



ISSN 2582 - 211X

LEX RESEARCH HUB JOURNAL

On Law & Multidisciplinary Issues

Email - journal@lexresearchhub.com

VOLUME II, ISSUE I
OCTOBER, 2020

<https://journal.lexresearchhub.com>

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Publications**

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AN ANALYSIS OF ANTI DEFECTION LAW IN INDIA: NEED FOR ELECTORAL REFORM

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ABSTRACT

"India is one of those countries which adopted a parliamentary form of government when it achieved its independence. And in the parliamentary form of government, the role of legislators or MLA and M.P. is of primary importance. As it is, they who form a government after election results are out. However, the process of forming the government has sometimes given rise to some unethical practices. And defection of members of the party from one party to another has been one of them. Today the problem of defection has become a matter of national concern. In order to combat the problem of defection, the Anti defection law was passed in 1986 by the parliament. But the law has utterly failed to fulfil its objectives, as it is clear from the multiple instances of exploitation and misuse of the provision of the law. And the latest event of misuse of the law being in the case of Karnataka and Manipur. This paper aims to evaluate the provision of anti-defection law and in particular to issue concerning to role of speaker, whip, voluntary giving of membership, merger."

Keywords: Anti-defection Law, Defection, Parliamentary government, Speaker, Tenth Schedule, Representative, Merger, Judicial Review, Whip, Voluntary Giving Up of Membership.

RESEARCH QUESTION:

1. What amounts voluntarily giving up of membership under para 2(1)(a) of Tenth Schedule of Indian Constitution of India?
2. What is the role of the speaker under the Tenth Schedule of the Indian Constitution of India?
3. Whether whip issued under para 2(1)(b) under Tenth Schedule of Indian Constitution of India?

OBJECTIVES:

- To analyse the provision of the Tenth Schedule of the Indian Constitution.
- To study the speaker's role in deciding the disqualification of MP/MLA under the Tenth Schedule of the Indian Constitution.

RESEARCH METHODOLOGY:

The methodology adopted for this research is doctrinal. The study primarily focuses on researcher papers published in various journals, newspaper articles, books, statutes, and rules concerning anti-defection law in India.

RESEARCH PROBLEM:

One of the main objectives behind incorporating law on the anti-defection law by Rajiv Gandhi government in 1985, by 52nd Constitutional Amendment was to curb the perils of the defection of elected members of the legislative assembly/ parliament and political corruption. However, the law seems to have failed to fulfil its very objective even after completing 35 years of its passage. From 1985 till now, there has more than 2000 political defection that has taken all over India, a very recent example being defections that took place in the State of Goa, Karnataka, Manipur, Madhya Pradesh. And the Constitution (Ninety First Amendment), Act 2003 has made the law even weaker by allowing mass defection of elected members to take place. This research will focus on the role played by the speaker in deciding the disqualification of parliamentarians. And also, critically analyse the provisions relating merger, whip (para 2(1)(b)) and Voluntary Giving Up of Membership (para 2(1)(a)) of the Tenth Schedule of the Indian Constitution and point out the lacunas persisting in the law.

SCOPE AND LIMITATION OF THE STUDY:

This research work is confined to constitutional provisions and rules concerning Anti defection law in India. The study is purely analytical. For this study, reference has been made to various articles, research papers, reports, cases, constitutional provisions, and rules concerning anti-defection law. As the research methodology adopted is a doctrinal one.

II. INTRODUCTION:

Democracy, as said by Abraham Lincoln, is the rule of people, where people choose their representatives by the exercise of the vote. Government derives power from the people and the law of the land, as the government is formed by the support representatives elected by the people's votes. People's vote goes waste when the government topples down due to the defection of elected members or representative of their respective constituencies. The defection of elected members has turned out to be a menace which most of the governments around the world are facing. India being the world's largest democracy, is no exception to it because as it has witnessed more than thousands of defections that have taken place.

