

## ***Table of Contents***

Short Order	<b>1</b>
Crux of the Reference	<b>2</b>
Prayer of the President through the Reference	<b>2</b>
Question No.1	<b>2</b>
Freedom of speech and expression	<b>3</b>
The Purpose of Enacting Article 63A of the Constitution	<b>4</b>
Consequence of Defection as Provided by Article 63A	<b>4</b>
Whether vote in the Parliament is the Fundamental Right of a Member or the Parliamentary Party?	<b>5</b>
Question No.2	<b>6</b>
Whether the vote of defector can be excluded from counting	<b>7</b>
Question No.3	<b>8</b>
Question No.4	<b>9</b>
Role of the Constitutional Courts of Interpreting the Constitution	<b>12</b>
Measures to Eliminate the Menace of Malicious Floor-Crossing	<b>13</b>
The Trichotomy of Power	<b>14</b>
Conclusion	<b>14</b>

### **Judgment/Opinion**

***Jamal Khan Mandokhail, J.***-I have had the privilege of going through the Orders of my learned brother Judges, Mr. Justice Umar Ata Bandial, CJ, Mr. Justice Ijaz ul Ahsan, J and Mr. Justice Munib Akhtar, J. With profound respect, I am unable to bring myself to an agreement with some of the observations made and conclusions drawn in the Order. Therefore, I append my opinion and reasoning to my following short order dated 17.05.2022:

*"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 undersub-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."*

### **Crux of the Reference**

2. The Reference filed by the President Islamic Republic of Pakistan (**the President**) discloses that the political parties are the backbone of a parliamentary form of government and are ultimately accountable to the people. The persons affiliated to a party and elected on its symbol as Members of the Parliament or a Provincial Assembly are not absolute free agents of their will, therefore, are bound by the party discipline and its manifesto. It is contended that to check the menace of floor crossing and defection, Article 63A of the Constitution provides cessation of seat of a defected member but it warrants no preemptive action. According to the President, a cessation of a member *simpliciter* not enough to restrict or curb the illegal act of a member, therefore, he proposes that the members must not be permitted to cross the floor by voting or restraining from voting against the mandate of the party. Arguments of the learned Attorney General for Pakistan (**learned A.G.**) and learned counsel for the parties heard.

### **Prayer of the President through the Reference**

3. Through the Reference, the President wants us to interpret Article 63A of the Constitution in order to eliminate the practice of floor-crossing. In this behalf, he has posed four questions. My opinion and findings upon them are as follows.

**Question No.1:** *Whether keeping in view the scheme and spirit of the Constitution which enshrines democratic values, customs and norms and provides for parliamentary form of government conducted through*

*the chosen representatives of the people being carriers of Amanat, which of the following two interpretations of Article 63A of the Constitution is to be adopted and implemented to achieve the constitutional objective of curbing the menace of defections and purification of the electoral process and democratic accountability namely:-*

- (a) Interpretation of Article 63A in a manner that Khiyanat by way of defections warrant no preemptive action save de-seating the member as per the prescribed procedure with no further restriction or curbs from seeking election afresh; or*
- (b) A robust, purpose oriented and meaningful interpretation of Article 63A which visualizes this provision as prophylactic enshrining the constitutional goal of purifying the democratic process, inter alia, by rooting out the mischief of defection by creating deterrence, inter alia, by neutralizing the effects of vitiated vote followed by lifelong disqualification for the member found involved in such constitutionally prohibited and morally reprehensible conduct;*

### **Freedom of speech and expression**

5. Article 19 of the Constitution provides that *“Every citizen shall have the right to freedom of speech and expression, and there shall be freedom of the press, subject to any reasonable restrictions imposed by law in the interest of the glory of Islam or the integrity, security or defence of Pakistan or any part thereof, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, [commission of] or incitement to an offence.”* Similarly, Article 55 of the Constitution mandates that, *(1) Subject to the Constitution, all decisions of the National Assembly shall be taken by majority of the members present and voting, but the person presiding shall not vote except in the case of equality of votes.* Article 95 of the Constitution enshrines that a resolution of no confidence so moved against the Prime Minister (**the P.M.**), shall be voted by the members of the National Assembly. If the resolution is passed by the majority of the total membership of the National Assembly, the P.M. shall cease to hold office. The intent of the Constitution is clear that the decision upon the resolution shall be taken by vote of the total membership of the National Assembly, irrespective of their party affiliation. Such right of vote is a privilege of the members, which is protected by Article 66 of the Constitution, according to which *Subject to the Constitution and to the rules of procedure of [Majlis-e-Shoora (Parliament)], there shall be freedom of speech in [Majlis-e-Shoora*

