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ANTI-DEFECTION LAW: LACUNAE AND SOLUTION

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ABSTRACT

From Arunachal Pradesh in the east to Goa in the west, from Uttarakhand in the north to Karnataka in the south and most recently Rajasthan has seen the problems of political defection and rise of resort politics. Till 1967, Indian Politics experienced the single party dominance with the slogan of “Indira is India and India is Indira”¹, then why and how did the anti-defection law come into the picture? I have discussed various provision provided under Xth schedule of the Indian Constitution. Further, the article throws light on the provisions related to exemption from disqualification, the concept of voluntarily giving up one’s membership, the role of the Speaker of the house and time limit to decide defection matters. Recommendations of various committees have been examined and focus on how to ratify the present loopholes in the Anti-defection law. Then the article further discusses the impediments in the journey of Anti-defection law along with possible solutions. The Supreme Court held that “Voice of Dissents cannot be suppressed in a democracy”² over the petition filed by the Speaker of Rajasthan legislative assembly on challenging the Court order³ to bar him from conducting defection proceedings against “Sachin Pilot and 18 other rebel

¹Indira is India and India is Indira ,**OutlookIndia** (Oct. 28,2020, 18:20 PM) <https://magazine.outlookindia.com/story/indira-is-indiaindia-is-indira-jps-crusade/204064>

² Ashutosh Tripathi, *Mini-win for Sachin Pilot*, Hindustan Times (Aug. 23, 2020, 15:33 PM), <https://www.hindustantimes.com/india-news/supreme-court-allows-rajasthan-high-court-to-pass-order-on-disqualification-notice-to-sachin-pilot-18-mlas/story-HoJyWlr34e9CYaw2p702II.html>

³ *Sachin Pilot Case*, NDTV , (Aug. 20,2020, 14:28 PM), <https://www.ndtv.com/india-news/possible-outcomes-of-sachin-pilot-case-explained-in-5-graphics-2266049>

Congress MLAs.”⁴ The application of Anti-Defection law in India has been analysed in depth.

ANTI- DEFECTION LAW: EVOLUTION

Indian politics has been very notorious for certain unethical practices like floor-crossing, Horse Trading etc., in one such instance, was so grave that an idiom of Indian politics “Aaya Ram Gaya Ram”⁵ came into existence when Gaya Lal, a Haryana legislator had changed the party for thrice in a day as he wanted to be part of the ruling party. Jump into the fray^{*} as Gaya Lal was not alone in his political exploits. There were 2,500 defectors at the state level, out of which 15 defectors went on to become the Chief Ministers of the respective states between the years 1967 and 1983. The then appointed Prime Minister, late Rajiv Gandhi, passed the 52nd Constitutional Amendment Act, the **Anti-Defection Law** and amended the Constitution to include the Tenth Schedule in 1985. The 52nd Constitutional Amendment Act of 1985 accommodated the exclusion of the members from parliament and the state legislatures on the ground of changing political party.⁶ Afterwards, the 91st Constitutional Amendment Act of 2003 passed to repealed paragraph three of the Schedule Xth through which one-third split is no more exemption for disqualification.

⁴ *Rajasthan HC in Sachin Pilot Case*, The Wire (Aug. 20, 2020, 16:48 PM) PM), <https://thewire.in/politics/rajasthan-high-court-sachin-pilot-mla-disqualification>

⁵ Varun Ramesh, *Aaya Ram Gaya Ram*, The Week (Aug. 26, 17:09 PM) <https://www.theweek.in/news/india/2020/03/12/aaya-ram-gaya-ram-a-contemporary-history-of-defections-to-the-bjp.htm>

⁶ *Fifty-Two Amendment Act*, 1985, Legislative Assembly (Aug. 26, 2020, 17:30 PM) <http://legislative.gov.in/constitution-fifty-second-amendment-act-1985>

PROVISION UNDER SCHEDULE XTH

We will discuss the various provisions of Tenth Schedule regarding the disqualification of MPs or MLAs by the Speaker of a legislature on the ground of defection:

EXEMPTIONS FOR DISQUALIFICATION

A legislator is deemed to have defected if “he either voluntarily resigns his party membership or abstains from voting in the house contrary to any direction issued by his political party.”⁷ It may be noted Para 3 of schedule Xth among one of the exemptions for disqualification stated that if the split of at least one-third of the members of the original party shall not be considered a disqualification.⁸ But Atal Bihari Government repealed **Para 3 of schedule Xth** through **91st Constitutional Amendment Act, 2003** as BSP and Samajwadi Party faced major loss⁹ due to this exception. Now, the disqualification is subject to the only two exemptions, that is,

