Dissent or Defection: Understanding differentiation between the two is the key to the constitutional democratic political-party-based system of governance

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Abstract:

On November 13, 2019, a three-Judge Bench of the Supreme Court led by Justice N.V. Ramana, (the other members of the Bench being Justices Sanjiv Khanna and Krishna Murari) delivered a judgment on anti-defection law, which in our view, is fair, equitable, and just by all accounts. It seeks to hold objectively a balance between the conflicting and competing interests/rights that come into play in the functioning of a democratic-parliamentary-political-party-based system of governance under the Constitution. In their decision-making, the Supreme Court has eventually depended upon drawing the line of demarcation between the 'dissent' and the 'defection.'

In our critical analysis, however, we have endeavored to illuminate and understand the fine line of demarcation between the 'dissent' and 'defection' by making it "apparent," as much as possible. We have done this by restating that, in our reading, the constitutional concept of 'resignation' manifestly symbolizes the irreconcilable silent dissent; whereas 'disqualification' inflicted on account of 'defection' symbolizing vociferous or loud dissent that may be genuine or may not be genuine, such as based on extraneous considerations. Lest the notion of genuine dissent should drown with the non-genuine one, our Constitution saves the situation by limiting the power of the Speaker to disqualify the political

defector only "till the date on which his term of office would expire or he/she is re-elected to the legislature, whichever is earlier." Understanding this defined differentiation, thus, definitely defends the democratic political-party based system of governance.

I find the centrality of this proposition located in the recent decision of the 3-Judge Bench judgment of the Supreme Court in *Shrimanth Balasaheb Patil* and *Ors*. v. *Hon'ble Speaker, Karnataka Legislative Assembly* and *Ors*.[1] In order to get at this proposition, it is imperative to take note of the fact matrix of the case that has led the Supreme Court to deliver the judgment, which, in my view, is fair, equitable, and just. This I tend to say, because in it the Supreme Court has objectively held a balance between the conflicting and competing rights in the functioning of democratic-parliamentary-political-party-based system of governance under the Constitution.

In *Shrimanth Balasaheb Patil* case, the results of the 15th Karnataka Legislative Assembly were declared on May 5, 2018. The results revealed that the main contestant in the election were the three political parties; namely, Bharatiya Janata Party [BJP]; Indian National Congress [INC]; and Janata Dal (Secular) [JD(S)]. Though the BJP emerged as the single largest party (with 104 seats), yet the coalition of INC (78 seats) and JD(S) (36 seats) managed to form the government.[2] However, owing to the resignation by or disqualification of, as many

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MANU/SC/1558/2019: 2019 (15) SCALE 533: (2020) 2 SCC 595, per N.V. Ramana, J. (for himself and Sanjiv Khanna and Krishna Murari, JJ.) Hereinafter, Shrimanth Balasaheb Patil. Hitherto, I have examined this case critically as a part of my annual survey of Election Law for the year 2019, involving analysis of the judgements of the Supreme Court delivered during the calendar year 2019, to be published by the Indian Law Institute in the Annual Survey of Indian Law 2019. The present article is an attempt to further fortify and reinforce that analysis.

2 The other contestants were Bahujan Samaj Party, securing one seat; Karnataka Pragnyavantha Janatha, Party [KPJP] one seat; and Independent, one seat (out of the total number of 222 seats). See, id., para 4.

as 15 members[3] of the coalition group, the coalition government had a short life of about 14 months. [4] The Speaker of the Assembly (respondent in this case) had disqualified the appellant petitioners till the end of the 15th Legislative Assembly term by rejecting their resignation.[5] Aggrieved by the Speaker's decision, all the disqualified petitioners directly approached the Supreme Court under Article 32 of the Constitution.[6] In the background of this abstracted factual matrix, the three-Judge Bench of the Supreme Court, in order to resolve the 'conflicting-competing-rights phenomenon,' has raised several related critical questions of politico-legal complexion,[7] requiring their response on the touchstone of Constitution.

First question: Whether the Supreme Court has the jurisdiction under Article 32 of the Constitution to entertain challenge to the exercise of power by the Speaker while adjudicating the disqualification petition? In other words, whether the Writ Petition challenging the order of the Speaker under Article 32 of the Constitution is maintainable at all? This is the basic preliminary question that has to be answered by the Supreme Court at the very threshold.

Bearing in mind the placing of Article 32 within the complex of Constitution, the Supreme Court has observed unreservedly that "writ jurisdiction is one of the valuable rights provided Under Article 32 of the Constitution, which in itself forms part of the basic structure of the Constitution."[8] Prima facie, the writ jurisdiction of the Supreme Court under the provisions of Article 32 is confined to the protection

3 In this case 15 out of 17 petitioners had tendered their resignation from the House before the disqualification petitions were adjudicated. The Speaker vide orders dated 28.07.2019 in Disqualification Petition Nos. 3 and 4 of 2019 and Disqualification Petition No. 5 of 2019, and order dated 25.07.2019 in Disqualification Petition No. 1 of 2019, rejected the resignation of the Petitioners therein, holding that they were not voluntary and genuine. See, Shrimanth Balasaheb Patil, para 32. The two Petitioners in Writ Petition (C) No. 992 of 2019 and Writ Petition (C) No. 1003 of 2019 did not tender their resignation, see, id., para 47.

4 Id., para 6.

5 See, id., para 16.

6 Id., para 17.

7 See, id., para 18, crystalizing issues for Court's determination.

8 Id., para 22.

of fundamental rights enunciated in Part III of the Constitution.[9] Nevertheless, owing to its unique position and placing, which makes the remedial right in itself a fundamental right, the apex court has examined the various "contours" of the writ jurisdiction as reflected in the "long established" judicial precedents.[10] The crystalized position on this count may be abstracted as under.

(a) The proposition, that in view of hierarchy of appeals the parties must exhaust the available remedies before resorting to writ jurisdiction of the Supreme Court,[11] has been disputed by observing it does not represent "a Rule of law," but merely a policy of "convenience and discretion," and not of "a compulsion," and accordingly, "where there is failure of principles of natural justice or where the orders or proceedings are wholly without jurisdiction warrants, this Court may exercise its writ jurisdiction even if the parties had other adequate legal remedies."[12]

(b) The ambit of writ jurisdiction, seemingly beyond fundamental rights should, however, remain "confined to jurisdictional errors only viz., infirmities based on violation of constitutional mandate, mala fides, non-compliance with Rules of natural justice and perversity."[13]

(c) Moreover, the Speaker, "while exercising the power to disqualify," acts as a "Tribunal," and, therefore, "the validity of the orders are amenable to judicial review."[14]

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9 For instance, the plea was raised before the Supreme Court that in the present case the apex court had no jurisdiction to deal with the matter, inasmuch as no fundamental right was violated, more so when the members of Parliament or Legislative Assembly could not invoke the 'right to freedom of trade and profession' under Article 19(1)(g) of the Constitution of India. See, id., para 19.

