Page 1287 - 1300

INTERNATIONAL JOURNAL OF LEGAL SCIENCE AND INNOVATION

[ISSN 2581-9453]

Volume 6 | Issue 3

2024

© 2024 International Journal of Legal Science and Innovation

Follow this and additional works at: https://www.ijlsi.com/

Under the aegis of VidhiAagaz – Inking Your Brain (https://www.vidhiaagaz.com)

This Article is brought to you for free and open access by the International Journal of Legal Science and Innovation at VidhiAagaz. It has been accepted for inclusion in International Journal of Legal Science and Innovation after due review.

In case of **any suggestion or complaint**, please contact **Gyan@vidhiaagaz.com.**

To submit your Manuscript for Publication at **International Journal of Legal Science and Innovation**, kindly email your Manuscript at **editor.ijlsi@gmail.com.**

Evaluating Anti-Defection Law in India: An Attempt to Answer the Existing Legal Dilemmas

PRERNA SINGH[1] AND KIRTSIMRAN NAGPAL[2]

ABSTRACT

In the Indian democratic system, the Anti-Defection Law is extremely important. Despite the Anti-Defection rules being implemented, political defections continue in India, raising concerns about the effectiveness of these rules in maintaining political stability and deterring elected officials from acting opportunistically. The Anti-Defection Law, which was passed with the goal of preventing defection and keeping party discipline, has unexpected repercussions. Opponents argue that by restricting the ability to vote for representatives in government and making it more challenging to establish stable administrations, it erodes democracy. Furthermore, it has been said that political parties are encouraging a culture of insider trading and horse trading by using threats and inducements. Even though the 10th schedule spells out the disqualification laws in their entirety, there are still a number of important issues that come up from time to time, such as whether the Anti-Defection Law is constitutional, whether a speaker's decision-making abilities can be contested, and whether intra-party conflicts are also grounds for disqualification. In order to address each of these queries, the paper presents arguments both in support of and against the legal question, concluding with the author's summary of the findings. This paper will explore how to comprehend the practical legal nuances around anti-defection laws. It will also help the reader comprehend the Anti-Defection Law's moral and logical foundation. This paper covers contentions for and against the Anti-Defection Law along with the changes required in the current system. This paper aims at providing a wholesome view of the Anti-Defection Law in the nation along with its subsequent implications.

Keywords*: Defection, Democracy, Disqualification, Dissent, Legislative Representative.*

I. INTRODUCTION TO THE ANTI-DEFECTION LAW

Political parties are a necessary electoral requisite in a representative democracy. Two major reasons for failure are the criminalization of politics and the influence of money in elections.

[1] Author is an Advocate, District and Sessions Court, Amritsar, Punjab, India.
[2] Author is an Advocate, District and Sessions Court, Amritsar, Punjab, India.

© 2024. International Journal of Legal Science and Innovation [ISSN 2581-9453]

The nation has been concerned about the wickedness of political defections. It might threaten the fundamental basis of our democracy if left unchecked. With this goal in mind, the Lok Sabha overwhelmingly adopted a resolution on December 8, 1967, calling for the formation of a high-level committee made up of political party members and constitutional experts to study the issue and offer recommendations. In its report dated January 7, 1969, the aforementioned "Committee on Defection" recommended a number of measures to make defections illegal. With these suggestions in mind, a bill was passed specifically for this purpose and became the Constitution (Fifty-second Amendment) Act, 1985, which took effect on March 1st, 1985.[3] In addition to adding the Tenth Schedule to the Constitution, the Fifty-second Amendment Act of 1985 made the required modifications to Articles 101, 102, 190, and 191. The legislation pertaining to political defections is included in the Tenth Schedule. The goal was to stop the prevalent practice of unprincipled floor-crossing, which was driven by considerations for personal gain, and to guarantee the lawmakers' allegiance to the political party that supported their candidacies in the election.[4] The Schedule outlines specific exceptions as well as requirements for disqualification due to defection. Members of both the House of Commons and the House of a State's legislature are subject to the same provisions.[5] The several grounds of defection as per Para 2 of the 10th Schedule are enunciated as follows:

A member of the House who belongs to any political party will not be eligible to continue serving as a member of the House, according to paragraph 2(1) of the Tenth Schedule.

A. in the event that he willingly resigns from such political party membership;

B. If, without the political party to which he belongs prior consent, he votes in that House or abstains from voting in violation of any directives given by that political party.

