammad Nawaz Sharif (PLD 2015 Supreme Court 275) and Mahmood Akhtar Naqvi v. Government of Sindh (2015 SCMR 810).

xi. The learned Law Officer also submitted that in the event of an allegation of corrupt or illegal practices, Sections 42A and 82 of the RoPA provide a procedure of filing a complaint and its trial by a District & Sessions Judge. He further submits that matters being agitated before this Court are already pending before the Election Commission of Pakistan. As such, exercise of jurisdiction by this Court under Article 184(3) of the Constitution in the facts and circumstances of the case is not called for. He maintains that there are factual controversies involved which require evidentiary hearings and the law provides the mode, manner and forum for such

hearings. He, therefore, concluded by submitting that special care is to be taken in exercise of jurisdiction. He maintains that a declaration issued by this Court would have serious and far-reaching consequences and a stigma will be attached to the name of Respondent No.1 who is the head of the largest political party of the country. To support his contentions, he relied upon the cases of Aftab Ahmad Khan v. Muhammad Ajmal (PLD 2010 SC 1066) and Ishaq Khan Khakwani v. Mian Muhammad Nawaz Sharif (PLD 2015 Supreme Court 275).

24. In rebuttal, Mr. Naeem Bukhari, learned ASC for the petitioner in Constitution Petition No.29 of 2016, submitted that:-

i. Date of Birth of Respondent No.7 is 01.05.1972. According to the documents produced on behalf of Respondents No.6, 7 & 8 through CMA No.7531 of 2016, the land for Gulf Steel was allotted on 12.04.1974 and the Rent Agreement was signed on 12.06.1974. On the said dates, Respondent No.7 was two years old; and

ii. When Tripartite Agreement for sale of 75% shares in Gulf Steel was executed in 1978, Respondent No.7 was six years old. The outstanding liabilities of the Gulf Steel in 1978 were as follows:-

a) Approximately 27 Million Dirhams owed to BCCI;

b) Approximately 36 Million Dirhams owed to others;

c) Aggregated liability at the relevant time was in excess of 63 Million Dirhams.

iii. The learned ASC for the Petitioner pointed out that sale of 75% shares in Gulf Steel fetched about 21 Million Dirhams. Admittedly, the entire amount was paid to BCCI. This left an outstanding liability of 6 Million Dirhams to BCCI and 36 Million Dirhams to others. Therefore, when the balance 25% shareholding in the Gulf Steel was sold in 1980 for 12 Million Dirhams *(when Respondent No.7 was eight years old),* there was nothing which could possibly be invested in Qatar in view of the fact that an outstanding liability of 42 Million Dirhams still existed. He further submits that in the first affidavit of Mian Muhammad Tariq Shafi, it was merely stated that 12 Million Dirhams received from sale of 25% shares in Gulf Steel were, "applied as per instructions of Mian Muhammad Sharif". However, in the second affidavit, an improvement was made and it was claimed that the said amount was given to the elder brother of Hamad bin Jassim bin Jaber in Dubai for investment in the real estate business of Al Thani Family. This improvement was obviously an afterthought and an attempt to lend credence to an otherwise baseless and concocted tale.

iv. The learned counsel also maintains that there is a stark and noticeable difference between the stance taken by Respondent No.1 and Respondent No.7 before this Court. While Respondent No.1 has constantly taken the position that the funds generated from the sale of Gulf Steel and Azizia Steel Mills at Jeddah were used for purchasing the London Properties and the investment in Qatar was neither mentioned in his various speeches nor in the concise statement filed before this Court, the stance taken by Respondent No.7 is that the said properties were received by way of a settlement with the Al Thani Family.

v. The learned ASC submits that this Court should believe the word of the Prime Minister of the country and ignore the statement of his children who at the relevant time were minors. In the said scenario, both letters issued by Hamad bin Jassim bin Jaber lose their significance and the story built on the same falls to the ground. In that case, it can safely be concluded that the real owner of the Mayfair Properties is Respondent No.1. Further, there is no explanation whatsoever available on the record showing the source of funds for acquiring the properties in London.

vi. He maintained that despite being asked neither learned counsel for Respondent No.1 nor for

Respondents No.6, 7 & 8 submitted any documents showing real owner of the Mayfair Properties, the source of funds or the money trail.

vii. He further submits that Respondent No.6 has denied the document as well as her signatures thereon through which LZ Nominee Limited was reappointed as Nominee Director with effect from 13.05.2004. He maintains that in the first place, the said document was not made or forged by the Petitioners. It appeared in the Daily Guardian and was obtained from the correspondent of the said Newspaper but more importantly the document in question was acted upon. In this context, he drew our attention to a document appearing on page 12 of CMA No.895 of 17 which is a photocopy of the record of the Nescol Limited showing names of Directors of the said Company from time to time. It shows that LZ Nominee Limited was reappointed as Nominee Director on 13.05.2004 and resigned on 26.01.2006. He maintained that 13.05.2004 is the exact date which was mentioned in the aforesaid resolution containing the signatures of Respondent No.6 (Maryam Safdar). This unmistakably establishes that Respondent No.6 was, at all relevant times, the beneficial owner of Nescol Limited and the Mayfair Properties held in its name.

viii. The learned counsel further maintained that a declaration is liable to be issued against Respondent No.1 to the effect that he is neither truthful nor honest in view of the fact that he failed to disclose the correct facts and source of funds for purchase of London Properties. He referred to his address to the nation as well as the speech made on the floor of the house in which there was no mention of the investment made in Qatar and the funds generated from the said alleged investment. He vehemently argued that the fact that Respondent No.1 had lied to the Nation, to the National Assembly and to the highest Court of the country had clearly and unambiguously been established.

25. Mr. Muhammad Taufiq Asif, learned ASC for the petitioner in Constitution Petition No.3 of 2017 in his rebuttal arguments submitted that Respondent No.1 had misstated / withheld the material facts in his speech on the floor of the house. Therefore, the privilege claimed under Article 66 of the Constitution was not available to him as the said Article is subject to the Constitution. He further maintained that Respondent No.1 had violated his oath by putting his personal interest over and above the national interest and had made an effort to secure the same by making false statements on the floor of the house as well as before this Court. He was

therefore not truthful and *ameen*. He further maintained that despite having categorically stated that all relevant records regarding acquisition of assets in London will be produced, Respondent No.1 has consistently failed to do so which has rendered him liable to be disqualified. He referred to Nasir Mehmood v. Imran Masood [PLD 2010 SC 1089 @ 1117] to submit that Respondent No.1 did not meet the criteria of being truthful and a*meen* as provided in Article 62(1)(f) of the Constitution.

26. Mr. Imran Ahmad Khan Niazi, petitioner in Constitution Petition No.29 of 2016 sought permission of the Court to make a few submissions, which was granted by us. He submitted that the Prime Minister amongst other capacities is the custodian of the treasury of the country. A person who is not truthful, dishonest or corrupt cannot be expected to enjoy the trust of the people. He maintained that this is one reason why people of Pakistan are unwilling to pay taxes as they do not trust the custodians of their tax money. He further submitted that a leader is a role model and leadership by its example uplifts the moral values of the society as has been seen in the history of Islam as well as the world. He expressed his full confidence in the Court and prayed that the petition may be accepted.

27. Senator Siraj ul Haq, petitioner in Constitution Petition No.3 of 2017 was also granted an opportunity to address the Court. He submitted that Respondent No.1 had failed to explain or justify the sources of funds which were used to acquire assets in London. He maintained that it is incumbent upon this Court to decide the matter in accordance with the law to uphold the Constitution and safeguard the interests of 200 Million citizens of the country.

28. We have heard the learned counsel of the parties at length and examined the record submitted by the parties before us at various stages of the hearings. To our mind, *inter alia,* the following questions need to be answered on the basis of submissions made by learned counsel for the parties, the assertions made in the petitions and the stance adopted by the Respondents in their respective concise statements. We have also considered additional documents filed by the parties through numerous Civil Miscellaneous Applications filed at various stages of hearing of these petitions:

i. *What was the source of funds for acquisition of the Mayfair Properties in London, UK?*

ii. *Whether Respondents No.7 & 8, owing to their tender ages had the financial resources in early nineties to possess, purchase or acquire the Mayfair Properties?*

iii. *Who is the real and beneficial owner of Nescol*

Limited and Nielsen Enterprises Limited?

iv. *Whether sufficient material has been placed on record to explain the source of funds used for acquisition of the Mayfair Properties?*

v. *Whether Respondent No.1 has any direct or indirect, legal or beneficial right, title or interest in the Mayfair Properties or any of the businesses of Respondents No.7 and /or 8.*

vi. *Whether enough documentary evidence comprising of account statements and banking documents etc has been produced before us to establish generation of funds through legitimate sources and movement of such funds through banking channels for acquisition of the Mayfair Properties and businesses of Respondents No.7 & 8. If the answer is in the negative, what is its effect?*

vii. *Whether the two letters dated 05.11.2016 and 22.12.2016 submitted on behalf of Respondent No.7 allegedly written by Sheikh Hamad can be taken into consideration for the purpose of substantiating the stance taken by Respondent No.7*

viii. *Whether the business transactions allegedly occurring in 1974, 1978 and 1980 in Dubai and the documentation produced on behalf of Respondent No.7 in this regard show legitimate business activity generating sufficient funds to have supported subsequent transactions claimed to have been undertaken in Qatar, Saudi Arabia and UK?*

ix. *Whether there is sufficient material to support the claim of Respondent No.7 that a sum of 12 million Dirhams was invested in the real estate business of the Thani family in Qatar which multiplied manifold between 1980 to 2000 and consequently led to availability of requisite funds for settlement of dues of Hudaibiya Paper Mills Limited (HPML), provision of funds to*

Respondents No.7 & 8 in Saudi Arabia and the UK respectively and transfer of Mayfair Properties in favor of Respondent No.7 by way of a final settlement of accounts?

x. *Whether Respondent No.1 failed to provide a satisfactory explanation regarding the ownership of the Mayfair Properties and whether he was able to satisfy this Court that he has no nexus or connection with the Mayfair Properties and other businesses of his children?*

xi. *Whether Respondent No.6 was/is the beneficial owner of the Mayfair Properties. What is the effect of the trust document allegedly executed between her and Respondent No.7. What is the legal effect of the letter written by Mossack Fonseca to Financial Investigation Agency of British Virgin Islands (BVI), confirming that the Respondent No.6 is the beneficial owner of the Mayfair Properties?*

xii. *Whether Respondent No.6 is/was at the relevant time a dependent of Respondent No.1 and if so, whether Respondent No.1 had rendered himself liable to disqualification by making a misstatement in his Nomination Papers for the general elections of 2013 and concealing the same from the tax authorities?*

xiii. *Whether Respondent No.1 had been guilty of tax evasion in consequence of which he was liable to be disqualified in terms of Article 62 (1) (o) of the Constitution of Islamic Republic of Pakistan, 1973?*

xiv. *Whether the affidavits submitted on behalf of Mr. Tariq Shafi can be relied upon and believed in order to establish generation and transmission of funds in the manner claimed by Respondents No.1 & 7?*

xv. *Whether sufficient material has been placed on*

record explaining the source of funds for establishing Azizia Steel Mills in Jeddah, Saudi Arabia and its sale in 2005?

xvi. *What were the sources of funds utilized by Respondent No.8 to set up Flagship Investments Limited and a number of other companies, set up/taken over by Respondent No.8?*

xvii. *Whether Respondent No.7 adequately explained the mode and manner and the financial resources utilized for setting up Hill Metal Establishment in Saudi Arabia.*

xviii. *Does Respondent No.1 have any direct, indirect, legal, beneficial or equitable right, title or interest in Hill Metals Establishment, considering that he has regularly received amounts ostensibly by way of gifts for amounts in excess of US $ 7,612,350 from Respondent No.7? In the year 2015-16 alone a sum of approximately US $ 2.3 Million were received from the account of Hill Metals Establishment.*

xix. *Whether regular and consistent receipt of huge amounts of money from/on account of Hill Metals Establishment shows a financial/ ownership interest and stake of Respondent No.1 in the said business.*

xx. *Whether there are contradictions and discrepancies in the speeches, press interviews and statements made by Respondent No.1 and other members of his family at different times before different fora explaining ownership of Mayfair Properties and the sources of funds for purchase of the Mayfair Properties and other businesses of Respondents No.7 & 8. Further, whether there are irreconcilable discrepancies in the stance taken by Respondent No.1 and the statements, interviews and plea taken by Respondent No.7 and other members of his family before this Court?*

xxi. *Whether there is enough evidence available before this Court furnishing basis for disqualification of Respondent No.1 or to issue a declaration under Article 62(1)(f) of the Constitution and disqualify them from being member of the Parliament?*

29. In order to answer the afore-noted amongst a host of other questions which have arisen during these proceedings (all of which need not necessarily be dealt with by us), we consider it appropriate to examine the respective pleas taken by Respondents Nos.1, 6 to 8, 9 & 10 in the respective concise statements filed by them and submissions made by their learned counsel before us. It may also be noted that during the course of proceedings in these matters which were spread over 26 full day hearings before this Bench, additional documents were filed at regular intervals presumably to substantiate what was being asserted and to answer various queries raised by the Court regarding matters considered relevant in order to understand and resolve the controversy before us.