- (1) **Para 4 of schedule Xth** stated that “if two-thirds members exit from a party which led to the merger of the party with another party or creation of a new political party by the elected members of one party, the same shall not be considered defection”.¹⁰ In *Rajendra Singh Rana v. Swami Prasad Maurya and others (2007)*¹¹ and *Jagjit Singh v. State of Haryana*,¹² it was held that merger must take place at the national level if members

⁷ INDIA CONST. tenth Sch. cl. 2.

⁸ *Byrappa v. Deputy Commissioner, Mandya District*, Casemine (Aug. 26, 2020, 19:39 PM) www.casemine.com/judgement/in/56e66b40607dba6b

⁹ Amita, *Why BSP prone to break*, NewsD (Aug. 26, 2020, 22:39 PM) <https://newsd.in/why-bsp-is-a-party-prone-to-splits/>

¹⁰ *Disqualification on Defection*, Live Law, (Aug. 27, 2020 , 17:02 PM), <https://www.livelaw.in/disqualification-on-the-ground-of-defection-can-apply-only-to-those-motivated-by-the-lure-of-office-or-bribery-and-not-to-dispm>.

¹¹ *Rajendra Singh Rana vs. Swami Prasad Maurya and Others*, 4 SCC 270 (2007).

¹² *Jagjit Singh V State of Haryana* 11 SCC 1 (2006).

claiming merger has set up by the National party and just two-third members of the legislature party have agreed to such merger should not be sufficient so that the constitutional mandate is not defeated.¹³ It was also held that “the dismissal of the petition for disqualification was not only manipulative but also a violation of constitutional duties.”¹⁴

- (2) If a person elected as an officer, i.e., vice chairman, Speaker, vice speaker etc. of the house shall not be disqualified on two conditions under **paragraph 5 of schedule Xth**: (a) by reason of his election to such office he voluntarily gives up the membership of the political party and does not rejoin the party as long as he is holding such office and (b) rejoin the political party after a tenure of such office is completed. The Supreme Court in *Dr. Luis Proto Barbosa v. Union of India, 1992*¹⁵ held that exemption under paragraph 5 of schedule X would be available “when the speaker in view of the higher office of the speaker on a question of propriety and to sustain the image of impartiality of that office fulfil two conditions which are provided in Para 5 of Schedule X.” In this case, Dr. Luis was a member of Goa Legislative Assembly elected as Speaker of the house without resigning the congress party, and later he resigned from congress party while holding office to form its own party with other members. Court held that Para 5 of schedule X would not be available for the purpose to protect the integrity of the office, you have to resign before the election of Speaker, but here the case is totally different.

¹³ Rahul Kaushik, *Overview on Tenth Schedule*, ET (Aug. 27, 2020, 22:39 PM) [Economictimes.indiatimes.com/blogs/et-commentary/](https://economictimes.indiatimes.com/blogs/et-commentary/)

¹⁴ Rajendra Singh Rana vs. Swami Prasad Maurya and Others, 4 SCC 270 (2007).

¹⁵ Dr. Luis Proto Barbosa vs Union of India, Supp (2) SCC 644 (1992).

EXPOSITION OF ANTI- DEFECTION LAW

“VOLUNTARILY GIVES UP THE MEMBERSHIP”: EXPRESSLY OR IMPLIEDLY The phrase “voluntarily gives up his membership” has found not to be unrivalled with resignation.¹⁶ In *Ravi S Naik v. Union of India*, it was stated that the phrase “voluntarily gives up his membership”¹⁷ has wider connotations than resignation. A person may voluntarily relinquish his political party membership, even if he has not resigned from that party membership. The Supreme Court in *G.Vishwanatham v. Speaker, Tamil Nadu Legislative Assembly* held that if the formal resignation is not submitted by a member then voluntary giving up of membership can be inferred from act of the member.¹⁸ In another judgement, the Supreme Court observed that “the act of voluntarily giving up the membership of the political party can be either expressed or implied.”¹⁹ In *M.P. Singh v. Chairman, Bihar Legislative Council, 2005*²⁰, MLC elected on the Congress party ticket and filed a nomination paper as an independent candidate against its own party member which led to disqualification as impliedly voluntary gives up membership of party under Para 2 of X schedule. The Court in *Shri Rajesh Verma Vs. Mr. Mohammad Shahid Akhlaq, BSP* (2008) held that if a member publicly criticises his party, he is considered to have expressly voluntarily given up his membership of a political party²¹ because it is expected from members of the party to work along with the party’s ideologies.

