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An Exigency to Revisit Anti-Defection Law in India

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ABSTRACT

Defection is not a good word in most of the political instances. In India, the label of political parties plays a vital role in election of representatives. Floor changing after being elected as representative of people is almost a betrayal committed against the will of the people especially when the electorates hold their trust on the potential of any political parties. On the other hand, the laws which restrict defections have serious adverse effects in practice. Ideally speaking, a political leader after being elected to any House of representatives, has only minimum to do for his political party whereas, he holds many responsibilities against the electorates who chose him. Thus, a representative must be free from any unreasonable restrictions even from the part of the political party he belongs for the purpose of ensuring the interests of the people he represents. At this point, the relevance of revisiting the anti-defection law prevailing in India comes into play. This paper deals with the analysis of anti-defection law in India and also includes a brief comparative study of law relating to defection in India, United States and United Kingdom. In the conclusionary part, the researcher also provides with few suggestions for bringing a balance between the interests of the electorates and need for preventing the floor change of political leaders.

Keywords: *Anti-defection, Parliament, Democracy, Election, Electorate.*

I. INTRODUCTION

Democracy, as correctly defined by Abraham Lincoln, “is the Government of the people, by the people and for the people.” The will of the people is expressed through the ballotbox and it is the opportunity given to the people to express their will. The ballot determines the representatives of the people which would run the Government. Election is thus a vital component and it plays a pivotal role in a democratic system of governance. In a democracy, emergence of political parties with different and diverse ideologies is usual and natural. Free, fair and healthy competition amongst political parties at the hustings for wresting power to govern the country is indicative of a vibrant democracy. Political parties give concrete shape

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to different ideologies and are essential for success of any democracy. However, defections are a matter of concern for the political party system.² India is having anti-defection law in force for nearly three decades. Anti-defection law is inserted in the Constitution of India by way of the 52nd Amendment in 1985 under the Tenth Schedule (Schedule X). India was forced to introduce this law after witnessing as many defections in one year as it had in the four Lok Sabhas preceding it. The amendment was intended to bring stability to the structure of political parties and strengthen parliamentary practice by banning floor-crossing and thereby to avoid horse-trading practice in Indian politics. The delay to deal with this issue had led to rampant horse-trading and corruption in daily parliamentary functioning. Schedule X was thus seen as a tool to cure this practice and corruption. The import of this constitutional measure meant that once a member was elected under the token of a political party to Parliament, the member could not later opt to leave that party or switch to another party. Similarly, independent members of Parliament on the other hand would be liable upon moving to the folds of a political party subsequent to the election.³ But the point to be noted is that, if a member votes or abstains from voting in such House contrary to any direction issued by the political party to which he belongs or by any person or authority authorised by it in this behalf, without obtaining, in either case, the prior permission of such political party, person or authority and such voting or abstention has not been condoned by such political party shall be disqualified under paragraph 2(1)(b) of schedule X. This provision curtails a member's freedom of speech and his right to vote in favour of his opinion regarding a motion in the House.

II. ANTI-DEFECTION LAW IN INDIA

The anti-defection law is prevailing in India for more than three decades. The political situations in India can be studied by dividing the period of time into two based on anti-defection law. Namely, the era before the introduction of anti-defection law and the era after its introduction.

(A) Era Before the Introduction of Anti-defection Law in India

Defections are not at all new to Indian politics. From the period of pre-independence Central Legislative Assembly and Provincial autonomy days we can witness defections in the functioning of Indian parliamentary democracy. It is interesting and important to note that during Montford Reforms, a member of the Central Legislature named Shyam Lal Nehru was expelled from Congress party by Pandit Moti Lal Nehru, who was the leader of the Congress

² Dr. SUBHASH C. KASHYAP, ANTI-DEFECTION LAW AND PARLIAMENTARY PRIVILEGES 62 (Universal Law Publishing 2011).

³ Rajiv Khare, *Anti-defection Law: A Redundant Legislation*, 16-17 ALJ 159, 160-163 (2001).

party during that period. Shyam Lal Nehru was elected on Congress ticket but subsequently he joined the British side. This floor changing was the reason for his expulsion. Such act committed by him was strongly criticized and condemned by other members of the party.

