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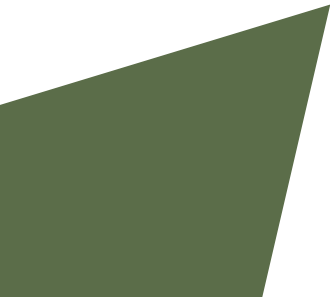
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The Anti-Defection Law

Erica Roseline Toppo

THE ANTI – DEFECTION LAW

The anti-defection law is embodied in the 10th Schedule of the Constitution. It was enacted by Parliament in 1985. It came into enforcement on March 1st, 1985. For a long time, the Indian political panorama was besmirched by political defections by members of the legislature. This predicament brought about sumptuous instability in the political system.

Legislators used to change parties frequently, precipitating about bedlam in the legislatures as governments fell. In sum, they often brought about political instability. This caused vital agitation to the right-thinking Political leaders of the country.

Several endeavours were fabricated to make some laws to curb defections. Starting from private members' efforts, Bills were brought in by the government at different times. No Bill could be passed because of one reason or the other. Nevertheless, the most consequential reason was that there was no consensus on the rudimentary provisions of the anti-defection law. Members of Parliament were agitated about the freedom of speech in Parliament and other legislatures as they had a fear that too stringent a law on defection would likely curb the freedom of speech (which is a constitutional right) of the legislators. A lot of time was taken before a consensus could be reached on this issue.

Eventually, in 1985, the Rajiv Gandhi government brought a Bill to amend the Constitution and restrain defection. The 10th Schedule of the Constitution, which embodies the anti-defection law, was enumerated to the Constitution through this amendment. The purpose, as is obvious, is to curb political defection by the legislators.

There are two grounds on which a member of a legislature can be disqualified.

One of the members voluntarily relinquish the membership of the party, he shall be disqualified. Voluntarily relinquishing the membership is not the same as abdicating from a party. Even without abdicating, a legislator can be disqualified if by his demeanour the Speaker/Chairman of the solicitous House draws an admissible inference that the member has voluntarily relinquished the membership of his party.

Second, if a legislator votes in the House averse to the direction of his party and his action is not condoned by his party, he can be disqualified.

These are the two grounds on which a legislator can be disqualified from being a member of the House.

SCHEDULE 10

Notwithstanding, there is an exception that was provided in the law to insulate from disqualification. The 10th Schedule says that if there is an amalgamation between two political parties and two-thirds of the members of a legislature party concede to the amalgamation, they will not be disqualified.

Certainly, the law was amended in 2003. When it was enacted first, there was a provision under which if there is an eventual split in the original political party and as a ramification of which one-third of the legislators of that party configure a separate group, they shall not be disqualified. This provision prompted in large scale defections and the lawmakers were convinced that the provision of a split in the party was being dissipated. Consequently, they decided to eradicate this provision. Now, the only provision which can be invoked for protection from disqualification is the provision relating to the amalgamation, which is provided in Paragraph 4 of the 10th Schedule.

The first ground for disqualifying a legislator for defecting from a party is his voluntarily relinquishing the membership of his party. This term "voluntarily relinquishing the membership of his party" is susceptible to elucidation. As has been explicated earlier, voluntarily relinquishing the membership is not the same as abdicating from a party. Then what exactly it means? How can one decide that a member of a legislature has voluntarily relinquished the membership of his party? The Supreme Court has illuminated this point by saying that the presiding officer, who acts as a tribunal, has to draw an admissible inference from the demeanour of the legislator. The law certainly has been able to curb the iniquitous of defection to a great extent. Although, recently, a very alarming trend of legislators defecting in groups to another party in search of greener pastures is visible. The recent instances of defection in state Assemblies and even in Rajya Sabha bear this out. This only shows that the law needs a re-evaluation in order to plug the inadequacies, if any. But it must be said that this law has served the interest of the society. Political instability caused by a frequent and discordant change of allegiance on the part of the legislators of our country has been contained to a very great extent. That is an account of success of one of the most important legislation that the Indian Parliament has enacted.

