

ANTI-DEFECTION LAW AND PARLIAMENTARY PRIVILEGES (1993). By Subhash C. Kashyap. N.M. Tripathi Pvt. Ltd., Bombay. Pp.xvi +422. Price Rs. 250.

THE MATTER of electoral reforms has remained the most controversial issue on the national agenda. Only the other day a Constitutional Amendment Bill seeking to "clip the wings" of the Chief Election Commissioner T.N. Seshan had to be withdrawn by the government due to widespread opposition both within and outside Parliament. Obviously, the government had rushed in with the Bill without arriving at a consensus on the basis of a national debate.<sup>1</sup> Another area which needs immediate attention of the government is the anti-defection law embodied in the Tenth Schedule of the Constitution introduced in 1985 which has several serious lacunae causing unprecedented damage to the political life of the country. On several occasions in the past the government has expressed intense desire to bring forward comprehensive amendments but nothing has happened so far. The anti-defection law too was passed in haste, rushed through the two Houses and was not a result of consensus and broadbased national debate.

The Statement of Objects and Reasons appended to the Fifty Second Amendment Bill 1985 stated that the evil of political defections has been a matter of national concern. If it is not combated, it is likely to undermine the very foundations of Indian democracy and the principles which sustain it. It is well known that the pressure to curb defection in our national life arose soon after the fourth general elections in 1967 which worked an unprecedented era of political instability due to large scale political defection resulting in the formation of coalition governments in several states. A Constitutional Amendment Bill was introduced in May 1973 to outlaw defections but it lapsed due to dissolution of the *Lok Sabha*. Another attempt to curb defections through constitutional amendment was again foiled in 1978. The Constitution (Fifty Second Amendment) Act 1985 has, (i) amended articles 101, 102, 190 and 191 of the Constitution; and (ii) added the Tenth Schedule to the Constitution containing provisions as to disqualification on the ground of political defections.

The book under review by Subhash C. Kashyap seeks to analyse and interpret the provisions of the Tenth Schedule to, (i) evaluate the working of the anti-defection law; and (ii) identify the basic flaws in the existing law. The author is an accredited scholar in parliamentary affairs and has written excellent treatises on the topic of defection.<sup>2</sup> The book under review<sup>3</sup> is particularly interesting as it is authored by a person who has himself worked as the Secretary General, *Lok Sabha* for a long time.

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1. See, *The Hindustan Times*, Editorial, 15 June 1994 (New Delhi).

2. Subhash C.Kashyap, *Politics of Defection* (1969) and *Politics of Power* (1974).

3. Subhash C. Kashyap, *Anti-Defection Law and Parliamentary Privileges* (1993).

The author explains the meaning of defection as connoting the “abandonment of loyalty, duty or principle or of one’s leader or cause”.<sup>4</sup> Chapter I very briefly traces the earlier attempts to curb defections. Chapter II is mainly devoted to a discussion of the Supreme Court’s decision in *Kihoto-Hollohan v. Shai Zachillu*<sup>5</sup> in which paragraph 7 of the Tenth Schedule was declared unconstitutional as it completely banned the jurisdiction of the courts and gave finality to the decision of the Speaker/Presiding Officer on the question of disqualification under the schedule. The court held that while operating under the anti-defection law, the Speaker was in the position of a tribunal and therefore his decision like those of all tribunals was subject to judicial review. Since the provisions of paragraph 7 in terms and in effect, brought about a change in the operation and effect of articles 136, 226 and 227, the Fifty Second Amendment, according to the court, required ratification in accordance with the proviso to sub-article(2) of article 368 of the Constitution. The remaining provisions were upheld by the Supreme Court. While discussing this case, the author, however, does not offer any criticism or comment of his own. Chapters III and IV provide very useful information about the incidents of political defections in various state legislatures and the *Lok Sabha*. The author very helpfully explains how in certain states like Nagaland, Mizoram, Tamil Nadu, Manipur, Goa and Meghalaya the governments were brought down through defections and how in certain cases the Speakers exercised their powers in a partisan and irresponsible manner.