*(Parliament) and no member shall be liable to any proceedings in any court in respect of anything said or any vote given by him in [Majlis-e-Shoora (Parliament)], and no person shall be liable in respect of the publication by or under the authority of [Majlis-e-Shoora (Parliament)] of any report, paper, votes or proceedings.*

### ***The Purpose of Enacting Article 63A of the Constitution***

In a Parliamentary System, an elected member is said to cross the floor, if he votes or refrain from voting against the dictate of the parliamentary party of which he is a member. This phenomenon is not new in the case of Pakistan. There are some countries in the world, which consider the floor-crossing as serious issue, hence, promulgated anti-defection laws, whereas, in majority of the countries, especially, in established democracies, it is a non-issue. Before the enactment of Article 63A of the Constitution of the Islamic Republic of Pakistan, there was no restriction upon members to assert their expression through a vote in the Parliament in any circumstance, therefore, they were frequently crossing the floor. It is for this reason, Article 63A was introduced as an anti-defection clause in the Constitution for the first time through the Fourteenth Amendment, to put a check upon the members. It was replaced in the Seventeenth Constitutional Amendment and was again replaced in the Eighteenth Constitutional Amendment, which is presently in the field.

### ***Consequence of Defection as Provided by Article 63A***

Article 63A of the Constitution imposes a condition that if a member of a Parliamentary Party composed of a single political party in the House, votes or abstains from voting in the House contrary to any direction issued by the Parliamentary Party to which he belongs, in relation to instances mentioned therein, he may be declared in writing by the Party Head to have defected from the political party and upon confirmation of the declaration by the Election Commission of Pakistan and exhausting the remedy of appeal before this Court, the member concerned shall cease to be a member of the House and his seat shall become vacant. Except for the consequence of deseating of the member, provided by the said Article, there is no bar in the Constitution on a member to vote against the parliamentary party's directions.

6. The President has said that the defection of a member of a parliamentary party on account of his vote in favour of a resolution for no-confidence against the P.M., contrary to his party's directions, is a *Khyanat* with his party, which is contrary to the Islamic principles. The constitutionality of Article 63A of the Constitution came up for consideration before this Court in the case of **WukalaMahazBaraiTahafazDastoor v. Federation of Pakistan**<sup>1</sup>, wherein it was held that the provisions of Article 63A of the Constitution is in consonance of the tenets of Islam and Sunnah. It was also declared that it preserves the right of freedom of speech of a member in the House, subject to reasonable restrictions as are envisaged in Article 66 read with Article 19 of the Constitution. Therefore, the act of a Parliamentarian of voting or abstaining from voting in the circumstances enumerated in Article 63A of the Constitution, contrary to his parliamentary party's directions, has not been considered as *ultra vires* to the Constitution, nor against the injunctions of Islam, hence cannot be considered as *Khayanat*.

**Whether vote in the Parliament is the Fundamental Right of a Member or the Parliamentary Party?**

7. The President through the Reference next contended that vote in the Parliament is a fundamental right of the Parliamentary Party, therefore, a member cannot exercise such right, contrary to the party's directions. The Preamble of the Constitution describes that sovereignty over the entire universe belongs to Almighty Allah alone, and the authority to be exercised by the people of Pakistan within the limits prescribed by Him is a sacred trust; AND it is the will of the people of Pakistan to establish an order; and the State shall exercise its power and authority through the chosen representatives of the people. The Constitution assigned the basic and most important role to the Parliamentarians to resolve citizens' problems and to do their best to serve and protect the interest of their constituents. Article 17 of the Constitution gives a right to every citizen to form associations or unions, subject to any reasonable restrictions imposed by law. In the democratic system, a political party is a union of people who aim to acquire political power. One of the main purposes and functions of a political party is to promote the interest of its voters and citizens, who vote for the candidate of their own choice to get their ideas implemented and

---

<sup>1</sup>PLD 1998 SC 1263

achieve their desired goals through their elected representatives. Our parliamentary democracy is constituency-based, therefore, the political parties always prefer to allot their symbol to candidates to contest elections from a particular constituency, where he has popularity or backing, in order to secure the seat. No doubt, every member is supposed to be loyal to the political party to which he belongs, but he has a constitutional fundamental right of freedom of speech and expression to be exercised through vote, subject to reasonable restrictions, in the interest of his electorates. Naturally, it is not common for members of a party to have similar ideas and interest of constituents in every circumstance and on every issue, as some decisions of the party may be against the interest of the people of any constituency in particular or of the Province and the country in general.