30. These cases arose out of documents recovered from the database of Mossack Fonseca, a Panama based law firm engaged in the business of establishing, structuring and managing offshore companies on behalf of its clients from all

over the world, including Pakistan. On the basis of the said information which was available in the public domain it was alleged that assets and businesses were held in the names of offshore companies which were owned by Respondent No.1 i.e. Prime Minister of Pakistan and members of his family including Respondents No.6 to 8. At the heart of the controversy were four residential flats bearing No.16, 16-a, 17 & 17-a, Avenfield House 118, Parklane London, UK *(hereinafter referred to as the Mayfair Properties)*. The Mayfair Properties were held in the names of two offshore companies namely Nescol Limited and Nielsen Enterprises Limited registered in the British Virgin Islands (BVI). It was alleged that the real owner of the Mayfair Properties was Respondent No.1 though beneficial ownership of the same was shown to be that of Respondent No.6, who is the daughter of Respondent No.1. She was at all relevant times and continues to be his dependent. Since Respondent No.1 had failed to declare the assets of his dependent daughter in the nomination papers filed by him for his election to the National Assembly and his yearly Statements of Assets and Liabilities required to be filed under Section 42-A of RoPA and had consistently failed to disclose or declare the same in his Tax Returns/Wealth Tax Statements, there had been a conscious and deliberate concealment of facts which

must lead to a declaration that he was not "*honest*" and "*ameen*" within the contemplation of Article 62(1)(f) of the Constitution. Consequently, he was liable to be disqualified from being a member of the Parliament.

31. In addition to the above, allegations of money laundering, corruption and use of corrupt practices on the part of Respondent No.1 were levelled. Questions were raised regarding the businesses being run by Respondents No.7 & 8 in Saudi Arabia and the United Kingdom. The said Respondents are the sons of Respondent No.1. Serious questions were also raised regarding the sources of financing of such businesses. Allegations of tax evasion and filing of incorrect/inaccurate tax returns were also levelled.

32. Faced with the disclosures that the Mayfair Properties were owned by the children of Respondent No.1 and the allegations that he is the real owner of these properties, Respondent No.1 who is the Prime Minister of Pakistan, addressed the Nation on 05.04.2016 on national television. This address was also televised by private media networks. He took the stance that on being sent into exile in the year 2000, he and his family had set up a Steel Mill in Jeddah, Saudi Arabia with financing obtained from Saudi

Banks and loans given by friends and well-wishers. He stated that the business in question was sold in 2005 and the funds received from such sale were utilized by his sons for their various businesses. He also stated that his son Hassan Nawaz (Respondent No.8), had been residing in London since 1994 and his other son Hussain Nawaz (Respondent No.7) was residing and doing business in Saudi Arabia since 2000. Both were engaged in lawful businesses. He lamented that political opponents would criticize the legitimate businesses of his children whether these were conducted within Pakistan or abroad. He denied any impropriety or wrongdoing on the part of his family. It appears that the speech failed to have the desired effect. The opposition parties as well as the Print and Electronic Media continued to allege wrongdoing on the part of Respondent No.1 and his family. There were calls for his accountability. This appears to have prompted Respondent No.1 to deliver another speech. This time, he spoke in the National Assembly of Pakistan on 16.05.2016. The said speech was also televised by the National Television Corporation Network all over Pakistan as well as other private TV Channels. In the said speech, Respondent No.1 took the position that he had no personal connection with the offshore companies or Mayfair Properties mentioned in the Panama Papers. His name

did not feature in any of the leaked documents. Although, he had been advised not to get embroiled in the controversy, but since the name of his family was mentioned in the said Papers, he considered it necessary to clarify the position so that the truth would come out. He stated that he did not need to seek any legal or constitutional immunity. He categorically stated that he had nothing to hide, his past and present conduct was like an open book and he was not averse to any form of accountability or investigation through any mode and before any forum.

33. Referring to the source of funds for the Mayfair Properties he stated that pursuant to nationalization of the family businesses in 1972 his late father Mian Muhammad Sharif went to Dubai and set up a Steel Factory under the name and style of Gulf Steel for which a license was granted by the Government of UAE. A long term lease was also granted to set up the factory over a plot of land measuring 1 million square feet. Subsequently, this factory was sold in 1980 at an approximate price of 33.37 Million Dirhams equivalent to US$ 9 Million. In the same speech, he also stated that when he and his family were sent into exile in 2000 his father set up a Steel Mill in Jeddah for which the amount received from sale of the factory at Dubai was also helpful. The factory at Jeddah was

sold in June, 2005 for about 64 Million Riyals equivalent to US$ 17 Million. He stated that these were the sources and resources which were utilized for businesses of his children and purchase of the Mayfair Properties. He also stated that all records and documentation relating to Dubai and Jeddah factories were available and would be produced before any forum to clear the name of his family.

34. It appears that even the second speech failed to settle the storm of criticism caused by the sudden and unexpected disclosures coming in the public domain through Panama Leaks. Therefore, initially efforts were made by/and on behalf of Respondent No.1 to refer the matter to an Inquiry Commission. A letter was accordingly written by the Government of Pakistan through Secretary, Ministry of Law & Justice, to the Honorable Chief Justice of Pakistan requesting him to appoint a Commission of Inquiry. However, such request was declined for reasons mentioned in the letter issued by the Registrar of this Court in response to the said letter. The matter was also referred to a Parliamentary Committee with the consent of the ruling party which is headed by Respondent No.1 as well as most of the opposition parties, to agree on a *modus operandi* and possibly pass legislation for appointing a Commission of Inquiry to conduct an inquiry/investigation into

the matter. It is therefore clear that there was consensus across the board amongst all parties that there was a need for inquiry and investigation to ascertain the true facts. However, unfortunately no consensus could be reached amongst the Parliamentarians regarding the mode, manner, scope and Terms of References (ToRs) of such Commission of Inquiry. This led to the present petitions being filed before this Court on behalf of Mr. Imran Ahmed Khan Niazi, Chairman, Pakistan Tehreek-e-Insaf (PTI), Sheikh Rashid Ahmed, Head of Awami Muslim League Pakistan and Senator Siraj ul Haq, the Ameer of Jamaat-e-Islami. The petitioners are leaders of Political Parties which have representation in the National Assembly of Pakistan. They seek *inter alia,* disqualification of Respondents No.1, 9 & 10 as Members of the National Assembly; a direction that looted / laundered money along with properties purchased through offshore companies should be recovered; a direction to Chairman NAB to discharge his obligations under Section 18 read with Section 9 of the National Accountability Ordinance, 1999 (NAO) and an order directing Respondents No.2 & 3 to initiate claims on behalf of the Government of Pakistan for recovery of the properties subject matter of these petitions (Mayfair Properties, etc), and also a direction to Respondent No.5, Federal Board of Revenue to

probe and scrutinize tax returns and asset declarations of Respondent No.1 and his family.

35. During the course of hearings, transcripts of various television interviews given by Respondents No.6, 7 & 8 were also produced before us. These have not been denied. It appears that Respondent No.7 Hussain Nawaz in an interview with the anchor of a television channel stated that the Mayfair Properties had been purchased from profits on investments made by his late grandfather Mian Muhammad Sharif in Dubai in 1980. Yet in another interview, he stated that the said Properties had been purchased by him (Hussain Nawaz) in 2006 with funds received from sale of the Azizia Steel Mills at Jeddah. Surprisingly, the said Respondent has not made any attempt before us to clarify, explain or reconcile the aforesaid patently contradictory statements made in two different interviews. The series of contradictions did not end here. After the parties had filed their concise statements a totally new dimension was introduced in this saga when in a dramatic turn of events the learned counsel representing the children of Respondent No.1 suddenly produced a letter purportedly written by Sheikh Hamad bin Jassim bin Jaber Al Thani (Sheikh Hamad), statedly a member of the Royal Family of the Kingdom of Qatar. The antecedents, international reputation

and credibility of the said gentleman, as pointed out by Mr. Naeem Bukhari, learned ASC for the Petitioner, and not specifically contradicted by the learned counsel for the Respondents, are, it is stated with great respect, not very enviable. It appears that he is/has been the subject of investigations for doubtful money across borders and similar activities in many countries. The least said the better about the evidentiary value and admissibility of the letters issued by him for a number of legal and procedural reasons. These need not be gone into because the letters in question 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. However, suffice it to say at this stage that the Respondents relied upon these letters to take the position that funds generated through sale of Gulf Steel in 1980 (12 Million Dirhams against sale of 25% stake in Gulf Steel Mills in favour of Mr. Abdallah Kaid Al Ahli) were, on the instructions of late Mian Muhammad Sharif, father of Respondent No.1 and grandfather of Respondents No.6 to 8, handed over to the older brother of Sheikh Hamad namely Sheikh Fahad bin Jassim bin Jabir Al Thani (Sheikh Fahad). It is claimed that these funds were given for the purpose of investment of the same in the real estate business of the Thani

Family in Qatar. This investment was statedly made on the alleged basis of longstanding and close personal and business relations of late Mian Muhammad Sharif, father of Respondent No.1 and grandfather of Respondents No.6, 7 & 8 with the father of Sheikh Hamad and Sheikh Fahad and the Thani Family of Qatar.

36. Nevertheless, coming back to the sequence of events set out by Respondents No.7 & 8 in their pleadings and submissions of their learned counsel, in order to substantiate the transactions of sale of Gulf Steel in Dubai, photocopy of a Tripartite Agreement between Gulf Steel acting through Mian Muhammad Tariq Shafi who was allegedly acting on instructions and on behalf of Mian Muhammad Sharif, Mr. Abdallah Kaid Al Ahli and BCCI was placed on record. This agreement shows sale of 75% shares in Gulf Steel in favour of Al Ahli family in 1978. This document indicates that a sum of 21,375,000 Dirhams was paid by the Ahli Family as purchase price of 75% shares owned by Mian Muhammad Sharif in Gulf Steel. The agreement also shows that at the time of sale of 75% shares of Mian Muhammad Sharif, Gulf Steel owed about 27,664,589 Dirhams to BCCI alone. The total liability of Gulf Steel was about 36,023,899.31 Dirhams. According to the terms of the agreement, the entire sale price for the 75%

shareholding was received by BCCI towards part payment of amounts owed to it by Gulf Steel. There is no explanation available on record and none has been offered despite repeated queries by us as to whether the balance outstanding amounts which were admittedly owed by Gulf Steel or its shareholders/partners to BCCI and other creditors were paid and if so by whom and from what source(s). There has either been complete silence or evasive responses on the part of the Respondents claiming lack of information/documentation/record to answer this question or fill these material gaps in the information.

37. It has been claimed on the basis of photocopy of another document that two years later the remaining 25% shareholding in the business which was held by Mian Muhammad Sharif through Mr. Tariq Shafi was also sold for an aggregate amount of 12 Million Dirhams. This amount was allegedly received in installments over a period of six months. In this context, it may be noted that Mr. Tariq Shafi initially submitted an affidavit dated 12.11.2016 stating that being a member of the Sharif Family he was acting on behalf of late Mian Muhammad Sharif and had sold the 75% shareholding in Gulf Steel. He also submitted that he sold the balance 25% shareholding on the directions of his uncle and utilized the

proceeds as instructed by him. At that stage, we note that he did not disclose what those instructions (regarding utilization of proceeds) were. It has been asserted by the learned counsel for the Petitioners that Gulf Steel/Mian Muhammad Sharif owed amounts much in excess of 12 Million Dirhams when the 25% stake was sold. Therefore, the entire amount was utilized to pay off the outstanding liabilities. This assertion appeals to reason and logic considering the contents of the documents showing sale of Gulf Steel in favour of Mr. Abdallah Kaid Al Ahli and the figures showing liabilities of Gulf Steel/Mian Muhammad Sharif.

38. In an apparent effort to fill the gaps and provide answers to various questions raised and reservations expressed by us an improved version of the previous affidavit was submitted by Mr. Tariq Shafi. This affidavit was executed on 20.01.2017. This time it was stated that the sum of 12 Million Dirhams was received in six different installments, spread over a period of about six months. Such installments were received from Mr. Abdallah Kaid Al Ahli in cash and were delivered in cash for investment in the real estate business of Thani Family to Sheikh Fahad who was the older brother of Sheikh Hamad who has allegedly passed away. He received the amounts on behalf of the Thani Family in Dubai during his frequent visits. This

investment was allegedly made on the basis of some understanding between their father Sheikh Jassim bin Jaber, who has also allegedly passed away and late Mian Muhammad Sharif who has also passed away. It is stated that both had close family ties and business relations. It is important to note that Mr. Tariq Shafi did not appear before this Court and other than letters allegedly issued by Sheikh Hamad and Affidavits of Mr. Tariq Shafi, the evidentiary value of which is highly questionable to say the least, there is not an iota of evidence or other credible material on record to substantiate the above story regarding investment of 12 Million Dirhams in Qatar.

