

14th amendment revisited

Law & Justice

By Anwar Syed *Dawn*

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IN Pakistani experience, no government has ever fallen for want of majority support in the National Assembly. Yet, the danger that defections may bring it down does exist when a ruling party, or a coalition, has only a slim majority in the house. Switching party affiliations, called "horse-trading," has been common enough to justify this fear. Defections can also do a good deal of collateral damage. We know that they kept the PPP and PML (N) from playing the vigorous role in national politics of which these parties might otherwise have been capable.

Threats of defection can make a government unwieldy, even incompetent. The opportunists among members of the ruling party may confront the prime minister with packages of self-serving demands and threaten to cross the floor if these are not met. The notoriety of Prime Minister Shaukat Aziz's "cabinet," both for its huge size and meagre abilities, is a case in point.

The Fourteenth Amendment to the Constitution (July 1997) was intended to remedy this evil. A new article (63A) prescribed penalties that would result to a member of parliament who had violated the discipline of the party upon whose nomination he had been elected, or which he had joined following his election as an independent candidate. A variety of actions constituted the said "violation," and the offender in each case could end up losing his seat.

A member would be deemed to have defected not only if he left to join another party but if he had violated his party's constitution, code of ethics, and declared policies, or if he had voted, or abstained from voting, contrary to his party leader's direction. In any of these situations, the party head could call upon him to show cause within seven days why he should not be declared to have defected.

The party's disciplinary committee would hear him, determine his status within seven days, and inform the party head accordingly. The latter would consider the member's appeal, if any, and then reach a decision that would be final. If a negative decision survived this review process, the party head would advise the presiding officer of the relevant house that the member concerned had become a defector. The presiding officer would promptly forward this finding to the chief election commissioner who would declare the member's seat to have fallen vacant.

One may wonder why Mr Nawaz Sharif chose to sponsor this amendment. With a two-thirds majority in the house behind him, there was no danger of his government falling for want of sufficient support. Consider also that the other parties were in no position to offer his party members more than what they already had, if as much. Nor could the potential defectors demand a price for their support, for it was not as critical to the prime minister as it might have been had his majority in the house been precariously slim.

tion that heads of parliamentary parties are entitled to deny their members the right to speak their minds. The problem would be less troublesome if issues were taken up regularly in the party caucus, and members given the opportunity of voicing their views before the same reached the floor. But this is not the normal practice of our parliamentary parties.

A group of lawyers, professedly dedicated to the safeguarding of the Constitution, took the issue to the Supreme Court and asked it to void article 63A. The court maintained (May 20, 1998) that the Article in question was not to be construed to deny a member of parliament his right to free speech, which was the "sine qua non" of parliamentary government. This right would bear only reasonable restriction such as that without which the system could not operate effec-

The authors of the Fourteenth Amendment may needlessly have gone to the extreme when they prescribed that a member of parliament would stand disqualified any time he spoke or acted contrary to his party's direction. Nothing would be lost if the whip were withdrawn altogether, and members allowed to speak and vote according to their best judgment, when the issues before the house were less than momentous.

tively. The article applied particularly to a member's voting, or abstaining to vote, contrary to his party's directive.

In other words, the court held that the requirement to vote according to one's party line was essential to the working of a parliamentary system, and therefore, proper. It held also that Article 63A related to a member's conduct within, not outside, the precincts of parliament. It would not apply if a member had criticized his party's leaders or policies in statements outside.

There is something to be said for a member's right to express his view of the matter in debate. On the other hand, it remains open to question whether a member who demolishes his party's stand through speeches on the floor, but in the end votes for the party line, has not strained the parliamentary system.

It may be useful at this point to see how party discipline works in other parliamentary democracies. It was not considered essential until about the third quarter of the 20th century when persons not elected to parliament on the basis of their known personal qualifications, status, and influence. A political party's endorsement might help but it did not count as much. Once elected, a member would speak and vote according to his own view of the matter.

