

**RESEARCH PAPER****Securing Parliamentary Party Allegiance through Anti Defection Laws in Pakistan: A Legislative and Judicial Discourse****¹Waqas Rafiq* ²Farhana Aziz Rana ³Waheed Rafique**

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***Corresponding Author** waqas.rafiq@pugc.edu.pk**ABSTRACT**

This paper aims to analyse the evolution of anti defection laws in Pakistan by going through legislative and juridical efforts made in this regard and to check whether contemporary jurisprudence on parliamentary defection has served its purpose. The political history of Pakistan also illustrates the need of anti-defection legislation in a country, which has experienced vices of defections and counter-defections by elected members in its parliamentary history for personal gains. Accordingly, several legislative efforts were carried out to penalize the act of defection by members of legislative assemblies. The role of Judiciary in the interpretation and implementation of these laws remained prominent throughout. This study employed doctrinal methodology by carrying out data analysis through descriptive and critical review of primary sources of law in the light of issues identified from secondary sources. Considering the current state of the legislature and judiciary in Pakistan, it is reasonable to conclude that the current anti-defection laws require extensive revision and modification in order to reflect contemporary realities and practices followed by members both within and outside of Parliament.

KEYWORDS Anti Defection Laws, Floor Crossing, Freedom of Association, Freedom of Speech, Parliamentary Defection**Introduction**

Legislation that remove members from legislative bodies who switch parties are referred to as "anti-defection" laws (Malhotra, 2005). Anti-defection laws require elected members of legislative bodies to abdicate their seats if either they change political parties or vote against their party's position after winning their seats as nominated candidates in elections or if they have joined a political party after winning their seats as independent candidates in elections (Tsfay, 2020). A person who runs for election as a political party's nominee demonstrates to his supporters and the voters how firmly he believes in the party's platform. Therefore, his decision to leave the party after winning the election amounts to a betrayal of the faith his constituents placed in him as well as a reluctance to fulfil his pledge and commitment. Such a betrayal cannot be supported by any accepted moral standard, much less by any accepted Islamic political code (Pir Sabir Shah v. Shad Muhammad Khan, 1995).

Islam demands that its followers keep all of their pledges and promises (except for those made in violation of an express Islamic injunction) and abstain from betraying any trust. As it is narrated in Surah-al-Imran, Verse 77:

"Indeed, those who trade Allah's covenant and their oaths for a fleeting gain will have no share in the Hereafter. Allah will neither speak to them, nor look at them, nor purify them on the Day of Judgment. And they will suffer a painful punishment." (*The Clear Quran*, 2016).

The political history of Pakistan also illustrates the need of anti-defection legislation in a country, which has experienced vices of defections and counter-defections by elected members in its Parliamentary history for personal gains. Accordingly, several legislative efforts were carried out to penalize the act of defection by members of legislative assemblies. The role of Judiciary in the interpretation and implementation of these laws remained prominent throughout. However, the question at hand is whether Pakistan's anti-defection law achieves its intended objectives or whether we are pursuing the wrong course of action.

Material and methods

The doctrinal legal research methodology was employed to acquire a better understanding of the subject matter under research in this study. Data from original sources of law, such as legislation and court judgments, were reviewed for this study. Secondary data in the form of a range of research articles, journals, and newspaper reports were also examined in order to gain in-depth knowledge, appropriately analyse the data, and meet the aims of the research.

Literature Review

The implementation of anti-defection laws is at variance in different jurisdictions (Janda, 2009). More established democracies do not include anti-defection legislation, as party defection is a non issue. They regard voting against one's political party's position or defecting from the party in parliament as exercising one's freedoms of association and speech (Nikolenyi, 2011). Contrarily, some jurisdictions, particularly those with newly formed or underdeveloped democracies, have turned to passing anti-defection legislation in order to punish and prevent parliamentary defection (Malhotra, 2005).