39. We have found it strange that while all other transactions including setting up of Gulf Steel, obtaining financing for it, repayment of dues of BCCI, furnishing of guarantees stipulated in the Tripartite Agreement, etc. were undertaken by involvement of Banks / Financial Institutions, the entire alleged transaction related to investment of 12 Million Dirhams in Qatar is claimed to have been undertaken through cash transactions without documentation of any nature being executed by the parties evidencing such transaction(s). There is not a shred of evidence showing the terms and conditions on the basis of which this sum of 12 Million Dirhams was

invested in the real estate business of the Thani Family. Late Mian Muhammad Sharif was a seasoned businessman of long standing. We find it hard to believe that he instructed Mr. Tariq Shafi to handover 12 Million Dirhams in cash to Sheikh Fahad for investment in his father's business without any documentation whatsoever. The learned counsel for the Respondents have also failed to explain to us the terms and conditions on the basis of which the alleged business arrangement between Mian Muhammad Sharif and the Thani Family took place. No evidence or material of any nature whatsoever has been produced to show that any relationship being claimed by the Respondents actually existed, what part the late Mian Muhammad Sharif played in this business relationship, whether or not any accounts were maintained and if at all there was any interaction in person or otherwise between late Mian Muhammad Sharif and the Thani Family. The entire story has been woven around two letters and two affidavits, the contents of which we have found to be dubious and hard to believe.

40. Notwithstanding what has been stated above, the story was stretched further by stating that for the next about 20 years the funds were left alone, apparently forgotten or intentionally kept untouched and unaccounted for by late

Mian Muhammad Sharif. During this time, apparently the funds continued to multiply expotentially at a very healthy rate. However, between 2001 to 2004 various sums aggregating US $ 4,207,925 which allegedly constituted a part of the return on the initial investment of 12 Million Dirhams were allegedly transmitted to the account of Respondent No.8 to help him set up his business in the UK. Another sum of US $ 8 Million is claimed to have been paid to Al Tawfeeq Investment Company to satisfy a decree issued by the London High Court against Hudaibiya Paper Mills Limited (HPML) and some of its Directors. Other sums aggregating US $ 5,410,000 were claimed to have been given to Respondent No.7 for setting up his business (Azizia Steel Mills) in Jeddah, Saudi Arabia. Surprisingly, there is no documentation, record of banking transactions or any verifiable money trail to show that the said funds which ended up in UK and Saudi Arabia at various times, originated from Qatar and were part of the amounts allegedly owed by the Thani Family to late Mian Muhammad Sharif on his initial investment of 12 Million Dirhams. The record does however indicate that Respondent No.8 who till the year 1999 was a student and was (according to his own admission which has not been disowned or denied) not earning anything, at all, was suddenly able to set up Flagship Investments Company

and had more than Half a Million UK Pounds available to him to start a real estate business and later, register/take over and operate a number of other companies for the purpose of running and expanding his business. The funds used by these businesses and the sources of the same, although not the subject matter of the present proceedings, also raise question marks, owing to the fact that these were being received from unknown and unverifiable sources, which have not been explained to us and were used by the sons of the holder of an elected office who also happened to hold the office of the Prime Minister of Pakistan on three different occasions. No effort has been made to provide even the basic answers to such questions, considering that accusing fingers are being pointed towards Respondent No.1, who is the sitting Prime Minister of Pakistan and has held high public offices since 1985.

41. It has further been claimed on behalf of Respondents No.7 & 8 (without proof) that late Mian Muhammad Sharif had instructed the Thani Family that the beneficiary of the proceeds of his investment will be his oldest grandson namely Hussain Nawaz (Respondent No.7). Late Mian Muhammad Sharif breathed his last in October, 2004 where-after it was claimed that in 2006, the Thani Family settled the accounts of investment made by him. In terms of

the said settlement, it was claimed on behalf of Respondent No.7 that in addition to other amounts paid earlier and as part of the settlement, in lieu of balance payable amount of US $ 8,039,753, bearer certificates of the two offshore companies namely Nescol Limited and Nielsen Enterprises Limited which owned the Mayfair Properties were handed over by a representative of the Thani Family to a representative of Respondent No.7 in Qatar as the bearer certificates in question were being held in Qatar.

42. It is important at this stage to point out that the Respondents have all along admitted that they were in physical possession and using Mayfair Properties since 1993/1996 when the same appear to have been acquired by two offshore/BVI registered companies namely Nescol Limited and Nielsen Enterprises Limited. However, it has been claimed that the Thani Family owned the said offshore companies and the Mayfair Properties. On account of their family relations with the late Mian Muhammad Sharif, the Thani Family had allowed Respondents No.7 and 8 to occupy and use the said properties while they were studying in London. 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. Further, once Respondent No.7

(Hussain Nawaz) admittedly left UK to come home and later started businesses in Saudi Arabia, why Respondent No.8 (Hasan Nawaz) continued to hold on to four flats for at least the next six years till 2006 when the same were allegedly given to Respondent No.7 as part of a settlement.

43. The above claim appears to be in contradiction to an interview of Respondent No.8 with Tim Sebastian of BBC London (neither the interview nor its contents have been denied by Respondent No.8). Respondent No.8 was specifically asked by Mr. Sebastian if the Flats he was living in had been acquired by his father through various offshore companies. He responded by saying that he was living on rental basis and rent for the same came from Pakistan, every quarter, from the family business in Pakistan. He also stated that he was a student at that time and was not earning. It is therefore clear that at least three different versions about ownership of the Mayfair Properties, and purchase of the same are available on the record not to speak of yet another version in which the first lady allegedly stated in an interview that the properties in question were purchased in the year 2000 for use of their children who were studying in London.

44. In order to substantiate the claim of a settlement

with Thani Family, a photocopy of an unauthenticated handwritten note has been produced. It has some random figures/calculations on it. Nobody has even tried to explain to us, who made these calculations and on what basis. Further, a print out of a computerized spread sheet which too is unsigned and unauthenticated has also been produced. Besides other calculations, it gives details of the aforesaid amounts paid to Respondents No.7 & 8 as well as Al-Tawfeeq Investment Company, which for ease of understanding are given in the following table:-

i. 8 million – Year 2000 – Al Tawfeeq
ii. 1st payment to Respondent No.7 (Azizia Steel) – US$ 650,000 – Year 2001
iii. 2nd payment to Respondent No.7 (Azizia Steel) – US$ 3,160,000 – Year 2002
iv. 3rd payment to Respondent No.7 (Azizia Steel) – US$ 1,600,000 – Year 2003
v. Final payment to Respondent No.7 (Mayfair Properties) – US$ 8,039,753 – Year 2006

- Total = US$ 13,449,753 (including Mayfair Properties)

vi. 1st payment to Respondent No.8 – US $ 1,038,569 – Year 2001
vii. 2nd payment to Respondent No.8 – US $ 461,333 – Year 2002
viii. 3rd payment to Respondent No.8 – US $ 1,771,257 – Year 2003
ix. 4th payment to Respondent No.8 – US $ 936,766 – Year 2004

- Total = US $ 4,207,925

The spread sheet shows that interest was paid on the so called initial investment of 12 Million Dirhams calculated at the London Interbank Offered Rate (LIBOR) from 1980 onwards till the alleged final settlement. This document is an obvious but amateurish exercise in reverse accounting in order to show accrual of money and then its alleged

payment/distribution under various heads of account, to create a semblance of availability and utilization of legitimate funds. No effort has been made to explain why, if at all funds were invested in Qatar in Dirhams (of which there is no evidence), for the purpose of investment in the real estate business of the Thani Family (of which there is not an iota of evidence either) the returns mysteriously accruing and multiplying over the next twenty years were calculated in US Dollars. Further, the alleged investment was admittedly not made by placement of the same in a Bank or financial institution or some investment company. Why, how and on the basis of what understanding or arrangement could returns on the alleged investment be linked to and calculated on the basis of LIBOR? In our opinion, the document is bogus, has no legal or evidentiary value and we have no hesitation in out rightly rejecting it.

45. It may be pointed out that in the year 2000, the London High Court had issued an *ex parte* decree against HPML, Mian Muhammad Sharif, Mian Muhammad Shahbaz Sharif and Mian Muhammad Abbas Sharif in a recovery suit filed by Al Tawfeeq Investment Company. On an application accompanied by an affidavit for execution of the decree, the London High Court passed a conditional attachment order

creating a charge on the Mayfair Properties. The petitioners have heavily relied upon the attachment order of the London High Court to allege that the properties were owned by the Sharif Family in the year 2000, which led to attachment of the same in execution of the decree passed against HPML and the aforesaid members of the Sharif Family who were presumably arrayed as defendants in their capacity as directors of the Company and guarantors of the loan. It, however, appears that the attachment was based on an affidavit filed by Mr. Shezi Nackvi, an officer of Al Tawfeeq Investment Company, stating that the said members of the Sharif Family had proprietary rights/interest in the said properties. The Respondents have, during the course of proceedings before this Court procured and produced an affidavit of Mr. Nackvi stating that he had submitted the affidavit before the London High Court in the year 2000 on the basis of information available in a Report prepared by Mr. Abdul Rehman Malik, who was then working in the Federal Investigation Agency (FIA) stating that the Sharif Family owned these properties. Mr. Nackvi has further stated in his affidavit that other than the afore-noted information he had no independent information or knowledge about the identity of the persons who owned the Mayfair Properties. We have

various reservations about the contents, reliability and admissibility of the affidavit. However, nothing turns either on the affidavit or the decree, because in neither, Respondents No.1, 6, 7 or 8 find any mention. The affidavit of Mr. Nackvi does however raise a number of questions and issues relating to the family businesses of Respondent No.1, including HPML etc for which no answers have been found nor has any attempt been made to furnish any answers backed by evidence and documentation. It has however, been claimed that the attachment order/charge was removed by the Court on being informed by the decree holder that the Judgment Debtors (members of the Sharif Family) had satisfied the decree which was apparently for a sum of approximately US $ 16 Million, by payment of a claimed settlement amount of US $ 8 Million. No proof or documentation has been produced to show the terms of settlement (if any). Additionally, it has been claimed that this settlement amount of US $ 8 Million was also paid by the Thani Family to Al Tawfeeq Investment Company.

46. No documentation, paper trail, money transactions, remittances records etc or any other record / material has been placed before us to back this claim. We, therefore, have no reason to believe that this amount was indeed paid by the Thani Family. The question as to who

satisfied the decree of the London High Court against HPML and its Directors has remained unanswered. It has further been claimed that out of the settlement amount, a few Million Dollars were also given to Respondent No.7 for the purposes of his businesses in Saudi Arabia. No proof, paper trail or bank records of the same have been furnished either and the learned counsel appearing on behalf of Respondent No.7 has conveniently stated that no record, documentation or evidence is available on account of the fact that most of the persons directly involved in these transactions have passed away, the records have not been retained by the Banks/Financial Institutions and whatever records were available with the Sharif Family were taken over by the NAB, FIA and other authorities when the Government of Respondent No.1 was over thrown in 1999. We are neither convinced nor satisfied by the said explanation.

47. With regard to the Mayfair Properties, it has been claimed on behalf of Respondent No.7 that on receipt of bearer certificates of Nescol Limited and Nielsen Enterprises Limited, he became the beneficial owner of the two companies as well as the properties owned by the said companies in 2006. However, in view of the fact that he has two families and various children, in order to safeguard the

rights of both families, he appointed his sister (Respondent No.6) as a Trustee to hold the shares in trust for him. In this regard, a so called Trust Deed has also been produced which appears to have been signed on 2nd of February, 2006 in Saudi Arabia by Respondent No.6 and in London, UK on 04.02.2006 by Respondent No.7. Admittedly, this is a private document, was never registered or authenticated by any competent authority and strangely enough was never placed in any official record or disclosed to any authority that had anything to do with the two offshore companies or the Mayfair Properties held by the said companies. Apparently, it saw the light of the day for the first time in these proceedings before us. It has not been established as to who is the real owner of the Mayfair Properties. However, the facts and circumstances narrated herein raise a suspicion that Respondent No.1 may be the real owner of these properties. Such ownership may be direct, indirect, beneficial or equitable. This requires probe and investigation.

48. It is also important to highlight that in response to letters written by the Financial Investigation Agency of British Virgin Islands (FIA-BVI), Mossack Fonseca after having collected information from Nescol Limited and Nielsen Enterprises Limited confirmed to it that Mrs. Maryam Safdar,

Respondent No.6 whose address was mentioned in the records of the two companies as Saroor Palace, Jeddah, Saudi Arabia was the beneficial owner of the two offshore companies which owned the Mayfair Properties. It is pertinent to note that Respondent No.6 was at that time living in exile in Saudi Arabia along with her father (Respondent No.1) and other members of the Sharif Family. We have asked the learned counsel for Respondents No.6 to 8 why this information which according to them is incorrect and erroneous was provided by Mossack Fonseca to FIA-BVI. We have also pointed out to the learned counsel representing the Respondents that this letter directly contradicts the stance of Respondent No.7 who claims beneficial ownership but has failed to produce any document in this regard. However, other than feigning complete ignorance we have not received any satisfactory or even remotely convincing response. It is also noticeable that by and large the Respondents have not denied the information and data coming to light through what is commonly known as Panama Leaks. The only document specifically denied is a Resolution purportedly signed by Respondent No.6. She has denied her signatures on the Resolution dated 07.02.2006 through which she had ostensibly reappointed LZ Nominee Limited as

Nominee Director of Nescol Limited, retrospectively, with effect from 13.05.2004. However, from the sketchy record made available to us, we find that the said resolution was duly acted upon by Nescol Limited. The record of Nescol Limited (placed before us through CMA No.859 of 2017) shows that LZ Nominees were reappointed as Nominee Director on 15.5.2004 and resigned as such on 26.01.2006. We cannot help but notice that the date of appointment i.e. 13.05.2004 is exactly the same as it appears in the Board Resolution said to be signed by Mrs. Maryam Safdar and denied by her. Further, we have found no reason either for the petitioner or for any other party to forge a document of this nature. Even otherwise, the resolution was published by a German Newspaper which appears to have dug it out from the cache of documents that constituted part of the Panama Leaks.

