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ANALYSIS:- ANTI-DEFECTION LAW

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INTRODUCTION

The word politics comes from the Greek word **“Politika”** which means “of, for, or relating to citizens. But politicians make promises but seldom full-fill them.

The main intent of Anti-defection law is to combat ‘the evil of political defections.’ This law was passed so that it curbs the political defections but the ever-increasing hunger of our legislatures and with our excellent legal fraternity it was not a difficult task to find some loopholes in this law and they used it to their interest.¹

I. ABSTRACT

Object of Anti-defection law was to bring down the political defections but due to ever increasing political dishonesty and corruption this law never evolved properly and now the question is that whether achieving the goals of this law is a reality or a myth?

II. ABOUT

- 1. WHAT IS ANTI-DEFECTION LAW IN REAL SENSE & ITS MERITS/ DEMERITS**
- 2. CHALLENGES OF THE ANTI-DEFECTION LAW**
- 3. JUDICIAL INTERPRETATION BY COURTS OF THE ANTI-DEFECTION LAW**
- 4. REPORTS OF COMMITTEES ON THE ANTI-DEFECTION LAW**
- 5. INTERNATIONAL SCENARIO ON ANTI-DEFECTION LAW**

1. WHAT IS ANTI DEFECTION LAW IN REAL SENSE

Meaning:

The word defection has been derived from a Latin word ‘defectio’ meaning that an act of abandonment of a person or a cause to which that person is bound by a reason allegiance or duty, or to which he has wilfully attached himself²

Anti-defection law:

Our legislatures made an amendment in the year 1985 and passed a law called “Anti-defection law” which added a new schedule to our Constitution, i.e., Schedule 10th ³

Schedule 10th of our Constitution provides for Anti-defection law, which is as follows-

Disqualification on ground of defection. - (1) Subject to the provisions of [Paragraphs 4 and 5], a member of a House belonging to any political party shall be disqualified from being a member of the House:

(a) if he has voluntarily given up his membership of such political party ; or

(b) 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, without obtaining, in either case, the prior permission of such political party, person or authority and such voting or abstention has not been condoned by such political party, person or authority within fifteen days from the date of such voting or abstention.

·Decision on questions as to disqualification on ground of defection.- (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:

Provided that where the question which has arisen is as to whether the Chairman or the Speaker of a House has become subject to such

² www.lawaudeince.com

³ 52nd Constitutional Amendment Act 1985

disqualification, the question shall be referred for the decision of such member of the House as the House may elect in this behalf and his decision shall be final.⁴

Bar of Jurisdiction of Courts - Notwithstanding anything in this Constitution, no court shall have any jurisdiction in respect of any matter connected with the disqualification of a member of a House under this Schedule.

The Chairman or the Speaker of a House may, without prejudice to the provisions of Art.105 or, as the case may be, Art.194, and to any other power which he may have under this Constitution direct that any will-full contravention by any person of the rules made under this paragraph may be dealt with in the same manner as a breach of privilege of the House.

Merits and Demerits of this law:

Merits:

- Provides stability to the government by preventing shifts of party allegiance.
- Ensures that candidates elected with party support and on the basis of party manifestoes remain loyal to the party policies. Also promotes party discipline.

Demerits:

- By preventing parliamentarians from changing parties, it reduces the accountability of the government to the Parliament and the people.
- Interferes with the member's freedom of speech and expression by curbing dissent against party policies.

2. CHALLENGES TO THE ANTI-DEFECTION LAW:

The first challenge to the anti-defection law was made in the Punjab and Haryana high court. One of the grounds on which the law was challenged was that paragraph 2(b) of the Tenth Schedule to the Constitution violated Article 105 of the Constitution, wherein the court held: "So far as the right of a member under Article 105 is concerned, it is not an absolute one and has been made subject to the provisions of the Constitution and the rules and standing orders regulating the procedure of Parliament. The framers of the Constitution,

⁴ The Constitution of India 1950 – P.M. Bakshi

therefore, never intended to confer any absolute right of freedom of speech on a member of the Parliament and the same can be regulated or curtailed by making any constitutional provision, such as the 52nd Amendment. The provisions of Para 2(b) cannot, therefore, be termed as violative of the provisions of Article 105 of the Constitution (Para 28).”

Provisions for decision-making by the president and governors of states in relation to questions on disqualification on ground of defection.⁵

The Constitution (52nd Amendment) Bill 1985 suddenly introduced the provision that questions of disqualification on ground of defection shall be decided by chairmen and speakers of the legislative bodies. The intention was to have speedier adjudicative processes under the Tenth Schedule. This provision was a subject matter of serious debate in both Houses of Parliament when the bill was being passed.