The literature on the factors that cause elected members to change parties has been condensed into two categories by Goeke & Hartmann (2011). Firstly, poor party institutionalization, or a lack of intra-party democratization, and high patronage and individualist anarchism may contribute to party switching. As a result, internal party conflicts may result in party disintegration, whereby the vanquished bloc splits off and jointly leaves the political party. Secondly, members may also change their party allegiance to achieve personal interests i.e. to improve the probability of getting favoured policy outcomes, pursue prospects for parliamentary offices or nominations in reelection. Another factor may be to thrive his democratic character or to voice policy based differences (Rahman, 2010). Here the elected member has to make a choice between party policy and preferences of his constituency, which are at variance. In such circumstances, the elected member may decide to follow the preferences of his constituents and choose the prospect of reelection over choosing allegiance to the party's stance and attempting to secure his capacity to advance in the party (Tsfay, 2020).

Ideologically, policy based, parliamentary defections are not regarded as troublesome and are not the problems that anti-defection legislation are meant to address. Instead, these are seen as demonstrations of the democratic discussion and debate, as well as the freedom of speech, that are an integral part of parliamentary democracy (Janda, 2009). Anti-defection laws aim to prevent non-ideological defections, in which elected members change parties for personal benefit, such as in exchange for a promise that they would be appointed to a position by another party, rather than because of ideological inclinations and may lead the way to the establishment of a brand new government. Accordingly, governments may promulgate anti-defection laws to combat these types of induced and opportune party switching and to further the steadiness of ruling parties (Goeke & Hartmann, 2011).

Despite the fact that anti-defection laws in various jurisdictions have mutual goal, namely to promote the stability of governing parties, but their implementation differs significantly (Tsfay, 2020). First, they differ in terms of the consequences of defection.

Defectors are obliged to abandon their parliamentary seats in several jurisdictions with anti-defection laws. Whereas, in other jurisdictions, they do not instantly lose their elected status but are barred from contesting in upcoming elections. Second, anti-defection legislation differ in terms as to whether defection just comprises unilateral resignation from political party membership or also encompasses expulsion from the House. In India, a member of parliament who is ejected from a political party is only stripped of their parliamentary position if they join another political party. Third, anti-defection statutes differ in their treatment of legislative opposition. Even though many jurisdictions permit elected members to vote autonomously even if it is against the stance of their party whip, certain jurisdictions punish them for casting their votes against the stance of their political groupings e.g. Pakistan.

Statutory History: Political Parties Act, 1962

The very first legislation addressing the issue of defection by an elected nominee a political party, was section 8(2) the Political Parties Act, 1962 (Act). It prescribed the penalty of disqualification from the Assembly for the remaining term in case said member withdraws from his political party. However, he was allowed to contest bye-election and be re-elected for the remaining term of the Assembly. After adoption of Constitution of 1973, the said section was repealed with retrospective effect from May 8, 1974 (Constitution Fourth Amendment Act, 1975). The reason for such repeal was the enactment of proviso to Article 96(5) of the Constitution of 1973. It stated that a vote on a motion of no-confidence cast by an elected member being a candidate or nominee of a political party in opposition to the majority vote of that party would be disregarded. This action acted as a strong deterrent to elected party members leaving their party.

Later the aforementioned Article was deleted (Presidential Order No. 14 of 1985). This omission created a gap due to absence of law regarding floor-crossing or defection. It was filled through legislation by adding section 8B in the Act (Political Parties Amendment Act, 1985). The said section again provided the same penalty of disqualification for defection or withdrawal from party ranks similar to above discussed section 8(2). Furthermore, the Election Commission was empowered to determine any question regarding said disqualification on a reference by the Leader of the Parliamentary Party. It provided right of Appeal, within thirty days of the commission's decision, to the Supreme Court.

