

‘QUIT OR BE DISQUALIFIED’: DOES CONTINUING AS SPEAKER INVITING EXPULSION FROM ONE’S PARTY WARRANT DISQUALIFICATION UNDER THE TENTH SCHEDULE?

*Deepak Raju & Karthy Nair**

The recent expulsion of Lok Sabha Speaker, Mr. Somnath Chatterjee from his party has raised not just a flutter in the political circles, but also many a constitutional question of significant import. There is a school of opinion which believes that if a person by not abiding by the dictum of his party to resign as the Speaker brings upon himself expulsion from his party, he should be considered to have given up his membership in the party voluntarily, and hence disqualified under the Tenth Schedule. This admittedly, is a radical position, and posits a very fundamental constitutional question. After analysing the position, we have come to form an opinion in opposition to the automatic expulsion theory. Through this paper, we have tried to objectively analyse the current legal position, and have tried to present an opinion based on constitutional provisions and parliamentary conventions.

I. INTRODUCTION

“A Speaker is, or should be, one of the trustees of a nation’s liberties. On his fair interpretation of the rules of procedure depends the protection of the rights of members. In protecting these rights he is protecting the political freedom of the people as a whole.”¹

* 3rd and 2nd Year students respectively, W.B. National University of Juridical Sciences.

¹ PHILIP LAUNDY, *THE OFFICE OF SPEAKER IN THE PARLIAMENTS OF THE COMMONWEALTH* 10 (1984) as quoted in Hon Margaret Wilson, *Reflections on the Roles of the Speaker in New Zealand*, 22 NZULR 545 (2007).

The Indian understanding of the role of the Speaker draws from the development of Speakership in Britain, which dates back to as early as 1377 when Sir Thomas Hungerford was appointed the Speaker.² The office seems to have existed even further back under different names such as ‘parlour’ and ‘prolocutor’ and can be traced to the role played by Peter de Montfort when he acted as a spokesman between the Crown and the Parliament in 1258.³ The British Speaker’s early role in the Parliament was as an agent of the Crown, serving as an interface between the Parliament and the Crown. Later on, as the Parliament’s nature changed from that of an appointed body to an elected representative, the Speaker’s role was redefined. This change of the Speaker from a Crown’s to a Common’s man is best expressed in the words of the Speaker Lenthall in 1642 when he said to King Charles II that “I have neither eyes to see, nor tongue to speak in this place, but as the House is pleased to direct me, whose servant I am here.”⁴ The office of the Speaker in Britain underwent further changes over time to ensure the neutrality of the office so much so that the Speaker of the House of Commons resigns from his political party on election and, even after his tenure takes no part in politics.⁵ This seems to reaffirm the view that there has been an effort not only to ensure the impartiality of the Speaker but also to ensure that his impartiality is generally recognised.⁶

In theory, India embraces the impartiality of the Speaker. The Speaker’s office is considered to be of great dignity as he represents the House – the collective of the nation’s expectations from the government and has been vested with considerable power.⁷ It is the Speaker who presides over the meetings of the House, and it is his responsibility to maintain discipline in the House. He also fixes the agenda of the House and gives permission to the members to raise their questions. The Speaker is expected to act at all such times with fairness, lack of prejudice and detachment. The Speaker has another very important responsibility vested in him—he acts as the judge in deciding disputes relating to the defection by party members. However, though much importance is attributed to maintaining this office above petty political games and subterfuges; unlike the British system, the Speaker continues to be part of a political party and after his tenure, he can even return to active politics.⁸ Thus, there are no actual conventions to ensure the impartiality of the office even though it is expected.

² House of Commons Information Office, *The Speaker*, available at <http://www.Parliament.uk/documents/upload/M02.pdf> (Last visited on November 2, 2008).

³ *Id.*

⁴ *Id.*

⁵ BHATTACHARYYA, *INDIAN GOVERNMENT & POLITICS* 250 (2001).

⁶ ERSKINE MAY, *TREATISE ON THE LAW, PRIVILEGES, PROCEEDINGS AND USAGE OF PARLIAMENT* 235 (1983) as quoted in A.G NOORANI, *CONSTITUTIONAL QUESTIONS & CITIZEN’S RIGHTS* 157 (2006).

