

ROLE OF THE OFFICE OF SPEAKER AS AN ADJUDICATORY AUTHORITY UNDER ANTI-DEFECTION LAW IN INDIA: A CRITICAL STUDY

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ABSTRACT

The office of the Speaker in India enjoys a constitutional status and is considered to be a person of high integrity, dignity and value ethics and thus, he was conferred with the responsibility of deciding matters arising under the Tenth Schedule. However, recently it has been observed that the elected representatives would often slip from clutches of application of law. It has been noted that decisions by the Speaker are often challenged in the courts of law as there is dissatisfaction and allegations of bias. Thus, the objectives of the author in the present research was to critically analyse the role of Speaker as an adjudicatory authority under the Tenth Schedule and to also study the conflict that has arisen between the courts and the Speakers. The author has conducted a doctrinal study and has analysed primary sources as well as secondary sources. The present research argues that there is inefficiency of Anti-Defection Law in India due to the partisan role of the Speaker and has further concluded that the august office of Speaker should be kept out of such controversial matters. Therefore, to protect and uphold the democratic principles in India, the author has suggested constitution of an independent Tribunal to decide matters of defection.

Keywords: Defection; Speaker; Tenth Schedule; Anti-Defection Law; Judiciary; Democracy.

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INTRODUCTION

1. UNDERSTANDING THE LAW

In our contemporary society, political parties have become the part and parcel of democracy. It is quite impossible to separate the two. A country proclaiming to be democratic is supposed to have more than one political party. One political party is considered to be the anti-thesis of democracy.¹ However, the countries which have adopted multi-party system, particularly in parliamentary democracies, have witnessed mushrooming of political parties. This has increased the competition among the parties. There is nothing wrong in it, rather it is a sign of a healthy democracy. However, most of these political parties have no definite objective or ideology and only concentrate on capturing political

¹ Paras Diwan, Aya Ram Gaya Ram: *The Politics of Defection*, 21 JOURNAL OF INDIAN LAW INSTITUTE 291, 292 (1979).

power without considering the method through which the power is captured.² This hunger for power has given birth to the evil of defections in politics.

The practice of political defections has reduced the institution of government to a mockery.³ It is considered to be a compromise on political ethics and attacks the principles of democracy.⁴ As a result, an Anti-Defection legislation was added to the Indian Constitution's (hereinafter referred to as the Constitution) Tenth Schedule by the Constitution (Fifty-second Amendment) Act, 1985.

The law allows for disqualification owing to defection, which covers both the representative's willful leaving of the party through which they were elected and their breach of party whips as described in paragraph 2. In the event that two or more parties merge under extraordinary circumstances, paragraph 4 provides an exemption to the same rule.

A departure was made from the existing decision making authorities for deciding disqualification petitions of the elected representatives, provided under Article 102(1) and Article 191(1) of the Constitution from President for Parliament and Governor for State Legislatures respectively, acting on the recommendation of the Election Commission to the Speaker of Lok Sabha as well as State Legislative Assemblies and Chairman of Rajya Sabha as well as State Legislative Councils for deciding petitions arising out of disqualification on ground of defection under Article 102(2) and Article 191(2) respectively.

2. OFFICE OF THE SPEAKER

The Speaker is a body created under the Constitution which enjoys special position in the parliamentary system of governance. He is considered to be the representative of the House which he presides over. He also represents a common voice for the legislature. In the parliamentary type of government, the Speaker's duties and powers are of paramount significance as probably the first thing which a new Parliament has to do is to elect or nominate a Speaker for itself.⁵ Jawaharlal Nehru, the first Prime Minister of India, had attached a lot of importance to the office of Speaker, when he had said, "*The Speaker represents the House. He represents the dignity of the House, the freedom of the House and because the House represents the nation, in a particular way, the Speaker becomes the symbol of the nation's freedom and liberty.*"⁶

In lieu of the significance that is attached with the office of Speaker, it is expected that he shall act in fairness at all times and be just and impartial while dealing with the matters before the assembly.⁷

Since, India has adopted the Westminster model of parliamentary democracy; it was pertinent to introduce the office of the Speaker to regulate the business and the proceedings of the House. Thus, in theory, the office of Speaker in India is similar to that of Britain. However, in practice, there are some differences as observed between the two jurisdictions.