49. It appears that in the background of events of 9/11 and the consequent international efforts to curb money laundering, holding assets through offshore companies by masking identity of real owners and tracing illegal money etc, the law relating to offshore companies in BVI namely International Business Companies Act, 1984 was reenacted in 2006. The earlier law provided for issuance of bearer certificates without disclosing the name of the holder which

could be issued under Section 28 of the Act without requiring any registration and could be transferred by delivery under Section 31 thereof. In other words a person could hold a share in an offshore company which owned immovable property in UK without disclosing his identity. The reenacted law however provided for registration of the bearer certificates with disclosure of identity of holder of the bearer certificates. The deadline in the reenacted law for registration of such bearer certificates was 31.12.2009.

50. Respondent No.7 claims that pursuant to the aforesaid requirements, the bearer certificates of Nescol Limited and Nielsen Enterprises were surrendered with the said companies and bearer certificates were issued/registered in the names of two management companies namely Minerva Holdings and Minerva Services. This arrangement continued till 2014 when the shares issued in favour of Minerva Holding and Minerva Services were cancelled and fresh shares were issued in favour of Trustee Services Corporation. Thereafter, it appears that Arrina Limited was appointed to provide management services for the Mayfair Properties and liaise with service providers of Nescol Limited and Nielsen Enterprises Limited. Respondent No.7 has attempted to show that he was in effective control of and instructing the management

companies as well as service companies. He has thus tried to establish that the beneficial owner of the Mayfair Properties is and always was Respondent No.7 and that Respondent No.6 had no direct or indirect right, title or interest of any nature in the Mayfair Properties other than in her capacity as a Trustee (authorized signatory, etc) for and on behalf of Respondent No.7. However, not a single document showing real ownership of Nescol Limited, Nelson Enterprises Limited, Minerva Holdings, Minerva Services, Trustee Services Corporation, etc or control of Respondent No.7 over the said entities has been produced. The real ownership and control of the companies/properties and more importantly the sources of funds used to acquire these properties remains shrouded in mystery. Another material factor that has to be kept in mind is that admittedly the Mayfair Properties were in possession/occupation of the family of Respondent No.1 since 1993/1996 when these are alleged (without proof) to have been acquired by the Thani Family through Nescol Limited and Nielson Enterprises Limited. At that time neither Respondent No.7 nor Respondent No.8 had any sources to purchase/acquire these assets. Respondent No.1 was at the relevant time (1993/1996) and still is holder of a public office. His children have since then been in possession of the Mayfair Properties, when they were admittedly

dependents of Respondent No.1 and had no sources of income. The value of the Mayfair Properties was ostensibly disproportionate to the declared and known sources of income of Respondent No.1 (if his income tax returns are kept in mind). In his concise statement as well as his two speeches, Respondent No.1 has totally denied his connection with these assets. This *prima facie* amounts to failure to account for these assets. The matter clearly attracts the provisions of Section 9(a)(v) read with Section 14(c) of NAO authorizing NAB to proceed against Respondent No.1 and any other person connected with him in this regard. We cannot help but conclude that this matter has intentionally and deliberately been kept vague, undocumented and unexplained to hide and conceal the real facts, which if disclosed would be damaging for the case of Respondents No.1, 6, 7 & 8.

51. Having examined the transactions leading to acquisition of the Mayfair Properties and having made earnest, and at times, highly frustrating and fruitless efforts to find a verifiable trail of transactions showing legitimate funds being transmitted through legitimate sources and verifiable banking channels for acquisition of the Mayfair Properties, we have been left in a lurch. This was despite tall and unequivocal claims on the part of Respondents No.1, 6, 7, other members of

the Sharif Family and their political spokespersons who took to every available television channel and availed every possible opportunity to assert and claim that all relevant documents/evidence showing legitimate sources, money trails and banking transactions were available, in possession of the Respondents and will be produced before the legal *fora*. Regrettably, there has been complete utter and total failure to do so. It was repeatedly promised that all record will be produced before the concerned fora in order to show that there was no wrongdoing and the acquisition of the properties was through legitimate sources which were transparent and above board. On the contrary, we note with regret and disappointment that every possible effort was made and every conceivable device was adopted to withhold and conceal information and documents which were necessary to answer the numerous questions which have been raised regarding probity, transparency and legitimacy of the transactions in question by the highest Court of the country. We have valid reasons and lawful justification to believe and hold that most of the material questions have either not been answered or where any answers have been attempted, the same have been found by us to be most unsatisfactory, farfetched and unbelievable. It has candidly been admitted

by the learned counsel for Respondents No.7 & 8 that there are holes and gaps in the stance adopted by the Respondents which have neither been filled nor explained by supplying acceptable explanations, evidence and documentation. There is a host of material, crucial and critical questions which have remained unaddressed, unresolved and unanswered. It has been argued that the explanation offered by Respondents No.7 & 8 meets the threshold of "realm of possibilities", and this is what the Respondents were required to do. We are unfortunately unable to agree with the said argument in the facts and circumstances of the present case. We may observe that the contradictory, discrepant and divergent explanations offered to us by the Respondents, including Respondent No.1 have been found by us to be absurd, fanciful and ludicrous. Owing to the missing pieces and gaps we have found it impossible to make any reasonable sense out of a convoluted, contradictory and deliberately jumbled up set of facts to come to a conclusion on a number of matters including the fact that the Mayfair Properties were purchased/acquired with legitimate funds and verifiable sources.

52. The most material question that arises from the above discussion is whether the findings recorded above are

enough for us to declare that Respondent No.1 is not truthful and *ameen* and then proceed to disqualify him from being a member of the National Assembly. In order to answer these questions, it would have to be seen if there is any provision of the Constitution which may require a Parliamentarian to disclose assets of his adult and independent children and the sources of funds with which such assets were acquired and in the event of such non-disclosure or inability to explain the sources, empowers this Court to disqualify such Parliamentarian, in exercise of powers under Article 184(3) of the Constitution. Articles 62 & 63 of the Constitution deal with the issue of qualification and disqualification of the Parliamentarians. Interpretation of the said constitutional provisions, being pivotal to the question in issue, the said Articles are reproduced below, for ease of reference:-

> *"62(1). A person shall not be qualified to be elected or chosen as a member of Majlis-e-Shoora (Parliament) unless—*
>
> *(a) he is a citizen of Pakistan;*
>
> *(b) he is, in the case of the National Assembly, not less than twenty-five years of age and is enrolled as a voter in any electoral roll in—*
>
> *(i) any part of Pakistan, for election to a general seat or a seat reserved for non-Muslim; and*
>
> *(ii) any area in a Province from which she seeks membership for election to a seat reserved for women.*

(c) he is, in the case of Senate, not less than thirty years of age and is enrolled as a voter in any area in a Province or, as the case may be, the Federal Capital or the Federally Administered Tribal Areas, from where he seeks membership;

(d) he is of good character and is not commonly known as one who violates Islamic Injunctions;

(e) he has adequate knowledge of Islamic teachings and practices obligatory duties prescribed by Islam as well as abstains from major sins;

(f) he is sagacious, righteous, non-profligate, honest and ameen, there being no declaration to the contrary by a court of law; and

(g) he has not, after the establishment of Pakistan, worked against the integrity of the country or opposed the ideology of Pakistan.

(2) The disqualifications specified in paragraphs (d) and (e) shall not apply to a person who is a non-Muslim, but such a person shall have good moral reputation.

63 (1). A person shall be disqualified from being elected or chosen as, and from being, a member of the Majlis-e-Shoora (Parliament), if—

(a) he is of unsound mind and has been so declared by a competent court; or

(b) he is an undischarged insolvent; or

(c) he ceases to be a citizen of Pakistan, or acquires the citizenship of a foreign State; or

(d) he holds an office of profit in the service of Pakistan other than an office declared by law not to disqualify its holder; or

(e) he is in the service of any statutory body or any body which is owned or controlled by the Government or in which the Government has a controlling share or interest; or

(f) being a citizen of Pakistan by virtue of section 14B of the Pakistan Citizenship Act, 1951 (II of 1951), he is for the time being disqualified under any law in force in Azad Jammu and Kashmir

from being elected as a member of the Legislative Assembly of Azad Jammu and Kashmir; or

(g) he has been convicted by a court of competent jurisdiction for propagating any opinion, or acting in any manner, prejudicial to the ideology of Pakistan, or the sovereignty, integrity or security of Pakistan, or the integrity, or independence of the judiciary of Pakistan, or which defames or brings into ridicule the judiciary or the Armed Forces of Pakistan, unless a period of five years has elapsed since his release; or

(h) he has been, on conviction for any offence involving moral turpitude, sentenced to imprisonment for a term of not less than two years, unless a period of five years has elapsed since his release; or

(i) he has been dismissed from the service of Pakistan or service of a corporation or office set up or, controlled by the Federal Government, Provincial Government or a Local Government on the grounds of misconduct, unless a period of five years has elapsed since his dismissal; or

(j) he has been removed or compulsorily retired from the service of Pakistan or service of a corporation or office set up or controlled by the Federal Government, Provincial Government or a Local Government on the grounds of misconduct, unless a period of three years has elapsed since his removal or compulsory retirement; or

(k) he has been in the service of Pakistan or of any statutory body or any body which is owned or controlled by the Government or in which the Government has a controlling share or interest, unless a period of two years has elapsed since he ceased to be in such service; or

(l) he, whether by himself or by any person or body of persons in trust for him or for his benefit or on his account or as a member of a Hindu undivided family, has any share or interest in a contract, not being a contract between a cooperative society and Government, for the supply of goods to, or for the execution of any contract or for the performance of any service

undertaken by, Government:

Provided that the disqualification under this paragraph shall not apply to a person—

(i) where the share or interest in the contract devolves on him by inheritance or succession or as a legatee, executor or administrator, until the expiration of six months after it has so devolved on him;

(ii) Where the contract has been entered into by or on behalf of a public company as defined in the Companies Ordinance, 1984 (XLVII of 1984), of which he is a shareholder but is not a director holding an office of profit under the company; or

(iii) Where he is a member of a Hindu undivided family and the contract has been entered into by any other member of that family in the course of carrying on a separate business in which he has no share or interest; or

Explanation.—In this Article "goods" does not include agricultural produce or commodity grown or produced by him or such goods as he is, under any directive of Government or any law for the time being in force, under a duty or obligation to supply; or

(m) he holds any office of profit in the service of Pakistan other than the following offices, namely:-

(i) an office which is not whole time office remunerated either by salary or by fee;

(ii) the office of Lumbardar, whether called by this or any other title;

(iii) the Qaumi Razakars,

(iv) any office the holder whereof, by virtue of such office, is liable to be called up for military training or military service under any law providing for the constitution or raising of a Force; or

(n) he has obtained a loan for an amount of two million rupees or more, from any bank, financial institution, cooperative society or cooperative body in his own name or in the name of his spouse or any of his dependents, which remains unpaid for more than one year from the due date, or has got such loan written off; or

(o) he or his spouse or any of his dependents has defaulted in payment of government dues and utility expenses, including telephone, electricity, gas and water charges in excess of ten thousand rupees, for over six months, at the time of filing his nomination papers; or

(p) he is for the time being disqualified from being elected or chosen as a member of the Majlis-e-Shoora (Parliament) or of a Provincial Assembly under any law for the time being in force.

Explanation.—For the purposes of this paragraph "law" shall not include an Ordinance promulgated under Article 89 or Article 128.

(2) If any question arises whether a member of the Majlis-e-Shoora (Parliament) has become disqualified from being a member, the Speaker or, as the case may be, the Chairman shall, unless he decides that no such question has arisen, refer the question to the Election Commission within thirty days and if he fails to do so within the aforesaid period it shall be deemed to have been referred to the Election Commission.

(3) The Election Commission shall decide the question within ninety days from its receipt or deemed to have been received and if it is of the opinion that the member has become disqualified, he shall cease to be a member and his seat shall become vacant."

53. Perusal of the afore-noted constitutional provisions would reveal that the said Articles of the Constitution do not impose an obligation on a Parliamentarian to disclose his own assets or those of his spouse, dependent or independent children. Likewise, there is no corresponding provision in the

Constitution providing a penal consequence for non-disclosure of such assets or failure to explain the source(s) of funds with which such assets may have been acquired. In the absence of any constitutional requirement, the same cannot be read into the language of Articles 62 or 63 of the Constitution. For the said purpose, one has to look towards other laws which create such obligations, violation whereof attracts the provisions of Articles 62 and /or 63 of the Constitution.

54. One such law relating to the conduct of elections to the National and the Provincial Assemblies is the Representation of People Act, 1976 (RoPA). It provides for the conduct of elections and to guard against corrupt and illegal practices and other offences at or in connection with such elections. Article 218 of the Constitution provides for establishment of an Election Commission to organize and conduct elections and to make such arrangements as may be necessary to ensure that the election is conducted honestly, justly, fairly and in accordance with law and that corrupt practices are guarded against.

