

ANTI-DEFECTION LAW IN INDIA A REVIEW

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ABSTRACT

The 52nd Amendment to the Constitution introduced the Tenth Schedule, also known as the 'Anti defection law,' designed to tackle the issue of political defections. This law, enacted by the Constitution (Fifty-Second Amendment) Act, 1985, has successfully reduced the number of political defections and changes in political loyalties within our legislative bodies. However, it has not fully solved some intricate challenges within Indian politics. The authority of the presiding officer to remove legislators for defection is a point of contention. Over time, expert committees and commissions have found that the presiding officer's role exposes them to political influences, leading to problems like the rejection of disqualification petitions and delays in making decisions. Yet, there have been fewer efforts to address certain legal ambiguities that need clarification. Issues such as the presiding officer's ability to disqualify legislators during legislative adjournments, the handling of disqualification petitions by the presiding officer, the powers of the presiding officer to address petitions about defection, and the consideration of petitions directed to the Secretary of the Legislature are among the unresolved matters under the Tenth Schedule of the Constitution. This research paper seeks to examine the impact of the Anti-Defection Law on Indian democracy. Written against the backdrop of increasing political defections, this article points out the 'legislative silence,' sheds light on specific judicial decisions, and argues for limiting the power of the presiding officer/Speaker to adjudicate on defection petitions.

Keywords- Anti-Defection Sue Moto, Legislative Silence, Tenth Schedule, Presiding Officer.

1. INTRODUCTION

Initially, the Constitution of India did not have any mention about the political parties. But, gradually when the multi-party system evolved, there had have been defections in the Indian Parliamentary System where there have been shift of people from one political party to another which resulted in breaking down of public confidence in a democratic form of Government. Defection is “desertion by one member of the party of his loyalty towards his political party” or basically it means “When an elected representative joins another party without resigning his present party for benefits There was uncontrolled Horse- Trading and corruption been prevailed in the political parties. One of the major incidents in the India’s Political History occurred after 1967 elections; where about 142 MP’s and 1900 MLA’s had switched their respective political parties. So, in order to restrain such practice, the Rajiv Gandhi Government in 1985 introduced Anti-Defection laws in the Indian Constitution. It was introduced by way of the 52nd Amendment in the Constitution, which inserted tenth Schedule in the Constitution; which is known as the Anti –Defection law. This amendment helped to restrict the elected members belonging to a political party to leave that party and switch to another party in Parliament. ‘Defection’ has been defined as, “To abandon a position or association, often to join an opposing group”. Defection in context of polity refers to a situation where a member of a political party gives up his position in the party from which he is elected to join an opposing party. The anti-defection law was passed in 1985 through the 52nd Constitutional Amendment Act. It added the Tenth Schedule to the Indian Constitution and amended four articles in the Constitution. (It amended Articles 101, 102, 190 and 191 which are related to the vacating of seats and disqualification of MPs and MLAs.) The Anti-defection law lays down the process by which legislators may be disqualified on the grounds of defection by the Presiding officer of the house. The law applies to both Parliament and state legislative assemblies. The Presiding officer of the house decides on the question of the defection.

Anti-defection Law

Tenth Schedule: The Anti-Defection Law under the Tenth Schedule of the Constitution punishes MPs/ MLAs for defecting from their party by taking away their membership of the legislature.

- **Power to the speaker:** It gives the Speaker of the legislature the power to decide the outcome of defection proceedings.
- **52nd Amendment Act, 1985:** It was added to the Constitution through the Fifty-Second (Amendment) Act, 1985 when Rajiv Gandhi was PM. The law applies to both Parliament and state assemblies.

Objectives of study

- 1 To study the impact of anti-defection law in Indian politics.
- 2 To find out loopholes of anti-defection law in Indian politics system. Propose potential reforms or amendments to strengthen the Anti-Defection Law.

2. METHODOLOGY

this paper has adopted a secondary research methodology like literature reviews, which include textbook reviews, Wikipedia, and journal articles reviews and Newspapers Articles.

