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GRT ANTI- DEFECTION LAW: A CRITICAL ANALYSIS



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Abstract: Political stability inter-alia plays a dominant role in the economic growth of a country. Some unscrupulous members of parliament and state legislative assemblies in the past, putting into oblivion their loyalty towards the party who made them either members of parliament or state legislative assemblies and people who elected them by virtue of being the members of that party, in pursuit of their personal advancement and self-aggrandisement by changing their party loyalty have been responsible for destabilization and fall of governments and colossal draining of public exchequer as a result of re-elections due to changing party loyalty or defection has been the bane of Indian political system which goes against the demands of public interest favouring stability of polity and governments. Realising the need to curb such unhealthy trend, constitution was amended to incorporate the X schedule contemplating legal provisions to that effect. In this article an attempt is made to analyse critically the X Schedule of the Constitution which is popularly known as anti-defection law and the subsequent judicial decisions in that regard with special reference to various committee reports pertaining to the subject.

Key words: Anti- Defection , Analysis , Political stability , destabilization.

INTRODUCTION :

Meaning of Defection: It signifies moving of an elected party member from one party to the other. It is known by different nomenclatures such as floor-crossing, carpet-crossing, party hopping and waka (canoe) jumping.

OBJECT OF ANTI-DEFECTION LAW

The very object of anti-defection law is to preserve the democratic structure of the legislature and strengthen political morality in legislators. Such laws are rare in established democracies but common in nascent democracies. They are often defended as temporary measure to consolidate a chaotic party system. The majority rule and party system are the two important elements of modern political machinery which have pervaded at all levels of government administration i.e., centre, state and local governments. In some of the countries including India where the political morality has reached the lowest ebb, the opposite parties which always grab an opportunity to deprive the ruling party of its majority to topple the government which has been legitimately elected by the people. The degree of the peril of being toppled from the power is high where a ruling party enjoys a thin majority.

People expect good governance sans corruption from the ruling party and the opposite parties to play a constructive role as watch dogs of the activities of the ruling party. But to the utter chagrin of the people the opposite parties place hurdles to the ruling party by causing defections or disobedience to party whip by illegitimate means, intimidation and allurements. The net result is political chaos and political instability marring the progress of the country.

Hence, there arises need for anti-defection law to curb the chaos discussed above. In this regard in *Kihota-Hollohon v. Zachilhu*, the Honourable Supreme Court observed “the provisions are salutary and are intended to strengthen the fabric of Indian parliamentary democracy by curbing unprincipled and unethical political defections”.

Sometimes an elected member may conscientiously disagree with the party policies. In such a situation, if he wished to leave the party, he has to resign his membership of the house and seek afresh mandate. Such principles based defection is acceptable. But such defections are rare. The naked truth is that most of the defections are prompted by selfish motive of becoming ministers in the council of ministers to be formed with the support of defectors. It can be illustrated by the jumbo size Kalyan Singh Government where there were 94 ministers. The government was formed with the support of defectors from Congress Party and Bahujan Samajwadi party. All defectors were made ministers. The above incident manifests that any defection not based on any principle is ethically wrong, opportunist and is the result of desire for power. The Supreme Court observed in *Kihota's* case that the anti-defection law strengthened democracy and the representative functions. It did not stifle the freedom of the legislators. The *kihota* verdict resulted when the anti-defection was challenged as invalid for restricting the freedom of the legislators by making the directions of the chief whip of the party binding.

Historical background of Anti-defection Law

After the independence until the current legislation



on the subject, it was very easy for an elected legislative member to hop around from one party to another party to fulfil his ambitions. It has led to a very clumsy and precarious position of many governments toppling around. India was spurred to introduce anti-defection law on the aftermath of witnessing many defections in the four loksabhas preceding the enactment of current law on the subject. The absence of law in this regard culminating in a situation of utter failure to deal with the issue had led to rampant horse trading and corruption in daily parliamentary functioning. It paved the way for 52nd amendment of the Constitution in 1985 to incorporate the X Schedule which popularly came to be known as the Anti-defection law.