10 See, id., para 20.

11 See, ibid, citing U.P. State Spinning Co. Ltd. v. R.S. Pandey, MANU/SC/2467/2005: (2005) 8 SCC 264.

12 Ibid, citing

Id., para 21, citing the Constitution Bench decision in Kihoto Hollohan v. Zachillhu, MANU/SC/0753/1992 (para 109): 1992 Supp (2) SCC 651, 13

14 Ibid.

(d) Even on the touchstone of fundamental rights, the writ jurisdiction of the Supreme Court could be invoked in the instant case, because the allegations of "violation of the principles of natural justice and right to fair hearing can be traceable to right to equality and Rule of law enshrined Under Article 14 of the Constitution, read with other fundamental rights."[15]

(e) In a fact matrix analogous to that of the present case, a three Judge Bench of the Supreme Court[16] "has explicitly held that a challenge to an order of disqualification under the Tenth Schedule is available under the writ jurisdiction of this Court."[17]

(f) The Constituent Assembly Debates reveal that Dr. B.R. Ambedkar has described Article 32 as "he very soul of the Constitution - very heart of it," and, accordingly, "the jurisdiction conferred on this Court by Article 32 is an important and integral part of the basic structure of the Constitution of India and no act of Parliament can abrogate it or take it away except by way of impermissible erosion of fundamental principles of the constitutional scheme are [and?] settled propositions of Indian jurisprudence."[18]

Thus, having thus decided that the Supreme Court has sufficient jurisdiction under Article 32 to examine the validity of the orders passed by the Speaker, disqualifying the Petitioners and rejecting their resignations, the three-Judge Bench in the present case has entered a note of disapproval: "We do not

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15 Id., para 23, referring to Maneka Gandhi v. Union of India, MANU/SC/0133/1978: (1978) 1 SCC 248. Earlier, a seven Judge Bench of this Court in the case of Ujjam Bai v. State of Uttar Pradesh, MANU/SC/0101/1961: AIR 1962 SC 1621, held that writ jurisdiction of the Supreme Court under Article 32 of the Constitution is available when principles of natural justice are violated. This view was later affirmed by a nine Judge Bench of this Court in the case of Naresh Shridhar Mirajkar v. State of Maharashtra, MANU/SC/0044/1966 (para 54): AIR 1967 SC 1, when it held, inter alia, that a writ is maintainable in three cases: "(1) where action is taken under a statute which is ultra vires the Constitution; (2) where the statute is intra vires but the action taken is without jurisdiction; and (3) where the action taken is procedurally ultra vires as where a quasi-judicial authority under an obligation to act judicially passes an order in violation of the principles of natural justice." See, id., para 24.

16 Jagjit Singh v. State of Haryana, MANU/SC/5473/2006 (para 11): (2006) 11 SCC 1, cited in id., para 25], relying upon the Constitution Bench decision in Kihoto Hollohan v. Zachillhu [MANU/SC/0753/1992 : 1992 Supp (2) SCC 651], inter alia held that the order of the Speaker disqualifying a member of the Legislature under the 10th Schedule of the Constitution "would be a nullity if Rules of natural justice are violated."

17 Shrimanth Balasaheb Patil, para 25.

18 Id., para 26.

appreciate the manner in which the Petitioners have knocked on the doors of this Court."[19] By "challenging the order directly Under Article 32, the Petitioners have leapfrogged the judicial hierarchy as envisaged under the Constitution."[20] In their opinion, "a party challenging a disqualification order is required to first approach the High Court as it would be appropriate, effective and expeditious remedy to deal with such issues."[21] By doing so, the Supreme Court "would have the benefit of a considered judicial verdict from the High Court," and that if "the parties are still aggrieved, then they may approach this Court."[22] Notwithstanding this prescription, the Supreme Court has proceeded to consider the matter due to the "peculiar facts" presented before it, which included "certain interim orders were passed herein by another Co-ordinate Bench of this Court,"[23] in which the present Bench of the Supreme Court "had heard the matter at some length,"[24] and "the matter was fixed for final hearing.."[25] "Since a substantial amount of time has passed in the meanwhile, and to ensure that the same exercise need not be repeated before the High Court, we are left with no option but to hear these cases on merits." [26]

Under the Tenth Schedule of the Constitution read with relevant provisions, the Speaker is empowered to meet the menace of political corruption, such as horse trading and other corrupt practices associated with defection and change of loyalty for lure of office. However, his decision-making is not unqualified. Why?

"The Speaker, while adjudicating a disqualification petition, acts as a *quasi-judicial* authority and the validity of the orders thus passed can be questioned

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19 Id., para 29.

20 Id., para 28, by referring to Tamil Nadu Pollution Control Board v. Sterlite Industries (I) Ltd., MANU/SC/0223/2019.

21 Id., para 30.

22 Ibid.

23 See, id., para 29: Writ Petition (C) No. 872 of 2019 filed by some of the present Petitioners.

24 The writ petition was heard on 25.09.2019 and 26.09.2019, with the consent of the counsel of all the parties.

25 Ibid.

26 Ibid.

before this Court Under Article 32 of the Constitution."[27] However, having so held, the Supreme Court has advisedly stated that "ordinarily, the party challenging the disqualification is required to first approach the High Court as the same would be appropriate, effective and expeditious."[28] The underlying reason seems to be that the jurisdiction of the High Court under Article 226 of the Constitution is much wider than that of the Supreme Court under Article 32,[29] which is singularly focused and confined to for the protection of fundamental rights. However, the extent of intervention by the Supreme Court in dealing with the exercise of powers of the Speaker relatively remains confined.[30]

Second question: Whether the scope of Speaker's power in accepting/rejecting the resignation letter, resigning from membership of legislative assembly, is unbounded? It is trite to state that the power of the Speaker to accept or reject the resignation of a member of either the House of Parliament or a member of a House of the Legislature of a State is derived, like that of any other constitutional functionary, from the Constitution. In the present case, the relevant constitutional provisions are contained under Article 190(3)(b),[31] as amended by the The Constitution (Thirty-Third Amendment) Act, 1974. The amended version of Article 190(3)(b), *inter alia,* provides:

> "If a member of a House of the Legislature of a State resigns his seat by writing under his hand addressed to the Speaker or the Chairman, as the case may be, and his resignation is accepted by the Speaker or the Chairman, as the case may be, his seat

27 Id. para 152(a)

28 Ibid.

29 The Power of High Courts to issue certain writs under Article 226 opens with non-obstante clause:

"(1) Notwithstanding anything in article 32 every High Court shall have power, throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority, including in appropriate cases, any Government, within those territories directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose."

