
THE EFFICACY OF ANTI-DEFECTION LAW IN INDIA: A COMPREHENSIVE ANALYSIS

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ABSTRACT

The anti-defection law was enacted in 1985 as part of the Constitution's 52nd Amendment. The Tenth Schedule was included to the Indian Constitution in order to combat "the scourge of political defections." The law provides that a legislator of a house who is a member of a political party shall be disqualified – if he voluntarily gives up his political party membership; or - votes against his political party's direction, or does not vote in the House at all when such a direction is issued. A member, on the other hand, will not be disqualified if he has obtained prior approval from his party or if his vote or abstention is condoned by the party within 15 days of the vote or abstention, or if an independent candidate later joins a political party, or if a nominated member joins a political party six months after becoming a legislator. The law was passed in order to curtail the “Aya Ram Gaya Ram” (Ram has come, Ram has gone) practice after the elections have taken place. The phrase became famous in 1967 when Gaya Lal a MLA in Haryana changed parties thrice in a fortnight. The practice was often practiced by many political parties and hence to combat this practice this anti-defection law was needed.

But how far this law has been successful in curtailing this unhealthy practice is a question that is the subject of debate and research here as this trend still continues. There are numerous recent examples of this political shifting such as the political crisis in MP, Rajasthan and Karnataka MLA’s disqualification case where speaker refused to accept the resignations of the legislators initially.

Hence this article aims firstly to highlight the lacunas in the existing law secondly to reflect upon the possible suggestions to make the law more satisfactory and practical and thirdly by discussing various Supreme Court judgments to give a possible way forward.

The researcher’s endeavor would be to answer the following research questions in addition to giving his own through provoking views:

1. Whether this law has been able to achieve the objectives which it aimed at?

2. Is it the law which requires urgent reconsideration or there has been a failure on the part of constitutional functionaries in honestly implementing the law?
3. Does this law in order to curtail defections somewhere limit an elected member's ability to vote according to his own conscience, crumbling his independence?
4. Is the legislation suffocating healthy intra-party debate and discourse and restricts them from raising genuine concerns?
5. Whether decision of the disqualification should be left on to Speaker?

Keywords: Anti-defection, amendment, legislator, disqualification, election.

1. HISTORICAL BACKGROUND OF ANTI DEFECTION LAW IN INDIA

The anti defection law was passed in order to curtail the “Aya Ram Gaya Ram” (Ram has come, Ram has gone) practice after the elections have taken place. The phrase became famous in 1967 when Gaya Lal a MLA in Haryana changed parties thrice in a fortnight. The practice was often practiced by many political parties and hence to combat this practice this anti-defection law was needed. It was during 1960s that coalition governments started coming to power.

Till this time INC was the only dominating party in the Indian Political framework but they lost 9 states during 1967 where they used to be in power. Their majority also suffered in Loksabha. Haryana was one of the states where they were expecting to retain power but United Front came to power as Gaya Ram changed his parties thrice in a fortnight. It was congress which won the majority of seats in Haryana but their government was unable to stabilize due to multiple defections of this sort.

Prior to the 1967 disaster, India only had roughly 500 defections, the most of which occurred in the States. ¹ In 1967, notwithstanding, around 550 of the roughly 3500 chosen state officials exchanged ship.² 50% of the parliamentarians exchanged sides once somewhere in the range

¹ H. R. Saviprasad & Vinay Reddy, *The Law on Anti-Defection: An Appraisal*, 11 STUDENT ADVOC. 116 (1999).

² Subhash C. Kashyap, *The Politics of Defection: The Changing Contours of the Political Power Structure in State Politics in India*, 10 ASIAN SURVEY 195-208 (1970).

of 1967 and 1972.³ Political instability loomed large in numerous state governments as a result of these large-scale defections, with the Congress bearing the brunt of the defections. The relaxed floor-crossing by such competitors who were tempted either by influence or by cash, which in the end became known as 'Horse Trading,' was additionally supported by a stunning number of independent members.⁴

2. EXISTING LACUNAS IN THE ANTI-DEFECTION LAW

After going over the contents of the Tenth Schedule in detail, it's critical to assess how the law has performed since its establishment. When a member is obligated by the party whip issued by the political party's leadership during times of moral turpitude, the law has been heavily criticised. There are also complaints concerning a variety of other concerns, including decision-making authority, certain inconsistencies in the Schedule, and the urgency of decision-making under the Schedule. The majority of the law's numerous loopholes have been detailed here.

