



INTERNATIONAL JOURNAL OF CREATIVE RESEARCH THOUGHTS (IJCRT)

An International Open Access, Peer-reviewed, Refereed Journal

"An Analytical Study Of The Role Of The Speaker Under Anti-Defection Law"

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Abstract

The Anti-defection law under the Tenth Schedule of the Indian Constitution gives a decisive role to the Speaker of the House of People or State Legislative Assembly in deciding the disqualification of MLAs or MPs on the grounds of defection. Many times questions are raised on the impartiality of the speaker. He is accused of disposing of the disqualification petition in the interest of his former political party, i.e. if disqualifying rebel members is in the interest of the speaker's former political party, he immediately becomes active and declares such members disqualified and if doing so is not in the interest of his former political party, he remains inactive on the disqualification petition, because the biggest drawback of the anti-defection law is that the time limit for disqualification petition is not fixed. In such a situation, the objective of this research paper is to test the impartiality of the speaker and his activism in disqualification cases through the study of the cases of disqualification of MLAs in different states and judicial decisions.

Index Terms - Defection, Speaker, House of People, Legislative Assembly, Disqualification.

1. Introduction

"Not every case can be handled in such a way that the operation is successful but the patient dies." - Justice Gavai[1]

Justice Gavai has made this statement in relation to the Speaker's delay in resolving the disqualification petition on the basis of defection in the Telangana Assembly in 2024, which is appropriate; similarly, if the Speaker delays the disqualification petition, it benefits the rebel MLAs in the form of retaining their posts, which certainly defeats the purpose of the Anti-Defection Law. While the anti-defection law was added to the 10th

schedule of the Indian Constitution by the 52nd Constitutional Amendment, 1985 to prevent toppling of government due to defection so that there is stability in governance, now it is being used to toppling of the government. In which the role of the Speaker is very important. The Speaker is the deciding authority to resolve the disqualification petition under the anti-defection law. If he takes a decision in cases of defection constitutionally, only then the objective of the anti-defection law can be achieved. But it does not seem practically possible to expect this from the Speaker because the speaker of the house is not a member of any political party in principle but in practice he is loyal to his former political party. Recently, undesirable delays by the Speaker in resolving disqualification petitions in Karnataka, Manipur and Maharashtra indicate the need for a critical study of the role of the Speaker.

2. Review of Literature

1. G.C. Malhotra, *Anti-Defection Law in India and Commonwealth* 4 (New Delhi, 11th ed., 2015) - The book describes the origin and development of the Anti-Defection Law. It also gives a detailed description of the defection that took place in the Parliament and the State Legislatures. The status of defection in various countries of the world is also mentioned in this book.

2. N. Dharmadhana, 'Whether Decision of Speaker of the Legislature is Justifiable', AIR, March 2004, Issue No. 03- This article evaluates the fairness of Speaker's decisions in disposing of disqualification petitions for defection.

3. Research Question: Does the Speaker decide the disqualification petition on the ground of defection impartially and constitutionally under the Tenth Schedule?

4. Research Objective - The objective of this research paper is to assess the impartiality of the Speaker under the Tenth Schedule to find out whether assigning this function to the Speaker fulfils the objective of the Anti-Defection Law or not.

5. Research hypothesis- Disqualification petition is not resolved impartially by the speaker under the tenth schedule.

6. Research methodology- Doctrinal method has been used in the presented research. Research work has been done through primary and secondary information such as Indian Constitution, 10th Schedule Anti-Defection Law, magazines, websites, judicial decisions, commission reports etc.

7. Research Scope and Research Limitation- In the presented research, the evaluation of the role of the Speaker under the Anti-Defection Law is limited to the information available on the internet, study of judicial decisions and study of reports of commissions and committees.

