

Recent Trends of Frequent Defection of Members of Legislative Assemblies and Related Apex Court Verdicts: A Critical Study

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Abstract

The federal system of India has been guaranteed under the Indian Constitution to ensure independent functioning of state legislatures by their elected members, but unfortunately a frequent trend of defection have been witnessed. The anti-defection law was introduced to prevent such political defections by inserting tenth schedule in the Constitution of India in 1985. Still, several loopholes in law have permitted defections on several occasions and so many cases have been adjudicated by many High Courts and Supreme Court in this regard. Unfortunately, there are enough evidences of justice delivered in a flip-flop manner. Serious anomalies in decisions given by speakers and governors, in judgements delivered by respective High Courts and even the Supreme Court of India have failed to protect the aim and objective of Constitution of India as well as basic rights of citizens of India. In this article we have tried to critically address today's scenario of political defections and role played by the judicial system.

Keywords: Defection, MLA, Speaker, High Court, Supreme Court.

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INTRODUCTION

After the Independence of India and adaption of the Constitution in the year 1949 and its implementation in 1950, India originated as a Federal system of different States. The Constitution of India provides for the regulation of States through special provisions under Part VI, VII, and VIII.

Article 178 of the Constitution of India provides for the Speaker and Deputy Speaker of the Legislative Assembly and states that- Every Legislative Assembly of a State shall, as soon as may be, choose two members of the Assembly to be respectively Speaker and Deputy Speaker thereof and, the position of the Speaker/Deputy Speaker vis-à-vis the State Legislative Assembly is similar to that of the Speaker/Deputy Speaker of the Lok Sabha [1]. As regards to the office of the Speaker, the Madras High Court in the case of K.A. Mathialagan vs P. Srinivasan And Ors., 1973 [2] on 27 February, 1973 [AIR 1973 Mad 371] observed, "The office of Speaker being obviously an office resulting from election or choice, the person so chosen holds the office during the pleasure of the majority. The Speaker is undoubtedly a servant of the House, not its Master and the authority

transmitted to him by the House is the authority of the House itself which he exercises in accordance with the mandates, interests and well-being of the House".

Before a member takes his seat in the House, he has to make and subscribe before the Governor or some person appointed by him for this purpose, an oath or affirmation in the prescribed form. The oath emphasizes that the member shall bear faith and allegiance to the Constitution of India as by law established and that he will uphold the sovereignty and integrity of India and further that he will faithfully discharge the duty as a member of the Assembly. It is compulsory for a member to take an oath or make an affirmation. Without doing so, he cannot function as a member of the House. Article 188 provides for oath or affirmation by members- "Every member of the Legislative Assembly or the Legislative Council of a State shall, before taking his seat, make and subscribe before the Governor, or some person appointed in that behalf by him, an oath or affirmation according to the form set out for the purpose in the Third Schedule" [3].

At the time of Rajiv Gandhi Government, a member of Legislative Assembly of Haryana, Gaya Lal

changed his party thrice within the same day in 1967. The problem of defection remained more rampant in the States leading to government instability. The Committee of Governors, reporting in 1971, pointed out that in States, defection became very widespread after the elections of 1967. From March 1967 to August 1970, there were 1240 defections in the States, and most of these defections took place because of the promise of reward of office, or were engineered by other “means not too honourable”. Many governments fell because of defections which denote selfish, unprincipled political manoeuvring on the part of the defectors. Ultimately Anti-Defection Law was passed to discourage defections both at National and State level [4].

The anti-defection law introduced to prevent such political defections which may be due to reward of office or other similar considerations. It was inserted by the Tenth Schedule in the Constitution in 1985. It lays down the process by which legislators may be disqualified on grounds of defection by the Presiding Officer of a legislature based on a petition by any other member of the House. But the law has not been proved very effective in checking defections and the members keep defecting from one party to another party, ignoring the objective of the assembly. Several times such matters have been taken up by the Honourable Supreme Court of India. Analysis of these Cases shows that there are loopholes in the anti-defection law. Also, in defining the power of Speaker and Governor and in the Justice delivery system of the High courts and the Apex Court. The various Supreme Court verdicts and the decisions taken by the respective Speakers and Governors from time to time shows fluctuations and due to this, it appears that the basic concept and objective of the election system, formation of Assembly is hampered.

