

Anti-Defection Law - A Tussle Between Law and Ideology

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Abstract: *This article will analyse the "Anti-defection Law in India". Moreover, the author would be examining the contentious provisions of this act, while taking in account of its significance and criticism, and its recent development. Here, author would give a brief evolution of the act and then move on to its effects on the democracy of India. While discussing this act, the author would be also analysing the recent trends and its effect on the governance of the country and its effect upon the functioning of the democracy. Also, the author would be highlighting the tussle between freedom of speech and dissent in party politics. Author would also be focusing on the linkage between corruption and defection, and how defection betrays the electorates. The delay in deciding the matters relating to the defection by the presiding officer, designated by this act, and the power of the judicial courts in this regard would also be looked upon while resorting to relevant precedents set out by the Hon'ble appellate court of this country. Pertinently, Author would touch upon the issue of application of the law in the country and to what extent it has been successful in preventing the political defection.*

Keywords: Anti-Defection law, Tenth Schedule, Right to Dissent, Accountability, Horse-trading

I. INTRODUCTION

Elections in India are fought between different political parties since the country achieved independence. The political parties that root themselves on a particular ideology try to gain support from the mass by impressing them through their ideology¹. The country that happens to be one of the largest democracies of the world where the government be it to the parliament or state legislature has to have the blessing of the public at large. The political parties therefore try to impress the public through the ideology and programmes incorporated by them in their election manifesto. The electorates who are inclined to a particular ideology vote for the political party embracing it.

India in the mid 1960s witnessed unsavoury developments in the political arena where the elections became a source of earning for the candidates and the party with the highest and the most lucrative bid became successful in forcing the candidate who had won the election to cross the floor of the parliament or state legislature thereby changing the political party and the Ideology which made them win the election. The infamous Aaya Ram Gaya Ram² expression also found its place in the political developments that took place in those years where an MP was seen changing the political party multiple times within a single day. This floor crossing of candidates that won on the ticket of one party and then changing the political party just after the win was nothing but a trading of ministers that was termed as horse trading which undermined the basis of the democracy.

The then Government, in order to curb the menace of floor crossing added the tenth schedule to the constitution in the year 1985 which includes provisions for disqualification on the grounds of defection³. But the past and recent events in Indian politics show that the schedule falls inefficient as the players in the political arena have successfully found their

¹ Constituent Assembly of India Debates (Proceedings) - Volume VII, as accessed on December 9, 2022, https://www.constitutionofindia.net/constitution_assembly_debates/volume/7/1948-11-04.

² https://www-barandbench-com.translate.googleusercontent.com/translate/colums/21st-century-aaya-rams-and-gaya-rams?_x_tr_sl=en&_x_tr_tl=hi&_x_tr_hl=hi&_x_tr_pto=tc

³ Tenth Schedule, The Constitution of India, https://legislative.gov.in/sites/default/files/COI_English.pdf. 2 The Constitution (Fifty-Second) Amendment Bill, 1985, Lok Sabha, January 24, 1985,

way out to belittle the intention of the legislation. The trend of the elected members resigning the political party in order to reduce their strength to form the government and joining the party against whom the concerned members had fought the election and then contesting the by election to become a minister is proof to the above contention.

II. RESEARCH METHODOLOGY.

This study on the anti-defection law in India will involve a comprehensive literature review to understand its historical background, legal provisions, and implementation challenges. Data collection will include analysis of government reports, legal documents, parliamentary proceedings, and media coverage. Qualitative methods such as interviews with policymakers and legal experts will supplement quantitative analysis of relevant statistics. Ethical considerations will be paramount, ensuring confidentiality and unbiased presentation of findings. The research will conclude with interpretations of data to inform policy recommendations for enhancing the effectiveness of the anti-defection law.

III. HISTORICAL BACKGROUND

The historical background of the Anti-Defection Law in India traces back to the tumultuous political landscape of the 1960s and 1970s, characterized by frequent government changes, unstable coalitions, and rampant defections. Here's a detailed historical overview:

1. Pre-Emergency Era (Pre-1975):

India experienced coalition governments at both the central and state levels, with political parties frequently forming alliances to secure power.