India came up with a law relating to the defection of elected members as soon as India got independence. It was the Rajiv Gandhi government that came up with a law concerning anti-defection through the 52nd Constitutional Amendment in the year 1985. And the provision pertaining to the anti-defection was incorporated under the Tenth Schedule of the Indian Constitution. One of the main objectives behind coming with anti-defection law was to curb the menace of defection and political corruption that was taking place before the law came into force.

However, even after thirty-five years of the law passage, it has failed to fulfill its very objective. This can be seen in recent defections of the elected member that took place in the State of Goa, Karnataka, Manipur, Madhya Pradesh, which led to the fall of state governments. And this proves that the law has to turn out to be ineffective and futile. This article critically examines the provision of the tenth schedule of the Indian Constitution.

The first part of the article provides a historical background of the anti-defection law. The second part evaluates the provision of the Tenth Schedule of the Indian Constitution concerning the role

of speaker, merger and split, voluntary giving up of membership. The third part of the article provides for discussion upon the supreme court's take on the latest political crisis that took place in Karnataka and Manipur. The last part of the article concludes with the possible solution that needs to be adopted to curb the menace of defection and political corruption in India.

III. BACKGROUND:

The term defection appears to have been derived from the Latin word "defectio", meaning an act of abandonment or a cause to which reasons of allegiance or duty-bound such person, or to which he has wilfully attached himself¹. Defection is an act of abandoning or changing his loyalty towards a party of which he/she was an earlier part. The defection of elected representatives of people from one party to another is prevalent in almost all democratic countries worldwide. The menace of defection isn't not new to India.

The history of defection in India dates back to the pre-independence era when Shyam Lal Nehru, a member of the central legislature, changed his loyalty from congress to British India. Another notable instance was in 1937 when the elected member of Uttar Legislative from Uttar Pradesh defected from Muslim League and joined congress. The defection of elected members increased after independence due to increased political corruption and not ideological differences. The best example of the same was the fourth general assembly election, which took place in 1967. As per the Chavan committee report, within a short period between March 1967 to February 1968, India witnessed 542 defection cases all over India².

And reasons for defection lure of office, money, etc. Former Prime Minister Rajiv Gandhi, immediately after the 8th Lok Sabha election, introduced the 52nd Constitutional amendment bill before parliament. The bill got passed in both Lok Sabha and Rajya Sabha on 30th and 31st January 1985, respectively. The bill got its assent of the president on February 15, 1985, and came into force from March 1 1985.

¹ G.C. Malhotra, Anti Defection Law and The Commonwealth, page 3(Metropolitan Book Co. Pvt. Ltd 2005)

² Report of Committee on Defections under the Chairmanship of Shri Y. B. Chavan (Ministry of Home Affairs, 1969)

IV. PROVISION OF TENTH SCHEDULE OF INDIAN CONSTITUTION:

Role of Speaker:

Speaker under Indian Constitution holds the office which is of high esteem and respect. He holds the office, which is a ceremonial one and pivot of Indian Parliamentary tradition. The speaker is said to be the very embodiment of prosperity and impartiality. Due to this very characteristic of the speaker, the drafters of the tenth schedule of the Indian Constitution conferred the power to decide the question as to disqualification of MP/MLA's on him³. Para 6 of the tenth schedule of the Indian Constitution states that if any question arises concerning disqualification of members of the house under para 2(1)(a) & (b), then such matter shall be decided by the speaker of such house⁴. And the decision taken by him is final. Para 7 bar imposes bar jurisdiction of the court. The speaker, while adjudicating the petition concerning disqualification of members of the house, has to act neutral and independent manner. And his political affiliation shouldn't influence his decision.

The speaker, while deciding the disqualification of a member of the house to comply with natural justice principles and give ample opportunity to a person subjected to disqualification. Upon receiving the petitions and if satisfied that para six requirements are met, shall send copies of petitions against whom they are made⁵. The speaker, upon receipt of the comments from such person, has conducted an inquiry on the same. Speaker upon gathered facts while enquiring the plea of disqualification of a member of the house, if satisfied that the act done comes under par 2(1)(a) &(b), then speaker shall pass the decision to that effect and record the same in the official record.