¹⁶ *Shrmanth Balasaheb Patil v. Hon’ble Speaker, Karnataka Legislative Assembly* 2 SCC 595 (2020).

¹⁷ *Ravi S Naik v. Union of India*, (Supp.) 2 SCC 641 (1944).

¹⁸ *G.Vishwanatham v. Speaker, Tamil Nadu Legislative Assembly*, 2 SCC 353 (1996).

¹⁹ *Rajendra Singh Rana vs. Swami Prasad Maurya and Others*, 4 SCC 270 (2007).

²⁰ *Mahachandra Prasad Singh v. Chairman Bihar Legislative Assembly*, 8 SCC 747 (2004)

²¹ *Shri Rajesh Verma Vs. Mr. Mohammad Shahid Akhlaq, BSP*, SCC OnLine All 1923 (2010).

Now the question arises: Whether should we appropriately assume that the right to freedom of speech and expression of legislator under Article 105 is shortened by the X schedule. The answer will be “NO” as provision does not affect the conscience and rights of the elected members under Article 105 and 194 of the Constitution.²² The court in *Mian Bashir v. State of Jammu & Kashmir, 1982*²³ held that “freedom of speech enjoyed by legislator under Article 105 and 194 of the Constitution are merely privileges and not fundamental rights. If there is any inconsistency between freedom of speech and expression and strengthen the fabric of democracy, then preferences given to latter”. Interestingly, it can be argued that the provisions ironically suppress the democratic functioning of a political party by suppressing dissent within the party; apparently, such parties are supposed to maintain democracy in the governance of the entire country.

WHO WILL DECIDE THE DEFECTION MATTERS?

Para 6 of Schedule Xth provided sole power to decide defection matters to the **Speaker of the house. Para 6 and 7 of schedule Xth** provide Speaker shall perform duty as an impartial, independent tribunal in the case of disqualification and his decision is final, cannot be challenged in court. **Such decisions to disqualify a member is subjected to judicial review on the ground of malafide, ambidextrous, violation of natural justice etc.,** in the High Court and the Supreme Court, as held in *Kihoto Hollohan vs. Zachilhu and Others, 1992*²⁴ *and Nabam Rebia & Bamang Felix v. Dy. Speaker, Arunachal Pradesh Legislative Assembly And Others, 2016*.²⁵ In Mahachandra Prasad Singh v.

²² Kihoto Hollohan vs. Zachilhu and Others, Supp (2) S.C.C 651 (1993).

²³ Mian Bashir v. State of Jammu & Kashmir, SC 412 (1993).

²⁴ Kihoto Hollohan vs. Zachilhu and Others, 2 SC 412 (1993).

²⁵ Nabam Rebia & Bamang Felix v. Dy. Speaker, Arunachal Pradesh Legislative Assembly And Others 8 SCC 1 (2016).

Chairman Bihar Legislative Assembly (2004)²⁶ court held fairness demands from the Speaker as he involved in adjudicating process by providing an opportunity to member in fault to explain his position. In *Kihoto Hollohan vs. Zachilhu and Others, 1992*,²⁷ the court laid down four parameters to avail Judicial Review against the decision of Speaker as follows: (a) if it is ultra vires to the Speaker's power (b) if it is a contravention of mandatory provision of law conferring power to the Speaker (c) if the decision of Speaker is malafide or colourable legislation or non-compliance of rules of natural justices. (d) if the decision of Speaker not based on supportive evidence. The Supreme Court in *Kashinath G. Jalmi (Dr.) v. Speaker, Legislature, 1992*²⁸ held Speaker while functioning under schedule Xth has no power to review his/her own decision on disqualification, but the judicial review could be possible. Moreover, judicial review constituted the basic structure of the Constitution under *Keshavananda Bharati and Others v. State of Kerala and Another*.²⁹ In 2015, the Hyderabad High Court had denied to intervene after hearing a petition which alleged that there had been delay by the Telangana Assembly Speaker in acting against a member under the anti-defection law.³⁰

TIME LIMIT ON PRESIDING OFFICER

The law does not specify a time period for the Speaker to decide upon a plea of disqualification, but the Rajasthan Assembly (Rules) mandate that the Speaker shall give a 7-days' notice to a member to explain his stance in a defection case.³¹ It is pertinent to note that the person must show cause within three days from

²⁶ Mahachandra Prasad Singh v. Chairman Bihar Legislative Assembly, 8 SCC 747 (2004).

