BLOGS

Disqualification Under Defection Law- An Overview

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ANTI-DEFECTION LAW

Article 102(2) lays down that a person can be disqualified under **Schedule X** and it was passed in the year 1985 through the **52nd Constitutional Amendment**. According to Schedule V, a person can be disqualified on the following grounds:

1. He has voluntarily given up membership in any political party after being elected.
2. If one person goes against the party lines and no prior permission was taken or it has not been condoned.
3. If a person was elected as an independent and he joins any political party.
4. If a person was a nominated member, then he is allowed to join any party within 6 months but thereafter if he joins , he would be disqualified.

Whip

Generally a political party directs its members to vote on a particular line but sometimes this direction comes from an authority called as a Whip. This whip is a link between the political party's internal organisation and the relationship of the party inside the legislature. His duty is to secure the presence of the members inside the house on important occasions.

Whips are of three kinds:

- One Line Whip: It is a non binding whip who merely informs the members of the vote and the date.
- Two Line Whip: Here there is a clear cut direction for attendance during the vote.
- Three Line Whip: There is a clear cut direction to be present during the vote and also to vote according to party lines.

The rule of anti defection does not apply in case of a merger of any political party.A merger takes place when at least 2/3rd members of any particular political party either joins any other party or after joining, they form a new party. For example, If a party has 12 members, then eight can have a merger or they can create a new political party.

The second exception of anti defection law is the Speaker, Dy. Speaker, Dy. Chairman of Lok Sabha and Rajya Sabha and also of Legislature of States and Legislative Councils.Once they occupy such posts, they can resign from the party and can rejoin the party after they leave this post.

In the case of ***Kihoto Hollohon v Zachillhu (1992) (SC)***, an important question was raised whether Schedule X violates the freedom of Speech or not and it was held that it does not violate and reasonable restriction can be applied to curb the menace of defections. It was clarified that Para 7 of Schedule X is invalid as it would affect the powers of the Supreme Court and High Court and by virtue of Article 368 of the Constitution of India, it would have required ratification by half of the State. Since the ratification was missing it was held to be invalid.

In the case of ***Ravi S Nayak v Union Of India (1994) (SC)***, the Supreme Court followed Kihoto Hollohon's case and held that Judicial Review would be there as the Speaker is acting like the Tribunal. In the case of ***Rajinder Singh Rana v Swami Prasad Maurya*** *(2007) (SC)*, it was held that if the Speaker fails to act on a complaint or gives a decision without making adjournment findings, this is the violation of Constitutional duties. In the case of *Bala Sahib Patil v Speaker, Karnataka Assembly (2019) (SC)*, the Supreme Court again reiterated that the orders of the Speaker are subject to Judicial Review.

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