The speaker's power under Article 190(1)(b) of the Indian Constitution to inquire into the resignation of the MP/MLA should be limited to if the members intend the relinquish his membership out of his own will. And once the speaker has satisfied that the member has

³ N.S. Gehlot, The Anti- Defection Act, 1985 and The Role of the Speaker, The Indian Journal of Political Science, July - Sept., 1991, Vol. 52, No. 3 (July - Sept., 1991), pp. 327-340

⁴ Para 6 Tenth Schedule of Constitution of India 1950.

⁵ Rule 7(3) of the Disqualification on Ground of Defection Rules, 1985

voluntarily given up his membership by submitting his resignation out of his own will, the speaker has no option but to accept the same⁶.

Decisions passed by the speaker while exercising power under para 6 shall be subject to judicial review if any infirmities in his decisions. In *Kihoto Hollohan v Zaichillu* The Supreme court held that the speaker, while passing an order under para 6 of the tenth schedule, shall act as a tribunal adjudicating rights and liabilities under the tenth schedule. The order passed by the speaker under para 6 is not final and is subject to judicial review under Article 136, 226, and 227 of India's Constitution. And Judicial review of speakers' order is restricted to jurisdictional error viz, infirmities based on a violation of the constitutional mandate, mala fides, non-compliance with natural justices, and perversity. Judicial review should not cover any stage before the making of a decision by the Speakers/ Chairmen⁷.

And immunity granted under Article 122 and 212 shall come into play when there is the challenge of the irregularity of procedure⁸. The speaker under the tenth schedule doesn't have the power to review his own decisions passed by him under para 6 of the tenth schedule⁹. None of the provisions Tenth Schedule or Constitution of India confers power to the speaker with to disqualifying member till the expiry of the term of the legislative assembly or bar him from contesting the election, the Supreme Court in the *Shrimanth Balasaheb Patil v Hon'ble Speaker Karnataka*, has held that "Speaker, in the exercise of his powers under the Tenth Schedule, does not have the power to either indicate the period for which a person has been disqualified or to bar someone from contesting elections."¹⁰

However, our recent experience in Karnataka, Madhya Pradesh, Manipur shows that speakers had not acted independently and impartially concerning disqualification of members of the house under para 2(1) (a) & (b) of the tenth schedule of the Indian Constitution. And the speaker has not given ample opportunity to disqualified members represent their case. The reason recorded by the speaker was improper. Reasons for such act of speaker has been his affiliation with a political party which appointed him as a speaker.

⁶ *Shrimanth Balasaheb Patil v Hon'ble Speaker, Karnataka Legislative Assembly 2020 (1) Karl J 1*

⁷ *Kihota Hollohon vs. Zachillhu and Others AIR 1993 SC 412.*

⁸ *In Re Kehav Singh's Case AIR 1965 SC 745*

⁹ *Dr. Kashinath Jhalmi v. Speaker and others AIR 1993 SC 1873*

¹⁰ *Shrimanth Balasaheb Patil and others v Hon'ble Speaker, Karnataka Legislative Assembly 2020 (1) KarlJ 1*

Another being many of them doesn't have expertise in adjudicating matter and lack in knowledge of the law which was seen many of the defection case brought before the court, where speaker expressed his inability to decides the case. From the catena of the different speakers' decisions, it is clear that there is no uniformity in their decisions. Speakers have not adhered to any guidelines or criteria while deciding the disqualification of elected members of the house under the ground of defection.

Voluntary Giving Up of Membership:

Para 2(1)(a) of Tenth Schedule of the Constitution of India deals with the disqualification of members of the house on account of voluntary giving up of the political party's membership. Speaker under this provision shall disqualify" a member of the house if he voluntarily gives membership of the political party. The act of voluntary giving up of the membership may either be implied or expressed¹¹. A person may voluntarily give up his membership of a political party even though he has not tendered his resignation from the party's membership.