⁷ K.K. GHAI, *INDIAN GOVERNMENT AND POLITICS* 263 (2003).

⁸ *Supra* note 5.

The Speaker thus has two identities – firstly, that of a neutral head of the House and secondly, as a party member. In India, the Speaker has to juxtapose political loyalty with the neutrality of the Speaker's office, and never has this juxtaposition seemed more difficult than with the recent 'no confidence' motion in the Parliament and the event immediately preceding it where the Speaker's role was put under close scrutiny.

II. THE ANTI-DEFECTION LAW

In Parliamentary parlance, defection relates to the switching of allegiance by a member of a political party,⁹ by either giving up his membership in a political party or by voting (or abstaining from voting) which is in violation of a party directive. Traditionally this has been known as 'floor crossing,' a term made popular in the British Parliament where the crossing of the floor to the side of the opposition or the government became symbolic of defection.¹⁰ If one were to look at the history of defection in Britain, the list includes the likes of William Gladstone, Winston Churchill, Ramsey Macdonald and a host of others who have changed their allegiance to a party at one time or another during their political career. In India, within the time period between 1967 and 1972 alone, there have been over 2000 cases of defection signifying that over fifty percent of the legislature has at some time or the other defected.¹¹ Wide spread defection led to much horse trading which was to prove damaging to almost all parties concerned.¹²

It was in order to check this growing malaise that in 1968, a Committee was set up to look into this problem under the chairmanship of the then Home Minister Shri Y B Chavan.¹³ The committee was to have several eminent members such as Jayaprakash Narayan, H.M Kunzru, and M.C. Setalvad among others.¹⁴ Their recommendations would result in three amendment bills,¹⁵ of which the third would result in the Fifty Second Amendment Act, 1985. The Act amended Articles 101 and 102 of the Constitution, which deal with the vacation of seats and disqualification of members from the Central Legislature and Articles 190 and 191, which deal with the same in the State Legislature. The Act also added the Tenth Schedule to the Constitution, which set out the practical considerations surrounding disqualification on grounds of defection, many of the provisions of which have met with criticism.

⁹ SUBHASH C. KASHYAP, *ANTI DEFLECTION LAW AND PARLIAMENTARY PRIVILEGES* 1 (1995).

¹⁰ *Id.*

¹¹ *Id.*, 2.

¹² For example, the Congress won 139 but lost 175 MLAs, the Jan Sangh won 3 and lost 16 of its MLAs. See, A.G. NOORANI, *CONSTITUTIONAL QUESTIONS & CITIZEN'S RIGHTS* 174 (2006).

¹³ The House while setting up the Committee spelled out that its purpose "is to consider the problem of legislators changing their allegiance from one party to another and their frequent crossing of the floor in all its aspects and make recommendations in this regard."

¹⁴ A.G. NOORANI, *CONSTITUTIONAL QUESTIONS & CITIZEN'S RIGHTS* 174 (2006).

¹⁵ The Constitution (Thirty-second Amendment) Bill, 1973, The Constitution (Forty-eight Amendment) bill 1978 and the Constitution (Fifty-second Amendment) Bill 1985.

Paragraph 2 (1), for example, of the Tenth Schedule provides that for disqualification on the ground of defection the member must have voluntarily given up his membership to the party or he must have voted or abstained from voting, disregarding a directive of the party.¹⁶ There has been criticism on the ground that disqualification on the charge of defection under paragraph 2 of the Act restricts a Parliamentarian's right to freedom of speech, right to dissent and freedom of conscience,¹⁷ thus, violating the fundamental rights of freedom of free speech and expression under Article 19 (1) (a). It has also been said that the law results in placing restrictions on the freedom of free speech, which is guaranteed under Articles 105 and 194 to members of the Parliament.¹⁸ Secondly, paragraph 6 had made the power to decide cases of disqualification rest in the Speaker.¹⁹ It is interesting to note, that the first two Amendment Bills had called for the vesting of the power to settle disputes relating to defection in the hands of the President on the advice of the Election Commission.²⁰ This was not entirely new considering that in general cases of disqualification under Article 102, the power of settling any dispute would rest on the President under Article 103 of the Constitution.²¹ It was, however, the 1985 Act that transferred the power to decide such disputes to the Speaker under paragraph 6. The impartiality of the Speaker while making such a decision was questioned as it was an almost decisive power that he was able to exercise while being a member of a party.²² Thirdly, Paragraph 7 had also provided

¹⁶ Para 2, Schedule 10, Constitution of India - "Disqualification on ground of defection.- (1) Subject to the provisions of paragraphs 3, 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."

