**Loyalty over conscience?**

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On **Apr 26, 2022**

In exercise of the powers vested in him under Article 186 of the Constitution of Pakistan, President Dr Arif Alvi recently filed a Presidential Reference to the apex court for the interpretation of Article 63-A of the Constitution. The President referred to the judgment of the Supreme Court, written by Justice Shafiur Rehman in Khawaja Ahmad Tariq Rahim v. Federation of Pakistan (PLD 1992 SC 646), finding that the endless malaise of floor crossings has stained and damaged the purity of the democratic process in the country for decades. Similarly, the reference also cited the Supreme Court judgment written by Ajmal Mian, former Chief Justice in Wukala Mahaz Barai Tahafaz Dastoor v Federation of Pakistan (PLD 1998 SC 1263). Chief Justice of Pakistan (CJP), Justice Umar Ata Bandial, while hearing the presidential reference on the interpretation of Article 63-A of the constitution, which deals with defection and disqualification of lawmakers, remarked that the larger bench of the apex court was aiming to give their opinion on Article 63-A as soon as possible because the country must be directed towards a system of mature democracy at the earliest.
Interestingly, as we await the hearing on the presidential reference to resume, the main question before the Supreme Court of Pakistan is this—to what extent does party discipline (i.e voting as per party policy) outweigh a politician’s individual right to vote according to his or her own conscience? According to Article 63-A of the Constitution, a parliamentarian can be disqualified on grounds of defection if he “votes or abstains from voting in the House contrary to any direction issued by the parliamentary party to which he or she belongs, in relation to election of the prime minister or chief minister; or a vote of confidence or a vote of no-confidence; or a money bill or a Constitution (amendment) bill”.
Unlike the Indian and Bangladeshi constitutions, which completely prohibit voting against party lines, Article 63-A of our Constitution has evolved from similar general prohibitions on voting against party lines to a narrower and comparatively more reasonable scope of circumstances—including voting against party lines during a vote of no-confidence.
The central question in this defection debate is whether failing to always obey party command in making decisions as a member of parliament or a provincial assembly is illegal or immoral. While the concerns raised by Pakistan Tehreek-e-Insaf (PTI) about the involvement of bribery and corruption in vote buying seems valid, they should not be confused with a constitutional scheme which aims to strike a balance between allowing a Member to vote against their party’s directives, if they feel they have strong justifications for doing so. The consequences of such defection are limited to an MNA or MPA ceasing to serve as a member of the Parliament or Assembly and having their seat vacated.
The constitution “strikes a balance” by limiting lawmakers to follow party guidelines in certain cases. On the other hand, the law also provides for some kind of appeal procedure under 63(A). This was also addressed by Mr Justice Jamal Khan Mandokhel of the Supreme Court of Pakistan, who recently remarked that severe punishment like disqualification cannot be given without trial. He added that an independent candidate who joins the party after winning an election does not take an oath of allegiance to the party.
In fact, a crucial aspect to keep in mind is that not every case of disagreement between a legislator and his or her party is necessarily a case of monetary gain or “horse trading”. There may be one or two odd cases of receiving bribes, but as per statistics, an overwhelming number of lawmakers develop differences with their party because either the leadership does not interact with them or is not evaluating their opinion while deciding party policy or not dealing with them adequately in matters relating to their constituency. Hence, the decision of a legislator to vote against his or her own party head at the risk of being disqualified may also be considered an individual act of his or her own conscience and convictions.
It must not always be tainted with an assumption of illegality, “bargaining” and corruption, unless this can be effectively proven. We must bear in mind that our Constitution allows ample freedom to legislators to make independent judgments regarding their vote on legislation or the election of certain officials. Therefore, while forming an opinion on the defiance of party directives, one should deal objectively with various aspects of parliamentary democracy and the state of democracy within our political parties. It makes perfect sense for legislators to support their party’s policies and candidates, but it is also essential that those party policies be formulated and that candidates be chosen within parties through a truly democratic process. Legislators’ votes must be obtained through a process of engagement, not coercion.