8. The performance of the Parliamentarians is always under strict scrutiny and on the basis thereof, in every forthcoming election, the electorate decides the fate of the elections of the members of their respective constituencies. Under such circumstances, in case of choice between the interest of the party and that of the constituency, the member mostly prefers the interest of the constituency by casting his vote against the party's decision. This situation normally emerges when a member of Parliament observes that his legitimate concerns regarding the interest and respect of his electorate are consistently ignored by the party head and he usually defects in the interest of the electorate. While doing so, he is cognizant of the fact that if he casts his vote contrary to his parliamentary party's directions, in the circumstances described in Article 63A of the Constitution, subject to a declaration by the party head, he will lose his seat, which in the parliamentary system is a severe penalty. However, the said Article does not provide **disqualification** of a member and restraining him from contesting elections for any period. The Constitution permits every member to cast his vote freely and according to his conscience, subject to reasonable restrictions. Similarly, there is no prohibition or unreasonable restriction in the Constitution except provided by Article 63A upon a member for expressing his views through vote contrary to the party's directions. This is a proof of the fact that vote in the Parliament is not the fundamental right of the party, rather is a fundamental right of a member, to be exercised in the interest of

people. The defector is since ready and willing to pay the price for defection, therefore, the right of the political party stands protected to award its symbol to any person to contest by-election.

**Question No.2:** *Where a Member engages in constitutionally prohibited and morally reprehensible act of defection, can the member nevertheless claim a vested right to have his vote counted and given equal weightage or there exist or is be read into the Constitution restriction to exclude such tainted votes from the vote count?*

### **Whether the vote of defector can be excluded from counting**

9. According to Article 95 of the Constitution every member of the National Assembly is free to cast his vote in favour of the resolution of no confidence moved against the P.M., irrespective of his party affiliation and directions. The said Article mandates that the fate of the resolution against the P.M. and his office shall be decided, upon counting of the votes so cast by the members of the National Assembly. Under such circumstances, the proposal of the President to exclude from counting any vote so cast, makes no sense, as there is no restriction in the Constitution upon counting of the votes so cast. The only consequence upon casting or abstaining from casting vote of a member is prescribed in Article 63A of the Constitution. It is important to mention here that earlier Article 96 was part of the Constitution, which contained a Proviso that the vote of a member cast in support of a resolution for a vote of no confidence against the party's directions, shall be disregarded. Subsequently, Article 96 of the Constitution as a whole was omitted and it is no more part of the Constitution. The constitution-makers intentionally did not revive the omitted Article along with its Proviso, nor include the condition of disregarding or excluding from counting the vote of a member of the House so cast, in any circumstance. This reflects the intention of the Parliamentarians that they do not want a member to be deprived of his constitutionally guaranteed fundamental right of expression through vote, nor exclude the vote so cast from counting in any circumstance. In my opinion, the Legislature while enacting the provision of Article 63A of the Constitution, has taken care of the fundamental constitutional right of vote of the Parliamentarians and at the same time tried to put a check upon members of the National Assembly to avoid frequent

floor-crossing. Under Article 95 of the Constitution, the moment the votes are cast by the members of the House, the fate of the resolution against the P.M. is decided on the day of voting. To the contrary, Article 63A of the Constitution is a complete code in itself, which provides a comprehensive procedure regarding defection of a member of the National Assembly. It takes considerable long time to complete the process upto the decision upon an appeal filed by the aggrieved party before this Court. Had the intention of the constitution-makers been to disregard or exclude vote of a member from counting, then the result of the resolution of vote of no confidence would have been subject to the outcome of the proceedings enshrined in Article 63A of the Constitution, which is not so. Thus, it is not the intent of the Legislature to put a bar upon the fundamental right of casting vote or excluding it from counting.

