

Anti-Defection Law – Need For Reformation

Dr. P Subhakara Reddy¹

Introduction :

Political defection popularly known as floor crossing is traceable to the British House of Commons. In England prominent parliamentarians like William Gladstone², Joseph Chamberlin³, Winston Churchill⁴ and Ramsay MC Donald⁵ had resorted to floor crossing. Likewise, there are incidents of politicians defecting from one party to another in other democratic countries like Australia, Canada and America. But those defections were considered basing on ideological differences and without any motive or personal interest of the defector. The year 1967 has flagged off political instability and horse-trading resulting in the formation of coalition governments in Indian politics as the Congress Party did not secure majority in Lok Sabha. During the past fifty years, the disease of floor crossing has come to stay in the Indian politics despite the operation of anti-defection law since 1985. Now a day's floor crossing has become a common sight in our country's political life and it is on the increase at an alarming pace.

This paper explains the anti-defection law as it stands today, the role played by the Chairperson /Speaker in its implementation, a few but important judicial pronouncements on the issue and also suggests the areas of reformation needed in the law keeping in view our multi party parliamentary system of democracy.

Anti-defection law

With a view to put an effective check on the evil of floor crossing the Constitution (52nd Amendment) Act, 1985 has been passed by the Parliament which came into force with effect from the 1st March 1985. The 52nd Amendment while adding 10th Schedule to the Constitution which deals with disqualification of legislators both at the Centre and in the States on the ground of defection also introduced suitable

modifications to Articles 101, 102, 190 & 191 of the Constitution for the purpose. The new clause 2 added to Articles 102 and 191 provide that a legislator attracts disqualification for being so if his case falls under any one of the grounds as detailed in the 10th Schedule. Namely:

- i. Resigns to the primary membership of the party on whose ticket he is elected to the House; or
- ii. Gives vote or does not participate in the voting in the House against the whip of the party without proper cause and excuse which is not condoned within 15 days of such voting or abstention; or
- iii. A nominated legislator joins any political party 6 months after becoming a legislator; or
- iv. If an independent legislator joins any political party⁶.

No disqualification:

A legislator, however, will not attract any disqualification under the provisions of the 10th Schedule;

- i. If he leaves the party on account of 'merger' which is a minimum of two third strength of that party in the House; or
- ii. If after being elected as a presiding officer he gives up the membership of the party to which he belonged or does not re-join that party or becomes a member of another party⁷.

Thus, the 10th Schedule to the Constitution provides to disqualify a legislator on four specific grounds while recognising two exceptions from being disqualified.

Role of the Speaker :

Under our Constitution the institution of speaker of Lok Sabha and every State Legislature is modelled on the lines of the speaker of the British House of Commons. The speaker is the custodian of the dignity of the House and an

impartial arbitrator in all its proceedings from conducting routine business of the House to taking disciplinary action against members for violating the decorum of the House. Once elected, the speaker is expected to rise above party politics, because he represents the House. That is why by convention the speaker in Britain dissociates himself of his party character by resigning from the party to which he belonged before his election. In India, the credit goes to Neelam Sanjeeva Reddy⁸, who resigned the party after his election as speaker of Lok Sabha to highlight the independence and impartiality of the institution of speaker.

The anti-defection law has conferred an additional power on speaker to decide disqualification of a legislator on the ground of defection. The question whether a legislator has attracted any disqualification under the provisions of 10th Schedule, shall be referred to the Chairperson or the speaker of such House, whose decision shall be final⁹. Their decision shall not be questioned in any court of law¹⁰. Tenth Schedule also authorizes the presiding officers of the respective Houses to prescribe rules of procedure to be followed in the matter which are subject to approval, modification or rejection by the House. Any wilful disobedience or contravention of these rules may be treated as a breach of the privilege of the House and can be punished¹¹.

Judiciary on anti-defection law :

Anti-defection law has been subjected to judicial comment in a sizeable number of cases either due to hasty orders or no action initiated at all by the speakers of the respective Houses on the complaints of floor crossing received from the political parties. The judiciary has been trying to uphold democratic values on the issue of political defections. One of the earliest and leading cases on the point is Kihota¹² a Public Interest Litigation filed in the Supreme Court. The Constitution Bench by 3:2 *inter alia* held that

- ❑ The provisions of the Tenth Schedule to the Constitution added by 52nd Amendment neither violates the freedom of speech and expression guaranteed under Article 19 (1) (a) nor undermines the democratic rights of legislators. The provisions of Tenth Schedule are “salutary and are intended to strengthen the fabric of Indian parliamentary democracy by curbing unprincipled and unethical political defections”.
- ❑ The speaker’s order of disqualifying a legislator on the ground of defection is subject to judicial review by the High Courts and the Supreme Court on grounds such as ‘violation of constitutional mandate, mala fide, non-compliance with the principles of natural justice and perversity etc.’
- ❑ Para 7 of the Tenth Schedule which provides that the decision of the speaker on the issue of disqualification shall be final and no Court has power to examine its validity was struck down as it violated the power of judicial review a basic structure.

Accordingly, the majority had set aside the orders of the Speakers of Meghalaya and Manipur disqualifying some members of their respective Houses on the ground of defection

On the issue of “voluntarily giving up membership of a political party” the Court observed that it has a wider meaning and the inference can be drawn from the conduct of the members also¹³.