The political party or anybody else authorized by it may issue such a directive, sometimes known as a whip. According to some, the phrase "voluntarily given up his membership of such political party" has a broader meaning than "resignation" and should not be used interchangeably. Giving up your political party membership freely, whether explicitly stated or implied, is not a big deal. Neither is the failure to complete the requirements to join a party. It is further to be noted that Floor crossing is not the sole type of defection, according to Schedule X. There may be instances where a certain political party has issued directives mandating that all of its members cast votes in a certain way on any issue. In that instance, lawmakers from that party are obligated to vote precisely in accordance with this directive.

[3] Dr. Narender Kumar, *Constitutional Law of India* 614 (Allahabad Law Agency, Haryana, 11th edn., 2023).
[4] Kuldeep Nayar v. Union of India, AIR 2006 SC 3127; Yitachu v. Union of India, AIR 2008 Gau. 103.
[5] Constitution of India (As Amended by the Constitutional (105th) Act, 2021), Schedule.10.

Voting against the instructions is also considered desertion.[6]

Explanation (a) to Para 2(1) states that firstly, an elected member shall be deemed to be a member of a party by which he was set up as a candidate. And explanation (b) to Para 2(1) states the rule regarding nominated members wherein such a member shall be deemed to be a member of the party who has nominated him or he shall be deemed to be a member of the party of which he first joins before the expiration of six months from the date of such nomination. Such joining shall be in compliance of Article 99 or Article 188, as the case may be.

Para 2(2) expounds that an independent member shall be disqualified from the house upon joining any political party after the conclusion of election. Furthermore, Para 4 and 5 provides exception to the general rule of disqualification. Para 4 states that Anti-Defection Law does not apply in matters of mergers of political parties; and Para 5 exempts disqualification of members of political party who have been elected as an officer of house. Next important provision i.e., Para 6 provides that if any question as to the disqualification arises, the question shall be dealt by the chairman in cases pertaining to Upper house of Parliament and by the Speaker of the house in matters pertaining to Lok Sabha. The decision of the speaker/ chairman shall be deemed final in such cases. Additionally, the courts are prohibited from exercising jurisdiction in matters of disqualification under 10th Schedule.[7]

Though 10th schedule lays down the law on disqualification in entirety, however, several significant questions such as the constitutionality of Anti-Defection Law, challenge ability of decision of a speaker or if intra-party disputes are also a subject of disqualification rises every now and then. The paper seeks to answer all such questions by adducing contentions in favor and against the legal query followed by a summarizing opinion of the author. This paper will delve into understanding the legal technicalities of the anti-defection in practice. It will also assist the reader to understand the logical and ethical basis of the Anti-Defection Law.

II. QUESTION PERTAINING TO FINALITY OF SPEAKERS' DECISION AND COURT'S INTERFERENCE IN MATTERS OF DISQUALIFICATION

Is the Speaker's show-cause notice to a Legislative Assembly member considered to be a "decision" and thus subject to legal dispute in court? If so, may a Court of Law intervene in a Tenth Schedule disqualification case before the Speaker has had a chance to exercise his authority over it? These questions often come to the mind of a person trying to comprehend the

[6] Vijay Kumar Tyagi, "Anti-Defection Law in India: An Analysis of the Effect of Unregulated Whip on Parliamentary Democracy" *ILI Review* 145 (2021).

[7] Constitution of India (As Amended by the Constitutional (105th) Act, 2021), Para 7 Schedule. 10.

true ambit of anti-defection. The answer to this question is stated as under:

A. Contentions in Favor

The speaker/chairman has been granted significant authority to decide cases involving defection-related disqualification, as stated in the Tenth Schedule of the Indian Constitution. Under this schedule's paragraph 8, the speaker or chairman may establish rules of procedure. As a result, the speaker's show cause notice issued in accordance with rule 7[8] can be interpreted as a conclusion based on the anticipated outcomes of the upcoming contention. As per the law laid down in Kihoto Hollohan v. Zachillu & Ors.[9], the court has recognised speaker's role as that of a tribunal and the validity of the orders thus passed can be challenged by way of judicial review on limited grounds only. It has to be noted that the quasi-judicial character of the office of speaker has been ratified in various cases like Shrimanth Balasaheb Patil[10] case, Keisham Meghachandra Singh[11] case and Rameshwar Prasad[12]case. However, the court has limited the scope of judicial review in Kihoto Hollon's judgement primarily on four grounds: mala-fides, perversity, violation of constitutional mandate and orders passed in violation of natural justice. In Menaka Gandhi v. Union of India[13], it was observed that the principles of natural justice have a cardinal role in modern administrative law. So as per the observation made in Ravi S. Naik's[14] judgment, an order of an authority exercising judicial or quasi-judicial functions passed in violation of the principles of natural justice is procedurally ultra vires and, therefore, suffers from jurisdictional error. For this reason, even if paragraph 6(1) of the Tenth Schedule gives the Speakers'/Chairman's decision finality, a decision like this is nevertheless open to judicial scrutiny if it violates the principles of natural justice.[15] Moreover the law laid down in Raja Ram Pal's[16] judgment is apposite in the sense that it is open to the aggrieved party to approach the court raising grievance against the action of the parliament and if court is satisfied within limited parameters of judicial review that the action is unwarranted, unlawful or unconstitutional, it can be set aside. Likewise in Balchandra L Jarkiholi[17], the show cause notice issued by speaker amounts to denial of natural justice to the appellant by not providing sufficient time to file the written statement and hence the decision of disqualification was set