After independence India witnessed various splits in the political parties especially in Congress which was the major power of that time. Congress Socialist Party left the Congress in the year 1948. The Congress Socialist Party also directed all its members to resign from their seats in the assemblies and to face a re-election. Even though it was a good and decent step, this ideal could not become a precedent. In 1950, twenty-three MLAs defected from the Congress and jointly established the Jana Congress in Uttar Pradesh. Again in 1958 Indian democracy witness a massive defection. Ninety-eight MLAs openly defied the Government and this time the impact was significant. The defection led to the fall of Sampurnanand ministry. The Praja Socialist Party (PSP) is another good case of defection in the era before the introduction of anti-defection law in India. In 1953 Prakasam, who was the leader of Praja Socialist Party floor crossed from PSP and joined the Congress for the sake of forming the Government in Andhra Pradesh. More or less some defections have been taking place in all the states but did not succeed to create a good wave. For instance, during the period 1957-1967, ninety-seven members defected from the Congress and 419 defected to it. While in 1967-68 within a year 175 defected from it and 139 defected to it.⁴

(B) General Elections, 1967- Formation of Coalition Government

Widespread political defections happened after fourth general elections held in the year 1967 by elected M.P.s and M.L.A.s as the political parties failed to attain absolute majority to form Government at the center. Absence of a strong anti-defection law to ensure the stability of political parties and the elected representatives further accentuated the problem. Some M.L.A.s changed parties three or four times in a day just for monetary gain and out of the greed for power.

In the fourth general election, even though Congress attained a majority of 283 seats out of 520 seats in the Lok Sabha, the party could not secure absolute majority in eight of the Sixteen States of the Union that went to the polls. Even in States where the Congress party retained control, its strength was much diminished. However, in the eight States where Congress miserably failed to get absolute majorities no other party has taken its place. The 1967 elections can be said as the starting point of the dual era of short-lived coalition governments and politics of defection, even though a series of defections happened in India before 1967.

⁴ Paras Diwan, *Aya Ram Gaya Ram: The Politics of Defection*, 21 JILI 291, 295-307 (1979).

However, the fourth general election broke the monopoly of Congress party. As a consequence of fourth general elections, the virtual monopoly of political power by Congress party that they held even before independence was shattered away. The opposition saw this situation as an opportunity to seize power. But the opposition was highly disunited so that the political parties which fought tooth and nail against each other at the polls from time to time forgot their political and ideological differences and came forward to share power on the basis of what was called the common minimum program. The only aim of the opposition was to overthrow the monopoly of Congress party and to form government.

Between the fourth and the fifth general election of the Lok Sabha and the Legislative Assemblies in the States and the Union Territories, there were nearly 2,000 cases of defection and counter defection. Defection became a common political strategy used by a political party to weaken the opposite party. Approximately 50 per cent of the legislators had changed their party affiliations by the end of 1971 and some of the members did in 1972 also. Many members did floor crossing more than one time. For some time, we can see an average of more than one legislator was defecting each day and almost one State Government falling each month due to these defections by the members. In the case of State Assemblies alone, an average of 50.5 percent of the total number of legislators changed their political affiliation at least once. The percentage would be even more alarming if such States were left out where Governments happened to be more stable and changes of political affiliations or defections from parties remained very infrequent. It was during this time a political horse trading happened all over India.

The phenomenon of defection became clearer and more evident after the fourth General Elections held in the year 1967 about which the figures speak for themselves. It is to be noted that till 1967, there have been about only 400 defections happened in India and within one year from the election of 1967, five hundred odd defections happened in India of which the figures also say, 118 were by persons who became Ministers or Ministers of State. The problem became so important during this period for the purpose of preserving the best traditions of democracy and of setting certain norms of political behaviour.

The following table shows the number of defections happened between March 1967 to March 1970 from one party to another or to independent side.⁵ In six states namely Haryana, Punjab, Bihar, Madhya Pradesh and West Bengal even the Chief Minister-ship went to a defector and most of the defectors were included in the ministry.