The British House of Commons has adopted certain conventions which have ensured neutrality and isolation of the Speaker, as opposed to the Speaker in India, wherein due to the lack of these practices, the office has always loomed with doubts of partiality and partisanship.⁸ A few conventions adopted by the British House of Commons are listed below:

1. The Speaker is elected from amongst the members of the House of Commons. This is done by voting in a series of rounds with candidates eliminated in each round. The person with the fewest votes is eliminated, along with candidates who gain less than five percent of the votes. The voting is

²*Ibid.*

³P.M.Kamath, *Politics of Defection in India in the 1980s*, 25 ASIAN SURVEY 1039, 1050 (1985).

⁴K.T.Thomas, *Anti-Defection Law*, 3 NUALS L.J. 1, 2 (2009).

⁵Hari Chand, *Powers of the Speaker*, 16 J. ILI 128, 130 (1974).

⁶As stated in *Kihoto Hollohonv.Zachillhu*, (1992) 1 SCR 786 (India).

⁷Albert.A.Austen, *The Impartiality of the Speaker of the House of Commons*, 23 JRUL 48 (1960).

⁸*Ibid.*

done through secret ballot. The candidates involve themselves in formalized campaigning including issue of manifestos and participating in hustling. It was only in 2009 that this procedure was adopted in the election of the Speaker. The common practice until then was that the Speaker would be chosen by the party in power.⁹

2. The Speaker, upon being elected, severs all ties with the party i.e. resigns from his party. Moreover, if he wishes to seek re-election, other members do not campaign against him. His election is essentially a re-election to the office of the Speaker though he continues to be responsible for his constituency.

3. The Speaker has given up his right to vote in the House and exercises it only when there is a tie.

4. His salary is drawn from the Consolidated Fund. The Parliament has no role in determining his salary.

Though India has tried to adopt some of the above conventions to ensure the independence of the Speaker, however, it has failed to adopt the most crucial of them all i.e. to abandon all ties with the party after his appointment as the Speaker. As the convention of resigning from the party after being elected as the Speaker is becoming popular, yet, he does not completely sever ties with the party. Moreover, the manner of selection of Speaker is also not democratic as it has become a convention that the Speaker is to be appointed by the party in power and the Deputy Speaker by the opposition party. The Speaker are elected unopposed but not unanimous.

So far as his salary and emoluments are concerned, he has been made as independent as his counterpart in England in that his salary has been charged on the Consolidated Fund of India.¹⁰

Unlike in England, the Speaker and the Deputy Speaker have to submit their resignations to each other and not to the President. When asked about this unusual procedure, Dr. Ambedkar had explained in the Constituent Assembly that the principle embodied in this procedure is that a person normally tenders his resignation to a person who has appointed him and in the case of the Speaker and Deputy Speaker, as they are appointed by the House, the only logical conclusion would be to tender the resignation to the House. The House being a collective body, it is not feasible to send a resignation to every member of the House. Therefore, the Speaker or the Deputy Speaker, as the case may be, is required to submit their resignation to each other and in theory the resignation would be to the House. Following the same principle, it is not the concern of the President to receive their resignations because he has nothing to do with their appointment or election.¹¹ This indicates the objective of the framers of the Constitution to keep the Speaker independent of the executive.

The function of adjudicating upon the questions arising out of disqualification of a member on the ground of defection has been conferred upon the Presiding Officers of the respective Houses including the Speaker who as a constitutional body, is expected to be free from partisanship so that he may carry out his functions in a just and fair manner. However, Speaker in India continue to be a part of their respective parties which affect their capabilities as an independent adjudicatory authority, thus being criticized as biased and partial in their decision making. The same has led to encroachment of the judiciary on these matters, thus, threatening the separation of powers in India.

3. THE OFFICE OF THE SPEAKER AND THE TENTH SCHEDULE

a. DECISION MAKING AUTHORITIES

The authority to adjudicate on petitions for the disqualification of House members has been granted to the Speaker or the Chairman of the House under Paragraph 6 of the Tenth Schedule. The Chairman or the Speaker should be consulted on the matter of disqualification; his decision is final.