[8] Lok Sabha (Disqualification on grounds of defection) Rule 1986.
[9] Kihoto Hollohan v. Zachillhu & Ors., (1992) Supp. (2) SCC 651.
[10]Shrimath Balasaheb Patil v. Hon'ble Speaker Karnataka Legislative Assembly, (2020) 2 SCC 595.
[11]Keisham Meghchandra Singh v. The Hon'ble Speaker of Manipur Legislative Assembly, (2020) 1 ALT 299.
[12]Rameshwar Prasad & Others v. Union of India & Another, (2006) 1 SCR 562.
[13]Maneka Gandhi v. Union of India, (1978) 2 SCR 621.
[14] Ravi S. Naik v. State of Maharashtra, 1994 Supp. (2) SCC 641.
[15]*Ibid.*
[16]Raja Ram Pal v. The Hon'ble Speaker, Lok Sabha & Others, (2007) 3 SCC 184.
[17]Balchandra L Jarkiholi v. B.S.Yeddiyurappa, (2011) 10 SCR 877.

aside by the court. Furthermore, it is apparent from reading of paragraph 7 of this schedule that there is an express bar on exercise of jurisdiction by court however the case of Kihoto Hollohan[18] has held that under prevalence of exceptional circumstances where disqualification or suspension is likely to have grave, immediate or irreversible repercussions and consequences, the court is allowed to interfere prior to the speaker exercising his jurisdiction. As apprehended in the case of Rajendra Singh Rana[19] and S.A. Sampath Kumar[20], it has been rightly observed that failure to exercise the jurisdiction conferred on speaker cannot be covered under the shield of paragraph 6 and simultaneously failure of speaker to decide a petition within reasonable time would attract the jurisdiction of the court while the petition is pending before the speaker. And it is to be noted that this power of judicial review certainly includes the power of passing interim orders by the court.[21] Therefore, it can be perceived that a court can interfere in matter pertaining to disqualification prior to speaker exercising his jurisdiction under exceptional circumstances.

B. Contentions Against

It is asserted in the view of the aforementioned legal query that the issuing of a show cause notice is not a decision. A show cause notice is the primary stage of adjudication and it cannot be regarded as a decision of an authority. The assertion has been laid on fact that show cause notice is issued under rule 7[22] which constitutes only a procedural mandate. Thereby, as per the deduction made by the court in Ravi S. Naik's[23] judgment, the disqualification rules are procedural in nature and the violation of same would amount to irregularity in the procedure which is immune from judicial review as against the law laid down in Kihoto Hollohan v. Zachillu & ors[24]. Furthermore, in accordance with the Hollohan ruling, no intervention is allowed during a quiatimet action or an interlocutory stage of proceedings, and judicial review is not accessible before the Speaker or Chairperson makes a judgment. It has been rightly pronounced by court in Renu Kumari's[25] case that the writ petition challenging show cause notice was premature and not maintainable as manifested from paragraph 6 and 7 read with Article 212. Furthermore, in Mayawati's[26] case, it was held that even if order of speaker is set aside on any grounds, the court cannot substitute speaker in its place, rather the consequential

[18] Kihoto Hollohan v. Zachillhu & Ors., (1992) Supp. (2) SCC 651.
[19]Rajendra Singh Rana v. Swamy Prasad Maurya, (2007) 4 SCC 270.
[20]S.A Sampath Kumar v. Kale Yadaih&ors, SLP (C) No.33677 of 2015.
[21]Khumukcham Joykishan Singh v. Hon'ble Speaker, MLA and Others, M.C.(W.P.(C)) No. 82 of 2020.
[22]Lok Sabha (Disqualification on grounds of defection) Rule 1986
[23]Ravi S. Naik v. State of Maharashtra, 1994 Supp. (2) SCC 641.
[24]Kihoto Hollohan v. Zachillhu & Ors., (1992) Supp. (2) SCC 651.
[25]Renu Kumari v. The Bihar Legislative Assembly and others, (2015) 1 PLJR 835.
[26]Mayawati v. Markandeya Chand and Ors., AIR 1998 SC 3340.