¹⁷ *Kihota Hollohon v Zachillu*, AIR1993 SC 412.

¹⁸ *Id.*

¹⁹ ¶ 6, Schedule 10, Constitution of India - "Decision on questions as to disqualification on ground of defection.- (1) If any question arises as to whether a member of a House has become subject to disqualification under this Schedule, the question shall be referred for the decision of the Chairman or, as the case may be, the Speaker of such House and his decision shall be final."

²⁰ *Supra* note 14, 176 – 177.

²¹ Article 103, Constitution of India - "Decision on questions as to disqualifications of members.- (1) If any question arises as to whether a member of either House of Parliament has become subject to any of the disqualifications mentioned in clause (1) of article 102, the question shall be referred for the decision of the President and his decision shall be final. (2) Before giving any decision on any such question, the President shall obtain the opinion of the Election Commission and shall act according to such opinion."

²² *Supra* note 17.

that the court would have no jurisdiction in this matter and the Speaker would be the final judge in the matter.²³ This has been criticised as being in violation of the basic feature of judicial review.

These different criticisms have been dealt with in the case *Kihota Hollohon v. Zachillu*²⁴ where most of the provisions of the Act were upheld. On the first issue the court held that anti-defection laws were necessary to uphold the most basic of fundamental features of the Constitution – Democracy, and as such, restrictions could be placed on the fundamental freedoms of free speech and expression in this regard.²⁵ Secondly, the parliamentary privileges as guaranteed under article 105 are not violated as the provisions in the Tenth Schedule do not result in any proceedings in any court thus safeguarding the guaranteed immunities.²⁶ On the second issue, while the minority judgement given by Justices L.M Sharma and J.S Verma stated that the power of settling disputes should not rest with the Speaker,²⁷ the majority judgement, headed by Justice Venkatachaliah propounded that the very nature of the Speaker's office should make it inappropriate to question the impartiality of the Speaker.²⁸ The problem with this majority assessment rests in the fact that, though, India embraces the British notions of impartiality and dignity of the office of Speaker, it has made no effort to maintain the sanctity of the office by separating it from mainstream politics. Paragraph 7 of the Tenth Schedule was struck down by both the judgments on the ground that the paragraph dealt substantially with the power of writ jurisdiction of the Supreme Court and the High Courts under Chapter IV and VI of the Constitution and it should have been ratified by the states under the procedure for amendment laid down in Article 368. The majority went on to hold that paragraph 7 was severable from the rest, while the minority was of the opinion that the very entrustment of the power to decide the disputes of defection on the Speaker was violative of the basic structure of the Constitution and that it should have ideally been an independent authority outside the house, namely the President or Governor on the opinion of the Election Commission.²⁹

Even after the judgement in *Kihota Hollohon v. Zachillu*, there are still issues that remain unresolved. For example, while paragraph 2 disqualifies individual members on defection, paragraph 4 clarifies that in case of merger of a political party with another or in the instance of formation of a new political party, such

²³ ¶ 7, Schedule 10, Constitution of India - "Bar of jurisdiction of courts: Notwithstanding anything in this Constitution, no court shall have any jurisdiction in respect of any matter connected with the disqualification of a Member of a House under this Schedule."

²⁴ *Supra* note 17.

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Supra* note 14, 155.

²⁸ *Id.*, 156.