There were apprehensions of making the Speaker as an adjudicatory authority under the Schedule and the same could be inferred from the comments of some of the Members of Parliament at the time of

⁹*Ibid.*

¹⁰ Hari Chand, *Powers of the Speaker*, 16 J. ILI 135 (1974).

¹¹*Ibid.*

debating the Bill before the House. They were concerned that the office of Speaker would be drawn into avoidable controversies as whatever actions the Speaker will take will be deemed to be the actions of the House and in doing so the members of the House will not be able to say anything on the floor. Moreover, the Constitution provides for an independent judiciary, independent executive and independent legislature but through this Bill, the legislature is asked to perform judicial functions.¹²

b. POWER TO MAKE RULES

Under Paragraph 8 of the Schedule, the Chairman and Speaker have been empowered to make rules in order to give effect to the provisions of the Tenth Schedule.

The rules being delegated legislation have to conform to the mandate of the enabling law.¹³ In furtherance of this power, the Lok Sabha Members (Disqualification on Ground of Defection) Rules, 1985 were implemented. The State Legislative Assemblies have passed similar rules, keeping the Lok Sabha Rules as the draft rules.

c. EXEMPTION TO PRESIDING OFFICERS AND THEIR DISQUALIFICATION

Paragraph 5 of the Schedule provides protection to the Presiding Officers of the House from disqualification on ground of defection in two circumstances:

- “1. He has voluntarily given up the membership of his party immediately before being elected to the office and has not as long as he continues to hold that office rejoined the party or joined some other political party; or*
- 2. He has given up the membership of the party on account of the election to such office, immediately before such election and rejoins the party after he ceases to hold the office.”*

No Presiding Officer of the House has so far used the benefit under the exemption clause by resigning from his party.

If the conduct of the Speaker is not covered under the exemption clause, he may himself become subject to disqualification.

In such a situation, the petition shall be addressed to the Secretary General who shall make a report and submit the same to the House and on the basis of the report, the House shall elect a member for decision.¹⁴

The exemption under paragraph 5 would be available to the Speaker only when in order to protect his prestigious office from bias and partiality, the Speaker resigns from the political party to which he might have belonged prior to his election as the Speaker.¹⁵

d. JUDICIAL REVIEW OF DECISIONS OF THE SPEAKER

According to paragraph 6(2), the proceedings to resolve any issue of disqualification due to defection shall be deemed to constitute proceedings before the State Legislature or the Parliament as provided by Articles 122 and 212 of the Constitution. Thus, despite the proclamation of finality in Paragraph 6, Paragraph 6(2) strengthens the provision in Paragraph 6(1) to prevent the orders of the Presiding Officers under the Tenth Schedule from being challenged in court. By removing the courts' jurisdiction, paragraph 7 offers a climax to the finality element of the Presiding Officers' orders under the Tenth Schedule¹⁶. As a result, the Tenth Schedule's paragraph 6(2) served as a barrier to prevent the court from interfering with the Presiding Officers' directives.

¹² G.C.MALHOTRA, ANTI-DEFECTION LAW IN INDIA AND THE COMMONWEALTH 1 (1 ed. Metropolitan Book Co. Pvt. Ltd. 2005).

¹³ Mahachandra Prasad Singh v. Bihar Legislative Council, (2002) 8 SCC 747 (India).

¹⁴ Rule 6(2), Lok Sabha Members (Disqualification on Ground of Defection) Rules, 1985.

¹⁵ Dr.Luis Proto Barbosa v. Union of India &Ors., AIR 1992 SC 1812 (India).

¹⁶ R.KOTHANDARAMAN, IDEAS FOR AN ALTERNATIVE ANTI-DEFECTION LAW 1 (1 ed. Parliamentary Research Cell, Nagaland 2006).

Paragraph 7 had prescribed a bar on the jurisdiction of the Courts in respect of any matter which was connected with the disqualification of a member from the House under the Tenth Schedule. This meant that no decision of the Speaker shall be subject to judicial review.

However, it has been held that the power of judicial review is a part of the basic structure of the Constitution.¹⁷ And thus, this power of the judiciary cannot be tampered with by any law made by the legislature.