course to be adopted is to leave the matter to the speaker to decide afresh in accordance with law. As propounded by the court in Nabam Rebia[27]the Speaker has exclusive jurisdiction to decide disqualification questions that are referred to him. Likewise it was held in Kuldeep Bishnoi's[28] case, that high court had no jurisdiction to decide upon the matter which was in the domain of the speaker. Therefore, it is concluded that a court cannot exercise jurisdiction prior to the speaker as manifested from paragraph 6 and 7 of schedule.

C. Concluding Answer

It is opined in the view of the above analysis that parliamentary democracy can only be shielded under the umbrella of judicial review. Though the speaker is delineated with considerable powers in paragraph 6 of tenth schedule yet the same cannot be review proof. Speaker like any other branch of Government, Parliament is also obligated to conserve and further the values of democracy. Where there is manifestly unauthorised exercise of power under the constitution, it is the duty of the court to intervene. However the judicial review and intervention of the court is subject to prevalence of certain exceptional circumstances.

III. DISSENT AND DEFECTION: KEEPING IN VIEW INTRA-PARTY DISPUTES

Another significant question that the legal fraternity encounters: Is it possible to consider *"Intra-party dispute and dissent*" as subject to Anti-Defection Laws under the Tenth Schedule of the Indian Constitution? The answer to the same is substantiated as follows:

A. Contentions in Favor

The paramount aim of Anti-Defection Law is to protect the stability of the government, and for the achievement of the same, various grounds of defection have been stated in paragraph 2 of Tenth schedule. The term defection is not defined anywhere in the Constitution of India, however in simple language it may mean 'crossing of floor of the house in order to join opposite political party'. Paragraph 2 sub-para (1) provides a member of a political party shall be disqualified from being a member of the concerned house on following two grounds:(a)Voluntarily giving up of membership from his political party; or (b) He votes or abstains from voting, contrary to any direction issued by political party to which he belongs. Taking paragraph 2(1) (a) into consideration, what amounts to 'voluntarily giving up of membership from a political party' has been rightly expounded in Ravi S. Naik's[29] case as follows –"It is possible to conclude from a member's behavior that he has willingly resigned

[27]Nabam Rebia And Others v. Deputy Speaker, (2016) 8 SCC 1.
[28] Speaker Haryana Vidhan Sabha v. Kuldeep Bishnoi, (2012) 10 SCR 672.
[29]Ravi S. Naik v. State of Maharashtra, 1994 Supp. (2) SCC 641.

from the political party to which he belongs even in the lack of a written resignation."Likewise in Mandadi Satyanarayana Reddy's[30]case, the writ petitioners had incurred disqualification under Para 2(1) (a) by proposing the candidature of Sri Kasani Gnaneswar in the elections held to the Andhra Pradesh Legislative Council. Thus it can be inferred that the conduct of a member of a political party is a predominant factor in determining his membership in a certain political party. It is asserted that for proper functioning and stability of a political party, the whip of a party is a tool that has been designed to ensure that members are present and vote as per the direction issued by the political party in relation to important questions. The expression "any direction" in paragraph 2(1) (b) has been given wider meaning in Kihoto Hollohan's[31] judgment stating that the expression "any direction" itself includes two exceptions that provides occasions when a member may vote or abstain from voting contrary to the directions issued by the party. This wider connotation of the term "any direction" has been appreciated in Rameshwara Prasad's[32] decision as well. As is rightly observed in Yitachu's[33] pronouncement, the tenth schedule does not prohibit member from violating direction/whip. It only says that if the violation is not shielded under any of the exceptions given in para 2(1) (b) then only the member will be deemed to be disqualified. As per Hollohan[34] decision, while construing the meaning of para 2(1) (b) it cannot be ignored that the right to freedom of speech of member of parliament or state legislature, as the case may be, is subject to the provisions of this constitutions as enumerated under article 105 and article 194 which has given certain privileges and immunities to members which includes freedom of speech and right of vote. It cannot be said that article 105 and 194 is a source of immunity from the consequences of unprincipled floor crossing. As rightly upheld in Prakash Singh Badal's[35] case, the provision of para 2(1) (b) cannot be termed as violative of the provision of article 105 as right to freedom of speech of a member can be regulated or curtailed by making any constitutional provision such as 52nd amendment. It was rightly observed by the court in Ananga Udaya Singh Deo's[36] Judgment, a whip issued by political party to vote in favour of a candidate who is not a member of the house is not a whip. Further as observed in Kihoto Hollohan judgment, if the para 2(1) (b) not properly construed to, it will cause member to vote as per their views and ultimately causing lack of stability in the structure of the concerned political party. It is thereby concluded that intra-party