There has been a controversy as to the status of an expelled legislator. In *G. Vishwanathan v. Speaker, Tamil Nadu Legislative Assembly*¹⁴ the court observed that a legislator expelled from the party has to be treated as “unattached” member in the house. But he continues to be a legislator of the old party as per the 10th Schedule. If, after being expelled, he joins a new party he can be said to have voluntarily given up membership of his old party. However, in *Rajendra Singh Rana v.*

Swami Prasad Maurya¹⁵, it was held that the 10th Schedule does not recognise unattached member and it has no legal bearing. The Court went on to proclaim that the concept of unattached member will defeat the very purpose of 10th Schedule i.e. anti-defection law. In that case the speaker's order that certain members were not disqualified on the ground of defection was set aside by the Supreme Court as unconstitutional as it was based on no evidence. Strikingly, the Court instead of sending the matter back to the speaker for a fresh order on merits declared that the concerned members stood disqualified from the date of happening of the event and not from the date of the pronouncement of the judgment.

It has been held that the role of the Chairman or the Speaker of the House is only in the sphere of ascertaining the relevant facts. Once the facts gathered show that a legislator has attracted any of the provisions of the 10th Schedule, the disqualification shall apply. The principle of fairness demands the Speaker to give the member concerned some opportunity for explaining his case. However, if the member concerned has not suffered any prejudice, natural justice principle does not apply¹⁶.

Conclusion:

Anti-defection law has been hailed as a bold step to stall political opportunism and to promote democratic values and good governance in public interest. But, a catena of incidents of floor crossing since the coming into force of anti-defection law in general and the events of political defections in the recent past in various states in particular would reveal that the anti-defection law has thoroughly failed to live up to its expectations.

The recent toppling game enacted in the State of Arunachal Pradesh to which the govt. at the centre is a major contributor. The on-going activity of engineering defections in the newly created States of Telangana and Andhra Pradesh in the name of strengthening the ruling parties

on a regular and priority basis. The Tamil Nadu episode of disqualification of certain legislators following no confidence motions, strongly indicate that the anti-defection law instead of serving as an effective missile in curbing unprincipled, unethical and opportunistic defections it has been reduced to a damp squib mostly due to the inaction or partisan attitude of the presiding officers of the legislative Chambers and indifferent attitude and scant respect by the major political parties towards anti - defection law.

Suggestions:

In order to stall further weakening of the law and to root out the evil of defections from our polity, there is an imminent need to reform the anti-defection law by bringing suitable amendments. The following are a few but prominent reforms that are thought necessary. Namely:

- ❑ The Speaker should be divested of the power to decide disqualification of a legislator due to defection under the 10th Schedule – Because, the Speaker being a political creature, whose tenure depends on the majority in the legislature, generally takes decisions or refuse to initiate any action that supports the interest of the party to which he belongs. It is difficult for the Speakers to maintain objectivity and impartiality required in the matter which has become evident from the on-going incidents in the States of Telangana and Andhra Pradesh. Therefore, Para 6 of the 10th Schedule shall be omitted.
- ❑ The adjudicatory function under the anti-defection law should be vested in the Election Commission of India –The President of India in case of parliament and the Governor in case of a State Legislature must be conferred with a power to refer the issues of floor crossing to the Election Commission. The opinion of the Election Commission should be binding on the President/ Governor. In fact this measure

has been recommended by the Dinesh Goswami Committee (1998), the Committee to Review the Constitution (2002) and the Law Commission of India (2005).

- ❑ All complaints of defection received from the voters, political parties, by way of PIL or *suo motu* action initiated against a legislator shall be disposed of as expeditiously as possible, say within 3 to 6 months from the date of receiving such complaint by the President or the Governor, since the tenure of a legislator is 5 years in case of direct election and 6 years in case of indirect election.
- ❑ No legislator shall be allowed to occupy any constitutional or statutory position until the complaint of defection against him is disposed.
- ❑ As the power of judicial review has been declared as a basic structure, Para 7 of the 10th Schedule which makes Speaker's decision final on issues of floor-crossing must be omitted which has been already spelt by the Supreme Court in Kihota case.
- ❑ Any violation of the provisions of the anti-defection law shall be treated as a case of failure of constitutional machinery both in the States as well as at the Centre and appropriate remedial action shall be initiated by the Governor and the President.

If these modifications are introduced to the existing anti-defection law, it is hoped that it would effectively check the evil of political defections in our country.

(Endnotes)

1. Professor, VIT School of law, VIT Chennai Campus, Vandalur – Kelambakkam Road, Chennai -600 127 Tamil Nadu.
2. Defected from Conservative to Peelite in 1846.<https://en.Wikipedia.org>
3. From liberal to Liberal Unionist in 1866
4. From Conservative to Liberal in 1904
5. From Labour to National Labour in 1931
6. Para 2 of the 10th Schedule to the Constitution
7. Para 4 Ibid. Para 3 which dealt with 'split' as one of the exceptions from disqualification was omitted by the Constitution (91st Amendment) Act, 2003 which came into force from 2nd January 2004.
8. The Speaker of Lok Sabha from 17th March 1967- 19th July 1969 and again from 26th March 1977- 13th July 1977
9. Para 6
10. Para 7
11. Para 8
12. Kihota Hollohon v, Zachillhu And Others (1992
13. Ravi S Naik v. Union of India (1994)
14. AIR 1996 SC1060
15. AIR 2007 SC 1305. See also MP Singh v. Chairman, Bihar Legislative Council (AIR 2005 SC 69)
16. IR 2005 SC 69