30 See, supra, note 190.

31 The corresponding Article 101 of the Constitution deals with the vacation of seat by members of both Houses of Parliament.

> shall thereupon become vacant: Provided that in the case of any resignation referred to in sub Clause (b), if from information received or otherwise and after making such inquiry as he thinks fit, the Speaker or the Chairman, as the case may be, is satisfied that such resignation is not voluntary or genuine, he shall not accept such resignation."

A bare perusal of Sub-clause (b) of Clause (3) of Article 190 reveals that the acceptance of resignation from his seat by a member of the legislature, communicated to the Speaker in 'writing under his hand', is subject to proviso, which was added by the 33rd Amendment of the Constitution.[32] Under the added proviso, the Speaker is empowered to 'satisfy' himself whether the submitted resignation is 'voluntary or genuine.' If he is satisfied after making 'inquiry' that 'such resignation is not voluntary or genuine, he shall not accept such resignation.'

In the instant case, the Speaker rejected the resignation of petitioners, who had tendered their resignation from the House before their disqualification was adjudicated.[33] The issue for determination is whether the satisfaction of the Speaker in disqualifying the petitioners is purely 'subjective' and, therefore, 'absolute' and not justiciable? This proposition is not true, as has been demonstrated earlier that the Speaker in the discharge of disqualifying petitioners, on general principle, acts as a "Tribunal", and, therefore, "the validity of the orders are amenable to judicial review."[34] Apart from this, his "discretion is not unqualified", inasmuch as under the added proviso, he can reject the resignation only if it were found and revealed on inquiry that that such resignation was not 'voluntary or genuine'.[35] In other words, satisfaction "cannot be based on the ipse dixit of the Speaker;"[36] that

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32 Prior to the 33rd Constitutional Amendment of Article 190(3)(b), a member could resign his seat unilaterally simply "by writing under his hand" addressed to the Speaker or the Chairman, as the case may be," and acceptance of the resignation was not required, see, Shrimanth Balasaheb Patil, para 38, referring to Union of India v. Gopal Chandra Misra, MANU/SC/0370/1978 : (1978) 2 SCC 301; Moti Ram v. Param Dev, MANU/SC/0270/1993 : (1993) 2 SCC 725.

33 See, supra note 180.

34 See, supra note 191, and the accompanying text.

35 Shrimanth Balasaheb Patil, para 35.

36 Ibid.

is, merely on the assertion of the Speaker without requiring him to 'prove' that how he had arrived in his inquiry at the conclusion that the resignation was not 'voluntary or genuine.'

The underlying premise, constitutionally obligating the Speaker to show that the resignation was not 'voluntary or genuine', is, as the Supreme Court has put it:[37]

> [A]s a starting principle, it has to be accepted that a member of the Legislature has a right to resign. Nothing in the Constitution, or any statute, prevents him from resigning. A member may choose to resign for a variety of reasons and his reasons may be good or bad, but it is his sole prerogative to resign. An elected member cannot be compelled to continue his office if he chooses to resign.

All this implies is that "the Speaker has limited discretion for rejecting the resignation."[38] "If the resignation is voluntary or genuine, the Speaker has to accept the resignation and communicate the same."[39] This 'limited' discretionary role is substantiated by the Rules of Procedure and Conduct of Business in Karnataka Legislative Assembly.[40] This Rule is in consonance with the added proviso in Article 190(3)(b) by the constitutional Thirty-third Amending Act. From the cumulative reading, "it is clear that the Speaker's satisfaction should be based on the information received and after making such inquiry as he thinks fit."[41] "If a member appears before him and gives a letter in writing, an inquiry may be a limited inquiry."[42] "But if he receives information that a member tendered his resignation

37 Id., para 39.

38 Id., para 40.

39 Ibid.

40 Chapter 22, Rule 202 (2) of the Rules of Procedure and Conduct of Business in Karnataka Legislative Assembly, inter alia, provides: "If a member hands over the letter of resignation to the Speaker personally and informs him that the resignation is voluntary and genuine and the Speaker has no information or knowledge to the contrary, and if he is satisfied, the Speaker may accept resignation immediately." Cited in id., para 41.

41 Shrimanth Balasaheb Patil, para 41.

42 Ibid.

under coercion, he may choose to commence a formal inquiry to ascertain if the resignation was voluntary and genuine."[43]

The discretionary role of the Speaker under the added proviso of Article 190(3)(b) of the Constitution is circumscribed by the two words "genuine" and "voluntary," which have not been defined in the Constitution. However, the Supreme Court has construed these terms in the context in which they appear. The word "genuine" "would simply mean that a writing by which a member chooses to resign is by the member himself and is not forged by any third party."[44] That is, the word "genuine" "only relates to the authenticity of the letter of resignation."[45]

Similarly, the word "voluntary" would contextually mean that "the resignation should not be based on threat, force or coercion."[46] This limited connotative construction is amply supported by the Statement of Objects and Reasons of the 33rd Constitutional Amendment Act, which added the proviso to Articles 101(3)(b), and 190(3)(b) of the Constitution. The avowed objective of the added proviso is to counteract the phenomenon "*where coercive measures have been resorted to for compelling members of' a Legislative Assembly to resign their membership, if this is not checked, it might become difficult for Legislatures to function in accordance with the provisions of the Constitution.*"[47] Accordingly, it is stated by the Supreme Court that the Speaker "has a duty to reject the resignation if such resignation is based on coercion, threat or force."[48]

In this scenario, the critical question is about the ambit of "voluntary or genuine" within the contextual construction of added 'proviso' to Articles 101(3)(b), and 190(3)(b) of the Constitution. Can the Court go into "the ***motive*** of the member

43 Ibid.

44 Id., para 42,

45 Ibid.

46 Id., para 43.

47 The Statement of Objects and Reasons of the 33rd Constitutional Amendment Act, cited in ibid. (Emphasis supplied by the Court.)

