

## 76 Anti-Defection Law

The 52nd Amendment Act of 1985 provided for the disqualification of the members of Parliament and the state legislatures on the ground of defection from one political party to another. For this purpose, it made changes in four Articles<sup>1</sup> of the Constitution and added a new Schedule (the Tenth Schedule) to the Constitution. This act is often referred to as the 'anti-defection law'.

Later, the 91<sup>st</sup> Amendment Act of 2003 made one change in the provisions of the Tenth Schedule. It omitted an exception provision i.e., disqualification on ground of defection not to apply in case of split.

## PROVISIONS OF THE ACT

The Tenth Schedule contains the following provisions with respect to the disqualification of members of Parliament and the state legislatures on the ground of defection:

### 1. Disqualification

**Members of Political Parties:** A member of a House belonging to any political party becomes disqualified for being a member of the House, (a) if he voluntarily gives up his membership of such political party; or (b) if he votes or abstains from voting in such House contrary to any direction issued by his political party without obtaining prior permission of such party and such act has not been condoned by the party within 15 days.

From the above provision it is clear that a member elected on a party ticket should continue in the party and obey the party directions.

**Independent Members:** An independent member of a House (elected without being set up as a candidate by any political party) becomes disqualified to remain a member of the House if he joins any political party after such election.

**Nominated Members:** A nominated member of a House becomes disqualified for being a member of the House if he joins any political party after the expiry of six months from the date on which he takes his seat in the House. This means that he may join any political party within six months of taking his seat in the House without inviting this disqualification.

### 2. Exceptions

The above disqualification on the ground of defection does not apply in the following two cases:

- (a) If a member goes out of his party as a result of a merger of the party with another party. A merger takes place when two-thirds of the members of the party have agreed to such merger.

- (b) If a member, after being elected as the presiding officer of the House, voluntarily gives up the membership of his party or rejoins it after he ceases to hold that office. This exemption has been provided in view of the dignity and impartiality of this office.

It must be noted here that the provision of the Tenth Schedule pertaining to exemption from disqualification in case of split by one-third members of legislature party has been deleted by the 91<sup>st</sup> Amendment Act of 2003. It means that the defectors have no more protection on grounds of splits.

### 3. Deciding Authority

Any question regarding disqualification arising out of defection is to be decided by the presiding officer of the House. Originally, the act provided that the decision of the presiding officer is final and cannot be questioned in any court. However, in *Kihoto Hollohan* case<sup>2</sup> (1993), the Supreme Court declared this provision as unconstitutional on the ground that it seeks to take away the jurisdiction of the Supreme Court and the high courts. It held that the presiding officer, while deciding a question under the Tenth Schedule, function as a tribunal. Hence, his decision like that of any other tribunal, is subject to judicial review on the grounds of *mala fides*, perversity, etc. But, the court rejected the contention that the vesting of adjudicatory powers in the presiding officer is by itself invalid on the ground of political bias<sup>3</sup>.

### 4. Rule-Making Power

The presiding officer of a House is empowered to make rules to give effect to the provisions of the Tenth Schedule. All such rules must be placed before the House for 30 days. The House may approve or modify or disapprove them. Further, he may direct that any willful contravention by any member of such rules may be dealt with in the same manner as a breach of privilege of the House.

According to the rules made so, the presiding officer can take up a defection case only when he receives a complaint from a member of the House. Before taking the final decision, he must

give the member (against whom the complaint has been made) a chance to submit his explanation. He may also refer the matter to the committee of privileges for inquiry. Hence, defection has no immediate and automatic effect.

## EVALUATION OF THE ACT

The Tenth Schedule of the Constitution (which embodies the anti-defection law) is designed to prevent the evil or mischief of political defections motivated by the lure of office or material benefits or other similar considerations. It is intended to strengthen the fabric of Indian parliamentary democracy by curbing unprincipled and unethical political defections. Rajiv Gandhi, the then Prime Minister, described it as the 'first step towards cleaning-up public life'. The then Central law minister stated that the passing of the 52nd Amendment Bill (anti-defection bill) by a unanimous vote by both the Houses of Parliament was 'a proof, if any, of the maturity and stability of Indian democracy'.

### Advantages

The following can be cited as the advantages of the anti-defection law:

- (a) It provides for greater stability in the body politic by checking the propensity of legislators to change parties.
- (b) It facilitates democratic realignment of parties in the legislature by way of merger of parties.
- (c) It reduces corruption at the political level as well as non-developmental expenditure incurred on irregular elections.
- (d) It gives, for the first time, a clear-cut constitutional recognition to the existence of political parties.

### Criticism

Though the anti-defection law been hailed as a bold step towards cleansing our political life and started as new epoch in the political life of the country, it has revealed may lacunae in its operation and failed to prevent defections in toto. It came to be criticised on the following grounds:

1. It does not make a differentiation between dissent and defection. It curbs the legislator's right to dissent and freedom of conscience. Thus, 'it clearly puts party bossism

on a pedestal and sanctions tyranny of the party in the name of the party discipline'<sup>4</sup> .