1. **Anti-defection law:**

- 52nd amendment in 1985 inserted **10th schedule** (anti-defection law)
- Grounds for disqualification are mentioned in **Article 102(2) & 191(2) for MP's and MLA's**

Defected:

1. Elected member (gives up & voting)
2. Independent member
3. Nominated member

Exceptions:

1. Speaker or chairman
2. Party could be merged into another (2/3 majority)

- **Presiding Officer** decides on the question of disqualification
- Issue is – SC interpretation in **G Vishwanathan judgment** in 1996 case (unattached member) → Amar Singh(MP)

Advantages

- Stability and party discipline

Disadvantages

- Members freedom gets affected

(Source <https://www.insightsonindia.com/2023/03/07/editorial-analysis-the-anti-defection-law-is-facing-convulsions/>)

Role of the Presiding Officer The speaker enjoys a prestigious position. He/she is the chief officer of the LS or state legislature. Also, the 10th schedule empowers him. Note 6 of the 10th schedule states that if any question of defection arises, the decision of the speaker or chairman shall be final. Later, in the Kihoto Hollohan case, the decision of the presiding officer was subject to judicial review. It is part and parcel of his jurisdiction to decide the questions raised by the complainant and defendant (the one who sought to be disqualified). In the case of Rajendra Singh Rana And Ors vs Swami Prasad Maurya And Ors[8], the court observed that on the scheme of Articles 102 and 191 and the Tenth Schedule, the determination of the question of split or merger cannot be divorced from the motion before the Speaker seeking a disqualification of a member or members concerned. In the case of Kashinath G. Jalmi v. The Speaker it was observed that the speaker acting as a tribunal in the tenth schedule has no authority to review his decision. Many circumstances were incurred where certain allegations of political biases and considerations. Speaker is a political being and guardian of democracy. He is affiliated with a particular party. Then, the question in front of us is can the speaker become partial and give biased decisions. It will be an insult to put questions on the prestigious post. Even SC in the recent case of Keisham Meghachandra Singh v. Speaker of Manipur[10], the court opined that it is time that parliament reconsiders whether the disqualification matters ought to be entrusted to a speaker as a quasi-judicial authority. Court recommended that the speaker should be replaced with a retired SC judge or retired chief justice.

Provisions enacted in the 10th Schedule :(Split)

- Split in a political party and that of a merger of two political parties.
- If a split occurs in a political party resulting in a faction coming into existence one-third of the legislators move out of the party and join that faction. Those members could get an exemption from disqualification.
- One-third of the legislators would get protection only if there was a split in the original political party.
- The split in the original political party is the pre-condition for exempting one-third of legislators from disqualification.
- If there was no split in the original political party and one-third of the legislators only moved out, all of them would be liable to be disqualified.
- With the deletion of this paragraph, a split in the original party is no longer a defense against disqualification.
- Even when a political party has split, the legislators will not get any protection.
- For the legislators to claim protection, a split in the original party was always necessary.

Anti-Defection Law Amendments

- The Central Council of Ministers, including the Prime Minister, cannot have more than 15% of the Lok Sabha's total strength. • Members of either House of Parliament who are disqualified due to defection are not eligible for ministerial appointments.
- A state's Council of Ministers, including the Chief Minister, cannot exceed 15% of its Legislative Assembly strength. However, a state must have at least 12 ministers, including the Chief Minister.
- A member of either House of a state legislature belonging to any political party who is disqualified on the ground of defection shall also be disqualified to be appointed as a minister.

- A member of either House of Parliament or the House of a State Legislature belonging to any political party who is disqualified on the ground of defection shall also be disqualified from holding any remunerative political post.
- The provision of the Tenth Schedule (anti-defection law) pertaining to exemption from disqualification in case of split by one-third of members of a legislature party has been deleted. It means that the defectors have no more protection on the grounds of splits.

Scope of Reforms:

Dinesh Goswami Committee (1990)

- This committee recommended that disqualification under the Tenth Schedule should only occur in specific circumstances:
- If a member voluntarily relinquishes their membership in a political party.
- If a member abstains from voting or votes against the party's official position in a vote of confidence or motion of no-confidence.
- Additionally, the committee suggested that the President/Governor should make the decision regarding disqualification under the Tenth Schedule based on the advice of the Election Commission.

Halim Committee on Anti-Defection Law (1998)

- This committee was tasked with precisely defining certain terms in the law:
- "Voluntarily giving up membership of a political party
- The committee proposed imposing certain restrictions on defecting members, including prohibitions on joining another party and holding government office.