Chapter V is perhaps the most interesting entitled “The Case of the Twenty in the Lok Sabha Speaker’s Court”. It may be recalled that on 7 August 1992, 20 of the 59 members of Janata Dal led by Ajit Singh appeared before the Speaker physically in one group and claimed that they belonged to a group and should be seated separately from the Janata Dal members led by V.P. Singh. Eight of these members had already been expelled by the Janata Dal leadership in two separate spells for anti-party activities. Speaker Rabi Ray declared the group of 20 as ‘unattached’ and held that the split was a one time affair and not a continuous process. Later Speaker Shiv Raj Patil did not declare them ‘unattached’ like his predecessor but allotted them separate seats in the House.

At the time of writing of the book under review the decision on the matter of split in the Janata Dal was pending with the Speaker. The author, however, is critical of the view that ‘split’ in a national party is a one time affair. To him split cannot be in the “nature of a guillotine that suddenly falls and in a precise moment divides the party membership into two.”<sup>6</sup> He is of the opinion that neither the Constitution nor the Tenth Schedule recognise any category of ‘unattached’ members. Simply ‘expulsion’ is not recognised by anti-defection law. He observes:<sup>7</sup>

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4. *Id.* at 1.

5. (1992)1 Scale 338. The author however nowhere mentions the name or citation of this case in this ch.

6. *Supra* note 3 at 44.

7. *Id.* at 42.

Every member is either independent or nominated or belongs to the party of which he was a candidate at the election. "Expulsion" and declaration as "Unattached" have been used only as partisan and illegal devices for circumventing the Anti-Defection Law.

Dealing with the case of the twenty, the author notes that anti-defection law recognises both 'merger' and 'split' as legitimate. Split would occur if members "claim" that their group represents a faction 'arising' as a result of a 'split' and they are not less than one-third of the total party membership. In such a situation they will not be disqualified in terms of paragraph 6 of the Tenth Schedule. According to the author the only matter that the Speaker has to look into and satisfy himself is in regard to the group claiming to be the result of the split being not less than one-third. If this requirement of one-third is met, the Speaker is bound to hold that no disqualification is incurred.<sup>8</sup>

According to him no political party has the authority to expel any member of the party because expulsion is not recognised by the Tenth Schedule.<sup>9</sup> Pointing out the dangers of such expulsions, he observes:<sup>10</sup>

By using the device of expelling some of the dissidents or suspected or potential members of a group likely to break away any party leadership of the day can completely nullify the intentions of the law and make any legitimate split in the party impossible.

It may be worthwhile to describe the events that took place subsequent to publication of the book under review. On 1 June 1993 *Lok Sabha* Speaker Shiv Raj Patil recognised the 20 member Janata Dal group led by Ajit Singh as a "validly constituted faction of the Janata Dal Parliamentary Party" but disqualified four of its members for their failure to abide by the party whip stipulating that they vote for the no-confidence motion against P.V. Narasimha Rao Government on 17 July 1992. Patil's 117 page order contains very valuable suggestions for reforming the anti-defection law. Like the present author the Speaker also held that political parties have no right to expel members from the legislative party. Therefore the expulsion of members by the Janata Dal was illegal and without any effect on their constitutional status as members of the Janata Dal Parliamentary Party.<sup>10</sup> The learned Speaker also ruled that any action against the members under the Tenth Schedule would have prospective and not retrospective effect.

In chapter VI entitled "Reforming the Law: A case for Amending the Tenth Schedule" the author makes several suggestions for reforming the anti-defection law which according to him was "prepared in haste and rushed through the two Houses at a time when the ruling party had an unprecedented majority in the Lok Sabha".<sup>11</sup> He advocates clear definition of terms like 'political party' 'merger'

8. *Id.* at 41.

9. *Id.* at 42.