²⁷ Kihoto Hollohan vs. Zachilhu and Others, 2 SC 412 (1993).

²⁸ Kashinath G. Jalmi (Dr.) v. Speaker, Legislature, 1992 SCC OnLine Bom 53

²⁹ Keshavananda Bharati and Others v. State of Kerala and Another, 4 SCC 225 (1973).

³⁰ K. Vijaya Bhaskara Reddy, Sabotage of Anti-Defection Law in Telangana, 50 EPW 735, 50 (2015).

³¹ Schedule Tenth, Parliamentary Bulletin II (Aug. 29, 2020 ,19:05 PM) http://164.100.47.5/newsite/bulletin2/Bull_No.aspx?number=57066.

issuing of the said notice by the Speaker. It is important to ask whether the Speaker abides by the Rules in the present case. The Presiding officer has no power to review his own decision to disqualify a member, but it is not implicit in the provision, and even this power is not provided under the tenth schedule.³² In the case Speaker, *Haryana Vidhan Sabha v. Kuldeep Bishnoi & Ors.*³³ and *Mayawati Vs Markandeya Chand & Ors.*,³⁴ the courts have shown concern regarding the unnecessary delay in deciding the defection cases by the presiding officer. The Leading Opposition MLAs in Andhra Pradesh had refrained from the entire 12-day assembly session in protest of a more than 18-months delay on his party's MLAs who were accused of defecting to the ruling party.³⁵ The Supreme Court in *Keisham MeghaChandra Singh v. Hon'ble Speaker Manipur Legislative Assembly, 2020*³⁶ held that Speaker of legislative assembly must be decided disqualification matters within three months in the absence of exceptional reason. This judgement is not a solution as no time period given under schedule Xth that led to preference to exceptions overrule. In case of *Shrimanth Balasaheb Patil v. Hon'ble Speaker, Karnataka Legislative Assembly, 2020*³⁷, Speaker issued an order to eleven members to not conduct an election for the period of five years. It was held Speaker cannot prescribe the time period of disqualification. In my view, Supreme court must not allow disqualified member to conduct the election under Para 2 to prevent cases of defection. Such judgement

³² Dr. Kashinath G Jhalmi v. Speaker, Goa Legislative Assembly ,2 SCC 703 (1993).

³³ Haryana Vidhan Sabha v. Kuldeep Bishnoi & Ors, 12 SCC 381((2015).

³⁴ Mayawati Vs Markandeya Chand & Ors, 7 SCC 517 (1998).

³⁵ The line TD leaders dare not cross, The Hindu ,(Aug. 29 , 2020, 10:06 AM), <http://www.thehindu.com/todays-paper/tp-national/tp-andhrapradesh/the-line-td-leaders-dare-not-cross/article21>

³⁶ Keisham MeghaChandra Singh v. Hon'ble Speaker Manipur Legislative Assembly,SCC Online SC 617 (2020)

³⁷Shrimanth Balasaheb Patil v. Hon'ble Speaker, Karnataka Legislative Assembly (2020) 2 SCC 595

showed judiciary does not fulfil the expectation; otherwise, it promotes disqualification as no harm to the member who changes the party affiliation.

FURTHER DEVELOPMENTS

New development comes into picture in the form “unattached member” and “independent candidate”. The “Unattached Member” defined in *G. Viswanathan v. Hon’ble Speaker of Tamil Nadu, 1996*³⁸ case that if a candidate gets elected to a House of the legislature and is thereafter expelled from the party for any reason. Advocate Harish Salve argued in *Aman Singh v. Union of India, 2011*³⁹ that ‘unattached member’ cannot be an independent member as they elected on political party tickets. Power to declare ‘unattached member’ lie only to Speaker. These members neither belong to any party nor disqualified but still a member of the house. Since ‘unattached member’ continues to be a member of the assembly, it has no relevance under Xth schedule.⁴⁰ The term “Independent Candidate” means the candidate elected independently without affiliation to any party and who wishes to join a political party after election.⁴¹ In *Jagjit Singh v. State of Haryana, 2007*⁴², petitioner elected as a member of assembly as an independent candidate. He was disqualified under Para 2 of schedule Xth as he joined the Congress party that led to the formation of the government of Congress. The Independent Candidate means not following any party ideologies. The Court set aside the decision of Speaker as failed to observe the principle of natural justice “Audi Alteram”.