[30]Mandadi Satyanarayana Ressy v. Andhra Pradesh Legislative Assembly, LQ 2009 HC 7049.
[31]Kihoto Hollohan v. Zachillhu & Ors., (1992) Supp. (2) SCC 651.
[32]Rameshwar Prasad & Others v. Union of India & Another, (2006) 1 SCR 562.
[33]Yitachu, MLA of the Tenth Nagaland Legislative Assembly, Hutsu v. Union of India & Others, 2008 (2) GLT 284.
[34] Kihoto Hollohan v. Zachillhu & Ors., (1992) Supp. (2) SCC 651.
[35]Prakash Singh Badal. V. Union of India, AIR 1987 P & H 263.
[36]Ananga Udaya Singh Deo v. RangaNath Mishra, AIR 2001 ORI 24.

dispute and dissent is amenable to Anti-Defection Law in accordance with other provisions of Constitution of India.

B. Contentions Against

It is asserted that freedom of speech and right of dissent are predominant for the survival of parliamentary democracy but the same has been hampered by the provision of paragraph 2 of Tenth schedule. It is contended that the intra-party dispute and dissent should not be subject to Anti-Defection Law on the premise of the foregoing argument. As observed in Shrimanth Balasaheb Patil[37], a line has to be drawn between dissent and defection, so that democratic values are upheld in balance with other constitutional considerations. It has to be noted that all defection involve dissent but all dissent may not involve defection. Thus it has been rightly opined in the case of Gyanendra Kumar Singh[38] that matter arising from events which take place beyond the floor of the house cannot be subject to disqualification under Para 2(1) (b). Moreover the expression "any direction" gives discretionary as well as dictatorial powers to the party leader which ultimately hampers the right of dissent of the party members which is against parliamentary democracy. Moreover the same view was upheld in Prakash Singh Badal's[39] case that if literal meaning of the expression "any direction" is construed then it will lead to destruction of democracy, so it shall be interpreted in a narrow connotation. As held in Gyanendra's[40] case, honest dissent is healthy for parliamentary democracy and it shall not be a subject of Anti-Defection Law. As apprehending from judgement in Balachandra L.Jarikholi[41], deserting the government/leader and deserting the party are not synonymous to each other and accordingly the court set aside the disqualification on the ground that withdrawing support from government is a healthy dissent and doesn't amount to defection under the purview of Para 2 of this schedule. Similarly, in Pema Khandu's[42] case the importance of dissent in a parliamentary democracy was appreciated. It is proposed that intra-party dispute and dissent is not amenable to Anti-Defection Law as the scope of operation of Para 2(1) (b) has been limited by Kihoto Hollohan's[43] judgement.

C. Final opinion

It is proposed that right to dissent is a fundamental for maintenance of parliamentary

[37]Shrimath Balasaheb Patil v. Hon'ble Speaker Karnataka Legislative Assembly, (2020) 2 SCC 595.
[38]Gyanendra Kumar Singh v. The Bihar Legislative Assembly, (2015) 1 PLJR 582.
[39]Prakash Singh Badal. V. Union of India, AIR 1987 P & H 263.
[40] Gyanendra Kumar Singh v. The Bihar Legislative Assembly, (2015) 1 PLJR 582.
[41]Balchandra L Jarkiholi v. B.S.Yeddiyurappa, (2011) 10 SCR 877.
[42]Pema Khandu & Others v. The Speaker, Arunachal Pradesh Legislative Assembly, Naharlagun, Arunachal Pradesh & Others, 2016 (2) GLT 1050.
[43]Kihoto Hollohan v. Zachillhu & Ors., (1992) Supp. (2) SCC 651.

democracy and it should not be hampered at the hands of defection. A dissenting member neither changed sides nor crossed the floor; he continues to be a member of his party. Therefore the difference between dissent and defection needs to be appreciated carefully before making decision as to disqualification of a member. All dissents are not defections. And only those dissents should be amenable to tenth schedule that falls under the arena of paragraph 2(1) of this schedule.

