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# Understanding Aaya Ram, Gaya Ram in the Recent Political Tenor

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## ABSTRACT

*This article aims to shed a light on the menace of Defections which has been a major peril for our Democracy since 'Regionalism' was introduced into Politics, till the year of 1985 when the 52nd Amendment to the Constitution inducted the X Schedule in our Mother Document. But has it actually posed a challenge to the conspirators or the so called Chanakya's threatening the true essence of Democracy that is People choosing their representatives, not brokers luring others to cater their vested interests. The article primarily focuses on how Defections have been used as a tool to destabilize and sabotage governments and lays out recommendations to strengthen the Statute.*

## I. PRELUDE

Law cannot always subdue the nature of politics, especially when there are numerous stakeholders in play waiting to bypass and circumvent it for their greater advantage. In the late 1960's Common Minimum Programmes and Coalition Governments were a need when Congress lost heavily in 7 States and lost the treasury in 8 States. Post the Haryana debacle in 1967 when Gaya Lal switched parties 3 times in a fortnight, Defections in country were soaring high and saw 142 defections in Parliament and 1969 defections in State Assemblies across the country within 4 years (1967-1971), Thirty-two governments collapsed and 212 defectors were rewarded with ministerial positions.<sup>3</sup> This compelled the Government to enact a legislation in order to curb the issue of Defections.

If one looks at the Statement of Object and Reasons appended to the 52<sup>nd</sup> Amendment Act it gives a very ideal view of the modus operandi that were needed to be achieved but which turned out to be woefully ineffective taking in account the recent turnovers in State Assemblies ranging from Manipur to Karnataka to Madhya Pradesh and now Rajasthan on the verge as well. It reads as "*The evil of political defections has been a matter of national concern. If it is not combated, it is likely to undermine the very foundations of our democracy and the*

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<sup>3</sup> Rohit, *Politics of Defection*, PRS LEGISLATIVE RESEARCH (March 1, 2011) available at <https://www.prsindia.org/theprsblog/politics-defection>

*principles which sustain it. With this object, an assurance was given in the Address by the President to Parliament that the Government intended to introduce in the current session of Parliament an anti-defection Bill. This Bill is meant for outlawing defection and fulfilling the above assurance.*"<sup>4</sup> Some experts believe that the law is so far so good and was able to curb this menace, while the other section has condemned it for it being ineffective.

## II. A GLANCE AT THE 'ANTI-DEFECTION LAW'

The constitutional provisions alluding to the consequences of disqualification are Articles **102** and **191** of the Constitution, for the MPs and MLAs respectively. The conditions and procedure for the same are dealt under 10<sup>th</sup> Schedule of the constitution. The schedule mentions two grounds<sup>5</sup> attracting disqualification, mentioned hereunder:

- (1) if he has voluntarily given up his membership of such political party; (not merely resignation but must be construed in a wider manner, considering both 'express' and 'implied' conduct)
- (2) 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. *Subject to party's approval within 15 days.*

However some protection is granted to the members by providing exception to the general rule of defection under (1) ground, the schedule states that, 'Disqualification on ground of defection not to apply in case of merger, the condition is that the *merger has to be not less than of the 2/3 members* of the legislature party. The remaining members who have not accepted the merger and opted out of it can function as a separate group.

All the questions as to the disqualification of the members are left upon the speaker (or chairperson) of the House, who decides the fate of the concerned legislator/s. The *speaker is the final authority* in these matters. In addition to that, these proceedings are covered by article 122 and 212, meaning thereby, they are not to be discussed in court of law on grounds of procedural irregularities.

Moreover, the powers of the speaker in these matters were given blanket protection from judicial review under para 7 of the schedule, which now has been repealed. Therefore, the decision is subject to judicial review.

Prima facie, the law seems to be comprehensible, but it has been call into question on various

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<sup>4</sup> Constitution (Fifty-second Amendment) Bill, 1985 (Bill No. 22 of 1985).

<sup>5</sup> Constitution of India, Schedule 10, Para 2.

occasions leading to numerous judicial pronouncements and till date happens to be one of the most contentious laws.