55. Section 12 of RoPA deals inter alia with nomination papers, sub-section (f) thereof requires a candidate to file with his nomination papers, on solemn affirmation, a statement of

his assets and liabilities and those of his spouse and dependents on the prescribed form as on the preceding thirtieth day of June. Section 107 of the RoPA empowers the Election Commission of Pakistan to make Rules for carrying out the purposes of the Act. In exercise of such powers, the Representation of People (Conduct of Election) Rules, 1977 (the Rules) have been promulgated. In terms of Rule 3 thereof, Nomination Forms have been prescribed. The standard Nomination Form, in addition to other particulars of the candidate, requires him to make and sign a number of declarations. The declaration relating to assets and liabilities reads as under:-

"STATEMENT OF ASSETS AND LIABILITIES

I, …….. A candidate for election to general seat from constituency No…… hereby declare on solemn affirmation that no immovable and movable property, including bonds, shares, certificates, securities, insurance policies and jewellery, other than specified herein below, is held by me, my spouse(s) and dependents on the 30th day of June, ……..

ASSETS

	Cost of Assets	*Present value of property*	*Remarks*
1. IMMOVABLE PROPERTY *Open plots, houses, apartments, commercial buildings, under construction properties, agricultural property, etc.* *(a) Held within Pakistan* *(i)* _____ *(ii)* _____ *(iii)* _____ *(b) Held outside Pakistan* *(i)* _____ *(ii)* _____ *2. MOVABLE ASSETS* *(a) Business capital within Pakistan* *(i) Name of business* *(ii) Capital amount* *(b) Business capital outside Pakistan* *(i) Name of business* *(ii) Capital amount* *(c) Assets brought or remitted form outside Pakistan** *(i) Bank drafts/Remittances* *(ii) Machinery* *(iii) Other* *(d) Assets created out of*			

remittances from abroad*			
(e) Investments			
(i) Stock and Shares			
(ii) Debentures			
(iii) National Investment (Unit) Trust			
(iv) ICP Certificates			
(v) National Savings Schemes			
- Defence Savings Certificate			
- Special Savings Certificate			
- Regular Income Certificate			
(vi) Unsecured loans			
(vii) Mortgages			
(viii) Any other			
(f) Motor Vehicles **			
Make Model Reg. No.			
(i) ___ ___ ___			
(ii) ___ ___ ___			
(g) Jewellery, etc			
Weight _____			
Description_____			
(h) Cash and Bank Accounts*			
(i) Cash in hand			
(ii) Cash at Bank			
Account No. Bank & Branch			
Current __ _____			
Deposit __ _____			
Savings __ _____			
Other Deposits __ _____			
(i) Furniture, Fittings & articles of personal use –			
(j) Assets transferred to any person---			
(i) Without adequate consideration, or			
(ii) By revocable transfer			
(k) Any other assets			

LIABILITIES

		Amount	Remarks
(i)	Mortgages Secured On Property Or Land		
(ii)	Unsecured Loans Owing		
(iii)	Bank Overdraft		
(iv)	Bank Loans		
(v)	Amounts Due Under Hire Purchase Agreement		
(vi)	House Building Loans		
(vii)	Advances from Provident Funds etc		
(viii)	Other debts due		
(ix)	Liabilities in the names of minor children (in respect of assets standing in their names)		
Total			

VERIFICATION

I,…… S/o, W/o, D/o …….. Do hereby solemnly declare that, to the best of my knowledge and belief, the above statement of assets and liabilities of myself, my spouse(s), dependents as on 30th June, …….. is correct and complete and nothing has been concealed therefrom.

Dated…….. *Signature of Candidate"*

56. The said declaration is also required to be verified under Oath. Section 42-A of the RoPA also requires every member to submit a statement of assets and liabilities of his own, his spouse and dependents annually to the Commission by the thirteenth day of September each year. Rule 28-A of

the Rules requires such statement to be submitted in Form XXI, the format whereof is provided therein. In terms of Section 42-A(4) of the RoPA if a member submits the statement of assets and liabilities which is found to be false in material particulars, he may be proceeded against under Section 82 of the RoPA for committing an offence of corrupt practice. If found guilty by a Sessions Judge under Section 94 of the RoPA, such member is punishable with imprisonment for a term which may extend to three years or with fine which may extend to Five Thousand Rupees or with both. In case, it is established in a Court or Tribunal of competent jurisdiction that a candidate has concealed any of the assets required to be disclosed under the statement of assets and liabilities in his Nomination Papers or his Annual Statement of Assets and Liabilities, the same may constitute basis for his disqualification *inter alia* under the provisions of Articles 62 and/or 63 of the Constitution.

57. However, it needs to be emphasized that where such declaration is properly made there is neither any requirement nor power vesting in the hierarchy provided under the Election Laws to require the candidate to explain the source of funds used to acquire such assets. Does this mean that a candidate or holder of a public office, who acquires

assets through unlawful means goes scot-free as long as he declares the same in his Nomination Papers? The answer is obviously in the negative. However, the mechanism provided by the law in order to make such a person answerable and accountable for disclosure of sources for acquisition of assets is incorporated in the NAO under which a person, holding assets directly or indirectly, which are disproportionate to his known sources of income can be called upon to explain and disclose the sources with which such assets were acquired and on his failure to do so to the satisfaction of the Court, he can be visited with penal consequences provided in the said law. A conviction under NAO or any other law for the time being in force can also trigger the disqualification mechanism provided in the Constitution. Section 9(a)(v) read with Section 14(c) and Section 15 of the NAO provide as follows:-

> *"9(a)(v). if he or any of his dependents or benamidars owns, possesses, or has* http://www.nab.gov.pk/Downloads/nao.asp - 12-4*[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, which he cannot [reasonably] account for; [or maintains a standard of living beyond that which is commensurate with his sources of income]*
>
> *14(c) In any trial of an offence punishable under clause (iv) of sub-section (a) of section 9 of this Ordinance, the fact that the accused person or any other person on his behalf, is in possession, for which the accused person cannot satisfactorily account, of [assets] or pecuniary resources disproportionate to his known sources of income, or that such person has, at or about the time of the commission of the offence with which he is charged, obtained an accretion to his*

pecuniary resources or property for which he cannot satisfactorily account, the Court shall presume, unless the contrary is proved, that the accused person is guilty of the offence of corruption and corrupt practices and his conviction therefore shall not be invalid by reason only that it is based solely on such a presumption.

15. Disqualification to contest elections [or to hold to public office]. (a) Where an accused person is convicted [of an offence under section 9 of this Ordinance], he shall forthwith cease to hold public office, if any, held by him and further he shall stand disqualified for a period of ten years, to be reckoned from the date he is released after serving the sentence, for seeking or from being elected, chosen, appointed or nominated as a member or representative of any public body or any statutory or local authority or in service of Pakistan or of any Province:

Provided that any accused person who has availed the benefit of [sub-section (b) of section 25] shall also be deemed to have been convicted for an offence under this Ordinance, and shall forthwith cease to hold public office, if any, held by him and further he shall stand disqualified for a period of ten years, to be reckoned from the date he has discharged his liabilities relating to the matter or transaction in issue, for seeking or from being elected, chosen, appointed or nominated as a member or representative of any public body or any statutory or local authority or in service of Pakistan or of any Province.

(b) Any person convicted of an offence [under section 9 of this Ordinance] shall not be allowed to apply for or be granted or allowed any financial facilities in the form of any loan or advances [or other financial accommodation by] any bank or financial institution [owned or controlled by the Government] for a period of 10 years from the date of conviction."

58. Where there is an allegation that a holder of public office or any of his dependents or benamidars owns or possesses any assets or pecuniary resources which are disproportionate to his known sources of income which he cannot reasonably account for he can be convicted of an

offence of corruption and corrupt practices and upon such conviction, penal consequences would follow. However, such conviction can only be recorded by an Accountability Court under the NAO, after a proper trial, recording evidence and granting due process rights guaranteed by the Constitution to the accused. To transplant the powers of the Accountability Court and to attach such powers to the jurisdiction of this Court under Article 184(3) of the Constitution has neither been prayed for by the petitioners nor can it be, in our opinion, done without stretching the letter of the law and the scheme of the Constitution. Further, such course of action would be violative of the principles enshrined in Articles 4 and 25 of the Constitution, which guarantee to every citizen the right to be dealt with in accordance with law, equality before law and entitlement to equal protection of law. Adopting any other mode would set a bad precedent and amount to a constitutional Court following an unconstitutional course. This, we are not willing to do, in the interest of upholding the rule of law and our unflinching and firm belief in adherence and fidelity to the letter and spirit of the Constitution.

59. Perusal of Article 62 (1) of the Constitution would indicate that, *prima facie* it relates to pre-election qualification as is evident from the words, "a person shall not be qualified to

be elected ….." The provisions of Article 62 of the Constitution which have also been replicated in Section 99 of the RoPA are initially enforceable through the hierarchy established under the RoPA starting from the Returning Officer and culminating in the Election Tribunal/Election Commission in terms of Articles 218 & 225 of the Constitution. For instance, if it is established before the Returning Officer, Election Tribunal or the Election Commission that a Court of law has issued a declaration that a candidate is not sagacious, righteous, non-profligate, honest and ameen, any of the fora provided in the RoPA (depending on the time, the stage and the proceedings in which such information is placed before the concerned forum) can hold that he is not qualified to contest the election. It must also be kept in mind that various provisions of RoPA prescribe a period of limitation for filing objections to the candidature of an intending candidate or to challenge his election after notification of the result is published in the official gazette. The question that arises is what remedy is provided under the law and the Constitution if certain facts or circumstances as enumerated in Articles 62 or 63 of the Constitution are discovered after a person has been elected and the stage or the period of limitation to challenge his election on any of the grounds provided in the said Articles before the competent fora provided in RoPA has passed/expired. Does this mean

that a person once elected cannot be disqualified on the said grounds by any mode or manner despite the fact that he suffers from any of the disqualifications mentioned in Articles 62 and/or 63 or any provision of RoPA? The answer is obviously in the negative. Where there is a wrong there is a remedy. The Constitution and the law clearly cater for situations like these.

60. It may be noticed that Article 63 of the Constitution *inter alia* deals with the issue of post-election disqualification and also provides a forum for the same. Therefore, if a question is raised by a member as to whether or not another member of the Majlis-e-Shoora (Parliament) has become disqualified from being a member on any ground available under the Constitution or any law for the time being in force including RoPA, the Speaker or the Chairman, as the case may be, is obliged to examine the material placed before him and if he comes to the conclusion that such question has arisen, he is required to refer the same to the Election Commission within 30 days. If he fails to do so within the said period such question is deemed to have been referred to the Election Commission.

61. Before referring the matter to the Election Commission, the Speaker / Chairman has 30 days to decide whether or not such question has arisen and if he decides that

no such question has arisen he has the power to refuse to refer the question to the Election Commission for decision. However, the decision of the Speaker has to be made on the basis of lawful, valid and cogent reasons showing due application of mind to the facts, circumstances and material placed before the Speaker/Chairman, as the case may be. Such decision is justiciable before Courts of competent jurisdiction. If a Court of competent jurisdiction on being approached by any of the parties finds that the decision of the Speaker/Chairman is legally or factually incorrect it can set aside such decision, and pass appropriate orders in accordance with the law and the Constitution to refer the matter to the Election Commission of Pakistan.

62. On receipt of such question, the Election Commission has the power to decide the same within 90 days and if it is of the opinion that the member has become disqualified, such member ceases to be a member and his seat becomes vacant. In these proceedings, the Election Commission of Pakistan has the power to issue such directions or orders as may be necessary for the performance of its functions and duties, including any order for doing complete justice and an order for the purpose of securing attendance of any person or the discovery and production of any document.

Any of the parties aggrieved of a decision of the Election Commission can approach a Court of competent jurisdiction to challenge such order.

63. Another constitutional remedy in situations of this nature is available under Article 199 of the Constitution before the High Court and in appropriate cases before this Court in terms of Article 184(3) of the Constitution. As noted above jurisprudence in this regard has developed in the past few years. However, in an earlier case reported as Farzand Ali v. Province of West Pakistan (PLD 1970 SC 98), Justice Hamoodur Rahman, CJ writing for the Court laid out the contours of exercise of jurisdiction of this Court. He repelled the contention that a writ of *quo warranto* could not be issued in an election dispute by holding as follows:-

> *"I regret my inability to accept this contention for more than one reason. Firstly, because this would be allowing a person to continue to remain a member of an Assembly even though Article 103 of the Constitution says that he cannot. Secondly, because, the dispute raised after an election is not, a dispute relating to or arising in connection with an election but a dispute regarding the right of the person concerned from being a Member of an Assembly. An election dispute is a dispute raised by a voter or a defeated candidate in his individual capacity under the Statute. It determines the private rights of two persons to the same office but a proceeding for an information in the nature of quo warranto is invoked in the public interest. The latter seeks to determine the title to the office and not the validity of the election. These are two distinct and independent remedies for enforcing independent rights, and the mere fact the disqualification has been overlooked or what is worse, illegally condoned by the authorities who were responsible for properly scrutinizing a person's right to be enrolled as a voter or*

> *his right to be validly nominated for election would not prevent a person from challenging in the public interest his right to sit in the house even after his election if that disqualification is still continuing. Indeed a writ of quo warranto or a proceeding in the nature of an information for a quo warranto, unless expressly barred by some statute, is available precisely for such a purpose"*

64. The principles laid down in the said judgment were subsequently followed in a number of cases including Mehmood Akhtar Naqvi v. Federation of Pakistan (PLD 2012 SC 1089). However, this power can be exercised only when there are admitted facts and/or irrefutable direct evidence available on record to justify disqualification. In the instant case, admitted facts or direct and irrefutable evidence is not presently available on record to justify and support a declaration of disqualification. However, sufficient material is available to raise valid suspicions which furnish legitimate basis to order probe and investigation to ascertain the true facts and collect evidence. If such facts/evidence are/is placed before this Court, appropriate orders including orders for disqualification can be passed in exercise of powers under Article 184(3) read with Article 187 of the Constitution.

