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Anti-Defection Law

BHANU PRATAP SINGH¹

ABSTRACT

The Constitution (Fifty-second Amendment) Act, 1985, popularly known as the anti-defection law, came into force in March 1985. Anti-defection law is provided to curb all those evils affecting our free democratic setup. Politicians make promises but never fulfil them; they work on filling their pockets and making the life of people miserable. The aim of anti-defection law is to set a free democratic setup which shall be free from every kind of evil. Political parties are not allowed to do whatever they want. No member of a political party is allowed to leave the seat whenever they want without any kind of prior permission or notice on lame grounds and join another party. This law was passed soon after Lt. Shri. Rajiv Gandhi became the Prime Minister of the country with a massive mandate. This law would not have been passed if there had been no Rajiv Gandhi and his government with an unparalleled massive majority. In the Research paper, Anti Defection Law and its importance are discussed. The loopholes of the law when it came into force, the process of disqualification on various Grounds, the Indian case laws in which Disqualification happened are also discussed the present paper.

Keywords: Defection, politics, Law, Disqualification, grounds

I. INTRODUCTION

Our Indian Bureaucratic and Legislative system is running through our politicians; politicians comes from the word “Politics.” The word politics comes from the Greek word “Political” which means “of, for, or relating to citizens,” but our Indian Politics, according to a layman, is a bog where a person once enters, never comes out. Politicians make promises but never fulfil those promises; they work on filling their pockets and making the life of people miserable. Earlier after the Independence, it was very easy for a legislative, elected member to jump around from one party to another to fulfil their ambitions, but this led to many Governments toppling around; keeping in mind all this, our legislatures made an amendment in the year 1985 which was our 52nd Amendment Act and passed a law called “Anti-defection law” which added a new schedule to our Constitution, i.e., X Schedule.

Anti-defection Law intends to combat ‘the evil of political defections.’ This law was passed soon after Lt. Shri. Rajiv Gandhi became the Prime Minister of the country with a massive

¹ Author is an Assistant Professor at Asian Law College, Noida, India.

mandate. This law would not have been passed if there had been no Rajiv Gandhi and his government with an unparalleled massive majority. This law was passed so that it curbs political deflections, but the ever-increasing hunger of our legislatures and with our excellent legal fraternity, it was not a difficult task to find some loopholes in this law, and they used it to their interest.

The aim of this act is to provide that the elected member of parliament or state legislature who has been elected as a candidate set up by a political party and a nominated member of parliament or state legislature who is a member of a political party at the time he takes his seat within six months after he takes seat would be disqualified on the ground of defection if he voluntarily relinquishes his membership of such political party or votes or abstains from voting in such a house contrary to any direction of such party².

II. DISQUALIFICATION ON GROUNDS OF DEFECTION

The Constitution (Fifty-second Amendment) Act, 1985, popularly known as the anti-defection law, came into force in March 1985. It amended articles 101, 102, 190 and 191 of the Constitution regarding vacation of seats and disqualification from membership of Parliament and the State Legislatures and added a new schedule, i.e. the Tenth Schedule to the Constitution setting out certain provisions as to disqualification on ground of defection.

In articles 102/191, a new clause (2) has been inserted, which reads as follows:

“(2) a person shall be disqualified for being a member of either House of Parliament if he is so disqualified under the Tenth Schedule.”

The main provisions of the Tenth Schedule are—

Grounds of Defection

2. The grounds on which disqualification can be incurred are as under:

(i) Members belonging to political parties

A member of a House belonging to any political party shall be disqualified for being a member of the House—

(a) if he has voluntarily given up his membership of such political party; or

(b) if he votes or abstains from voting in such House contrary to any direction issued by the political party to which he belongs or by any person or authority authorised by it in this behalf, without obtaining, in either case, the prior permission of such political party, person or authority

² The Constitution (52nd Amendment) Act, 1985, <http://indiacode.nic.in/coiweb/amend/amend52.htm>.

and such voting or abstention has not been condoned by such political party, person or authority within fifteen days from the date of such voting or abstention.

An elected member of a House shall be deemed to belong to the political party, if any, by which he was set up as a candidate for elections as such member.

Nominated member of a House shall—

(i) where he is a member of any political party on the date of his nomination as such member, be deemed to belong to a such political party;

(ii) in any other case, be deemed to belong to the political party of which he becomes, or, as the case may be, first becomes, a member before the expiry of six months from the date on which he takes his seat after complying with the requirements of article 99 or, as the case may be, article 188.