2. Its distinction between individual defection and group defection is irrational. In other words, 'it banned only retail defections and legalised wholesale defections'<sup>5</sup> .
3. It does not provide for the expulsion of a legislator from his party for his activities outside the legislature.
4. Its discrimination between an independent member and a nominated member is illogical. If the former joins a party, he is disqualified while the latter is allowed to do the same.
5. Its vesting of decision-making authority in the presiding officer is criticised on two grounds. Firstly, he may not exercise this authority in an impartial and objective manner due to political exigencies. Secondly, he lacks the legal knowledge and experience to adjudicate upon the cases. In fact, two Speakers of the Lok Sabha (Rabi Ray–1991 and Shivraj Patil–1993) have themselves expressed doubts on their suitability to adjudicate upon the cases related to defections<sup>6</sup> .

## 91<sup>ST</sup> AMENDMENT ACT (2003)

### Reasons

The reasons for enacting the 91<sup>st</sup> Amendment Act (2003) are as follows:

1. Demands have been made from time to time in certain quarters for strengthening and amending the Anti-defection Law as contained in the Tenth Schedule, on the ground that these provisions have not been able to achieve the desired goal of checking defections. The Tenth Schedule has also been criticised on the ground that it allows bulk defections while declaring individual defections as illegal. The provision for exemption from disqualification in case of splits as provided in the Tenth Schedule has, in particular, come under severe criticism on account of its destabilising effect on the Government.
2. The Committee on Electoral Reforms (Dinesh Goswami Committee) in its report of 1990, the Law Commission of India in its 170th Report on "Reform of Electoral Laws" (1999) and the National Commission to Review the Working of the Constitution (NCRWC) in its report of 2002 have, *inter alia*, recommended omission of the provision of the Tenth Schedule pertaining to exemption from disqualification in case of splits.
3. The NCRWC was also of the view that a defector should be penalised for his action by debarring him from holding any public office as a minister or any other remunerative political post for at least the duration of the remaining term of the existing Legislature or until, the next fresh elections whichever is earlier.
4. The NCRWC has also observed that abnormally large Councils of Ministers were being constituted by various Governments at Centre and states and this practice had to be prohibited by law and that a ceiling on the number of ministers in a state or the Union Government be fixed at the

maximum of 10% of the total strength of the popular House of the Legislature.

## Provisions

The 91<sup>st</sup> Amendment Act of 2003 has made the following provisions to limit the size of Council of Ministers, to debar defectors from holding public offices, and to strengthen the anti-defection law:

1. The total number of ministers, including the Prime Minister, in the Central Council of Ministers shall not exceed 15 per cent of the total strength of the Lok Sabha.
2. A member of either House of Parliament belonging to any political party who is disqualified on the ground of defection shall also be disqualified to be appointed as a minister.
3. The total number of ministers, including the Chief Minister, in the Council of Ministers in a state shall not exceed 15 per cent of the total strength of the Legislative Assembly of that state. But, the number of ministers, including the Chief Minister, in a state shall not be less than 12.
4. A member of either House of a state legislature belonging to any political party who is disqualified on the ground of defection shall also be disqualified to be appointed as a minister.
5. A member of either House of Parliament or either House of a State Legislature belonging to any political party who is disqualified on the ground of defection shall also be disqualified to hold any remunerative political post. The expression “remunerative political post” means (i) any office under the Central Government or a state government where the salary or remuneration for such office is paid out of the public revenue of the concerned government; or (ii) any office under a body, whether incorporated or not, which is wholly or partially owned by the Central Government or a state government and the salary or remuneration for such office is paid by such body, except where such salary or remuneration paid is compensatory in nature.
6. The provision of the Tenth Schedule (anti-defection law) pertaining to exemption from disqualification in case of split



by one-third members of legislature party has been deleted. It means that the defectors have no more protection on grounds of splits.

## NOTES AND REFERENCES

1. These are Articles 101, 102, 190 and 191 which relate to the vacation of seats and disqualification from membership of Parliament and the state legislatures.
2. *Kihoto Hollohan v. Zachilhu*, (1993).
3. The court observed: 'The Chairman or Speakers hold a pivotal position in the scheme of parliamentary democracy and are guardians of the rights and privileges of the House. They are expected to and do take far-reaching decisions in the functioning of parliamentary democracy. Vestiture of power to adjudicate questions under the Tenth Schedule in such constitutional functionaries should not be considered unexceptionable'.
4. Soli J. Sorabjee, 'The Remedy should not be worse than the Disease', *The Times of India (Sunday Review)*, February 1, 1985, p. 1.
5. Madhu Limaye, *Contemporary Indian Politics*, 1989, p. 190.
6. Speaker Shivraj Patil stated: 'The advantages in giving these cases to the judiciary are many. The Speaker or the Chairman may or may not be endowed with legal acumen and proficiency in law. It is more apt to have the cases decided by the Supreme Court or high court judges'.