8. Constitutional Position of the Speaker-

The post of Speaker is a prestigious position within the House. The Speaker is the chief officer of the Lok Sabha or the State Legislature. He has wide powers to regulate the proceedings of the House under its rules and procedures. He is the representative and spokesman of the House on its behalf. The Speaker and the Deputy Speaker of the Lok Sabha or the Legislative Assembly are elected by the House from among its members. Certain constitutional provisions ensure the impartiality and independence of the Speaker and the Deputy Speaker such as their salaries and allowances are determined by law made by the Parliament and is charged on the Consolidated Fund of India and the Consolidated Fund of the respective States. The Speaker and the Deputy Speaker cannot be removed from office except by a resolution passed by the House. The Speaker or the Deputy Speaker is also exempted from the anti-defection law.

The Speaker is the chief custodian of the rules, regulations, powers and privileges of the House. The Speaker is expected to act with impartiality and neutrality in all situations. In *Kihota Holohon v. Zachillhu* [2] the Supreme Court of India while speaking about the office of the Speaker stated that:-

“In parliamentary traditions, the office of the Speaker is accorded the highest honor and respect. The institution of the Speaker is the pivot of the development of the parliamentary institution. The Speaker holds a high, important and ceremonial position. (...) The Speaker is said to be the symbol of propriety and impartiality.”

The Hon'ble Supreme Court of India while speaking about the duty of the Speaker in *Nabam Rebia and Bamang Felix vs. Deputy Speaker and others* [3] held that-

“According to ancient wisdom, the Speaker should renounce his “Purvaashram” and immerse himself in “Paraashram”. This means that the Speaker should remain constantly connected with the cherished values of the incarnation of his office and should not deviate even a little from the constitutional prudence and philosophy. His neutrality should have comprehensibility.”

9. Powers and Role of the Speaker under the Tenth Schedule

Disqualification on the ground of defection is mentioned in Articles 102(2) and 191(2) and the Tenth Schedule of the Indian Constitution. Para 6(1) of the Tenth Schedule empowers the Speaker to decide on disqualification on the ground of defection. The Speaker's decision is subject to judicial review. [4]

In many cases, allegations of bias have been labeled against the Speaker in deciding cases of disqualification on the ground of defection. On some occasions, there have been reasons to justify such allegations *prima facie*. An attempt has been made to evaluate the role of the Speaker by analyzing the recent disqualification cases of different states.

9.1 Recent examples of delayed decision by the Speaker and judicial activism-

I. Kesham Meghchandra Singh vs. Speaker, Manipur Legislative Assembly [5] - In 2020, 07 rebel Congress MLAs joined the BJP. No decision was passed by the Speaker on their disqualification petition for three years. Regarding the delay in decision on the question of disqualification, the Supreme Court ruled that-

The court is not "powerless". If the Speaker fails to take action, the Supreme Court can use its extraordinary powers under Article 142. Although the court cannot pre-determine the disqualification petition from the Speaker, but it can certainly direct the Speaker to take a decision within a reasonable period. In the present case, the disqualification petition was directed to be decided within 3 months, and in exceptional circumstances, this time limit was allowed to be extended. The Supreme Court made the following observation on the role of the Speaker in delaying disqualification petitions –

“The Speaker, being a political entity himself, cannot delay disqualification petitions indefinitely.” [6] - Justice R. Nariman

“There is a growing tendency to deliberately delay decisions on disqualification petitions to aid Defectors. This destroys democracy.” [7]

II. Subhash Desai vs. Governor of Maharashtra [8] - In this case the petition was filed due to the delay of about 1 year on the decision on Shiv Sena Split and disqualification of Members by the Speaker. In which the Supreme Court ordered the Speaker to recognize actual Shiv Sena and to decide on the disqualification petitions in the stipulated time frame.

III. Kiho Sema vs. Speaker, Nagaland Legislative Assembly [9] -The fact of this case is, in the year 2023, Kiho Sema along with some of his other Members joined the Nationalist Democratic Party without resigning from the Naga People's Front. Disqualification petitions were submitted on the basis of voluntarily leaving the political party to the Speaker. Due to the delay in the decision, this petition was filed in the Supreme Court. The Supreme Court issued Order to decide the disqualification petitions within 2 weeks.