⁵ KASHYAP, *supra* note 1, at 83.

| Sl. No. | Name of the States | Defection by member of political party | Defection by Independent member | Total No. of Defection |
|---------|--------------------|----------------------------------------|---------------------------------|------------------------|
| 1. | Uttar Pradesh | 294 | 58 | 352 |
| 2. | Madhya Pradesh | 237 | 25 | 262 |
| 3. | Bihar | 161 | 41 | 202 |
| 4. | Gujarat | 142 | 16 | 158 |
| 5. | Andhra Pradesh | 73 | 57 | 130 |
| 6. | Punjab | 114 | 16 | 130 |
| 7. | Haryana | 85 | 24 | 109 |
| 8. | Mysore | 79 | 23 | 102 |
| 9. | Orissa | 61 | 3 | 64 |
| 10. | Kerala | 35 | 5 | 40 |
| 11. | Rajasthan | 25 | 6 | 31 |
| 12. | Tamil Nadu | 19 | 1 | 20 |
| 13. | Maharashtra | 19 | 1 | 20 |
| 14. | Himachal Pradesh | 5 | 7 | 12 |
| 15. | Assam | 2 | 2 | 4 |
| 16. | Jammu & Kashmir | 3 | Nil | 3 |
| | TOTAL | 1562 | 313 | 1875 |

(C) Formation of the Committee on defection

On August 11, 1967, P.Venkatasubbaiah who was a prominent Congress member of the Lok

Sabha and also the Secretary of Congress party in Parliament, moved a non-official resolution seeking appointment of a Committee on Defections. The Lok Sabha discussed about the resolution on November 24 and December 8, 1967. The resolution was adopted by the House with an amendment. The said amendment was proposed by S.S.P. leader Madhu Limaye. The resolution was passed by the House. The House opined that a high-level Committee which consist of representatives of political parties and constitutional experts must be set up immediately by the government to consider the problems of legislators changing their allegiance from one party to another and their frequent crossing of floor in all its aspects and make recommendations in this regard for the purpose of protecting the smooth functioning of democratic government.

In the light of the Lok Sabha Resolution, the Government of India decided to appoint a Committee in February 1968. The Committee was named as the Committee on Defections under the Chairmanship of the then Union Home Minister, Shri Y.B. Chavan to study the problems of political defections in detail and suggest effective remedial measures in this connection. Home Minister Y.B Chavan described defections as “a national malady” which was “eating into the very vitals of our democracy”. The Committee held six meetings on March 26, April 18, May 12, July 14, August 8 and September 28, 1968. The report of the Committee on Defections was signed on January 7, 1969 and the same was presented to Parliament on February 18, 1969.⁶

The Committee formed for studying about the defection after a careful consideration has accepted a definition of ‘defector’. According to the Committee a defector is “an elected Member of a Legislature who had been allotted the reserved symbol of any political party, can be said to have defected if, after being elected as a member of either House of Parliament or of the Legislative Council or the Legislative Assembly of a State or Union Territory, he voluntarily renounces allegiance to or association with such political party, provided his action is not in consequence of a decision of the party concerned.”

The Committee on Defections also made several recommendations suggesting ethical, political, constitutional and legislative solution of the problem in hand. The important recommendations of the Committee were:

- (i) A code of conduct must be adopted by every political party which has to be taken against a defector at the time of floor crossing;
- (ii) A representative should be deemed to be bound to the party under whose support he

⁶ KASHYAP, *supra* note 2, at 95.

wins the election. This follows from a clear understanding of the nature and character of representation and the duties of an elected representative towards his political party;

(iii) Any person who was not initially a member of the Lower House should be appointed as Prime Minister or Chief Minister and any necessary amendment to this regard should be given prospective effect;

(iv) No defector shall be appointed;

(v) There should be a ceiling on the size of ministries both at the Centre and the State levels. This was considered necessary because the number of people who were included in the Council of Ministers sometimes appears to be unending. As the life of the Government proceeded, the Council of Ministers went on inflating. And sometimes it was found that most of the members of the party forming the government were in the Council of Ministers. Therefore, in order to find the solution to this problem, the recommendation was made by the Committee that there should be limitation on the size of the Council of Ministers.

(vi) The Committee on Defections recommended, inter alia: "Articles 102 (1)(e) and 191 (1)(e) of Constitution empower Parliament to make a law providing for disqualification a person for being chosen as, and for being, a member of either House of Parliament or of the State Legislative Assembly or Legislative Council. As standing for election to Parliament or State Legislature is only a statutory right as distinguished from a fundamental right, it is open to Parliament to impose such restrictions or conditions on the exercise and enjoyment of that right as it considers necessary or reasonable restriction in public interest. On that basis, it is possible to provide in a special legislation that a legislator who renounces the membership of or repudiates his allegiance to a political party shall be disqualified from continuing as a member of Parliament/State Legislature."