48 Ibid.

and reject his resignation if it was done under political pressure"?[49] The Supreme Court has repelled this contention clearly and categorically by observing:[50]

> We are unable to accept this contention. The language of Article 190(3)(b) of the Constitution does not permit the Speaker to inquire into the motive of the resignation. When a member is resigning on political pressure, he is still voluntarily doing so. Once the member tenders his resignation it would be "voluntary" and if the writing can be attributed to him, it would be "genuine."

This judicial construction stands squarely supported by the debates on the 33rd Constitutional Amendment of the Constitution.[51]

In view of the above, the Supreme Court has held that the scope of the decision-making power of the Speaker to reject a resignation under Article 190(3)(b) of the Constitution is not unbounded. It is limited to inquiring whether or not resignation is "voluntary" or "genuine" without taking into account "any other extraneous factors", such as "motive of the member," or whether "a member is

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49 This issue was specifically raised before the Supreme Court in the instant case on behalf of respondents, see, id., para 44. (Emphasis added)

50 Ibid.

51 The Supreme Court has specifically cited the statement made by the then Law Minister, H.R. Gokhale, while participating in the Lok Sabha debate dated 03.05.1974 on the 33rd Constitutional Amendment. Dispelling the doubts, whether the 33rd Amendment of the Constitution deprives the members of their freedom to resign from the membership of the legislative bodies, he, inter alia, observed: "[T]he idea that the Bill prevents any member from resigning is absolutely wrong. On the contrary, the basis on which the Bill proceeds is, the right of resignation is protected and the idea of acceptance of a resignation is also subject to a proviso that the acceptance is in the normal course and the resignation can take place only in the event of a conclusion being reached that either it is not genuine or it is not voluntary. Therefore, to proceed on the basis that the right of a Member to resign is taken away, is entirely wrong. This can be seen if the bill is properly studied. The other thing they said was, in the name of democracy, how do you prevent people from resigning. Nobody is prevented from resigning. On the contrary, the basic idea is, the ordinary right of a person to say 'I do not want to continue to be a Member of the House' is maintained. But, is it a democratic way, when a Member does not want to resign, people pressurise him to resign - not political pressure but by threats of violence - as had occurred in the recent past. The person has no option but to resign. The Speaker has no option but to accept the resignation in the present set-up. This is a matter which was true in Gujarat. It may be true elsewhere. It was true in Gujarat. It had happened. A large number of people, about 200-300 people, went and indulged in acts of violence, held out threats and under duress, signatures were obtained. In some cases, Members were carried physically from their constituencies to the Speaker for giving resignations." (Emphasis by the Supreme Court,) Cited in para 44, ibid.

resigning on political pressure."[52] In other words, his role is limited whether the member's resignation was out of his free will or under undue influence. "Once it is demonstrated that a member is willing to resign out of his free will, the speaker has no option but to accept the resignation,"[53] and that it is "constitutionally impermissible for the Speaker to take into account any extraneous factors while considering the resignation."[54]

Third question: Whether the right of a member to resign can pre-empt or overtake the Speaker's jurisdiction to disqualify him under the Tenth Schedule of the Constitution? The avowed objective of introducing the Tenth Schedule in 1985 by the 52nd Amendment into our Constitution[55] is "to curb the evil of political defections motivated by lure of office or other similar considerations which endanger the foundations of our democracy."[56] And the proposed remedy to curb this evil is "to disqualify the Member of either House of Parliament or of the State Legislature who is found to have defected from continuing as a Member of the House."[57] This remedy was further strengthened by the Constitution (Ninety-first Amendment) Act, 2003 (w.e.f. 01.01.2004), which introduced Articles 75(1B), 164(1B) and 361B in the Constitution.[58] "These provisions bar any person who is disqualified under the Tenth Schedule from being appointed as a Minister or from holding any remunerative political post from the date of disqualification till the date on which the term of his office would expire or if he is re-elected to the legislature, whichever is earlier."[59]

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52 Id., para 45 read with paras 44 and 46.

53 Id., para 152(b).

54 Ibid, citing State of Uttar Pradesh v. Mohammad Nooh, MANU/SC/0125/1957: AIR 1958 SC 86; Harbanslal Sahnia v. Indian Oil Corporation Ltd., MANU/SC/1199/2002 : (2003) 2 SCC 107]

55 The Tenth Schedule [Articles 102(2) and 191(2)] was inserted in the Constitution in 1985 by the 52nd Amendment Act. It lays down the process by which legislators may be disqualified on grounds of defection by the Presiding Officer of a legislature based on a petition by any other member of the House. It is further reinforced in 2002. Earlier, 10th schedule was related to association of Sikkim with India. Once, Sikkim became full-fledged state, this schedule was repealed via the 36th amendment act.

56 Id., para 49, citing Kihoto Hollohan v. Zachillhu [MANU/SC/0753/1992 [paras 9]: 1992 Supp (2) SCC 651.

57 Ibid.

58 Id., para 50.

59 Ibid.

In this context, a question has come to the fore, whether a member in the exercise of his right to resign from the membership of the House could circumvent his impending disqualification under the anti-defection law as laid down in the Tenth Schedule of the Constitution? The Supreme Court has squarely responded to this predicament by observing: [60]

> "If we hold that the disqualification proceedings would become infructuous upon tendering resignation, any member who is on the verge of being disqualified would immediately resign and would escape from the sanctions provided Under Articles 75(1B), 164(1B) and 361B. Such an interpretation would therefore not only be against the intent behind the introduction of the Tenth Schedule, but also defeat the spirit of the 91st Constitutional Amendment.

The crucial question before the Supreme Court in the instant case, therefore, is: how to interpret the provisions of the Tenth Schedule along with the ones introduced by the 91st Amendment of the Constitution that would effectively prevent the member from defeating the spirit of anti-defection provision in disguise of his right and freedom to resign? For this the Supreme Court has derived the inspirational clue from their Constitution Bench decisions on the following counts:

One, "an inhibition under the Constitution must be interpreted so as to give a wider interpretation to cure the existing evils."[61] The rationale for 'wider interpretation' is provided in the following "extract" from the Constitution Bench decision, which needs to be quoted in full for bringing out its true import: [62]

> Legislation, both statutory and constitutional, is enacted, it is true, from experience of evils. But its general language should not, therefore, necessarily be confined to the form that that evil had taken. Time works changes, brings into existence new conditions and purposes and new

60 Id., para 51.

61 Id., para 52, citing the five Judge Bench of the Supreme Court in the case of Delhi Transport Corporation v. D.T.C. Mazdoor Congress, MANU/SC/0031/1991 (para 118): 1991 Supp (1) SCC 600.