In *Ravi S. Naik v Union of India &Others*, the Supreme court has held that "Even in the absence of a formal resignation from membership, an inference can be drawn from a member's conduct that he has voluntarily given up his membership of the political party to which he belongs" and also stated "burden of proof is on the person who is claiming disqualification under the anti-defection law, that the member has violated para 2 of Tenth Schedule ¹².

An independent elected member shall also be subject to disqualification if once joins a political party and then defect to another party. For an elected member to be disqualified under the anti-defection law, evidence has to be presented before the speaker's table that the elected member has given the membership of the party which he was earlier part of and joined the other party¹³.

In *Rajendra Singh Rana v Swami Prasad Maurya*, the Supreme court of India, while giving a broad interpretation to the term "voluntary giving membership," held that even a letter tender by an elected member of a party to the governor asking him to call opposition party leader to form the government would itself amount to voluntary giving membership of the party. The Supreme court,

¹¹ Anju Sindhu, Anti Defection Law in India: Analysis, International Research Journal of Management Science and Technology, ISSN 2250-19589 Issue 6 (2016), page 95-116

¹² *Ravi S. Naik v Union of India &others* 1994 SCC (11) 641.

¹³ *G. Vishwanath v Hon'ble Speaker Tamil Nadu Legislative Assembly, Madras and Another* 1999 SCC (2) 353.

in various other cases, has also held that the criticizing party policy, working against the party interest while being the party member, would also amount to disqualification under paragraph 2(1)(a) of the Tenth Schedule of Indian Constitution.

Even though the supreme court, through a catena of decision, has tried to define voluntary giving of membership. But there is still confusion that persists as to the difference between resignation and voluntary giving of membership. Its time to revisit the law and define the word voluntary giving up of membership of the party.

Whip:

Para 2(1)(b) of Tenth Schedule of Indian Constitution states that a person is disqualified from being elected member of any political party if he votes or abstains from voting in the house contrary to any directions issued by the political party to which he belongs without obtaining permission. It is the political party's direction to their elected members, which is called a whip under the political system. The whip is a colonial concept, which was used to manage the floor in assembly. It is a written order that the political party issues to its member for being present for an important vote¹⁴. Violation of political whip issued by the political party under para 2(1)(b) would be ground for defection under Article 102(2) and Article 191(2) of the Constitution of India.

However, many times, questions have been raised against the constitutional validity of para 2(1)(b) of the tenth schedule to be violative of freedom of speech and expression granted under Article 105 and Article 19 of the Indian Constitution¹⁵. The above question was brought before the Supreme Court of India in the case of Prakash Singh Badal and others v Union of India¹⁶, wherein the court held that the right to freedom of speech and expression conferred on MP/MLA in the house isn't absolute and subject to restriction like provisions of the Constitution, standing order, rules, and regulation. The 52nd Amendment to the Constitution of India is one such exception to it.

However, the concern has been raised in the various committee reports and parliamentary debates concerning para 2(1)(b) being violative of the right to freedom of speech and expression

¹⁴ Kaustubh Shukla, Constitutional Lessons from the Rajasthan Political Crisis, Indian Legal (13 December 2020, 4:22 PM) www.indialegallive.com

¹⁵ Karthik Khanna and Dhavani Shah, A Death Knell for Parliamentary Dissent, NUJS Law Review, Volume 5 Issue 1 (2012) pages 103-127

¹⁶ Prakash Singh Badal and others v Union of India AIR 1987 P&H 263

guaranteed under Article 105 and 194 of the Indian Constitution. These provisions confer protection to legislative assembly members and Members of Parliament against liability before any court for their statements or vote in parliament. The main reason behind granting such protection to parliament members and assemblies was to ensure democratic functioning without fear, which is the essence of representative democracy.

In a representative democracy, the representative of people can freely express the need and aspirations of the respective constituency people who have elected them. And when any bill is introduced before the house, which may affect his constituency or his people. MLA/MP should be allowed to dissent and vote against the whip passed by the party. The best example for this would be that of NDA attempt to pass the CAA, NRC bill which is opposed most of its party members and alliance, but still to vote for it due to fear whip¹⁷.

