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Overview of Anti-Defection Law

Introduction

In the Indian Parliamentary system, many instabilities are caused by the democratically elected legislators. They shift allegiance from the parties at the time of the election, they disobey the decision of the decisions of the parties at the time of voting. To end this political corruption, the anti-defection law was introduced by the 52nd Constitutional amendment¹ and the tenth schedule came into existence. They were forced to introduce this law due to many defections that took place in the preceding years. This amendment is established to promote parliamentary discipline and decorum, which results in the stability of the structure of political parties. The main purpose behind the introduction of the Tenth schedule is to curb the issue of unethical tactics used by politicians, the evil of defection which caused immense problems in our body-politic.² Under this schedule, it is mentioned that no courts shall have jurisdictions in respect of cases regarding the disqualification of a member. For the first time, the constitution has mentioned about powers to decide on disputes of speakers and chairman. Paragraph 7 of the schedule bars the jurisdiction of courts and the legal intent of these provisions is plain and manifest.³

¹ The Constitution (Fifty Second-Amendment) Act, 1985.

² Kihoto Hollohan v. Zachillhu, 1992 S.C.R. (1) 686.

³ Mask v. Secretary of State, A.I.R. 1940 P.C. 105.

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Background

The modern growth of democracy in different countries who have adopted the party system demands more than one political party. If there is only one party existing then it is against the thesis of democracy. In India, after independence they had opted for the obvious alternative, that is democracy. The whole freedom movement was clearing the way for operating democracy. Congress was the ruling party at that time, and it was the origin of many opposition parties. The Congress party enjoyed the majority in three general elections, but the problem started when there was a spill in the party that took place. Therefore, at the state level, the politics of defection had started between 1957 and 1967. Before 1967, about 500 cases of defection took place at the state level. One of the famous examples of defection occurred in 1967, a legislator Gaya Lal changed his political affiliation three times in a fortnight and it gave rise to the ill-famed phrase "Aaya Ram, Gaya Ram."

The practice of switching sides and allegiance of parties to gain office was popularly known as 'Horse Trading'.⁴ To tackle the issue of political defection, a committee was formed during the fourth Lok Sabha in 1967. The report submitted by this committee led to invoke the anti-defection bill in Parliament. The recommendation of the bill was:

- A code of conduct should be created and followed by all political parties.
- If defection is due to ideological reasons, then the defector should be disqualified, but they are allowed to stand again.
- If defection is due to the lure of office, then the defector should be disqualified and should not be allowed to stand again for some time.

The ruling party led by Indira Gandhi referred the anti-defection bill to a joint select committee even though the opposition parties were in support of it. The suggested bill was concentrating only on a certain category of defection and it did not regulate the whole network of defection. However the recommendation was acted upon later in 1973, the government introduced the 32nd

⁴ J.K MITTAL, Parliamentary Dissent, Defection and Democracy, 35 JILI vii (1991).

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amendment bill. However, the Lok Sabha was resolved and this bill lapsed. There was no action taken regarding the anti-defection law until the Rajiv Gandhi Government came to power. The President addressed both the houses and intent to introduce a bill relating to anti-defection. To this, the government introduced the 52nd Constitutional Amendment bill in January 1985. This bill was finally passed and the Act came into force from 1st March 1985.

The relevant provisions of the anti-defection law

The anti-defection law enshrined in the tenth schedule of the Indian Constitution consists of 8 paragraphs. It consists of the grounds on which disqualification can take place and who are exempted from disqualifications. The rules and decision-making power of the chairman or the speaker are mentioned and place a bar on the jurisdiction of courts.

Grounds for disqualification

If a member of a political party:

- Voluntarily gives up the membership of such a political party.
- Votes or abstains against the directives issued by his representative political party.
- After being elected to a certain party, joins another political party after the election.
- If a nominated member changes his party after 6 months from the time he has taken his seat.

A member is disqualified if he 'voluntarily gives up his membership from the party'. However, the Supreme Court has held that in the absence of a formal resignation by the member, the giving up of membership can be inferred by his conduct.⁵ The Apex Court also clarifies in a case that if a member joins another party after being expelled is also considered as voluntary giving up membership of the political party.⁶

⁵ Ravi S. Naik v. Union of India, A.I.R. 1994 S.C. 1558.

⁶ G. Vishwanathan v. Speaker of Tamil Nadu Legislative assembly, A.I.R. 1996 S.C. 1060.

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The exception to the anti-defection law

As per paragraph 4 of the Tenth Schedule, the disqualification on the ground of merging with another party with two-thirds of legislators was exempted. So the legislators were allowed to change the party in favor of the merger. In such a case, neither the legislators who left the party nor the legislators who stayed in the party will face disqualification. The disqualifications arising out of spilt with one-third of members from a party were at first exempted in paragraph 3 of the schedule, but later this exemption was removed by the 91st Constitutional Amendment Act, 2003.⁷ The reason behind this amendment is that the tenth schedule received much opposition on the ground that it allowed defection as a group and punished only individual defection. One such provision was the exemption of disqualification in the case of splits. As per paragraph 5, the Speaker, Chairman, and deputy-Chairman of legislative houses are exempted from disqualification.