In this article, we are going to analyse and review some major cases of defection and its consequences. The main objective will be to find out that is there any loophole in the Anti-defection law provided by the Constitution and also is there any major loophole is the justice delivery system of the Honourable Supreme Court of India. Further, is there any need for evaluating the power of the Speaker and Governors but also in the delivery system of the judgements to safeguard the interest of the public?

RESEARCH METHODS

The research methods used in this project is non-empirical research methods. The primary data collection is being done from the available secondary sources such as books, journal, articles, statutes etc. Thus, the materials collected for the project are pre-existing/available. The cases from above resources have been critically analysed keeping in mind the improper application of loopholes in existing law and related ambiguity in delivery system of justice.

RESULTS AND DISCUSSION

In 1994, the Supreme Court in the case of S. R. Bommai vs Union of India [5], on 11th March laid down a landmark judgement to prevent arbitrary dismissal of elected Assembly just for political cause but, so many deviations have also been noticed in recent days by overpassing the objectives laid down in Bommai case verdict to achieve political mileage by members of political parties. In these days, Members of Legislative Assemblies are defecting either due to huge money or power offer or by threat also, which leads to instability of the House. The verdict does not address the problem of house trading of the Members of Legislative Assembly by hook and cook, it only addresses the after effect of the main reason and thus, at grass root level justice remains impaired. This may be considered as by-pass of the verdict of Bommai case by political parties.

In Uttarakhand case 2016 [6], it seems that Honourable Supreme Court has paid more attention to ensure fair status of the Assembly. In this case dismissed Assembly was restored on the basis of ensured free and fair floor test, and for that the respective High Court was instructed. The Honourable Supreme Court has allowed even the disqualified Members of Legislative Assembly for participation in vote of confidence and Supreme Court has evaluated itself the vote of all the Members of Legislative Assembly including the disqualified members. In this way the Honourable Supreme Court has nullified the horse trading of Member of Legislative Assembly up-to larger extent. But the same practice was not adopted by the same Supreme Court in several retrospective as well as prospective similar cases which gives evidence of the flip-flop functioning of the Apex Court in such a sensitive matter related to protection of the central dogma of the federal system of the country.

Recent example is the case of Madhya Pradesh Assembly in 2020, in the case of Shivraj Singh Chouhan vs Speaker Madhya Pradesh [7] which so called defected Member of the Legislative Assemblies were not given chance to vote like Uttarakhand case even when the suffering party advocated that defected members are kidnapped by the opposing party. But the Apex Court has completely ignored the matter keeping aside the precedence of 2016 case of Uttarakhand Assembly. A comparative system of both cases reflects lack of full proof system of justice.

In the case of Arunachal Pradesh [8] in 2015, following the defection of some Members of Legislative Assembly of ruling Indian National Congress, the opposition party BJP approached to the Governor for preponement of the Assembly session with agenda of impeachment of the Speaker. The Governor without consulting the Chief Minister and Speaker accepted the demand of opposition, enforced the Assembly in a Community Hall in lieu of Assembly house and as a first agenda, the Speaker was

impeached. On the next day, the Deputy Speaker opened the House in a hotel in lieu of the Assembly House and the Chief Minister was impeached. Here, it is matter of concern that even the Constitutional obligation that the Governor is bound to act on the advice of Council of Ministers (except- 1. While exercising his power of functioning in his own discretion. 2. While exercising his power of functioning in his individual judgement specified in the Constitution of India) the Governor in this case has clearly kept aside the Constitutional obligation and arbitrarily passed order in favour of opposite party. Not only in the Constitution but in many verdicts of the Apex Court it has been clearly mentioned that under such circumstances floor test should be done. But the Governor has ignored every precedent and acted in favour of the opposition.