IV. CONSTITUTIONAL VALIDITY OF 10TH SCHEDULE

Does the Tenth Schedule to the Indian Constitution violate the fundamental framework of the Constitution of India?

A. Contentions in Favor

It is submitted that the tenth schedule is violative of basic structure of Constitution of India. In the furtherance of the same view, it is apparent from the reading of Paragraph 6 of tenth schedule that the speaker is delegated with exclusive powers to adjudicate matters pertaining to disqualification on the grounds of defection. And simultaneously an express bar has been placed on exercise of jurisdiction by courts in matter pertaining to disqualification as enunciated by Paragraph 7 of this schedule. In the judgement of Kihoto Hollohan v. Zachillu and Ors.[44], paragraph 7 of this schedule was assailed on the grounds that it violates the doctrine of judicial review which is a part of the basic structure of the constitution of India and in addition to this it was also challenged that the paragraph 7 is unconstitutional as it has not been ratified by half the number of states as per Article 368(2)[45]. As observed in the landmark judgement of Keshavnanda Bharti[46], judicial review is a part of basic structure of Constitution of India and the constitution cannot be amended to violate its basic structure. Similarly as held in Minerva Mills[47] judgement, it was decided that everything and anything is open to judicial review and nothing can be shielded from it. Relying on the same it was rightly stated in Shivraj Singh Chouhan's[48] case that whenever there is manifestly unauthorised exercise of power under the Constitution, it is the duty of the court to intervene by means of judicial review. However, on close perusal of the tenth schedule it is evident that it gives enormous powers to the presiding officers and puts a restraint on the power of the court under Article 136, Article 226 and Article 227 which is clearly violating the basic structure of the Constitution of India. On the same

[44]Kihoto Hollohan v. Zachillhu & Ors., (1992) Supp. (2) SCC 651.
[45] Constitution of India (As Amended by the Constitutional (105th) Act, 2021).
[46]Keshavnanda Bharti and ors. v. State of Kerala and anr., (1973) 4 SCC 225.
[47] Minerva Mills v. Union of India, AIR 1980 SC 1789.
[48]Shivraj Singh Chouhan & ors. v. Speaker, Madhya Pradesh Legislative Assembly and ors., (2020) 4 MLJ 207.

premise, paragraph 7 of tenth schedule was held to violate basic structure as pronounced in Kihoto Hollohan's judgment. In the same case it was contended that the very concept of disqualification for defection is violative of the fundamental values and principles underlying Parliamentary democracy and violates an elected representative's freedom of speech, right to dissent and freedom of conscience and is, therefore, unconstitutional as destructive of a basic features of the Indian Constitution It has to be noted that all these rights constitute fundamental rights and as a matter of fact fundamental rights are also a part of basic structure of Constitution of India. As per the observation made in Keshavnanda Bharti v. State of Kerala[49] the basic structure of the constitution can be amended including fundamental rights but only after following the constitutional mandate. On this premise, it is evident that paragraph 7 of this schedule is clearly violative of basic structure for two main reasons which are: (a) one that it doesn't follow the mandate given in Article 368 and (b) second, it hinders the jurisdiction of the court to exercise the power of the judicial review. It is further asserted that Anti-Defection Law also violates the principle of separation of power as the entire power has been centred in the presiding officer and there may be instances where the presiding officer may take politically partisan view. It is thus concluded that tenth schedule is violative of basic structure of Constitution of India.

B. Contentions Against

No, the 10th schedule has no adverse impact on the Basic structure of the Constitution and hence, shall be deemed valid. The tenth schedule had been included in the Constitution of India by 52nd Amendment Act which brought major changes in the running politics of the country. The main propaganda of Anti-Defection Law is to curb the evils of disruptive political practices and maintenance of stability of government. This law was passed at a time when there was high rise in defection of member in political parties and there was an urgent need to dominate the same. The constitutional validity of this schedule was upheld in Kihoto Hollohan's[50] judgement where it was pronounced by majority that the provisions of this schedule are salutary in nature and are beneficial for the furtherance of parliamentary democracy as this schedule will help to curb the menace of unprincipled and unethical defections. It was upheld that the tenth schedule does not violate basic structure of Constitution of India. It was contended that the said schedule violates the fundamental rights of legislators particularly freedom of speech, freedom of vote and right to dissent. However, these contentions have been negated in various pronouncements

