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ANTI-DEFECTION LAW: A CRITICAL ANALYSIS OF THE ROLE OF SPEAKER UNDER INDIAN ADMINISTRATIVE LAW

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I. ABSTRACT:

The Anti-Defection Law in India serves as an important constitutional provision to safeguard the stability of national politics by reducing defections. This paper explores the convergence of the Anti-Defection Law with Administrative Law, particularly focusing on the decision-making role of the Speaker in disqualification cases. The paper delves into the debate surrounding the scope of judicial review of the Speaker's decisions, the legal validity of the law in light of the doctrine of separation of powers, and the application of principles of natural justice and fairness. Through an analysis of landmark cases, including *Kihoto Hollohan vs Zachillhu* and *Ramesh Kumar v. State of Karnataka*, the paper highlights the evolving nature of law in response to societal changes.

Furthermore, it examines the significant responsibilities entrusted to the Speaker, whose role as a quasi-judicial authority raises questions about the impartiality of the decision-making process. The dual role of the Speaker as both a political leader and an adjudicator often leads to perceived impartiality, potentially undermining the trust in the legislative process.

Additionally, the paper discusses the concerns posed by the Speaker's dual role as a political leader and an adjudicator, which may lead to bias in decision-making. The recommendations of the Dinesh Goswami Committee and the 170th Law Commission Report, advocating for the involvement of the President or Governor in disqualification matters, are also examined as potential solutions to address these concerns. This paper argues for the necessity of maintaining a balance between the

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Speaker's authority and the judiciary's oversight to ensure the fairness of the political process and uphold the principles of good governance.

II. KEYWORDS:

Anti-Defection Law, Speaker's Role, Judicial Review, Indian Constitution, Administrative Law

III. INTRODUCTION:

The Anti-Defection law is established in India to protect the country from the political instability caused, these defection laws have a varied interest in different people and there is debate about the role of speaker, judicial review of the speaker's decision, constitutional validity of the law by arguing based on the violation of separation of powers and principles of natural justice and fairness and some important case laws which was turning point in the provisions are going to be discussed below.

In the case *Kihoto Hollohan v. Zachillhu, Supp. (2) SCC 651 (1992)* the court in this case recognised that when society evolves the law is required to evolve along with it is considered as law which is good, Along these lines a law which was constitutional at some time may cease to be so due to passage of time.³

The speaker taking decision regarding the defection of a member is an administrative decision and the subject of judicial review of the administrative decision by the speaker, these are the relation of a constitutional provision with administrative law.

In *P. M. Kaliappan v. P. M. Sayeed, (1999) 4 SCC 412*, the Speaker's quasi-judicial powers is affirmed by the court and their decisions in maintaining parliamentary discipline and upholding the Constitution is important aspects of the case. The Speaker's role as an independent adjudicator in defection cases, subject to judicial review is limited which is recognised by the courts.⁴

Jawaharlal Nehru, the first Prime Minister of India, had given a lot of importance to the Chairman/Speaker, when he had said, The Speaker represents the parliament. He represents the dignity of the parliament houses, the freedom of the Houses and

³ *Kihoto Hollohan v. Zachillhu, Supp. (2) SCC 651 (1992)*.

⁴ *P. M. Kaliappan v. P. M. Sayeed, (1999) 4 SCC 412*

because the parliament represents the entire nation, in a particular way, the Speaker becomes the symbolisation of the national freedom and liberty which is very important.⁵

In *Ramesh Kumar v. State of Karnataka*, (2019) 4 SCC 810, the Court emphasized the need for the Speaker to act fairly and transparently while deciding on disqualification petitions, upholding constitutional values and principles. The position of the Speaker comes with significant powers. Since the powers should be used judiciously and should be of no partiality or any abuse of the power.⁶

The Role of the speaker in deciding the disqualification of a member of parliament is debatable due to various claims since the speaker himself a political leader so he cannot act as an independent adjudicatory. There is a chance of impartiality by the speaker and subject to limited grounds of judicial review is also debatable. Since the speaker cannot act as independent judiciary and also the judicial review of speaker's decision require a critical analysis, and the motive is to provide sincere suggestions to put an end to these debates.

A. Judicial Review on speaker's decision:

a) SEVERANCE OF PARA 7 OF TENTH SCHEDULE OF INDIAN CONSTITUTION

At first the Tenth schedule had paragraph 7, this paragraph stated that no court has jurisdiction over the matter of disqualification of a legislative member.⁷ In the case *Ravi S. Naik vs Union Of India*, the court held the judicial power is in the hands of speaker.⁸ Since the supreme court in the case *Kihoto Hollohan vs Zachillhu And Others*, the supreme court held that the decision of disqualification is a field that is owned by the judiciary and it could never be legislative in nature, hence the court declared paragraph 7 as unconstitutional since the judicial review is the basic structure of the Indian constitution so the court used the doctrine of severability. The doctrine severability is a doctrine which can be used to remove a specific section or law in an

⁵ *Kihoto Hollohan v. Zachillhu*, Supp. (2) SCC 651 (1992).