DISQUALIFICATION OF MEMBERS OF PARLIAMENT AND LEGISLATIVE ASSEMBLIES

The Constitution of India contemplates disqualification of members of parliament and legislative assemblies. Inter-alia it is laid down that an elected member suffers disqualification under any law made by the parliament. Accordingly an elected member of parliament, legislative assembly and council invites disqualification under the following circumstances laid down in the X schedule on the ground of defection.

a) Disqualification of an independent elected member

Any person who has won the election not set up as a candidate by any political party and if he joins any political party after the elections invites disqualification. It follows that this provision speaks of disqualification of an independent candidate elected in an election. If he joins any political party after election, that shall be deemed as an instance of defection. The rationale is that an independent candidate should maintain his independent character until he wishes to continue as a member of the house. The other way out is to resign his membership of the house and join a political party. In *Balachandra Jarkiholi & Another v. Yeddyurappa*, the speaker disqualified 5 independent MLAs who supported the BJP Government without joining the party and they were made ministers. Subsequently they withdrew their support to the government. The Speaker ruled that the independent legislators by their action of supporting the BJP led Government formed part of BJP and consequently their withdrawal of support to the government attracted disqualification under the anti-defection law. The High Court of Karnataka upheld the decision of the speaker. On appeal the Apex Court, rejecting the contention of the speaker has held that by extending support to Yeddyurappa to form the Government, the independents have not sacrificed their independent identity and the fact that the independent legislators have joined the Council of Ministers also does not alter the position.

b) Disqualification of Nominated members

If a nominated member joins a political party 6 months after he becomes a member of the legislature, he stands disqualified from the membership of the house on the ground of defection. It follows from the provision that if he joins any political party within 6 months of his nomination as a member of any house, he is free to join any political party. It

is submitted that it goes against the very spirit of the anti-defection law and accordingly it should not be allowed.

c) Disqualification of an elected member belonging to a political party

Any member who votes or abstains from voting in violation of the whip of the party on whose symbol he has been elected attracts disqualification. The Supreme Court has explained the reason for this disqualification in the following words in *Kihota Hollohon v. Zachilhu*, "Loyalty to party is the norm, being based on shared beliefs. A divided party is looked with suspicion by the electorate. It is natural for the members to accept the opinion of their leaders and spokesmen on the wide variety of matters on which those members have no specialist knowledge".

It follows from the above observation that an elected member loyal to the party should not violate the party whip to vote against the party policies and decisions. Loyalty to the party and abiding by the party whip should go hand in hand. It looks certainly strange if one says that I am always loyal to the party, but I vote against the policies and decisions of the party. Voting against the pronounced policies of the party would certainly cause serious damage to the party reputation. In this regards it was observed,

"any freedom of members to vote as they please, independently of the political party's declared policies will not only embarrass its public image and popularity but also undermine public confidence in it, which in the ultimate analysis, is its source of sustenance-nay indeed its very survival. Violation of party whip either affirmatively or negatively is a manifestation of breach of trust and betrayal on the part of a party member. To Honourable Supreme Court, "to abstain from voting when required by party to vote is to suggest a degree of unreliability. To vote against party is disloyalty. To join with others in abstention or voting with the other side smacks of conspiracy".

In *Shri Rajeev Ranjan's case*, 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 that 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.

In *Shri Prabanath Singh's case*, Sri 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 was evidence to show that the whip had been delivered to Sri Prasad's house and had been duly received, it cannot be said that he had no knowledge of the whip.

In a recent case, from Andhra Pradesh, no-confidence motion was moved by the TRS against Kiran Kumar Reddy government. The Congress Legislative Party naturally issued a whip to its members to vote against the motion, while the TDP issued whip to its members to be neutral, 18 MLA's of congress party were defiant. Though Kiran Kumar Reddy succeeded in the motion, his party lost stability and peace for the remaining term. 15 MLAs of the Congress and the Telugu Desam, all of whom were known to

be loyal to the YSR Congress, were disqualified from the Andhra Pradesh Assembly for defying the whips and voting for the no-confidence motion. The Speaker concluded that respondents had exercised their vote on the motion on the floor contrary to the whip issued, attracting provisions of the X Schedule to the Constitution read with the AP Legislative Assembly (Disqualification on the ground of Defection) Rules 1986.

There is no direct provision in the X Schedule as to what constitutes defection on the part of elected members of a political party except one relating to violation of party whip. But it follows from the exemption provisions of the schedule that if less than 2/3 of the elected members take recourse to floor crossing or merge their faction with another party, it constitutes defection. It does not alter the legal position when one gets elected as a member of any house under the ticket of a particular political party, subsequently if he contests as an independent candidate without first resigning from his membership of any house what he holds and vice versa. After resigning the membership of the house he is free to contest as an independent Council candidate failing which he attracts disqualification. In *Mahachandra Prasad v. Bihar Legislative Council*,^{xix} a member who was elected on the ticket of Indian National Congress for the Legislative Council contested as an independent candidate in the parliamentary election. It was held that there could be no escape from the conclusion that the petitioner had incurred disqualification and the decision of the chairman was perfectly correct.

