

Judicial Overreach in Constitutional Clothing: A Critique of the Supreme Court's Reinterpretation of Article 63-A

Supreme Court Bar Association of Pakistan v. Federation of Pakistan
PLD 2023 SC 42

Muhammad Hayat Lak*

Introduction

In 2022, the Supreme Court of Pakistan ('Court') was confronted with some important constitutional questions. These matters came about when Prime Minister Imran Khan faced a looming Vote of No Confidence ('VoNC') which would have ousted him under Article 95 of the Constitution of the Islamic Republic of Pakistan, 1973 (the 'Constitution'). When Deputy Speaker Qasim Suri set aside the VoNC motion on grounds of foreign interference, PM Khan advised the President to dissolve the National Assembly under Article 58 of the Constitution. Upon this development, the Court opened its doors immediately through a *suo motu* notice, quashed the Deputy Speaker's ruling and allowed the National Assembly to resume the VoNC procedure.¹ However, the crisis did not end at this point.

In the ensuing hustle and bustle in Islamabad, the Supreme Court Bar Association ('SCBA') petitioned the Court to block political parties from holding rallies or processions in Islamabad. While this petition, alongside another one filed by Pakistan Tehreek-e-Insaf—calling for a lifetime bar on defectors to contest elections—was pending in the Court, the President of Pakistan filed Reference No. 1 of 2022, invoking the advisory jurisdiction of the Court under Article 186 of the Constitution, to seek its opinion on the interpretation of Article 63-A. All three cases were clubbed together and adjudicated by the Court.² However, this case note focuses primarily on the Presidential Reference, since it encompasses the main issues decided by the Court.

* Muhammad Hayat Lak is a recent graduate of the Shaikh Ahmad Hassan School, Lahore University of Management Sciences. Lak's academic interests include constitutional and public law.

¹ *Pakistan Peoples Party Parliamentarians v. Federation of Pakistan* PLD 2022 SC 574.

² *Supreme Court Bar Association of Pakistan v. Federation of Pakistan* PLD 2023 SC 42.

The case note respectfully disagrees with the majority view penned by Justice Munib Akhtar and argues in favour of the dissenting note of Justice Mazhar Alam.

Background on Defections and the Insertion of Article 63-A

Before delving into the legal intricacies associated with Article 63-A, it is first necessary to discuss its origins and development. Article 63-A(1) of the Constitution provides as follows:

If a member of a Parliamentary Party composed of a single political party in a House—

(a) resigns from membership of his political party or joins another Parliamentary Party; or

(b) votes or abstains from voting in the House contrary to any direction issued by the Parliamentary Party to which he belongs in relation to—

(i) election of the Prime Minister or the Chief Minister; or

(ii) a vote of confidence or a vote of no-confidence; or

(iii) a Money Bill or a Constitution (Amendment) Bill; he may be declared in writing by the Party Head to have defected from the political party, and the Party Head may forward a copy of the declaration to the Presiding Officer and the Chief Election Commissioner and shall similarly forward a copy thereof to the member concerned: Provided that before making the declaration, the Party Head shall provide such member with an opportunity to show cause as to why such declaration may not be made against him.

Defections in the legislature have existed in Pakistan since the time of the First Constituent Assembly in 1947. Constitution-making was delayed owing to a variety of reasons that scholars have categorised as lack of consensus amongst the framers, extra-parliamentary pressure, frequent dissolutions, and the absence of a powerful guiding figure in the Assembly.³ The Constitution of the Islamic Republic

³ Hamid Khan, *Constitutional and Political History of Pakistan* (2nd edn, OUP 2019) 64.

of Pakistan, 1956 (the '1956 Constitution') was not allowed enough time to explore questions of defection before being abrogated two years after its promulgation. Neither the 1956 Constitution nor the Constitution of the Islamic Republic of Pakistan, 1962 (the '1962 Constitution') provided explicitly for disqualification for defecting from party line on a legislative or administrative issue. However, scholars have extensively proven that the largely rump central legislature in Ayub Khan's regime suffered from frequent defections as the regime shuffled and reshuffled the King's Party.⁴

