

AAYA RAM GAYA RAM POLITICS IN 21st CENTURYBHUVANESWARI. R¹**ABSTRACT**

Election are the formal process of selecting a person for public office. Elections are conducted to choose a representative by the population on their behalf. Elections were conducted in free and fair manner in order to vote freely and to free representation of people. In 1967 the famous phrase “Aaya Ram Gaya Ram²” was coined into Indian politics and continued for a decade in different states. The Anti Defection law is contained in the 10th schedule of the Constitution. The Anti Defection Law has been enacted in the year 1985 in order to curb defection. It tries to provide stable government by ensuring the legislators do not switch sides and reduce governments to a minority mid-way during their tenure. In this paper I discuss about Today politics trends and Anti defection law’s current scenario.

KEYWORDS: Election, Politics, Anti Defection, 10th Schedules.

I. INTRODUCTION

Election are the formal process of selecting a person for public office. Elections are conducted to choose a representative by the population on their behalf. Elections were conducted in free and fair manner in order to vote freely and to free representation of people. In India elections are governed by the constitution of India and through other statutory machineries. The Constitution of India regulates the elections through a constitutional body (Election Commission) under Article 324 to 329³. The term “Defection” means switching over one’s loyalty from one political party to another. The Anti Defection Law sought to prevent such political defections which may be due to reward of office or other similar considerations. In recent times defections have been raised though it has been controlled and regulated by the Anti Defection Laws. Such defection has happened in different states. This paper deals with the

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² In 1977 Gaya Lal, a legislator in Haryana switched to three parties in a same day ... Available at <https://www.thehindubusinessline.com/opinion/columns/rasheeda-bhagat/aaya-ram-gaya-ram-time-in-haryana-again/article29815848.ece>

³ Available at V.N.Shukla’s Constitution of India 8th Edition, also available at www.prsindia.org

importance of defection law, and how it is misused by legislators and the relevant measures to be taken to cover the lacunas of defection laws.

II. NEED FOR DEFECTION LAW

The need for Anti defection law arose in the late 1960's as defection brought great instability in the political system. In 1967 the famous phrase "Aaya Ram Gaya Ram⁴" was coined into Indian politics and continued for a decade in different states. The Anti Defection law is contained in the 10th schedule of the Constitution⁵. It was introduced in 52nd amendment in 1985 during Rajiv Gandhi's tenure. This anti defection law applies to both parliament and state assemblies. It lays down the process by which legislators may be disqualified for defection.

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 criticized on the ground that it allows bulk defections while declaring individual defections as illegal. The provisions for exemptions from disqualification in case of splits as provided in the tenth schedule has in particular, come under severe criticism on account of its destabilizing effect on the government. The Dinesh Goswami Committee Report 1990,⁶ The Indian Law Commission's 17th Report,⁷ The National Commission to Review of Working of the Constitution Reports 2002⁸ and many other reports recommended for an amendment which resulted in the 91st Amendment of 2002

III. THE LAW OF DEFECTION

The Anti Defection Law has been enacted in the year 1985 in order to curb defection. It tries to provide stable government by ensuring the legislators do not switch sides and reduce governments to a minority mid-way during their tenure. In the case of *Kihoto Hollohan vs. Zachillhu and Other*⁹ the Supreme Court declared that the Anti Defection Law is constitutional as it does not curb the individual freedom of a legislator to switch parties. The individual

⁴ In 1971 Gaya Lal, a legislator in Haryana switched to three parties in a same day ... Available at <https://www.thehindubusinessline.com/opinion/columns/rasheeda-bhagat/aaya-ram-gaya-ram-time-in-haryana-again/article29815848.ece>

⁵ Available at Constitution law of India by J,N Pandey

⁶ The Committee on Electoral Reforms.

⁷ Reforms of Electoral Laws 1999

⁸ The National Commission to Review of the Working of the Constitution was set up by the resolution by the Ministry of Law and Justice (Department of Legal Affairs) dated on 22, February, 2000. The Commission was asked to complete its work and make recommendations within one year. The report was submitted on March 31, 2002. The report was segmented in two volumes.