**Question No.3:** *Where a member who could but did not hear the voice of his conscience by resigning from his existing seat in the Assembly and has been finally declared to have committed defection after exhausting the procedure prescribed in Article 63A of the Constitution including appeal to the Supreme Court under Article 63A(5), he can no longer be treated to be sagacious, righteous, non-profligate, honest and ameen and, therefore, stands disqualified for life?*

10. There are variety of reasons why members of Parliament decide to cross the floor, therefore, there are views for and against it. Sometimes, they cross the floor according to their conscience and in the interest of the constituents, whereas, there is also a general view that defection is because of corrupt practices, lucrative incentives, moral turpitude or for some other reasons. Article 62(1)(f) of the Constitution provides that a person shall not be qualified to be elected or chosen as a member of *Majlis e Shoora*, unless she is sagacious, righteous and non-profligate, honest and ameen, there being no declaration to the contrary by a court of law. The said provision of the Constitution in clear terms describes that only upon a declaration from a competent court of law, someone can be considered as such. This Court in the cases of **Imran Khan Niazi v. Mian Muhammad Nawaz Sharif<sup>2</sup>**, **SamiUllahBaloch v. Abdul**

---

<sup>2</sup>PLD 2017 SC 265



**Karim Nousherwani<sup>3</sup> and Roshan Ali Buriro v. Syed Murad Ali Shah<sup>4</sup>**, has held that an elected member can only be declared as no longer sagacious, righteous, non-profligate, honest and ameen, after a declaration by a competent court of law in this behalf.

11. In order to further protect the fundamental right of a citizen, Article 10A was introduced in the Constitution through the Eighteenth Amendment. According to the said Article, *for the determination of civil rights and obligations or in any criminal charge against him, a person shall be entitled to a fair trial and due process.* Declaring someone as disqualified for any period to become a member of the Parliament is a penalty, depriving him of his constitutional rights. Without declaration by a competent Court of law after adopting due process through fair trial, determining any right and obligation of a person would be against his fundamental right guaranteed by the Constitution. In a democratic system, there is always a difference of opinion and every member has a right to dissent and debate in order to put a check upon the working and decisions of the party and its head. Merely on the apprehension that a member has betrayed his party and thereby depriving him from his right of expressing views and the right of dissent, will be against the basic concept of democracy enshrined in the Constitution. Thus, simply on the declaration of a party head, determining the constitutional and fundamental right of a member, without adopting due process and fair trial, he cannot be treated to be no longer as *sagacious, righteous, non-profligate, honest and ameen*. This will also amount to giving unbridled power to the P.M., which will result in creating a culture of civil dictatorship. No member will then have a right to remove the P.M., even if the latter himself remains no longer as *sagacious, righteous, non-profligate, honest and amen* or if his policies are against the State, the Constitution, the interest of the constituents, the injunctions of Islam or even contrary to the party manifesto. For these reasons, the constitution-makers intentionally did not include the word "**disqualification**" of a member for any period of time in Article 63A of the Constitution.

**Question No.4:** *What other measures and steps can be undertaken within the existing constitutional and legal framework to curb, deter*

---

<sup>3</sup>PLD 2018 SC 405

<sup>4</sup>2019 SCMR 1939

*and eradicate the cancerous practice of defection, floor crossing and vote buying?*

12. By inserting Article 63A into the Constitution, the constitution-makers have already suggested preventive measures in the cases of crossing the floor. It is thought-provoking that further stringent laws, enabling more severe consequences for defectors on account of corrupt practices, could prevent a person from his act of defection? The consequence by Article 63A of the Constitution does not differentiate between the defection by the member on account of conscience or on the basis of ill-intention. There is no doubt in my mind that defection on the basis of ill-intention amounts to corrupt practice, however, to prove such intention, a member is to be subjected to due process and fair trial, whereafter, upon proving the allegation, he shall be subjected to the anti-corruption laws. Therefore, whatever measures suggested by the Parliamentarians in the Constitution are sufficient according to their wisdom, as such, no other measure, contrary to the provisions of the Constitution, can be suggested by any outsider. In my opinion, prevention is more fruitful than imposing deterrent laws. It is a general impression that floor crossing is mostly due to corruption, lucrative incentives or moral turpitude, which requires to be discouraged. However, it cannot be generalized that every defection is on account of corrupt practices, lucrative incentives or immoral acts. The majority of the Parliamentarians enjoys good character and are mature enough to differentiate between good and bad. It is, therefore, not necessary that a Parliamentarian belonging to a political party shall always follow the decision of their party head or the parliamentary party leader. Some decisions may be perverse, against the interest of the country, the constituents, contrary to the party manifesto or against the injunctions of Islam, therefore, the member is not bound by such decision(s). The Parliamentarians have a right to express their views independently through a vote, according to their conscience, in the interest of the country and the public at large. Until and unless, an ill-intention, immoral or malicious act of crossing the floor by members of the Parliament is proved and declared as such by a competent court of law, assuming a member to be corrupt, would be an injustice.