10. See, *The Hindustan Times*, 2 June 1993 (New Delhi).

11. *Supra* note 3 at 47.

and 'split' occurring in the Tenth Schedule. He finds a clear contradiction between Direction 120 of the Directions of the Speaker and provisions of the anti-defection law relating to the meaning of a 'political party'. Under the Speaker's Direction, to be recognised as a political party the minimum number required is one-tenth of the membership and for a group it should be at least 30. On the other hand, under the Tenth Schedule every party is a political party that is represented in the House regardless of the number of its members in the House. This contradiction can be rectified by a constitutional amendment only.

The author very rightly says that "no reform in the anti-defection law would be meaningful without a deep view of the conception, structure, functioning and role perception of political parties in our polity."<sup>12</sup> Parties as they exist today hardly deserve any protection against defection by their members as most of them are not based on any principles, ideologies or programmes and are not democratically run. One of the suggestions made by the author is to do away with the distinction between individual and group defection. Under the Tenth Schedule an individual defector is disqualified to be a member but the disqualification on the ground of defection shall not apply to a member if he and other members of the party constitute a group 'arising' as a result of the split in the original political party, and such group consists of one-third of the members of the legislature party. The author thinks it unfair that an individual defector should be penalised by disqualification while a group of defectors can escape the penalty of disqualification "after entering into a conspiracy to act together to defect the objectives of the law and throw out a legally constituted government"<sup>13</sup> He proposes that anyone changing party affiliations after being elected on a particular party ticket must automatically and immediately lose his seat in the legislature. There should be "no exceptions and no provisos".<sup>14</sup> He also suggests that a defector should never be appointed, (i) as a minister; or (ii) to any public office of material benefit or influence.

Another reform suggested by the author relates to powers of the Speaker to decide the question of disqualification. He believes that the Speaker being chosen by the ruling party cannot be expected to be non-partisan and therefore it would be unjust to give finality to the decision on the controversial matter of disqualification. He advises the Speakers and Presiding Officers to unanimously resolve to be relieved of all duties assigned to them under the anti-defection law. It is interesting to note that in his ruling on 1 June 1993, even Shiv Raj Patil took the view that cases pertaining to anti-defection law should be tried by judges only because in any event the Speaker's verdict is not final and subject to judicial review. He has suggested that by amending the law the Supreme Court should be given exclusive power to decide cases arising in Parliament and the High Courts should decide the cases pertaining to the state legislatures.

Chapter VII provides a comprehensive account of the role of Whip in the context of anti-defection law and parliamentary privileges. The author very

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12. *Id.* at 52.

13. *Id.* at 53.

14. *Ibid.*

helpfully cites examples of the Whips issued both in UK and India. In particular he undertakes a case-study of the matter in which a minister issued a handwritten Whip on the floor of the House on the spur of the moment to two dissident members of his party asking them not to continue to speak and threatening them with disqualification under the Tenth Schedule. He notes that whereas in UK the Whips only 'request' or 'particularly request' attendance or declare attendance essential, the Indian Whips not only ask for presence of members but also direct them to support and vote without fail in favour of party candidates in the manner indicated in the Whip.<sup>15</sup> In UK a Whip can be refused by a member. A Whip is always issued outside the House.

Under the anti-defection law disobedience of party directives or Whips can result in disqualification of membership of the House. The author has suggested that the role of the whip in legislature should be codified. Chapter VIII entitled "The Anti-Defection Law" deals with clause by clause commentary of the Tenth Schedule. Many points made here have already been covered in preceding chapters.

Out of 422 pages only 117 pages constitute the text of the book under review. 303 pages are covered by annexures and index. The book is slightly repetitive which could have easily been avoided by the author.

The author deserves congratulations for bringing out such a nice book on anti-defection law. It is highly informative. The various reforms suggested by him deserve favourable consideration. It is hoped that the Tenth Schedule will soon be amended so as to make it effective. At present, this law instead of curbing defections, has encouraged bulk defections and splits.

The book under review is very useful for everyone interested in functioning of democracy and political parties in India.

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15. *Id.* at 70.

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