Defections, often driven by personal ambitions, ideological differences, or offers of inducements, were common among lawmakers, leading to frequent changes in government and undermining democratic principles.

2. Emergency Period (1975-1977):

The declaration of Emergency in 1975 by Prime Minister Indira Gandhi further exacerbated the issue of defections, as political dissent was suppressed, and opposition leaders were arrested. Many politicians, disillusioned with the authoritarian tendencies of the ruling government, defected to join opposition parties or form splinter groups.

3. Post-Emergency Political Reforms:

Following the end of the Emergency in 1977, India witnessed a wave of political reforms aimed at strengthening democratic institutions and restoring civil liberties.

The Janata Party government, which came to power after the 1977 elections, initiated discussions on electoral and parliamentary reforms to address the problem of defections.

4. Rajiv Gandhi Government and Bofors Scandal:

In the mid-1980s, during the tenure of Prime Minister Rajiv Gandhi, the Bofors scandal rocked the Indian political landscape, tarnishing the image of the government.

The scandal, coupled with increasing public disillusionment with political corruption and opportunism, intensified calls for legislative measures to curb defections and promote political stability.

5. Introduction of the Anti-Defection Law:

In 1985, responding to the growing public outcry against defections and political instability, the Indian Parliament passed the 52nd Amendment to the Constitution, which introduced the Tenth Schedule, commonly known as the Anti-Defection Law.

The Anti-Defection Law aimed to curb defections by disqualifying lawmakers who violated party lines on crucial votes in the legislature or defected to another party.

6. Provisions of the Anti-Defection Law:

The Anti-Defection Law prohibits elected representatives from defecting to another party and allows for their disqualification if they disobey party whips or defy party instructions on voting. It also provides exceptions for splits or mergers of political parties under certain conditions to prevent undue restrictions on the freedom of expression and association.

7. Judicial Interpretation and Amendments:

Over the years, the Supreme Court of India has played a crucial role in interpreting and clarifying the provisions of the anti-defection law through various landmark judgments. Additionally, amendments have been introduced to address loopholes and refine the application of the law in response to emerging challenges and criticisms.

IV. MEANING OF ANTI DEFECTION LAW IN INDIA

The term defection finds its origin in the latin word ‘defectio’ which means “ an act of abandonment of a person or a cause to which such person is bound by reason of allegiance or duty, or to which he has wilfully attached himself.” The definition effectively conveys the meaning of the word defection which when read in the present context refers to the act of the candidate who has won an election on the ideology of a party to whom he is duty bound to be loyal but abandons the same and shifts to some other party. It simply means “leaving the party and joining another.” The nomenclature keeps changing as we move from one country to another such as “floor crossing”, “carpet crossing”, “party hopping”, “dispute”, and “waka-jumping”.⁴

The Indian parliament taking note of the trend of horse trading which had the capacity to undermine the basic idea of democracy set up a committee in the year 1967 which included learned constitutional experts and other representatives of the political parties under the chairmanship of Y.B. Chauhan, to consider the issue of horse trading and making suggestions for the same. The parliament showed serious concern over the issue as they termed defection as a “national malady which was eating into the very vitals of our democracy.”⁵

V. TENTH SCHEDULE OF INDIAN CONSTITUTION.

The tenth schedule of Indian Constitution which found its place in the Constitution in the year 1985 when read with Article 102(2) and Article 191(2) of the constitution provides provisions for the disqualification of the members of the parliament or state legislature on the grounds of disqualification in the situation or circumstances listed below:

Candidates who are elected on the ticket provided by a political party or the nominated members who are a member of a political party while they have taken a seat in the parliament or state legislature and **voluntarily give up their membership of such political party.**

Voluntarily Giving Up Membership Of The House.