The term defection was defined for the first time in any law by Ordinance X of 1990 by adding an Explanation to said section 8B. The two scenarios of defection were, firstly in case a member of senate, national or provincial assembly votes or abstains from voting against any direction furnished by the disciplinary committee of the Parliamentary Party or, in case of its absence by the Parliamentary Party itself without receiving prior approval in either event and the Parliamentary Party has not ratified said abstention or voting within thirty days. Secondly, by accepting any office under the Government of another political party in absence of prior written permission of his Parliamentary Party.

The said explanation could not become permanent law due to non promulgation of Act of Parliament. Ordinance XXX of 1993, which the caretaker government adopted in advance to the 1993 general elections, transferred the power of Election commission to the majority of the Parliamentary Party and changed the forum of appeal from Supreme Court to the Speaker of National or Provincial Assembly or the Chairman of the Senate, who shall decide the appeal within thirty days. The said Ordinance stood repealed, not being placed before the Assembly within 4 months as per Article 89 of the Constitution and consequently the amendments introduced by it in the Act were also repealed.

Judicial Opinion on the Political Parties Act and Vice of Defection

The Apex Court on more than one occasion in its judgments, pointed out the vice of defection and floor crossing by the elected representatives and impressed upon the need to

eliminate this unhealthy and immoral practice from the body politics of the country. There was raging debate regarding the legitimacy and enforceability of the preceding provision 8B, and it could not be properly used against members of the Assemblies who engaged in party switching. The matter came up before Supreme Court in 1990, in the form of an appeal, in which interpretation of section 8B(2) was involved, but the case was remanded to the Peshawar High Court (*Humayun Saifullah Khan v. Federation of Pakistan, 1990*).

Afterwards, in the case of dissolution of the National Assembly and the dismissal of Ms. Bhutto's government one of the many argued points was the ramification of defection (*Khawaja Ahmad Tariq Rahim v. The Federation of Pakistan, 1992*). Shafiur Rahman, J. in his leading opinion highlighted the vice of defection. He described three vices of elected members' defection from his political party. At first, such defection breaches the trust bestowed upon him by the people and his political party. Secondly, such treachery renders the political sovereign powerless, and the elector must wait years for new elections to denounce such defector. Meanwhile, the defector thrives and enjoys all of the world's benefits. Finally, it undermines the normative foundations of an Islamic state's constitution which prescribe only Allah's sovereignty, exercise of His authority, as a sacred trust, by the people of Pakistan and the exercise of powers by State through elected representatives. An elected member who betrays his proclaimed conviction, constituency, party, or mandate undermines his own representative character and cannot engage in the exertion of State power and authority on the mandated Constitutional prescription. He ruled that maintaining the government on the basis of such defections is regarded, even by simply secular criteria, as nothing more than a "mockery of the democratic Constitutional process." He suggested that if his conscience demands a course of action against that of his political party he must resign by shedding off his representative character and run for re-election. This will not only render him honourable but also allow for the development of principled leadership.

The effect of section 8-B was agitated before Supreme Court, wherein due to defection of two PMLN's and A.N.P.'s elected members of the N.W.F.P. Assembly, Pir Sabir Shah's government was deposed, and Mr. Sherpao's government, which belonged to P. P. P. was put in place (*Pir Sabir Shah v. Shad Muhammad Khan, 1995*). According to the majority opinion of seven to five, the provisions of section 8-B (2) and (3) of the Act were held to be contrary to the article 63(2) of the Constitution. The Supreme Court served as the forum under the Act, whereas the Chief Election Commissioner did so under clause (2) of that article. As a result, the latter shall take precedence. However, in the minority opinion, it was determined that there was no conflict among subsection (3) of section 8-B of the Act and clause (2) of article 63 of the Constitution and that the aforementioned section 8-B was *intra vires* and was designed to repress the mayhem of floor-crossing for the benefit of the nation. The scope of section 8-B remained unclear as a result of the aforementioned majority opinion in the Pir Sabir Shah case.