65. We have been informed that a number of Members of the National Assembly belonging to the political party of the petitioner as well as Sheikh Rashid Ahmed, one of the petitioners before us, had filed Petitions before the

Speaker, National Assembly under Article 63(2) of the Constitution seeking disqualification of Respondent No.1. However, vide an identical order dated 2nd September, 2016, the Speaker refused to refer the Petitions to the Election Commission holding that in his opinion no question had arisen regarding disqualification of Respondent No.1 as a member of the Majlis-e-Shoora (Parliament). The afore-noted order passed by the Speaker of the National Assembly has been challenged before the Lahore High Court, by way of a constitutional petition which is pending. We would, therefore, not like to comment on the order of the Speaker lest such comment should prejudice the case of either party. The High Court shall therefore proceed with the matter(s) before it and decide the same in accordance with law. Article 63(2) of the Constitution provides one of the remedies to cater for a situation where a validly elected member becomes disqualified during the tenure of his membership on the basis of any of the grounds mentioned in Articles 62 and/or 63(1) of the Constitution. That is to say the ground of disqualification occurs after he has validly been elected and was not in existence (whether known to anybody or not) at the time when he filed his nomination papers and was elected. In such a situation, any other member can approach the Speaker/Chairman seeking disqualification of the member who has incurred the alleged

disqualification whereupon the Speaker/Chairman and the Election Commission can exercise powers provided in Article 63(2) and (3) of the Constitution, respectively. This means that where the ground for seeking disqualification is that a member did not qualify at the time of filing his nomination papers, but this fact (ground seeking disqualification) was discovered subsequently (which is the case of the petitioners), the matter cannot be referred to the Election Commission of Pakistan. In order for the Election Commission to disqualify a member on a reference sent by the Speaker, it must be shown that the disqualifying fact or event occurred after a member had validly been elected, which (ground) was nonexistent at the time of filing of nomination papers. The words "if any question arises, whether a member of Majlis-e-Shoora (Parliament) has become disqualified from being a member …." supports this interpretation. This view is fortified by the law laid down by this Court in Muhammad Azhar Siddiqui v. Federation of Pakistan (PLD 2012 SC 774).

66. As noted above, the power to disqualify a member in cases where for some reason he escaped disqualification at the time of filing his/her nomination papers, but such fact/event was discovered subsequently (as is the case set up by the petitioners) can, in appropriate cases and subject to

availability of admitted facts or irrefutable evidence be exercised by the High Court under Article 199 and by this Court under Article 184(3) of the Constitution on the principles laid down in Farzand Ali's case ibid, which has been followed by this Court in a number of recent judgements, including Mehmood Akhtar Naqvi's case *ibid*. This power can also be exercised where facts can be determined if the exercise does not require voluminous evidence and intricate and disputed questions of fact are not involved. The instant case, however, does not presently meet the said criteria.

67. We have already dealt with the ground urged by the Petitioners seeking disqualification of Respondent No.1 by issuing a declaration that he is not "honest" within the meaning of Article 62(1)(f) of the Constitution in the earlier part of the judgment.

68. We now proceed to take up other grounds urged by the Petitioners in their petitions seeking disqualification of Respondents No.1, 9 & 10. It has been alleged by the Petitioners that Respondent No.1 did not declare the Mayfair Properties in the declaration filed with his nomination papers. The Respondents maintain that the beneficial owner of the said properties is Mrs. Maryam Safdar, who is a dependent of Respondent No.1. As such, he was required to disclose the said

assets in his nomination papers. Such failure on his part shows that he is not truthful within the contemplation of Article 62(1)(f) of the Constitution and is therefore, liable to be declared as such, leading to his disqualification from being a member of the National Assembly. The defence of Respondent No.1 is that he neither owns the offshore companies (Nescol Limited and Nelson Enterprises Limited) nor the Mayfair Properties. However, in our view a mere denial is not enough for the reason that admittedly Respondents No.6 to 8 were minors when the Steel Mill at Dubai was established, Respondent No.1 being the oldest son of Mian Muhammad Sharif was with him in the said business (as is evident from the photographs produced by him) and the family was together when Ittefaq Foundry was returned and a number of other Units were set up. It is hard to believe that he had no information regarding the mode and manner in which the shares in Gulf Steel were sold in two different transactions and the funds generated through the said sales were used. We are also unable to believe that if at all an investment was made in Qatar, Respondent No.1 was totally unaware of it till the time that he addressed the Nation in 2016 and even after that till the time that he filed his concise statement before this Court, on none of which occasions did he mention investments in Qatar and the Mayfair Properties being given to Respondent

No.7 by way of a settlement through transfer of bearer certificates. Further, the stance of different members of the Sharif Family including Respondents No.1 and 7 for many years has been that the Mayfair Properties were "purchased". However, their accounts differ quite materially on the mode of acquisition, source of funds and timing of acquisition. The position was bad enough, as it was when letters allegedly written by Sheikh Hamad were introduced to add a new dimension to the already confused state of affairs to complicate it further. This was obviously an afterthought. Therefore, if the story of the Qatar investment and settlement was to be disbelieved (which at this stage and on the basis of material before us, we have no reason to believe), many questions have arisen on the basis of the admitted position that the Mayfair Properties have been in possession and occupation of the sons of Respondent No.1 since 1993/1995 when admittedly Respondents No.7 & 8 were dependents and had no independent sources of income. These questions include questions like who is the real owner of the Mayfair Properties, whether Respondent No.1 has legal or beneficial title or ownership of the said properties, whether he is holding these properties through *Benamidars*, whether the properties were acquired through legitimate sources etc, whether by his failure to declare his ownership in his Nomination Papers/Tax

Returns/Wealth Statements etc he has concealed his property and is therefore liable to be visited with the penal consequences of Articles 62 & 63 read with Section 99 of the RoPA. Further, Respondent No.1 is a holder of public office and his children have been in possession of the Mayfair Properties since 1993/1996 which were disproportionate to the known sources of income of Respondent No.1 and his children. Therefore, the provisions of Section 9(a)(v) read with Section 14(c) of the NAO may be attracted. However, it is clear and obvious that answers to these questions cannot be found without a thorough probe and investigation. On the basis of the outcome of such exercise, we would be in a better position to decide if there is sufficient material available before us to exercise jurisdiction under Article 184(3) of the Constitution to disqualify Respondent No.1 and/or refer the matter to an Accountability Court established under the NAO.

69. As far as recording a finding that Respondent No.1 is hit by the provisions of the Article 62(1)(f) of the Constitution because he did not declare an asset (Mayfair Properties) beneficially owned by his dependent daughter (Maryam Safdar) in his nomination papers is concerned, there are two stumbling blocks in our way to grant such declaration. In the first place, we are not convinced at this stage and on the basis

of material before us to hold conclusively that Respondent No.6 was a dependent of Respondent No.1. In addition, and notwithstanding the fact whether or not Respondent No.6 was a dependent of Respondent No.1, it cannot at this stage, on the basis of material before us conclusively be held that Respondent No.6 is the beneficial owner of the Mayfair Properties. Both these facts need to be established before Article 62(1)(f) of the Constitution gets attracted in this case. As a necessary corollary, it is not possible for us to hold, at this stage on available record, that Respondent No.1 has failed to disclose an asset owned by his dependent daughter in the declaration given in his Nomination Papers, and return a finding that he is not honest in terms of Article 62(1)(f) of the Constitution.

70. Another aspect of the case set up by the petitioner against Respondent No.1 with reference to his disqualification is that he had declared Respondent No.6 as his dependent in his wealth statement for the tax year 2011. It has been submitted that despite such admitted dependency, Respondent No.6 was not shown as a dependent and the Mayfair Properties and other assets owned/held by her were not declared in the nomination papers submitted by Respondent No.1 for his election for a seat in the National

Assembly in 2013.

71. The basic question that arises from the assertions made on behalf of the petitioners is whether Respondent No.6 was a dependent of Respondent No.1 in 2011. The learned counsel for Respondent No.1 has argued that mere mention of Respondent No.6 in the tax returns of Respondent No.1 in the column provided for dependents is not enough to make her a dependent of Respondent No.1 in the legal sense. He has elaborated by pointing out that agricultural property owned by Respondent No.1 was held in the name of Respondent No.6 and was so disclosed in the Wealth Tax Returns. This disclosure perforce had to be made in the column for dependents owing to lack of space in the computerized form for disclosure of properties held by the filer in the name of any other person. He further points out that it was clearly stated that the property was, "held in the name of Respondent No.6" which shows that the property was owned by Respondent No.1 for all intents and purposes but was *bona fide* declared to be held in the name of Respondent No.6. The property in question was subsequently purchased by Respondent No.6 from Respondent No.1 through validly registered sale deeds and payment of consideration. This fact is established by the documents showing transfer of approximately Rs.254 million

from the accounts of Respondent No.6 to the account of Respondent No.1 through banking channels which shows that she paid the price of the agricultural land in question to Respondent No.1 and became the real owner of the property in question. She declared the said property as her own in her Tax Returns. The consideration received by Respondent No.1 was also shown in his Tax Returns. In the subsequent Wealth Tax Statements, filed by Respondent No.1, the said property was therefore not declared by Respondent No.1 as his property in his returns/declarations filed after 2012. The learned counsel for Respondent No.1 has further drawn our attention to a notification dated 26.08.2015 issued by the FBR creating another column in the Wealth Tax Return to provide space for disclosure of properties held by the filer in the names of others. This according to the learned counsel shows that the deficiency in the earlier form was noticed by the FBR which necessitated the issuance of the notification in question by way of rectification of the omission/deficiency in the Form. We have considered the argument of the learned counsel for Respondent No.6 and find it plausible. In our opinion, it explains the transaction in question adequately and the same is also verifiable from the record. Further, the transaction has not been questioned by the Income Tax Authorities either before us or even in exercise of their own powers under the

Income Tax Ordinance, 2001.

72. We also find that although Respondent No.6 has received cash gifts from her father in substantial amounts on various occasions, the same have been declared where such declaration was required. Even otherwise, receipt of gifts from the father does not necessarily make Respondent No.6 his dependent in the legal sense of the world. We also notice that Respondent No.6 owns substantial agricultural property, receives income from the same, holds shares in limited companies worth more than Rs.200 million and her husband also receives a fair amount of money by way of pension as a retired military officer. He also receives salary / allowances in his capacity as a member of the National Assembly. The mere fact that she has chosen to live in a compound owned by her grandmother does not *ipso facto* make her a dependent of Respondent No.1 either. She has asserted and such assertion has not been challenged by the learned counsel for the petitioner that she contributes a substantial sum of money towards her share in the joint expenses incurred by her grandmother on behalf of other members of the Sharif Family residing in the compound. In this context, whether or not Respondent No.6 is the beneficial owner of the Mayfair Properties becomes irrelevant at this stage, seen from the

point of view of seeking disqualification of Respondent No.1 on the ground that he has failed to disclose the assets of a dependent. Even otherwise, the issue of dependency is a question of fact to be determined on case to case basis after recording evidence. We are not persuaded to undertake the said exercise, for this purpose, while exercising jurisdiction under Article 184(3) of the Constitution.

73. Having come to the conclusion that in these proceedings sufficient material is not available on the record to establish that Respondent No.6 is a dependent of Respondent No.1, in a legal sense, we do not feel the necessity to discuss this aspect of the case any further, lest it should prejudice the case of either party before a competent forum if and when this issue is agitated.

74. It has strenuously been argued by the learned counsel for the petitioner that Respondent No.1 and other members of his family have been involved in tax evasion. By way of illustration, it has been pointed out that in the wealth reconciliation statements for the tax year 2011, Respondent No.1 has disclosed receipt of a sum of US$ 1,914,054 which translates into about 20 Crore Pak Rupees. In subsequent years, similar amounts were received by Respondent No.1 as gifts. These amounts were allegedly sent by Respondent No.7

to Respondent No.1 by way of gifts. It is argued that the amounts received by Respondent No.1 did not qualify as gifts. These were to be treated as income in the hands of Respondent No.1 through other sources on which tax was required to be paid by him. It was also pointed out that despite tall claims made by Respondent No.1 regarding payment of huge amounts of money as tax by the industrial establishments of his family, his personal tax payments between 1981 to 1999 were not more than a few thousand rupees.