13. Interpreting Article 63A of the Constitution in a manner desired by the President would be in direct conflict with Articles 19,

55, 63A, 66 and 95 of the Constitution. This Court in the case of **Wukala Muhaz** *supra* has already held that Article 63A of the Constitution is not in violation of any provision of the Constitution and injunctions of Islam. It is further held that the said Article is to be construed in such a way that it should preserve the right of freedom of speech of a member in the House, subject to reasonable restrictions as envisaged in Article 66 read with Article 19 of the Constitution.

If any measure or step, other than provided by the Constitution in its clear terms, interpreted by this Court in the stated case, is suggested, the fundamental right of members of the Parliament, belonging to the ruling party guaranteed by Articles 19 and 95 of the Constitution to move or support the vote of no confidence, would be snatched. The procedure provided by Article 63A of the Constitution to be initiated against a defecting member of the ruling party on account of voting for the resolution of no-confidence against the P.M. would also become redundant. Even it will amount to depriving the party head of his discretion to issue or not to issue a declaration in writing against a defecting member. The privilege provided by Article 66 of the Constitution to the members for casting vote will then also become ineffective. No doubt, the Supreme Court has the power to interpret any provision of the Constitution, but it must not be in a manner to change its basic structure and purpose nor could include or enhance the scope of the penal provision. This Court in the case of **WukalaMahaz** *supra* has held that a penal provision should be construed strictly and its scope should not be extended unless it is so required by the clear language used therein. The intent, desire and wisdom of the constitution-makers is clear enough that they did not want to restrain a member from voting in any circumstance; their wisdom was not to disqualify a defector from contesting election either for the remaining term of the Parliament or for future elections; the Legislature did not want the vote to be disregarded or excluded from counting. The rationale behind it is that any strict anti-defection provision in the Constitution, other than deseating a member, would debar and put a clog upon the independence of a member from exercising his fundamental right of freedom of expression through voting. The writers of the Constitution, in their wisdom, have put a balance between fundamental right of vote of the Parliamentarians

and the consequence of crossing the floor. The member intentionally chooses to defect and pays the price of being deseated for going against the political party's line, which without any doubt, is a very tough decision. The Parliamentarians considered the deseating of a defecting member of the Parliament, elected on a party's symbol as sufficient and reasonable restriction in order to discourage the frequent floor-crossing.

### **Role of the Constitutional Courts of Interpreting the Constitution**

14. The Constitution has assigned the role of interpretation of the Constitution and any statute to the constitutional courts of the country. While doing so, the Courts are always conscious that the interpretation of the Constitution should be in accordance with the intent, desire and wisdom of the Legislatures. It is the obligation and job of the Court to carry out the Constitution's intent. It should not be in a manner to change its object, purpose and meaning. The need of interpretation of any provision of the Constitution arises when such provision or words in it are vague and ambiguous. If the words of the provision of the Constitution or Statute are clear, precise and free from ambiguity, there is no need to interpret it in a manner, to change its plenary and normal meaning. Similarly, when a procedure for doing a particular act is prescribed by the Constitution or the Legislature, it is not for the Courts to substitute it with a different one on the pretext of purposive interpretation. The Judges while interpreting any provisions of the Constitution should limit themselves to a fair reading of the words of the Constitution and the intention of its framer, and no more. Otherwise, Judges enter the realm of creating, not just interpreting the Constitution. Asking us to interpret Article 63A in a manner to add in it disqualification of a member for life or exclude from counting the vote so cast, in addition to already given consequence of cessation of seat, would amount to re-writing and reading into the Constitution, which is against its basic concept. The wording of Article 63A of the Constitution in my opinion is clear and free from any ambiguity. There is no need to interpret it in a manner to change its plenary and normal meaning by adding or substituting any word, on the pretext of purposive interpretation. Any amendment, addition or deletion in the Constitution is the sole power and authority of the

Legislature to be exercised within the Parliament, keeping in view the basic structure of the Constitution. Accepting the proposal of the President would bring material changes to the stated Articles of the Constitution, which will lose its purpose, utility and basic concept as well. Thus, the Judges have no authority to assume the role of the Parliamentarians and to replace their wisdom by amending the Constitution.

