



AN ANALYSIS OF ANTI-DEFECTION LAW IN INDIA

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ABSTRACT

The political parties were not mentioned in the Indian Constitution at first. However, as the multi-party framework was created, there were retaliations in the Indian Parliamentary System, where individuals changed starting with one ideological group then onto the next, bringing about a deficiency of public confidence in a constitutional democracy. Defection has been described as “a member of a political party abandoning his or her commitment to that party or, more simply, when an elected member joins some other party without withdrawing from his or her current party in exchange for rewards.” The term “Horse-trading” refers to the practice of elected officials switching political parties intending to gain office. “In the United Kingdom, It is known as ‘Floor Crossing’, and in Nigeria, it is known as ‘Carpet Crossing.’ Defectors, Fence Sitters, or Turn Coats are those who are elected from one political party yet receive perks from the other.” Horse-trading was out of control, and political parties were rife with corruption. One of the most significant events in Political and State history took place during the 1967 elections when around 142 MPs and 1900 MLAs changed ideological groups. To forestall such conduct, the Rajiv Gandhi government authorized Anti-Defection laws in the Constitutional Provisions in 1985. It was enacted by the Constitution's 52nd Amendment, which added the 10th Schedule, often called the Anti-Defection Law. This provision made it more difficult for elected members of the political organization to quit their party and join another one. This article analyses the brief history of anti-defection law in India.

Keyword: Anti-defection, Politics, Constitution, Tenth Schedule, Election.

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INTRODUCTION

Many democracies have legislators who defect. It might be argued that they could jeopardise the government's stability, which is reliant on the dominant party's chosen MPs and additionally an alliance of those chosen to address different parties. Subsequently, the contention goes, such unsteadiness can be understood as an infringement of individuals' order as communicated in the latest election.

By one gauge, nearly 50% of the 4,000 administrators chosen for focal and government parliaments in the 1967 and 1971 general elections along these lines surrendered, prompting political unrest in the country.¹The law of anti-defection in India has a major effect on the lives of the general people as it tries to maintain Parliamentary discipline and decorum to prevent the politicians from exercising unethical tactics like a defection. While the aim of the law is worth appreciating, at times it has proven to have created more problems and complications than ever before. One of the reasons behind the contention is the provision that forces MPs to vote by the party lines putting behind their narratives and ideas.

In this context, a certain question arises “where does one draw the line”? Shall a legislator be permitted for voting against the order of his party leadership, if the member perceives it right to go against the party line for genuine reasons? Does a person owe a greater allegiance to his party or to the citizens who voted him to put forward their interest? In our country, the urgency of tackling defection arose only after 1967, before it, there were only about 500 instances of defection, and most of the cases of defection at the state level. After the 1967 general elections in the country, the practice of instances of defection took a frightening unprecedented turn. Several legislators swapped their parties due to the allurements of powers of office and suddenly exchanged back when the allurements proposed to them was not satisfied. This act of absconding or changing sides to acquire office, further prominently known as ‘Horse Trading’. Somewhere in the range of 1967 and 1972 over half of the administrators exchanged sides in some measure once.

¹ B. Venkatesh Kumar, ‘Anti-Defection Law: Welcome Reforms’ (2003) 19 Economic and Political Weekly <<https://www.jstor.org/stable/4413541>> accessed 16 January 2022.

The anti-defection statute was enacted in 1985 as part of the Constitution's 52nd Amendment. On March 1, 1985, the law included in the 10th Schedule of the Constitution went into effect. It was drafted in order to bring stability to India's political structure. Even while the law has been successful in reducing the evil of defections to a large level, recent events in India's political arena highlight the necessity for a review to close all loopholes.

The fundamental goal of this 10th schedule was to prevent political defections and strengthen democracy by bringing political stability and making parliamentarians more accountable and loyal to their parties. A political deserting happens when an individual from an ideological group switches parties, either voluntarily or for other reasons. It also establishes a strategy by which a lawmaker might be precluded for defection by the legislator's managing official. This Schedule applies to both the federal and state governments.

WHAT IS ANTI-DEFECTION LAW?

It was when the then Congress government came to power that any positive and fruitful attempt was made in this direction. It began on 17th January 1985 with the presidential address to both the Houses of Parliament, the 52nd constitutional Amendment Bill was presented in Lok Sabha on 24th of January. The then Prime Minister Mr. Rajiv Gandhi had extended talks with the opposition leaders, it was only after that, the Bill was enabled to be passed in Lok Sabha on 30th January and in Rajya Sabha on 31st of January. The Act came into power with impact on the 18th of March 1985 after receiving the Presidential assent on the 15th of February. It defines the procedures by which individuals might be excluded on the grounds of absconding by the presiding officer of the house. A lawmaking body is said to have deserted assuming that he either defies the order of the party leadership on a vote or deliberately surrenders the participation of the party he has a place with. This means that a member disobeying the order of the party on any matter could be disqualified from the House and eventually lose his membership.