Nani Palkhiwala, a famous legal jurist during the thirteenth Lok Sabha session, expressed concerns that anti-defection law would curtail the right to vote and freedom of speech and expression of elected members of the undemocratic house¹⁸. The Supreme court in *Kihoto Hollohan v Zachillhu*, while interpreting the term "any direction" under para 2(1)(b) harmoniously with other provisions confined to the objective of the tenth schedule, expressed that "For this purpose, the direction is given by the political party to a member belonging to it, the violation of which may entail disqualification under paragraph 2(1)(b) would have to be limited to a vote on Motion of Confidence or No Confidence in the Government or, where the motion under consideration relates to a matter which was an integral policy and program of the political party based on which it approached the electorate"¹⁹.

The 170th Law Commission report and Dinesh Goswami report also suggested that political whip or direction shall be issued by the political party only when the no-confidence motion is passed in the house or when abstaining from voting will likely affect the running of government of

¹⁷ Gyan Varma and Anuja, NDA allies mount opposition to national register, Mint (e- paper), 19 Dec 2019.

¹⁸ Constitutional Assembly debates, December 16 2003, Speech by Shivraj.V. Patil, available at www.loksabhp.nic.in. (last visited on 13 December 2020)

¹⁹ *Kihota Hollohon vs. Ziachillu and Others* AIR 1993 SC 412

machinery²⁰. By doing this, it would safeguard both the freedom of speech and expression and maintain discipline in the party.

Merger:

The provision relating split under paragraph 3 was omitted from the Tenth Schedule of Indian through the 91st Constitutional Amendment Act 2003. This act was proposed before parliament by a committee headed by our former President Pranab Mukherjee, which after the intense debate concluded to remove paragraph 3 because it was gravely misused and allowed division of parties, indirectly promoting horse-trading or mass defection to take place.

Para 4 lays down the grounds under which defection as the ground of disqualification shall not apply. As per the provision, the speaker shall not disqualify the member of the house under the law, if:

- His/her party merges with another party and become a new political party
- Has not accepted the merger and opted to remain and function as a separate political group.

The protection under the provisions would apply when one-third of members of the original party has decided to merge with the other party. This provision was included in the tenth schedule by 91st Constitutional Amendment 2003, which made paragraph 4 as an exception provision that is ground of defection not to apply in case of merger of parties²¹. The condition doesn't define precisely define the term merger and but only provides the situation under which a merger of parties can take place. The provision mandates that two-third of members of the party have to agree to merge with party another political party.

The expression "having agreed merger" in paragraph 4(1)(2) was explained by Supreme Court of India in the case of W.K. Singh v Speaker, Legislative Assembly Manipur²², as "merger occurring under paragraph 4(1)(2) implies that merger if to take place first at party level to which two-third members of the party are also required to agree, for the merger to be effective insofar they concerned.

²⁰ Law Commission of India, 170th Report on Reform of Electoral Laws, 1999 available at <https://lawcommissionofindia.nic.in/lc170> last seen 15 December 2020

²¹ Sakshi Rewari, An Analysis of Anti Defection Law in India, Lexidem Veritos, (26th July 2018) <http://www.latestnew.com/articles> (last visited 19 December 2020 1:17 PM)

²² W.K. Singh v Speaker, Legislative Assembly of Manipur AIR 1996 SC 1060

In *Rajendra Singh Rana v Swami Prasad Maurya*²³, the Supreme court held that "those who left the party will prima facie to show by relevant materials that there has been a split in the original party." And the court also upheld the decision passed in *Jagjit Singh v State of Haryana*²⁴, which held that "split in the original party is a precondition for recognizing split in the original party. In the *Rajendra Singh* case, the supreme court's five-judge bench also mentioned that decision in the *Jagjit* case should apply to the merger of the party also.

