
ANTI- DEFECTION LAWS WITH SPECIAL REFERENCE TO MAHARASHTRA

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INTRODUCTION

REPORTS OF VARIOUS COMMITTEES AND BILLS ON ANTIDEFECTION LAWS

1) 32nd amendment bill

The Bill provides for the disqualification of a member if he voluntarily gives up his membership of the party or if he abstains from voting in the voting. The Bill provides that members will not be disqualified if he gave up his membership by a reason of split. The Bill applies to independent member, nominated members or unrecognized political parties. In case of one-fourth of the legislative party where the strength was less than 20 but not less than 5 formed a party registered under the election commission would not be disqualified. 2) 84th amendment bill 1978

Independent and nominated members were allowed to join any party in first place. Members can be disqualified if they voluntarily give up their membership or votes against the directions of the party.

3) Dinesh Goswami report 1990:

Disqualification should be for the members who voluntarily give up their membership and who votes contrary to the directions issued by the party to whom they belong. The power to decide should vest with the President or governor upon the aid and advice of the election commission.

4) Law commission 170th report 1999:

The provisions of split/mergers should be deleted as an exception to anti-defection under schedule ten.

5) Constitution review commission 2002:

The members who are voting contrary or abstaining from voting or defaulters of their party to which they belong should be barred from holding public office and casting of vote by the defaulters should be held invalid.

According to para 6 of tenth schedule the decision of the speaker/chairman is final with respect to disqualification of any member who has been charged under anti-defection. Although this can be judicially reviewed by the supreme court under article 32 or 136 of the constitution and by high courts under article 226 and 227 of the constitution.² The judicial review is the basic structure of the Indian constitution which means it cannot be amended by way of amendment under article 368 of constitution of India.³ If a member of a political party publicly opposes his party and supports the other party it would be deemed as the resignation of the opposing member from his party⁴. The speaker or chairman has full authority to decide whether the member is disqualified under schedule ten or not, there is no limitation on the powers of presiding officers of parliament or state legislature to decide under para 1,2 and 6 of tenth schedule.⁵ Now the question comes that does the right to freedom of speech and expression in the parliament is being hampered by the anti-defection laws, as per the apex court schedule ten does not hamper the freedom of speech in parliament which is provided by article 105 of the Indian constitution.⁶

We can say that anti-defection laws force the members of a party to do something which they might not want to do but in order to be a member they have to follow the commands which is issued by the party. Members do have a choice of obeying the orders of their party or they can risk their seat and wait for their disqualification.⁷

WHAT CAN BE INFERRED FROM TENTH SCHEDULE

The anti-defection laws prohibit individual defection but allows collective defections in the name of merger i.e., 2/3rd of members collectively can merge into another party without being

² *Kyoto Hollohan v. Zachilu and Ors.* 1992 SCR (1) 686

³ *Keshwananda Bharti v. State of Kerala and anr.* (1973) 4 SCC 225

⁴ *Shri Rajesh Verma v. Shri Mo. Sadique BSP Writ Petition No. 9750 of 2008*

⁵ *Mannadi Satyanarayan Reddy v. Andhra Pradesh Legislative assemble writ petition no. 28453 and 28624 2008*

⁶ *Kyoto Hollohan v. Zachilu and Ors.* 1992 SCR (1) 686

⁷ PRS Legislative research Available at: < <https://prsindia.org/articles-by-prs-team/the-anti-defection-lawcontinues-to-damage-indian-democracy>> (last visited July 15, 2022)

penalized. Members have to vote according to the decision taken by party and any contradicting vote or abstaining from voting in parliament can be treated as defection. There is no bar on judiciary to decide whether a member is disqualified or not and legislature cannot curtail the power of judicial review from judiciary.⁸

REASONS FOR ENACTING ANTI-DEFECTION LAWS

Two primary defenses have been offered for anti-defection laws. The law's goal of preventing political splintering brought on by bribery and political corruption is one argument in its favor. Before the anti-defection law was enacted, it was noted that MPs were regularly persuaded to defect by offers of administration positions or personal advantages. 1 A commission led by the then-Home Minister, YB Chavan, considered an anti-defection act in 1969 after he saw that 116 of the 210 Indian legislators who left their state legislatures gained cabinet positions in the new government they had helped form. It was recommended that those who leave their positions for reasons of monetary gain or the prospect of political office should likewise be barred from standing in later elections for a certain period of time. Defections, according to some, ignore the will of the people. The premise of this argument is that political parties serve a purpose in the parliamentary system. According to the argument, most candidates are selected depending on the party that offers them a ticket. The candidate runs for office in line with the party's programme, and the party also coordinates the candidate's election expenses. As a result, when a party member quits, they betray the fundamental trust that allowed them to win an election.⁹