IV. K.P. Vivekanand and Padi Kaushik Reddy vs. Speaker of Telangana Legislative Assembly and others [10] (presently pending in Telangana High Court and Supreme Court)- the fact of this case is in the year of 2023, after the Telangana Legislative Election, three The Bharat Rashtra Samithi's M.L.A. joined the Congress party. In January 2024, the petitioners filed disqualification petitions before the Speaker under paragraph 2(1) (a) of the Tenth Schedule alleging that the petitioners had voluntarily given up their membership of the political party. The Speaker did not act on the disqualification petitions for several months. The High Court issued notice to the Speaker and directed an early hearing of the petitions. In February 2025, the petitioners moved the Supreme Court in the case of K.T. Rama Rao and others vs. Speaker, Telangana Legislative Assembly and others. [11] The Supreme Court issued notice to the Speaker and asked, “What is the reasonable period for the

Speaker to take action?" The matter is still pending in the court. But prima facie, the delay by the Speaker again casts doubt on the impartiality of the Speaker.

V.Vinay Saxena and others vs. Speaker of Madhya Pradesh Legislative Assembly and others- In this case the petitioners (Congress MLA Vinay Saxena and others) challenged the delay by the Speaker in deciding the defection petitions on 22 Congress MLAs who joined the BJP in March 2020. The Supreme Court issued notices and directed the Speaker to respond as to when the petitions would be decided. [12]

9.2 Speaker's decision unconstitutional and judicial activism –

Nabam Rebia and Bamang Felix vs. Deputy Speaker, Arunachal Pradesh Legislative Assembly and others [13]-The facts in the case were that in 2015, a group of Congress MLAs in Arunachal Pradesh revolted against Chief Minister Nabam Tuki. They moved a resolution in the House to remove Speaker Nabam Rebia under Article 179(c) of the Indian Constitution. Just before the voting, the Speaker disqualified 14 rebel Congress MLAs under the Tenth Schedule. These MLAs challenged the disqualification order in the Supreme Court. The Supreme Court held that disqualification powers under the Tenth Schedule cannot be exercised by the Speaker after a notice for removal of a Speaker has been served. The Supreme Court quashed the Speaker's order declaring them disqualified.

9.3 Ultra virus Act of Speaker and judicial activism -

Srimanth Balasaheb Patil vs. Speaker of Karnataka Legislative Assembly[14]- The Fact of this case were that during the trust vote in the Karnataka Legislative Assembly in July, 2019, 15 MLAs from Congress and JD(S) did not vote in defiance of their political party whip, leading to the collapse of the coalition government led by H.D. Kumaraswamy. The Assembly Speaker disqualified these MLAs under the 10th Schedule and also ordered that such disqualification would last till the end of the term of the Assembly, meaning they could not contest elections till then. The Supreme Court upheld the Speaker's order disqualifying the MLAs but declared the order setting a time limit for contesting elections again as unconstitutional.

10. Legislative Attempt-

1. Constitution Amendment Bill, 2010 and Constitution Amendment Bill, 2019 [15]- MP Manish Tiwari presented a private member bill in the Council of States, in which the following amendment was proposed regarding the disposal of the disqualification petition in the Tenth Schedule that 60 days were fixed for the disposal of the disqualification petition, but before this, the member was given an opportunity to present his defense within fifteen days and after presenting the defense, the time for confirmation from the concerned political party was also given within 10 days. In case of no confirmation, the Speaker will have to dispose of such petition within 60 days. But this bill could not be passed.

2. Constitution Amendment Bill, 2022 [16] - Recently, in the Council of States MP Raghav Chadha again presented the bill in the House, in which the following amendment was proposed regarding the disposal of the disqualification petition in the Tenth Schedule that a minimum period of 30 and maximum of 3 months was fixed for the disposal of the disqualification petition. But this bill could not be passed.