### III. LITMUS TEST BY THE JUDICIARY

Like any other novel law, the act also contained intricacies and therefore was prone to be manipulated by the defectors. The pronouncements of the Apex Court have been imperative for reference to The Speaker as well as the Legislator/s in terms of procedure and reasoning towards the Anti- Defection Law, though the trend has usually been the same since it was first discussed even before the 52<sup>nd</sup> Amendment Act, 1985 in a challenge to Section 24G of the Jammu and Kashmir Representation of the People Act, 1957 which read that ‘Any person can be disqualified if having been elected voluntarily gives up the membership of the party on whose ticket he/she contested the election’. The court held it to be constitutionally valid in the case of Mian Bashir Ahmed V. State of Jammu and Kashmir<sup>6</sup>

Post the Parliament enacting the legislation under the X schedule, there was a challenge to it in the Supreme Court of India which was settled in widely renowned Kihoto Hollohan case<sup>7</sup>. The principal question was whether the unfettered role given to the Speaker was violative of the Doctrine of Basic Structure opined in Kesvananda Bharti V. State of Kerala<sup>8</sup>. The contention was regarding the sweeping power of the Speaker under Para 6(1) *“If any question arises as to whether a member of a House has become subject to disqualification under this Schedule, the question shall be referred for the decision of the Chairman or, as the case may be, the Speaker of such House and his decision shall be final”*. The petitioners in Hollohan argued that whether it was equitable that the Speaker should have such broad powers given that there is a reasonable likelihood of bias, The bench of Justices M N Venkatachaliah and K Jayachandra Reddy answered this question in the affirmative, The Speakers/Chairman hold a pivotal position in the scheme of Parliamentary democracy and are guardians of the rights and privileges of the House. They are expected to and do take far reaching decisions in the Parliamentary democracy, they added that the Schedule’s provisions were “salutary and intended to strengthen the fabric of Indian Parliamentary democracy by curbing unprincipled and unethical political defections. The bench struck down Paragraph 7 for want of ratification in accordance with the proviso to clause (2) of article 368. This judgement turned out to be a landmark judgement in governing the issues erupting out of X schedule and is still pivotal in determining the validity of Defections. Similarly, the fate of expelled MLA from the party, was decided in

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<sup>6</sup> Mian Bashir Ahmed V. State of Jammu and Kashmir, AIR 1982 J&K 26, 34.

<sup>7</sup> Kihoto Hollohan V. Zachillhu and Ors, (1992) 1 SCC 309.

<sup>8</sup> Kesvananda Bharti V. State of Kerala, (1973) 4 SCC 225.

**G. Vishwanathan v. Speaker<sup>9</sup>, while delivering upon the question the apex court held that even the expelled MLA would be subject to disqualification, if he/she joins any other party, as it would be assumed that the legislator voluntarily gave up the membership. This gave a serious blow to the genuine dissenters and front runner of freedom of speech & expression.**

#### **IV. DEBATE OF FREEDOM OF SPEECH & EXPRESSION VS ANTI-DEFECTION**

Legislators, leaders across party lines, various committees, jurists etc. suggested to have a relook and strengthen the provisions of the schedule according to the changing nature of politics which had led to more engagement in horse-trading and due to allegations being leveled that this particular law is not in the interest of democracy since it curbs the views or dissent of legislators barring them of their privilege, therefore, owing these demands the need was left to review the schedule and a committee<sup>10</sup> comprising speakers of various assemblies was constituted for the same.

After extensive discussions and deliberations, the committee submitted its report in 2003, with the recommendations that, the expression 'political party' be defined; that a time frame be laid down for decisions on the anti-defection cases; that the disqualified member be barred from holding any ministerial post or office of profit; other hot issues were that, what amounts to 'voluntarily giving up the membership' as per para 2(1)(a) of the 10<sup>th</sup> Schedule, which suggested that the terms 'voluntarily giving up membership' be defined<sup>11</sup> and the time frame for deciding these matters be fixed. If these, amendments were made, this will in turn give a clearer picture and will resolve the issue of its conflict with free speech & expression.