75. It is therefore argued that the tax payment history of Respondent No.1 clearly points towards tax evasion on his part for years on end. On considering the arguments of both sides on the issue, we find that the Returns filed by Respondent No.1 from time to time were accepted by the Tax Department. The Returns were neither challenged nor reopened in exercise of powers available to the concerned functionaries of the tax department and may have become past and closed transactions owing to afflux of time considering the period of limitation provided by the Tax laws. Representatives of the Federal Board of Revenue (FBR) and their counsel categorically stated before us that no definitive information was placed before the competent authorities

either by the petitioners or any other person that may have furnished basis for reopening and scrutiny of the Returns of Respondent No.1. It was therefore stated that there was no valid reason or lawful basis available to the tax department to reopen the returns of Respondent No.1 for past years.

76. Further, even if for the sake of argument, the allegations of tax evasion were to be given any credence, the same would not automatically attract the penal consequences of Article 63(1)(o) of the Constitution. This is in view of the fact that the said Article is attracted only where liability has finally been determined by the competent forum and default has been committed in payment of such determined liability. In the present case, the said prerequisites are missing. As a result, on a mere allegation of tax evasion, it cannot be held that provisions of Article 63(1)(o) of the Constitution are attracted and Respondent No.1 is liable to be disqualified on that score from being a member of the Parliament.

77. As far as the question of default in payment of tax on the afore-noted gifts is concerned, the learned counsel for Respondent No.1 has drawn our attention to the exemption provided under Section 39(3) of the Income Tax Ordinance, 2001. For ease of reference, the said provision is reproduced

below:-

> *"(3) Subject to sub-section (4), any amount received as a loan, advance, deposit [for issuance of shares] or gift by a person in [a tax year]from another person (not being a banking company or financial institution) otherwise than by a crossed cheque drawn on a bank or through a banking channel from a person holding a National Tax Number shall be treated as income chargeable to tax under the head "Income from Other Sources" for the tax year in which it was received."*

78. We have been informed that Respondent No.7 held a National Tax Number (NTN) at the time when the gifts were made and continues to do so. The said assertion has not seriously been contested by the Petitioners. As such, the amounts sent by him by way of gifts to Respondent No.1 enjoyed exemption from payment of income tax and were not required to be treated as income from other sources as visualized in Section 39(3) *ibid*. Further, the amounts received by Respondent No.1 from Respondent No.7 were transmitted through banking channels and were duly declared to the tax authorities. Some Tax Returns and Account Statements reflecting the above position have been filed and examined by us. *Prima facie,* the amounts received as gifts appear to be covered by the exemption provided in Section 39(3) *ibid*. Likewise, the cash gifts given by Respondent No.1 to Respondents No.6 & 8 were also given through banking channels/crossed cheques and were duly declared by the donor/donee in his/her Returns where required. As such, these

transactions have not been found by the tax department to be in violation of provisions of the tax laws. We are therefore not inclined to arrogate to ourselves the role of the tax department, and / or tax auditors, reopen the tax history of the Respondents and record findings of our own. In case, the petitioners have any definite information regarding tax evasion, they are at liberty to approach the competent authorities who will proceed in the matter in accordance with law.

79. While on the subject of gifts, we may observe that between the years 2011 to 2015, Respondent No.1 had received amounts in excess of Rs.840 million by way of gifts from Respondent No.7. On being directed by us, the learned counsel for Respondent No.7 filed documents showing how and from where the funds originated and were routed to the account of Respondent No.1. The documents have been examined by us. We have noticed that most of the funds were sent from the accounts of an entity operating in Saudi Arabia under the name and style of Hill Metals Establishment. This company/entity is allegedly owned and operated by Respondent No.7 and appears to be a highly profitable business, enabling Respondent No.7 to send tens of millions of rupees to Respondent No.1 as gifts on a regular basis. It was

claimed that the Company is a successful concern and is generating huge amounts of profits out of which certain sums are sent by Respondent No.7 to Respondent No.1 by way of gifts. Since this information has come before us during the course of these proceedings and appears to have some significance, we cannot simply skim over it. This information by itself, considering the volume of money being generated and circulated, identity of the parties involved and the seriousness of allegations against them raises a number of questions which have no obvious answers and nothing has been placed on record nor has any attempt been made to provide any answers. The record is completely silent on the question how and when Hill Metals Establishment was set up by Respondent No.7, who are its shareholders, what was the source of funds which were used to set up this business and why such huge amounts of money are being circulated through the said company. It has also not been explained whether or not Respondent No.1 who is the recipient of these funds has any direct, indirect, overt or covert nexus or connection with the said company. In today's world of offshore companies, dummy directors and elaborate devices to hide and camouflage financial transactions, as has been seen in this case, direct evidence is seldom found. However, there are telltale signs that may point towards the possibility of legal,

beneficial or equitable interests in financial resources or assets. Receipt and use of financial benefits is one such sign. Therefore, owing to admitted receipt of sums in excess of Rs.840 Million between 2011 to 2015 by Respondent No.1 from Respondent No.7, the possibility of a beneficial interest of Respondent No.1 in assets ostensibly held in the name of Respondent No.7 cannot be ruled out. As a corollary, if it is found that there is any such interest of Respondent No.1 in Hill Metals Establishment, his failure to declare the same in the Nomination Papers and Tax Returns could attract the provisions of Articles 62 and 63 of the Constitution for disqualification of Respondent No.1. Further, the value of these assets of Respondent No.7 appear to be disproportionate to his known sources of income and Respondent No.1, being their father, keeping in view the huge amounts received by him through gifts needs to explain his position. In these circumstances, *prima facie* provisions of Section 9(a)(v) read with Section 14(c) of the NAO are attracted.

80. During the course of hearing of these petitions, it has also come to our notice that Respondent No.1 and his family were the subject matter of a number of investigations in the past. There were serious charges of corruption and money laundering in which context two FIRs were lodged and a

Reference was also filed by the National Accountability Bureau (NAB) which *inter alia* relied upon a confessional statement made by Respondent No.10 giving details of the mode and manner, persons and entities involved in activities ranging from money laundering to trans-border movement of allegedly tainted money and real estate investments in other countries. Respondent No.10 was granted pardon by the Chairman, NAB presumably in return for his offering to cooperate and providing the requisite information. Respondent No.10 subsequently resiled from his confessional statement. The Reference filed by NAB did not proceed for many years for various reasons including absence of Respondent No.1 and his family from the country, having been sent into exile after the events of 1999. Subsequently, the Reference was quashed by a Division Bench of the Lahore High Court on technical grounds in exercise of its constitutional jurisdiction in a case reported as Hudaibiya Paper Mills Ltd. v. Federation of Pakistan (PLD 2016 Lahore 667). It is important to note that one of the learned Judges comprising the Bench while quashing the Reference held that NAB may if it deemed appropriate reinvestigate the matter while the other Member of the Bench disagreed on the point of reinvestigation and held that such reinvestigation would amount to providing the prosecution an opportunity to fill the lacuna in its earlier

investigation. The Hon'ble Chief Justice of the Lahore High Court referred the point of disagreement to a Referee Judge who agreed with the finding that the NAB could not be allowed to reinvestigate the matter.

81. Owing to the importance of the issue and considering the consistent practice of NAB that most verdicts of the High Court which had any adverse impact on investigations and prosecutions being conducted by the NAB were challenged before this Court, we were surprised why this judgment was not challenged and whether failure to challenge was based upon the fact that the parties involved were influential and prominent in the corridors of power. In order to clarify the position, we summoned the current Chairman, NAB as well as the Prosecutor General, NAB along with the record to explain the position. On being questioned lame, feeble and unconvincing excuses were put forth to the effect that an internal opinion was sought from in-house counsel who opined that in view of the fact that two Honorable Judges of the Lahore High Court had recorded findings against NAB on the question of reinvestigation, there were slim chances of success of an appeal before this Court. The then Chairman, NAB who, not unsurprisingly is also the current Chairman appears to have readily agreed with such

opinion and decided to shelf the matter by not filing an appeal before this Court. Despite our serious misgivings regarding the motivation, merit and impartiality of such decision, the Chairman, NAB blatantly and unapologetically defended his action and stated that he would stick to his earlier decision despite discovery of new material and evidence.

82. The fate of the afore-noted FIRs was no different which were also quashed by a Bench of the Lahore High Court in a case reported as Hamza Shahbaz Sharif v. Federation of Pakistan (1999 P. Cr. L. J 1584). The accused were acquitted and the chapter of investigation and trial for allegations of corruption and money laundering was unceremoniously, prematurely and abruptly closed.

83. In our quest to judge, analyze and examine the inclination, disposition and ability of the State institutions and functionaries created and charged with the responsibility to probe, investigate, inquire into matters of this nature and to safeguard and protect the interest of the State and the people of Pakistan, in case any wrongdoing was found, we also summoned Representatives of FIA, FBR and Ministry of Interior to appear before us. They were required to inform us about the steps taken by them in the wake of Panama Leaks

and information becoming available about possible tax evasion, money laundering and other offences committed *inter alia* through offshore companies and accounts. The Ministry of Interior pleaded lack of jurisdiction so did the FIA which stated that nobody had approached it in this regard. It also pleaded lack of jurisdiction. The FBR took the stance that it had taken immediate cognizance of the matter and issued notices to all those whose names had appeared in the Panama Papers. This, "immediate cognizance" translated into halfhearted issuance of some notices six months after the information came into public domain which speaks volumes about the lethargy, carelessness and inefficiency displayed by the premium tax and financial watchdog of the country. On behalf of the NAB, it was stated by a person no less than its Chairman himself that it was waiting to be approached by the "regulators", like SECP, FBR, State Bank of Pakistan, etc before it could initiate any proceedings. When his attention was drawn to the provisions of the NAO which empowers NAB to initiate proceedings on its own accord and asked why such powers had not been exercised, he had nothing much to say except to mumble a halfhearted apology and an equally halfhearted promise to "look into" the matter. We are perturbed and disappointed to find that State functionaries/institutions charged with the responsibility to

enforce law and safeguard the interests of the State by strict, impartial and unbiased enforcement of the laws are disinclined, disinterested and unwilling to do so. We are in no manner of doubt that by conscious planned and premeditated design all important State institutions which could offer any resistance or act as impediments in the way of loot and plunder of State resources which rightfully belong to the people of Pakistan by those who wish to impoverish our country and its people have been captured, taken over and neutralized by appointment of their handpicked officers in complete disregard of merit, honesty and integrity to head such institutions. These cronies owe their loyalty to their masters to whom they are beholden and do not feel any sense of allegiance, loyalty or fidelity to the country or its people. This state of affairs has brought us to the sorry, pitiable, pathetic and heart breaking situation that we find ourselves in. Being the apex Court of the country and custodians of the Constitution which has placed upon us the responsibility and constitutional mandate to enforce fundamental rights of the people, we cannot look away become unconcerned bystanders and close our eyes to this stark, painful and grim reality. The people of Pakistan expect and want this Court to enforce the law and the Constitution and exercise the powers conferred on it by the Constitution truly, faithfully, honestly,

transparently, fairly and in the interest of the country and its people. Our oath of office obligates us to preserve, protect and defend the Constitution to do right to all manner of people according to law, without fear or favour, affection or ill will. We are, therefore, bound to perform our legal and constitutional duty to do justice considering the facts and circumstances of these cases in exercise of powers granted to us by the Constitution and the people of Pakistan in terms of Articles 184(3) and Article 187 of the Constitution.

84. The learned counsel for the Respondents have laid much stress on the powers of this Court under Article 184(3) of the Constitution and passing orders in terms of Articles 62 & 63 of the Constitution. In this context, the learned counsel for Respondent No.1 as well as Respondent Nos.6, 7 & 8 have emphasized that this Court has traditionally refrained from delving into situations/cases which involve factual controversies requiring recording of evidence. The only exceptions being cases where irrefutable or unrebutted evidence is available or necessary facts are admitted by the parties. It may, however, be noted that new jurisprudence of this Court has evolved in the past few years in matters involving fake degrees and dual citizenship held by the Parliamentarians. The principles regarding exercise of powers

under Article 184(3) of the Constitution are undergoing a process of evolution and fresh ground is being broken. The argument made by the learned counsel for the Respondents that evidence cannot be recorded or factual inquires cannot be conducted in exercise of powers under Article 184(3) of the Constitution may be based on some precedent but we find that this is not a hard and fast, inflexible and rigid principle of law. It has only been followed by way of practice and expediency with exceptions being created and jurisdiction being extended from time to time where the facts and circumstances so required. By way of illustration, the case of Pakistan Muslim League (N) v. Federation of Pakistan [PLD 2007 SC 642] may be cited. In this case, this Court held that that there was no bar on the power of this Court under article 184(3) of the Constitution to record evidence provided voluminous record and complicated questions of fact and law were not involved. This Court is not a slave of the doctrine of stare decisis. We are not shackled by the chains of precedents where the interests of the people of Pakistan so demand. While remaining within the four corners of the law and limits set for us by the Constitution, in order to do complete justice, there is no bar on the power of this Court to record evidence in appropriate cases and pass such orders as may be necessary.