⁹ 1992 SCR (1) 68

freedom of speech and expression given under Article 105(1) is a restricted right.¹⁰ It facilitates democratic realignment of parties in the legislature by way of merger of parties. Generally members of a political party defects for a post in a political office, money and for other kind. The law also aims to reduce corruption at the political level as well as non-developmental expenditure incurred on irregular elections. The anti-defection law for the first time, a clear cut conventional recognition to the existence of the political party. Party hopping by a member of a party results in the destruction of faith of the public.

IV. MODES OF DISQUALIFICATION

Legislators are considered to have defected if they are either voluntarily give up their membership of the party¹¹ or disobey directives of the party leadership on a vote¹². The Apex Court held that voluntarily giving up of membership is more than resignation. It further states that even the conduct of the members is enough to draw an inference regarding him/ her giving up the membership voluntarily¹³. There are certain exemptions which are extended to the presiding officers of the houses and to those members who left their party as a result of merger with another political party (2/3rd members as of the amendment). An independent member of the House (elected without being set up as a candidate by any political party) becomes disqualified to remain member of the House if he joins any political party after elections. A nominated member of a House becomes disqualified for being the 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.

V. ROLE OF THE PRESIDING OFFICER

The presiding officer (Speaker / Chairman) of the House plays certain important roles under Anti Defection Law. The presiding officer is the one who disqualifies the legislators in parliament as well as State legislatures. The decision of disqualification will be taken by the presiding officer of the legislature. Once after the decision is been given, the court can interfere in it. The tenth schedule bars the court's jurisdiction in respect of any matter related to

¹⁰ The Supreme Court observed that "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 and exceptionable".

¹¹ Section 2(1)(a) of the 52nd Amendment Act of 1985

¹² Section 2(1)(b) of the 52nd amendment Act of 1985

¹³ Ravi s. Naik vs. Union of India (1994) AIR1558.

disqualification¹⁴. The decision of the presiding officer can be subjected to judicial review.¹⁵ The presiding officer of a house is empowered to make rules to give effect the provisions of the Tenth schedule¹⁶. All such rules must be placed before the house for 30 days. The house may approve or modify or disapprove them.

VI. POLITICAL DEFECTION IN INDIA

There have been instances when after the declaration of election results, winning candidates have resigned from their membership of the houses as well as the party from which they which they got elected. Things changed in the 1967 elections that marked the beginning of the coalition era. Between 1967 to 1971 closed to 142 MP's and over 1,900 MLA's defected to other political parties. In 1967 a Haryana MLA "Gaya La" have changed his party thrice in a day. Inspiring the phrase "Aaya Ram Gaya Ram¹⁷" in Indian politics, many legislators have changed their parties continuously causing the government to fall both at the centre and the states. The term "Aaya Ram Gaya Ram" politics means frequent floor crossing, turn coating, switching parties and political house trading in the legislature by the elected politicians and political parties¹⁸.

In 2017¹⁹ in Tamil Nadu after the death of Former Chief Minister J.Jayalalitha's death 18 MLA's from the ruling AIADMK were disqualified. After this they asserted the rebel T.T.V. Dhinakaran was the true leader of the party. In 2018 the Election Commission ruled that the rebel MLA's could contest in the by-election necessitated by the disqualification. The Chief Election Commissioner O.P. Rawath said Defection disqualifies MLA's from the current election. It does not bar the person to contest in election in future²⁰.

Goa also witnessed defection in the year 2017²¹. The assembly of Goa consist of 40 members. In 2019 10 out of 15 Congress MLA's including the leader of the oppositions broke away from

¹⁴ Section 7 of the 52nd Amendment Act of 1985. This provision restricted the court in the matters of disqualification of legislators. This provision was held unconstitutional in certain Supreme Court verdicts.

¹⁵ Kihoto Hollohan vs. Zachillhu And Others 1992 SCR (1) 686. Also Available at Ravi s. Naik vs. Union of India (1994) AIR1558

¹⁶ Section 8 of the tenth schedule 1985.