(D) Introduction of Anti-defection Law in India

Sufficient damage was caused to the political moral and ethics in the country due to the lapse of the second Bill. In his Address to both Houses of Parliament assembled together on 17th January, 1985 the President of India said that the Government intended to introduce in that session a Bill to outlaw defections. That assurance was fulfilled by the Government by the way of introducing the Constitution (Fifty-Second Amendment) Bill in the Lok Sabha on 24th January, 1985. The reasons and objects appended to the Bill states that the frequent floor crossing of the members of the House has become a threat to the fundamental features of democracy and its principles. The Bill seeks the amendment to the Constitution providing that an elected member of Parliament or a State Legislature, who has been elected as a candidate

under the ticket of a particular political party and a member of Parliament or of any State Legislature or who is a member of a political party at the time he takes his seat within six months after he takes his seat would be disqualified on the ground of defection. The ground of defection is specifically mentioned in the Bill. A member is said to be defected if he voluntarily relinquishes his membership of such political party or votes or abstains from voting in such House contrary to any direction of such party or is expelled from such party. This disqualification is also relevant to an independent Member of Parliament or a State Legislature shall also be disqualified if he joins any political party after his election. A nominated member of Parliament or a State Legislature who is not a member of a political party at the time of his nomination and who has not become a member of any political party before the expiry or six months from the date on which he takes his seats shall be disqualified if he joins any political party after the expiry of the said period of six months. The Bill also considered the splits in, and mergers of political parties. It is to be noted that a special provision has been included in the Bill to enable a person who has been elected as a presiding officer of a House to sever his connection with his political party for the purpose of avoiding the chaos in the political parties. The question as to whether a member of a House of Parliament or State Legislature has become subject to the proposed disqualification shall be determined by the presiding officer of the House and where the question with reference to the presiding officer himself, it will be decided by a member of the House elected by the House in that behalf.

The said Bill was passed by Lok Sabha and Rajya Sabha on 30th and 31 st January, 1985, respectively. It received the assent of the President on 15th of February, 1985. On 1 st March, 1985 the Act came into force after issue of the necessary notification in the Official Gazette. The Constitution (52nd Amendment) Act, 1985, amended Articles 101, 102, 190 and 191 of the Constitution regarding vacation of seats and disqualification from membership of Parliament and the State Legislatures. The Act also added a new Schedule (10th Schedule) to the Constitution setting out certain provisions as to disqualification on grounds of defection. The Schedule X of the Act provides that;

a) An elected member of Parliament or a State Legislature, who has been elected as a candidate set up by a political party and nominated member of Parliament or a State Legislature who is a member of a political party at the time, he takes his seat would be disqualified on the 16 grounds of defection if he voluntarily relinquishes his membership of such political party or votes or abstains from voting in the House contrary to any direction of

such party;⁷

b) An independent member of Parliament or a State Legislature will be disqualified if he joins any political party after his election;

c) A nominated member of Parliament or a State Legislature who is not a member of a political party at the time of his nomination and who has not become a member of any political party before the expiry of six months from the date on which he takes his seat shall be disqualified if he joins any political party after the expiry of the said period of six months;

d) No disqualification would be incurred where a member claims that he belongs to a group representing a faction arising from a split in a party or merger of a party in another provided that in the event of a split the group consists of not less than one-third of the members of the legislature party and in case of a merger of not less than two-thirds of the members of the legislature party concerned;

e) No disqualification is incurred by a person who has been elected to the office of the Speaker or the Deputy Speaker of the House of the People or of the Legislative Assembly of a State or to that office of the Deputy Chairman of the Council of States or the Chairman or the Deputy Chairman of the Legislative Council of a State, if he serves his connection with his political party;

f) The question as to whether a member of a House of Parliament or State Legislature has become subject to disqualification will be determined by the Chairman or the Speaker of the respective House; where the question is with reference to the Chairman or the Speaker himself it will be decided by a member of the concerned House elected by it in that behalf;

g) The Chairman or the Speaker of a House has been empowered to make rules for giving effect to the provisions of the Schedule. The rules are required to be laid before the House and are subject to modifications/disapproval by the House;⁸

h) All proceedings in relation to any question as to disqualification of a member of a House under the Schedule will be deemed to be proceedings in Parliament within the meaning of Article 122 or, as the case may be, proceedings in the Legislature of a State within the meaning of article 212;

i) Notwithstanding anything in the Constitution, no court will have any jurisdiction in respect of any matter connected with the disqualification of a member of a House. Paragraph

⁷ Schedule 10, the Constitution of India.

