

Report of National Webinar on Anti Defection Law in India-Need for Review

Webinar on “**Anti Defection Law in India-Need for Review**” was organized on 30th September 2020 at 10:30 am. Prof. Deep, Principal, delivered well come speech. Resource Person of this webinar **Dr. Sanjeeve Gowda, Assistant Professor, V.V.Pura Law College, Bengaluru,** addressing the participants said that the anti-defection law in India, technically the Tenth Schedule to the Indian Constitution, was enacted to address the perceived problem of instability caused by democratically elected legislators in India's Parliamentary System of Government shifting allegiance from the parties they supported at the time of election, or disobeying their parties' decisions at critical times such as during voting on an important resolution. Such shifting of allegiance was considered to be a symptom of endemic political corruption, which in turn provided some legitimization for corruption prevalent in other aspects of life in the country. Defection by legislators occurs in many democracies. It can be argued that they can undermine the stability of the government, which is dependent on the support of the majority party's own elected legislators and/or a coalition of those elected to represent other parties. The argument follows that such instability can amount to a betrayal of the people's mandate as voiced at the most recent prior election. Prior to the introduction of the anti-defection law, both the central Government of India and the governments of some of its states and territories had experienced instances of perceived instability resulting from legislators changing their political allegiance.

Initially, the Constitution of India did not have any mention about the political parties. But, gradually when the multi-party system evolved, there had have been defections in the Indian Parliamentary System where there have been shift of people from one political party to another which resulted in breaking down of public confidence in a democratic form of Government. Defection is “desertion by one member of the party of his loyalty towards his political party” or basically it means “When an elected representative joins another party without resigning his present party for benefits”. The 52nd Amendment Act, 1985 lead to amendment in Article 101, 102, 190 and 191 of the Constitution to provide the grounds for vacation of seats for the disqualification of the members ; and also inserted Tenth Schedule.

Speaking on the loopholes in the law he said, as per Rule 6 of the schedule, the Speaker of the House or the Chairman has been given wide and absolute powers to decide the case related to disqualification of the members on the grounds of defection. The Speaker still remains as the member of the party which had nominated him/her for the post of speaker. One of the major

criticisms of this power is that not necessary the speaker has legal knowledge and expertise to look upon and perform such acts in such cases. Further, as per the Rule 7, which bars the jurisdiction of the courts in any matter connected with disqualification of a member of a House, which states that it is outside the jurisdiction of all courts including the Supreme Court under Article 136 and High Courts under Article 226 and 227 of the Constitution to review the decisions made by the Speaker in this regard. The rule barring the jurisdiction of Courts has been challenged multiple times before the courts and the Court, in *Kihoto Hollohon v. Zachilhu and Others*, held that the law is valid in all respects except on the matter related to the judicial review, which was held as unconstitutional. Any law affecting Articles 136, 226 and 227 of the Constitution is required to be ratified by the States under Article 368(2) of the Constitution. As the required number of State assemblies had not ratified the provision, the Supreme Court declared the rule to be unconstitutional.

The Court also held that the Speaker, while deciding cases pertaining to defection of party members, acts as a tribunal and nothing more than that, and that his/ her decisions are subject to the review power of the High Courts and the Supreme Court. Mentioning a rule of caution, the Supreme Court warned against the exercise of power of judicial review prior to making of any decision by the Speaker.

According to the Rule 2 it can be seen that the anti-defection law puts the members of the party into a bracket of obedience in accordance with the rules and policies of the party, restricting the legislator's freedom to oppose the wrong acts of the party, bad policies, leaders and bills. A political party acts as a dictator for its members who are not allowed to dissent. In this way it violates the principle of representative democracy wherein the members are forced to obey the high command. Rule 4 of the Tenth Schedule seems to provide some exception from disqualification of members in the cases relating to mergers, there seems to be some loophole in the law. The provision tends to safeguard the members of a political party where the original political party merges with another party subject to the condition that at least two-third of the members of the legislature party concerned have agreed to such merger. The flaw seems to be that the exception is based on the number of members rather than the reason behind the defection. Concluding his observation on the law he said that the introduction of the Tenth Schedule in the Indian Constitution was aimed at curbing political defections. Though the law has succeeded in a reasonable way but due to some of its loopholes, it has not been able to achieve the best it can. The programme concluded with the vote of thanks proposed by the coordinator Sri S.B. Boregowda.