This practice continued under the regime of General Zia-ul-Haq. The period between 1988-1999 in Pakistan was marked by weak democratic regimes, which were at odds with a strong President who enjoyed extensive constitutional powers.⁵ Governments also had to keep a close eye on the number of seats filled in the Treasury benches to avoid an in-house change through a vote of no confidence. The first prominent one came in 1989 against Prime Minister Benazir Bhutto. The joint opposition led by the Islami Jamhoori Ittehad ('IJI') used the resources of the Provincial Government of Punjab to woo the government members.⁶ Bhutto's government survived, but only after it physically relocated over one hundred of its Members of the National Assembly ('MNAs') to secure locations to prevent defections.⁷ However, in totality, there were nine defections, six from the Opposition and three from the Treasury benches.⁸

Later, in 1993, the Nawaz Sharif government in the Centre was removed from office after the President's order to dissolve the National Assembly. This move had a trickle-down effect at the provincial level as well. The IJI Chief Minister of Punjab, Ghulam Hyder Wyne, was ousted through a successful vote of no confidence, and Mian Manzoor Wattoo was elected as the Chief Minister.⁹ Massive defections marred the whole saga, as the IJI lost despite originally having

⁴ Ibid 153–58.

⁵ The Constitution of the Islamic Republic of Pakistan 1973, art 58(2)(B)—which was inserted through the 8th Constitutional Amendment—allowed the President to dissolve the National Assembly. President Ghulam Ishaq Khan exercised this power in 1990 to put an end to Benazir Bhutto's first tenure; he again used this power in 1993 to end the Nawaz Sharif government. President Farooq Leghari used this power in 1996 to end the second tenure of Benazir Bhutto.

⁶ Khan (n 3) 400.

⁷ Ibid.

⁸ Ibid 401.

⁹ Ibid 421.

a majority in the House. However, the situation completely reversed once the Nawaz Sharif government was reinstated by the Court; this time, the members supporting Wattoo broke rank and started joining the IJI.¹⁰ Even in the North West Frontier Province ('NWFP'), the Pakistan Muslim League (Nawaz) coalition government,¹¹ led by Sabir Shah, was reduced to a minority by the Pakistan People's Party ('PPP').¹²

To put an end to horse-trading and defection, Article 63-A was inserted into the Constitution in 1997 through the Constitution (Fourteenth Amendment) Act, 1997 ('14th Constitutional Amendment'). It defined defection from a party as a) breach of party discipline by violation of its Constitution and code of conduct; b) voting contrary to any direction given by the parliamentary party; and c) abstaining from voting in Parliament against the direction of the parliamentary party on any bill. The Party Head was empowered to decide the fate of the defector but only after issuing a show-cause notice and considering their defence. If the Party Head decided against the defector, the decision was to be relayed to the Presiding Officer of the concerned House, who was obligated to refer the matter to the Chief Election Commissioner, who, in turn, was bound to declare the defected member's seat vacant. More importantly, the jurisdiction of all courts about any action under this law was excluded.¹³

The 14th Constitutional Amendment was challenged before the Court, and by a majority judgement of 6-1, it declared Article 63-A not violative of any provision of the Constitution.¹⁴ Chief Justice Ajmal Mian opined that Article 63-A should preserve the freedom of speech of the House's members, subject to the reasonable restrictions mentioned in Article 66, read alongside Article 19 of the Constitution. However, after the military coup of General Pervez Musharraf in 1999, the Constitution was held in abeyance; the Legal Framework Order ('LFO') of 2002 was promulgated, which amended a myriad of provisions of the Constitution. Article 63-A was drastically changed, and could only come into

¹⁰ Ibid.

¹¹ This party, led by Nawaz Sharif, emerged out of the IJI.

¹² Lawrence Ziring, *Pakistan in the Twentieth Century-A Political History* (OUP 1997) 556–57.

¹³ Constitution (n 5) art 63-A(6): 'Notwithstanding anything contained in the Constitution, no Court including the Supreme Court and a High Court shall entertain any legal proceedings, exercise any jurisdiction, or make any order in relation to the action under this Article.'

¹⁴ *Wukala Mahaz Barai Tahafaz Dastoor v. Federation of Pakistan* PLD 1998 SC 324.

operation if a member voted against the direction of the parliamentary party in the following 3 cases: 1) election of the Prime Minister or the Chief Minister, 2) a vote of confidence or a vote of no confidence, and 3) voting on a money bill. It empowered the Parliamentary Party Head to declare the member to have defected from the party; the declaration then had to be sent to the Presiding Officer of the concerned House by the Party Head. More significantly, the Election Commission of Pakistan ('ECP') was allowed to confirm or reject the declaration, and a member aggrieved by the ECP's decision had the right to appeal to the Court.

