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Article 63-A verdict apparently intended to weaken no-confidence motions: CJP Isa

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Chief Justice Qazi Faez Isa on Monday raised concerns over the inconsistent interpretation of Article 63-A, which governs the disqualification of lawmakers, during a Supreme Court hearing on review petitions related to the disqualification of defecting members of the National Assembly. The chief justice called for adherence to the constitution's text, emphasising the need for clarity in

the application of the law. Presiding over a five-member bench, Chief Justice Isa questioned the contradiction in rulings that suggest a lawmaker should be de-seated upon defection while also leaving it to Parliament to decide the duration of the disqualification. “If the constitution clearly states that a disqualified member will be de-seated, then that is the action that must be followed,” Isa said, highlighting that there should be no ambiguity in implementing the constitution’s provisions. The case revolves around Article 63-A, which deals with the disqualification of members of Parliament for defying party directions during critical votes. The Supreme Court is reviewing its earlier decision in the case, which ruled that the votes cast by dissident lawmakers would not be counted, and left it to Parliament to legislate on the duration of their disqualification. The hearing began with Barrister Ali Zafar, representing the petitioner, raising objections to the formation of the bench. He expressed concerns about the replacement of Justice Muneeb Akhtar with Justice Naeem Akhtar Afghan in the five-member bench. Chief Justice Isa assured the counsel that his concerns would be heard at a later stage in the proceedings, urging him to proceed with the arguments. Chief Justice Isa also stressed that the Supreme Court is operating transparently, with no decisions being made behind closed doors. “These days, nothing is happening behind closed doors in the Supreme Court. The larger bench is now complete, and we can begin the proceedings,” he stated. During the hearing, Chief Justice Isa pointed out a significant

contradiction in the previous ruling. He remarked that the decision to de-seat a lawmaker for defying party directions should be straightforward, but the involvement of Parliament in determining the disqualification period adds complexity. He questioned how the decision-making process could be left to both the judiciary and Parliament, calling it a “clear contradiction.” “On one hand, the ruling states that a defecting member should be de-seated, but on the other hand, it allows Parliament to decide the length of disqualification. This is contradictory,” the Chief Justice said, urging that the constitution’s wording should be the sole basis for such decisions. The case has its roots in the presidential reference filed by President Arif Alvi in March 2022, during the Pakistan Tehreek-e-Insaf (PTI) government. The reference sought the Supreme Court’s opinion on whether the votes cast by dissident lawmakers could be counted and whether their actions would lead to disqualification. In response to the reference, a five-member Supreme Court bench, led by former Chief Justice Umar Ata Bandial, issued a verdict in May 2022. The court ruled that the votes of dissident lawmakers should not be counted and that the Parliament could legislate on the period of their disqualification. The decision was reached with a 3-2 majority, with Justices Ijaz-ul-Ahsan, Muneeb Akhtar, and the Chief Justice ruling in favour of the disqualification, while Justices Jamal Khan Mandokhail and Mazhar Alam Miankhel dissented. The hearing also revealed the divisions within the Supreme Court over the

interpretation of Article 63-A. Chief Justice Isa remarked that there has been growing criticism regarding how the Supreme Court is handling such sensitive matters. “There are significant objections to how the Supreme Court is being run, and this is not conducive to political stability in Pakistan,” he said. The Chief Justice also questioned the logic behind ruling that a dissident member’s vote should not be counted in cases of no-confidence motions. He argued that if the vote is not counted, it could render Article 95 of the constitution, which governs the procedure for no-confidence motions, ineffective. “If a dissident lawmaker’s vote is not counted in a no-confidence motion, then a Prime Minister cannot be removed, meaning that Article 95 has become ineffective,” Isa noted. The review of Article 63-A’s interpretation has significant political implications, as it affects how dissent within political parties is handled and the potential consequences for lawmakers who go against party lines. The Chief Justice’s comments highlighted the need for clarity to avoid contradictions that could lead to further political instability. Chief Justice Isa also warned that such contradictions in the law could affect the integrity of democratic processes. “This judicial decision appears to make the no-confidence motion ineffective. In the UK, for example, the Conservative Party was able to change its Prime Minister while maintaining party governance,” he said, drawing a comparison with the political dynamics in other countries. The court will continue its review of the petitions, with more arguments expected in the coming

days.