

# Indic Legal Law Journal

Volume No. 1

Issue No. 3

August - September 2022

Pages: 1 - 5

Author Name: Vennila

---

## ANTI DEFECTION LAW AND ITS CONTEMPORARY RELEVANCE

### **INTRODUCTION:**

Primacy is given to the loyalty of the legislators to the constituency. The Indian political environment was undermined for a long time by political defections by legislators. In the political system, this situation has resulted in greater uncertainty. Aaya Ram Gaya Ram was a phrase that became popular in Indian politics after Haryana MLA Gaya Lal changed his party three times the same day in 1967. The anti-defection law attempted to avoid such political defections that could be due to holding any office of profit or other similar factors.

In 1985, the parliament passed the tenth schedule of the 52nd amendment, usually recognized as the Anti-Defection law. The 52nd amendment amended Articles 101, 102, 190, and 191 of the Constitution addressing the suspension of seats and the dismissal of members of the parliament and the state legislature and introduced a new schedule, i.e. the tenth schedule laying down rules relating to the disqualification of positions based on the defection.

### **HISTORY OF ANTI DEFECTION LAW:**

In the late 1970s, our country faced unlawful defection by representatives. This caught the eye of all the political members in Parliament, leading to the adoption of a unified motion to research and disclose the question of defection by creating a Commission.

The 32nd Constitution Amendment bill was proposed to disqualify flawed lawmakers from possessing ministerial births. With the dissolution of Lok Sabha, this Bill lapsed. The 48th

# Indic Legal Law Journal

Constitution Amendment Bill preceded this attempt with the identical tenor and wording of the lapsed Bill. Finally, the Tenth Schedule was included in the Constitution along with the anti-defection law in 1985, by the 52nd amendment when Rajiv Gandhi was Prime Minister with a strong majority.

## **PURPOSE OF ANTI DEFECTION LAW:**

It is evident, the object is to prevent political defection by the legislators. Another purpose of the anti-defection law is to ensure consistency in the democratic political system and to impose the members' loyalty and acceptance of the party's orders by the members. There are two grounds for disqualifying a member of a legislature.

First, if the individual willingly gives up the party's membership, he can be disqualified. Giving up membership willingly isn't the same as quitting from a party. Even without having to resign, a member may be excluded if the Speaker / Chairman of the House concerned derives a fair conclusion from his actions that the member has willingly given up his party's membership. Second, he can be disqualified if a member vote in the Assembly against the direction of his party, and his conduct is not tolerated by his party. These are the two conditions on which it is possible to disqualify a member from becoming a House member. There is an exception that was included in the law to safeguard the disqualification of members. The 10th Schedule implies that they will not be disqualified if there is an alliance between two political parties and two-thirds of a legislative party's members agree to the merger.

## **JUDICIAL OBSERVATIONS:**

In *Kihoto Hollohon v. Zachilhu*<sup>1</sup>, The Supreme court held that the law was appropriate in all respects except in the matter of judicial review, which was found to be unconstitutional. The key concern, in this case, was whether the tenth schedule limits the freedom of speech and expression in parliament and state legislature and usurps the democratic rights of the elected members? And also if it is valid to give finality to the Speaker / Chairman's decision?

---

<sup>1</sup> *Kihoto Hollohon v. Zachilhu*, A.I.R. 1993 S.C. 412.

# Indic Legal Law Journal

In this case, it was eventually held that the tenth schedule does not impair the freedom of speech and expression or undermine the democratic freedoms of elected representatives. Constitutionally, the 10th Schedule is valid. And this provision is valid, but under the constitution, the High Courts and the Supreme Courts can exercise judicial review. But the Judicial Review does not cover any period before the speakers/chairmen making a decision.

The problem had emerged as to whether public condemnation of one's political party leads to defection upon the part of the members?

This was addressed in *Shri Avtar Singh Bhadana v. Shri Kuldeep Singh*<sup>2</sup>, Indian National Congress case. In this case, the Indian National Congress argued that Shri Bishnoi frequently attacked the congress government on a public forum and called for the government to be dismissed in Haryana. In this situation, the Speaker held that, apart from other reasons, a member was chosen as a delegate of a political party because of the programs and manifestos of the party. If a member disparages his party publicly, he would be considered to have voluntarily resigned his affiliation to the political party.

