**SC on defections**

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Holding that the vote of any member cast contrary to any direction issued by a parliamentary party in terms of para (b) of clause (1) of Article 63A of the constitution – regarding the election of the prime minister or the chief minister; or a vote of confidence or a vote of no-confidence; or a money mill or a constitutional (amendment) bill – cannot be counted and must be disregarded, the SC statedly interpreted Article 63A of the constitution “in a purposive and robust manner, which accords with its spirit and intent”.

For some, such a judicial approach in the interpretation of Article 63A amounts to rewriting or reading into the constitution what is not provided in its text.

A well-intentioned judicial endeavour to eradicate parliamentary defections from the body politic, the verdict changes the intent and spirit of Article 63A. In case any member votes against a direction issued by a parliamentary party in terms of para (b) of clause (1) of Article 63A of the constitution, the party head, after providing him/her with an opportunity to show cause for defection, may declare in writing that the member has defected from the political party.

The party head may then forward a copy of this declaration to the presiding officer of the House and the CEC for the latter to decide the same within thirty days. Upon confirmation of the declaration by the Election Commission, the member shall cease to be a member of the House. Any party aggrieved by the decision of the Election Commission may, within 30 days, lodge an appeal to the Supreme Court which shall decide the matter within ninety days from the date of the filing of the appeal.

The SC emphasizes that, regardless of whether the party head, subsequent to the vote, proceeds to take, or refrains from taking, an action that would result in a declaration of defection, the vote of that member “cannot be counted and must be disregarded”. This interpretation makes the explicit procedure and purpose of Article 63A redundant. Moreover, it nullifies the powers of the party head, the Election Commission, and even the Supreme Court to declare, reject or confirm the declaration of the defection of a member.

Considering the history of horse-trading and political engineering in Pakistan, Article 63A was added to the constitution by the passage of the 18th Amendment in 2010. It aimed to strike a balance between the rights of individual parliamentarians and regime stability. A three-layered mechanism for the declaration of defection and de-seating was provided to ensure constructive debate and freedom of expression, the sine qua non of parliamentary government.

Particularly in a country where political parties are generally run like personal fiefdoms and dynasties, the freedom of expression of individual parliamentarians is very important. It is an established custom of parliamentary practice that a parliamentarian is only bound by his/her conscience. Thus, the verdict is not in keeping with parliamentary democracy and its norms and could end up stifling dissent or encouraging unintended consequences, for example, encouraging independent non-party parliamentarians.

The SC argues that: “Article 63A must be interpreted in a broad manner, consistent with fundamental rights. If there is any conflict between the fundamental rights of the collectivity ie, political party and an individual member thereof it is the former that must prevail”. Yet, in my opinion, the right of individual members – freedom of speech (Article 19) – cannot be eclipsed by the right of a political party: freedom of association (Article 17). Both categories of rights are equal and should be interpreted in a balanced manner. In the absence of freedom of speech, freedom of association does not make any sense for citizens or parliamentarians.

A broad interpretation of Article 63A does not require the denial of freedom of expression for parliamentarians. Para (b) of clause (1) of Article 63A should not necessarily mean the nullification of the vote of a member against the direction of a party head. Every defection is not a case of horse-trading. There could be genuine dissent and disapproval with one’s political leadership for failing to deliver to the people. The right to dissent is an essential feature of a functioning democracy.

Arguably, a broad interpretation of Article 63A in the presidential reference takes away parliamentarians’ right to dissent and weakens democracy. It demolishes the conceptual basis of the right to liberty, freedom of speech etc, and disturbs the balance provided under Article 63A between the individual right of a member and the right of political parties.

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