The then learned Chief Justice, Sajjad Ali Shah, in his majority opinion drew the attention of Legislature towards the need for improvement in the legislation to deal with the vice of defection and floor-crossing by elected members of the Assembly. He stated that defection law was to be framed by the Legislature and had to be construed or interpreted by the Courts as it was. On the subject of defection the law which held the field was the Political Parties Act, 1962 which could not be improved by the Courts during interpretation in the sense that some thing could be added to it which was not put there by the Legislature. We cannot and should not make any comments on the merits or demerits of defection because these questions are to be left open to be determined by competent forum where such questions can be raised and *vires* of law are questioned. Saiduzzman Siddiqui, J. opined that in terms of its notion and political terminology, defection refers to a political opportunistic action taken to earn unethical benefits and material advantages by making use of one's political position and representative character. No recognised Islamic political philosophy can be used to defend such actions.

Insertion of Article 63A in the Constitution through Fourteenth Amendment: Disqualification on grounds of defection, etc.

Therefore, before the advent of general election in the country in 1997, there was a public outcry against the vice of defection and floor crossing by elected representatives of Assemblies, and under tremendous pressure of public opinion the two major political parties held out promises to their electorate that if voted to power they will do away with the vice of defection and floor-crossing by members of Assemblies elected on the ticket of a political party, through legislative measures to eradicate the vice of defection in order to bring about stability in the polity of the country. In the above background, Constitution (Fourteenth Amendment) Bill was tabled in the Parliament to introduce Article 63A into the Constitution. Interestingly, when the 14th Amendment Bill was moved in the two Houses of Parliament by the Ruling party it was not only supported by the main opposition parties in the Parliament but it was carried through without a vote of dissent on July 1, 1997, and it gained the President's approval on July 3, 1997.

The goal of the Amending Act, as stated in the preamble, is to prevent instability in the formation and administration of government. The Article 63A provides the substantive and procedural law in respect of defection by a political party's elected member. The Head of the Political Party or authorised person was empowered to issue a show cause notice, along with information to Presiding Officer of the relevant House and to a defecting member to explain within seven days. A member of political party was defined as being elected as candidate or nominee or using symbol of political party, or elected as an independent candidate but became member by a declaration in writing.

The defection was defined in the explanation to clause 1 providing three instances to be deemed defection. Firstly, infringement of party discipline meaning thereby, a contravention of the party's constitution, codes of conduct, and stated policies. Secondly, voting against any instruction issued by the Parliamentary Party, and finally, abstaining to vote in the House in respect to any Bill that defies party policy. In case of first scenario, reference would be sent by the Head of the Party to the party's disciplinary committee who would determine the matter within seven days after personal hearing. The appeal may lie to the head of the party if the disciplinary committee decides against the alleged defected member. However, in the other two scenarios keeping in view the explanation by the said member the Head may declare the member as defected.

After such declaration the decision was required to be sent to the concerned presiding officer who was obligated to send it to the Chief Election Commissioner, who would then declare the seat vacant and announce the schedule of bye-election. An immunity was provided to the Speaker of the senate and speaker of the national or provincial assemblies. Interestingly by the non-obstante clause (6) the proceedings under this Article were ousted from the jurisdiction of all courts including Supreme and High Courts.

Supreme Court Verdict on the Fourteenth Amendment: Only Anti Defection not Anti Dissent

The constitutionality of Article 63A came up for consideration before Supreme Court on the ground, inter alia, of its inconsistency with and repugnancy to the fundamental rights and other provisions of the Constitution. (*Wukala Mahaz Barai Tahafaz Dastoor v Federation of Pakistan, 1998*). It was argued, that Article 63A is not anti-defection law, but in essence it is anti-dissent with a connotation for parliamentarians to lose their seats when dare to speak freely and express their candid opinion according to their conscience, contrary to the policy of their party.