It was in the case of *Union of India vs. Jyoti Prakash*¹⁸ that the Supreme Court had interpreted the word 'final' as provided under Article 217(3) of the Constitution. The Court was of the opinion that, "*the Court has jurisdiction in appropriate cases to set aside the order, if it appears that it was passed on collateral considerations or the rules of natural justice were not observed, or that the President's judgment was coloured by the advice or representation made by the executive or it was founded on no evidence. But this Court will not sit in appeal over the judgment of the President, nor will the Courts determine the weight which should be attached to the evidence.*" Applying the observations in the above case, the High Court of Punjab and Haryana while considering the constitutionality of the Tenth Schedule¹⁹, had held that the use of the word 'final' with respect to the decision of any authority under the Constitution or a statute means that no appeal, revision or review would lie against such a decision. However, it does not mean that no judicial review shall lie against such decision. Thus, even if the word 'final' is used, the High Court as well as the Supreme Court would have the power to exercise judicial review over such decisions under Article 226 and 32 respectively.

The constitutionality of the Schedule was challenged before the Supreme Court in the case of *Kihoto Hollohon v. Zachillhu*.²⁰ A few of the questions addressed by the Court are stated as follows:

- a) Whether Paragraph 7 has effected a change in Articles 136, 226 and 227 of the Constitution?
- b) Whether Paragraph 7 is ultra vires Article 368 as it lacks ratification by state legislatures?
- c) Whether Paragraph 7 is severable?
- d) Whether the Speaker acts as a Tribunal while giving decisions under Tenth Schedule and therefore can be reviewed by the judiciary?
- e) Whether the exercise of judicial review powers will affect the finality of decision by the Speaker as provided under Paragraph 6?

With respect to the first and second questions, the bench answered in the affirmative. With respect to the third question, the majority was of the opinion that paragraph 7 is severable, making the remaining provision of the Schedule to be valid.²¹

The court further confirmed the view held by the Punjab and Haryana High Court²² and held that the Speaker acts as a tribunal while deciding cases under the Tenth Schedule and therefore any decision given would be subject to judicial review. However, due to finality attached to the decision of the Speaker, the court restricted the power of the courts to exercise the power of judicial review and the same was to be exercised with respect to jurisdictional errors only i.e. "*violation of constitutional mandates, mala fides, non-compliance with rules of natural justice and perversity.*"

In *Manilal Singh v. Dr. H. Borobabu Singh & Anr.*,²³ the court held that the orders issued by the Supreme Court in proceedings arising out of Speaker's decision on question of disqualification of a member of

¹⁷ *Kesavnanda Bharti v. State of Kerala*, AIR 1973 SC 1461 and *Minerva Mills v. Union of India*, AIR 1980 SC 1789 (India).

¹⁸ *Union of India v. Jyoti Prakash*, AIR 1971 SC 1093 (India).

¹⁹ *Prakash Singh Badal v. Union of India*, AIR 1987 P H 263 (India).

²⁰ *Kihoto Hollohon v. Zachillhu*, (1992) 1 SCR 786 (India).

²¹ P.P. RAO, *RECLAIMING THE VISION: CHALLENGES OF INDIAN CONSTITUTIONAL LAW AND GOVERNANCE* (1 ed. LexisNexis 2013).

²² *Prakash Singh Badal v. Union of India*, AIR 1987 P H 263 (India).

²³ *Manilal Singh v. Dr. H. Borobabu Singh & Anr.*, 1993 SCR (1) 769 (India).

the House on ground of defection under the Tenth Schedule are binding on the Speaker. Hence, the Speaker cannot resist implementation of the Court's orders.

4. THE QUESTION OF IMPARTIALITY IN DECISIONS BY THE SPEAKER

Decision making is a complex process. A lot of varying factors have to be taken into consideration and competing interests are to be balanced. The decision maker often employs the rules of natural justice²⁴ in order to arrive at a fair and impartial decision.

Thus, independence of the decision making authority is imperative, as impartiality can be achieved only when the decision maker is independent from any kind of external pressure. This is because justice must not only be done but must also appear to be done.