In *Mannadi Satyanarayan Reddy v Andhra Pradesh Legislative Assembly*<sup>3</sup>, the High Court of Andhra Pradesh had to decide, amongst others, whether the Speaker, when exercising authority, could ascertain whether or not the Member belonged to a specific legislative party. Having that the Speaker could also determine as such, the Court held that if in determining the question of disqualification of a member depended on the response provided by the political party to which that representative was already named and whether or not he belonged to that party, he should be permitted to determine that question.

## **ANTI DEFECTION LAW IN OTHER COUNTRIES:**

While most representatives of the Canadian Parliament are elected with political allegiance, they are not required to maintain the party label during their term of office. A member who switches party affiliation has no moral obligation to resign his seat and contest for re-election. There is no

---

<sup>2</sup> *Shri Avtar Singh Bhadana v. Shri Kuldeep Singh*, Indian National Congress, 2015 (12) S.C.C 402.

<sup>3</sup> *Mannadi Satyanarayan Reddy v Andhra Pradesh Legislative Assembly*, 2009 (3) ALT 324.

# Indic Legal Law Journal

restriction, either legal or statutory, against the exercise of crossing the floor. In Papua New Guinea, the legislation provides for punishments if a representative of the legislature quits or becomes independent of the party for which he was first elected and joins another party. If the member wishes to change the party, he shall have to face the 'leadership tribunal' (the Ombudsman's Commission) which shall determine if the grounds for resignation are legitimate.

Members of the Parliament of South Africa serve not only the people but also, in particular, their parties to the Legislature. However, the Constitution was amended in 2003 to allow for two 15-day periods during the five-year life of a Parliament during which representatives of the Assembly can change their party membership while maintaining their seats in the Assembly. Changes in party composition do happen in the United Kingdom from period to period. However, the changes in the party are creating issues for the political sides involved rather than for the House of Commons. There have been cases in recent parliaments where representatives have changed their political affiliations. There are no rules or legislation requiring members to register a party of which they are representatives or to compensate for any repercussions if a member leaves the party. A representative who switches the party does not have to resign. Similarly, a member removed from his party would keep his seat.

## **COMMITTEE REPORTS:**

### 1. Dinesh Goswami Committee on Electoral Reforms 1990:

The disqualification must be limited to situations where (a) a member willingly abdicates membership of his political group, (b) a member refrains from voting or, in a motion of vote of confidence or motion of no-confidence, votes contrary to the party policy. The President or the Governor, on the advice of the Election Commission, could decide the matter of disqualification.

### 2. 170th Law Commission Report, 1999:

Provisions to be removed which exempt splits and mergers from disqualification. Under the anti-defection laws, pre-poll electoral fronts should be regarded as political parties. And when the government is in danger, political parties must limit the distribution of whips to cases.

# Indic Legal Law Journal

### 3. Election Commission Report:

The report presented by the election commission was that Decisions under the Tenth Schedule should be taken on the binding advice of the Election Commission by the President or the Governor.

### **DRAWBACKS IN ANTI DEFECTION LAWS:**

Anti-defection legislation seeks to limit members' freedom of speech and expression by prohibiting them from voicing any opposing opinions on party policies. In different decisions, however, it has been argued that the freedom of expression contained in article 105 and 194 is not absolute. It is subject to the provisions of the Constitution, one of them being the Tenth Schedule. Another disadvantage of the law is that it limits the government's accountability to Parliament and the public by prohibiting political party members from changing their parties.

### **CONCLUSION:**

The anti-defection law, when passed, was meant to bring down the political defection. Schedule 10 protects the integrity of the political formation as well as the existence of the government. However, it should be modified and some of the provisions described above should be implemented in such a way that the Representatives are not limited to a mere number and can play a role as people's representatives and not only as members of the party. Recent changes have little variance with the doctrine of division of power, but, as our ancestors have said, the constitution is adaptive and can evolve with new trends. Issues of have been troubling the country for more than thirty years, and hence significant efforts must be made to reform the current anti-defection law, which is in reality a great weapon to curtail this evil activity, but due to some of its loopholes, as described above, it has not been able to do the best it can.