**Measures to Eliminate the Menace of Malicious Floor-Crossing**

15. In order to eliminate this menace of malicious floor crossing, it would be appropriate to know the causes and circumstances of defection by a member. Our democracy has been interrupted several times by unconstitutional forces via the imposition of martial laws on the pretext and through the arranged campaigns, to portray all the Parliamentarians as corrupt in order to give justification to the unconstitutional acts. The reputation of the politicians has been damaged by labeling them as corrupt without due process and a declaration from a competent court of law, despite the fact that most of them enjoy good character and they are men of principle. Some members are compelled to change their loyalties without their free will and against the conscience for unknown reasons, which is one of the causes of malicious floor-crossing. Because of unconstitutional interruptions in the democratic system, our country has already suffered great loss and ultimately had an enormous negative impact on its prosperity, economic and democratic progress. Admittedly, there is difference of opinion amongst the political parties and their parliamentary members with regard to the consequences of floor crossing, therefore, it is the authority of the Parliamentarians, who may reconsider the consequences of defection, on the touchstone of morality and ill-intention of members. The President could have expressed his reservations and suggested proposals before the Parliament during his annual speech or otherwise could have had a meeting with the heads of the political parties and parliamentary party leaders, for deliberations about his concerns regarding malicious floor-crossing. Instead, he preferred the Reference, after almost more than a year of the Senate Elections and that too, on the eve of proposed resolution of no-confidence against the P.M. The attempt of the President to get the desired interpretation is not free from doubt. He still has the authority to indulge with the

Parliamentarians and party heads to unearth the causes of defection of a member for unknown reasons and to suggest measures in order to eliminate the malicious floor crossing.

### **The Trichotomy of Power**

16. The Constitution is the supreme, fundamental and paramount law of the land. It prescribes branches of the government, consisting of Legislature, Executive and Judiciary and determines their respective responsibilities, powers, duties, objectives and fundamental values, so that no organ of the State should exercise power beyond those listed. We are a nation of laws, not men. If all the issues of the citizens are left at the disposal of the members of the Parliament to be resolved in the House, in accordance with the Constitution and law, without fear, favour or interference from any external force; and the executive follows and implements the Constitution and maintains **the Rule of Law**, the goal of a consistent and mature democracy can conveniently be achieved. It could only be done, if all the three organs of the State remain strictly within their domain, listed by the Constitution, resultantly, the basic structure of the democracy will become stable and the country will prosper. I am optimistic that only by following the Constitution in letter and spirit, maintaining the rule of law and by recognizing the sovereignty of the Parliament, the goal of pure and mature democracy could be achieved. This is now high time for all the stakeholders to think and realize about the welfare of the people, continuity of process of democracy, sovereignty of the Parliament and prosperity of the country, strictly within the parameters of the Constitution. Ultimately, the members will acquire political acumen, resultantly, the frequent malicious floor-crossing could conveniently be eliminated to a great extent. This Court in the cases of **Mehmood Khan Achakzai v. Federation of Pakistan**<sup>5</sup>, **Ishaq Khan Khakwani v. Mian Muhammad Nawaz Sharif**<sup>6</sup> and **Reference No. 1 of 2020**<sup>7</sup> has already declined to interfere in such disputed political questions.

### **Conclusions**

The Judges while interpreting any provisions of the Constitution should limit themselves to a fair reading of the words of the

---

<sup>5</sup>PLD 1997 SC 426

<sup>6</sup>PLD 2015 SC 275

<sup>7</sup>PLD 2021 SC 825

Constitution and the intention of its framer, and no more. Otherwise, Judges enter the realm of creating, not just interpreting the Constitution. The wordings of Article 63A are clear enough and free from any doubt to judge the intent of the Constitution's framers. Thus it needs no further interpretation. The questions posed by the President through the reference are of political nature, therefore, the same cannot be replied in a manner proposed by him. In view of the principle of trichotomy of powers, in my opinion, it is not desirable for this Court to engage itself in resolving sensitive political issues.

**(Jamal Khan Mandokhail)**  
Judge

Islamabad  
K.Anees

**APPROVED FOR REPORTING**