The amendment makes it mandatory for all those switching political sides — whether singly or in groups — to resign their legislative membership. They now have to seek re-election if they defect and cannot continue in office by engineering a “split” of one-third of members, or in the guise of a “continuing split of a party”. The amendment also bars legislators from holding, post-defection, any office of profit. This amendment has thus made defections virtually impossible and is an important step forward in cleansing politics.

“Section 2(b) of the Tenth Schedule puts the Member of Parliament into the straight jacket of obedience to the despotic dictates of the party whips which undermines the democratic spirit. It also violates the principle of representative democracy by empowering the party, and undermining the relationship between elected representatives and their constituents. The anti-defection law makes a mockery of parliamentary democracy by marginalizing debates, as the legislators are not allowed to dissent, without being disqualified by the House. Disruptions, rather than substantive debate, become the only form of opposition possible. Parliamentary debate has thereby become largely redundant”.⁶

The Tenth Schedule has laid down certain norms for keeping the flock of legislators of each party together, and the ‘whips’ in the hands of legislative

⁵ The Constitution (32nd Amendment) Bill 1973 and the Constitution (48th Amendment) Bill 1978

⁶ The 91st Amendment to the Constitution 2003

party leaders reducing the hon'ble leaders and people's representatives into shepherds and sheep. As the political parties invented mechanisms to fail this constitutional legislation, the judiciary played a very significant role in upholding the legality and morality of the law besides expanding its horizons to curb most treacherous practice of sudden political disloyalty. This Tenth Schedule whenever used is enhancing the burden of courts. The Political parties, instead of maintaining standards within the party with effective leadership, are resorting to litigation, begging the courts to decide the political issues, which they failed to settle. It is not fair to blame judiciary for taking time to decide this tricky question within the frame work of constitution. Neither the Governor nor the Speaker is bona fide. Their moves are not fair. They desperately try to use Constitutional power to settle political scores and wreck political vengeance. In the process they just do not care the people's will in electing a party to power, for whatever reasons that might be.

Dependents and Independents:

There are a few nominated seats provided by the Constitution in legislative houses. Unless he is dependent, he cannot be nominated as legislator. Hence, he can decide his loyalty. A nominated member of a house will be disqualified if he joins any political party after six months.

That means law permits him to be loyal or disloyal to nominating party only for six months.

The Supreme Court held: "when an independent member is alleged to have joined a political party the test to be applied is whether the member has given up his independent character on which he was elected. This has to be determined on appreciation of material on record and conduct of the member of the Speaker. No hard and fast rule can be laid down when the answer is dependent on facts of each case. The substance and spirit of anti-defection provisions are the guiding factors". Disqualification of these members by speaker was upheld, despite the allegation of procedural defect in enquiry.

Supreme Court also clarified one more question: "Where a sole member of a political party in an Assembly joins another political party, he cannot get protection of paragraph 3 of Tenth Schedule of the Constitution and will be disqualified from being member under paragraph 2 of the Tenth Schedule of the Constitution."⁷

3. JUDICIAL INTERPRETATION BY THE COURT:

A question was raised that whether the right to freedom of speech and expression is curtailed by the Tenth Schedule, the Apex Court held that "The provisions do not subvert the democratic rights of elected members in Parliament and state legislatures. It does not violate their conscience. The provisions do not violate any right or freedom under Articles 105 and 194 of the Constitution." In the present case few more issues were raised that whether Para 6 & 7 of the X schedule are constitutional or not? The Supreme Court held that to the extent that the provisions grant finality to the orders of the Speaker, the provision is valid. However, the High Courts and the Supreme Court can exercise judicial review under the Constitution. Judicial review should not cover any stage prior to the making of a decision by the Speakers/ Chairman. Para 7 seeks to change the operation and effect of Articles 136, 226 and 227 of the Constitution which give the High Courts and Supreme Court jurisdiction in such

cases. Any such provision is required to be ratified by state legislatures as per Article 368(2). The paragraph was therefore held invalid as it had not been ratified.

In another case an issue was raised that whether a member can be said to voluntarily give up his membership of a party, if he joins another party after being expelled by his old political party. It was held by Supreme Court that "Once a member is expelled, he is treated as an 'unattached' member in the house. However, he continues to be a member of the old party as per the Tenth Schedule. So, if he joins a new party after being expelled, he can be said to have voluntarily given up membership of his old party."⁸

In another case it was asked whether a Speaker can review his own decision to disqualify a member under the Tenth Schedule, it was held that The Speaker of a House does not have the power to review his own decisions to disqualify a candidate. Such power is not provided for under the Schedule, and is not implicit in the provisions either.⁹

Two issues were raised that whether the Speaker of a legislature is bound by the directions of a Court and Whether judicial review by courts extends to rules framed under the Tenth Schedule, it was held by the Hon'ble Apex Court that "the orders passed by a speaker are subject to judicial review and rules under the Tenth Schedule are procedural in nature. Any violation of those would be a procedural irregularity. Procedural irregularity is immune from judicial scrutiny."¹⁰

A very important issue regarding that when can a court review the Speaker's decision-making process under the Tenth Schedule was answered by the S.C. in Rajendra Singh Rana and Others. vs. Swami Prasad Maurya and Others¹¹, it was held that if the Speaker fails to act on a complaint, or accepts claims of splits or mergers without making a finding, he fails to act as per the Tenth Schedule. The Court said that ignoring a petition for disqualification is not merely an irregularity but a violation of constitutional duties.