As any other authority, the most essential aspect of speakership is his impartiality; without which a Speaker cannot do justice to the august office he holds and as long as he remains a member of a political party, he cannot be regarded as an impartial person. In India, the problem is deeper than what it appears to be.

The legislature was aware of the fact that the Presiding Officers, being part of a prestigious office would in some circumstances not be able to detach themselves from the politics of parties which may affect their exercise of powers under the Tenth Schedule and therefore the provision of exemption was provided for them.²⁵

In these circumstances, the conferment of decision making power under the Tenth Schedule to the Speaker has become a subject of controversy with the point of debate being the impartiality of the Speaker in decision making process.

This issue was particularly brought to light after the Janata Dal splits case of 1989. It was alleged that the Speaker responsible for recognizing the breakaway groups officially, had not acted impartially, as they had openly violated the party whip.²⁶

Such cases have been increasing where it could be seen that the Speaker in order to secure majority for the ruling party decides the petitions on their whims and fancies, in favour of the ruling party.

The minority in the case of *Kihoto Hollohon v. Zachillu*,²⁷ had questioned the independence of Speaker to confer such wide powers upon him in the following words:

"An independent adjudicatory machinery for resolving disputes relating to the competence of Members of the House is envisaged as an attribute of the democratic system which is a basic feature of our Constitution. The tenure of the Speaker, who is the authority in the Tenth schedule to decide this dispute, is dependent on the continuous support of the majority in the House and, therefore, he does not satisfy the requirement of such an independent adjudicatory authority; and his choice as the sole arbiter in the matter violates an essential attribute of the basic feature."

A case which highlights the arbitrary exercise of powers by the Speaker wherein a petition was filed by Yeddiyurappa under paragraph 2(1)(a). It was alleged that these members had written to the Governor indicating that even though they had contested elections on BJP tickets, however, they were dissatisfied with the Yeddiyurappa's administration. They also claimed in the letter that he didn't have popular support. Show cause notices were sent on the respondent, however they were posted on the doors of the Bangalore MLAs' locked quarters which were only utilised when the House was in session

²⁴Natural justice or procedural fairness comprises three main components: the opportunity to be heard; there must be no bias; and the decision must have some basis in fact or reasoning.

²⁵R.KOTHANDARAMAN, IDEAS FOR AN ALTERNATIVE ANTI-DEFECTION LAW 1 (1 ed. Parliamentary Research Cell, Nagaland 2006).

²⁶Lewis P. Fickett, Jr., *The Rise and Fall of the Janata Dal*, 33 Asian Survey 1151-1162 (1993).

²⁷*Kihoto Hollohon v. Zachillu*, (1992) 1 SCR 786.

Based on the letter written to the Governor and the media reports that the petitioner submitted, the Speaker determined that the MLAs were unable to serve as members of the Assembly under paragraph 2(1)(a) of the Tenth Schedule. He believed that instead of expressing disagreements over party leadership in the form of letters to the governor, such disagreements should instead be debated on party platforms. He relied on the decision of the apex court in *Rajendra Singh Rana & Ors. v. Swami Prasad Maurya*²⁸, wherein it was held that writing a letter asking the Governor to call the leader of the opposition party to form a government constituted a voluntary resignation from membership. Similar reasoning was used in the *Shivraj Singh*²⁹ case, in which the Speaker of the House refused to disqualify a member in accordance with the anti-defection statute on the grounds that the person in issue had freely left his or her party membership. The Supreme Court ruled that voluntarily leaving a party is not a legal ground for disqualification.

The Speaker's decision was challenged in a review petition to the Supreme Court³⁰. The court believed that the Speaker should have disqualified the members for the simple reason that they had not refuted the allegations against them, which is against the fundamental principles of evidence. Essentially, the person making the accusation is the one who must provide proof to back up his assertions. Mere non-denial of the evidence does not constitute proof. The Court determined that the Speaker's behaviour violated the principles of natural justice and noted:

"This conduct on part of the Speaker is also indicative of the hot haste with which the Speaker disposed off the petition as complained off by the appellants."