(ii) Member elected otherwise than as a candidate set up by any political party An elected Member of a House who has been elected as such otherwise than as a candidate set up by any political party shall be disqualified for being a member of the House if he joins any political party after such election.

(iii) Nominated Members

Nominated member of a House shall be disqualified from being a member of the House if he joins any political party after the expiry of six months from the date on which he takes his seat after complying with the requirements of article 99 or, as the case may be, article 188.

Cases of split

3. The Tenth Schedule, as added to the Constitution by the Constitution (Fifty-second Amendment) Act, 1985, contained a provision (paragraph 3 of the Tenth Schedule) to the effect that no member will be disqualified from the membership of the House where he makes a claim that he and any other members of his legislature party constitute a group representing a faction which has arisen as a result of a split in his original political party and such group consists of not less than one-third members of the legislature party concerned.

This provision (paragraph 3) has since been omitted from the Tenth Schedule by the Constitution (Ninety-first Amendment) Act, 2003, which came into force from 1 January 2004. Consequent to the omission of Paragraph 3, it is not now permissible to claim a split in the legislature party.

Cases of merger

4. No member will be disqualified from the membership of the House where his original political party merges with another political party, and he claims that he and any other members of his original political party have become members of the other political party or the newly formed political party provided not less than two third of the members of the legislature party concerned have agreed to such merger.

Exemption to persons elected to the office of Speaker/Chairman or Deputy Speaker/Deputy Chairman

5. No disqualification is incurred by a person who has been elected to the office of the Speaker or the Deputy Speaker of the House of the People or of the Legislative Assembly of a State or to the Office of the Deputy Chairman of the Council of States or the Chairman or the Deputy Chairman of the Legislative Council of a State if he serves his connections with his political party after such election. Also, no disqualification is incurred if he, having given up by reason of his election to such office, his membership of the political party to which he belonged immediately before the such election, rejoins the such political party after he ceases to hold such office.

Chairman/Speaker to decide questions as to disqualification on grounds of defection

6. The question of whether a member of a House of Parliament or State Legislature has become subject to disqualification will be determined by the Chairman/Speaker of the House and his decision will be final. Where the question is with reference to the Chairman/Speaker himself it will be decided by a member of the House elected by the House in that behalf and his decision will be final.

All proceedings in relation to any question as to disqualification of a member of a House under the Tenth Schedule shall be deemed to be proceedings in Parliament within the meaning of article 122.

Bar on Jurisdiction of Courts

7. Notwithstanding anything contained in the Constitution, no court has any jurisdiction in respect of any matter connected with the disqualification of a member of a House on ground of defection.

Power to make Rules

8. The Chairman or the Speaker of a House has been empowered to make rules for giving effect

to the provisions of the Tenth Schedule. The rules are required to be laid before each House and are subject to modifications/disapproval by the House.

The Chairman or the Speaker of the House may without prejudice to the provision of article 105 or as the case may be, article 194, and to any other power which he may have under the Constitution direct that any wilful contravention by any person of the rules made under paragraph 8 of the Tenth Schedule may be dealt with in the same manner as a breach of privilege of the House.

Para 7 of the Tenth Schedule which stipulates this bar on judicial review, has been declared invalid by the Supreme Court in *Kihoto Hollohan vs. Zachilhu*. This provision, however, still forms part of the Tenth Schedule as no constitutional Amendment Bill has been brought forward by the Government so far for omitting the same from the Tenth Schedule.

Members of Lok Sabha (Disqualification on Ground of Defection) Rules, 1985

9. The Members of Lok Sabha (Disqualification on Ground of Defection) Rules, 1985; as framed, by the Speaker under the Tenth Schedule were laid on the Table of the House on 16 December, 1985 and came into force with effect from 18 March, 1986.

The main provisions of these Rules are given below:

Information etc. to be furnished by leader of a legislature party

10. The Rules cast a responsibility on the leaders of legislature parties in the House to furnish to the Speaker within 30 days after the first sitting of the Houses or within 30 days after the formation of such legislature party as the case may be, a statement containing the names of members of such legislature party, a copy of the rules and regulations/constitution of the political party concerned and where such legislature party has a separate set of rules and regulations, constitution, a copy of such rules and regulations/constitution. This information is required to be given in Form-I as prescribed in Disqualification Rules. The leader of the legislature party is also required to inform the Speaker about the changes that take place in the strength of the party or in its rules, regulations, constitution, etc. Duty is also cast on the leader of the legislature party or the person authorised by him in that behalf to communicate to the Speaker any instance of a member of the party voting or abstaining from voting in the House contrary to any direction issued by such political party without obtaining the prior permission of such party, person or authority. Such communication is required to be furnished in Form-II as prescribed in the Disqualification Rules.