³⁸ G. Vishwanatham v. Speaker, Tamil Nadu Legislative Assembly, 2 SCC 353 (1996).

³⁹ Aman Singh v. Union of India, 1 SCC 210 (2011).

⁴⁰ W.N. Singh v. Speaker, Manipur Legislative Assembly, Gau 58 (2011).

⁴¹ Jagjit Singh v. State of Haryana 11 SCC 1 (2006).

⁴² Jagjit Singh v. State of Haryana SC 590 (2007).

However, the complaint of a violation of natural justice will not succeed if the member concerned has not suffered from any prejudice.⁴³ Defection took place not due to ideology of the party but because of a lust for office and power. If not become ministers, then scope open to become chairman of the tribunal, which is easy to fraud the law. Article 361 capital B introduced if member disqualifies under schedule Xth barred to hold any remunerative political post on the recommendation of National Constitutional to Review the Working of the Constitution (NCRWC).

RECOMMENDATION OF VARIOUS COMMITTEES ON ANTI DEFECTION LAW

Whenever legislators change parties, the functioning of the parties affected generates mayhem and instability in the political systems which need to be attended from time to time. To ratify the loopholes in the provision of Anti-defection law, various committees came up with recommendations. In the line of several committees, the Dinesh Goswami Committee suggested that the disqualification should be confined to the extent where the member voluntarily gives up his membership and when members abstain from voting in consonance with the party whip in a motion of vote of no-confidence.⁴⁴ The issue of disqualification must be decided by the president/Governor after taking the advice of the Election Commission, all recommendations implemented to modify the anti-defection law. In 1998, Halim Committee unveiled the phrase “voluntary giving up membership of a political party”⁴⁵ be compressively characterised and

⁴³ Mahachandra Prasad Singh v. Chairman Bihar Legislative Assembly, 8 SCC 747 (2004).

⁴⁴ Dinesh Goshwami Committee, PRSINDIA, (Aug. 29, 2020, 14:15 PM), www.prsindia.org/uploads/media/Note on Anti...

⁴⁵ Halim Committee on anti-defection Law, Legalsaga, (August 29, 2020, 17:45 PM), <https://theindiasaga.com/politics-governance/the-anti-defection-law-explained/>

limitation was placed on ousted members to join another party or for holding any office in the government.

The Law Commission in its 170th Report in 1999 suggested that provisions which exempt splits and mergers from disqualification should be removed to promote the stability in the party.⁴⁶ The Election Commission made a recommendation that the President should make a decision on defection under the X Schedule after the advice of the Election Commission. The reasoning behind the Election Commission recommendation was to create space for autonomous bodies to examine the question of disqualification and to ensure the tenth schedule is just a deterrence not in contrary to people's mandate. In 2002, National Commission to Review the Working Constitution⁴⁷ suggested that the Defectors should be punished for holding public office or any remunerative political post for the remaining term of the existing legislature and vote cast by a defector to overturn a government should be treated as invalid. All these demands or recommendations made by different committees to enhance the Anti-Defection Law through the 91st Constitutional Amendment which made the various provision to limit the size of council of Ministers, to debar defectors from holding public offices, no more protection on the grounds of splits and to fortify the anti-defection law.

IMPEDIMENTS IN THE JOURNEY OF ANTI-DEFECTION LAW

The first challenge to Anti-defection law was that “provision 2(b) of the Tenth Schedule stands repugnant to Article 105 Powers, Privileges and Immunities of Parliament and its members” of the Constitution. In the case *Prakash Singh*

⁴⁶170TH Report, Law Commission, (August 30,2020, 09:55 AM), <http://www.lawcommissionofindia.nic.in/lc170.htm>

⁴⁷National Commission to Review the Working Constitution, PRSINDIA, (August 31, 2020, 14:15 PM), www.prsindia.org/uploads/media/Note on Anti...