An elected member of a house who got so elected under the ticket of a political party, if without resigning the membership of the house joins another political party, he invites disqualification. In a case where all four members elected from the Nationalist Congress Party had changed their allegiance to the Biju Janatha Dal, it was held that they attracted the disqualification contemplated under the X Schedule.

Sometimes an elected member often dissent and criticise his party policies publicly. A question arises whether it constitutes defection. The question was answered affirmatively in *Sri Avtar Singh Bhadana v. Shri Kuldeep Singh*, (Indian National Congress) case. In this case the Indian National Congress party alleged that Sri Bishnoi dissented from and criticised the Congress Government publicly and had demanded the dismissal of the Congress Government headed by INC. The Speaker concluded that a person who got elected from the ticket of a political party was so elected because of the programmes of the party. It was further opined that he had no right to retain the membership of the house and he should go before the electorate to seek fresh mandate.

A political party may expel any of its members from the party who got elected under its ticket to any house for any reason. Status of such a member is that of an unattached member i.e., not attached to any party. Subsequently if he joins any political party without resigning from the membership of the house a question arises will he incur the disqualification under the X schedule? The Supreme Court has answered this question in the affirmative in *G. Vishwanathan v. Speaker, Tamil Nadu Legislative Assembly*. In this regard the court observed that there was

nothing to infer an unattached member under X Schedule that such arrangement and labelling had no legal bearing thereof. If such a member was allowed to escape from the rigour of law, it would defeat the very object of X Schedule i.e., to curb the evils of defection which has polluted the Indian political system.

In *Sri Rajesh Verma v. Mohammad Shahid Akhlaque, BSP*, it was alleged that Shri Akhlaque joined the Samajwadi Party in a public meeting. It was alleged that at this meeting, he said, he had always been a member of SP at heart. The Speaker reasoned that there is no reason why news clippings and stories in the media would be untruthful. In effect, the above said Akhlaque, voluntarily gave up his membership of the BSP.

It follows from the above case that if an elected member of a party makes public announcement of his affinity with another party that amounts to an act of disloyalty towards the party from whose ticket he got elected. He may be expelled from the party on the ground of disloyalty. If the party does not expel him, the question is can the speaker relying on the media disqualify him from the membership of the house. In the above case the question did not arise as the member voluntarily resigned. If an elected member voluntarily resigns from the party or has been expelled from the party, he gains the status of an unattached member. If he continues as such he does not invite the disqualification contemplated under X schedule. If he joins any other political party he needs to resign the membership of the house prior to it. Otherwise he attracts disqualification under the X Schedule. In such a situation it is always advisable to voluntarily give up the membership of the house than waiting for the speaker's order of disqualification on the ground of default of X Schedule.

In *Balachandra Jarakiholi & Another v. B.S. Yeddyurappa*, the Karnataka Assembly Speaker inter-alia disqualified 11 BJP dissident MLAs, just hours before the B.S. Yeddyurappa government faced floor test in the House. Speaker's decision was affirmed by the High Court. But on appeal the Apex Court quashed their disqualification on the ground that they were not given sufficient opportunity by the speaker to present their case before the action was taken against them.

EXCEPTIONS

a. Condonation

An elected member may violate the whip of his party by voting against or abstaining from voting. In such a situation, if he has abstained with prior permission for such abstention from the party leadership or the concerned party condones the violation of the whip or abstention within 15 days from the date of voting or abstention, it does not invite the disqualification contemplated under X Schedule.

b. Merger

Sometimes an entire political party may merge with another political party or by such merger form a new political party. It can be done with immunity from the provisions of X Schedule. If some of the elected members express their dissent, then the exception will operate only if not less than two-thirds of the members of party in the house

have agreed to such merger. After the merger, the members are considered as the members of the party with whom merger has taken place or the new political party or group which has emerged after merger. The members dissenting from such merger may opt to continue as a separate group. It follows from the above discussion that a split in the party for the purpose of merger subject to the condition contemplated above does not fall within the prohibition of X Schedule.

c. On being elected to the office of Speaker or Deputy Speaker

By reason of his election to the office of speaker or deputy speaker of a house an elected member may voluntarily give up the membership of the political party to which he belonged immediately before such election. In such a situation so long as he holds the office without joining that political party or becoming a member of another political party, he does not invite the ban of X Schedule. He can re-join the party to which he belonged immediately prior to the election to such office or become a member of another political party after ceasing to hold it. It is submitted he should to go back to his original political party. He should not be allowed to join another political party after ceasing to hold the office of the speaker. Otherwise it amounts to moving away from the true spirit of anti-defection law.