²⁹ *Supra* note 27.

members will not be charged with defection.³⁰ This apparent dichotomy has been severely criticised as being prejudicial to the individual member as opposed to a faction. In a way, the Act seems to come down with harsh measures on individual defection while condoning mass defection, which has similar if not worse effect on the health of the political system.³¹ Further, there exists the issue of the case where the Speaker is charged with defection. This raises pertinent questions, which will be dealt with in the subsequent paragraphs.

III. DEFECTION BY THE SPEAKER – DOES CONTINUING IN OFFICE AND BEING EXPELLED ON THAT GROUND CONSTITUTE DEFECTION?

The Speaker, under the Tenth Schedule is at the same time, the judge in matters of alleged defections, and is subject to the prohibition against defection. To determine the apparently paradoxical question as to whether a Speaker has indeed defected, the Tenth Schedule provides for a procedure according to which a Member of Parliament is elected on an ad hoc basis to decide on the specific issue at hand.³² Dr. Luis Proto Barbosa, former Speaker of the Legislative Assembly of Goa is the only presiding officer of a legislative House in India who has been subjected to such proceedings hitherto. This issue has of late, been a matter of interest in light of the recent refusal of Mr. Somnath Chatterjee to resign as Speaker in spite of implied and arguably express directions to him from the party. After his party had withdrawn support to the Central government, he was expected to resign from his post of Speaker, and his refusal to comply resulted in consequential expulsion from his party. This has triggered off a debate as to the meaning of ‘voluntarily gives up his membership’ appearing in Paragraph 2(a) in relation to the office of the Speaker.³³ We came across a very thought-provoking discussion on the matter in an internet blog with membership drawn from a cross section of a few well known names in Indian legal academia. Mr. V. Venkatesan, in the said discussion has reiterated his position already voiced by him through an article in a leading daily - conducting oneself in a manner which warrants or necessitates expulsion from a party should

³⁰ ¶ 4 Schedule 10, Constitution of India: “Disqualification on ground of defection not to apply in case of merger.- (1) A member of a House shall not be disqualified under sub-paragraph (1) of paragraph 2 where his original political party merges with another political party and he claims that he and any other members of his original political party- (a) have become members of such other political party or, as the case may be, of a new political party formed by such merger; or (b) have not accepted the merger and opted to function as a separate group, and from the time of such merger, such other political party or new political party or group, as the case may be, shall be deemed to be the political party to which he belongs for the purposes of sub-paragraph (1) of paragraph 2 and to be his original political party for the purposes of this sub-paragraph.”

³¹ *Supra* note 9, 7-8.

³² ¶ 6, Schedule 10, Constitution of India.

³³ ¶ 2, Schedule 10, Constitution of India: “Disqualification on ground of Defection – (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; (...).”

also be regarded as voluntarily giving up membership.³⁴ According to him, when it is communicated to a person by his party expressly or impliedly, that he has to choose between the primary membership in the party and the office of the Speaker and he chooses the latter, he voluntarily gives up the former. Attractive in logic as the argument may sound, we wish to point out certain fallacies in such an interpretation of the phrase. Given the ambit of the paper, we may not be in a position to go into the specifics of the situation involving Mr. Chatterjee, as it may add to the debate a political colour at the expense of the academic discourse we intend to undertake. The discussion will be confined to the proposition that a person who continues in the office of the Speaker in disregard of the directions from his party, and hence subjects himself to expulsion from the party, does so at the peril of 'voluntarily giving up his membership' as defined in the Tenth Schedule.

At the outset, it is important to note that the Schedule prescribes disqualification on two grounds, namely, (1) voluntary giving up of membership in a party, (2) voting or abstaining from voting against the directions of the party or of the person or authority authorized by the party to issue such direction. The latter ground is not of much relevance in the context of the Speaker as the 'whip' issued by a political party, being a general instruction to the members regarding their conduct during a vote in the House, is not usually applicable to the Speaker who by the Constitutional mandate does not vote in the first instance.³⁵ With respect to the former ground, an exception has been provided by paragraph 5 of the Schedule so that a person who resigns from his party immediately following his election as the Speaker and does not rejoin that party or join any other political party during his continuation in office shall not be liable to disqualification on this ground.³⁶

³⁴ V. Venkatesan, *The Status of Lok Sabha Speaker: Some questions, Law and Other Things*, available at <http://lawandotherthings.blogspot.com/2008/07/status-of-lok-sabha-Speaker-some.html> (Last visited on November 13, 2008); V. Venkatesan, *Case for Speaker's Disqualification*, *The Hindu*, July 30, 2008, available at <http://www.hindu.com/2008/07/30/stories/2008073055111000.htm> (Last visited on November 13, 2008).