⁸ G. C MALHOTRA, ANTI-DEFECTION LAW IN INDIA AND COMMONWEALTH, 104-06 (1st ed., 2005).

7 of the Schedule X of Constitution of India.⁹

(E) The Constitution (91st Amendment) Act, 2003

For strengthening and amending the Anti-defection law contained in the Tenth Schedule to the Constitution of India, demands were made from time to time on the ground that these provisions have not been able to achieve the desired goal of checking defections. The fact that it allows bulk defection while declaring individual defection as illegal has also been criticised. Another important criticism against the anti-defection law is the provision providing exemption from disqualification in case of split as provided in paragraph 3 of the Tenth Schedule to the Constitution of India on account of its destabilising effect on the Government. It is important to note that the Committee on Electoral Reforms (Dinesh Goswami Committee) in its report in the year 1990, the Law Commission of India in its 170th Report on “Reform of Electoral Laws” (1999) and the National Commission to Review the Working of the Constitution (NCRWC) in its report of March 31, 2002 have recommended omission of paragraph 3 of the Tenth Schedule to the Constitution of India which lays down exemption from disqualification in case of splits, which was an important criticism against the anti-defection law. Many of these recommendations of the Commission was accepted and implemented by The Constitution (Ninety-First Amendment) Act, 2003 even if only partially. A new Article 361 B was inserted into the Constitution of India and Articles 75 and 164 were amended by the way of this Act. The Constitution (Ninety-First Amendment) Act, 2003 provides that-

(i) the total number of Ministers in the Council of Ministers both at the Union and the State level shall not be more than 15% of the number of Members in the House of the People, provided that the number of ministers in a state shall not be less than twelve;¹⁰

(ii) provides that a member of either House of Parliament or of a State Legislature belonging to any political party who is disqualified under paragraph 2 of the Tenth Schedule shall also be disqualified to be appointed a minister or hold a remunerative political post for the duration of the period commencing from the date of disqualification till the date on which term of his office as such member expire or where he contests an election to either House of Parliament or Legislature of a State, before the expiry of such period till the date on which he declared elected, whichever is earlier;¹¹

⁹ KASHYAP, *supra* note 2, at 124.

¹⁰ INDIA CONST. sec. 3, *amended* by The Constitution (Ninety-first Amendment) Act, 2003.

¹¹ INDIA CONST. sec. 4, *amended* by The Constitution (Ninety-first Amendment) Act, 2003.

(iii) The Act omitted the provision regarding splits from the Tenth Schedule to the Constitution of India.¹²

III. ANTI-DEFECTION LAW PREVAILING IN INDIA: AN ANALYSIS IN THE LIGHT OF LESSONS FROM US AND UK

Defection law was introduced in India in order to check the rampant practice of parliamentarians relinquishing their original parties to join rival political groups. The need to check this mischief was heightened by the fact that defection was being used as a tool to engineer the toppling and formation of governments. Anti-defection law was thus seen as an instrument for the reaffirmation of India's democratic ideals by ensuring that only citizens have a say in government making.

On the other hand, we can observe that Schedule X has created profound anti-democratic ramifications in the Indian polity. In our parliamentary system where decisions have to be taken through debate and discussion. But, Paragraph 2(1)(b) seems to have curtailed both. It mandates that once the political party or a person authorised by such party has directed voting on a matter in a particular way, a parliamentarian cannot vote in a contrary manner. The authorised person specified here refers to the whip of a political party, a formulation borrowed from the British Parliament. Whips, as parliamentary functionaries, ensure attendance of party members and enforce voting according to party stance. From this point we can observe that the anti-defection law, which ought to protect the democratic values, on the other hand hinders the effective functioning of the Parliament. Here the practice of US and UK becomes relevant, where the members of the House have the freedom to vote in contrary to the party stance and according to their conscience.