2.1.THE COMPLEXITY OF LARGE SCALE DEFECTIONS

Individual defections are punished by law, bringing about ejection from the House. At the point when more than 66% of a party deforms to the next camp, be that as it may, similar prerequisites don't make a difference. This isn't just a reasonable inconsistency, yet it likewise seems counter-intuitive, taking into account that the law means to restrict a malevolence however absolves transgressors if the awful is submitted by a larger part of the party. The reasoning for an individual and a mass deserting might be something very similar, yet the last option is protected on the grounds that to the larger number of individuals included. Heard rebellions are similarly as responsible for annihilating the embodiment of Indian majority rules system as individual abandonments since they don't maintain the soul with which the law should work.⁵

Other fascinating circumstance is when members of a political party are expelled rather than willingly giving up their membership. In terms of India, the Schedule emphasises voluntary defection. The removal of a part from the party isn't tended to in the Schedule. This differentiation is fundamental in the Indian Parliament since removal doesn't bring about

³ H. R. Saviprasad & Vinay Reddy, *The Law on Anti-Defection: An Appraisal*, 11 *STUDENT ADVOC.* 116 (1999).

⁴ J.K. Mittal, *Parliamentary Dissent, Defection and Democracy*, 35 *J.I.L.I.* (1991).

⁵ H. R. Saviprasad & Vinay Reddy, *The Law on Anti-Defection: An Appraisal*, 11 *STUDENT ADVOC.* 116 (1999).

preclusion from the House.⁶ A defection is characterized as a part done holding fast to the party's political tenet and thus willingly leaving the party. A removal, then again, follows something else entirely. Since a removal is compulsory, it is satisfactory to deduce that the part keeps on preferring the party's convictions and is along these lines dedicated to the order got by the electors. This may, nonetheless, give a viable test, since individuals might endeavor to cause a circumstance in which the party is compelled to discharge the person in question. In that circumstance, the part may not freely abandon yet be displayed out of the party while keeping up with their bureau position. In the wake of being removed, such a part would be a free in the House, with the choice of joining another ideological group, which presents a strange however similarly conceivable abuse of the Schedule, which the Supreme Court had the chance to inspect in *G. Vishwanathan v. Speaker, Tamil Nadu Legislative Assembly*, which will be examined later.⁷

2.2. ACCOUNTABILITY OF THE ELECTED MEMBER VIS A VIS RIGHT TO DISSENT

The accountability of the elected to the electors is at the heart of a representative democracy.⁸ When a legislator is elected from his constituency it is of utmost importance that he ensures that issues of his/her constituency are addressed and hold the government accountable if those issues are not addressed but if he is forced to vote as per the party whip even when his/her constituencies' interest are not being addressed because of the fear of disqualification such law can certainly be said to be a hindrance in the way of holding government accountable.

One of the most widely recognized complaints of the law is Section 2(1)(b) of the Schedule, which accommodates preclusion if a part casts a ballot against the initiative of an ideological group's headings or will not cast a ballot by any stretch of the imagination. This often starts a question about the ethical quality of decisions and votes in a House accused of doing state administrative errands. It's an inquiry concerning the substance of delegate majority rules system, in which the fundamental connection between an official and individuals who choose the person in question is a higher priority than the connection between the lawmaker and their

⁶ Nico Steytler, *Parliamentary Democracy - The Anti-Defection Clause*, 1 LAW DEMOCRACY & DEV. 221 (1997).

⁷ *G. Vishwanathan v. Speaker, Tamil Nadu Legislative Assembly*, (1996) 2 SCC 353.

⁸ GLENN PATMORE ET AL., *LAW AND DEMOCRACY* 3 (Glenn Patmore et al. eds., 1st ed. 2014).

political gathering.⁹ In this unique circumstance, if deciding on the lines of party whips brings about the concealment of individual officials' voices, it represents a danger of disintegrating the soul of an agent majority rule government. It not just this keep an administrator from casting a ballot against their soul, however the repercussions of such a situation block the real essence of a chosen delegate's obligation.¹⁰ Also one point is Representation of People Act has its own set of rules.¹¹ Political parties are recognized solely for the purpose of receiving symbols, disclosing financial information, and registering with the Election Commission.¹² Disqualification dependent on defection, which could conceivably be a genuine dispute, successfully obscures the line among absconding and difference. It's likewise clear how an administrative framework based on discussion and conversation is viably choked by section 2(1) (b), which keeps officials from testing the part whip if it contradicts the electorate's requests.