62 Ibid.

> awareness of limitations. Therefore, a principle to be valid must be capable of wider application than the mischief which gave it birth. This is particularly true of the constitutional constructions. Constitutions are not ephemeral enactments designed to meet passing occasions. These are, to use the words of Chief Justice Marshall, "designed to approach immortality as nearly as human institutions can approach it ...." In the application of a constitutional limitation or inhibition, our interpretation cannot be only of 'what has been' but of 'what may be'.[63] [Emphasis added]

Two, one of the cardinal principles of constitutional interpretation is that the courts are "obligated to take an interpretation which glorifies the democratic spirit of the Constitution," which "gives birth to the requisite constitutional trust which must be exhibited by all constitutional functionaries while performing their official duties." [64]

Three, for preserving the democratic spirit of Constitution, "the decision of the Speaker that a member is disqualified, relates back to the date of the disqualifying action complained of."[65] The proposition that the Speaker has the power to take "ex facto" decision; that is "to decide the question of disqualification with reference to the date on which the member voluntarily gives up his membership or defies the whip," is already a judicially decided one.[66] Moreover, in this respect, the "tendering of resignation does not have a bearing on the jurisdiction of the Speaker,"[67] else, it would amount to holding that by mere putting in the resignation,

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63 Citing in turn the observations of the Supreme Court in Sunil Batra v. Delhi Administration [MANU/SC/0184/1978: (1978) 4 SCC 494: 1979 SCC (Cri.) 155].

64 Shrimanth Balasaheb Patil, para 53, citing the judgment of five judges Bench in State (NCT of Delhi) v. Union of India, MANU/SC/0680/2018 (paras 284.1 and 284.5): (2018) 8 SCC 501, which, inter alia, held: "While interpreting the provisions of the Constitution, the safe and most sound approach for the constitutional courts to adopt is to read the words of the Constitution in the light of the spirit of the Constitution so that the quintessential democratic nature of our Constitution and the paradigm of representative participation by way of citizenry engagement are not annihilated."

65 Id., para 54.

66 See, ibid, citing the Constitution Bench decision of the Supreme Court in Rajendra Singh Rana v. Swami Prasad Maurya, MANU/SC/0993/2007 : (2007) 4 SCC 270.

67 See, id., para 55, citing D. Sanjeevayya v. Election Tribunal, Andhra Pradesh, AIR 1967 SC 1211,

the member could "vaporise" the taint of disqualification.[68] In other words, "[e]ven if the resignation is tendered, the act resulting in disqualification arising prior to the resignation does not come to an end."[69] Since in the fact matrix of the present case, the act of disqualification have arisen prior to the members resigning from the Assembly, the pending or impending disqualification action of the Speaker would not be impacted by the submission of the resignation letter. [70]

Fourth question: Whether the power of the Speaker to curb the evil of political defection through the sanction of disqualification as envisaged under the Tenth Schedule of the Constitution is absolute and unqualified? To curb and contain the evil of political defection constitutionally, India is one of the few countries that legislated Anti-defection Law.[71] This has been done by introducing the Tenth Schedule of the Constitution, which specifically empowers the Speaker to disqualify a member belonging to any political party if he has voluntarily given up his membership of such political party or if he votes against the wishes of his party.[72] However, his power to disqualify under the Tenth Schedule is at variance with the power of the Governor to disqualify a person for being a member of either House of Legislature of the State in the general scheme of the Constitution.

The provisions of Article 192 of the Constitution pointedly provide that the Governor will be the authority for determination of disqualification on the grounds as contained under Article 191(1) of the Constitution, such as holding an office

68 See, ibid.

69 Id., para 56.

70 Ibid.

71 India's lead was followed by, say, Israel and Canada. See., Id., para 58.

72 The provisions of Paragraph 2 of the Tenth Schedule, which deal with disqualification on ground of defection, provide that: (1) Subject to the provisions of paragraphs 4 and 5, a member of a House belonging to any political party shall be disqualified for being a member of the House -- (a) if he has voluntarily given up his membership of such political party; or (b) if he votes or abstains from voting in such House contrary to any direction issued by the political party to which he belongs or by any person or authority authorised by it in this behalf, without obtaining, in either case, the prior permission of such political party, person or authority and such voting or abstention has not been condoned by such political party, person or authority within fifteen days from the date of such voting or abstention.

of profit, unsoundness of mind, insolvency, etc.[73] In contrast, the decision as to disqualification on the ground as contained in Article 191(2) of the Constitution,[74] which specifically disqualifies a person for being a member of the Legislative Assembly or Legislative Council of a State, if he is so disqualified under the Tenth Schedule,[75] vests exclusively in the Speaker in terms of paragraph 6 of the same Schedule.[76] A bare comparison of the two clauses of Article 191 of the Constitution reveals the ambit of power of disqualification rendered by the Governor of the State on the one hand, and the Speaker of the State Assembly on the other. Under Clause (1), the Governor may disqualify a person not only for being a member of the Legislative Assembly or the Legislative Council if the actions or candidature of the person concerned attract the grounds therein, but also debar him "for being chosen"; that is even from contesting election.[77] Against this, under Clause (2), the Speaker could debar a person only "for being a member" of the Legislative Assembly or the Legislative Council.[78] This position is further clarified and strengthened by the later on inserted Articles 164 (1B) and 361B of the Constitution.[79] Under the provisions of these Articles, it is clearly stated that a person who is disqualified for being a member of that House under paragraph 2 of the Tenth Schedule shall also be disqualified "to be appointed as a Minister" or " hold any remunerative political post" " for duration of the period commencing from the date of his disqualification till the date on which the term of his office as such member would expire or where he contests any election to the Legislative

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73 Article 192 of the Constitution, relating to the decision on questions as to disqualifications of members, stipulates: "(1) If any question arises as to whether a member of a House of the Legislature of a State has become subject to any of the disqualifications mentioned in clause (1) of article 191, the question shall be referred for the decision of the Governor and his decision shall be final. (2) Before giving any decision on any such question, the Governor shall obtain the opinion of the Election Commission and shall act according to such opinion." The grounds contained in Article 191(1) of the Constitution include such disqualifications as holding an office of profit, unsoundness of mind, insolvency, etc.