The term “voluntarily given up his membership” as used in para 2 of the tenth schedule of the constitution came up to the supreme court for interpreting the scope of the term voluntarily given up his membership. The division bench of the Supreme Court ruled that a person may not tender the resignation and voluntarily give up his resignation from the party and in the absence of the formal resignation also an inference can be drawn considering the conduct of the member inferring that he has given up the membership of the political party that he belonged to.⁶

If the member of a political party who is a seating member of the parliament or state legislature votes or abstains from voting against the direction of the political party or the whip of the party and the same has not been condoned by the party with 15 days from such voting or abstinence.

⁴https://www.google.co.in/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&ved=2ahUKEwi-qqO1yYSDAxUZ-zgGHT3WDic4ChAWegQICBAB&url=https%3A%2F%2Fprindia.org%2Ftheprsblog%2Fthe-anti-defection-law-explained&usg=AOvVaw2Y3rGJrh2Y4fHiGTYvk_6m&opi=89978449

⁵ G. Viswanathan & Ors. v. Hon’ble Speaker Tamil Nadu Legislative Assembly & Ors

⁶ Girish Chodankar Versus The Speaker, Goa Legislative Assembly, Writ Petition No. 1228 of 2021 High Court of Bombay at Goa, February 24, 2022,

Any elected member of the parliament or state legislature who has been elected otherwise than as a member of a political party shall be disqualified if he joins any political party after becoming a member of the parliament or state legislature.

Term- Legislature Party.

The tenth schedule of the constitution coined the term legislature party and accorded it with the meaning which include all the members of a political party elected as a member of a parliament or any state assembly. So the total number of members of a political party seated in the parliament are the legislature party of the concerned political party.

The framework of the tenth schedule of the constitution also includes exemptions that list the grounds on which the act of the members of the parliament or the state legislature will not fall under the ambit of disqualification.

Till the 91st Constitutional Amendment, the schedule included the provision for split in the party that is If the legislature party as a whole witnesses a split in the parliament or state legislature where in not less than 1/3rd elected members of the legislature party split from the original party which also means they voluntarily give up their membership in such political party.

The 91st Constitutional Amendment that deleted the provision permitting the split in the legislature party thereby avoiding the defection was deleted and only merger between the parties was made an exemption from the disqualification under the tenth schedule.

Merger of political parties will fall under the ambit of exemption only if 2/3rd members of the house of such a political party agree to the merger between the original party merging with another political party.

The above provision relating to the merger of political parties and the exemption awarded to such acts from disqualification shows the intention of the legislation that in case of genuine shift in the ideology of a certain party or in case where stabilisation is required for the formation of the government. This makes it clear that when para 2(1) is read with para 4, the parliament has expected that "legislature party should be dealt with independently from the political party to witness whether there is a merger."⁷

VI. SPEAKER AS A SOLE ADJUDICATOR.

Para 6 of the schedule makes the speaker or the Chairman of the house is the sole adjudicator in matters pertaining to defection. The place accorded to the speaker by the tenth schedule is a judicial one where the schedule requires a petition to be made to the speaker under Para 2 of the Tenth Schedule in order to proceed with the disqualification proceedings. The speaker or the presiding officer who is considered to be the ultimate evaluator in the concerned proceedings is considered to be the guardian of the process of democratic rules in the country.⁸

Considering the position of the speaker who happens to be the head of the legislature and acting as a constitutional authority given to the speaker or the presiding officer he acts as a quasi judicial authority, the proceedings conducted by him are amenable to the jurisdictions of the courts and intervention and judicial scrutiny is barred. However, a petition for judicial review can always be filed. The same was affirmed by the apex court in the landmark judgement of *Kihoto Hollohan vs Zachillhu And Others*⁹ where the Supreme Court specifically noted that "The Speakers, Chairman while exercising powers and discharging functions under the Tenth Schedule act as Tribunal adjudicating rights and obligations under the Tenth Schedule and their decisions in that capacity are amenable to judicial review."

Although the para 7 of the tenth schedule of the constitution was struck down in the year 1992, it cannot be contended that the speaker does not enjoy the power of passing final orders. The judicial review of the order passed by the speaker

⁷ Chapter 4, Electoral Processes and Political Parties, Volume 1, Report of the National Commission to Review the Working of the Constitution, <https://legalaffairs.gov.in/sites/default/files/chapter%204.pdf>.