Deciding authority to decide Disqualification (on the ground of Defection)

Any question touching disqualification of any elected member shall be determined by the speaker of the house or chairman of the council as the case may be on such question being referred to him. His decision shall be final. Any court shall not have any jurisdiction with respect to disqualification of any member of a house as contemplated in the X Schedule. It does not mean that the power of judicial review by the higher courts is barred. In *Kihota Hallowhon v Zachilhu & ors*, the Court struck down clause 7 of the X Schedule which has placed a bar on the judicial review as unconstitutional and applying the doctrine of severability held that excluding clause 7 the other provisions were constitutional. The reason for nullification of Article 7 was that the Bill was not ratified by half of the State Legislatures which was necessary to take away the power of judicial review.

The Court in the above case upheld the validity of clause 6 of X Schedule which contemplates that the decision of the speaker or chairman shall be final. It cannot be questioned in lower courts. But the High Courts and Supreme Court can review the decision of the speaker of the house or Chairman of the Council but such review should not cover any stage prior to the making of a decision by the speakers/ chairmen. The power of higher Courts to review the order of the speaker or chairman is supported by the proposition that the speaker or chairman as the case may be while passing an order under X Schedule acts as a tribunal. Hence it further leads to the proposition that a speaker before arriving at his conclusion should follow the principles of natural justice and an opportunity of being heard must be given to the members before disqualifying them on the ground of defection.

In *Mayavati v. Markandeya Chand*, 12 & 22

members of BSP and Congress Party respectively supported the BSP Government in U.P, in October 1997 to confer it a majority in the U.P Legislative Assembly. Subsequently all the defectors were made ministers. A complaint was filed by the BSP leader that the BSP members who joined the BJP should be disqualified as defectors. The speaker procrastinated the hearing and eventually it was held that as there was a split in BSP and as the defectors constituted 1/3rd of total members they did not invite any disqualification. However subsequently, accepting the recommendation of Law Commission and National Commission to Review the working of the Constitution (NCRWC) the above exception of split to defection law was deleted by the Parliament.

Another line of argument is that the prestige of exalted office of the presiding officer of a house must be maintained at any cost that it should never be his duty to involve himself in highly political and controversial cases of conflict of party interests and unhealthy manoeuvrings of power politics. The Supreme Court clarified this criticism in a very subtle language by stating that the positive decision on the part of a chairman or speaker, no doubt culminates in the disqualification of a member, but it does not signify that the chairman or speaker is the competent authority to remove a membership.

The Speaker of a house cannot review his own decision of disqualifying a member of a house under the X Schedule. In *Dr. Kashishnath G Thalmi v. Speaker, Goa Legislative Assembly*, the Supreme Court held that the speaker of a house did not have the power to review his own decisions to disqualify a member as neither such power was provided under the Schedule nor was it implicit in the provisions.

Failure on the part of a speaker to act on a complaint of defection or acceptance of claims of split or mergers without making a finding goes against the spirit of the X Schedule. Ignoring a petition for disqualification is not merely an irregularity but a violation of the Constitutional duties.

In a country governed by rule of law all without any distinction all are the slaves of law, for which a speaker is not an exception to manifest an indifferent attitude that he is not amenable to any legal process. In Manipur, on number of occasions the speaker had disqualified many elected members. The Supreme Court set aside all those decisions.

But the speaker was very defiant that he refused to be bound by the verdict of the Supreme Court on the ground that his decision under X schedule was final that he was beyond the pale of any legal process. In spite of many orders to appear before it, the speaker did not heed any respect for them. Eventually the Supreme Court directed the central government to produce him before it by application of mild force if required. In this regard the Honourable Supreme Court observed, "It is unfortunate that a person who holds the Constitutional office of a speaker of Legislative Assembly has chosen to ignore the Constitutional mandate that is governed by the rule of law and what the law is for this Court to declare in discharge of its constitutional obligation which binds all in accordance with Article 141 of the Constitution and Article 144 then says that all authorities are to act in the aid of the orders made by this Court".