The larger Bench of the Supreme Court, by majority judgment of six to one, led by the then Chief Justice Ajmal Mian, ruled that Article 63A inserted through the Fourteenth Amendment as *intra vires* and lawful under the Constitution. The Chief Justice in his opinion

declared freedom of speech as a necessary feature of a government system that is parliamentary, beholden to reasonable restrictions, and Article 63A could not be interpreted in such a way which would defeat this basic attribute. He held that various provisions of the said Amendment should be construed in light of Articles 66 (member privilege) and 19 (freedom of speech), and that efforts ought to be made to safeguard the freedom of speech on the House floor, beholden to reasonable restrictions, since a parliamentary form of government cannot function effectively without it.

In response to assertions that Article 63A may be abused, it was decided that at this time, there is no reason to believe that a political party leader could take advantage of or abuse the provision. There appears to be no incompatibility between paragraph (a) to explanation to Article 63A(1) and Articles 19 and 66 of the Constitution, since they do not clearly stipulate that a member cannot voice his opinion about matters placed before the House by virtue of his right under Article 66.

The Chief Justice ruled that he could not concur to the reasoning that the paragraph (a) to explanation of Article 63A(1) would also encompass the activities of the members outside the House. An elected member cannot be declared disqualified under Article 63-A for misconduct committed outside the precinct of the parliament based on the principle of construction that a punitive stipulation should be interpreted stringently and its extent should not be expanded unless it was considered necessary by the plain words used therein or by requisite intent. He further concluded that a High Court or the Supreme Court are not prohibited from reviewing any order made or action taken against a member according to Article 63-A(ii) of the Constitution which are *coram non iudice*, *mala fide* or are without jurisdiction.

Although they agreed on other points, Justices Saeeuzzaman Siddiqui and Irshad Hassan Khan disagreed with the Chief Justice's conclusions concerning dependence of clause (a) on clauses (b) and (c) of the explanations to Article 63A(1) and asserted their independence from each other. They maintained that Article 63A(1)'s clause (a) applies to an elected member of a political party's conduct both within and outside the House, while clauses (b) and (c) only apply to his conduct within the House. They ruled, however, that the freedom to honest dissent cannot be extended to encompass disobedience and criticism of the party's discipline, code of conduct, and stated policies.

Justice Siddiqui stated that an elected member of a political party who violated the Constitution's code of conduct and the party's stated policies outside the Assembly does just as much damage to the party's standing and operations as did his behaviour inside the Assembly. A defection would certainly lose the support of its constituency and would be viewed with distrust by the general public. A political party member who openly criticises the party's charter, code of conduct, or stated policy after being elected to the Assembly on its platform is unable to serve that party in the Assembly for any moral, ethical, or legal reasons. If an elected member of a political party believes firmly that he cannot now support the party's programmes due to his views on these matters, he should relinquish his representative character. Justice Mamoon Kazi disagreed with the majority verdict and found the amendment to be illegal and unenforceable because it violated basic rights.

Reforming Anti Defection Laws: Constitution (Eighteenth Amendment) Act, 2010

The anti defection law enumerated in Article 63A was substituted through section 22 of Eighteenth Amendment Act, 2010, to clarify and minimize the scope of defection and consequential penalty. There are now just two instances of defection. Firstly leaving the party by resignation or joining other parliamentary party. Secondly, voting or abstaining to vote against the direction by the Parliamentary Party in respect of "(i) Prime Minister's or Chief Minister's election, (ii) vote of confidence or no-confidence and (iii) a Money Bill or a Constitution (Amendment) Bill". The party head, pronounced as such by the party, may declare in writing that such a member have defected, after issuing show cause notice and

providing opportunity of hearing, and forward such declaration to the member concerned and Presiding officer of the house. The presiding officer is obligated to refer such declaration within two days to CEC to lay it before Election commission to decide either confirming or rejecting such declaration within thirty days. In case election commission confirms the declaration of defection, the membership ceases and seat become vacant. The forum of appeal to decision by election commission is Supreme Court within thirty days, which has to decide within ninety Days.

