

Editorial

Monday, December 18, 2017

Why Congress still remains silent on the defection of 8 MLAs from their party?

'In Indian politics nothing is possible' - former Chief Minister of Manipur Radhabinod Kojjam once said to reporters before he took oath on February 15, 2001. Saying so, the bindings of the constitution of India cannot be overridden by any of the citizen including the elected representatives called MLAs or Ministers. Numbers matter in democracy to form government, but as stated by former CM Radhabinod Kojjam, it was made possible for the BJP to form a government here in the state even though it bagged only 21 seats in the assembly election. Congress party which bagged 28 seats failed to come back to power as it failed to control its members elected in the election who had parted violating the constitutional provisions provided under the Anti defection Law.

Th. Shyamkumar, the Forest Minister, was the first Congress MLA to join BJP. He joined BJP even before being sworn in as MLA. He was sworn in as Cabinet Minister at Raj Bhavan along with others on March 15 this year. On April 18, Congress MLA Ginsuanhou Zou joined BJP. Four more Congress MLAs - Y Surchandra, Ngamthang Haokip, O Lukhoi and S Bira joined the BJP on April 28. Another two Congress MLAs Kshetrimayum Biren Singh and Paonam Brojen joined the BJP on July 17.

With the joining of the 8 Congress MLAs to BJP, the number of Congress MLAs has been reduced to 20.

Congress party is the oldest political party in the country. People across the country have high respect for this political party over its commitment to protect and safeguard the constitution of India.

When BJP comes to power, people are not upset on realizing that the Congress party will play constructive role of opposition. In democracy a strong opposition is what people has been expecting and with the present numbers, Congress is a strong opposition in the house of 60.

Protecting the 10th Schedule of the Indian constitution is also what is expected from the oldest political party. But for reason best known the political party is not following any procedure to protect the constitutional provision.

A candidate will be disqualified if he wins election on one party ticket and joins other party after win under Anti- defection law. Anti- defection law was introduced by 52nd amendment act, 1985 and it was also added in constitution as 10th schedule. Having known it, none of the members of the Congress had applied for disqualification of these elected representatives even after 7 months plus some few days. It was only against Th. Shyamkumar that a petition for disqualification had been reported filed. But till now no move or campaign is seen to speed up the case.

Lately a disqualification case has been filed against MLA Y Surchandra to the Speaker's tribunal but by a voter from Kakching Assembly constituency and not from the political party he had defected.

The congress party is now busy staging non-stop protest demanding reveal of contents of Frame Work agreement. Well and good as it is in the interest of the people of the state. But then it seems rather an election campaign for the upcoming Lok Sabha Election . Why the Congress party is still quiet on the issue of their MLAs defections? Ignoring such a matter is something like saying that the party is not concern about protecting the Constitution of India.

Yes, in politics everything is possible. Who knows these defected members return again after seeing the result of the Gujarat election? Is this the reason for the ignorance? If so, no political party is worth respecting as they don't give a damn of the constitution of India.

Anti-defection Law in India: History, Provisions, Issues and Analysis

Source - IAS Points

Anti-Defection Law is contained in the Tenth Schedule of the Constitution, which was introduced by the 52nd Amendment in 1985 during tenure of Rajiv Gandhi. Earlier, 10th schedule was related to association of Sikkim with India. Once, Sikkim became full-fledged state, this schedule was repealed via the 36th amendment act.

Definition of defection

Defection is defined as "to abandon a position or association, often to join an opposing group" which essentially describes a situation when a member of a particular party abandons his loyalty towards that party and provide his support (in the form of his vote or otherwise) to another party.

Historical Background

Originally, the Constitution of India carried no reference to political parties and their existence. Since multi-party democracy had not evolved in 1950s and early 1960s, the heat of defections and their implications were not felt. Things however, changed after the 1967 elections. The 1967 elections are thus called a watershed moment in India's democracy.

What happened in 1967 elections?

In 1967, some sixteen states had gone to polls. The Congress lost majority in them and was able to form government only in one state. This was the beginning of coalition era in India. This election also set off a large scale defections. Between 1967 to 1971, some 142 Mps and over 1900 MLAs migrated their political parties. Governments of many states, beginning from Haryana, collapsed. The defectors were awarded with plum ministries in the governments, including Chief Ministership in Haryana. In Haryana, one legislator "Gaya Lal" changed party for three times and thus, all defectors used to be called "Aaya Ram-Gaya Ram". However, the issue was not addressed immediately. It took further 17 years to pass the anti-defection law in 1985. The 52nd amendment of the Constitution in 1985 inserted 10th schedule in the constitution with Provisions as to disqualification on ground of defection.