The court also noted that after the disqualification of these 11 MLAs, Yeddiyurappa enjoyed the confidence of the House. It forced the court to conclude that:

"Unless it was to ensure that the trust vote did not go against the CM, there was no conceivable reason for the Speaker to have taken up the petition in such a great hurry... The Speaker proceeded in matter as if he was required to meet the deadline set by the Governor irrespective of whether in the process he was ignoring the constitutional norms set out in the Tenth Schedule."

Though it was held in the case of *Ravi .S.Naik*³¹ that rules are directory in nature but it was also held that irregularity should not be such so as to prejudice any authority that could be adversely affected by such breach.

*NabamRebia v. Registrar, Gauhati High Court*³² is another case which had raised doubts about the impartiality of the Speaker. In Arunachal Pradesh, 33 members of the Assembly had met the Governor to communicate their displeasure with the Speaker and the Government. The Governor, consequently, listed the removal of the Speaker on the legislative agenda. The Speaker, however, before such proceedings could take place, out rightly disqualified the 33 MLAs under the Tenth Schedule.

J. Dipak Misra (as he then was) was quoted as saying:

"It would be an anathema to the concept of constitutional adjudication, if the Speaker is allowed to initiate proceeding under the Tenth Schedule (disqualification on ground of defection) of the Constitution after intention to remove him from his office is moved."

Recently, in the case of *Yengkhom Surchandra Singh v. Hon'ble Speaker, Manipur Legislative Assembly and Others*³³ the petitioner served as an Indian National Congress representative in the Manipur Legislative Assembly. The Speaker of the Manipur Legislative Assembly dismissed him as a Member of the Assembly on the grounds that he had reportedly switched to the Bharatiya Janata Party (BJP).

²⁸*Rajendra Singh Rana & Ors. v. Swami Prasad Maurya*, (2007) 4 SCC 270 (India).

²⁹*Shivraj Singh Chauhan v. Hon'ble speaker, Madhya Pradesh Writ Petition (C) No. 439 of 2020* (India).

³⁰*Balchandra L. Jarkiholi & Ors. v. B.S. Yeddiyurappa & Ors.*, (2011) 7 SCC 1 (India).

³¹*Ravi. S. Naik v. Union of India & Ors.*, AIR 1994 SC 1558 (India).

³²*NabamRebia v. Registrar, Gauhati High Court*, (2016) 8 SCC 1 (India).

³³WP(C) No. 316 of 2020

Singh appealed his disqualification in a writ petition to the Manipur High Court. He stated that the disqualification did not adhere to the requirements of the Tenth Schedule of the Indian Constitution, which addresses disqualification upon defection. According to the High Court, the petitioner's disqualification was justified since he willingly left the Indian National Congress and joined another political organisation, which amounted to defection in accordance with the Tenth Schedule.

Similarly, the petitioner in *Girish Chodankar v. Speaker, Goa Legislative Assembly*³⁴ represented the Indian National Congress party as a member of the Goa Legislative Assembly. The Speaker of the Goa Legislative Assembly dismissed him as a Member of the Assembly on the grounds that he had reportedly defected to the Bharatiya Janata Party (BJP). Chodankar appealed his disqualification in a writ petition to the Bombay High Court. He contended that he had been expelled from the Indian National Congress rather than having left the party of his own free will. Additionally, he claimed that the Speaker's decision to disqualify him was not made in accordance with the law. Chodankar's appeals were denied by the High Court, which affirmed his disqualification. It was decided that the disqualification was in conformity with the Tenth Schedule's requirements, which provide disqualification due to defection under the Indian Constitution. The Speaker's decision to exclude Chodankar from serving as a member of the Legislative Assembly was upheld by the High Court as having been made in accordance with the law.

5. TIME FRAME FOR DECIDING CASES BY THE SPEAKER

Speakers are not required by law to make a decision in a timely manner on any anti-defection issue, and this discretion has frequently benefited ruling parties in some states.

The power to adjudicate upon the cases of defection was conferred on the Chairmen and Speaker with the intention to provide for a speedy adjudicative process under the Tenth Schedule. At the time of passage of Bill, the provision was a subject matter of serious debate in both the Houses of Parliament as it was a departure from the adjudicatory authority for other grounds of disqualification. It was found that one of the reasons why the power of decision making was conferred on the Speaker was with the objective of speedy disposal of cases.