[49] Keshavnanda Bharti and ors. v. State of Kerala and anr., (1973) 4 SCC 225.
[50] KihotoHollohan v. Zachillhu&Ors., (1992) Supp. (2) SCC 651.

made by the court. Like in one case of M.S.M Sharma v. Shri Krishna Sinha[51], it was held that the freedom of speech given in article 19(1)[52] is different from that of the freedom of speech given to legislator under the Article 194(2). In Kihoto Hollohan's case, it was stated that "it cannot be said that article 105 and 194 is a source of immunity from the consequences of unprincipled floor crossing." That's why provisions of para 2 of this schedule does not violate any rights or freedom of elected member of parliament or state legislature under article 105 and article 194 and is thus constitutionally valid. In addition to this, the loophole in Paragraph 7 was rectified by the court in Kihoto Hollohan's case by allowing courts to exercise judicial review on limited grounds. Further relying on pronouncement made in Raja Ram Pal's[53] case it was further expounded that it is open for an aggrieved party to approach the court raising grievance against the action of parliament and if court is satisfied within limited parameters of judicial review, it can set aside the order of the presiding officer of the house. This was pronounced in the view to remove the lacunae of the tenth schedule of Constitution of India. After all these pronouncements made by various courts the constitutionality of the tenth schedule can be upheld as not violating basic structure of the Constitution of India.

C. Concluding remarks

It is proposed in view of the foregoing contentions that the tenth schedule is predominant for the maintenance of stability in political parties and it is imminent to know that the evil of disruptive political practices still exist that can only be dominated with the operation of tenth schedule of Constitution of India. It is an instrumental law made for the furtherance of parliamentary democracy. This law predominantly focuses to curb political corruption, strengthen democracy and make members of parliament and state legislature more responsible and loyal to the parties with whom they were aligned at the time of their election. Thereby, its constitutional validity shall not be a subject of challenge. It is accurately in line with the constitutional mandates. The Hon'ble Supreme Court recommended, however, that an independent tribunal be appointed to handle disqualifications under the Tenth Schedule in place of the Speaker of the Lok Sabha and Legislative Assemblies, and that this change be made to the Anti-Defection Law.[54]

V. CRITICALLY ANALYZING ANTI-DEFECTION LAW

In 1985, the 52nd Amendment to the Indian Constitution was ratified, including anti-defection

[51]M.S.M. Sharma v. Dr. Krishna Sinha & Others, (1961) 1 SCR 96.
[52]Constitution of India (As Amended by the Constitutional (105th) Act, 2021).
[53]Raja Ram Pal v. The Hon'ble Speaker, Lok Sabha & Others, (2007) 3 SCC 184.
[54]Keisham Meghchandra Singh v. The Hon'ble Speaker of Manipur Legislative Assembly, (2020) 1 ALT 299.

laws in response to the problem of defection in the country's political system. The regulation was put in place to prevent public servants from abruptly changing their political affiliations or parties. However, the Act has faced a variety of challenges and criticisms over time, some of which are expounded as under[55]:

A. The anti-defection act is said to have infringed the right to freedom of speech and expression, which is protected by Article 19(1) (a) of the Indian Constitution. MPs and MLAs' freedom of expression and conscience are curtailed by the legislation, which mandates them to vote in accordance with party whips issued by their respective parties. The Indian Constitution's Article 19(1) (a) protects the fundamental right to freedom of speech and expression, which the anti-defection legislation is said to have infringed.

B. The anti-defection law is thought to be ambiguous and open to many interpretations. Exploitation and misuse are conceivable since the regulation is unclear regarding what constitutes a good reason to alter political membership.

C. Political parties have abused the anti-defection rule to sway MPs and MLAs' defection in order to further their own agendas. By promising them cabinet positions, cash, and other perks, the clause has been exploited to entice MPs and MLAs to join rival parties.

D. Critics have pointed out that the anti-defection measure lacks accountability and transparency. The member of the ruling party who serves as the House presiding officer makes the decision to legally remove an MP or MLA. This could result in arbitrary and biased decisions that damage the legitimacy of the legal system.