EFFECTS

According to the anti-defection law, a politician who disobeys the party whip is unable to hold office. Members must therefore follow the party line in order to keep their seats in the House. The statute questions the role of a legislator. One of them is that it restricts MPs' ability to voice their opinions in the House. The electorate's and their representatives' accountability connection is also shattered. A member's ability to hold the government accountable is restricted, which upsets the balance of power between the legislative and executive branches.

⁸ L.Chandra Kumar v. UOI 1995 AIR 1151

⁹ Discussion Papers, PRS Legislative Research (2022),

<https://prsindia.org/parliamenttrack/discussionpapers/anti-defection-law-intent-and-impact> (last visited Jul 4, 2022).

Four, it allows party leaders to force MPs to vote in line with their directives and leads to a small group of party leaders controlling the majority of the House's important choices.

HOW ARE CITIZENS AFFECTED BY DEFECTION

The anti-defection law further blurs the border of authority between citizens and elected representatives. Voters choose their representatives in India for terms of five years. Based on his parliamentary record, they can assess the member's performance during the course of this term. For instance, a citizen could feel strongly about land acquisition. He might present the legislator with this argument and urge him to vote in a particular way. The legislator must justify their position if they disagree with it. Voters can therefore have their viewpoints represented in the legislature, and if they think a legislator hasn't done so, they can express their displeasure or even vote the representative out of office in the upcoming election.

Each legislator must cast their vote in accordance with the criteria established by their party. He may easily explain his voting decisions and absolve himself of this responsibility to serve as his voters' representative by asserting that the party whip pushed him to cast a certain vote. Given its detrimental impact on the environment, a Bill to regulate fish trawling, for instance, may be presented to a vote in Parliament. An MP from a coastal constituency where largescale fish trawling supports the local economy may be compelled to support a measure if a party whip is implemented. The MP can say that the anti-defection legislation left him with no choice if a constituent from his constituency asks him why he supported the motion. If he broke from the party line, he would lose his job and be unable to promote the needs of the people. The obligation of the elected authorities to the general public is further diminished as a result.

STANDING OF THE HOUSE DUE TO DEFECTION

Important legislation is decided by a small number of party leaders as opposed to the majority of MPs because of the anti-defection law. In India, political parties frequently issue whips over subjects going for a vote in Parliament. This suggests that whomever controls the party leadership has the power to command all MPs. As a consequence, the House will vote in conformity with the views of a small number of party leaders rather than representing the sentiments of all MPs.

As a result, party leaders may choose the vote on a topic without consulting other members of their political party, rather than Parliament remaining a body that deliberates. Therefore, in

order to approve a resolution in Parliament, the government just has to consult with the leaders of the major political parties in the House. This consensus level can be much lower if one party holds the majority in the House. For instance, the government's policy may be maintained without the need to secure the support of any other MPs, either inside or outside the party, if the majority party in the House issues a whip during a vote on a topic.

HOW HAS DEFECTION LAW BEEN A FAILURE FOR INDIA

In July 2008, the Lok Sabha was presented with a motion of confidence by the United Progressive Alliance cabinet. The nuclear accord with the United States made the motion necessary since the Communist Party of India (Marxist) stopped supporting the government.

The anti-defection rule was still in place, yet 21 MPs broke their party whips to vote against the proposal.¹⁰

In 2016 Uttarakhand congress government was toppled the opposition and nine MLAs from the ruling party demanded a vote count on an appropriations bill that would have resulted in the overthrow of the Congress administration.

Arunachal Pradesh government collapse, of 2015, 20 Congress MLAs in Arunachal Pradesh resigned from their seats. These opposition MLAs passed a resolution of no confidence in the present administration at a special session. In 2016, the Supreme Court decided that the removal of the Congress government was illegal and urged its reinstatement.

