

UNCOMPROMISING NEED: A STRINGENT IMPLEMENTAION OF ANTI-DEFECTION LAW

Power is one such force that has allured everybody, whether a human or an animal. One who is strong, has a majority, holds the power. Same is in the political arena, party who has support of the general public at large gets in power. Aristotle has rightly said, man is by nature a political animal. He is a social creature with power of speech and moral reasoning.

In the political sphere, the incidents of political leaders, shifting parties are dime a dozen from many decades. To curb such incidents, Anti- Defection Law was passed by 52nd Amendment in the year 1985 when the government of Late Sh. Rajiv Gandhi won the elections with a huge majority. This amendment added Tenth Schedule in the Indian Constitution with the intention to put a stop on floor-crossing, the ever increasing horse-trading, ensuring political stability and curbing the corruption prevalent in the Indian Politics. The major change that this amendment intended to bring in was that, once a member is elected to parliament under a particular name, cannot later on shift to some other party.

Paragraph 2 of Schedule X lays down the process by which legislators can be disqualified on the ground of defection. Member is said to have defected if he voluntarily gives up his membership of that political party or defies the party whip on a policy issue by voting against his party. One thing that is evident here is that a member cannot just be defected if he changes his party after getting selected, rather can also be defected by the other member if he doesn't act or vote according to the direction provided by the party officials.

Originally, anti-defection law was formulated in terms of the principles of democracy where the members must stay with the original party, under which the public elected them at first. But the way the law is implemented, it has anti-democratic outcomes. Parliament is a platform where the policies are discussed and debated at length and then bills are passed and laws made. But, due to the anti-defection law in force, if any legislator steps aside or derails from the party lines, they are pulled in the ambit defection. It is astonishing that Paragraph 2(1)(b) has curtailed an air of democracy in the intrinsically democratic entity, the Parliament.¹ It is slowly leading to the death of debating over an issue. There are various instances where bills in double digits were passed just in 5-6 hours and not debated on length with a very small percentage of members present.

¹ Nick Robinson, Expanding Judiciaries: India and the Rise of the Good Governance Court, Rev. 1 (2009).

Elections work on the tool called Manifestos. These are the basis on which, candidates turn votes of public in their favor. Debates in houses and state assemblies is that part of the entire process where, the general public who based their votes on these manifestos see the true face of the legislators. There is not just one, but many instances where the candidates themselves voted against the laws to be passed on subjects, that were manifestos of their elections and Bill for Women Reservation is one of them.

The Hon'ble Supreme Court has expressed the importance of incentivizing parliamentarians to debate at length. The Hon'ble Court held that, this ability gains significance especially in cases when a member might choose to raise an opinion, different from the line taken by his party. The benefit of such an instance is that, often the views expressed by the Members in the House have resulted in substantial modification, and even the withdrawal, of the proposals under consideration. Debate and expression of different points of view, thus, serve an essential and healthy purpose in the functioning of Parliamentary democracy. At times such an expression of views during the debate in the House may lead to voting or abstinence from voting in the House otherwise than on party lines².

Debating on issues is not just the need for making well-decided and extensive laws but at the same time, it is the right and privilege vested with the Parliamentarians. A right akin to Article 19 of the Indian Constitution, a right under Article 105 is bestowed on the parliamentarians who are provided this freedom only when inside the House. It has been conclusively established that Art. 105(1) and its equivalent Art. 194(1) are parliamentary privileges and not fundamental rights.³ It has, however, been held that the extent of this privilege is much wider than any right vested in an ordinary person. While reasonable restrictions apply in the case of Article 19, no such restrictions have been imposed in case of Art. 105. This is indicative of the greater rights that parliamentarians enjoy. Along with that Constitution also provides for the Right to freely vote in the Parliament⁴ and anti-defection law cannot abridge this right and take away the freedom to vote in which ever favor the legislator wants.

The Supreme Court⁵ took into account the comparative understanding of the functioning of parliaments and political parties. It observed that there are several cogent arguments that impress upon the court, the importance of a party maintaining a united stand when laying

² Kihoto Hollohan v. Zachillhu, 1992 Supp (2) SCC 651.

³ K. Ananda Nambiar v. Chief Secretary to the Govt. of Madras, AIR 1966 SC 657.

