**Parliamentary democracy and Article 63A**

Nafisa Shah

Thursday, Mar 24, 2022

On March 8, the combined opposition moved a motion of no-confidence against Prime Minister Imran Khan. Subsequently, faced with a growing number of the ruling party’s own dissenting members of the National Assembly (MNAs) and a clear and present danger of the prime minister losing his majority in the house, the PTI government moved a presidential reference to the Supreme Court under Article 143/1 of the constitution – seeking a radical interpretation of the defection clause in the constitution, Article 63A, apparently to deter members of the ruling party from voting for the motion against party direction.

Article 63A states that if a member of a political party abstains or votes contrary to the direction of the parliamentary party to which he or she belongs in the election of the prime minister or a chief minister, a vote of confidence or n- confidence, and in a money bill or a constitutional amendment, they may be deseated through a set procedure involving the party leader, the speaker of the NA and finally the Election Commission. However, this does not prevent a member from voting and there is no precedent of any contrary vote not being counted.

Through the presidential reference, the Supreme Court has been asked to expand the scope of 63A to restrain defected MNAs from voting in favour of the no-confidence motion through suggested preemption, and further application of Articles 62 and 63 proposing permanent and immediate disqualification of such members. At present, Article 63A only provides for de-seating and is silent on future elections of the member concerned.

But the presidential reference is deeply flawed as it goes against a settled legal principle as the courts cannot interpret what is not already written in law. Only the legislature can amend the constitution to broaden its scope as suggested in the reference.

Also, the reference is based on the assumption that defections of members are motivated by bribes and financial incentives by the opposition which is untenable without concrete evidence. Interestingly, when the 2019 Senate chairman’s vote of no-confidence was held, the opposition lost despite the numbers, and this was vehemently defended by the ruling party which had argued that a secret vote was a vote of conscience and the question of buying votes was impossible.

Finally, there is a much larger principle – of the sovereignty of parliament and the principle of parliamentary democracy itself. If parliament elects the prime minister, it alone can remove them. By making it impossible for ruling political party members to vote against their party leader, it is implied that assuming there is no coalition and the prime minister is also the party leader, the prime minister can never be held accountable, making Article 95 and the vote of confidence and no-confidence redundant and meaningless.

The present defection clause is harsh enough as it deseats a member after s/he has voted against party direction but to wish that no member should ever vote against the prime minister even with the risk of de-seating and should be permanently disqualified seems to be person specific to escape accountability and nothing else.

Members of a sovereign house are free to vote and have free will in most democracies. In Pakistan’s assembly, free will and vote of conscience is already restricted under Article 63A. If that restricted vote is also taken away the house will lose its powers to hold the executive accountable.

What if a prime minister has failed to deliver on his/her manifesto, and has lost the confidence of the house? What if s/he has taken the country to the brink, to an economic and security collapse? An MNA, regardless of party affiliation, must be fully empowered to dethrone such a prime minister.

As it stands, the present prime minister has in the past attacked parliament, has always been derogatory towards it and has never deigned to be in the house even during emergency times and crises, as in the case of the Covid-19 pandemic, the Kashmir crisis, and the Afghanistan situation.

If the law’s interpretation is stretched to disqualify members permanently, it will lead to political party dictatorship, and the parliamentary prerogative to hold the executive accountable will be lost – thereby weakening parliament. It will also imply that parliament is subservient to the political party, making rule by parliamentary democracy into rule by political party.

The writer is a member of the National Assembly.