Individual MPs/MLAs who desert starting with one party then onto the next are dependent upon the anti-defection law. It permits a set of MPs or MLAs to join (or converge with) another ideological group without confronting defection punishments. It likewise sees no difference amongst ideological groups that energize or acknowledge defecting officials. It all started with the expression "Aya Ram Gaya Ram," which acquired popularity in Indian governmental issues after Haryana MLA Gaya Lal

exchanged gatherings multiple times in the same day. It took place in 1967.² The case was used by Parliament to justify the addition of the 10th Schedule to the Indian Constitution. This law establishes the procedure for parliamentarians to be disqualified for defection by a legislature's Presiding Officer in response to an appeal from some other individual from the House.

NEED & MAIN PURPOSE OF THE ACT

The main aim of this law was to prevent MPs from switching parties, thereby keeping governments stable. It was a reaction to the overturning of various state legislatures by party-jumping MLAs following the government elections of 1967.

Some of its main purposes can be explained as:

- To battle political defilement, which was considered a pivotal initial phase in fighting different sorts of debasement in the country. As indicated by U. C. Aggarwal, the then-Central Vigilance Commissioner, the political field should be liberated from defilement to propel other, lower levels to do likewise.
- To improve democracy by restoring political stability and ensuring that the Government's regulative projects are not risked by an absconding parliamentarian.
- Individuals from parliament ought to be considered more responsible and faithful to the ideological groups with which they were subsidiary at the hour of their election. Many individuals accept that their party association is crucial to their electoral success.

Following its enactment, certain legislators and political parties exploited the law's flaws. There was evidence that the law neglected to accomplish its objective of forestalling political abandonment and, indeed, legitimized far and wide absconding by absolving activities that it labelled "splits" from its prohibitions. For example, when Chandra Shekhar as well as 61 different parliamentarians switched allegiances at the same time in 1990, they were not penalised. The Speaker of the Lok Sabha would not permit the abandoning individuals from the Janata Dal's breakaway group to clarify their position.

² T Tandon, 'What Is Anti-Defection Law? 10th Schedule of the Constitution of India Explained' Jagranjosh (23 November 2021) < <https://m.jagranjosh.com/general-knowledge/amp/what-is-antidefection-law-1633499851-1> > accessed 16 January 2022.

The Speaker's role in deciding matters involving political defections has also been criticised as part of the statute.

When it came to awarding official status to various factions of political parties, the Speakers of several houses were questioned about their impartiality. Because of their political past with the party from which the individual was chosen as Speaker, questions have been raised concerning the Speaker's nonpartisan duty. In 1991, the Janata Dal (S) was accused of sabotaging the soul of the counter surrender law by keeping deserters in ecclesiastical positions. The resistance of individuals from parliament introduced an oath to India's President, begging him to disperse the ministers. At last, because of endeavors to reestablish the Speaker's and House's respect, the Prime Minister soothed the deserting individuals from their ministerial jobs.

10th SCHEDULE

The anti-defection provision in the Indian Constitution's tenth Schedule is expected to prevent political rebellions inspired by the enticement of office, financial motivators, or other comparative intentions. Parliament set up the anti-defection resolution in 1985, and it was supported in 2002.

- The Anti-Defection Law, otherwise called the tenth Schedule of the Indian Constitution, was embedded by the 52nd Amendment to the Constitution in 1985.
- “To quit a stance or association, often to join an opposing party,” as per the word reference meaning of defection.
- The anti-defection law was enacted to ensure that party members do not violate the party's mission and that if they do, they will forfeit their House membership. Both Parliament and state councils are dependent upon the rule.
- The Anti-Defection Law was sanctioned to keep individuals from parliament from exchanging ideological groups for individual reasons.

The Tenth Schedule contains the accompanying guidelines in regards to defection-related preclusion of MPs and MLAs:

Grounds for disqualification:

- Assuming an individual from an ideological group, who is chosen, intentionally surrenders his enrollment from that party.
- If the person abstains from voting if the party said to vote or if he votes Despite the bearings which were given by his ideological group then he can be disqualified.
- If any independently elected member joins an ideological group.
- Assuming any assigned individual joins an ideological group after the half-year time frame has terminated.
- The decision on defection-related disqualification questions alludes to the Speaker or Chairman of the House, and their choice is conclusive.
- All activities relating to disqualification under this Schedule are deemed to constitute procedures before Parliament or, all things considered, the Legislature of a state.