11. Judicial Suggestion

Kesham Meghchandra Singh v. Speaker, Manipur Legislative Assembly - “We are of the view that Parliament should seriously consider amending the Constitution to replace the Speaker of the House with a permanent independent tribunal headed by a retired Judge of the Supreme Court or the Chief Justice of a High Court...” - Justice R.F. Nariman[17]

12. Reports of Commissions and Committees

Dinesh Goswami Committee Report, May, 1990[18], 170th Report of Law Commission, 1999[19], Election Commission Report on Electoral Reforms, 2004[20], 4th Report of Second Administrative Reforms Commission, 2007[21], 255th Report of Law Commission, 2015 [22] and Association for Democratic Reforms Report, 2021 [23] suggested regarding the deciding authority for disposal of disqualification petition that - “The power to decide on the question of disqualification of a member of the House should be given to the President or Governor, not to the Speaker or Chairman of the House, who will work on the advice of the Election Commission.”[24]

In the report of the National Commission to Review the Working of the Constitution, 2002[25], it was suggested that the Election Commission should be given the right to hear the question of disqualification under the Tenth Schedule instead of the Presiding Officer of the House. [26]

13. Time limit for adjudication of question of disqualification in different countries

Bangladesh- In India, no time limit has been prescribed for deciding cases relating to defection under the Tenth Schedule. In Bangladesh, unlike India, the Speaker has to prepare a report to the Election Commission within thirty days of the first presentation of a petition and the Election Commission shall decide the petition within 120 days and inform the Speaker. The decision of the Election Commission is final and no appeal lies against such decision. [27]

Pakistan- In Pakistan, the Presiding Officer, on receipt of information from the head of the political party concerned regarding the defection of a member, shall place it before the Election Commission for its decision within two days of the receipt of such information, which Election Commission shall give its decision within 30 days from the date of receipt of such information. Any party not satisfied with the decision of the Election

Commission has the right to appeal to the Supreme Court within thirty days of such decision and the Supreme Court is bound to decide the case within three months. [28]

14. Conclusion and Suggestion

The court also said that “the Speaker acting like a tribunal is against the basic concept of justice. He has been continuously associated with a political party and cannot act impartially.” - Justice Jeevan Reddy (Kihto Halohal vs. Jachillu) [29]

In parliamentary democracy, the speaker is such a respectable position that it is expected of him that he will conduct all the proceedings of the house in such a way that the dignity and discipline of the house is maintained and the work of the house continues smoothly. In this context, under the tenth schedule, the speaker was given the right to decide on the question of disqualification of a member of the house, but the speaker's ability to discharge this responsibility impartially has always been viewed with doubt. The valid reason for this is that he was previously associated with the political party of the government and he will definitely join that previous political party again after the completion of his tenure as speaker. In such a situation, it does not seem possible for that speaker to work impartially without any influence of any political party in resolving the disqualification petitions.

Thus, a study of recent cases shows that the Speaker's delay in deciding the disqualification petition in so many cases cannot be a mere coincidence. This partisan behavior of the Speaker is defeating the objectives of the Tenth Schedule because if there is a delay in deciding the disqualification petition, the rebel MLA/MP remains in his post till the decision and in many cases, such cases have come up where the decision is not given till the end of the term of the House, there is no justification for the Tenth Schedule. The judiciary has shown activism in these cases. Recently, in the case of Keisham Meghchandra Singh vs. Speaker, Manipur Legislative Assembly [30], the Supreme Court had directed three months for the Speaker to resolve the disqualification petition and suggested setting up an independent body for adjudication on the disqualification petition instead of the Speaker. In this direction, MPs Manish Tiwari and Raghav Chadha also made efforts to set a time limit for the disposal of the disqualification petition in the Tenth Schedule through the Constitution Amendment Bill, 2019 and Constitution Amendment Bill, 2022 respectively, but they were not successful. Various committees and commissions in their reports suggested that the right to adjudicate under the Tenth Schedule should be given to the President in the case of Parliament and the Governor in the case of the state instead of the presiding officer of the House, who will work on the advice of the Election Commission. In countries like Bangladesh and Pakistan, this responsibility has been entrusted to the Election Commission and a time limit for adjudication has been set.

Suggestion: - "The power to decide on the question of disqualification should be given to the President in the case of any member of the House of the People and the Governor in the case of any member of Legislative Assembly, who will act on the advice of the Election Commission.

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