The 18th Constitutional Amendment once again made changes to Article 63-A. As it currently stands, a member defects their party if they: (a) resign from the membership of the party or join another party, or (b) abstain or vote contrary to any direction given by the parliamentary party on the election of the Prime Minister or Chief Minister, a VoNC, a money bill or a constitutional amendment bill. As the 14th Constitutional Amendment had envisioned, the Party Head retained the authority to declare a member as having defected from the party. Thereupon, the Parliamentary Party Head will send the declaration to the Presiding Officer of the concerned House. The roles pertaining to the House's Presiding Officer and the Chief Election Commissioner, alongside the right to appeal, as provided by the LFO, were kept intact. This framework has retained its shape to the present day. However, considering the fact that multiple petitions were made to the Court on the matter, there is still ambiguity on several issues.

The Presidential Reference and the Issues Before the Court

Presidential Reference No. 1 of 2022 sought the Court's opinion on the following four issues: (i) what is the purpose of Article 63-A and what malady does it aim to cure; (ii) should the defecting member's vote be counted and given the same weightage as it would have received had the member not defected; (iii) should a person declared to have defected from his political party be declared not honest and *ameen*, under Article 62(1)(f) of the Constitution, and hence disqualified for life; and (iv) what other methods can be adopted to deal with practices such as floor-crossing and vote-buying?

The Court left the third issue for Parliament to determine and discarded the fourth issue as being ambiguous. The Court gave its judgement on the first and

second issues, apart from clarifying the related question of whether it is the Party Head's or the Parliamentary Party's direction that a member is bound to follow.

The Court's Majority View

On the first issue, the Court linked Article 63-A with Article 17(2) of the Constitution, which allows any individual to form or be a political party member, subject to certain reasonable restrictions. The Court relied upon two important cases: *Benazir Bhutto v. Federation of Pakistan*¹⁵ and *Muhamad Nawaz Sharif v. The President of Pakistan*.¹⁶ Both cases had interpreted Article 17(2) broadly, holding that the rights embodied in it were twofold. The right to form a political party belongs to the individual. Still, once that party or organisation has been set up, the rights are transferred to that party, which collectively enjoys them. While upholding the view taken in the Nawaz Sharif case,¹⁷ the Court ruled in the *Benazir Bhutto* case that the right under Article 17(2) is not just limited to forming a political party but also includes the right to contest elections and to form a government if it has the requisite majority available. Any move that prevents that party from forming a government violates Article 17(2).

The judgement, drawing a connection with Article 63-A, ruled that the rights under Article 17(2) are to be enjoyed equally by every party; defections obstruct and alter political parties' balance of power and violate Article 17(2) because they prevent a political party from achieving its objectives (i.e., electing a Prime or Chief Minister, passing a constitutional amendment or a money bill).

The Court then clarified the penalties for voting against party line while giving a judgement on the second issue. The majority reasoned that discarding the vote was essential to uphold the internal discipline and representative mandate of political parties under Article 17(2). They emphasised that a member's defection distorted the electorate's choice and that penalising such conduct protected constitutional democracy by maintaining political coherence. The first penalty is the removal of the defector under due process initiated through a declaration by the Party Head, reinforcing the internal healthy operation of the party. The second

¹⁵ *Benazir Bhutto v. Federation of Pakistan* PLD 1988 SC 416.

¹⁶ *Mian Muhamad Nawaz Sharif v. The President of Pakistan* PLD 1993 473.

¹⁷ *Ibid.*

headway is that the vote of the defected member should not be counted because their vote might have changed the balance of power in the concerned house. Hence, the Court ruled that the defecting member's vote must be discarded to promote the external aspect of a political party's healthy operation.

On the direction issue, the Court opined that the Parliamentary Party and Party Head roles had been bifurcated in Article 63-A. The Parliamentary Party was to decide the party line on a parliamentary action, while the Party Head became relevant only once a member had acted contrary to the direction issued, with the ability to declare the member to have defected from the party.

In shedding light on the purpose behind Article 63-A, the Court, while adopting the living tree scheme of constitutional interpretation,¹⁸ reasoned that the Constitution evolves with changing social needs and must not remain stagnant. It concluded that the spirit of the Constitution suggests that Article 63-A must be read with Article 17(2), as the purpose behind it was to protect the rights of political parties. However, it may be argued that the spirit of the Constitution is to be derived from the text of the Constitution, in which Article 63-A is a complete provision. The dissent rightly points out that the only purpose behind inserting Article 63-A was to regulate discipline within the party, and if a member breaches that discipline, they should face the punishment of disqualification. The dissent further argued that expanding Article 63-A to invalidate the vote amounted to judicial rewriting of the Constitution, and stressed that individual conscience and independent legislative action were part of the broader democratic structure envisioned by the framers. The Court cannot decide what the spirit of the Constitution is if that line of reasoning does not even find the minimum amount of shelter within the provision's text.