The impeached Speaker later approached the respective High Court and the High Court ruled that- neither the Governor's discretion nor the proceedings of a Legislature can be challenged in a Court of law under Article 163 and 212 of the Constitution and upheld the action of Governor and Deputy Speaker. Again, the question arises that the High Court has not only explained the power of Governor ignoring the Constitutional provision that- Governor is bound to act on the advice of the Council of Ministers under Article 163(1) of the Indian Constitution. Moreover, the respective High Court has also ignored the landmark verdict of the Honourable Supreme Court in Bommai case that even the President of country cannot dissolve the Assembly without suggestion of both upper and lower house of Parliament and that too will be under the review of the Supreme Court. In this case, the justice delivered by the respective High Court seems not only impugned but also full of ignorance of the Supreme Court precedent.

Later the Speaker approached the Honourable Supreme Court and the Supreme Court held that the action of the Governor was in violation of Article 163 read with Article 174 of the Constitution. The Supreme Court also said that action of Deputy Speaker was also unprecedented and unconstitutional. And also held that all steps and actions taken by the Arunachal Pradesh Legislative Assembly, pursuant to the Governor's order and message dated 09.12.15 are unsustainable and liable to be set aside.

It seems that the verdict of Honourable Supreme Court has done justice, but again several questions arise-

The ignorant and unjustly act of the Governor and the Deputy Speaker of Arunachal Pradesh have caused severe harm to the Federal System of the Nation, although it was corrected by the Apex Court but and elected government had suffered and the citizens of the Country voted for government remained cheated due to

faulty action of the Governor and the Deputy speaker and the non-committed volatile Members of Legislative Assembly, which raises question that our Federal System is immunized or not?

The impugned justice delivered by the respective High Court and the ignorance of the Precedent laid down by the apex court is acceptable to the Nation? Is there not a need of a full proof system, to protect the Federal system of the Nation?

In two Writ petitions filed before the Supreme Court- WP(C) 439 of 2020 and WP(C) No. 449 of 2020, the first was instituted by 10 members of Madhya Pradesh Legislative seeking a Writ directing the Speaker, Chief Minister, and Principal Secretary of Legislative Assembly to hold a floor test in accordance with the direction issued by the Governor. The second Writ petition was instituted by the Madhya Pradesh Congress Legislature Party through its Chief whip seeking diverse reliefs.

In pursuance of the above Writs, the Supreme Court has issued VII points directives which included an order to conduct floor test on 20th March 2020 before 5pm but has fully ignored the claim of ruling party that their 22 Members of the Legislative Assembly have been forcefully kept at Bangalore by the opposition party, evident by the resignation letter of rebel

Members of Legislative Assembly that was submitted by the leader of opposition not by the concerned Members; three chartered planes were managed by the opposition to move the rebel Members; a resort was arranged by the opposition at Bangalore for comfortable stay of rebel Members; the ruling party leaders were prevented by the police force of Karnataka to meet the rebel Members keeping aside the principle of democracy.

However, the Supreme Court instructed Director General of police of Karnataka and Madhya Pradesh to ensure the rights and liberties as citizens of 16 rebel Members of Legislative Assembly but ignored the rights and liberties as citizens of the leaders of ruling party, who were prevented by the same police force of Karnataka to meet the rebel members. This raises question on fair delivery of justice because the act does not only paved the path for manipulating action of opposition, but also paved the path to bypass and misuse the loophole in the Anti-Defection law against its fair compliance.

It is unfortunate that the Supreme Court did not choose to address the concern and claim of Madhya Pradesh Congress seeking access to the rebel Members of Legislative Assembly held in captivity by opposition in Bangalore.

Moreover, the Supreme Court had ignored an opportunity to lift the veil behind the mass resignation of Member of Legislative Assembly which was done to overtake the Anti-Defection law.