85. There are serious allegations of money laundering, corruption and possession of assets beyond known means and or acquiring assets, the sources of which have not been explained. It is also important to note that Respondent No.1 has repeatedly admitted that the Mayfair Properties were purchased by his family with the funds generated from sale of Steel Mills in Saudi Arabia. Respondents No.6 to 8 have also admitted that the said properties are owned by the Sharif Family while Respondent No.7 has been claiming that the properties were purchased by him. Neither Respondent No.1 nor Respondents No.6 to 8 have placed any credible evidence or material on record that may conclusively establish the real ownership of the Mayfair Properties. Despite at least 26 hearings spread over months, it has not been made clear to us whether the real owner of the properties is Respondent No.1, Respondent No.6 or Respondent No.7. Although it has been alleged by the petitioners that Respondent No.1 is real owner of the properties, they have not been able to produce any credible evidence to substantiate their assertion. The Mayfair Properties have been continuously in possession and use of the children of Respondent No.1 since 1993/96, when admittedly they had no independent sources of income. We have already discarded the explanation

offered by Respondent No.7 based on the letters of Sheikh Hamad as dubious and hard to believe. Therefore, in the facts and circumstances of the case, the possibility of direct or indirect/Benami ownership of Respondent No.1 cannot be ruled out. The position that emerges is that it is not possible for us to conclusively hold that Respondent No.1 is the owner of the properties and thereby require him to explain the source of funds which were used to acquire such properties but it is equally difficult for us to hold that he is not the owner of the said properties. Owing to the fact that provisions of Section 9(a)(v) read with Section 14(c) of the NAO are *prima facie* attracted, it is for them to produce the requisite evidence and record to show the real ownership of the properties and legitimate sources and transactional money trails to show lawful movement of funds for acquisition of the same in an investigation and then before Courts of competent jurisdiction.

86. It is also an admitted fact that Respondent No.7 owns and operates Hill Metals Establishment in Saudi Arabia. From the accounts of the said business, huge amounts of funds have been transmitted to Respondent No.1 in foreign exchange which have been declared by Respondent No.1 as gifts on which no income tax is payable. Respondent No.7 needs to produce all relevant evidence and record to show

the source of funds utilized for the purpose of setting up the said business.

87. It is also an admitted position that Respondent No.8 set up a company under the name and style of Flagship Investments Limited which received substantial sums of money in the year 2001 when the said Respondent had no source of income. Over the course of the next few years, a number of other companies were set up/taken over by Respondent No.8 allegedly for the purpose of his real estate business. The sources from which the said companies/businesses were funded are also shrouded in mystery. There is yet another company under the name and style of Capital FZE, Dubai presumably registered under the laws of UAE. Funds also appear to have been routed through the said company from time to time by / and on behalf of Respondent No.7. The real ownership and business of the said company is unclear from the record which needs to be explained. No effort has been made on the part of the Respondents to answer the questions on the afore-noted matters.

88. In our opinion, considering the high public office that Respondent No.1 holds and the requirement of honesty, transparency, clean reputation, unquestionable integrity, financial probity and accountability for a person who holds

the highest elected office of the land, it was necessary and incumbent upon Respondent No.1 to place all information, documents and record before this Court to clear his own position and that of the members of his family. Very serious and damaging questions were raised and grave allegations levelled by the Petitioners and the local as well as international Print and Electronic Media regarding money laundering, tax evasion, corruption and misuse of authority on the part of Respondent No.1 and members of his family. Although lofty claims were made by and on behalf of Respondent No.1 regarding readiness and willingness to face accountability and clearing his name, the claims remained hollow rhetoric. Regrettably, no effort was made either on the part of Respondent No.1 or that of Respondents No.7 & 8 who are his sons before this Court, to come clean, to clear their names, place the true facts and relevant record before us and the people of Pakistan by producing all documentary evidence which was either in their possession, control or accessible to them which could have answered all unanswered questions, removed all doubts and put all allegations to rest and cleared their names once and for all. This was not done and an opportunity squandered for reasons best known to the Respondents. Instead refuge was taken behind vague, ambiguous, fuzzy and hyper technical pleas.

89. Regrettably, most material questions have remained unanswered or answered insufficiently by Respondent No.1 and his children. I am also constrained to hold that I am not satisfied with the explanation offered by Respondent No.1 (Mian Muhammad Nawaz Sharif, the Prime Minister of Pakistan) and his children regarding the mode and manner in which the said properties came in their possession and what were the sources of funds utilized for acquisition of the same. Further, the source(s) of funding for Azizia Steel Mills and Hill Metals Establishment in Saudi Arabia, Flagship Investments Limited and a number of other companies set up/taken over by Respondent No.8 also need to be established. In addition to the affairs of Capital FZE, Dubai which also appears to be owned by Respondent No.7 need an inquiry. The aforesaid investigation and inquiry under normal circumstances should have been conducted by NAB. However, it has become quite obvious to us during these proceedings, Chairman NAB is too partial and partisan to be solely entrusted with such an important and sensitive investigation involving the Prime Minister of Pakistan and his family. Further owing to the nature and scope of investigation a broader pool of investigative expertise is required which may not be available with NAB.

90. In the afore-noted circumstances, I would order as follows:-

i) A Joint Investigation Team (JIT) shall be constituted, which shall investigate the matter, collect all relevant record and material in order to determine and establish the real title and ownership of the Mayfair Properties, the source(s) of funds utilized for purchase of the said properties and the mode, manner and time when such funds were transmitted to the United Kingdom for purchase of the Mayfair Properties;

ii) Likewise, the JIT shall also collect evidence to determine the source(s) of funds for establishing Hill Metals Establishment in Saudi Arabia as well as the mode, manner and source(s) of funding for Flagship Investments Limited and all other companies owned and controlled by Respondent No.8 from time to time;

iii) Evidence shall also be collected by the JIT regarding source(s) of funding of Capital FZE, Dubai; its business activities and role in transfer of funds to different entities owned or controlled by Respondents No.7 & 8;

iv) The JIT is also directed to investigate and find out if Respondent No.1 (Mian Muhammad Nawaz Sharif, the Prime Minister of Pakistan)

directly or indirectly or through *benamidars* or authorized agents owns any other properties/assets/financial resources of any nature including but not limited to shares through offshore companies/bank accounts, which have not been disclosed to the concerned authorities.

v) The JIT shall consist of the following members:-

a) A senior Officer of the Federal Investigation Agency (FIA) not below the rank of Additional Director General heading the Team. He shall have firsthand experience of investigation of white collar crime and related matters;

b) A representative of the National Accountability Bureau (NAB);

c) A nominee of the Securities and Exchange Commission of Pakistan familiar with issues of money laundering and white collar crime;

d) A nominee of the State Bank of Pakistan familiar with international banking transactions involving money laundering and matters relevant to the investigation;

e) A senior Officer nominated by the Director General, ISI; and

f) A senior Officer appointed by the Director General, MI.

vi) Heads of the aforesaid Departments/ Agencies/ Institutions shall communicate the names of their nominees within seven (07) days hereof which shall be placed before the

Special Bench for perusal/approval.

vii) Respondents No.1, 7 & 8 are directed to associate and render full cooperation to the JIT, provide any and all record(s), document(s) and material(s) sought by it and appear before the JIT, if and when required.

viii) The JIT may also examine the evidence and material available with the FIA and NAB, if any, relating to or having any nexus with the possession or acquisition of the Mayfair Properties and the source(s) of funding for the same.

ix) The JIT shall submit its periodical report(s) before the Special Bench of this Court every fortnight. The JIT shall complete and submit its final report before such Bench within a period of sixty (60) days from the date of receipt of a copy of this judgment.

x) I would request the Honourable Chief Justice of Pakistan to constitute a Special Bench to ensure implementation of this judgment in letter and spirit.

91. On receipt of report of the JIT, the Bench shall pass appropriate orders in exercise of powers under Article 184(3) read with Articles 187 & 190 of the Constitution relating to disqualification of Mian Muhammad Nawaz Sharif, the Prime Minister of Pakistan, Respondent No.1 as a member of Majlis-e-

Shoora (Parliament), if necessary. In this regard, it may, if considered necessary or expedient, summon Respondents No.1 (Mian Muhammad Nawaz Sharif), 7 (Hussain Nawaz) and 8 (Hassan Nawaz) or any of the said Respondents and any other person having any direct or indirect connection with or having knowledge about the matters relevant to these proceedings, to appear before it for being examined. Further, if so justified by law and on the basis of material placed before the Bench, orders may also be passed for filing of a Reference before the Accountability Court against Respondent No.1, the private Respondents and any other person having nexus with the offence.

92. During hearings of these matters and while examining the various pleas raised by the parties and the documents and other material placed before us, I have found it imperative to pass orders and take steps to ensure that the true facts should come before the people of Pakistan who have a fundamental right to be governed in accordance with law, by those who fulfill the requirements of the Constitution and the law and whose financial dealings, earnings and expenditures are open to public scrutiny to show that they meet the test of honesty, integrity, financial probity and *bona fide* dealings. It is high time that standards were set and

systems were put in place to develop a culture of accountability at all levels in order to cleanse our system and institutions from the evils of corruption, money laundering, loot and plunder of national resources by a few, irrespective of their rank or status in the system.

93. As a Nation, we need to heed the words of the great poet and philosopher Dr. Allama Muhammad Iqbal, if we aspire to reach our true potential and hold our heads high amongst the comity of Nations:-

صورتِ شمشیر ہے دستِ قضا میں وہ قوم
کرتی ہے جو ہر زماں اپنے عمل کا حساب

94. Before parting with this judgment, I would acknowledge and appreciate Syed Naeem Bukhari, learned ASC; Mr. Taufiq Asif, learned ASC; Sh. Rashid Ahmed, petitioner in person; Mr. Makhdoom Ali Khan, learned ASC for Respondent No.1; Mr. Shahid Hamid, learned Sr.ASC for Respondents No.6, 9 & 10; Mr. Ashtar Ausaf Ali, learned Attorney General for Pakistan; Mr. Muhammad Waqar Rana, ASC; and Mr. Waqas Qadeer Dar, Prosecutor General, NAB and their respective teams for rendering valuable assistance in the matter.

Judge

ORDER OF THE COURT

By a majority of 3 to 2 (Asif Saeed Khan Khosa and Gulzar Ahmed, JJ) dissenting, who have given separate declarations and directions, we hold that the questions how did Gulf Steel Mill come into being; what led to its sale; what happened to its liabilities; where did its sale proceeds end up; how did they reach Jeddah, Qatar and the U.K.; whether respondents No. 7 and 8 in view of their tender ages had the means in the early nineties to possess and purchase the flats; whether sudden appearance of the letters of Hamad Bin Jassim Bin Jaber Al-Thani is a myth or a reality; how bearer shares crystallized into the flats; who, in fact, is the real and beneficial owner of M/s Nielsen Enterprises Limited and Nescoll Limited, how did Hill Metal Establishment come into existence; where did the money for Flagship Investment Limited and other companies set up/taken over by respondent No. 8 come from, and where did the Working Capital for such companies come from and where do the huge sums running into millions gifted by respondent No. 7 to respondent No. 1 drop in from, which go to the heart of the matter and need to be answered. Therefore, a thorough investigation in this behalf is required.

2. In normal circumstances, such exercise could be conducted by the NAB but when its Chairman appears to be indifferent and even unwilling to perform his part, we are constrained to look elsewhere and therefore, constitute a Joint Investigation Team (JIT) comprising of the following members :

ii) a senior Officer of the Federal Investigation Agency (FIA), not below the rank of Additional Director General who shall head the team having firsthand experience of investigation of white collar crime and related matters;

ii) a representative of the National Accountability Bureau (NAB);

iii) a nominee of the Security & Exchange Commission of Pakistan (SECP) familiar with the issues of money laundering and white collar crimes;

iv) a nominee of the State Bank of Pakistan (SBP);

v) a seasoned Officer of Inter Services Intelligence (ISI) nominated by its Director General; and

vi) a seasoned Officer of Military Intelligence (M.I.) nominated by its Director General.

3. The Heads of the aforesaid departments/ institutions shall recommend the names of their nominees for the JIT within seven days from today which shall be placed before us in chambers for nomination and approval. The JIT shall investigate the case and collect evidence, if any, showing that respondent No. 1 or any of his dependents or benamidars owns, possesses or has acquired assets or any interest therein disproportionate to his known

means of income. Respondents No. 1, 7 and 8 are directed to appear and associate themselves with the JIT as and when required. The JIT may also examine the evidence and material, if any, already available with the FIA and NAB relating to or having any nexus with the possession or acquisition of the aforesaid flats or any other assets or pecuniary resources and their origin. The JIT shall submit its periodical reports every two weeks before a Bench of this Court constituted in this behalf. The JIT shall complete the investigation and submit its final report before the said Bench within a period of sixty days from the date of its constitution. The Bench thereupon may pass appropriate orders in exercise of its powers under Articles 184(3), 187(2) and 190 of the Constitution including an order for filing a reference against respondent No. 1 and any other person having nexus with the crime if justified on the basis of the material thus brought on the record before it.

4. It is further held that upon receipt of the reports, periodic or final of the JIT, as the case may be, the matter of disqualification of respondent No. 1 shall be considered. If found necessary for passing an appropriate order in this behalf, respondent No. 1 or any other person may be summoned and examined.

5. We would request the Hon'ble Chief Justice to constitute a Special Bench to ensure implementation of this

judgment so that the investigation into the allegations may not be left in a blind alley.

JUDGE

JUDGE

JUDGE

JUDGE

JUDGE

Announced on_____ at _____.

JUDGE