Another important point is that the Parliament does not merely exercise a check on the functioning of the Executive but also includes discussing matters of public interest and voting on bills. Prior to voting, however, it is expected that a thorough debate on the issue will be undergone in the House. The British Parliament, for instance, uses debate as the tool for discharging its functions. These functions, sourced from a medieval understanding regarding the functions of the Parliament, refer to any meeting for a speech or conference. This function has been affirmed by scholars who regard Parliament to be a body entrusted with the task of discussing the different policies of the Government. This responsive function is exercised effectively through constant scrutiny of all the matters brought forward by the Government. Parliamentary debates are mandated as a part of such an institution, as it ensure that no pillar

¹² INDIA CONST. sec. 5, *amended by* The Constitution (Ninety-first Amendment) Act, 2003.

of the Government is left unregulated.¹³

The importance of debates and discussions is pivotal and it is an intrinsic feature of the Indian legislature as well. Tellingly, Ryle and Griffith argue that discussions must be of such a nature that the government defends its proposals in response to criticism and alternatives laid down by the opposition against such proposal. Another important fact to be noted is that the manner in which debate is conducted in the legislature must be fair enough. The operation of Paragraph 2(1)(b) has, however, worked against this theoretical assumption which gives importance to the practice of debates. For the purpose of an effective debate which results in the introduction and implementation of good policies and schemes, all members in the House must have their freedom of expression and speech without having a fear of defection in case of his contrary individual stance against the party lines regarding a subject.¹⁴

Premised on the actions of debate and discussion, all procedures and rules of functioning of Parliament must be aimed towards facilitating the welfare of the general public. The scope of free debate arises only if there is a scope for parliamentarians to express dissent. This dissent shall be evident only in the form of discussion and most importantly, through vote as well. The right to vote without encumbrances is paramount to free speech. Considering that members enjoy a broad privilege concerning speech and expression, same protection must be given to the voting rights of the members in the House and be exercised freely without any restriction. Further, curtailing this privilege by way of Paragraph 2(1)(b) makes the functioning of the Parliament less productive. The stance of a political party is mostly the stance of the leaders of such party and the others member-parliamentarian of the party must follow the stance of such leaders of the party. This curtails the freedom of expression of the members in the House.¹⁵

Defections are seen as an action which demolish the democratic nature of the Parliament. Being disloyal to the party, under the token and strength of which a member has come to power, was widely seen as an act stemming from corruption and bribery. Consider the case of parliamentarians who aid the toppling of their own government and then jump to become ministers in consequent governments which lead by the opposite political parties with different political ideologies. It would surely require a faith which is beyond the boundaries of reason to consider that such acts stem from uncolored dissent and not from an illegal

¹³ Kartik Khanna and Dhvani Shah, *Anti-defection Law: A Death Knell for Parliamentary Dissent?* 5 NUJS L Rev 103, 122-123 (2012).

¹⁴ KASHYAP, *supra* note 2, at 186.

¹⁵ Diwan, *supra* note 4.

incentive. In light of this short history, it is clear that Schedule X aims to tackle corruption as well. In fact, Paragraph 2(1)(b) of Schedule X does not meet this objective and falls short of adequately dealing with bribery in Parliament.¹⁶

The case of P.V. Narasimha Rao v. State¹⁷ is the very suitable example which shows why corruption in voting will persist. This case dealt with a no-confidence motion initiated against the P.V. Narasimha Rao led coalition government in the year 1991. The government overcame the challenge by a margin of 14 votes. After the voting, it was alleged that bribes had been given to members of Jharkhand Mukti Morcha and supporters of Janta Dal, for the purpose of defeating the motion. FIR was lodged against Narasimha Rao to that effect as well. The Special Judge of the CBI Court took cognizance of the offences of bribery and criminal conspiracy, in the case. The Delhi High Court affirmed this holding by the CBI court.

The challenge before the Supreme Court concerned the issue of whether a parliamentarian shall be protected from being prosecuted in a criminal court for voting caused from a bribe by virtue of the privilege vested in Art. 105(2) of the Indian Constitution. The majority judgment held that a parliamentarian cannot be charged under the Prevention of Corruption Act and Indian Penal Code for conspiracy and bribery in light of the privilege ensured under Art. 105. The said Article provides that no member of Parliament can be held liable in court with respect to anything said or any vote cast in the Parliament.¹⁸

