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THE INTERPLAY BETWEEN DISSENT AND DEFECTION: TRACING THE DICHOTOMY THROUGH THE CASE OF BALCHANDRA L. JARKIHOLI VS B.S. YEDDYURAPPA

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ABSTRACT

The Tenth Schedule that was introduced through the 52nd amendment in the Indian Constitution[1] predominantly deals with disqualifications of legislative members on the pretext of defection. The paper therefore attempts to dissect the consequence of the aforesaid amendment and the fundamentals of its implementation. Alongside it is important to contemplate upon the indirect approaches adopted by the political parties to appease their lust for throne even when a regulation that acts as an ombudsman is in place. As the retail exchange of the elected members is targeted via the amendment, the bulk exchange remains unaffected. The paper hence tends to examine the themes of motivated dissent amounting to disqualifications by critically gauging Para 2(1)(a), Para 2(1)(b), Para 4 and Para 6 of the Tenth Schedule[2] through the case study of Balchandra L. Jarkiholi vs B.S. Yeddyurappa[3].

INTRODUCTION

Defections have been a loyal participant in the Indian democratic scene since 1967, it is a zero-sum game backed by political groups/parties urging elected members to switch camps either to crumple the established government or to form one when in need of a requisite number. This

[1] The Constitution of India,1950
[2] Ibid.
[3] *Balchandra L. Jarkiholi vs B.S. Yeddyurappa* [2011] 7 SCC 1

power-inspired move resonates with deficient ideological stand and political ethics in a parliamentary system.[4] Subsequently the Anti-Defection Law had been incorporated in the Constitution by way of the 52nd Amendment to preserve the ethos of democracy by imparting the masses with the right to choose their government[5] and not the elected members who are prone to abandon their political affiliations in pursuit of power. In Conjunction with political stability, the Anti- Defection law, provides for transparency in the representatives setup holding the elected heads accountable for their actions.[6] Hence, the incorporation of the Tenth Schedule via this amendment was to provide for disqualification of legislative members on the pretext of Defections.[7] Therefore, this paper sheds light on the specifications of Para 2(1)(a), Para 2(1)(b), Para 4 and Para 6 of the Tenth Schedule by the application of the case Balchandra L. Jarkiholi vs B.S. Yeddyurappa.[8]

FACTS OF THE CASE

On 6th October 2010, the Governor of Karnataka received similar letters from 5 independent MLA's and 13 Bhartiya Janata Party (BJP) MLA's voicing their mistrust in the B.S Yeddyurappa led government.[9] These letters revealed the arbitrary exercise of power by the government and pleaded the Governor's office to intervene in its Constitutional capacity. Consequently, these anxieties of the members and their retraction of support from the government were communicated by the Governor to the Chief Minister, thereby demanding him to evince his majority on the floor of the house by 12th October 2010. The Respondent filed an application on the same day requesting the Speaker to pronounce these MLAs as disqualified under Para 2(1)(a). In lieu of the same, on 7th October 2010, the Speaker issued Show-Cause notices communicating with the MLAs that their acts have led to disqualification from the Assembly. Further, they were given time to communicate their replies in person to the Speaker by 10th October, 2010. The MLAs in their interim replies filed on 09.10.2010 stated

[4] PM Kamath, 'Politics of Defection in India in the 1980s on JSTOR' (*Jstor.org*2024)
[5] Kartik Khanna & Dhvani Shah, 'Anti-Defection Law: A Death Knell for Parliamentary Dissent?' (2012) 5 NUJS L Rev 103
[6] Ibid.
[7] Rangarajan R, 'Understanding the Tenth Schedule | Explained' (*The Hindu*16 January 2024)
[8] Balchandra L. Jarkiholi vs B.S. Yeddyurappa [2011] 7 SCC 1
[9] Ibid.

that the Notice infringed Rules 6 and 7 of the Disqualification Rules, 1986.[10] According to the said Rules, the notice was to be handed over by the Speaker with the copies of annexures and a time span of 7 days for the filing of reply by the MLAs however these were not complied with in the given circumstances. The MLAs also communicated in their interim replies that they are withdrawing support from the Yeddyurappa led government and not from the party thus they cannot be disqualified under Para 2(1)(a).