Badal v. Union of India,⁴⁸ it was held that the Constitution of India is the “Grundnorm”⁴⁹. Article 105 finds its origin in the Indian Constitution but at the same time framers never intended to accord any absolute right of freedom of speech on MPs. Hence, the provisions of Para 2(b) cannot be in contradiction to Article 105.⁵⁰

The Anti-Defection law aims to prevent political defections and ensures firmness of the government. However, the law simultaneously restrains a member of the legislature from functioning effectively as the member is obligated to adhere to the instructions of the party whip. The aim behind the anti-defection law is to combat political defections and bring firmness or stability in the government but it restrains the legislator to function effectively as he has to adhere to the instruction of the party whip which might lead to breaking of the chain of answerability between the elected representative and the voter as legislator failed to present the demands of voter over party’s instruction. If the member chooses to disagree or act contrary to the party’s decision, there is a real likelihood that he may lose his seat, resulting in his inability to serve the interest of his voters. Nonetheless, the whip has always been defied at both centre and state on significant votes affecting government stability. For instance, in 2016, the Appropriation Bill was introduced in the Uttarakhand legislative assembly where 9 MLAs from the ruling party supported the demand of the opposition party for counting of votes on the same bill which led the topple of congress government. In another case, MLAs defected from the ruling party, Congress and joined the Opposition to move the no-confidence motion against the ruling party in a special session.⁵¹ It was held the excuse of the ruling party was illicit

⁴⁸ Parkash Singh Badal v. Union of India 263 (F.B.) ((1987).

⁴⁹ Vikas v. State of Rajasthan 3 SCC 321 (2014).

⁵⁰ Kihota Hollohon v. Zachilhu, S.C. 413 (1993)

⁵¹ Nabam Rebia and Bamang Felix vs. Deputy Speaker Arunachal Pradesh Assembly and Ors ,SC 689 (2016).

and again called restoration. In *Shri Prabhunath Singh vs. Shri Ram Swaroop Prasad, JD(U)*, a party member when voluntarily defied the party whip was held liable for the same.⁵²

Who has the power to decide the matters of defection under the tenth schedule? This question has been answered through various Constitutional amendments such as the 32nd and the 48th Amendment Constitutional Bill which empowered the President and Governors of states to take a decision on questions of disqualification under X schedule.⁵³ The 52nd Constitutional Amendment, 1985 introduced the provision that questions of disqualification shall be pronounced by Speaker of the house.⁵⁴ The intention was to have speedier adjudicative processes and the same intensely discussed in the parliament. The 91st Constitutional Amendment introduced in 2003 with the intention to fortify the Tenth Schedule. This amendment makes it obligatory for all those who changed political parties frequently— whether individually or in groups — to resign their legislative membership. There are various instances where anti-defection law has failed to achieve their objectives as law failed to fix the time frame within which presiding officers are required to decide disqualification petitions which resulted in defecting members continuing to be members of the house for significant terms of the assembly and even ministers while still retaining membership of their original political party.⁵⁵ For instance, in Telangana, 12 members became ministers out of 26 MLAs who defected from the opposition parties to Telangana Rashtriya Samiti from 2014-18 as delay in decision taking on defection by

⁵² *Shri Prabhunath Singh VS. Shri Ram Swaroop Prasad*, PARLIAMENTARY DEBATES, (August 27, 2020, 17:55 PM), <http://loksabhaph.nic.in/Debates/DebateAdvSearch16.aspx>

⁵³ *Amendment to Decide Jurisdiction*, LEGALSERVICES, (August 31, 2020, 14:05 PM) <http://www.legalservicesindia.com/article/1937/Anti-defection-law-the-challenges.html>

⁵⁴ The 52nd Constitutional Amendment, 1985, INDIAN CONSTITUTION, (AUGUST 31, 2020, 15:37 PM), <https://www.indianconstitution.in/2017/09/52nd-amendment-in-constitution-of-india.html>

⁵⁵ Rakesh Mohan, *Speakers not Time-Bound to decide on Anti-Defection Cases*, The ET, (August 29, 2020, 16:20 pm), <https://economictimes.indiatimes.com/news/politics-and-nation/speakers-not-time-bound-to-decide-on-anti-defection-cases/articleshow/64199077.cms?from=mdr>

presiding officer.⁵⁶ Similarly, in Andhra Pradesh, four out of 23 MLAs were appointed as Ministers who had defected from YSR Congress Party to ruling Telugu Desam Party as Speaker has not taken any decision on defection from 2015-18.⁵⁷ In 2015, the Law Commission had stated that the Speaker may not satisfy the eligibility test of an independent adjudicating authority as appointed either elected through a majority vote of the house or usually nominee of the ruling party or coalition. Frequently, the decision of the speakers on defection challenged before courts for being one-sided and fractional.