VI. SUGGESTIONS AND CONCLUSIONS

In response to political defections that were causing instability and a lack of responsibility in the government, India first introduced an anti-defection law in 1985. The law has undergone numerous amendments to improve and make its contents clearer throughout time. Despite concerns that the law violates multiple fundamental rights, the Supreme Court has affirmed the statute's legality in a number of significant rulings. Among other changes to the legislation, the 91st Amendment was passed in 2003 and made it illegal for elected persons to break with their party or disobey party whip policies. Legislative independents who do not belong to any political party are exempt from the law. In addition to protecting elected officials' rights, the Anti-Defection Law works to maintain the stability and accountability of the government.[56]

[55] Sumit Vashishtha and Dr. Bhoomanna Reddy, "A Critical Analysis of Anti-Defection Laws in India" 9 *International Journal of Law and Social Sciences* 70-77 (2023).
[56] Sumit Vashishtha and Dr. Bhoomanna Reddy, "A Critical Analysis of Anti-Defection Laws in India" 9 *International Journal of Law and Social Sciences* 70-77 (2023).

However, the expectation that defection would prevent party jumping or floor crossing by elected officials failed to minimize the threat. It is claimed to be fundamentally flawed and completely out of date given the growing complexity of the political system and the subpar personnel running it. It is alleged to have aided in the division of minor parties and promoted widespread defections on behalf of the larger, controlling parties.[57] A legislator is disqualified if he or she makes a mistake, but it is acceptable if others agree with them. It places intolerable restrictions on legislatures when the House is in session. Its broad use runs counter to democracy's core values. Regarding floor crossing due to ideological disagreements, the legislation is silent. It does not invalidate a party member's expulsion. Under such circumstances, the House Presiding Officer has created the phrase "unattached" to set himself apart from both party members and independent members.[58] Being an independent member and providing outside assistance is not the same as joining a political party after the election. There isn't a set rule that applies to all situations, though; instead, it depends on the specifics of each instance. It is believed that the essence and intent of the law serve as the deciding factors. The litmus test is whether he has abandoned the independent spirit that helped win him the election. There is now controversy around the position of the Presiding Officer of the House. For example, his unusually hurried actions or his lack of sleep over the issue, acting arbitrarily by denying the member a fair chance to be heard, or by refusing to let him review the record or provide his defense. A speaker cannot take suo moto action to declare disqualification of a member.[59] He cannot take any action until a petition has been presented to the Speaker and, in some situations, has been later withdrawn by the Party. The speaker is allowed to review his decision of disqualification. The slow process outlined in the Rules significantly undermines the goal of the anti-defection legislation.[60] Moreover, in spite of the existing law on defection, it has been difficult to curb defections. On the basis of foregoing discussion the following suggestion are appended by the author:

A. **Encouraging transparency and intra-party democracy:** Elections for party leaders and other positions within the party might lessen the incentives for defection. Additionally, transparent and inclusive decision-making procedures inside political parties can improve the accountability of elected officials to their party and voters.
B. **Sensitizing and educating voters and elected representatives:** Raising awareness among these groups about the consequences of defecting and the value of preserving

[57] Dr. Narender Kumar, *Constitutional Law of India* 622 (Allahabad Law Agency, Haryana, 11th edn., 2023).
[58] *Ibid.*
[59] Jagjit Singh v. State of Haryana, AIR 2007 SC 590.
[60] Dr. Narender Kumar, *Constitutional Law of India* 623 (Allahabad Law Agency, Haryana, 11th edn., 2023).

democratic principles can help foster a positive political climate that discourages defections.

C. **Regarding the clauses pertaining to the disqualification requirements:** Establishing clear and explicit grounds for disqualification—such as voting against the party's declared policies, resigning from the party, and violating the party whip in a vote of confidence—can help reduce arbitrary disqualifications.

D. **Ensuring fair and unbiased adjudication:** The Speaker's or Presiding Officer's decision-making authority in cases of defection has been a topic of discussion. To guarantee impartial and fair rulings in cases of defection, it is possible to set up an independent and impartial adjudicatory body or process that is distinct from the political executive.

E. **Periodically reviewing the anti-defection laws:** Frequent assessment of anti-defection legislation, based on input from stakeholders and lessons learned from different jurisdictions, can help find and fix any shortcomings or unanticipated consequences.

For many different reasons, the Anti-Defection Law has been criticized, yet it has also served to maintain administrative stability. The clause has come under fire for weakening democratic principles, limiting the scope of legislative debate, being exploited by political parties, delaying the disqualification procedure, and requiring a constitutional revision to be changed. Conclusively, it can be deduced that Anti-defection laws are essential to the operation of parliamentary democracies, but their formulation and implementation must strike a delicate balance between the demands of party discipline and the democratic principles of free speech and dissent. The recommendations made in this research paper can act as a springboard for further discussions and changes to guarantee the efficacy and fairness of anti-defection law in the political sphere.

*****

© 2024. International Journal of Legal Science and Innovation [ISSN 2581-9453]