The Speaker dismissed the disqualification application of 2 MLAs who retracted their withdrawal, and the remaining 11 MLAs were disqualified under Para 2(1)(a) as voluntarily relinquishment of the membership could be deduced by their conduct.[11]

JUDGEMENT

1. **Whether voluntarily relinquishment of the membership of the political party by the Appellants resulted in their disqualification under Para 2(1)(a) of the Tenth Schedule?**

The Speaker referred to the landmark case of *Kihoto Hollohan v. Zachillhu* which establishes the fact that voluntarily relinquishing the party membership can be either expressed or implied.[12] The Speaker thereupon stated that it can be deduced from the actions of the Appellants (media statements) that the support was withdrawn from the B.S. Yeddyurappa led Government, further the BJP State President Shri K.S. Eswarappa alleged the same through supporting documents and an affidavit that were not even rebutted by Appellants. The words of the letters forwarded to the Governor also were The letters posted to the Governor also hinted that the words employed by the Appellant in the said letters were also identical to the words rooted in Article 356 as they requested the Governor to intervene and begin the Constitutional process that can be construed as pleading for the pronouncement of the President's Rule.[13] However, the Court disregarded all the suppositions and deductions traced by the Speaker

[10] Ibid.
[11] Ibid.
[12] Kihoto Hollohan v. Zachillhu, AIR [1993] SC 412
[13] Animesh Tiwari, 'Article 356 the Core and the Penumbra' (2021) 1 Indian JL & Legal Rsch 1

holding that the letters of Appellants had no explicit mention of withdrawing their support to the party and did not express any intention to discontinue as an MLA of the BJP. On the contrary, it was rather explicitly quoted in their replies that they would remain a part of this Government, that would be led by any other individual but not the Respondent. Consequently, the Court affirmed that the Appellant through the letter sought Governor's intervention to remove the Chief Minister for the welfare of the State and set it free from nepotism and corruption, not inviting President's Rule in the State.[14] Thus, the Appellants' action goes beyond the purview of Para 2(1)(a).

2. Whether the hot haste in granting 3 days rather than 7 or more by the Speaker as enshrined under Rule 7 (3) of the Disqualification Rules, 1986[15] invalidates the Notice?

The Speaker brough up the case of *Ravi Naik v. Union of India*[16] and *Dr. Mahachandra Prasad Singh v. Bihar Legislative Council*[17] in which the Court articulates that Disqualification Rules, 1986 are directly and not mandatory. Hence, the speaker argued that his decision to provide 3 days rather than 7 for submission of reply is not violative of Rule 7(3) of the Disqualification Rules,1986 and therefore cannot be exercised against him to vitiate the disqualification order.[18] The Court on the other hand also stressed upon the case of *Ravi Naik v. Union of India*[19] clarifying that procedural gap shall not be of such kind that might pose prejudice to the person affected. As the facts of the instant case suggest that the notices were pasted on the doors of the MLA quarters, that too at the time when the house was not in session and were not served to them directly, lead to grave detriment. Also, the fact that affidavit placed by the BJP State President were not made accessible for the Appellants makes it apparent that they had to suffer due to non-compliance with the procedure by the Speaker. The Court then affirmed that no protection under Rule 6 and Rule 7 of the Disqualification Rules, 1986 shall be given for such irregularity.[20] The Court restated that a considerable period should've bestowed upon the

[14] Dr. Devender Singh, ' Role of Judiciary in the Functioning of Anti- Defection Law with Special Role of Judiciary in the Functioning of Anti- Defection Law with Reference to Recent Supreme Court Decisions : Critique' Pg. 221
[15] *Balchandra L. Jarkiholi vs B.S. Yeddyurappa* [2011] 7 SCC 1

[16] *Ravi S. Naik v. Union of India*, 1994 Supp (2) SCC 641
[17] *Dr. Mahachandra Prasad Singh* v. *Chairman, Bihar Legislative Council*" (2004) 8 SCC 747
[18] *Balchandra L. Jarkiholi vs B.S. Yeddyurappa* [2011] 7 SCC 1
[19] *Dr. Mahachandra Prasad Singh* v. *Chairman, Bihar Legislative Council*" (2004) 8 SCC 747
[20] *Balchandra L. Jarkiholi vs B.S. Yeddyurappa* [2011] 7 SCC 1