Constitutional Validity of X Schedule

According to the Court the whole exercise of disqualification of a member is not the decision or political preference of the speaker but it is the result of the application of Constitutional provisions. The X Schedule to the Constitution is constitutionally valid excluding the provisions barring judicial review by the Higher Courts. In *KihotaHollohon v.Zachilhu&ors*, it was contended that adherence to the party whip would amount to the violation of members freedom of speech and expression. Rejecting the contention, the Supreme Court held that the X Schedule did not violate any fundamental right of any member. The court in this regard observed,“ it does not necessarily follow that rights and immunities under article 105(2) of the Constitution are elevated to the fundamental rights and the X Schedule would have to be struck down for its inconsistency..... it does not violate freedom of speech and expression, freedom of vote and conscience.... It does not violate the basic structure of the Constitution”.

The above observation can be further fortified by the fact that when any person joins a political party there is an implied understanding on his part to adhere to the party principles and policies. He can criticize the party principles and policies in the right platform but not publicly. It is further implied that he is bound by the party decision that he should always show his allegiance to the party by respecting its whip. Such respect does not violate the freedom of speech & expression, freedom of vote and conscience. If any member wants to criticize the party policies he can do so by severing his connection with the party. It should be noted that freedom of speech and expression is not absolute but subject to reasonable restrictions like public interest which lies in the unity of the party which will go a long way in establishing a stable government that dissidence within the party is looked on with suspicion by the electorate. Unity can be maintained only abiding the party whip. Therefore it becomes inevitable for the members to accept the opinions of their leaders and spokesman in wide variety of matters touching the people, upon which they do not have specialized knowledge.

There shall be freedom of speech in parliament, legislative assemblies and councils. It is a privilege conferred to every elected member as contemplated in the constitution itself. Accordingly a member shall not be liable in any proceedings in a court with respect to any thing said in the house or any vote given in the house. As held by the Supreme Court the above immunity is nothing but a privilege which cannot be elevated to the status of a fundamental right. Even after the incorporation of the X Schedule the privilege continues in the sense that a member for anything said or vote given in the house cannot be dragged to the court. But if he votes against the whip of the party, unless it condoned by the party within 15 days of voting, the disqualification provisions get attracted. Therefore the privilege must be read in the light of the provisions of X Schedule which serves greater public interest. In many cases the Supreme Court has laid down that when there are two fundamental rights competing with each other, one which advances the public interest must prevail over the other. By analogical extension then it is apt to put across that the privilege of a member should come under the shadow of greater public good.

Members of Lok Sabha (Disqualification on Ground of Defection) Rules, 1985

The X Schedule confers power to the Speaker to make rules with respect to the procedure to be followed for determining disqualification of a member. In pursuance of such power, the above rules have been laid down to the following effect.

Information to be furnished by leader of a political party

The leaders of the legislative parties in house shall within the time prescribed therein furnish a statement containing the names of members of such legislative party along with a copy of the rules and constitution of the political party and if the legislative party has any separate rules and regulations, a copy of it. They are under a duty to inform the speaker any change in the constitution, rules and regulations of the party. A duty is cast on them to inform the speaker any instance of voting or abstaining from voting in violation of the party whip. The rule contemplated above is applicable where the legislative party consists only one member also. Every member invariably shall furnish the speaker a statement containing his party affinity on the date of election and nomination. The information contemplated above furnished to the speaker will be helpful to him to deal with the matter of disqualification when a petition for the same is filed before him.

Petitions for Disqualifications

The petition alleging that an elected member has become disqualified may be made by any member to the speaker. Such petition shall be made only in writing. It shall contain a concise statement of material facts and a copy of the documentary evidence relied upon if any. The petition should be signed by the petitioner and verified in the manner contemplated under the code of Civil Procedure.

Procedure

On receipt of the petition, the speaker may dismiss it if it does not comply with the requirements of the rules. If so, he shall forward the copies of the petition to the member against whom it is made and if such member belongs to any legislative party a copy of the petition to the leader thereof. After perusing the petition, the speaker may determine the question himself or refer the matter to the committee of the privileges. In both the cases an opportunity of being heard must be given. After considering the material facts an order of disqualification may be passed which shall be effective from the date of its passing.