⁸ Girish Chodankar Versus The Speaker, Goa Legislative Assembly, Writ Petition No. 1228 of 2021 High Court of Bombay at Goa, February 24, 2022, https://hcservices.ecourts.gov.in/ecourtindiaHC/cases/display_pdf.php?filename=QnBUxJ6a3gIx%2B5SFrUiAoH9LG%2B9BV1lcvBcqkamqbjUCMjJXHBBwdJjeH4pfdbO&caseno=WP/1228/2021&cCode=5&appflag=.

⁹ 1992 SCR (1) 686, February 18, 1992, <https://main.sci.gov.in/judgment/judis/12491.pdf>.

or the chairman enjoys finality and can only be challenged subject to the ground of breach if constitutional mandate, mala fides, violation of principles of natural justice.¹⁰

Para 8 of the schedule further empowers the speaker and the chairman to make rules and regulations for giving effect to the provisions of the tenth schedule. The para 8(3) further affirms that the proceedings conducted in relation to the disqualification of members will be deemed to be proceedings in parliament within the meaning of Article 122 of the constitution or within the meaning of Article 212 for the state legislature.

Therefore, the orders and only the orders and not the when the proceedings are pending before the speaker, a petition for the judicial review can be made on the grounds like non compliance with the principles of natural justice or irrelevant and extraneous considerations or malafide.

Effect of non compliance of the rules framed by the speaker or chairman for the disqualification proceedings.

As mentioned above, the speaker through the tenth schedule of the constitution is authorised to frame rules to conduct the proceedings relating to disqualification of any member on the grounds of defection. It is pertinent to take into consideration the effect of non compliance of such rules framed by the speaker while conducting such proceedings.

The Supreme Court of India was also posed with such a question in the case of *Ravi Nayak v. Union of India*¹¹ where the petitioner contended that the speaker was wrong in disqualifying him as he did not follow the rules that were framed under para 8(3) of the tenth schedule. The Supreme Court laid down certain principles to adjudicate the matter where in the apex court held that violation of rules made by the speaker will be just an irregularity and will have no effect in decision taken while adjudicating the proceedings relating to disqualification of any member of the parliament or state legislature. However, the decision passed by the speaker or chairman in matter relating to disqualification shall stand the test of reasonableness and principles of natural justice.¹²

Defection or Resignation by the speaker.

The legislation has given due recognition to every aspect involved which includes the defection caused by the speaker. In cases where the speaker himself joins another party or resigns from his political party or becomes a member of another political party while being seated as a speaker of the house. Para 5 of the tenth schedule considering the august office of the speaker and the position that he holds, the relevance it has been accorded by the constitution does not subject the speaker to disqualification.¹³ The intention behind the same was to maintain the integrity and dignity of the position which requires impartiality.

VII. SCOPE OF THE POWER OF SPEAKER UNDER PARA 6 OF TENTH SCHEDULE

The power accorded to the speaker or chairman to adjudicate matters relating to disqualification of any member on the ground of defection remains untamed as the speaker enjoys the privilege to pass final orders without any time frame provided in the schedule. One can understand the effect of privilege to a person belonging to a political party that has formed the government. The speaker being one of them with his ideology and interests inclined towards the government, having been bestowed with a power of adjudication without a reasonable time frame to adjudicate renders the entire objective of the tenth schedule as a dead letter.¹⁴

In instances where any member faced defection and the speaker does not decide the matter in hand as the defection that has taken place is in the interest of the party that the speaker belongs and keeps delaying the same as the schedule does not specify any reasonable time period will allow the political party in power to misuse the constitutional morality by

¹⁰ Report No. 170, Reform of the Electoral Laws, Law Commission of India, 1999, <https://cdnbbsr.s3waas.gov.in/s3ca0daec69b5adc880fb464895726dbdf/uploads/2022/08/2022082424.pdf>.

¹¹ 1994 AIR 1558, February 9, 1994, <https://main.sci.gov.in/judgment/judis/11632.pdf>.