In the case of Shromnath Balasaheb Patil v. Speaker of Karnataka Assembly and others [9], the Supreme Court on 13th November 2019, had held that the Speaker had no power to disqualify the member on the ground of defection until the end of the current Assembly. The Anti-defection Law does not prevent the resignation from the Assembly of a legislator who is elected on the ticket of one party and seeking re-election on the ticket of another political party. But the Supreme Court held that the Member of Legislative Assembly who resigns from Assembly, if found guilty of defection by the Speaker on the basis of his/her conduct prior to resignation, the Speaker would be right in disqualifying the member. The fact and taint may not be diluted by tendering resignation to the Speaker. The Supreme Court held that a pending or impending disqualification on action does not become infructuous by submission of the resignation letter, when act(s) of disqualification arisen prior to the Member's resignation letter.

In the same Karnataka case, the bench also fixed the scope of inquiry of the Speaker to accept or reject the resignation of Members of Legislative Assembly and quoted that "once it is demonstrated that a member is willing to resign out of his free will, the Speaker has no option but to accept the resignation. So, on the basis of affidavit submitted by MLA's of Madhya Pradesh case before the Supreme Court stating that they are resigning by their own will provided the Supreme Court a ground to consider voluntary resignation by MLA's but again it was based on only affidavit, not physical inquiry in presence of any interlocutor to establish the fact and truth, to avoid surpassing tendency of the Anti-defection law and to ensure proper justice. It seems that the decision taken by the Supreme Court on the ground of affidavit is not full proof which led to unilateral discussion.

Another important point is the 91st Amendment of the Constitution which ensures that a member disqualified by the Speaker on account of defection is not appointed as a Minister or holds any remunerative political post from the date of disqualification or must the date on which his term of office would expire or he/she is re-elected to the legislature, whenever is earlier.

There is no similar bar on a member who resigns from Assembly until he or she is re-elected, this enabled the rebel Congress MLA's in Madhya Pradesh to join new BJP government as minister before re-election. There is no law and not even a Supreme Court directive to prevent such MLA's to be rewarded by the opposition (of forming government as taken place in

Madhya Pradesh by BJP). This may be considered as big loophole in justice delivered by the Supreme Court which encouraged the Indian politicians to 'defect' and cook a snook at the Anti-defection law and the 91st Amendment of the Constitution.

CONCLUSION

Based on the results and discussions above, it may be concluded that at several occasions the Apex Court of Country has not only delivered contrary decisions but also have not acted in full proof style of functioning to protect the aim and objective of the Constitution and to protect the Federal system of the Country. The Supreme Court has even not paid proper attention to protect the objective of the Representation of people Act 1951. Another important question that is not addressed by the Supreme Court is that the MLAs demand vote from people of India by making several commitments and showing hopes for their welfare but in the mid-way for their own personal gain, not only do they defect from their party but also cheat the people concerned and thus their rights are hampered so often by their own representatives without any punishment to them.

The member of legislative assemblies should be made accountable for their promises which they made to their voters through an existing political party. If they defect from their party, the act should be considered a case of "CHEATING" with the voters. In case of resignation by a MLA, the physical presence of the concerned MLA before Speaker should be secured and he/she should not be allowed to leave the capital without Speaker's permission till the matter gets resolved.

Also, Speaker should be bound to take decision in open house meeting before all other members of legislative assembly in a transparent manner. And member/s willing to resign should explain the reason before open house, only on that basis of this explanation, Speaker should take decision. The decision of Speaker and Governor should be made subject matter of judicial review.

If an act of an MLA comes under category of "CHEATING", then concerned MLA should be PROHIBITED-

- (i) to participate in any general election in his/her life from lowest to highest level,
- (ii) to be nominated as public representative/law maker from lowest to highest level,
- (iii) to enjoy any welfare scheme of nation for whole life.

Lastly, all the suggestions discussed above seem inevitable and are urgent need of hour to protect federal system of country as per aim of constitution of India.

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