Effect of Disqualification

A member of a house belonging to any political party who has been disqualified on the ground of defection as per X Schedule suffers from disability to hold any remunerative political office for the duration of the period commencing from the date of his disqualification till the date on which the term of his office as such member would expire and in case if he contests an election, till the date on which he is declared elected, whichever is earlier. The term remunerative political office signifies any office-
a) Under the Central Government or State Government,

where the salary is paid out from the public revenue of the respective governments.

b) Under a body, whether incorporated or not, which is partially or wholly owned by the Central or State Government as the case may be and the remuneration for such office is paid by such body.

Any member of a legislative assembly or council, who is disqualified under X Schedule being a member of such house or council cannot be appointed as a minister for such duration of the period commencing from the date of his disqualification till the date on which the term of his office as such member would expire or if he contests in an election for the legislative assembly or council, before the expiry of such period till the date on which he is declared elected whichever is earlier.

Merits and Demerits of Anti-Defection Law

Merits: It provides stability to the government by preventing shift in the party allegiance. It makes the members to remain loyal to the party by adherence to party manifestoes and policies. In effect, it promotes party discipline.

Demerits: It may result in blind adherence to the party policies even though they are not compatible with the public interest. A member cannot vote against the party whip for fear of disqualification which precludes him from making even constructive comment of party policies in the greater public interest.

VARIOUS COMMITTEES ON ANTI-DEFECTION LAW

Dinesh Goswami Committee

It has recommended that disqualifications should be limited to the following instances

1. A member voluntarily giving up the membership of political party resulting in termination of his membership of any house or Council.

2. A member abstaining from voting or voting in violation of the party whip in a motion of vote of confidence or no confidence and the matter of disqualification should be decided by the President/Governor on the advice of the election commission.

The Halim Committee on Anti-defection Law:

Halim committee impressed upon the need for a comprehensive definition of voluntarily giving up membership of a political party. It further recommended for restrictions like prohibition on joining another party or holding offices in the government. This recommendation has been implemented.

Law Commission:

The commission in its 170th Report (1996) recommended for doing away with the exemption of splits and mergers from the X Schedule and the political parties limiting the issuance of whips to instances only when the government is in danger, and treating the pre-poll electoral fronts as political parties.

Election Commission:

The election commission recommended for the decisions to be taken under the X schedule by the President/Governor on binding advice of the election Commission.

The Constitution Review Committee

It has recommended for debarring the defectors from holding any public office or any remunerative political post for the rest of the duration during which the disqualification continues. This recommendation has been implemented.

CONCLUSION

It is evident from the above discussion that the unprecedented rampant menace of unprincipled and unethical floor crossing by the elected members prompted the incorporation of X Schedule to the Constitution popularly known as the anti-defection law as a weapon of eradicating that malady which has been a perennial bane of Indian political system. Unscrupulous people always venture to find out the loopholes in the existing law in the accomplishment of their selfish ends and desires. That is what the immoral politicians have done. As the X Schedule stood earlier, it allowed not less than one-third of the elected members to change the party. Taking advantage of this provision, in 1997, BJP Government headed by Kalyan Singh was formed with the help of defectors from BSP and SP. One is at loss to understand how if more than 1/3 of the elected members change the party, it ceases to be defection and otherwise it amounts to defection. Defection is defection irrespective of the number of elected members involved in the party hopping. The focus should be on the nature of the act rather than how many members have committed it. However subsequently realising the lacuna in the provision it was repealed

It should be noted that the above lacuna has revisited in another form i.e merger of political parties. Accordingly if not less than 2/3 of the elected members render their consent to merge with another political party, it does not amount to defection. Technically and in form it may not look like defection. But in substance it is nothing but defection. If one looks at the object of such mergers, it is obvious that power longing and self-aggrandizement are the only factors by which our unscrupulous politicians are swept putting aside the public opinion and interest. Therefore it is submitted that as recommended by the Law Commission in its 170th Report the provisions exempting mergers should be deleted from the ambit of X Schedule.

The exemption of merger can be used as a ruse to perpetuate defection with immunity from disqualification that as and when they want the split away group numbering not less than 2/3 of the elected members which has merged with another political party either it may revert to its original party or can claim the status of a separate group. The fact that should be noted here is that the elected members who have won the election under the ticket of a particular political party merge with another political party. The people, who have elected them, cast their votes reckoning the policies of that party and not for the purpose of merging with another party. They want to see that the elected members should

continue in that party and complete their tenure to confer stability to the ruling outfit if they are the members of it or even otherwise or the public who have voted independent candidates desire that they should maintain their independent character.