2.3.THE PROBLEM OF PROPER ADJUDICATING MECHANISM

The adjudicating authority entrusted with settling on the choice is critical to the exclusion of individuals. The Speaker or Chairman of a House has the authority to make a decision in this matter, and until and unless the aforementioned makes a decision, there is no way to disqualify members.¹³ This raises certain difficulties, such as the adjudicator's impartiality and the pressing need for a rapid conclusion.

In addition, according to Article 93 of the Indian Constitution, a Speaker does not appear to be required to quit his or her political affiliations upon gaining office. As a result, the Speaker of the House is transformed into a political figure, with the potential to rule on defection cases based on political considerations. This casts serious doubt on the fairness of the decisions made, especially when the Speaker has the power to manipulate the situation in favor of his favourite political party.¹⁴

⁹ Subhash C. Kashyap, *The Politics of Defection: The Changing Contours of the Political Power Structure in State Politics in India*, 10 *ASIAN SURVEY* 195-208 (1970).

¹⁰ Vibhor Relhan, *The Anti-Defection Law Explained*, PRS LEGISLATIVE RESEARCH (DEC. 26, 2017), <https://www.prsindia.org/theprsblog/anti-defection-law-explained>.

¹¹ *The Representation of People Act, No. 43 of 1951, INDIA CODE.*

¹² Subhash C. Kashyap, *The Politics of Defection: The Changing Contours of the Political Power Structure in State Politics in India*, 10 *ASIAN SURVEY* 195-208 (1970).

¹³ NS Gehlot, *The Anti-defection Act, 1985 and the role of the Speaker*, 52 *INDIAN J. POL. SCIENCE* 327 (1991).

¹⁴ H. R. Saviprasad & Vinay Reddy, *The Law on Anti-Defection: An Appraisal*, 11 *STUDENT ADVOC.* 116 (1999).

It is additionally obvious when one peruses the discoveries of India's 170th Law Commission, which exhorts that the obligation regarding settling on exclusion ought to be appointed to a non-hardliner figure, like the President or Governor, in light of the Election Commissioner's examinations. This was likewise one of the grounds on which the counter surrender resolution was tested in the Kihoto Hollohan case, which will be discussed in additional detail later.¹⁵ In terms of decision-making speed, it's important to remember that the Schedule doesn't specify a set time limit within which the Speaker or Chairman must make a disqualification judgment. This leaves the petitioner with few options other than to wait for the Presiding Officer of a House to make a judgement, which, as previously stated, may be based on political factors.¹⁶ While individuals might confront exclusion because of their abandonment, there might be a circumstance where surrenders happen in sprays, at last prompting the deserting of more than 66% of the House, however they will keep on being individuals from the House as long as the Presiding Officer settles on no choice.

3. CONTEMPORARY CASE STUDIES

Following the extraordinary scenario of the General Elections of 1967, there have been various occurrences of lawmakers absconding to other political groups in India. Regardless of whether the Schedule was invoked, the experience has been nothing short of astonishing in recent years, with India witnessing several defections practically every time a State went to polls. Here are some of the most interesting and noteworthy events of the last decade.

1. GOA, 2019

In the 2017 Goa Assembly Elections, no party got sufficient seats to shape an administration in the state, bringing about a weird hung assembly. The Indian National Congress, hosting arose as the single-biggest party, was generally expected to take power; nonetheless, the BJP-drove alliance, which included autonomous competitors and more modest territorial gatherings, won a greater part and took power. From that point forward, the political circumstance in Goa has been amazingly turbulent, especially since the passing of previous Chief Minister Manohar Parrikar. Because of the demise of the officeholder MLA, two Congress MLAs deserted to the BJP and were reappointed in by-decisions close by another BJP up-and-comer. Following these changes, upwards of ten of the leftover 15 Congress individuals, framing a 66% larger part,

¹⁵ Kihoto Hollohan v. Zachillhu & Ors., 1992 SCR (1) 686

¹⁶ Speaker, Haryana Vidhan Sabha v. Kuldeep Bishnoi and Ors., (2015) 12 SCC 381 (India); See also Mayawati v. Markandeya Chand and Ors., AIR 1998 SC 3340 (India).

abandoned to the BJP, including the resistance chief. The MLAs were not excluded since the numbers were as per the Schedule.