¹⁷ Available at <https://www.ndtv.com/india-news/haryana-poll-2019-haryana-elections-in-haryana-many-defections-ahead-of-polls-most-join-haryana-bjp-2111884>

¹⁸ See also <https://timesofindia.indiatimes.com/city/chandigarh/haryana-speaker-disqualifies-five-inld-mlas-under-anti-defection-law/articleshow/71076383.cms>

¹⁹ Refer <https://www.outlookindia.com/website/story/18-disqualified-aiadmk-mlas-not-to-appeal-against-madras-high-courts-order/319353>

²⁰ See Also in <https://www.thehindu.com/news/national/tamil-nadu/what-is-the-case-for-the-disqualification-move-against-three-tamil-nadu-mlas/article27103592.ece>

²¹ Refer <https://thewire.in/politics/bjp-deliberate-misreading-of-anti-defection-law-goa>

the party. The presiding officer recognized the group indicating that the merger of the 2/3r of the Congress legislators are valid. This does not amounts to defection. On the next day all 10 have joined in BJP party.

The Anti Defection Law was brought back into focus by the political crises in Karnataka in the year 2019²². It started with 15 MLA's resigned on 6th July. In a day followed the Former C.M H.D. Kumaraswamy was defeated in a motion of confidence. The Karnataka assembly is a 225 member house including one nominated Anglo Indian MLA. The speaker Ramesh Kumar disqualified 17 MLA's bringing down the strength to 207 which excludes the speaker. This brought down the majority mark in the assembly into 104. The BJP with 105 MLA's and the support of an independent MLA. Disqualification under Anti Defection law bars MLA's punished for defection from occupying an electoral office. The presiding officer ruled that the disqualified MLA's cant contest elections till the assembly ends. The Supreme Court of India upholds the disqualification of 17 rebel MLA's. However it struck down the term of disqualification. It paves the way for all the disqualified MLA's to contest in the upcoming by polls in Karnataka²³.

The Madhya Pradesh legislative assembly is of 230 seats. In 2018 elections²⁴ Congress got up 114 seats and BJP have got 109 seats and the rest were in the hands of some independent parties and other parties. The majority required are 116 seats. Congress got up the support with other members and formed the government. 2 MLA's were died, so the total strength reduces to 228. 22 members of Congress party resigned from their party and the total members remains 206. Now the political party should have 104 members as majority to form the government. Thus BJP formed the majority with 109 members and Shivraj Singh Chowhan become the Chief Minister of Madhya Pradesh in March 2020.

VII. CONCLUSION

The Anti Defection Laws has been constituted through the 52nd constitutional amendment of 1985. The purpose of establishing anti defection law is to prevent party hopping, to make legislators loyal to the party, to promote party stability in order to stable the government and to prevent party corruption. But the law has been misused by the legislators in the form of

²² Refer <https://economictimes.indiatimes.com/news/politics-and-nation/karnataka-speaker-disqualifies-three-mlas-under-anti-defection-laws/articleshow/70382727.cms?from=mdr>

²³ Shrimanth Balasaheb Patil vs. The Hon'ble Speaker, Karnataka WP (civil) No. 992 of2019. See also <https://thewire.in/law/supreme-court-karnataka-mlas-defection>

²⁴ Refer <https://www.thehindu.com/news/national/congress-may-see-more-defections-in-madhya-pradesh-say-observers/article31125699.ece>

merger. The law leaves an exemption from disqualification in case of merger of 2/3rd members of a party switch or merge with another party. The law should be amendment in such a way in order to curb defection completely. The Anti Defection law has to reformed or restricted through amendment. The legislator should be barred more than 5 years, so that he or she may not contest in the next election. All persons defecting from the party on whose ticket they had been elected must resign from their parliamentary or assembly seats. The vote cast by a defector to topple a government should be treated as invalid. The power to decide questions regarding disqualification on ground of defection should vest in the Election Commission instead of the Speaker/ Chairman of the House concerned²⁵.

²⁵ The National Commission to Review the Working of the Constitution Report 2002