It is obvious from the provisions of X Schedule that an independent elected candidate invites disqualification if he subsequently joins any political party. If in a constituency an independent is elected by the electorate, the inference is that they have rejected the political parties and expect the elected candidate to fulfil their expectation by remaining so. The question is if the independent candidates without joining a ruling party became ministers in the cabinet, whether they cease to be independent to attract the disqualification. The Supreme Court answered that question in the negative in the above discussed Balachandra Jarakiholi case. In that case it should be noted that in order to attain the minimum majority, the BJP government sought the support of 5 independent MLAs who but for a berth in the cabinet would not have supported BJP government. But it was a pragmatic approach on that occasion as otherwise there was no possibility of formation of a government compelling re-election which is not acceptable to the public at large. It follows that whatever may be the reason for such support by extending such support by becoming or not becoming ministers, the independent members do not commit an act of defection. But joining any political party without resigning their membership of the house amounts to defection.

The machinery to determine the disqualification under X Schedule is set in motion on complaint by a member. The question is whether the speaker can suo-moto assume jurisdiction. There is no express provision in the X Schedule to that effect. Naturally the speaker will not be inclined to invite the trouble of assuming suo-moto jurisdiction and waits for some member to file the complaint. Further there is no provision of law laying down the limitation period insisting the period within which the complaint has to be filed and trial should be complete. The net effect of this loophole is inordinate delay in adjudication reducing the whole process into a mockery. Therefore it is submitted that law should be amended to confer power to the speaker to assume suo-moto jurisdiction and lay down a time period to expedite the whole process of adjudication.

The authority to determine the disqualification of an elected member is speaker as contemplated in the X Schedule. But the speaker generally belongs to the ruling party who is not an exception to the partisan feeling, even though ideally and in principle he should be above the party affinity once if he is elected as a speaker. In effect, his decision either to disqualify the elected members or otherwise will be generally propelled by the desire to protect exclusively the party interest for which the UP and Karnataka instances discussed above can be cited as the apt testimony.

Dinesh Goswami Committee has suggested cutting short the ambit of defection confining it to an instance of a member defying the party whip to vote against or abstaining from voting in confidence or no confidence motion. But X Schedule contemplates a whip of every kind which totally prevents an elected member to express his opinion. The whip contemplated above is of a very consequential nature that the

existence and continuation of the government depends upon the ruling party members obedience to the whip and the opposite parties can also see that their elected members adhere to the whip. If Dinesh Goswami committee report is accepted in this regard that would strike a balance between the desire of the party that the members should be at least loyal to the party at the time of crisis and the members demand to present their views regarding the policies of their own party.

Another weak link in the chain is that the order of speaker is not final. It is subject to judicial review. In effect, a disqualified member will move the higher court challenging the order of the speaker and continue in the office comfortably until finally the matter is set at rest that delay is used as a strategy to hoodwink the constitutional provision. An unfortunate development is the confrontation between the Supreme Court and the speaker as happened in the Manipur case where the speaker had defied the order of Supreme Court on the stance that he is not subject to any legal process. Law laid down by the Supreme Court is binding on all. A speaker being the president of a house adorning a coveted and respectable position should know his constitutional obligation and respect the verdict of the Supreme Court and any callous attitude towards the court tantamounts to challenging its very existence.

It is submitted that as opined by the election commission that the legal issues under Schedule X should be determined by the President/ Governor on the binding advice of the election commission. The concept of defection needs to be examined in a broader spectrum, but not in isolation. The bottlenecks in the effective implementation of anti-defection law must be cleared. In this regard the evils of the multiparty system in this country should loom large in the eyes of legislators. Such a system provides a fertile ground and various options for the floor hoppers. Therefore it is submitted that introduction of bi-party system is the need of the hour which will go a long way in curbing the defection effectively.

The other factor to be reckoned is the present day political system characterised by the presence of coalition government. The political parties fight general election forming pre-poll alliance. After the election some of the parties play the trump card of opportunist politics and blackmailing the ruling majority with a threat of withdrawal of support or actual withdrawal of support which mars the political stability. Therefore it is submitted that a law should be passed insisting all the political parties which have effected a pre-poll alliance to continue that till the full term and no party should be allowed to withdraw the support for the ruling majority. It is the only way out until a bi-party system is introduced to ensure the stability of coalition government.