³⁵ Article 100, Constitution of India - "Voting in Houses, power of Houses to act notwithstanding vacancies and quorum. — (1) Save as otherwise provided in this Constitution, all questions at any sitting of either House or joint sitting of the Houses shall be determined by a majority of votes of the members present and voting, other than the Speaker or person acting as Chairman or Speaker. The Chairman or Speaker, or person acting as such, shall not vote in the first instance, but shall have and exercise a casting vote in the case of an equality of votes."

³⁶ ¶ 5, Schedule 10, Constitution of India states, "Exemption.—Notwithstanding anything contained in this Schedule, a person who has been elected to the office of the Speaker or the Deputy Speaker of the House of the People or the Deputy Chairman of the Council of States or the Chairman or the Deputy Chairman of the Legislative Council of a State or the Speaker or the Deputy Speaker of the Legislative Assembly of a State, shall not be disqualified under this Schedule,— (a) if he, by reason of his election to such office, voluntarily gives up the membership of the political party to which he belonged immediately before such election and does not, so long as he continues to hold such office thereafter, rejoin that political party or become a member of another political party; or (b) if he, having given up by reason of his election to such office his membership of the political party to which he belonged immediately before such election, rejoins such political party after he ceases to hold such office."

The above mentioned argument that a person who continues in his office as Speaker at the cost of his primary membership in his party and had not availed of the option provided for under Paragraph 5 immediately following his election to the office is liable to be disqualified on the ground of defection appears to lean on two judgments by the Supreme Court, namely, *Ravi Naik v. Union of India*,³⁷ and *G. Viswanathan v. Hon'ble Speaker, Tamil Nadu Legislative Assembly*³⁸ wherein it was held that in order to constitute 'voluntary giving up of membership' within the meaning of the Tenth Schedule, no formal resignation was necessary and that 'an implied or express giving up' as inferred from the conduct of the member will suffice. In *Ravi Naik v. Union of India*,³⁹ the member whose disqualification was sought had informed the Governor that he no longer supported the political party to which he belonged and had issued public statements to the effect that he had voluntarily given up membership in the party. However, no formal resignation from the primary membership of the party was tendered. *G. Viswanathan v. Hon'ble Speaker, Tamil Nadu Legislative Assembly*⁴⁰ dealt with the disqualification of members for forming a new party after they had been expelled from the party to which they belonged. In both the cases, the acts of the disqualified members were directly in conflict with their primary membership in their respective parties. A person informing the governor that he has ceased to support his political party and issuing public statements to this effect or forming a new party cannot, by the very nature of his acts, be expected to act as a member of his party.

However, if the Schedule is so widely interpreted as to make a person not complying with his party's direction to resign as Speaker, the tenure of the Speaker will be terminable at the subjective pleasure of his party. This is because a person elected as the Speaker and not having exercised the option under Paragraph 5, if faced with a direction by his party to resign will have to choose between vacating his office through resignation or through disqualification. This is, needless to say, against the letter and spirit of the Constitution, which creates and protects the office of the Speaker and expressly lays down the procedure to be followed for his removal.⁴¹ The provisions of Article 94 which lays down the procedure for removal of Speaker will be reduced to dead letter as a party to which the Speaker remains attached can remove him without complying with any of the requirements under that Article. The importance of Article 94 and the procedure laid down therein by which, the House reserves the exclusive power to remove the Speaker finds ample enunciation in the Constituent Assembly Debates. While the draft Article was being discussed in the Assembly on May 19, 1949, an amendment

³⁷ *Ravi Naik v. Union of India*, AIR 1994 SC 1558.

³⁸ *G. Viswanathan v. Hon'ble Speaker, Tamil Nadu Legislative Assembly*, 1996 2 SCC 353.