With the advent of mass politics, it became cumbersome, and financially unfeasible, for unaligned individuals to manage and win elections. They needed organizational support that political parties provided. Parties became identified with certain declared policy goals, and the people would now vote for a candidate not only because he was a nice and wise guy but because he was the nominee of a certain party. The vote for him had in fact been a vote for his party. It is not surprising, then, that in this new situation he was expected to submit to his party's disci-

But even in these places the possibility of conflict between the political needs of the party and the individual member's judgment and conscience haunts observers. There is considerable distaste for the notion of treating a member of parliament merely as a rubber stamp to be used by the party bosses.

Let us now turn to the British House of Commons and see what happens there. An MP does normally follow party discipline. But he does not lose his seat because he has spoken or voted contrary to its direction. The party organization includes a chief whip and a number of his deputies. It is their business to keep their members informed of the business that is coming in and the importance the party attaches to various items. But note, that it is also a part of their function to serve as listening posts and carry the members' views on various issues back to the leadership.

The whips are to make sure that members are present on the floor to vote on measures the party considers important. A notice delivered to each of them indicates the degree of importance the government attaches to an item by underlining it. An item underlined thrice means that it is critical and a member's failure to vote on it would be regarded as virtual rebellion. The same conduct on less important issues may be frowned upon but it will not incur penalties. The member concerned may even get away with a speech critical of the government's position.

Persistent defiance of the party leadership could invite one of the following penalties: (1) expulsion from the party caucus (in extreme cases); (2) denial of party nomination or lower funding and organizational support at the next election; (3) exclusion from important parliamentary committees and delegations visiting abroad; (4) inadequate office space and staff; (5) loss of opportunity to ask questions from the floor; (6) dimmer prospect of selection for a ministerial position; (7) cold-shouldering by colleagues.

We have witnessed a greater inclination to self-assertion on the part of MPs, and some mellowing of the party whips, since the early 1970s. These tendencies are encouraged by the fact that the government does not fall every time it loses a vote in the house. It will resign only if it loses a vote of confidence, or the division on an issue that it has declared to be critical. In such an event, the prime minister will probably request the queen to dissolve the House of Commons.

It has been reported that between 1972 and 1979 the British government suffered 95 defeats on the floor, many of which had resulted from its own backbenchers' dissent. It sought a vote of confidence on only three of these occasions, and only once did the prime minister request dissolution.

The ruling party's need for stability and effectiveness and the individual legislator's obligation to obey his conscience would appear to have been harmonized to an extent in the evolving British practice. We, too, may be able to work out a similar harmonization. We may do well to adopt the position, and write it into law if necessary, that a government will fall only if it loses a vote of confidence. The authors of the Fourteenth Amendment may needlessly have gone to the extreme when they prescribed that a member of parliament would stand disqualified any time he spoke or

hear him, determine his status within seven days, and inform the party head accordingly. The latter would consider the member's appeal, if any, and then reach a decision that would be final. If a negative decision survived this review process, the party head would advise the presiding officer of the relevant house that the member concerned had become a defector. The presiding officer would promptly forward this finding to the chief election commissioner who would declare the member's seat to have fallen vacant.

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One interpretation at the time had it that Mr Sharif simply wanted to suppress all dissent within his own party. A spokesman of the Jamaat-i-Islami observed that he, and the clique surrounding him, rated their party members as a bunch of mindless individuals whose choice of following their conscience and independent judgment he wanted to take away.

Howsoever desirable political stability may be, it is difficult to endorse the proposi-

tion of a party line, and not submit the parliamentary system.

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Cohesive voting according to party line is the norm in most parliamentary systems (notably Britain, Germany, Italy, Canada, Australia, New Zealand, and India among others). The Indian constitution allows disqualification of a member who votes contrary to his party's directive. But in most other places the obligation to go with one's party is more a matter of established tradition than law.

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