The merits of anti-defection law outweigh the demerits which justify the continuation of law but the current anti-defection law suffers from certain deficiencies. These deficiencies have to be plugged out and a stringent law has to be laid down. That has to be done by the legislators who are politicians swept by parochial attitude and they are not certainly in favour of a stringent law. The net result is political unwillingness perpetuating the deep rooted malady

which the politicians wish to continue in the pursuit of their selfish ends. The problem is that this country is full of politicians and no statesmen. If the country were to be ruled by statesman, the need for anti-defection law would not have arisen. Every problem of the society cannot be absolutely eradicated by law alone. Law is not a panacea for all maladies with which the society is shrouded. Therefore change and transformation must come from within that every politician should realize his moral obligation to the electorate and the society at large

One controversial area in the whole system of anti-defection law is whether descent within the party, as a result of which a group of elected members of a party constitute a separate group to maintain their separate identity in the house without alienating from the party, amounts to defection. If going by the logic of violation of whip amounting to dissent falling under the ambit of defection, why the dissent of above nature should go out of sight. The people when they vote the party candidates they expect unity throughout. Separate splinter groups in the house are not within the contemplation of the people. Therefore it is submitted that dissent of the above type should be considered as defection. But off-course no political party is an exception for splinter groups within headed by a few leaders. So long as they are loyal to the party question of defection does not arise. It is the need of the hour that there should be a legislative clarification of dissent and defection

To conclude it is submitted that a stringent defection law should be laid down reckoning the deficiencies in the existing law uncovered in the above discussion and suggestions made thereof to prevent the citizens of this country from being silent spectators of the political mockery.

END NOTES:

- I.Laws against party switching, Defecting or Floor Crossing' by Kenneth Janda
- II.Shodhaganga.inflibnet.ac.in (BanjakPhom v.Thenucho) [(1992) 1 Gau.LR 356, (visited on d12/07/2013)]
- III.www.partylaw.leidenuiv.pl/party law in modern Europe by Kenneth Janda, north-western University. (Visited on 11/07/2013)
- IV. Jenks, Edward, 'A history of Politics' pp124-139- "we are so accustomed to look upon the administration of Justice as an inevitable duty of the state...."
- V.AIR 1993 SC 412
- VI.M.P.Jain, Indian Constitutional Law, Lexis Nexis, 6th Edn.2012 p 47
- VII.Ibid
- VIII. 542 cases of defection occurred in the period between first and four general elections and 438 cases occurring within a period of 12 months
- IX.Constitution was amended by Rajiv Gandhi Government in 1985
- X.See Art. 190 of the Indian constitution
- XI.See Art. 190 and 191 of the Constitution
- XII.Balachandra L Jarkiholi v. B.S.Yeddyurappa, (2011) 7 SCC 1
- XIII.See supra n.5
- XIV.See supra n. 5 at p.432
- XV.www.prsindia.org The Anti-defection Law-intent and

impact. (visited on 16/07/2013)

XVI.Ibid

XVII.Pragathi.nationalinterest.in/2012/01/examine-the-anti-defection-law (visited on 18/07/2013)

XVIII.See Section 4 Paragraph 2 of X Schedule

XIX.2004 (8) SCC 747

XX. AIR 2001 PH 86

XXI.AIR 1996 SC 1060

XXII.www.prsindia.org. The Anti-defection Law-intent and impact. (Visited on 16/07/2013)

XXIII.Ibid p3

XXIV.Paragraph 3 of X schedule.

XXV.Ins. By the Constitution (thirty-third Amendment) Act, 1974, (w.e.f. 19-5-1974)

XXVI. Ibid

XXVII. ibid

XXVIII. See supra n.5

XXIX.AIR 1998 SC 3340

XXX.Ibid

XXXI.AIR 1993 SC 1873

XXXII.See supra n.5

XXXIII. See Para 7 of the Indian Constitution

XXXIV. Ibid

XXXV.supra n.6 at p.52

XXXVI. X v. Hospital (1998) 8 SCC 296, Kharak Singh v. State of U.P AIR 1963 SC 1295, M. Vijaya v. MD, Singareni Collieries Co Ltd, AIR 2001 AP 502

XXXVII.Para 10 & 11 of X Schedule (disqualification on ground of Defection) Rules, 1985

XXXVIII.See section 2 of X schedule of the Indian Constitution

XXXIX. Members of Delhi legislative Assembly (Disqualification on ground of Defection) Rules, 1996

XL.Art. 164(1-B) of the Indian Constitution

XLI. Ibid

XLII.ibid

XLIII.ibid

XLIV.ibid

XLV.ibid

XLVI.ibid

XLVII.ibid

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