The Tenth Schedule was incorporated in the Constitution in 1985. It lays down the procedure by which legislators may be disqualified on grounds of defection by the Presiding Officer of the legislature based on a petition by any other member of the House.

A legislator is deemed to have defected if he either voluntarily relinquishes the membership of his party or contravenes the directives of the party leadership on a vote. This implies that a

legislator defying (abstaining or voting against) the party whip on any issue can lose his membership of the House. The law appertains to both Parliament and state assemblies.

Legislators may change their party without the risk of disqualification in certain circumstances. The law allows a party to amalgamate with or into another party provided that at least two-thirds of its legislators are in favor of the amalgamation. In such a scenario, neither the members who decide to amalgamate nor the ones who stay with the original party will face disqualification.

EXPERT COMMITTEES

Numerous expert committees have recommended that rather than the Presiding Officer, the decision to disqualify a member should be made by the President (in case of MPs) or the Governor (in case of MLAs) on the advice of the Election Commission. This would be indistinguishable to be followed for disqualification in case the person persists an office of profit (i.e. the person holds an office under the central or state government which carries a remuneration and has not been disqualification, and has not been excluded in a list made by the legislature). The law provides for a member to be disqualified if he 'voluntarily relinquishes his membership'.

However, the Supreme Court has explicated that in the absence of a formal resignation by the member, the relinquishing of membership can be inferred by his demeanour. In other judgments, members who have publicly expressed opposition to their party or support for another party wear deemed to have resigned. In the case of the two JD(U) MPs who were disqualified from Rajya Sabha on Monday, they were deemed to have 'voluntarily relinquished their membership' by engaging in anti-party activities which included condemning the party on prominent forums on multiple occasions and attending rallies organized by opposition parties in Bihar.

The law initially stated that the decision of the Presiding Officer is not subject to judicial review. This condition was struck down by the Supreme Court in 1992, thereby allowing appeals against the Presiding Officer's decision in the High Court and Supreme Court. However, it held that there may not be any judicial intervention until the Presiding Officer gives his order.

In 2015, the Hyderabad High Court refused 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. The law does not specify a period for the Presiding Officer to decide on a disqualification plea. Given that courts can intervene only after the Presiding Officer has decided

on the matter, the petitioner seeking disqualification has no option but to wait for this decision to be made.

There have been several cases where the Courts have enunciated solicitude about the redundant deferment in deciding such petitions. In some cases this deferment in decision making has supervened in members, who have defected from their parties, continuing to be members of the House. There have also been instances where opposition members have been appointed ministers in the government while still retaining the membership of their original parties in the legislature.

In recent years opposition MLAs in some states, such as Andhra Pradesh and Telangana have broken away in small groups gradually to join the ruling party. In some of these cases, more than 2/3rd of the opposition has defected to the ruling party. In these scenarios, the MLAs were subject to disqualification while defecting to the ruling party in smaller groups. However, it is not clear if they will still face disqualification if the Presiding Officer makes a decision after more than 2/ 3rd of the opposition has defected to the ruling party. The Telangana Speaker in March 2016 allowed the merger of the TDP Legislative Party in Telangana with the ruling TRS, citing that in total, 80% of the TDP MLAs (12 out of 15) had joined the TRS at the time of taking the decision.

In Andhra Pradesh, legislators of the main opposition party recently boycotted the entire 12-day assembly session This boycott was in protest against the delay of over 18 months in action being taken against legislators of their party who have allegedly defected to the ruling party.

The Vice President, in his recent order disqualifying two JD(U) members, stated that all such petitions should be decided by the Presiding Officers within a period of around three months. The anti-defection law seeks to provide a stable government by ensuring the legislators do not switch sides. However, this law also restricts a legislator from voting in line with his conscience, judgment, and interests of his electorate. Such a situation impedes the oversight function of the legislature over the government, by ensuring that members vote based on the decisions taken by the party leadership, and not what their constituents would like them to vote for. Political parties issue a direction to MPs on how to vote on most issues, irrespective of the nature of the issue. Several experts have suggested that the law should be valid only for those votes that determine the stability of the government.