Para 4 of the Tenth Schedule of the Indian Constitution acts as an exception. If one-third of members of the original party decided to merge with another, then disqualification under the law shall not apply to them. The schedule fails to prohibit such unethical practice for the only reason being that number of members is involved. However, the law fails to lay down the rationale behind incorporating such an exception²⁵. Another thing that it fails to include is that it fails to integrate provision, which shall mandate the members of the original party who have decided to merge with another party have to provide a reason behind same to the election commission.

Judicial Review:

Paragraph 7 bars the court's jurisdiction in the matters relating to disqualification of a member on the ground of defection under the Tenth Schedule of the Indian Constitution. This provision barred the jurisdiction of both the Supreme and High Court under Article 32, 226, 136 under the Constitution of India. This provision decided the speaker final, and no appeal against his decision²⁶. This was, however, challenged before the Supreme Court in the landmark case of *Kihoto Hollohan v Zachillhu*²⁷, wherein six judges bench held that "Paragraph 7 of Tenth Schedule of Indian Constitution in terms and effect excludes the jurisdictions of all courts including supreme and high court and brings about change in operation and development of Article 136, 226 and 227 of Indian Constitution and therefore would require ratification under Article 368(2) of Indian Constitution of India and the Doctrine of Severability to the same doesn't apply to the bill. And if

²³ *Rajendra Singh Rana v Swami Prasad Maurya* 2007 (4) SCC 270.

²⁴ *Jagjit Singh v State of Haryana* 2006 (2) SCC 1.

²⁵ Rahul Kumar, Anti- Defection Law: An Obnubilated Democratic Objective, *International Journal of Law and Public Policy*, <http://www.ijlpp.com> (Last accessed 19 December 2020 1:27)

²⁶ Para 7 of Tenth Schedule of Constitution of India.

²⁷ *Kihoto Hollohan v Zachillhu* 1992 SCR (1) 686.

it were to be held as constitutionally valid, then it would be still invalid as the provision takes away the power of judicial review, which is the essential feature of the Indian Constitution.

And the court also held that "Judicial review should not cover any stage before the making of a decision by the Speakers/Chairmen. With regard to the Constitutional intendment and the status of the repository of the adjudicatory power, no qua time actions are permissible, the only exception for any interlocutory interference being cases of interlocutory disqualifications or suspensions which may have grave, Immediate and Irreversible repercussions and consequences".

V. RECENT POLITICAL CRISIS IN KARNATAKA AND MANIPUR:

The role of the Indian Judiciary has been crucial in interpreting and passing the decision on ambiguities that persisted in the provision. Misuse of power, increasing political corruption, government breakdown, misinterpretation of the provision of the tenth schedule by the members of parliament and assemblies have called upon the highest court of the land to interfere and pass decisions on the same. Supreme Court of India has given landmark judgment on various issues concerning the tenth schedule of the Indian Constitution. In the below paragraph, the supreme court take on the Karnataka and Manipur Political has been discussed:

- Shrimanth Bala Saheb Patil and others v The Hon'ble Speaker, Karnataka Legislative Assembly.

In July 2019, 13 MLA of the ruling coalition government of Congress and JDS had tendered the resignation to Speaker of the Karnataka State Legislative Assembly. They were joined by two other independent MLAs who withdrew their support from the government. All the 15 MLA defected to the Bhartiya Janta Party, showing their support in forming a government. The speaker didn't accept the resignation immediately, as he wanted to inquire into the genuineness of the resignation filed by MLA. Meanwhile, the JDS and Congress filed disqualification petitions against the 15 MLA for defying the whip. The speaker on the coalition government's collapse passed the decision that 15 MLA shall be disqualified till the expiry of the legislative assembly. All the 15 MLA challenged the speaker's decision by filing a writ petition under Article 32 of the Indian Constitution.

The three-judge bench of the Supreme Court held that speaker while adjudicating the disqualification of the petition act as quasi-judicial authority and validity of the decision can be questioned before the court under article 32 of the Indian Constitution the party challenging the disqualification is required first to approach the High Court as the same would be appropriate, effective and expeditious. With respect scope of inquiring into the resignation tendered, the speaker power under Article 190(3) of the Indian Constitution held that it is limited to examine "whether resignation tendered by the member is voluntarily or genuinely." The court, with on speaker's power to disqualifying the member for the rest of the term, held that the speaker isn't empowered to pass such an order. The court held that after going through various constitutional mandates and provision of the Constitution²⁸.