Judicial view on Disqualification by the Speaker for Defection:

- Dr. Koya defied a party whip requiring him to be present in the House and vote against the Motion of Confidence for the government. He claimed he was too ill to be present in the House. The Speaker concluded that Dr. Koya abstained from voting by remaining absent, and the evidence of the 'illness' is not sufficient to conclude that he was so ill that he could not be present in the House.
- Shri Prasad defied a party whip requiring him to be present in the House. In his defence, he denied that any whip was issued or served. The Speaker held that in view of the fact that there is evidence to show that the whip had been delivered to Shri Prasad's house, and had been duly received, it cannot be said that Shri Prasad had no knowledge of the whip.

⁷ Jagjit Singh v State of Haryana 2003

⁸ Ravi S. Naik vs. Union of India & Others. 1994 SCC (11) 641

⁹ Dr Kashinath G Jalmi and Another vs. The Speaker and Others (1993) 2 SCC 703

- The INC alleged that Shri Bishnoi often dissented from, and criticized the Congress government publicly, and had demanded the dismissal of the government in Haryana. The Speaker held that a person getting elected as a candidate of a political party also gets elected because of the programs of the party. If the person leaves the party, he should go back before the electorate.

- It was alleged that Shri Akhlaque joined the Samajwadi Party in a public

meeting. It was alleged that at this meeting, Shri Akhlaque had said that at heart, he had always been a member of the SP. The Speaker reasoned that there is no reason why news clippings and stories in the media would be untruthful. The Speaker therefore held Shri Akhlaque disqualified for having voluntarily given up membership of the BSP.

- The most recent case relating to anti-defection is from the Karnataka State Legislature where B.J.P. is the ruling party and 14 members of B.J.P. and 5 independent members sent a letter of discontent against the Chief Minister. A complaint was made against them and speaker disqualified them from their membership. The case is pending in the S.C.¹²

4. VIEWS OF SOME COMMITTEES ON THE ANTI-DEFECTION LAW:

- **Dinesh Goswami Committee on electoral reforms (1990)**

Disqualification should be limited to cases where (a) a member voluntarily gives up the membership of his political party, (b) a member abstains from voting, or votes contrary to the party whip in a motion of vote of confidence or motion of no-confidence.

The issue of disqualification should be decided by the President/Governor on the advice of the Election Commission.

- **Law Commission (170th Report, 1999)**

Provisions which exempt splits and mergers from disqualification to be deleted.

Pre-poll electoral fronts should be treated as political parties under anti-defection law.

Political parties should limit issuance of whips to instances only when the government is in danger.

- **Election Commission**

Decisions under the Tenth Schedule should be made by the President/ Governor on the binding advice of the Election Commission.

¹⁰ Kihoto Hollohan vs. Zachillhu and Others (1992) 2 SCC 651

¹¹ 2007, 4 SCC 270

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- **Constitution Review Commission (2002)**

Defectors should be barred from holding public office or any remunerative political post for the duration of the remaining term.

The vote cast by a defector to topple a government should be treated as invalid.

6. INTERNATIONAL SCENERIO AND ANTI-DEFECTION LAW:

Anti- defection law is not only practiced in India but it is prevalent in various other countries like Bangladesh, Kenya, South Africa, etc. Article 70 of the Bangladesh Constitution says a member shall vacate his seat if he resigns from or votes against the directions given by his party. The dispute is referred by the Speaker to the Election Commission.¹³

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KENYAN CONSTITUTION:

Section 40 of the Kenyan Constitution states that a member who resigns from his party has to vacate his seat. The decision is by the Speaker, and the member may appeal to the High Court.

SINGAPORE CONSTITUTION:

Article 46 of the Singapore Constitution says a member must vacate his seat if he resigns, or is expelled from his party. Article 48 states that Parliament decides on any question relating to the disqualification of a member.

Section 47 of the South African Constitution provides that a member loses membership of the Parliament if he ceases to be a member of the party that nominated him.

III. CONCLUSION

Anti-defection law when it was passed, it aimed at bringing down the political defection but due to ever increasing political dishonesty and corruption this law never evolved properly and now a question arose that 'whether achieving the goals of this law a reality or a myth?' Politicians found loopholes in this law and used it for their own benefit. It is high time that a watchdog should be provided to our Parliament and there is a need for our constitutional pundits to revisit the issue to combat the menace of corruption and

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