Appellants to file their replies. This whole episode illustrates the haste made by the Speaker for the very purpose of preventing the Appellants from voting against the then Chief Minister.[21]

THE DIVERGENT YARDSTICK

The Court also highlighted that the Petition forwarded by the 2 MLAs in which they retracted their withdrawal from the Yeddyurappa led government and extended the support to the same was welcomed by the Speaker in spite of them being disqualified under Para 2(1)(a) alongside the Appellants. Identical allegations were advanced against those 2 MLAs as were advanced against the Appellants, nevertheless they were granted an opportunity to vote in no-confidence motion. This exhibits different yardstick applied by the Speaker which contravenes the ideals of "*natural justice and fair play*".[22]

3. Whether the Court can determine/decide on the order pronounced by the Speaker under Para 2(1)(a) of the Tenth Schedule?

The Court while dealing with the dilemma of justiciability surrounding the order pronounced by the Speaker under Para 2(1)(a) restated the principle positioned in *Kihoto Hollohan v. Zachillhu*[23] ,that matters pertaining to defection are quasi- judicial in nature that leads to the Speaker conduct himself or function in the quasi- judicial position and makes his orders liable for judicial review.[24]

THE DISSECTION: THE INFLUENCE OF THE GOVERNOR TO POSITION THE "CONSTITUTIONAL PROCESS"

The Office of Governor is placed as an eminent authority to administer the decision-making approach of the Legislative Assembly and the Chief Minister Office. Posted at the pleasure of the President as the De Jure head, Governor gatekeeps the Constitutional values supervising over the political environment of the State. The Governor sets the legislative procedure in motion by summoning the Assembly under Article 174 of the Constitution, similarly under

[21] [2011] 7 SCC 1
[22] Ibid.
[23] AIR [1993] SC 41
[24] Aditya Kumar, 'Discerning the Working of the Constitutional Protection on Political Defections in India'

Article 175, the Governor holds right to send messages and to address the Assembly.[25] Henceforth, it is vital to note that the Governor acts as the Convenor of the house and can be called upon to address in the disputes pertaining to the functioning of the government.[26]

Thus, considering the instant circumstances, the placement of the Governor happens to be critical in issues where the MLAs demonstrate their dissatisfaction towards the leader of the legislative party. In such situations the Governor, typically needs to request the Chief Minister to show majority and institute confidence on the floor of the House, accordingly, if the Chief Minister fall short of doing so, the Government will fall.[27]In this backdrop, the Governor before going ahead with the choice of promulgating the President's rule under Article 356 or calling upon the Opposition party to form the Government, it is then emphasised that the Governor should contemplate upon the decision of providing a chance to the former legislative party whose Government stumbled, to yet again form the Government satisfying the requisite conditions of establishing confidence by bestowing another leader.[28] As in the current situation since MLAs have restated their support to the ruling party, therefore the court narrates that "*the Bhartiya Janata Party was not necessarily deprived of a further opportunity of forming a Government after a change in the leadership of the legislature party*"[29] accordingly this would not amount to the MLAs voluntarily relinquishing their membership of the party.

THE LACK OF AGREEMENT

The Court lacked in presenting a relevant paradigm that is to be traced prior to the formation of this Government. The Government can solely be instituted when the dissent voiced by these MLAs on the floor of the house, is condoned by their political party within the period of fifteen days by virtue of Paragraph 2(1)(b). Hence, the Court was deficient in reviewing the details of such dissent.[30] The option however lies with the political party to make suitable alterations or adjust to persist in power, on the other hand the Court didn't review that at during the Floor-Test, if it is expected that a whip is to be issued by the party and consequently if a member diverges from the instructions as issued through the whip or from the course established by the

