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Date of Hearing : 19, 21, 24, 25, 28 to 30.03.2022,  
04.04.2022 to 07.04.2022, 18.04.2022  
to 22.04.2022, 09.05.2022 to  
11.05.2022, 16 & 17.05.2022.

### **ORDER**

For detailed reasons to be recorded later and subject to what is set out therein by way of amplification or otherwise, by majority of three to two (Justice Mazhar Alam Khan Miankhel and Justice Jamal Khan Mandokhail dissenting) these matters are disposed of together in the following terms:

1. The first question referred by the President relates to the proper approach to be taken to the interpretation and application of Article 63A of the Constitution. In our view, this provision cannot be read and applied in isolation and in a manner as though it is aloof from, or indifferent to, whatever else is provided in the Constitution. Nor can Article 63A be understood and applied from the vantage point of the member who has earned opprobrium and faces legal censure as a defector by reason of his having acted or voted (or abstained from voting) in a manner contrary to what is required of him under clause (1) thereof. Rather, in its true perspective this Article is an expression in the Constitution itself of certain aspects of the fundamental rights that inhere in political parties under clause (2) of Article 17. The two provisions are intertwined. In its essence Article 63A functions to protect, and ensure the continued coherence of, political parties in the legislative arena where they are the primary actors in our system of parliamentary democracy, which is one of

the salient features of the Constitution. Political parties are an integral aspect of the bedrock on which our democracy rests. Their destabilization tends to shake the bedrock, which can potentially put democracy itself in peril. Defections are one of the most pernicious ways in which political parties can be destabilized. Indeed they can delegitimize parliamentary democracy itself, which is an even more deleterious effect. Defections rightly stand condemned as a cancer afflicting the body politic. They cannot be countenanced.

2. It follows that Article 63A must be interpreted in a purposive and robust manner, which accords with its spirit and intent. Ideally, the Article should not need to be invoked at all; its mere existence, a brooding presence, should be enough. Put differently, the true measure of its effectiveness is that no member of a Parliamentary Party ever has to be declared a defector. Article 63A should therefore be given that interpretation and application as accords with, and is aligned as closely as possible to, the ideal situation. The pith and substance of Article 63A is to enforce the fundamental right of political parties under Article 17 that, in particular in the legislative arena, their cohesion be respected, and protected from unconstitutional and unlawful assaults, encroachments and erosions. It must therefore be interpreted and applied in a broad manner, consistent with fundamental rights. It also follows that if at all there is any conflict between the

fundamental rights of the collectivity (i.e., the political party) and an individual member thereof it is the former that must prevail. The first question is answered accordingly.

3. Turning to the second question and keeping in mind the answer to the first, it is our view that the vote of any member (including a deemed member) of a Parliamentary Party in a House that is cast contrary to any direction issued by the latter in terms of para (b) of clause (1) of Article 63A cannot be counted and must be disregarded, and this is so regardless of whether the Party Head, subsequent to such vote, proceeds to take, or refrains from taking, action that would result in a declaration of defection. The second question referred to this Court stands answered in the foregoing terms.
4. As regards the third question, it is our view that a declaration of defection in terms of Article 63A can be a disqualification under Article 63, in terms of an appropriate law made by Parliament under para (p) of clause (1) thereof. While it is for Parliament to enact such legislation it must be said that it is high time that such a law is placed on the statute book. If such legislation is enacted it should not amount to a mere slap on the wrist but must be a robust and proportionate response to the evil that it is designed to thwart and eradicate. The question stands answered accordingly.

5. The fourth question referred to this Court is stated in terms that are vague, and too broad and general. It is therefore returned unanswered.
6. This short order disposes of pending matters under Article 186 as well as Article 184(3). What has been said herein above is to be read and understood as a simultaneous exercise of (and thus relatable to) both the jurisdictions that vest in this Court under the said provisions, read also in the case of the latter with the jurisdiction conferred by Article 187.

Sd/-  
**CHIEF JUSTICE**

Sd/-  
**JUDGE**

I am not in agreement with the majority decision and have appended a separate note.

Sd/  
**JUDGE**

Sd/-  
**JUDGE**

I am also not in agreement with majority decision. I have annexed a separate note.

Sd/-  
**JUDGE**

Announced in Court  
on 17.05.2022.

Sd/-  
**CJ.**

**APPROVED FOR REPORTING**

**ORDER**

***Mazhar Alam Khan Miankhel and Jamal Khan Mandokhail, JJ.***- We have had the privilege of going through the short order of our learned brothers. For the reasons to be recorded later, with great respect, we are not in agreement with the same. Article 63A of the Constitution of Islamic Republic of Pakistan (**the Constitution**) is a complete code in itself, which provides a comprehensive procedure regarding defection of a member of the Parliament and consequences thereof. In case the Election Commission of Pakistan confirms the declaration sent by a Party Head against a member, he/she shall cease to be a Member of the House. As a result thereof, his/her seat shall become vacant. A right of appeal to this Court has also been provided under sub-Article (5) of Article 63A of the Constitution, to either of the party, aggrieved by the decision of the Election Commission. Any further interpretation of Article 63A of the Constitution, in our view, would amount to re-writing or reading into the Constitution and will also affect the other provisions of the Constitution, which has not even been asked by the President through this Reference. Therefore, it is not our mandate. We see no force in the questions asked through this Presidential Reference, which are answered in the negative. However, if the Parliament deems fit or appropriate may impose further bar or restrictions upon the defectors.

Similarly Constitution Petitions No. 2 and 9 of 2022 are dismissed.

Sd/-  
**(Mazhar Alam Khan Miankhel)**  
Judge

Sd/-  
**(Jamal Khan Mandokhail)**  
Judge

**ORDER OF THE BENCH:**

The Presidential Reference No.1 of 2022 is answered and the Constitution Petitions No.2 and 9 of 2022 are disposed of in the terms of majority view.

Sd/-  
**CHIEF JUSTICE**

Sd/-  
**JUDGE**

Sd/-  
**JUDGE**

Sd/-  
**JUDGE**

Sd/-  
**JUDGE**

Islamabad,  
17.05.2022.

**APPROVED FOR REPORTING**