52nd Amendment Act

In this amendment, articles 101, 102, 190 and 191 were changed. It laid down the process by which legislators may be disqualified on grounds of defection. As per this process, a member of parliament or state legislature can be disqualified on the following grounds:

Members of a Political Party

- When voluntarily resigned from his party or disobeyed the directives of the party leadership on a vote.
- When does not vote / abstains as per party's whip. However, if the member has taken prior permission,

or is condoned by the party within 15 days from such voting or abstention, the member shall not be disqualified.

Independent Members

- If a member has been elected as "Independent", he / she would be disqualified if joined a political party.

Nominated Members

- Nominated members who were not members of a party could choose to join a party within six months; after that period, they were treated as a party member or independent member.

Exceptions

- If a person is elected as speaker or chairman then he could resign from his party, and rejoin the party if he demitted that post. No disqualification in this case.
- A party could be merged into another if at least one-third of its party legislators voted for the merger. The law initially permitted splitting of parties, but that has now been made two-third.

As soon as this law was passed, it was met with severe oppositions on logic that it impinged on right to free speech of legislators. A PIL was filed in the Supreme Court in the form of famous *Kihoto Hollohan vs Zachillu and Others* (1992). This PIL had challenged the constitutional validity of the law. But SC upheld the constitutional validity of 10th schedule. Court also decided that the law does not violate any rights of free speech or basic structure of the parliamentary democracy. However, Supreme Court also made some observations on Section 2(1) (b) of the Tenth schedule. Section 2(1) (b) reads that a member shall be disqualified if he votes or abstains from voting contrary to any direction issued by the political party. The judgement highlighted the need to limit disqualifications to votes crucial to the existence of the government and to matters integral to the electoral programme of the party, so as not to "unduly impinge" on the freedom of speech of members.

91st Amendment Act, 2003

Earlier, a "defection" by one-third of the elected members of a political party was considered a "merger". The 91st Constitutional Amendment Act, 2003, changed this. So now at least two-thirds of the members of a party have to be in favor of a "merger" for it to have validity in the eyes of the law. The 91st Amendment also makes it mandatory for all those switching political sides - whether singly or in groups - to resign their legislative membership. They now have to seek re-election if they defect.

Summary of Provisions Regarding Tenth Schedule

Conditions of Disqualification

- If a member of a house belonging to a political party;
- Voluntarily gives up the membership of his political party,

- or does not vote in the legislature, contrary to the directions of his political party.
- However, if the member has taken prior permission, or is condoned by the party within 15 days from such voting or abstention, the member shall not be disqualified.

Issue: If only resignation constitutes "voluntarily giving up" membership of a political party.

SC Judgement: There is a wider meaning of the words "voluntarily giving up membership". The inference can be drawn from the conduct of the members also.

G. Vishwanathan v. Speaker, Tamil Nadu Legislative Assembly (1996)

- Issue: If a member is expelled from old party and he joins another party after being expelled, will it be considered as having voluntarily given up his membership?

SC Judgement: Once a member is expelled, he is treated as unattached member in the house but he continues to be a member of the old party as per the Tenth Schedule. If he joins a new party after being expelled, he can be said to have voluntarily given up membership of his old party.

Critical Analysis of Anti-defection law

The anti-defection law has enabled the political parties to have stronger grip on their members which many times has resulted into preventing them to vote for the lure of money of ministerial berth. It also provides stability to the government by preventing shifts of party allegiance and ensures that candidates elected with party support and on the basis of party manifestoes remain loyal to the party. However, it is also resulted into its unintended outcome i.e. the curtailing to a certain extent the role of the MP or member of state legislature. It is culminated into absence of constructive debates on critical policy issues. The whip has become all the more powerful and has to be followed in all circumstances.

What reforms are needed in Anti-defection law?

Following are the key reforms needed in anti-defection law.

- The decision making power of speaker / chairman needs review
- The phrase "voluntarily giving up membership" is too vague and needs comprehensive revision.
- Political parties should limit issuance of whips to instances only when the government is in danger

The Election Commission had recommended that the decisions under the Tenth Schedule should be made by the President/ Governor on the binding advice of the Election Commission. A constitutional amendment vesting the power to decide matters relating to disqualification on the ground of defection with the President/Governor acting on the advice of the Election Commission would actually help in preserving the integrity of the Speaker's office.

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National News

Massive fire breaks out at a shop in Mumbai; at least 12 dead

PTI Mumbai, Dec. 18: At least 12 people were killed when a fire broke out at a shop in Mumbai's Saki Naka-Kurla area in the early hours today, an official said. The blaze erupted in the shop at Makaria Compound on Khairani Road around 4.25 am following which the structure collapsed, an official of the Brihanmumbai Municipal Corporation's disaster management cell said. The persons who were working inside got trapped, he said. The fire brigade and the police reached the spot and rushed the 12 victims to a hospital where doctors declared them dead before admission, the official said. The exact cause of the fire was yet to be ascertained, he added. Further details were awaited.

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