Validation of Eighteenth Amendment

The newly revised Article 63A was presented to the Supreme Court for review. (District Bar Association, Rawalpindi v. Federation of Pakistan, 2015). The Court held that the substitutions made in Article 63A by the Eighteenth Amendment look to be plausible and also vital for the preservation of party unity, continuity, and the efficient operation of Parliamentary democracy. The Court dismissed all constitutional petitions disputing the legitimacy of the Eighteenth Amendment.

Interpreting or Rewriting Constitution: Disregard of Defecting Votes

The provisions of Article 63A again came for consideration of Supreme Court seeking its interpretation under its advisory jurisdiction (Reference No.1, 2022). The case was based on a reference for the Supreme Court's ruling, under Article 186 of the constitution, sent by President Dr. Arif Alvi in March, when former Prime Minister Imran Khan was facing a rebellion within his own party following the submission of a no-confidence vote (Nazar, 2022). Although the said reference was comprised of four questions but the two having consequential nature are second and third. The second question seeking opinion was whether a member who committed a constitutionally illegal and morally indefensible act of defection nonetheless assert a constitutional right to equal weight and counting of his vote or there existed a provision in the Constitution or its interpretation that forbids such contaminated votes from being counted. The third question was whether a member who did not resign from his membership in the Assembly and was eventually judged to have committed defection, be no longer considered as sagacious, righteous, non-profligate, honest, and ameen, and so be disqualified for life.

In a three to two split decision, the majority judges gave their view regarding second question that the vote of any member of a House cast in defiance of any directive issued by the Parliamentary Party in accordance with paragraph (b) of Article 63A(1) is invalid and must be disregarded, regardless of the fact whether the Party Head acts or refrains from taking action that might result in a defection declaration following the vote. Whereas, in respect of third question they forwarded their opinion that a defection declaration in accordance with Article 63A may result in disqualification under Article 63, in accordance with an applicable statute passed by Parliament pursuant to clause (1), paragraph (p), of said article. Even while it is up to Parliament to implement such legislation, it must be acknowledged that it is past due for it to become a part of the law. If such law is passed, it must be a strong and commensurate reaction to the evil that it is intended to combat and eradicate rather than merely a "slap on the wrist."

The majority judges based their opinion on the rationale that Article 63A expresses certain parts of the basic rights inherent in political parties under Article 17 clause (2). The main goal of Article 63A is to uphold the political parties' basic right under Article 17 to have their coherence recognised and safeguarded against unconstitutional and unlawful attacks, intrusions, and curtailments, particularly in the legislative arena. Therefore, it must be given a broad interpretation and used in a way that respects basic rights. Furthermore, it follows that the political party's basic rights, as opposed to those of a particular member, must always take precedence in cases where there is a disagreement between them.

The two dissenting Justices, Mazhar Alam Khan Miankhel and Jamal Khan Mandokhail, found no conviction in the queries forwarded by the Presidential Reference and answered those in the negative. They ruled that the Constitution's Article 63A, which outline the process for defection of a Parliamentarian and its repercussions, was a full code in and of itself. Any additional interpretation of Article 63A would be an act of rewriting or reading into the constitution beyond our mandate, and it would also have an impact on its other provisions. However, the Parliament may impose further prohibitions or limitations on the defectors if it considered proper or necessary. In the end, the opposition was able to cobble together support from political parties with links to the government, thus Imran's ouster did not require the votes of the opposition legislators (Bhatti, 2022).

Government Formation Fiasco in Punjab

In the short term, this development has made Pakistan's political instability and legal ambiguity worse by upsetting established mechanisms for changing the government without providing a clear alternative. The ramifications are evident in the debacle of Punjab Government formation (Csontos, 2022). On April 16, 2022 political manoeuvring brought down the PTI government in the province and led to Hamza Sharif's election as chief minister with the backing of 25 PTI dissident lawmakers (Sheikh, 2022), against the party's direction which nominated Pervaiz Ellahi as its candidate. When the Reference judgement was issued, substantial litigation ensued to determine how the changing legal conditions should be applied to this scenario.