The problem arises because matters under the Tenth Schedule are time sensitive since the Speaker only has the time till the dissolution of the House to decide the petition as the same cannot be continued in the new Assembly formed. Recently, it could be seen that the Speaker are using this lack of time frame as an advantage as they fail or ignore to take any decision before the dissolution of the House. The defected members could be seen enjoying ministerial positions with no fear of being disqualified. This negates the objective of the anti-defection law.

Through judicial pronouncements, the scope of judicial review was also restricted with respect to time and it was held that no Court could exercise jurisdiction at any stage before a decision is made by the Speaker. Therefore, no *qua timet* actions would be allowed.³⁵ The doctrine of *qua timet* (because he fears) action is the right to be protected against anticipated future injury that cannot be prevented by the present action.

The exception being cases which may be grave and immediate and if it is not interfered with, there may be irreversible repercussions and consequence.

A number of petitions are filed in the courts to make the Speaker decide a petition for disqualification within a particular time frame or as soon as possible so that the petition may be dealt with expeditiously. However, the courts prefer to dispose of these petitions since it would lead to controversies between the courts and the Speaker, interfering in the separation of powers.

Under Rule 7(4) of the members of Lok Sabha (Disqualification on Ground of Defection) Rules, 1985, it is provided that the Speaker or Chairman may refer the disqualification petition to the Committee of Privileges for a preliminary enquiry. Though the decision to opt for the Committee is to be

³⁴Writ Petition No. 1228 of 2021.

³⁵*Kihoto Hollohon v. Zachillhu*, (1992) 1 SCR 686 (India).

discretionary, in most of the cases it is found that the Presiding Officers do refer to the Committee as a matter of procedure. This further delays the decision making process.

In *Mayawati Vs. Markandeya Chand*,³⁶ it was observed by the Supreme Court that it is important to have a time frame for cases under Anti-defection law in the following words:

“...it is absolutely necessary for every Speaker to fix a time schedule in the relevant Rules for disposal of the proceedings for disqualification of MLAs and MPs... all such proceedings shall be concluded and orders should be passed within a period of three weeks from the date on which the petitions are taken on file.”

The court had to pass the judgment in place of the Speaker, keeping in view the time constraints as the Assembly was on the verge of its dissolution.

Another case is that of *Speaker, Haryana Vidhan Sabha v. Kuldeep Bishnoi & Ors.*³⁷ In this case, petitions under Tenth Schedule were pending before the Speaker with respect to 5 MLAs of Haryana Legislative Assembly. Meanwhile, an interim order was passed by the High Court preventing the MLAs to continue their responsibilities as MLAs until the petition was dealt with and also imposed a time limit of 4 months on the Speaker to arrive at a decision. This order of the High Court was considered by the Supreme Court in light of its jurisdiction under Articles 226 and 227 of the Constitution. The Court held that:

“Restraining the Speaker from taking any decision under paragraph 6 of the Tenth Schedule is, in our view, beyond the jurisdiction of the High Court, since the Constitution itself has vested the Speaker with the power to take a decision under paragraph 6 and care has also been taken to indicate that such decision of the Speaker would be final. It is only thereafter that the High Court assumes jurisdiction to examine the Speaker's order.”

However, the Court saw merit in the direction given by the High Court to the Speaker to dispose of the petition within a particular time frame and ordered the Speaker to do the same within a period of 3 months from the date of the order.

The All-India Presiding Officers' Conference (AIPOC) ended without the delegates being able to agree on whether or not to restrict the Speaker's authority under the anti-defection law. There has been numerous instances where no actions were taken by the Speaker unless the apex court interfered. For instance, in the Goa Assembly in 2019, 10 of the 15 Congress lawmakers resigned and joined the Bharatiya Janata Party. The speaker ultimately decided on their disqualification in April, but only because the Supreme Court prodded him to do so. Their appeal for disqualification had been pending³⁸. Thounaojam Shyamkumar Singh, a legislator from Manipur who switched parties from the Congress to the Bharatiya Janata Party, was the subject of a disqualification petition that was pending for three years in 2020 when he resigned himself. This was solely practicable because the Supreme Court disqualified him from serving as a minister and prevented him from attending the Assembly, even though the court had ordered the Manipur Speaker to do so³⁹.