To justify the living tree scheme of constitutional interpretation, the majority view primarily relies upon the following case law:

¹⁸ A metaphorical approach employed, mostly in Canadian jurisprudence, for constitutional interpretation. It signifies that the Constitution is a living tree that evolves and grows over time within its natural frontiers; the constitutional tree has roots in the past, but it possesses the ability to grow out branches. The term was first used by Lord Chancellor Sankey in *Edwards v. Attorney General for Canada* [1930] AC 124. See also Vicki C. Jackson, 'Constitutions as "Living Trees"? Comparative Constitutional Law and Interpretive Metaphors' (2006) 75 FLR 921.

- i) *Marbury v. Madison*,¹⁹ where Chief Justice Marshall discovered the power of judicial review from the structure of the Constitution of the United States, even though there was no explicit provision in the text that allowed that.
- ii) *Roe v. Wade*,²⁰ where the United States Supreme Court declared that the right to privacy was inherent in the due process clause of the 14th Amendment and embodied in that right was the choice of having an abortion. It is interesting to note that neither the right to privacy nor the right to abortion was explicitly written in the text of the Constitution.
- iii) *Dobbs v. Jackson Women's Health Organization*,²¹ which overturned *Roe v. Wade* and ruled that the Constitution does not refer to abortion, nor do constitutional provisions implicitly protect such a right.
- iv) *Edwards v. Canada*,²² where the Privy Council, while referring to the living tree metaphor, reversed the decision of the Canadian Supreme Court, which in its advisory jurisdiction had ruled that women cannot be elected to the upper house of the Canadian legislature.

The Court reasons that the power to review a legislative or executive action was not written in the Constitution in *Marbury*. Still, because of the changing social conditions, the constitutional tree had to evolve, and with time, this power was derived. Then, in *Roe*, centuries after the promulgation of the United States Constitution, a new right was created out of the Constitution because the social conditions of the time demanded it. Later in *Dobbs*, the interpretation of the same provision evolved into something opposite. The majority view professes the idea that jurisprudentially, a provision is interpreted in a particular way, but over a while,

¹⁹ *Marbury v. Madison* 5 US (1 Cranch) 137 (1803).

²⁰ *Roe v. Wade* 410 US 113 (1973).

²¹ *Dobbs v. Jackson Women's Health Organization* 597 US 215 (2022).

²² *Edwards v. Canada* [1930] AC 124.

a 'tipping point' is reached, and from then onwards, a new understanding arises; hence, the constitutional tree evolves and grows out into different branches.

The textualist interpretation approach has often been emphasized as a primary mode of constitutional interpretation, particularly where the constitutional text is clear.²³ If the Constitution's text is unclear or leads to an absurd result, other approaches, such as the living tree approach, may be resorted to. In the referred judgements, the courts abandoned pure textualism because they discerned that the original text could no longer adequately respond to the evolving social or political realities—such as the expansion of judicial review (*Marbury v. Madison*), the emergence of privacy rights (*Roe v. Wade*), or gender equality in political rights (*Edwards v. Canada*). In each case, it was held that societal conditions had materially shifted, warranting a broader interpretation of constitutional guarantees. While these judgements justify the adoption of the living tree approach, it is important to note that they concerned different constitutional frameworks, legal questions, and jurisdictions. Their connection lies only within the broader common law interpretive tradition.

In contrast, the Pakistani disqualification jurisprudence concerns the interpretation of the same constitutional provision—Article 63-A—within a very short time frame of less than a decade. Therefore, the reliance on the living tree approach here lacks the necessary trigger of fundamental societal transformation that justified its use in the aforementioned cases. A more appropriate comparison would have been to show, for instance, how the Canadian courts in *Edwards v. Canada* justified the expansion of constitutional meaning over nearly half a century, reflecting extensive social change regarding gender equality. No similar evolution in the socio-political context has occurred in Pakistan regarding party defections since the 18th Constitutional Amendment. Thus, the Pakistani context does not reach the threshold where a re-interpretation of Article 63-A under the living tree approach becomes justified.