74 Clause (2) of Article 192, which was Inserted by the Constitution (Fifty-second Amendment) Act, 1985, Section 5 along with the Tenth Schedule of the Constitution (w.e.f. 1-3-1985).

75 Clause (2) of Article 191

76 A mere perusal of Para 6 of the Tenth Schedule reveals that as an integral part of the proceedings of the House, the power of disqualifying the defected member exclusively lies with the Speaker/Chairman of the House, and none else.

77 See, Shrimanth Balasaheb Patil, para 64.

78 Ibid.

79 Inserted by the Constitution (Ninety-First Amendment) Act, 2003, Section 3 (w.e.f. 1-1-2004).

Assembly of a State or either House of the Legislature of a State having Legislative Council, as the case may be, before the expiry of such period, till the date on which he is declared elected, whichever is earlier."[80]

Having thus circumscribed the power of the Speaker vis-à-vis the ambit of disqualification, Paragraph 6 of the Tenth Schedule under its sub-para (2) provides:

> "All proceedings under sub-paragraph (1) of this paragraph in relation to any question as to disqualification of a member of a House under this Schedule shall be deemed to be proceedings in Parliament within the meaning of Article 122 or, as the case may be, proceedings in the Legislature of a State within the meaning of Article 212."

This implies that under the Constitution, the proceedings in the Parliament or in the Legislature of the State enjoy the status of autonomy, and, therefore, the decision of the Speaker/Chairman "on disqualification under the Tenth Schedule is final."[81]

The critical question that required to be answered at this juncture is, whether the 'final' order of the Speaker/Chairman as to disqualification is absolutely final and conclusive, or whether the same is amenable to "judicial review".[82] The Supreme Court has answered this question by stating that "the finality which is attached to the order of Speaker cannot be meant to take away the power of this Court to review the same."[83] In the adjudication by the Speaker in the context of Tenth Schedule of the Constitution "the order of the Speaker is final but not conclusive and the same is amenable to judicial review."[84] However, the "finality Clause under paragraph 6(2) of the Tenth Schedule limits the scope of judicial review" available

80 Ibid.

81 See, Shrimanth Balasaheb Patil, para 68.

82 This is the question specifically raised by the Supreme Court in the instant case, see, id., para 67.

83 Id., para 69.

84 Ibid, citing Kihoto Hollohan case, supra, note 233.

to an aggrieved person under Articles 136, and 226 and 227 of the Constitution.[85] It "*would be confined to jurisdictional errors only viz., infirmities based on violation of constitutional mandate, mala fides, non-compliance with Rules of natural justice and perversity.*"[86]

With a view to explore the ambit of 'jurisdictional errors', the Supreme Court has expounded its components in the light of judicial precedents as under:

(a) Violation of the Principles of natural justice:

These are not "immutable but flexible" principles, nor could these be "cast in a rigid mould" or "put in a legal straitjacket.[87] "The yardstick of judging the compliance of natural justice, depends on the facts and circumstances of each case."[88] For instance, answering the show-cause notice, it does not depend on the number of days given by the Speaker, rather to see whether an effective opportunity of hearing was provided.[89]

(b) Violation of the constitutional mandate:

In the context of examining "the validity of any proceedings in Parliament," what is to be considered by the Court is whether there has been any "substantive illegality," as distinguished from mere "irregularity of

85 Id., para 70.

86 Ibid. [Emphasis by the Court].

87 Id., para 73, citing Ravi S. Naik v. Union of India, MANU/SC/0366/1994 (para 20): 1994 Supp (2) SCC 641 at page 653.

88 Id., para 72, citing R.S. Dass v. Union of India, MANU/SC/0482/1986 (para 25): (1986) Supp SCC 617, in which the Supreme had held that it is "well established that rules of natural justice are not rigid rules, they are flexible and their application depends upon the setting and the background of statutory provision, nature of the right which may be affected and the consequences which may entail."

89 Id., para 74, Ravi S. Naik, supra, note 264, wherein the Speaker had granted two days' notice to the members before issuing disqualifying order and the same was upheld by the Supreme Court; whereas in Balachandra L. Jarkhiholi v. B.S. Yeddyurappa, MANU/SC/0617/2011 : (2011) 7 SCC 1, the Supreme Court had struck down the disqualification order solely on the basis of the fact that only three days' notice was given to the members. See also, id., para 75, wherein it is stressed by the Supreme Court that this aspect needs to be adjudicated in the individual facts and circumstances having regard to the fact as to whether the members received notice of hearing, the reason for their absence and their representation before the Speaker.

procedure."[90] This is so, because under Article 122(1) of the Constitution for maintaining the autonomy of the Parliament in law making, it is specifically stipulated: "The validity of any proceedings in Parliament shall not be called in question on the ground of any alleged irregularity of procedure." It implies that "the procedural irregularities cannot be used by the court to undo or vitiate what happens within the four walls of the legislature."[91] Thus, the expression, "constitutional mandate" is "nothing but what is constitutionally required of the Speaker."[92] An act, which "cannot be defended on the touchstone of the Tenth Schedule and the powers or duties of the Speaker therein and is in contravention or violation of the same."[93]

In the light of this exposition, in the instant case, the Supreme Court has found that "there was an error committed by the Speaker in deciding the disqualification petitions" regarding "the period of disqualification imposed by the Speaker in the impugned orders," but "the same does not rise to a level which requires us to quash the disqualification orders in their entirety."[94] Since, "this error is severable, and does not go to the root of the disqualification, and thus does not require us to quash the disqualification orders in toto."[95]

(c) Challenge on ground of malafides:

"While there is no gainsaying that the ground of malafides is available to an individual challenging the order of the Speaker, the onus of proof regarding the same is on the one who challenges the said action and has a very heavy burden to discharge."[96] In the present case, although the Petitioners

90 Id., para 77, citing Raja Ram Pal v. Hon'ble Speaker, Lok Sabha, MANU/SC/0241/2007 : (2007) 3 SCC 184.

91 Ibid.

92 Ibid.

93 Ibid.

94 Id., para 78.

95 Ibid.

96 Id., para 79, citing E.P. Royappa v. State of Tamil Nadu, MANU/SC/0380/1973: (1974) 4 SCC 3; Raja Ram Pal case (supra); Sub-Committee on Judicial Accountability v. Union of India, MANU/SC/0060/1992 : (1991) 4 SCC 699.