The anti-defection law is being undermined since there is no set time limit for deciding defection petitions under it. The Supreme Court ruled that the decision shall be rendered within a reasonable amount of time in the case of *Keisham Meghachandra Singh v. The Hon'ble Speaker Manipur*. In addition, the court said that disqualification petitions submitted to the Speaker must be resolved

³⁶ *Mayawati v. Markandeyachand and Ors.*, (1998) 7 SCC 517 (India).

³⁷ *Speaker, Haryana Vidhan Sabha v. Kuldeep Bishnoi & Ors.*, AIR 2013 SC 120.

³⁸ India News, *Goa Congress defectors disqualification plea: SC to decide question of law*, HINDUSTAN TIMES (2022), <https://www.hindustantimes.com/india-news/goa-congress-defectors-disqualification-plea-sc-to-decide-question-of-law-101670388674228.html> (last visited Jan 26, 2023).

³⁹ Express News Service, *Supreme Court invokes special powers, removes Manipur minister*, THE INDIAN EXPRESS (2020), <https://indianexpress.com/article/india/supreme-court-invokes-special-powers-removes-manipur-minister-thounaojam-shyamkumar-singh-6320920/> (last visited Jan 26, 2023).

within three months of the petition date, excluding unusual circumstances for which there is a good reason. What constitutes reasonable will depend on the specifics of each case⁴⁰.

CONCLUSION AND SUGGESTIONS

It has been almost three decades since the Anti-defection law was introduced to prevent the politics of defection in India. However, defections continue to take place despite there being a law. One such reason for the ineffective implementation of law has been the lacunae on part of the decision making authorities under the Schedule, particularly the Speaker. The office of Speaker in India is constitutionally recognized and the trust and faith reposed in him is of a large extent. However, it is often seen that the Speaker, belonging to a political party, is unable to sever ties with that party while discharging his functions. It is a basic principle of justice that the decision maker should be untouched by bias and has no interest in the subject matter, either personal or official. However, Speaker being a member of the ruling party has an official matter in the subject matter. This creates a doubt with respect to the authenticity of the proceedings conducted by the Speaker, and in most of the cases it is found that the decision is challenged before the higher courts which defeat the purpose of having a tribunal in the first place. This also violates one of the basic pillars of justice that justice should not only be done but also appear to be done.

It can be seen in some of the cases that the Speaker tries to provide protection to the members of the ruling party or be stringent with those defecting from the ruling party, leading to arbitrary procedures and decisions. When the parties don't have faith in the decisions, it is imperative that the matter should be looked into.

There was no reasonable basis as to why Speaker was chosen as an adjudicatory authority under the Schedule. It has further complicated the matters. Instead, the suggestion of the author would be that the question as to disqualification of a member of a House or Assembly should be determined by a Tribunal, specially constituted to deal with the matters of disqualification under the Tenth Schedule. The Tribunal shall consist of judicial as well as non-judicial members, having expertise in political field. This would ensure an independent and impartial proceedings so that there is no doubt over the authenticity of the decisions made. Moreover, the law should be further amended to introduce a time limit for dealing with petitions under the Tenth Schedule so that there is speedy disposal of cases since it is a time sensitive matter and decision has to be made before the House is dissolved. Thus, a total time period of 3 months from the date when the petition is filed to deal with the petition would be reasonable and sufficient. The decision of the Tribunal may be challenged before the High Court(s) under Article 226 or to Supreme Court by way of Article 32 and 136. However, the same may be referred within a period of 3 months from the date of decision of the Tribunal so that the matter is not unnecessarily delayed.

India is considered to be the largest democracy in the world. Thus, it is a matter of concern that the basic principles of democracy are being violated by the elected representatives. They tend to switch parties for their own benefit and greed, committing a breach of the trust of the electorate that elected them. The government should act quickly in this matter and try resolving the issues with respect to the law, particularly those related to the decision makers, so that the implementation of law may become effective and efficient.

⁴⁰ Ibid.