Law Commission (170th Report, 1999)

- The commission recommended the elimination of exceptions to the law, such as in the case of mergers.
- It also suggested that pre-poll electoral alliances should be recognized as political parties under the law.
- Political parties should issue a limited number of whips for critical situations. Election Commission
- The President/Governor should make the decision on disqualification under the Tenth Schedule, following the advice of the Election Commission.

Constitution Review Commission (2002)

- The commission proposed that defectors should be prohibited from holding public office for the remainder of their term.
- It also suggested that the vote cast by a defector in a vote of confidence or motion of no-confidence should be considered invalid.

Issues with Anti Defection Law:

- **Undermining Representative & Parliamentary Democracy:** The MP or MLA has to follow the party's direction blindly and has no freedom to vote in their judgment.
- **The chain of accountability** has been broken by making legislators accountable primarily to the political party.
- **Controversial Role of Speaker:** No clarity in the law about the timeframe for the action of the House Chairperson or Speaker in the anti-defection cases. Some cases take six months and some even three years.
- **No Recognition of Split:** Due to the **91st amendment**, the anti-defection law created an exception for anti-defection rulings. However, the amendment does not recognize a 'split' in a legislature party and instead recognizes a 'merger'.
- **Subversion of Electoral Mandates:** Defection is the subversion of electoral mandates by legislators who get elected on the ticket of one party but then find it convenient to shift to another, due to the lure of ministerial berths or financial gains.
- **Affects the Normal Functioning of Government:** The infamous "Aaya Ram, Gaya Ram" slogan was coined against the background of continuous defections by the legislators in the 1960s. The defection leads to instability in the government and affects the administration.
- **Promote Horse Trading:** Defection promotes horse-trading of legislators which clearly goes against the mandate of a democratic setup.

Recommendations have come up regarding Anti-Defection laws

- **Second Administrative Reform Commission (2nd ARC):** It is suggested that the decision regarding the disqualification of members due to defection should be made by the President or Governor, following the advice of the Election Commission.

- **Elevating the Threshold for Disqualification:** There is a proposal to increase the threshold for disqualification from one-third to two-thirds or even three-fourths. This adjustment is anticipated to decrease the incidence of defections and thereby deter political parties from splitting.
- **Permitting Defections Under Specific Conditions:** There is a suggestion to permit defections under certain conditions, such as the merger of political parties or the expulsion of a member from their current party.
- **Removal of Speaker's Role in Disqualification Decisions:** There is a proposal to eliminate the Speaker's role in the adjudication of disqualification cases, to be replaced by an independent entity, such as the Election Commission.
- **Allowing Independent Members to Join Parties:** It is proposed that independent members should be permitted to join political parties without facing disqualification.
- **Provision for a Grace Period:** There is a recommendation to introduce a grace period for members who have defected, to allow them the opportunity to demonstrate their loyalty to their new party.
- **Time Frame for Disqualification Decisions:** The Supreme Court has previously mandated that the Speaker of the Legislative Assembly must address petitions seeking the disqualification of a member under the Tenth Schedule of the Constitution within a period of three months. Under the Tenth Schedule of the Constitution within a period of three months.

3. CONCLUSION

The Anti-Defection Law has been hailed as a significant step toward curbing the menace of political defections. It was introduced to regulate the behavior of Members of Parliament and ensure their loyalty to their respective political parties. This article aims to critically assess the law and determine whether it has truly succeeded in fostering parliamentary discipline, decorum, and preventing unethical practices by politicians. While the law is crucial for government stability and has, to some extent, succeeded in limiting political defections, several loopholes persist—such as the lack of a clear time frame for resolving disqualification pleas. Despite these gaps, the more damaging effects of frequent defections have been curbed to some degree. However, defections within political parties continue to rise in several states. Although the Anti-Defection Law seeks to address this issue, it has not been entirely effective. There is also a need to build political consensus, allowing room for political expression within Parliament. An urgent need exists for a stronger mechanism to prevent future defections and combat increasing levels of corruption in India's political system. In a democracy, people are the primary stakeholders, while political parties serve as institutional intermediaries. Although democracy requires stable political parties, restricting legislators too much undermines their representative function. The current priority should be addressing the law's shortcomings, as ongoing political instability disproportionately impacts the public, who ultimately bear the consequences.

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