2. KARNATAKA, 2019

Subsequent to the 2018 elections, the Congress and the Janta Dal (Secular) shaped an alliance organization in the Karnataka Legislative Assembly, which became one of the more notable political dramatizations of the year. 17 Congress and JD(S) officials, then again, left their separate gatherings just to later join the BJP. K.R. Ramesh Kumar, the Speaker of the Assembly excluded the 17 MLAs under the Tenth Schedule, in view of the succession of occasions, as the Supreme Court watched out for the circumstance.

MLAs which were precluded had appealed to the Supreme Court to have their renunciations acknowledged. With the Supreme Court requesting the norm to be kept up with, the Speaker in the long run excluded 17 MLAs, which the Supreme Court maintained, while at the same time discovering that the MLAs could be reappointed in the December by-surveys, which they were, except for three, reappointed as individuals from the BJP, with the party currently marking guarantee in the State.

3. MAHARASHTRA, 2019- In November 2019, super charged political show ejected in Maharashtra, where the Shiv Sena and the BJP's long-standing organization reached a conclusion because of force sharing contentions. Notwithstanding being the single-biggest party in the express, the BJP couldn't shape an administration. After the Shiv Sena's allure for the lead representative to shape an administration was denied, the state was set under President's organization. During the stalemate, the Shiv Sena, the Congress, and the Nationalist Congress Party collaborated to win an aggregate of 162 seats in the voting public, with Shiv Sena boss Uddhav Thackeray being named Chief Minister. However, before that could occur, the BJP marked case to the organization with the help of Ajit Pawar, the NCP's Maharashtra parliamentary boss, viably finishing President Rule. In these conditions, senior NCP pioneer Sharad Pawar took steps to utilize hostile to abandonment laws against Ajit Pawar, who had recently been confirmed as Maharashtra's Deputy Chief Minister. After a long political fight, a story test in the Assembly saw the three gatherings' collusion meet up, with Ajit Pawar rejoining the alliance and the BJP-drove government leaving for three days.

4. MADHYA PRADESH, 2020- In March 2020, Congress pioneer Jyotiraditya Scindia, alongside 22 different MLA's, left the party and joined the BJP, placing the current Congress

government in the state in a dangerous situation. This incited the Congress to document petitions with the Speaker of the Vidhan Sabha under the Tenth Schedule, on which no choice has yet been made. However, all things considered, the individuals have now surrendered, previous Chief Minister Kamal Nath has offered his abdication, and BJP's Shivraj Chouhan has made vow as Madhya Pradesh's Chief Minister.

The anti-defection law was meant to combat political defections, according to the Statement of Objects and Reasons of the Bill that introduced it. Its goal was to keep the government stable by preventing party loyalty swings.¹⁷

Despite the law, whips have been consistently disobeyed on critical votes affecting government stability in both the centre and the states.

3.1. CERTAIN PAST INSTANCES-

2008 CONFIDENCE MOTION (CENTER)- In July 2008, the United Progressive Alliance moved a movement of trust in the Lok Sabha. The movement was required when the Communist Party of India (Marxist) pulled out its help for the public authority over the nuclear pact with the United States. In spite of the way that the counter surrender law was in actuality, 21 MPs dismissed their party's whips while deciding on the goal.

2016: (UTTARAKHAND)

Nine individuals from the decision party joined the resistance in requiring a relate of decisions on an appointment charge that may have pushed the Congress government to the edge of total collapse.

2015 NO-CONFIDENCE MOTION (ARUNACHAL PRADESH): In Arunachal Pradesh, 20 Congress (ruling party) MLAs defected in 2015. In a special session, these opposition MLAs passed a vote of no confidence in the current government. The Supreme Court ruled in 2016 that the Congress government's dismissal was unlawful and that it should be reinstated.

¹⁷ Nabam Rebia, and Bamang Felix vs. Deputy Speaker Arunachal Pradesh Assembly and Ors. (2016) 8 SCC 1; Various news reports; PRS.

4. EXPERTS RECOMMENDATIONS ON THE LAW

Political groups ought to confine the utilization of whips to circumstances where the public authority is in risk. Exclusion ought to be restricted to circumstances in which a part (a) willfully leaves his political party, (b) goes without casting a ballot, or votes against the party whip in a movement of certainty or no-certainty. Mergers should be exempt from disqualification, hence those provisions should be removed. The phrases "voluntarily giving up membership in a political party" and "voluntarily giving up membership in a political party" should be clarified in detail.