Where a Legislature party consists of only one member such member is also required to furnish a copy of the rules and regulations of his political party to the Speaker within thirty days after the first sitting of the House or where he has become a member of the House after the first sitting, within thirty days after he has taken seat in the House or in either case within such further period as the Speaker may for sufficient cause allow.

Information to be furnished by members

11. Every member is invariably required to individually furnish to the Speaker a statement giving details of his party affiliation etc. as on the date of election/nomination in Form-III as prescribed in the Disqualification Rules. In the event of any change in the information given by the members in their respective Forms-III, in terms of declaration in their forms, they are required to immediately intimate the same to the Speaker.

Petitions re. Disqualification

12. No reference of any question as to whether a member has become subject to disqualification shall be made except by a petition in relation to such member made in writing to the Speaker by any other member.

Every petition is required to contain a concise statement of the material facts and to be accompanied by copies of documentary evidence, if any, on which the petitioner relies. Every petition is required to be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908, for the verification of pleadings. Every annexure to the petition is required to be signed by the petitioner and verified in the same manner.

Procedure

13. On receipt of a petition, the Speaker shall consider whether the petition complies with the requirements of the Rules. If the petition does not comply with the requirements, the Speaker shall dismiss the petition and intimate the petitioner accordingly. If the petition complies with the requirements, copies of the petition are forwarded to the member in relation to whom the petition has been made and if the member belongs to any legislature party, and such petition has not been made by the leader thereof, also to such leader, for furnishing their comments in writing to the Speaker on the petition.

After considering the comments, the Speaker may either proceed to determine the question or, if he is satisfied, having regard to the nature and circumstances of the case that it is necessary or expedient so to do refer the petition to the Committee of Privileges for making a preliminary inquiry and submitting a report to him.

The procedure which shall be followed by the Speaker for determining the question of disqualification and the procedure which shall be followed by the Committee of Privileges for making preliminary inquiry* shall, so far as may be, the same as the procedure for making inquiry and determination by the Committee of any question of breach of privilege of the House.

The Committee of Privileges (14th L.S.) while considering some petitions filed under the Tenth Schedule to the Constitution and the rules made thereunder referred to the Committee by the Speaker gave a very careful thought to the true import of the term "preliminary inquiry". The Committee came to a conclusion that in such matters, the Committee are required only to give their findings on the facts of the case and it isn't the Committee's remit to decide questions of law and arrive at conclusions on the merits of the case and make recommendations.

If the Speaker makes a reference to the Committee of Privileges, he shall proceed to determine the question as soon as may be after receipt of the report from the Committee.

Neither the Speaker nor the Committee come to any finding that a member has become subject to disqualification, without affording a reasonable opportunity to such member to represent his case and to be heard in person.

After the conclusion of the consideration of the petition, the Speaker may by order in writing dismiss the petition or declare that the member in relation to whom the petition has been made has become subject to disqualification under the Tenth Schedule and cause copies of the order to be delivered or forwarded to the petitioner, the member in relation to whom the petition has been made and to the leader of the legislature party, if any, concerned.

Where the Speaker declares that a member has become subject to disqualification under the Tenth Schedule, he shall cease to be member of the House with effect from the date of the order by the Speaker.

III. JUDICIAL INTERPRETATION BY COURTS

In *Kihota Hollohon vs. Zachilhu and Others* a question was raised that whether the right to freedom of speech and expression is curtailed by the Tenth Schedule, the Apex Court held that "The provisions do not subvert the democratic rights of elected members in Parliament and state legislatures. It does not violate their conscience. The provisions do not violate any right or freedom under Articles 105 and 194 of the Constitution." In the present case few more issues were raised that whether Para 6 & 7 of the X schedule are constitutional or not? The Supreme Court held that to the extent that the provisions grant finality to the orders of the Speaker, the provision is valid. However, the High Courts and the Supreme Court can exercise judicial

review under the Constitution. Judicial review should not cover any stage prior to the making of a decision by the Speakers/ Chairmen. Para 7 seeks to change the operation and effect of Articles 136, 226 and 227 of the Constitution which give the High Courts and Supreme Court jurisdiction in such cases. Any such provision is required to be ratified by state legislatures as per Article 368(2). The paragraph was therefore held invalid as it had not been ratified.