Moreover, the majority view is silent on what social changes during the last years made it necessary to grow new branches from the constitutional tree. Even Canadian courts have held that one of the limitations of employing the living tree

²³ John F. Manning, 'Textualism and Legislative Intent' (2005) 91 VLR 419.

approach is that it does not allow courts to discover new obligations that were not part of the original objective of the law; the analysis must be linked with the historical context of the provision.²⁴ The rejection of the defector's vote is a novel judicially manufactured liability with no roots in Article 63-A; it is contrary to the living tree approach. Even if the theory of jurisprudential tipping point is accepted, the question arises: who shall decide that such a tipping point has been reached? The Parliament shall make such a determination and change the law through an amendment rather than an unelected judiciary embroiling itself in judicial gymnastics.

Critical Analysis and the Dissenting Opinion

The judgement, while complementing the living tree scheme with the moral reasoning approach,²⁵ discusses in depth the breach of political party rights, which seems to be premised on a false belief that the act of defection is an ailment or morally wrong. It is argued that this might not always be the case. Article 63-A is morally neutral, as there can be instances where a defecting member votes according to their conscience. The judgement rejects the idea of such a defector and states that the only honourable recourse for such a member is to resign and get a fresh mandate. Contesting a new election may be an option, but this may not be the only option, especially where the person defecting was independently elected. The majority view considers a conscious defector as a mere theoretical construct; the reason seems to be that since there has not been an instance of a conscious defector in our history, there will be no such defector in the future as well. It states that even if a conscious defector has a right, it must yield in favour of the rights of the political party.

The Constitution envisions the idea of defection, and Article 63-A was explicitly inserted to deter members from doing so; it did not close the door for an individual member to defect; a member could break away from the party line if his conscience dictated him, but he would have to pay the price, i.e., disqualification. The majority judgement has taken away that right from the individual member of

²⁴ *R. v. Blais* [2003] 2 S.C.R. 236, 237 (Can.).

²⁵ The idea that Judges should decide cases in a way that helps in understanding the moral underpinnings of the Constitution. See Ronald Dworkin, *Freedom's Law: The Moral Reading of the American Constitution* (HUP 1996).

the House. The following illustration shows how this principle may be applied in the future. Suppose the House is considering a constitutional amendment bill, one that reduces the powers of the superior judiciary. Even though defectors may lose their seats for voting contrary to the party line, they have a right to vote according to their conscience. These defecting members would have lost their seats, but would at least have thwarted such an amendment. It appears that the majority view focuses on the future when considering the rights of the political parties, but is more interested in the past when it analyses the idea of conscious defection.

When dealing with the second question, the text of Article 63-A is ignored, which does not mention the vote of the dissenting member being discarded. However, when the words are read carefully, it becomes evident that the very act of casting a valid vote or abstaining (contrary to the given direction) is triggering the defection and bringing Article 63-A into operation. If there is no act on the part of the member and there is just a mere thought, or if that contrary vote is not accepted, then that member cannot be said to have defected, as they did not harm the party's functioning. If we analyse the constitutional history, it becomes clear that the idea of rejecting a contrary vote was part of the original Constitution as a proviso to Article 96²⁶—concerning the vote of no confidence—but it was omitted through the Constitution (Eighth Amendment) Act, 1985 ('8th Constitutional Amendment'). It was never restored, even under the 14th Constitutional Amendment, which introduced Article 63-A and the idea of defection separately. Not accepting the vote of the dissenting member is an extra punishment for the defector and ignores the fact that Article 63-A already punishes by de-seating and disqualifying the dissenting members. It is trite law that a penal provision should be construed strictly and cannot be expanded unless allowed by the provision. In *Wukala Mahaz*,²⁷ the Court strictly interpreted paragraph (a) of the Explanation to clause (1) of Article 63-A—which dealt with breach of party discipline by a member as provided by the 14th Constitutional Amendment—and held that it did not apply to any alleged misconduct outside the House. Hence, it inevitably follows

²⁶ Constitution (n 5) art 96 (proviso): 'Provided that, for a period of ten years from the commencing day or the holding of the second general election to the National Assembly whichever occurs later, the vote of a member, elected to the National Assembly as a candidate or nominee of a political party, cast in support of a resolution for a vote of no-confidence shall be disregarded if the majority of the members of that political party in the National Assembly has cast its votes against the passing of such resolution.'

²⁷ *Wukala Mahaz* (n 14) [14].

that the already stipulated penalty of disqualification cannot be widely interpreted to state that it also includes rejecting the defector's vote.