MAHARASHTRA GOVERNMENT TOPPLE

The same happened in the Maharashtra the rebel MLA's joined BJP and therefore the government collapsed. The case is currently on going in the apex court but as the MLA's collectively hopped to the opposition party which gave them protection under Schedule 10 of the Indian Constitution not to be held defective and thus cannot be held liable for hopping.

The issues before supreme court are:

The role of Speaker has been vacant ever since Nana Patole resigned in February 2021 to become president of the Maharashtra Congress. According to Shinde, a member who has been elected as Speaker or Deputy Speaker frequently resigns from their membership in their party,

¹⁰ G.C. Malhotra, *Anti-Defection Law in India and the Commonwealth*, Lok Sabha Secretariat, 2005.

but Zirwal hasn't done so. The opposition camp asserts that Zirwal's party (NCP), which backs the Shiv Sena's "minority fraction," is biased, animus-driven, and considering elements that are completely at conflict with constitutional principles in order to further his political party.¹¹

Shinde has said that he "does not anticipate justice at all from Zirwal, who, it appears, is intent upon acting on the directives of the leader's hostile to the Petitioner (Shinde) and his colleagues." This is despite the fact that the Deputy Speaker is expected to make decisions in a fair and impartial manner.

Instead of pursuing this defence in court, Shinde opted to request a stay of the disqualification processes in order to obtain an immediate respite.

The petition claims that since Zirwal approved Choudhari's candidacy as SSLP leader with the support of a "small group" of Sena MLAs, he violated the 1986 Members of Maharashtra Legislative Assembly (Disqualification on Ground of Defection) Rules.

Additionally, according to Shinde, the 16 MLAs received notifications when Choudhari and Prabhu, members of the SSLP minority group, improperly petitioned the Deputy Speaker under the Tenth Schedule of the Constitution.

Senior barrister Devadatt Kamat argued on behalf of the Maharashtra government that while the letter from the Shinde group "purported to be of Shiv Sena," claiming to be the majority faction, the notice supplied by the Thackeray faction was on the party's official letterhead.

According to Kamat, Zirwal correctly acknowledged Choudhari's appointment based on the official party letterhead. The court had determined that it would be "constitutionally unconstitutional" for a Speaker to make decisions about disqualification petitions under the Tenth Schedule while a motion of resolution for his own removal from the office of Speaker was still pending.

The petition for disqualification was forwarded to Zirwal after the notice for proposing a resolution for his own removal was issued, in the opinion of the rebel camp, and was thus "non-maintainable" since it was done in "complete disregard" of the 2016 SC judgement.

¹¹ Explained: In Shiv Sena crisis, the issues before Supreme Court, The Indian Express (2022), Available at: <<https://indianexpress.com/article/explained/what-grounds-eknath-shinde-rebel-mla-seeking-relief-supremecourt-7993518/>> (last visited Aug 5, 2022).

In response, Choudhari's senior attorney Abhishek Manu Singhvi claimed that the 1992 Constitution Bench decision in *Kihoto Hollohan v. Zachillhu* had explicitly stated that courts cannot intervene until the Speaker makes a decision and that the Speaker has broad discretion in cases involving the disqualification of MLAs.

According to Singhvi, the courts may only uphold the procedures that the Speaker or Deputy Speaker is required to follow. *Nabam Rebia* cannot be utilized to impose restrictions on the Speaker. He asserted that under the Tenth Schedule of the Constitution, the Speaker is qualified to decide a disqualification claim, and that Article 212 forbids courts from conducting investigations into parliamentary activities.

Singhvi questioned the argument's viability as well as the petitioners' decision to go directly to the Supreme Court without first going via the High Court. N K Kaul, a well-known rebel attorney, claimed that the supreme court was competent to consider the petitions. The noconfidence petition against Zirwal, according to senior attorney Rajeev Dhawan, was denied because it was challenging to verify the correctness or authenticity of the notice. The court ordered Zirwal's counsel to provide the most recent facts on the notice's denial, and inquired as to whether the Speaker could preside over his own case.

The case is still on pending in the court of law and yet to be decided. The decisions of cases often take long and by that time the essence behind the filling of the case loses its very objective.

CONCLUSION

In conclusion, it may be claimed that the law has been somewhat effective in minimizing political defections, but that there are still certain flaws, such as the time frame for considering the disqualification plea, etc. Even yet, despite these flaws, the bigger harm caused by frequent defections has been somewhat reduced.