Subsequently the amendment in the schedule was made in 2003, with the belief that any living law has to be dynamic to deal with the changing needs of the times, all the major recommendations were considered. Yet this aspect of 'voluntarily giving up the membership' and *time frame to decide cases* were left untouched and open for manipulation according to needs. On the issue of legislators' freedom, it was said that *this act ensuring that the members selected in the name of the party and its support as well as the party manifesto remain loyal to the political party of which he is a member and its policies.*<sup>12</sup>

Unsurprisingly, the same cycle of challenging the provisions and disqualifying legislators was initiated, leading to numerous pronouncements by the court and giving directives. First and

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<sup>9</sup> **G. Vishwanathan v. Speaker, Tamil Nadu Legislative Assembly**, (1996) SCC 353.(India).

<sup>10</sup> G.C. Malhotra, *Anti-Defection Law In India And The Commonwealth* (Lok Sabha Secretariat, 2005).

<sup>11</sup> Id at 6.

<sup>12</sup> Id at 6.

foremost case after the enactment was of Rajendra Singh Rana<sup>13</sup>, in which the court held that *the conduct of the legislator to qualify as 'voluntarily giving up membership' can be express or implied, it would be decided accordingly by the speaker*. This judgement gave a severe blow to the dissent of legislators, to some relief for the genuine dissenters the supreme court held that the decision of the speaker would be subject judicial review in Jagjit Singh case<sup>14</sup>, then recently the apex court reduced its scope and held that *only limited judicial review is available against the Speaker's decision on the grounds of violation of constitutional mandate, mala fides intentions*<sup>15</sup>, thereby, leading to the concentration of powers at the end of the speaker.

## V. EPILOGUE

The developments discussed earlier in the article have played a decisive role in moulding the path towards an ideal system but there is one element which is embedded in our country's politics which thrives and strives to evade the rule of law that is yearning of power. The covet of sitting on the treasury side in an Assembly has impelled the political parties to bulldoze their way to clinch the baton of power, whether it is gaining seats in the Upper House of the Parliament to pass controversial bills or toppling State Assemblies, the parties have not left a stone unturned. The recent annihilation of governments in States of Manipur, Karnataka and Madhya Pradesh is a Blue Chip example of this. From offering financial favours to advancing ministerial positions the parties have been through a fine tooth comb to serve the interests of legislators. This is a harrowing juncture for our democracy and there is a need to correct the shortcomings of this Act, some recommendations have been discussed as follows:

- i. Needless to say, the suggestions made by Dinesh Goswami committee<sup>16</sup>, that **disqualification be limited to confidence or no-confidence motion, money bill** and Political parties should limit issuance of whips to instances only when the government is in danger. This will ensure participatory democracy and freedom of legislators as well.
- ii. **Permanent tribunal for these matters be constituted**, comprising of the speaker and election commissioners. So as to, keep a check on unfettered power of the speaker and bring in more impartiality.
- iii. Guidelines issues by apex court in *Keisham Meghachandra Singh case*<sup>17</sup>, that a Speaker cannot sit on a disqualification petition indefinitely, creating ample room for horse-trading

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<sup>13</sup> Rajendra Singh Rana v Swami Prasad Maurya & Ors, (2007) 4 SCC 270.

<sup>14</sup> Jagjit Singh vs State Of Haryana & Ors on 11 December, (2006) 11 SCC 1.

<sup>15</sup> Shrimanth Balasaheb Patil vs Honble Speaker Karnataka, W.P. (Civil) No. 992 of 2019.

<sup>16</sup> **Dinesh Goswami Committee on Electoral Reforms (1990).**

<sup>17</sup> *Keisham Meghachandra Singh v. The Hon'ble speaker Manipur Legislative Assembly & Ors., SLP (Civil)*

and luring defectors. **Such a petition would need to be decided within a reasonable time.** In the absence of any exceptional circumstances, a period of three months for the Speaker to decide on the petition.

- iv. The most contentious and ambiguous term '*voluntarily giving up the membership*' be **defined.**
- v. Last and equally important is to ensure that the defectors or the **disqualified legislator is barred from holding any ministerial post for the remaining term of that assembly,** regardless of the re-election post disqualification. Which is antithetical to the the current provision, where the defectors can bypass the law and can be appointed on a ministerial post after re-election<sup>18</sup>.

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