In another case an issue was raised that whether a member can be said to voluntarily give up his membership of a Party, if he joins another party after being expelled by his old political party, it was held by S.C. that “Once a member is expelled, he is treated as an ‘unattached’ member in the house. However, he continues to be a member of the old party as per the Tenth Schedule. So if he joins a new party after being expelled, he can be said to have voluntarily given up membership of his old party.”

In another case it was asked whether a Speaker can review his own decision to disqualify a member under the Tenth Schedule, it was held that The Speaker of a House does not have the power to review his own decisions to disqualify a candidate. Such power is not provided for under the Schedule, and is not implicit in the provisions either.

In *Ravi S, Nayak v. Union of India* two issues were raised that whether the Speaker of a legislature is bound by the directions of a Court and Whether judicial review by courts extends to rules framed under the Tenth Schedule, it was held by the Hon’ble Apex Court that “the orders passed by a speaker are subject to judicial review and rules under the Tenth Schedule are procedural in nature. Any violation of those would be a procedural irregularity. Procedural irregularity is immune from judicial scrutiny.”

A very important issue regarding that when can a court review the Speaker’s decision making process under the Tenth Schedule was answered by the S.C. in *Rajendra Singh Rana and Ors. vs. Swami Prasad Maurya and OR’s.*, it was held that if the Speaker fails to act on a complaint, or accepts claims of splits or mergers without making a finding, he fails to act as per the Tenth Schedule. The Court said that ignoring a petition for disqualification is not merely an irregularity but a violation of constitutional duties.

Recent Orders on Disqualification by the Speaker for Defection:

- Shri Rajeev Ranjan Singh “Lalan” vs. Dr. P.P. Koya, JD(U)³ Dr. Koya defied a party whip requiring him to be present in the House and vote against the Motion of Confidence for the government. He claimed he was too ill to be present in the House. The Speaker

³ (January 9, 2009)

concluded that Dr. Koya abstained from voting by remaining absent, and the evidence of the 'illness' is not sufficient to conclude that he was so ill that he could not be present in the House.

- *Shri Prabhunath Singh vs. Shri Ram Swaroop Prasad, JD(U)*,⁴. Shri Prasad defied a party whip requiring him to be present in the House. In his defence, he denied that any whip was issued or served. The Speaker held that in view of the fact that there is evidence to show that the whip had been delivered to Shri Prasad's house, and had been duly received, it cannot be said that Shri Prasad had no knowledge of the whip.
- *Shri Avtar Singh Bhadana vs. Shri Kuldeep Singh, Indian National Congress*,⁵The INC alleged that Shri Bishnoi often dissented from, and criticized the Congress government publicly, and had demanded the dismissal of the government in Haryana. The Speaker held that a person getting elected as a candidate of a political party also gets elected because of the programs of the party. If the person leaves the party, he should go back before the electorate.
- *Shri Rajesh Verma vs. Shri Mohammad Shahid Akhlaque, BSP*,⁶. It was alleged that Shri Akhlaque joined the Samajwadi Party in a public meeting. It was alleged that at this meeting, Shri Akhlaque had said that at heart, he had always been a member of the SP. The Speaker reasoned that there is no reason why news clippings and stories in the media would be untruthful. The Speaker therefore held Shri Akhlaque disqualified for having voluntarily given up membership of the BSP.
- The most recent case relating to anti-defection is from the Karnataka State Legislature where B.J.P. is the ruling party and 14 members of B.J.P. and 5 independent members sent a letter of discontent against the Chief Minister. A complaint was made against them and speaker disqualified them from their membership. The case is pending in the S.C

IV. CONCLUSION

Anti-defection Law is provided to curb all those evils which effects our free democratic setup. The aim of anti-defection law is to set free democratic setup which shall be free from every kind of evil. Political parties are not allowed to do whatever they want. no member of political party

⁴ (October 3, 2008)

⁵ (September 10, 2008).

⁶ (January 27, 2008)

is allowed to leave seat whenever they want without any kind of prior permission or notice on lame grounds and join other party.