On June 30, 2022 the Lahore High Court held that the nullification of defectors' votes applied retroactively to Hamza's election (Muhammad Sibtain Khan v. Province of the Punjab, 2022). The exclusion of dissenting votes resulted in failure to achieve an absolute majority by either candidate. Thus the Court ordered a second round in accordance with the constitution's provisions. Another controversy was unleashed when in June, 2022, Election Commission of Pakistan (ECP) delayed the announcement of new MPAs on five Punjab Assembly seats designated for women and minorities, stating that the delay would last till the province's July 17 by-elections (Rana, 2022). The Lahore High Court directed the ECP to notify the PTI's parliamentarians on the five reserved seats in the Punjab Assembly that had become vacant as a result of the removal of 25 PTI legislators due to defection (Zainab Umair v Election Commission of Pakistan, 2022).

The primary question in the Punjab election was whether the "Party Head" or leader of the parliamentary party had the authority to give MPs legally binding voting instructions. The issue was raised when the party head of PML-Q, Shujaat Hussain issued direction to party's members to vote in favour of Hamza Shahbaz. The deputy speaker excluded ten votes of PML-Q in favour of Pervaiz Elahi and declared Hamza Shahba winner despite his score was 179 against 186 secured by Pervaiz Elahi. As a consequence, the candidate who secured 186 votes, and should be declared the winner, lost by 3 votes. The Deputy Speaker's ruling was challenged before Supreme Court (Chaudhry Parvez Elahi v Deputy Speaker, Provincial Assembly of Punjab, 2022). The Court pronounced the Deputy Speaker's ruling in the Punjab Chief Minister election "illegal," and Pervaiz Elahi was appointed the new Punjab Chief Minister. Thus, the political, constitutional, and juridical thriller concluded with a perplexing jurisprudence of anti-defection that would have far-reaching consequences in the future.

Conclusion

It is axiomatic that every political party in this country condemned, in strongest term, the vice of party switching and defection by the elected members of the Assemblies and promised to eliminate this evil from the body politic of the country, if voted to power. But it would appear from the history of legislation narrated above that when in power, the political parties turned a blind eye towards this immoral practice. The Political Parties Act, 1962 could not serve the purpose to put an end to vice of defection, creating insecurity for government formation and functioning. Even the Apex Court on more than one occasion in

its judgments, had to point out the vice of defection and floor crossing by the elected representatives and impressed upon the need to eliminate this unhealthy and immoral practice from the body politics of the country. The insertion of Article 63A in the constitution vide fourteenth amendment was a commendable effort but its scope was so wide as to undermine the basic freedom of speech and members' privileges guaranteed under Articles 19 and 66 of the Constitution, respectively. However, the Supreme Court in Wukala Mahaz case ruled that efforts ought to be made to safeguard the freedom of speech on the House floor, beholden to reasonable restrictions, since a parliamentary form of government cannot function effectively without it.

The eighteenth amendment to the Constitution was promulgated with an aim to restore the parliamentary form of government in 2010, inter alia, also reformed Article 63A and minimized the scope of defection and consequential penalty. However, the political debacle at National and Punjab level, this year, revives the chequered history of power politics disregarding any legal and ethical notions at the cost of power grabbing. The Supreme Court exacerbated the situation by ruling disregard of defecting votes in Presidential Reference case and faced the criticism as of rewriting or reading into the constitution beyond its mandate. Considering the current state of the legislature and judiciary in Pakistan, it is reasonable to conclude that the current anti-defection laws require extensive revision and modification in order to reflect contemporary realities and practices followed by members both within and outside of Parliament

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