PATH AHEAD FOR ANTI-DEFECTION LAW

Democracy is considered one of the most vibrant forms of governance and is preferred by the countries who channelise themselves towards progressive ideas and not just development. To give true meaning to fundamental rights such as the right of equality and freedom, democracy is a system where one can tread on a path of perfecting the meaning of the rights for every individual. As with every system, every social phenomenon, nothing is perfect, and so is the case with democratic forms of governance. The multi-party system is the essence of democratic governance, and defection is one of the challenges to the multi-party system, in an attempt to tackle this conundrum, the following measures can be taken:

ADVICE OF ELECTION COMMISSION:

The decision to preclude a member on the basis of defection must be decided either by the President or Governor instead of presiding officer of the house in

⁵⁶ 12 Members Suspended in Telangana Assembly, The Indian Express (Sept. 1, 2020, 10:02 AM), <https://indianexpress.com/article/cities/hyderabad/telangana-11-opposition-mlas-suspended-from-assembly-4431694/>.

⁵⁷ Defection in Andhra Pradesh Assembly, The Indian Express (Sept. 2, 2020, 13:05 PM), <https://www.newindianexpress.com/states/andhra-pradesh/2019/jul/20/andhra-pradesh-assembly-to-discuss-defection-of-mlas-2006776.html>.

the consultation of the Election Commission.⁵⁸ As an alternative to this, the decision over the disqualification can also be delegated on Chief justice of India or a Judge of Supreme Court in respect of parliament or Chief justices of High court in respect of state legislatures for more transparency in the decision-making process and ensure the proper interpretation of the law in regard of the disqualification of a member. In the *Hollohan* judgment⁵⁹, Justice Verma stated that tenure of the Speaker is based on the persistent support from the majority of the House, so his choice as the sole mediator in the matter violates an essential attribute of the basic characteristic. Thus, there is a requirement for an autonomous body to resolve defection cases as the involvement of independent authority will make decision making procedure transparent to everyone.

FIXED TIME LIMIT

As we examined discussed above, delay in decision making by the Presiding officers which lead to many defected members to successfully hold the seat beyond numbers of years and even in some cases; they become either a minister and Chief Ministers of state. So far, our concern is to set up a tribunal presided by a committee headed by former chief justice constituted by the Central government to set the time frame to decide matters within the given limit as to ensure goals of Constitution fulfilled and faith over democracy maintained for eternity.

PROMOTING THE PRINCIPLE OF INTRA-PARTY DEMOCRACY:

The 170th Law Commission Report emphasised on the importance of intra-party democracy. It stated that the political parties must listen to the views and opinions of each of its members to ensure the exercise of freedom of free speech and

⁵⁸ National Commission to Review the Working of the Constitution (NCRWC), *InsightofIndia*, (Sept. 2, 2020, 18:35 PM), www.insightsonindia.com/wp-content/uploads/2013/...

⁵⁹ *Kihoto Hollohan vs. Zachilhu and Others*, 2 SC 412 (1993).

expression. The same fails to happen as many times the ideology of the overall political party is shaped by a single person or a group of persons reflecting a dictatorship rather than a democratic view. Thus, it is necessary that the political parties listen to each member and their opinions to promote inter-party democracy.

CONCLUSION

As discussed above, there are many challenges existing in the present anti-defection law and the same makes for a toothless tiger in the multi-party democracy. The increasing number of defection cases in various states reflects how the present piece of legislation is weak and outdated. For the continuances and sustenance of a healthy democracy, it is necessary that the government work towards the recommendations put forth by various committees as discussed above. The same is the need of the hour especially in the light of words of late Prime Minister, Atal Bihari Vajpayee “there are facilities available even for a heart transplant, but this syndrome of political defection is yet to find a remedy”.⁶⁰

⁶⁰ Healthy Democracy, Hindustan Times ,(Sept. 3. ,2020,19:55 PM), <https://www.hindustantimes.com/india-news/discussion-on-simultaneous-polls-a-healthy-sign-for-democracy-pm-modi-on-mann-ki-baat/story-Gr9p5rrhwGumbeMUQ6xd1L.html>