³⁹ *Supra* note 37.

⁴⁰ *Supra* note 38.

⁴¹ Article 94, Constitution of India: "A member holding office as Speaker or Deputy Speaker of the House of the People— [...] (c) may be removed from his office by a resolution of the House of the People passed by a majority of all the then members of the House: Provided that no resolution for the purpose of clause (c) shall be moved unless at least fourteen days' notice has been given of the intention to move the resolution."

was proposed by member H.V. Kamath to the effect that the resignation of the Speaker should be submitted to the President of India and not the Deputy Speaker as the Draft Article prescribed. In response, Dr. Ambedkar informed the Assembly that the Deputy Speaker had been prescribed as the authority to whom the resignation was to be submitted based on the convention that a resignation is to be submitted to the appointing authority. As the House itself is the appointing authority in relation to the Speaker's office, any decision on the vacation of his office is to be taken by the House itself. Therefore, it was stated by Dr. Ambedkar, that the Deputy Speaker representing the House in the absence of the Speaker was the appropriate authority to receive the resignation of the Speaker. The Assembly agreed with this logic and voted in favour of the Draft Article in its original form and, consequently the proposed Amendment was withdrawn by Kamath with the leave of the Assembly.⁴² Any construction of the Tenth Schedule that vests the power of vacation of Speaker's office in his party defies this Constitutional logic, and hence is untenable.

Further, such an interpretation undermines the independence of Speaker's office to the largest possible extent as the Speaker becomes dependent on a political party for his continuation in office. What is currently said in relation to the Speaker's decision regarding resignation, may in the future be claimed in relation to his exercise of constitutional powers. If the logic that a person faced with an instruction to vacate the office of the Speaker he holds and defying it and thereby attracting expulsion from the party 'voluntarily gives up membership' in his party in the context of the Tenth Schedule holds true, it may well be argued with equal vigour and conviction that a Speaker faced with a direction from his party in relation to the discharge of his constitutional functions and defying it leading to his expulsion from his party should also be subject to disqualification under the Schedule. Such a situation is not desirable under the Indian constitutional framework as the powers and discretions vested in the Speaker's office under the Constitution will then be exercisable for all practical purposes by a political party. This goes contrary to the very objectives behind the creation of the office of the Speaker and the constitutional provisions and parliamentary conventions in relation thereto which have been summed up by the Supreme Court in the following words:

"The office of the Speaker is held in highest esteem and respect in Parliamentary traditions. The evolution of the institution of Parliamentary democracy has as its pivot the institution of the Speaker. The Speaker holds a high, important and ceremonial office. [...] The Speaker is said to be the very embodiment of propriety and impartiality."⁴³

⁴² CONSTITUENT ASSEMBLY DEBATES, Vol. VIII, 122-4.

⁴³ *Kihota Hollohon v. Zachillu*, AIR 1993 SC 412.

IV. CONCLUSION

Though the Indian constitutional democracy claims to be rooted in several respects in the British legal traditions and the same holds true in respect of the office of the Speaker to a large extent, a marked difference appears to be that political participation of the Speaker remains a reality in India. It is interesting to note that Neelam Sanjeeva Reddy was the only Speaker to resign the membership of his political party on account of his election to the office of Speaker. Therefore Speakers in India, both at the central and state level, face the dichotomy of constitutional obligations: the obligation not to defect and the obligation to conduct the affairs of the House with fairness and neutrality.

We, in this article, have attempted to critically analyse the office of the Speaker in the context of the Tenth Schedule. It appears that any construction of the Schedule in a manner so as to make the continuance of the Speaker in his office dependent on the will of his party is antithetical to the spirit of the Constitution and the much revered Parliamentary ideals and conventions. The recommendation of the National Commission to Review the Working of the Constitution that the decisions in regard to defection should lie with the Election Commission has not yet been subjected to much academic debate. In addition, the recent political upheavals concerning the Speaker have made it necessary that the Speaker's role in the Indian Parliament needs to be reassessed and reexamined, so as to ensure that the impartiality of the house is not lost and the sanctity of the office is maintained.