Bar of jurisdiction of courts and framing of rules

As per paragraph 7 of the schedule, the jurisdiction of courts in case of disqualification is banned. But does not place the bar on the intervention of courts in cases under Articles 32, 226, 137 of the Indian Constitution. As per paragraph 8 of the tenth schedule, the Chairman and the speaker are given the power to frame rules regarding the disqualification of members in the house of legislatures.

Disqualification based on voting conflicts the freedom of speech

As per article 105 of the Indian Constitution, the parliamentarians are vested with the freedom of speech and expression subject to the provisions of the constitution. The clause (2) of the section specifies that no member of the parliament should be held liable for anything in respect of voting by him in parliament. This privilege ensures the right enshrined under Article 19(1)(a) which is about the freedom of speech and expression to all persons. But this right is given to the parliamentarians only inside the house. Article 105(1) and 194(1) are only parliamentary privileges

⁷ The Constitution (Ninety-First Amendment) Act, 2003.

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and not fundamental rights.⁸ Like Article 19, there are no restrictions for the parliamentarians specified in Article 105. Therefore, the extensive right to defame others without fear of censure. They are also given free voting in parliament.

Generally, ordinary citizens themselves have the right to vote as a part of freedom of speech and expression.⁹ The right to vote as a statutory right is a facet of freedom of speech and expression.¹⁰ Casting vote in favor of or against one candidate is part of freedom of expression.¹¹ Thus, voting should not be restricted by Paragraph 2(1) (b) of the tenth schedule. Anti- defection law deals with floor crossing that is a change of allegiance which caused problems to the functioning of the legislature. But voting or abstain of voting would not pose the same problem. Therefore, disqualification under paragraph 2(1) (b) changes the meaning of anti-defection law. The freedom of expressing dissent in voting by party members has been taken as a sign of political instability and poor cohesion. The opinion of a member may fall in line with the majority or go against the majority and amount to dissent, it depends on the situation. The restriction placed on the voting of parliamentarian should be reasonable.¹²

Role of the speaker

The power of the speaker is in judicial nature, they can decide on whether a member of parliament has incurred disqualification and are they competent to be a member. Only when there is a claim under paragraph 2 of the tenth schedule, that any ground of disqualification is satisfied by a member, then the Speaker acts the way mentioned by the schedule. Is the speaker has the right to decide whether a legislator belongs to a particular political party or not? This question was answered by the Andhra Pradesh High Court, it was held that nothing in Paragraph 1, 2, 6 of the schedule confers such power to the speaker.¹³ The decision taken by the speaker under paragraph 6 is subject to judicial review under Article 136 by the Supreme Court. The orders of Speaker that breaches constitutional mandates and natural justice are subject to judicial review. Many questions

⁸ K. Ananda Nambiar v. Chief Secretary to the Govt. of Madras, A.I.R. 1966 S.C. 657.

⁹ People's Union for Civil Liberties v. Union of India, (2004) 2 S.C.C. 476.

¹⁰ Jyoti Basu v. Debi Ghosal, (1982) 1 S.C.C. 69.

¹¹ K.N. Subbareddy v. Advocates Association, I.L.R. 2009 K.A.R. 1697.

¹² Mian Bashir Ahmad v. State of Jammu and Kashmir, A.I.R. 1982 J&K 26.

¹³ Mannadi Satyanarayana Reddy v. Andhra Pradesh Legislative Assembly, W.P.No: 28453 & 28624/2008.

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have arisen about the partiality or impartiality of the speaker. This was brought into light in the Karnataka crisis in 2019. In that crisis, it was suggested that the bodies like Election Commission should implement the Anti-defection law.

Conclusion

With the increase in political corruption and dishonesty, the anti-defection law never evolved properly. Politicians found loopholes to escape from the law. The exemption of disqualification on the ground of split of parties was removed by an amendment. Then why did the merger provision still prevailed? This is a loophole for the politicians to escape disqualification. The distinction between the individual and group defection should be abolished. Even group defection like a merger should not be exempted from the grounds of disqualification. Law should be clear on crucial points and there should be uniformity in the decision making of the speakers in various states. Voting by parliamentarians should be considered as their freedom of speech and expression conferred under Article 19(1) (a). They should have the right to go against their political party while voting. Anti-defection law has nothing to do with the voting of parliamentarians. It is high time to bring changes in the Tenth schedule according to the present scenario and make the provisions even more stringent so that the politicians don't find any loopholes to escape.