⁶ *Ramesh Kumar v. State of Karnataka* (2019) 4 SCC 810

⁷ INDIA CONST, sch.10,para. 7.

⁸ *Ravi S. Naik vs Union Of India* (1994) 2 SCC 641.

Act, since only the particular section remains unconstitutional so even after removing the section from the Act, the other part remains constitutional. So this doctrine is applied to sever the para 7 of the tenth schedule and which let the remaining part of the schedule as constitutionally valid.⁹

b) DOCTRINE OF SEPARATION OF POWERS

A branch of a state cannot take the essential function of another branch by itself¹⁰. The court emphasizes the importance of rule of law and ensures that there is no arbitrary exercise of power.¹¹ The hon'ble supreme court held in *the Bhim Singh v. U.O.I* the court laid down few tests which determines the overlapping of functions of different branches, a branch should not take over the essential basic function of another branch which is violation of separation of powers doctrine.¹²

According to the schedule the speaker acts as a tribunal which is possible because to have a smooth functioning of administration, he gets the right to act both judicial as well as legislative. In the case *Jayantilal Amrit Lal Shodhan v. F.N. Rana*, the court held that an executive can act as a legislature and a judiciary for smooth functioning, since speaker create rules and regulations also cloth the power of judiciary to solve internal disputes so it is meant that there is no violation of doctrine of separation of power. The power of legislator and judiciary is vested in speaker to have a good functioning of the 10th schedule¹³, which is also pronounced by the court in the case *Ram Jawaya Kapur & Ors. vs The State Of Punjab*.¹⁴

c) PRIORITY TO SPEAKER'S DECISION BEFORE JUDICIARY

After serious examinations the supreme court in Kihoto case held that even though there is violation of some principles which are recognised by the court but the court states that the even though the judicial power is in hands of the legislative the finality is also embodied in the judiciary so they can reach the court, if they find the decision of the speaker to be injustice they can approach the court. But the judiciary should not

⁹ Kihoto Hollohan v. Zachillhu, Supp. (2) SCC 651 (1992).

¹⁰ State of Punjab v. Salil Sabhlok, (2013) 7 SCC 266

¹¹ State of westbengal v Anwar Ali Sarkar (1952) SCR 284

¹² Bhim Singh v. U.O.I, (2010) 5 SCC 538.

¹³ Jayantilal Amrit Lal Shodhan v. F.N. Rana, (1964) 5 SCR 294.

¹⁴ Ram Jawaya Kapur & Ors. vs The State Of Punjab, (1955) 2 SCR 225.

be staged priorly to the speaker's decision, hence the speaker's decision is first for the smooth performance of the 10th schedule so after that if any impartiality felt they can file a writ in the proper jurisdiction. The non-compliance to the principal such as doctrine of separation of powers, natural justice and fairness are noted but the speaker acts before the judiciary and after severance of the act there can be a chance of getting justice in the court in case of unfair decision.¹⁵ Hence the judicial review of the speaker's decision is not a bar.

B. Role of a Speaker in Disqualification as an Adjudicator:

There are lot of cases in which the court insisted the importance of speaker being an independent adjudicator in the decision of disqualification of a member, the speaker should not act partial, the disqualification should be fair and transparent and the principles of natural justice should be adhered. The speaker should act independently as a fair and impartial person while deciding this matter and he should not have his political thoughts influence this decision.¹⁶ Since the speaker's position in the parliament and the speaker acting as a tribunal in solving disqualification cases is a crucial role in the political stability of the country, hence it is critically analysed to come up with suggestions to provide natural justice, promote judicial fairness and to maintain the political stability in the country.

But even after so many cases emphasized the importance of the speaker there is chance of speaker acting impartial, so here in a case *Nabam Rebia v. Deputy speaker*, Gauhati High court where the members of the Arunachal Pradesh legislative assembly with the doubt of impartiality of the speaker so the 33 members reached out to the Governor for the displeasure caused by the speaker. So, the governor dismissed the speaker from his post but the speaker before the proceeding of such order he disqualified 33 members from the assembly under schedule 10 of Indian

¹⁵ Kihoto Hollohan v. Zachillhu, Supp. (2) SCC 651 (1992).

¹⁶ Manipur Legislative Assembly v. Speaker, Manipur Legislative Assembly, AIR 2020 SC 1865, Albert. A. Austen, The Impartiality of the Speaker of the House of Commons, 23 JRUL 48 (1960), Keisham Meghachandra Singh v. Hon'ble Speaker Manipur Legislative Assembly, Videh Kumar Jaipuriar v. Speaker, Jharkhand Legislative Assembly

constitution.¹⁷ Such cases shows the lack of Schedule 10 of Indian constitution in providing a clear path. It is time to change as society evolves the law also evolves.