¹² MLAs resigning their membership in the 15th legislative assembly, Madhya Pradesh Vidhan Sabha, https://mpvidhansabha.nic.in/15thvs_bi-election.pdf

¹³ Congress chodo, BJP ko jodo: Eight of 11 Congress MLAs join BJP in Goa, Financial Express, as accessed on December 10, 2022, <https://www.financialexpress.com/india-news/eight-go-congress-mlas-set-to-join-bjp-today-may-evade-anti-defection-law/2666181/>.

¹⁴ Report No. 255, Electoral Reforms, Law Commission of India, March 2015, <https://cdnbbsr.s3waas.gov.in/s3ca0daec69b5adc880fb464895726dbdf/uploads/2022/08/2022081635.pdf>.

strangling the independence of the speaker or the chairman of the august house that is the parliament or the state legislature.

VIII. CONCLUSION AND SUGGESTIONS

The Anti-Defections laws should incorporate laws under which separate committees should be constituted for investigating into the cases of horse trading between the parties and where members of these parties are found guilty, punitive sanctions should be imposed on them. Further, an embargo should be imposed on them from contesting elections, so that these elements do not disrupt the active democracy of the country.

India's anti-defection law, introduced through the 52nd Amendment to the Constitution in 1985, aimed to address the issue of political defections and maintain the stability of the government by preventing elected representatives from switching parties arbitrarily. However, over the years, the effectiveness of the law has been questioned due to various loopholes and instances of its misuse. Here are detailed suggestions for enhancing the anti-defection law in India:

1. **Stricter Penalties:** Strengthen the penalties for defection to act as a deterrent. Currently, disqualified lawmakers can still contest elections after a certain period. Consider extending the disqualification period or imposing additional penalties such as fines or loss of privileges.
2. **Timely Adjudication:** Ensure timely adjudication of defection cases to prevent prolonged legal battles that can destabilize governance. Establish special courts or tribunals dedicated to resolving defection cases swiftly. Delays in resolving cases undermine the purpose of the law and erode public trust in the political system.
3. **Transparency in Party Operations:** Enforce transparency in the functioning of political parties, particularly in their decision-making processes related to issuing party whips and disciplinary actions against defectors. Political parties should be required to maintain public records of their internal proceedings, including meetings where decisions regarding defection are made.
4. **Accountability of Party Leaders:** Hold party leaders accountable for orchestrating defections or coercing lawmakers to switch parties. Introduce provisions to penalize party leaders found guilty of violating the anti-defection law, including disqualification from holding office or financial penalties.
5. **Prevention of Mass Defections:** Address instances of mass defections by introducing safeguards against the wholesale switching of party allegiance. Implement measures such as requiring a minimum percentage of lawmakers to defect before triggering the anti-defection law or prohibiting the merger of political parties unless approved by a significant majority of party members.
6. **Review of Grounds for Disqualification:** Review the grounds for disqualification under the anti-defection law to ensure that they are comprehensive and relevant in the current political context. Consider including provisions to disqualify lawmakers who engage in activities that undermine the integrity of democratic institutions, such as advocating for secession or supporting anti-national activities.
7. **Public Awareness and Education:** Increase public awareness and understanding of the anti-defection law through civic education programs and outreach initiatives. Empower citizens to hold their elected representatives accountable for adhering to ethical standards and upholding the spirit of anti-defection legislation.
8. **Independent Oversight Mechanism:** Establish an independent oversight mechanism to monitor compliance with the anti-defection law and investigate allegations of misconduct. This oversight body should have the authority to conduct inquiries, impose sanctions, and recommend legislative reforms to address emerging challenges in the political landscape.
9. **Cross-party Consensus:** Foster cross-party consensus on the need for reforming the anti-defection law to prevent defections from being exploited for narrow political gains. Encourage constructive dialogue and collaboration among political stakeholders to draft amendments that strengthen the integrity and effectiveness of the legislation.
10. **Regular Review and Revision:** Conduct regular reviews of the anti-defection law to assess its efficacy and identify areas for improvement. Embrace a dynamic approach to legislative reform that adapts to evolving political dynamics and emerging threats to the stability of democratic governance.

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