claimed that the Speaker acted malafide, they have neither made any specific allegation, nor can it be said that they have discharged the heavy burden that is required to prove that the ground of malafide is made out. [97]

(d) Challenge on ground of perversity:

An order passed by the Speaker could be said to be 'perverse' if the same is based either "no evidence" or on evidence which is "thoroughly unreliable" and "no reasonable person would act upon it."[98] ,However, in the present case, "on a consideration of the totality of the facts brought on record," which has not been controverted by the opposite party, the Supreme Court has observed that "it cannot be held that the findings of the Speaker are so unreasonable or unconscionable that no tribunal could have arrived at the same findings."[99]

In the light of the above, the Supreme Court has held that in their view in the instant case the Speaker "had based on material and evidence that the members have voluntarily given up their membership of the party, thereby accruing disqualification in terms of the Tenth Schedule, which facts cannot be reviewed and evaluated by this Court in these writ petitions."[100] Accordingly, the Court "have to accept the orders of the Speaker to the extent of disqualification."[101]

Undoubtedly, under the Tenth Schedule of the Constitution the Speaker has power to disqualify a person for being a member of the Legislative Assembly of the State. But then, the provisions of Articles 361B and 164(1B) of the Constitution further stipulate that such a disqualification does not bar him from contesting elections, and on a member being re-elected the bar under the two Articles comes to an

97 Ibid.

98 Id., para 80.

99 Id., para 81.

100 Id., para 83.

101 Ibid.

end.[102] In view of this position, the Supreme Court has conclusively held that "the Speaker does not have any explicit power to specify the period of disqualification under the Tenth Schedule or bar a member from contesting elections after disqualification until the end of the term of the Legislative Assembly."[103] Such a conclusion is premised on the basic constitutional principle: "When the express provisions of the Constitution provide for a specific eventuality, it is not appropriate to read an 'inherent' power to confer additional penal consequences."[104] In other words, "nothing can be added to the grounds of disqualification based on convenience, equity, logic or perceived political intentions."[105] Any addition amounts to bring about "a change in the policy" which "cannot be looked into by this Court, as the same squarely falls within the legislative forte."[106] "Any attempt to interfere is better termed as reconstruction, which falls beyond the scope of legal interpretation by the Courts."[107]

Fifth question: Whether there is any perceptible difference between 'resignation' and 'disqualification' when the end-result of both under the Tenth Schedule of the Constitution is the same? There is indeed a noticeable difference between the two, which may be deciphered in two ways. One, in respect of the exercise of power by the Speaker. In the case of 'resignation', although the Speaker's power like in the case of 'disqualification', is subject to 'judicial review', his power is extremely limited to enquire whether it (resignation) was occasioned by 'free will' and not by, say, 'coercion'. If it was 'free will', the Speaker has no option but to accept the resignation. However, in the case of 'disqualification', Speaker's

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102 See, id., para 92. See also, supra, note 257 and the accompanying text. This interpretation is further supported by the language employed in Section 36(2) of the Representation of the People Act, 1951, which provides obligates the returning officer that he may the nomination of a candidate who is disqualified "for being chosen" to fill the seat Under Article 191 of the Constitution, echoing the language employed in Article 191(1), and not Article 191(2) of the Constitution. See, id., para 93.

103 Id., para 98.

104 Id., para 100.

105 For the derivation of this proposition, see the Constitution Bench ruling in G. Narayanaswami v. G. Pannerselvam, MANU/SC/0362/1972 : (1972) 3 SCC 717, and the three-judge bench decision of the Supreme Court N.S. Vardachari v. G. Vasantha Pai, MANU/SC/0364/1972 : (1972) 2 SCC 594, cited in id., paras 101 and 102.

106 Id., para 105.

107 Ibid.

power to impose sanction is arrested and controlled under the principle of judicial review specifically on "four grounds: mala fide, perversity, violation of the constitutional mandate and order passed in violation of natural justice."[108] Two, in respect of the date of acceptance of resignation and the date of imposing disqualification. While in the case of former, the Speaker has no discretion but to accept the resignation within the proximity of the very date of resignation, whereas 'disqualification' "relates back to the date when the act of defection takes place."[109] "A pending or impending disqualification action does not become infructuous by submission of the resignation letter, when act(s) of disqualification have arisen prior to the member's resignation letter."[110] In other words, as the Supreme Court has observed, "Factum and taint of disqualification does not vaporise by tendering a resignation letter to the Speaker."[111]

Sixth question: Why has the Supreme Court declined to refer the matter to a Constitution Bench even if the expansion of the requisite law under the Tenth Schedule of the Constitution was desiderated through the interpretative process in the absence of legislation proper?

The Supreme Court is acutely aware that the phenomena of "horse trading and corrupt practices associated with defection and change of loyalty for lure of office or wrong reasons," coupled with the "growing trend of the Speaker acting against the constitutional duty of being neutral," have not abated despite the introduction of the Tenth Schedule into the Constitution.[112] And, thereby "the citizens are denied stable governments."[113] "In these circumstances," the Supreme Court has noticed, "there is need to consider strengthening certain aspects, so that such undemocratic practices are discouraged and checked."[114] Despite this

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108 Id., para 152(f), citing the Constitution Bench judgment in Kihoto Hollohan v. Zachillhu, ANU/SC/0753/1992 [para 21].

109 Id., para 152(e).

110 Ibid.

111 Ibid, citing G. Narayanaswami case, supra, note 282.

112 Id., para 152(i).

113 Ibid.

114 Ibid.

situational context, the Supreme Court has declined to go in for abridging the gap between the law as it exists today and the law as it should be. The rationale for not doing so, as conclusively articulated by the three-Judge Bench of the Supreme Court, is as under: [115]

The existence of a substantial question of law does not weigh on the stakes involved in the case, rather, it depends on the impact the "question of law" will have on the final determination. If the questions having a determining effect on the final outcome have already been decided by a conclusive authority, then such questions cannot be called as "substantial questions of law". In any case, no substantial question of law exists in the present matter, which needs reference to a larger bench.

The rationale adduced by the Supreme Court is indeed reflective of the common law tradition, which prompts the court to expand law only to the extent necessary for its decision-making in the given fact matrix. This approach is absolutely consistent with the dictates of Constitution that commends the observance of the principle of separation of powers. Law making proper is indeed the singular function of the Parliament. Accordingly, it is the prerogative of the Parliament if they wished to strengthen the law on the lines hitherto adopted by revisiting the Tenth Schedule of the Constitution.