The phrase "political party" should be properly defined. Pre-election electoral fronts, for example, could be considered as political parties under the legislation. On the opinion of the Election Commission, the President/Governor should decide on disqualification. A dispute under the Tenth Schedule must be resolved as quickly as feasible by the Speaker. A six-month time frame has been suggested for the petition's resolution. Expelled members should be subjected to restrictions such as being barred from joining another political party or holding government positions. For the remainder of the legislature's tenure, defection makers ought to be kept from serving in a position of authority or any profitable political position. A vote cast by a turncoat to oust an administration ought to be viewed as void.

4.1.NEED FOR ELECTORAL REFORMS: STANDING COMMITTEE'S VIEW

The committee recommended that the election expenditure needs a periodical review. There is a limit of election expenditure but it is rarely followed in reality. The amount of money spent on elections by political parties has been far more than it is allowed;

The model code of conduct that is there needs to be given a statutory status so that there remains no vagueness about its implementation;

The power of derecognition of a political party that is there on ECI need to be incorporated in Representation of People Act, 1951

There is a need of Fast track courts to dispose of matters relating to Representation of people act, 1951 as currently the decision of Returning officer in case of rejection of nomination papers is final and can only be challenged in HC. Specialized agencies reduce the complexity and pendency of work in courts and grievances are better redressed this way.

The committee in its report also recommended for the reversal of the decision given in Kihoto Hollohan Case as it affects the autonomy of the legislature and violates separation of power doctrine.¹⁸

5. A COMPARATIVE ANALYSIS OF ANTI DEFECTION LAW WITH OTHER COUNTRIES

Political defections aren't just a problem in India. Anti-defection legislation does not exist in mature democracies such as the United States, the United Kingdom, or Canada. If a member deviates from the party line, the party may issue orders or impose pressure. Legislators, on the other hand, are not disqualified for disobeying their party's directions. Whips, for example, are frequently issued by political parties in the United Kingdom. If a single MP or MLA defies the whip, their membership in the legislature is not affected (although the party may take disciplinary action against them).

Only six countries, out of the 40 that have an anti-defection statute, have one that requires legislators to vote according to party directives.⁵

The remaining countries only disqualify MPs if they are discovered to have resigned or been expelled from their political party. India, Pakistan, Bangladesh, Guyana, Sierra Leone, and Zimbabwe are the six countries that disqualify legislators who violate the party whip.¹⁹

6. CONCLUSION

The anti defection law neglected to accomplish its objective of forestalling political abandonments and keeping up with political solidness. Moreover, the demonstration has coincidental ramifications that keep officials from doing their obligations appropriately. The legislator can't follow up on his own conviction and judgment, and thus can't satisfy his established commitment to consider the public authority responsible. The law has likewise hampered electors' ability to consider their chosen authorities dependable. Consequently, it very well might be beneficial to propose revoking the counter abandonment rule. A few changes have been proposed over the course of the years to alter different spaces of the rule. One of the vital objectives of the law's presentation, for instance, was to guarantee the public

¹⁸ Kihoto Case

¹⁹ Csaba Nikolenyi, "Keeping Parties Together? The Evolution of Israel's Anti-Defection Law?", Polish Political Science Yearbook, Volume 47(2), 2018, <https://czasopisma.marszalek.com.pl/images/pliki/ppszy/47-2/ppszy2018202.pdf>.

authority's soundness. Thus, different organizations have exhorted that the law's application be restricted to votes that impact the public authority's soundness, for example, votes on no-certainty movements and cash bills.

This would likewise imply that the law doesn't make a difference to the upper places of parliament, for example, the Rajya Sabha and state governing bodies. A private part's bill documented by a Member of Parliament in 2010 supported this correction. Some other element of reform has been the creation of an independent adjudicating authority to determine on legal disqualifications. Numerous experts have suggested that the Speaker's office may not be able to achieve this criteria. As a result, it has been proposed that defection cases be decided by the President (for the centre) or the Governor (for the states), based on the Election Commission's binding advice. This is comparable to how questions about legislators' disqualification for other reasons, such as holding a profit-making office, are decided under the Constitution.

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