**Article 63-A: Shutting the door of defection**

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A landmark judgement of the Supreme Court announced on a presidential reference, has effectively eradicated the malaise of defection and floor crossing that have immeasurably damaged and polluted the democratic process in the country for decades.

The judgement comes as a ray of hope when habitual turncoats have been used to switching their political loyalties for all sorts of illegal and mala fide considerations including secret or open vote buying.

In the reference filed Under Article 186 of the Constitution of the Islamic Republic of Pakistan, 1973 (Constitution) seeking interpretation of Article 63-A ibid, President, Arif Alvi asked four main questions from the Supreme Court:

1. Whether a limited or a broad, purpose-oriented interpretation of Article 63A can achieve the constitutional objective of curbing defections and purification of the electoral process and democratic accountability.

2. Can a defecting member claim a vested right to have his vote counted and given equal weightage?

[Sanaullah labels Imran as ‘political terrorist’, says no to negotiations](https://www.nation.com.pk/02-Nov-2022/sanaullah-labels-imran-as-political-terrorist-says-no-to-negotiations)

3. Should defecting members no longer be treated to be sagacious, righteous, non-profligate, honest and Ameen and, therefore, stand disqualified for life?

4. What measures can be undertaken to curb, deter and eradicate defection, floor crossing, and vote buying?

The reference speaks about ‘Khiyanat’ by the way of defections. Khiyanat cannot be rooted out without creating deterrence of lifelong disqualification, or at least five-year disqualification, for the turncoats for committing the prohibited and morally reprehensible “crime”.

Mere de-seating the defecting members for defections can never eradicate this political and democratic menace.

Defection amounts to a clear breach of confidence reposed in a turncoat by the electorate. If someone wants to defect, he should resign first and contest re-election in an honourable, clean, and principled manner.

The cancerous vice of defection could not let Pakistan achieve stability in the polity of the country. Also, the Constitution enshrines democratic values, customs, and norms and provides for a parliamentary form of government conducted through the people’s representatives being carriers of Amanat.

[NA speaker rejects disqualification reference against Asif Zardari](https://www.nation.com.pk/02-Nov-2022/na-speaker-rejects-disqualification-reference-against-asif-zardari)

Deciding the reference, the majority of the judges did not allow lawmakers to vote against the party line in four instances outlined under Article 63-A of the Constitution i.e.: the election of prime minister and chief minister; a vote of confidence or no-confidence; a Constitution amendment bill; and a money bill.

Chief Justice of Pakistan, Umar Ata Bandial, Mr. Justice, Ijazul Ahsan, and Mr. Justice, Munib Akhtar made the majority decision while Mr. Justice Jamal Khan Mandokhail and Mr. Justice Mazhar Alam Khan Miankhel were the dissenting judges. The dissenting judges remarked that giving an opinion on the presidential reference was tantamount to “rewriting the Constitution”.

The judgement begins with a quote from Chief Justice Marshall, whose judgments laid the foundations of US constitutional law, embedding in its rules and principles that, at least, in some instances, could not be found in the express text of the Constitution, as saying, “[We] must never forget that it is a constitution that we are expounding”. The ruling also quotes Justice Cardozo as saying, “A constitution states or ought to state not rules for the passing hour, but principles for an expanding future.”

[Senate chairman Sadiq Sanjrani meets Punjab CM Pervaiz Elahi](https://www.nation.com.pk/02-Nov-2022/senate-chairman-sadiq-sanjrani-meets-punjab-cm-pervaiz-elahi)

Before reaching Article 14 of the Constitution, which declares that the dignity of man shall be inviolable, the judgement talks about Article 9 ibid which provides that no person shall be deprived of life or liberty save by law.

Giving reference to the provisions from German and South African Constitutions, the judgement declares “dignity is a fundamental right”, and, “Human dignity shall be inviolable. To respect and protect it shall be the duty of all state authority”, and “Everyone has inherent dignity and the right to have their dignity respected and protected.” Then the judgement turns to the dignity of politicians.

To the first question, the verdict says, “The pith and substance of Article 63-A are to enforce the fundamental right of political parties under Article 17 [...] It must therefore be interpreted and applied broadly, consistent with fundamental rights.”

Terming defections “one of the most pernicious ways” in which political parties could be destabilised, the verdict notes that they could also delegitimise parliamentary democracy. The verdict went on to say, “Defections rightly stand condemned as cancer afflicting the body politic. They cannot be countenanced,” the order said, adding that 63-A must be interpreted in a “purposive and robust manner”.

[Criticism regarding FIFA World Cup in Qatar unjustified: Ashrafi](https://www.nation.com.pk/02-Nov-2022/criticism-regarding-fifa-world-cup-in-qatar-unjustified-ashrafi)

Responding to the second question, the Honourable Supreme Court bench ruled that the vote of any member of a parliamentary party in a house “that is cast contrary to any direction issued by the latter in terms of para (b) of clause (1) of Article 63-A cannot be counted and must be disregarded, and this is so regardless of whether the party head, after such a vote, proceeds to take, or refrains from taking, an action that would result in a declaration of defection.”

The judgement has redeemed the true spirit of the Constitution’s anti-defection provision by treating the defecting member’s vote as liable to be excluded from the vote count.

To the third question, the verdict replied, “While it is for parliament to enact such legislation, it must be said that it is high time that such a law is placed on the statute book. If such legislation is enacted it should not amount to a mere slap on the wrist but must be a robust and proportionate response to the evil that it is designed to thwart and eradicate.”

[Pakistan Football Federation announces Disciplinary Committee](https://www.nation.com.pk/02-Nov-2022/pakistan-football-federation-announces-disciplinary-committee)

However, the verdict did not give an opinion on the fourth question, deeming it to be “vague, too broad and general”, and subsequently returning it unanswered.

On the other side, Mr. Justice, Miankhel, and Mr.Justice, Mandokhail in the dissenting note remarked that Article 63-A is a “complete code” and provides a comprehensive procedure for defection and its consequences.

They remarked, “In case the Election Commission of Pakistan confirms the declaration sent by a party head against a member, he/she shall cease to be a member of the House. As a result thereof, his/her seat shall become vacant.”

They believed that any further interpretation of this provision would amount to “rewriting or reading into the Constitution”, and concluded, “Therefore, it is not our mandate. We see no force in the questions asked through this presidential reference, which are answered in the negative. However, if parliament deems fit or appropriate, [it] may impose further bar or restrictions upon the defectors.”

Positively, a truly democratic polity is no longer an unfilled distant dream and ambition as the menace of defection has been legally rooted out by the judgement.

The judgement has effectively eradicated the cancer of defection and horse trading through the robust and purposive interpretation of Article 63A of the Constitution.

Article 17 of the Constitution guarantees the citizens a fundamental right to form or be a member of political parties. In a parliamentary democracy, the judgement will help strengthen political parties and make them real engines of the democratic process as the voters will now confidently evaluate different candidates based on political ideology and the parties’ manifestos as it is the party vote bank that propels the majority of the candidates to the national and provincial assemblies,

Now the MPs elected on party ticket will be, in a real sense, bound by party discipline and remain accountable as per their party’s manifesto as the defection door has permanently been closed by landmark ruling.

Defection or floor crossing is a morally reprehensible and destructive act that shakes public confidence in the political parties and democratic process. The defecting members would first enrich themselves and then come back to remain available to the highest bidder in the next round. But it has now come to an end.

The purification and strengthening of the democratic process has begun with the landmark ruling of the apex court which has shut the doors of Parliament for habitual turncoats who would convert the elevated status of an elected member into a tradable commodity merely in pursuits of worldly gains and pleasures.