Exceptions under the Anti Defection Law

- When 66% of an ideological group's administrators vote to converge with another, neither the individuals who join nor the people who stay with the first party will be precluded.
- Any individual chosen as executive or speaker has the choice to pull out from his party and rejoin it if he relinquishes that position.
- Previously, the legislation permitted the splitting of parties, but this is now prohibited.

THE 52nd CONSTITUTIONAL AMENDMENT

The 52nd Amendment Act of 1985 altered Articles 101, 102, 190, and 191 of the Constitution to do something for the vacation of posts and suspension of members, just as the expansion of the Tenth Schedule.

The following is a list of the amendment's goals and justifications

*“The evil of political defections has been a matter of national concern. If it is not combated, it is likely to undermine the very foundation of our democracy and the principles with sustaining it.”*³

If a member of a political party's house:

- a. has willingly renounced his membership in a certain political party; or
- b. Casts a ballot or swears off casting a ballot in that House contrary to his ideological group's direction.

Nonetheless, the part won't be precluded on the off chance that the person has acquired earlier endorsement or is pardoned by the party within 15 days of the vote or withdrawal.

After the election, an alternative candidate joins a political organization.

If a qualified representative of a house joins a political organization after the six-month period following his election to the legislature has expired.⁴

Rule 4 and 5- states the exclusion from preclusions i.e.: -

An individual from the house will not be ousted in the event that his previous ideological group joins with another ideological group, and he and some other individual from his ideological group: -

1. Have joined some other political group, or have founded a new political party as a result of the merger
2. Refused to combine and instead chose to operate as a separate entity.

Rule 3 expresses that individual won't be excluded assuming they address a group of the past political group that happen as a result of the party's separation. An abdication of no less than 33% of an ideological group's individuals was considered a spilled that proved unable to be prosecuted.

³ Jenna Narayan, “Defect-Shun’: Understanding Schedule X to the Constitution of India’ (2007) ILJ <http://www.indialawjournal.org/archives/volume3/issue_1/article_by_jenna.html> accessed 16 January 2022.

⁴ B. Venkatesh (n 3).

LANDMARK CASE LAWS

The legislation is lawful in all aspects, according to **Kihoto Hollohon v. Zachilhu and Others**, except in the case of judicial review, which has been ruled unconstitutional. The key question for this situation here is whether the 10th timetable confines the right to freedom to speak freely of discourse and articulation and sabotages chosen individuals from parliament and state legislatures' democratic rights. Also, if conferring finality to the Speaker/decision Chairman's is valid? As a result, the tenth schedule was found to have no impact on freedom of speech or expression, nor does it undermine elected members' democratic rights. The tenth Schedule is legal under the Constitution.

Although this clause is legitimate, the constitution allows the High Courts and Apex Courts to undertake Judicial Review. However, the Judicial Review must not apply to any point until the Speakers/Chairmen make a judgment. Legal survey was governed to be a central part of the Constitution in **Keshavananda Bharati and Others v. State of Kerala and Others**⁵, and the Constitution could not be altered to contravene its basic framework. A question arose about whether the public judgment of one's own political group constitutes desertion by members.

In *Shri Avtar Singh Bhadana v. Shri Kuldeep Singh*⁶, Indian National Congress, this issue was raised. As per INC, Shri Bishnoi regularly went against the Congress organization on a political stage as well as looked for the evacuation of the Haryana government. In this example, the Speaker presumed that, in addition to other things, a member is chosen as a delegate of a political group in view of the party's arrangements and proclamations.

Assuming a part straightforwardly reprimands his ideological group, he will be decided to have enthusiastically left the party. In **Shri Rajesh Verma v. Shri Mohammad Shahid Akhlaque, BSP (January 27, 2008)**, the court decided that a part's comment in public get together expressing that he upholds another political party by heart added up to eagerly surrender the prior party's participation. e Andhra Pradesh High Court had to rule in **Mannadi Satyanarayan Reddy v Andhra Pradesh Legislative Assembly and Ors**⁷ whether the Speaker when executing judicial power, can choose whether or not a Lawmaker belonged to a specific Political party. Considering that a Speaker may make such a decision, the Court stated that if the question of a part's preclusion hinged on a

⁵ *Keshavananda Bharati and Others v. State of Kerala and Another*, (1973) AIR 4 SCC 225.

⁶ *Shri Avtar Singh Bhadana v. Shri Kuldeep Singh*, Indian National Congress, (2008).