[25] The Constitution of India,1950
[26] Rajni Goyal, 'The Governor: Constitutional Position and Political Reality' (1992) 53 The Indian Journal of Political Science 505
[27] Mahander Kumar Saini , 'A Study of no-confidence motions in the Indian Parliament (1952-70) on JSTOR'
[28] Sibranjan Chatterjee, 'The Role of Governor in Indian Politics since 1967 on JSTOR'
[29] [2011] 7 SCC 1
[30] M. N. Kaushika & M. S. Arun Prabhu, 'Dissent versus Defection: A Critical Analysis' (2023) 3 Indian J Integrated Rsch L 1

party then the member shall be disqualified according to Para 2(1)(b).[31] Therefore, as compared to the factors in proximity with the dissent as alleged by the party (BJP) through the affidavit provided by the State President alleging the Appellants for entering into negotiations with other political parties, highlights the tension and tussle on a prevalent matter of leadership. These evidence depict that it was extremely likely of the party to not to condone such dissent resulting in their disqualification.

THE PRICE OF OPINIONS

The Court on numerous occasions in this case has emphasized on the fact that retracting support from the Yeddyurappa led government will not amount to voluntarily relinquishment of the membership of BJP under the ambit of Para 2(1)(a) but has effortlessly escaped any explanation on these intra- party dissents that would not be ministered under the said para. This insufficiency of resourceful and judicious reasoning on this conventional practice has left innumerable questions unanswered.[32] This conundrum establishes an ambiguity that is being harnessed by political parties against those Members who try to bring forth concerns in the times when acts of the higher leadership do not align or correspond with the principles of the political party.[33] Therefore, it was indispensable for the Court as first instance review authority,[34] to constitute guidelines for the Speaker of the House and remove the haze surrounding theses intra party dissents and Para 2(1)(a).

CONCLUSION

The notion of a representative system is equivalent to the idea of accountability. The accountability of an elected representative drives in 2 spheres. The initial being loyal for the party and the secondary being answerable and liable towards the masses of constituency. It is in rare instances when members prefer the last over the initial resulting in disagreements in their allegiance.[35] However, to begin with, Paragraph 2(1)(b) sets aside this kind of positioning and compels a member to endorse the decisions of the party over the conflicting concerns of the people as it provides that a member shall abide by the Party's directions, thereby leaving

[31] Ibid.
[32] Mr Abhayachandran, 'Anti Defection law: A bane on Democracy'(2021)
[33] Ayushi Saumya & Aishik Majumder, 'Anti-Defection Law in India - A Boon or a Bane' (2018) 6 Supremo Amicus 24
[34] *Kesham Meghachandra Singh v. Hon'ble Speaker Manipur* MANU/SC/0062/2020
[35] Darsan Guruvayurappan, 'Rethinking Defection: An Analysis of Anti-defection Laws in India'

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room for defection to arise at the option of the party.[36] This judgement tends to resolve this conflict of interest by classifying the same as intra party dissent and not placing it under Para 2 (1)(a) but fails to uncover its relation with Para 2 (1)(b).

It is then to trace from the aim of Anti-Defection law, for instance to provide firmness to a democratic arrangement however, establishing to protect party interest and disregarding candidature. The Anti-Defection law works on the hypothesis that a voter is merely considering the party as an option to vote for and not the candidates. Back in 2003 by virtue of the 91st Amendment, Para 3 of the Tenth Schedule was omitted, which provided for exemption to the 1/3rd members of the legislative party to split by not bringing the same under the aegis of defection. However, Para 4 of the Tenth Schedule that allows 2/3rd of the legislative party members to merge with another party still remains intact.[37] It is this feature of majoritarianism that encourages political parties to control the power dynamics in a more severe way that does not even amount to defection. This concept of merger flouts the established legal principle of "*Quando aliquid prohibetur ex directo, prohibetur et per obliquumm- what cannot be done directly- also cannot be done indirectly*."[38] Therefore even when the Anti- Defection law looks forward to composing peace in the mainstream political sphere, it still gives room for a wholesale method of destabilization.

[36] Kartik Khanna & Dhvani Shah, 'Anti-Defection Law: A Death Knell for Parliamentary Dissent?' (2012) 5 NUJS L Rev 103
[37] Amisha Shrivastava, 'Group Defections' in Name of Political Parties Split & Merger Betray Voters: PIL in Bombay HC Against Para 4, 10th Schedule to Constitution'
[38] People's Union for Civil Liberties and Ors. vs. Union of India (UOI) MANU/SC/1036/2003