- **Kiesha Meghachandra Singh vs. The Hon'ble Speaker Manipur**

The Manipur Legislative assembly election conducted in March 2017 produced inconclusive results. None of the parties secured the majority seats, that is, 31 out of the 60 legislative assembly seats to form a government. The congress secured the highest number of seats, 28. Mr. Keisham Meghachandra Singh contested the election with a Congress ticket and won the election. But after the election shows he supports the BJP in forming a government. And became a minister under the newly formed government by BJP. Subsequently, a disqualification petition was filed against him before the speaker. Speaker didn't adjudicate upon the same. TN Hoakip filed a writ petition before the Manipur High Court. The High Court of Manipur refused to entertain the petition as the matter with regard "whether the high court has power to direct or issue directions Speaker of the house was pending before the 5-judge bench of Supreme court. And said it could any order on the same. A special leave petition was filed against the order of the high court.

The three-judge bench of the supreme court, hearing this petition, held that the high court of Manipur was wrong in its holding that issue is pending before the supreme court. However, the same issue has been dealt with by the supreme court's constitutional bench in Rajendra Singh Rana v Swamy Prasad Maurya. The Supreme court had held that if the speaker fails to exercise his jurisdiction within a reasonable period, then the same is

²⁸Shrimanth Bala Saheb Patil and others v The Hon'ble Speaker, Karnataka Legislative Assembly 2020 (1) KarL J 1

amenable to judicial review. And directed the Speaker of Manipur State Legislative Assembly to disqualification petition pending before him within four weeks from the day the present judgment would be intimated to him²⁹.

VI. CONCLUSION AND SUGGESTION:

The Anti defection law was incorporated in the Indian Constitution to curtail the political defection of members of the Parliament and Legislative assembly. After thirty-four years of the law passage, it has failed to fulfill its objective, as it can be seen through a series of the defection of members of one party to another that has taken place from the date of passage of the law. The present law seems to be ineffective in contouring the problems of political defection in India. An increase in the defection of an elected member and repeated bi-election of for the vacant seats has made electorates to lost their confidence that has concerning the representatives and law in place regulating them. However, there is an immediate need for revisiting the law of anti-defection and bring reforms in the same. Some of the reforms are suggested below, which would fill the lacunas that are existing in the present law.

Suggestions:

- 1) Issuance of the whip under para 2(1)(b) of the tenth should be restricted to the situation when the voting of members affects the government's non-continuance. And shouldn't be issued on every occasion³⁰.
- 2) The election commission of India shall regulate the merger of political parties. When a political party merges with another party, the parties must provide a proper reason for the election commission or independent body.
- 3) Power to decide the disqualification of elected members under the tenth schedule shall be vested with the president of India and governor. They shall act on the advice of the election commission of India³¹. The genuineness of the letter of resignation and

²⁹ Keisham Meghachandra Singh vs The Hon'ble Speaker Manipur Legislative Assembly and others (2020) SCC Online SC 55.

³⁰ Law Commission of India, 170th Report on Reform of Electoral Laws,1999 available at <https://lawcommissionofindia.nic.in/lc170> last seen 15 December 2020

³¹ Law Commission of India, 255th Report on Electoral Reforms, March 2015 available at <https://lawcommissionofindia.nic.in/reports/Report255> last seen 15 December 2020

- voluntary giving of membership to be decided by the election commission of India, which is tabled before the speaker.
- 4) New provisions concerning mandatory notice and period for disqualification of the MLA and M.P. shall be incorporated in the tenth schedule of India.
 - 5) The court of law has declared persons who are disqualified under the tenth schedule of the Indian Constitution and should be made liable to bear the cost of bi-election and must be debarred from contesting election for the justiciable period.

References:

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