⁴ Article. 105(2), Constitution of India.

⁵ Id 2.

forth their position and opinion.⁹⁹ Keeping in mind the ideals of a well functioning parliamentary democracy, however, the Supreme Court held that party cohesion must be maintained only in limited cases. The element of parliamentary democracy could not be held to suffer at the altar of mere party stability. While the Court held that the wide phraseology could not justify a constitutional challenge, it did resort to harmonizing the provision along with rest of Schedule X. It did so by limiting the very cases in which a member could be disqualified for a vote contrary to the directions of the whip. These cases were extended to vote of confidence or no-confidence as well as all matters concerning policies and programmes on the strength of which the party came to power.

Dissent is widely seen as a challenge to the party and the government, violation of party discipline or maverick bellicosity.⁶ What needs to be taken into consideration is that dissent is base of a positive and growing nation. If the Parliamentarians won't be allowed to disapprove or step back from the party lines, there will be no space for improvement and additions for the betterment of the nation.

To deal with the issue at hand, there is a need for the stricter interpretation of the anti-defection law and the disqualifications provided in the Tenth Schedule. One thing which needs to be taken into consideration is that there is no specific time period mentioned in which the presiding officer of the house / state assembly will give its decision. As the law does not provide for the same, the decision stays pending for a long period where in the member who is challenged, joins the opposite party and comes to power. No judicial action can also be taken as; judiciary cannot intervene before the decision of the presiding officer gets final. So, there is need to fix this time period so that the true benefit of the law can be taken.

Moreover, Manish Tewari, Member of Parliament, Lok Sabha suggested certain constitutional amendments to limit the vast interpretation and scope of Tenth Schedule, Paragraph 2 (1) (b)⁷. The propositions made by Tewari are akin to the recommendations made by the Dinesh Goswami Committee on Electoral Reform⁸ where it was suggested that

⁶Economic Times, Ruling party as opposition, September 28, 2010, available at http://articles.economictimes.indiatimes.com/2010-09-28/news/27574743_1_political-party-party-discipline-dissent, retrieved on 26th April, 2020 at 11:30 pm.

⁷Anita Joshua, Congress MP moves Bill to amend Anti-Defection Law, available at <http://www.thehindu.com/news/states/article103984.ece>, retrieved on 27th April, 2020, at 7:20 pm.

⁸Dinesh Goswami Committee on Electoral Reforms (as referred to in PRS Legislative Research), the anti-defection law-intent and impact, November 23, 2011, available at <http://www.prsindia.org/uploads/media/Note%20on%20Anti-Defection.pdf>, retrieved on 26th April, 2020, at

disqualification must be imposed only in cases of vote of confidence or no-confidence motions. The recommendations were:

(b) to be a possible sanction only if the member dissents against a whip issued in the following instances:

- “1. Motion expressing confidence or want of confidence in the Council of Ministers,
2. Motion for an adjournment of the business of the House,
3. Motion in respect of financial matters as enumerated in articles 113 to 116 (both inclusive) and articles 203 to 206 (both inclusive),
4. Money Bill”

Such a law would liberate legislators from the whip-imposed fear of losing their membership except in cases where the life of the government is threatened by a no-confidence motion, money bills and some crucial financial matters.⁹ His solution is appropriate to a great extent because it aims at justifying the object and purpose with which the anti-defection law was brought into force for the first time.

There is no abnegating the fact that to maintain stability in the party is very important from the point of the party leaders but at the same time the most important thing is that the right and freedom to debate, opine and vote in the favorable side should remain intact.

What needs to given importance is that, the present implementation of anti-defection law is not solving the issue of corruption but is rather increasing the cost of a vote in the parliament. The purpose of law is completely sidelined and has created a separate issue in itself. To put an end to the ever increasing misuse of the law, there is need that courts should provide with a narrowed down interpretation of the Tenth Schedule that solves the problem of floor crossing, corruption and bribery. Above all, there is a need to maintain a balance between the right to vote, right to dissent and right of political associational stability.

9:15 pm.

⁹B. Venkatesh Kumar, Anti-Defection Law: Welcome Reforms, 38(19) Economic & Political Weekly 1838 (2003).