In the case *U.O.I v. Tulshiram Patel* 1985 AIR 1416, the SC held that Article 14 guarantees Principle of Natural justice to everyone¹⁸. There is an important doctrine called 'Nemo judex in causa sua' which is guaranteed by Article 14 of Indian constitution¹⁹. In *A.K. Kraipak v. Union of India*, (1969) 2 SCC 262, the Supreme Court of India emphasized that the rules of natural justice are applicable to administrative proceedings. The Court held that the principle of nemo judex in causa sua is an integral part of the rule against bias²⁰, so the principle which is guaranteed by Article 14 is violated because a person cannot be a judge in matters where there is reasonable suspicion of him being biased. As per Schedule 10 of Indian Constitution, the speaker acts as the adjudicator²¹ but he can act impartial because of institutional bias that is to support his political party. So, it is always better to choose someone outside the houses to decide matter related to election dispute as it is difficult in situations to act as independent adjudicator. As a speaker taking decision in disqualification causes violation of natural justice since there is high institutional interest for the speaker.²²

According to Kihoto case, there is no violation of any freedom or Article 105 and 194, the para 7 which affects the basic structure was removed and now the decision of the speaker is subject to judicial review. So apart from this para 7 they held everything constitutional in 10 th schedule.²³ In the case *R.Bhoopathi Reddy vs The Chairman* the court mentioned that para 8(2) of Tenth schedule where the rule made by the speaker is always put before voting so core principle which is democracy, and it is protected.²⁴

For these claims of violation of principle of natural justice, the case *Jagjit Singh vs State Of Haryana & Ors*, where the court stated that Principle of Natural justice is not a rigid mould to be placed. The court every time needs to analyse the facts of the case to

¹⁷ *Nabam Rebia v. Deputy Speaker, Arunachal Pradesh Legislative Assembly*, (2016) 8 SCC 1 (India).

¹⁸ *U.O.I v. Tulshiram Patel* 1985 AIR 1416.

¹⁹ INDIA CONST. art. 14.

²⁰ *A.K. Kraipak v. Union of India*, (1969) 2 SCC 262.

²¹ INDIA CONST. sch.10,para 6

²² *Dimes v. Grand Junction Canal Co.*, 1852 3 HLC 759

²³ *Kihoto Hollohan v. Zachillhu*, Supp. (2) SCC 651 (1992).

²⁴ *R.Bhoopathi Reddy vs The Chairman* (2022) 9 SCC 235.

decide the violation of this principle.²⁵ Hence there is a chance of reasonable doubt, but it cannot be of every cases so the speaker can even act independently in various situations. The principle of natural justice is violated but not entirely so there is a different solutions given by Dinesh Gowsami committee, No. 170th law commission report of India. According to Dinesh Goswami Committee, the 170th law commission report insisted that instead of speaker being the adjudicator in the matter of disqualification they suggested the President or the Governor to take actions based on the advice of the Election commission of India.²⁶

According to Article 103 of the Indian constitution where the President of India is given power to disqualify a member on the basis of Article 102(1), where his decision shall be final but before taking decision the President needs to get advice from Election commission of India and act according the advice.²⁷ Since the President already takes decision of disqualification of members for Article 102(1), the other Article 102(2) which refers to the disqualification on the basis of 10th schedule but the power is in the hands of the speaker.²⁸ In the case of *Jagjit Singh Vs. State of Haryana*, the supreme court understood and acknowledged the Dinesh Gowsami report suggestions of taking election commission of India's advice as like Article 103 and 194(2).²⁹

IV. CONCLUSION & SUGGESTIONS:

While the Anti-Defection Law is chiefly a constitutional provision, it overlaps with Administrative Law in various ways, particularly through the administrative decision-making process of constitutional authorities, the scope for judicial review of those decisions, and the application of principles of natural justice and fairness. The law plays a critical role in preserving the integrity of the political process, which is a one of the main aspect of good governance and administration.

Through this article the content delivered mainly focuses that even though the Speaker delivers his decision it is always staged prior to judicial actions hence the

²⁵ *Jagjit Singh vs State Of Haryana & Ors.* (2006) 11 SCC 1.

²⁶ Law commission of India, Report NO.170.

²⁷ INDIA CONST, Art.103.

²⁸ INDIA CONST, Art.102.

²⁹ *Jagjit Singh Vs. State of Haryana*, AIR 2007 SC 590.

judicial review cannot be restricted as it is basic structure of the democracy and the constitution, it is always about checks and balances so it cannot be restricted but it is staged only after speaker's decision to have a smooth functioning of the 10th schedule of the Indian constitution.

Currently, the disqualification of members is decided by the speaker but it leads to potential bias because of institutional interest of the speaker, so the speaker's decision could be institutional bias. After critical analysis through the paper it is suggested that the president himself who can possibly act as an independent adjudicatory did not take action solely in Disqualification of members of the house. The decision is taken on the advice of Election commission of India.³⁰ So as per the 170th Report of the Law commission of India the President or the Governor should be taking the decisions related to defection cases as like the President of India takes decision in other disqualifications ³¹, also they should get the advice of the Election commission and take decision as per the advice, this report outcomes are also acknowledged by the apex court so it need to be passed and implemented.

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