On the direction issue, it is respectfully submitted that the majority view minimises the position of the Party Head, subjecting them to the will of members elected in the first place through the party ticket he issued and received votes in his name. This is contrary to previous judgements of the Court, where Party Heads were given significant power, for example, in the *Rawalpindi District Bar Association* case.²⁸ The leading view of Justice Azmat Saeed, supported by seven other judges, held that after the passage of the 18th Constitutional Amendment, the decision regarding how a party shall vote has to be taken by the Party Head. The judgement highlighted that the responsibility had been shifted from the Parliamentary Leader to the Party Head because of the practical realities of the country's political arena; it is the personal popularity of the political leader, who is primarily the Party Head, which translates into votes and eventually leads to the formation of the parliamentary party. Then later, in the *Zulfiqar Bhutta* case,²⁹ the Court extensively described the role and functions of the Party Head and even referred to them as the leader of the parliamentary party. The Court further held that the Party Head enjoys the central role within the party and directly manages and oversees the parliamentary party; all actions and decisions of the party require his approval. In the *Sardar Sher Bahadar* case,³⁰ the Court did not uphold the defection of a member because there had been no particular direction given by the Party Head. These precedents collectively underscore that the Party Head, and not the Parliamentary Leader, was envisioned as the ultimate authority within the party, particularly in the context of maintaining discipline and regulating defections, reflecting the constitutional scheme post-18th Constitutional Amendment.

Implications of the Majority Interpretation

It is an established principle of law that a constitutional provision shall be interpreted holistically, and no interpretation shall impute redundancy to any word of the concerned provision or any other constitutional provision (see, *District Bar*

²⁸ *District Bar Association, Rawalpindi v. Federation of Pakistan* PLD 2015 SC 401.

²⁹ *Zulfiqar Ahmed Bhutta v. Federation of Pakistan* PLD 2018 SC 370.

³⁰ *Sardar Sher Bahadar Khan and others v. Election Commission of Pakistan* PLD 2018 SC 97.

Association, Rawalpindi v. Federation of Pakistan,³¹ and *Benazir Bhutto v. Federation of Pakistan*³²). As per the new interpretation, there is no purpose left for having a vote in the House; the leader of the Parliamentary Party can simply write a letter to the Presiding Officer and inform him of the decision of the Parliamentary Party. It has made Article 95 and Article 136 (which deal with the vote of no confidence in the National Assembly and Provincial Assemblies, respectively) redundant. As of now, any vote of no confidence will never succeed if the leader of the house belongs to the party enjoying the majority of the house. Any member of that party who goes against its leader will be declared a defector, even though they may have serious concerns with the leader, and their vote too will be discarded. In such a situation, as per the new interpretation, the Prime Minister only needs to have the support of the majority of the Parliament to survive a vote of no confidence; this has reduced the rest of the House's membership to the status of silent observers. This creates an absurd situation as the whole purpose behind bringing a vote of no confidence has been destroyed; it will only succeed if the Prime Minister's majority composes different parties in case of a coalition. In other words, the majority view has made the leader of the house an elected dictator.

Conclusion

The Court's interpretation of Article 63-A in *SCBA v. Federation of Pakistan* marks a pivotal moment in Pakistan's constitutional jurisprudence—one where judicial innovation, arguably untethered from constitutional text or historical practice, has redefined the contours of parliamentary democracy. By discarding the vote of a defecting legislator, the majority transformed Article 63-A from a mechanism of party discipline into a tool of legislative disqualification, thereby granting political parties near-absolute control over their members' parliamentary conduct. This not only undermines the autonomy of elected representatives but also erodes foundational democratic norms such as dissent, deliberation, and conscience-based voting.

The Court's reliance on the living tree doctrine, though rhetorically compelling, lacks grounding in either the socio-political context of Pakistan or the textual limitations of Article 63-A. As the dissenting opinion rightly cautions, such

³¹ *District Bar Association* (n 28).

³² *Benazir Bhutto* (n 15).

interpretive elasticity risks judicial overreach and raises concerns about institutional legitimacy. While party coherence is important, it cannot come at the cost of hollowing out the very institutions meant to safeguard democratic accountability.

In the final analysis, this judgement tilts the constitutional balance decisively in favour of party leaderships, dilutes the role of Parliament as a deliberative body, and invites future constitutional crises by unsettling long-standing principles. The decision is not just a commentary on defection—it is a reimagining of legislative democracy, and one that deserves critical scrutiny.