⁷ *Mannadi Satyanarayan Reddy v Andhra Pradesh Legislative Assembly and Ors*, (2008) W.P.Nos. 28453 and 28624.

clarification to which political group had set him up and whether or not he had a place with that party, he ought to be able to make that decision.

Does this law affect the ability of the legislature to make decisions?

- The anti-defection bill tries to keep the government stable by preventing MPs from switching sides. However, this statute prevents an administrator from casting a ballot as per their heart, judgment, or the interests of the electorate.
- This type of circumstance obstructs the legislature's omission mechanisms over the public authority by guaranteeing that individuals vote in view of party administration choices rather than what their people want.
- Political parties give MPs instructions on the best way to decide, generally speaking, paying little heed to the idea of the issue.
- Anti-defection legislation does not give an adequate motivator for an MP or MLA to thoroughly research and consider a topic before participating in a debate.
- The law severs the connection between the elected legislator and his constituents.
- Importantly, numerous examiners have recommended that the resolution ought to just apply to votes that decide the public authority's steadiness (entry of the yearly spending plan or no-certainty movements).

Suggestions and Views of Committees on Anti-Defection Law

1. Dinesh Goswami Committee on Electoral Reforms (1990)

Exclusion ought to be restricted to circumstances in which (a) a member intentionally leaves his ideological group, (b) a member shuns casting a ballot or votes against the larger part party in a movement of certainty or movement of no certainty.

The President/Governor should settle on the choice of exclusion on the Election Commission's suggestion.

2. Law Commission (170th Report, 1999)

Provisions exempting mergers and divisions from disqualification must be removed.

Pre-survey electing fronts ought to be perceived as ideological groups under anti-defection regulation. Ideological groups ought to limit the utilization of whips to circumstances in which the government is at risk.

3. Election Commission

The President/Governor should settle on choices under the Tenth Schedule in light of the Election Commission's obligatory recommendations.

4. Constitution Review Commission (2002)

For the rest of the term, defectionists ought to be kept from getting chosen office or any monetarily compensating political position.

A vote given by a deserter to topple an administration should be viewed as void.

HOW ANTI-DEFECTION LAW FAIL TO DELIVER ITS OBJECTIVES?

Anti-defection law has led to the loss of independence of legislators and it prevents changing parties that have led to reducing the accountability of the government to parliament. The law prevents dissents against party policies no matter how arbitrary and unlawful it is; thus, it interferes with the right of freedom of speech and expression of the legislators. The current law on defection does not make a clear distinction between defection and dissent. Thus, it destroys the spirit of liberty and leads to the practice of puppetry within the party systems that undermine the basic principle and idea of democracy.

CONCLUSION

The 10th Schedule was included in the Indian Constitution in order to prevent political breaches. However, the law has triumphed in a respectable way, it has not had the option to understand its maximum capacity because of a couple of its defects. Through their double-dealing, abnormal government officials have had the option to take advantage of legitimate defects to accommodate their motivations furthest degree attainably. It is well agreed that this law has been made for protecting the privilege of the Parliament, but as we know any law is not static and require some changes by the need of the time, the 10th schedule of the Indian constitution for securing the privilege of the Parliament and to ensure untroubled conduct and the proper functioning of Parliamentary affairs has bit touched upon the corners of democracy and if it is suitably amended to adapt the changing political scenario, it could help in proper and smooth functioning of the Parliament in our country.

After having an insight into the Anti-Defection Law, it can be said that the law must be amended in a manner that the law could be less problematic and do away with all the unclarity and vagueness that

is present in the current anti-defection law. Hence, after having looked at the current law we can say that the present law on defection is outdated and as every weapon and software at times has to be updated to keep a check on the harmful updated version of viruses, similarly, the current law of defection must be updated to keep a check on such menace like defection, to uphold the idea of fairness in politics and thus strengthening the democracy.

The following legal modifications may be able to help it develop to its full potential:

1. The party whip's power ought to be brought down with the goal that main such individuals who vote against the moderate manifesto are disqualified, rather than those who vote it against the party on a minor point or one that isn't central to the party's platform. This will, in some ways, assist the members in developing their unique perspectives on many subjects.
2. To avoid any misunderstanding, the law must define by the terms “voluntarily giving up Membership.”
3. The section dealing with mergers, which specifically excludes representatives from preclusion assuming they leave in critical numbers, for example, 66%, should be amended to make the reason for defection, instead of mere figures, the grounds for exclusion from disqualification.
4. Based on Rules 6 and 7 of the Schedule, the regulation should be evaluated to resolve any differences between the legislative and the courts.