Conclusion

This judgment of the three-Judge Bench of the Supreme Court is not just a decision deciding the dispute on the basis of determining the scope of Speaker's power in disqualifying a member of the legislature under the Tenth Schedule of the Constitution. It is an attempt to show how to balance the various competing and conflicting rights or interests in the highly volatile political environment in which what is at stake is the very issue of constitutional governance. How has the Supreme accomplished this task?

115 Id., para 152(j).

In the first instance, the Supreme Court Bench has determined the domain and ambit of Speaker's power under the Constitution by raising as many as at least six critical questions as underlined above. Having done this, it issued the note of caution; namely, "constitutional morality should never be replaced by political morality, in deciding what the Constitution mandates."[116] This implies that what is commanded by the Constitution should be construed by the Speaker dispassionately irrespective of his own political affiliations, or any other political considerations. Once a member is elected as Speaker of the House, he becomes an apolitical person, rising above the so-called 'party-politics' and its 'pressures.' [117] His formally taking oath 'to protect and preserve the Constitution' must result into "imbibing the Constitutional values in everyday functioning."[118]

Bearing this constitutional perspective in mind, the Court has construed the disqualification order passed by the Speaker with a beneficial difference. With ingenuity, it has split the single, composite, impugned disqualification order into two parts. That part of Speaker's order "which specifies that the disqualification will last from the date of the order to the expiry of the term of the 15th Legislative Assembly of Karnataka" has been held "to be *ultra vires* the constitutional mandate,"[119] inasmuch as it transgresses the limits of disqualification sanctioned by the Constitution.[120] The voiding of this part, and herein lies the ingenuity of the Supreme Court to say and hold, "does not go to the root of the order, and as such, does not affect the aspect of legality of the disqualification orders,"[121] inasmuch as the remaining part of the impugned order squarely falls within the ambit

116 Id., para 110, [referring to Indra Sawhney v. Union of India, MANU/SC/0104/1993 : 1992 Supp (3) SCC 217.

117 See, id., para 115: "the Speaker, being a neutral person, is expected to act independently while conducting the proceedings of the house or adjudication of any petitions. The constitutional responsibility endowed upon him has to be scrupulously followed. His political affiliations cannot come in the way of adjudication. If Speaker is not able to disassociate from his political party and behaves contrary to the spirit of the neutrality and independence, such person does not deserve to be reposed with public trust and confidence."

118 Id., para 114.

119 Id., para 111.

120 Id., para 114: the Speaker has no power under the Constitution to disqualify the members till the end of the term." See also, supra, note

121 Id., para 111. See also, id., para 152(d).

of Speaker's power under Tenth Schedule of the Constitution, and, therefore, constitutionally consistent. It seems, in our view, the Supreme Court has invoked the analogy of the doctrine of severability, which is otherwise applied for severing the provisions that are constitutionally consistent from the ones that are not while testing the constitutionality of an impugned statute.

In the constitutionally circumscribed arena, the Speaker is invested independently with the power to meet the menace of political defection as per the mandate of the Constitution. It is also truism to state that political defection, which is often triggered "by lure of office or rather similar considerations,"[122] strikes at the very roots of democratic governance. But, nevertheless, in terms of consequences of disqualification imputed on account of political defection are not as harsh as in the case of disqualification imposed on grounds other than political defection. [123] Why so?

The reason therefor is to be deciphered, as the Supreme Court has put it with an illuminating foresight in the very prefatory paragraph of their judgment, from "the importance of party politics in a democracy and the requirement to have stability within the government to facilitate good governance, as mandated under the Constitution."[124] And, this is required to be done by making "apparent" the fine line that separates "defection" from "dissent," "so that democratic values are upheld in balance with other constitutional considerations."[125] It is in the context, says the Supreme Court, "the role of the Speaker is critical in maintaining the balance between democratic values and constitutional considerations."[126] The "Court's role is only to ascertain whether the Speaker, as a neutral member, upheld the tradition of his office to uphold the Constitution."[127]

In view of this prefatory perspective, we may turn back again to the constitutional provisions that limit the power of the Speaker to disqualify a political defector

122 Ibid.

123 See, supra note

124 See, id., para 2.

125 Ibid.

126 Ibid.

127 Ibid.

only to the extent that he/she shall not to be "appointed as a Minister or holds any remunerative political post from the date of disqualification or till the date on which his term of office would expire or he/she is re-elected to the legislature, whichever is earlier."[128] These provisions clearly and categorically convey that "the Speaker is not empowered to disqualify any member till the end of the term." [129]

In this limiting power of the Speaker lies embedded the very constitutional philosophy of limitation itself. We surmise that may be it is for the reasons that political defection could also possibly be construed as 'genuine acute political dissent'! In that eventuality, handing over harsher punishment to the so-called 'political dissenters' would itself be inimical to the fundamental principles of democratic governance. In fact, a certain degree of 'dissent' is always desiderated to keep the democracy alive and pulsating. Perhaps, it is for this reason that though the end result in both the cases of 'resignation' and 'disqualification' is the same, namely "vacancy of the seat held by the member in the legislature,"[130] and yet the resulting consequences are diagonally opposite in terms of our perception of 'good' and 'bad' – 'resignation' per se carries no taint, whereas 'political defection' does under the Tenth Schedule of the Constitution. However, mercifully, the disqualified dissenter has been given the opportunity to vindicate his stand by standing for election again and win, and, thereby, redeem his or her courage of conviction.

Thus, we may make the fine line of demarcation between the 'dissent' and 'defection' "apparent" by restating that, in our reading, the constitutional concept of 'resignation' manifestly symbolizes the irreconcilable silent dissent; whereas 'disqualification' inflicted on account of 'defection' symbolizing vociferous or loud dissent that may be genuine or may not be genuine, such as based on extraneous considerations. Lest the notion of genuine dissent should drown with the non-genuine one, our Constitution saves the situation by limiting the power of the Speaker to disqualify the political defector only "till the date on which his term of office would expire or he/she is re-elected to the legislature, whichever is earlier." Understanding this defined differentiation, thus, definitely defends the democratic system of governance.

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128 Id., para 152(g). By virtue of 91st Constitutional Amendment that inserted Articles 71 (1B), 164(1B) and 361B into the Constitution.

129 Id., para 152(h).

130 Id., para 152(c).

COMMENTARY