**Constitutional Dilemma in Punjab**

[Hafiz Ahsaan Ahmad Khokhar](https://dailytimes.com.pk/writer/hafiz-ahsaan-ahmad-khokhar/)

July 25, 2022

This is unprecedented in the constitutional and political history of Pakistan that in recent months, several constitutional and legal matters have been brought to superior courts by different political parties relating to the functioning of government and transfer of power, which should have been settled through implementation of the relevant provisions of the Constitution.

Resultantly, everyone has started criticizing without going to the spirit of the Constitution. Simultaneously, on the economic side, the country is on the verge of economic collapse but still we as a nation and for the institutions who matter should realize such grave concerns for the sake of country which is not only important for our political, economic stability but also important for the national security of Pakistan.

Punjab has been continuously seeing the constitutional crisis since April and that uncertainty has created a havoc for the administrative structure and its working in the province. The present process of runoff election of Chief Minister Punjab is another example, and that too was held on last Friday in pursuance of clear directions of Supreme Court, which were given a few days back with the concurrence of both sides on an appeal challenging the judgment of Lahore High Court regarding the election of Chief Minister. However, while counting the process in votes of Chief Minister’s election held on 22.07.2022, the deputy speaker of the Punjab Assembly did not count 10 votes of one political party while counting the complete votes for the election of chief minister by relying on the judgment of SC issued in presidential reference no 1, when particularly all the members of that political party reportedly followed the instructions of the head of parliamentary party and voted being one single party to their candidate.

The Constitution treats parliamentary party being one single party relating to the above of any process such as election of the prime minister or chief minister, vote of confidence or a vote of no-confidence and a Money bill or a Constitution (amendment) bill.

Article 63(A) of the Constitution of Pakistan deals with the process of defection of Parliamentarians both national and provincial assemblies. The legislatures can be disqualified on the grounds of defection if he votes or abstains from voting in the assembly contrary to any direction issued by the parliamentary party to which he belongs. This is restricted to three instances under the Constitution where the member has to follow the party’s directions such as election of the prime minister or chief minister, vote of confidence or a vote of no-confidence and money bill or a constitution (amendment) bill, and in all these situations, the decision of parliamentary party is the key word in terms of directions issued under Article 63A (1) and (2) of the Constitution, and the party head would only initiate the reference after receipt of such reference from Parliamentary Party.

The consideration or non-consideration of a vote of a member for any of the above process mentioned in Article 63A of the Constitution by the speaker or deputy speaker and consequently for the purposes of initiating a defection reference for the Election Commission against a parliamentarian under Article 63A of Constitution, it is evident from the language of this particular that the proceedings of a direction or reference could be initiated by the party head but on or after the specific decision of a parliamentary party/head, which should be communicated to other members of a Parliamentary Party well in time as per of Article 63A (1) of the Constitution.

Thus, the role of the parliamentary party being as collective decision is more important than the party head with either considering any direction and for a reference triggering the proceeding of Article 63 of the Constitution. The Constitution treats parliamentary party being one single party relating to the above of any process such as election of the prime minister or chief minister, vote of confidence or a vote of no-confidence and a Money bill or a Constitution (amendment) bill.

Now, as the matter has been brought to the Supreme Court, some proceedings have taken place, and notices have been issued to all concerned, thus with the above Constitutional and legal background, there would be a little chance that the apex court would grace immunity to the present ruling of deputy speaker of Punjab Assembly, being probably would be claimed under Article 69 of the Constitution as the Supreme Court has recently held in a judgment that the protection afforded to proceedings in Parliament by Article 69(1) of Constitution would give cover only to the procedure specified in the assembly rules that regulates the business of a House and as a result, the proceedings that would infringe the provisions of the Constitution would no longer be protected which pertains to the provisions that create substantive rights and duties or prescribed procedure, which mean thereby that there would be no blanket immunity to the proceedings of assemblies, might be claimed under Article 69 (1) of the Constitution. However, it would also be important that the Constitutional sanity should prevail and the country should run as per spirit of the constitutional provisions in future.

*The writer is a practicing lawyer at Supreme Court and has served as Chairman, Federal Excise & Sales Tax Appellate Tribunal and Senior Advisor Federal Ombudsman. He can be reached at: hafizahsaan47@gmail.com.*