IV. CONCLUSION AND SUGGESTIONS

Anti-defection law is in force in India for more than three decades. The question whether they protect the fundamental features of democracy by forbidding the practice of horse-trading and corruption in politics or they destroy the efficient working of the Parliament and state legislatures by hindering the freedom of speech and expression of members is an important matter of discussion time to time. Some argue that it is necessary to have laws against political defections for preventing the frequent floor-crossing of members from one political party to another and to enhance the stability in the House and also in the political parties. The history of India also shows that anti-defection law is much necessary in a country like India which witnessed defections and counter-defections by the members in the House for individual benefits. Without any doubt it is clear that such practices will negatively influence the working of the legislature and executive and ultimately affects the progress of the country as a whole. But the question here is that whether the anti-defection law prevailing in India meet its correct

¹⁶ Diwan, *supra* note 4.

¹⁷ P.V Narasimha Rao v. State, (1997) CriLJ 961 (India).

¹⁸ INDIA CONST. art. 105.

goals or we are barking up the wrong tree.

The current anti-defection law in India hinders the member's freedom of speech and expression and also his participation in a free debate. The anti-defection law enumerated in Schedule X of Constitution induce a fear of defection into the members of the House in case of their view in contrary to the stance of their political party. The stance of the party is decided by the leaders of such party and the anti-defection law binds the members with the point of view of such view in a mechanical manner without having a freedom to dissent. Here the lessons from UK and US becomes relevant. Both countries have not implemented antidefection law. The members in the House have their freedom of expression and can effectively participate in the free debate without having any fear regarding the defections. The members can act upon their conscience and the stance of the party is immaterial. Both countries have witnessed numerous defections in their parliamentary history, but both the countries gave more emphasis upon the effective participation of the members. In both the countries defection is an internal matter of every political party and which is not a matter which has to be dragged inside the House. At the same time Singapore has implemented anti-defection law which lay down that any member who voluntary relinquish his membership from his original political party under the token which he was elected to the house or if he is expelled from such party, then his seat in the House shall be vacated. The Constitution of the republic of Singapore also does not hinders the member's freedom of speech and expression. Supreme Court of India also did not make any sensible ruling in cases related to political defections as of now. In the year 1996 Supreme Court of India held that the nominated or elected Member of Parliament is bound by its whip even after his expulsion from the party. Recently, in the year 2016, a bench headed by Justice Ranjan Gogoi disposed of pleas filed by Amar Singh, a known politician from Uttar Pradesh, an actor-turned-politician Jaya Prada and Pyarimohan Mohapatra, who was expelled from the BJD in 2012, terming them "infructuous". The Court refused to revisit its 1996 ruling. Another important point to be noted is that the judgement held in P.V Narasimha Rao's corruption case is not yet overruled by the Supreme Court which allows the parliamentarians to take the cover of their privileges laid down under Art 105 of Constitution in the cases of corruption and bribery. This will ultimately destroy the goals of anti-defection law in India which stands for preventing the horse-trade and corruption in Indian politics. Anyhow, Supreme Court very recently on January, 2020 asked the parliament to amend the anti-defection law which confers power upon the speaker of the House to disqualify MPs and MLAs on the ground of defection. The three-judge bench led by Justice N.V Ramana stated that a speaker is also a member of a political party and also

questioned that why an insider should be the sole final arbiter in defection cases.¹⁹

It is doubtful whether India can adopt a model, similar to that in the US in case of adjudication upon the legality of a defection of any member. Even though the defection process is governed internally in the US and UK, while it is dealt with by the Parliament in India, the latter must take lessons from the extent of sanctions that can be imposed by a political party upon the member, especially the in case of sanctions which affects the performance of the members in the House. The imposition of sanctions can be watered down in India to only allow expulsion of a defecting member from his party without costing him his seat in the Parliament and by making it an internal issue of every political party. Even though it is doubtful that whether defections can be made as an internal issue of a political party, it is of no doubt that a speaker shall not be given the ultimate and final power to determine upon the matters of defection. Also, the whip's control over the members of a political party even after their expulsion shall also be amended. The Parliament shall also recheck whether the current antidefection law is capable of achieving the goals for which it is enacted.

¹⁹ Krishnadas Rajagopal, *SC again highlights taking away disqualification power from Speakers*, THE HINDU (21/01/2020), <https://www.thehindu.com/news/national/sc-asks-parliament-to-rethink-powers-of-the-speaker-in-disqualification-of-ministers/article30615269.ece>.