



Anti Defection Law in India Problems and Prospects

Mr. Keda. Nimba. Wagh

Head, Assistant Professor
Department of Politics
Mahatma Gandhi Vidyamandir
Arts, Science & Commerce College Harsul

ABSTRACT:

The study of this paper aims to study impact of antireflection law in Indian democracy. The Anti-Defection Law introduced by the Constitution (Fifty-Second Amendment) Act, 1985 has curbed defections and shifting allegiances in our legislatures. However, the law has failed to address some complex problems in Indian politics. The powers of the Presiding Officer to disqualify legislators for defection remain controversial. Over the years, expert Committees and Commissions have concluded that the conditions of the Office subject the Presiding Officers to political pressures resulting in issues such as non-admission of disqualification petitions and delays in adjudication. However, fewer attempts have been made to highlight certain legislative grey areas that require a review. Presiding Officer's power to disqualify legislators while the legislature is in suspended animation, withdrawing disqualification petitions pending with the Presiding Officer, Presiding Officers' Sue Moto powers to act on defection, and taking cognizance of petitions addressed to the Secretary of Legislature are some of the key issues which remain unresolved under the Tenth Schedule of the Constitution. This article, written in the background of the growing political defections, highlights the areas of 'legislative silence', throws light on certain judicial verdicts, and advocates for depriving the Presiding Officer/ Speaker of the power to rule on defection petitions.

Keywords Antidefection, Sue Moto, Legislative Silence, Tenth Schedule, Presiding Officer.

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 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

Anti defection law

The Tenth Schedule of the Constitution, commonly known as the anti-defection law, was introduced in 1985 with a view to curb the tendency among legislators to switch loyalties from one party to another and facilitate the toppling of regimes and formation of new ones.

- It provides for the Presiding Officer of the legislature to disqualify any defector on a petition by another member.
- The law contemplates two kinds of defection: (a) by a member voluntarily giving up membership of the party on whose symbol he got elected (b) by a member violating a direction (whip) issued by his party to vote in a particular way or to abstain from voting.
- While voting contrary to the party's whip is quite a straightforward instance of defection, the other mode of defection has proved to be a source of dispute and litigation.
- A member 'voluntarily giving up membership' does not refer to a simple resignation letter and formally joining another party.
- It is often an inference drawn by the party that loses a member to another based on the legislator's conduct.
- The Supreme Court has also ruled that 'voluntarily giving up membership' can be inferred from the conduct of a person.

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/2023/02/24/editorial-analysis-a-case-that-scans-the-working-of-the-anti-defection-law/>)

Objectives of study

- 1 To find out positive impact of anti-defection law in Indian politics system
- 2 To find out loopholes of anti-defection law in Indian politics system.

Methodology

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

Defection According to Oxford, the dictionary has described election as the act of leaving your own country or political party and joining an opposite one. **Who is a defector** The word defector was defined as a person: is an elected member of the legislature who had been allotted the reserved symbol of any political party can be said to have defected it, if after being elected as a member of either house of Parliament or at legislature council or legislative assembly of state or union territory, he voluntarily renounces allegiance or association with such political party provided that his action is not in consequence of the decision of the party concerned.

Anti-Defection The law of Anti Defection states that if a member parliament of ember legislative assembly: Voluntarily gives up the membership of the party; Votes or abstains for voting or defies any party whip; Joins any other party. In these cases, the member will be disqualified from the party and he will not hold the position of a nominated or an elected individual under the party. Thus he will lose his position as an MP or MLA

Exceptions: Disqualification under the purview of anti-defection shall not apply in case of split/merger of 1/3rd or more of the members of a party to another party. It shall also not apply in the event of a merger i.e. 1/3rd of the members or more merge with any other party. This exception where 1/3rd members were however revised by the way of the 91st amendment in the constitution and after which the provision of the split was removed and now it requires 2/3rd members of a party can merge with another party. This amendment revised these rules as there were mass defections by legislators and this amendment brought a change in the requirements from 1/3rd members of the party to 2/3rd members and by removing the provision of a split from the party.

Historical background of Anti-defection laws: There is a very well-known phrase of “Aaya Ram Gaya Ram” and it relates back to 1967 when Gaya Lal who was a congress leader fortnight went from congress to Janata Party and then back to congress and then again to Janata Party. In the journal titled “Aya Ram Gaya Ram- The politics of defection” by the Indian Law Institute in 1979 in which it was stated that from 1967 to 1969 more than 1500 party defections and 313 independent candidate defections had taken place in the 12 states of the country. It is estimated that till 1971, more than 50% of the legislature had switched from one party to another. A common term which is used when we read about defection is horse-trading of the legislators which in simple terms means shifting of legislators from one party to another by monetary means. The reasons can be several for eg- to break the majority of a government or by inducing the ministers to leave their party for a better position in the opposition parties. All of these circumstances were impelling the government to create a statutory provision in the constitution which would create punitive sanctions for those who were found guilty of such conduct.

Anti-Defection provisions in the Constitution: The bill for Anti Defection was proposed by Rajiv Gandhi and it was approved unanimously by both the houses and came into effect on 18 March 1985 after receiving the assent of the president. The Anti-Defection was added into the constitution by the way of the Tenth Schedule of the constitution by the 52nd Amendment in the constitution in 1985. These provisions provide for the disqualification of Member Parliaments under Article 102(2) and Member Legislative Assembly under Article 191(2). Under these Articles of the Constitution, the legislators can be disqualified if they are disqualified under the 10th schedule.

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 raise 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 of the high court.

Whether the right to freedom of speech and expressions of the parliamentarians and legislators is violated by the tenth schedule

The constitution has avowedly guaranteed the right to freedom of speech and expression under Article 19 of the constitution however it is subject to the reasonable restrictions mentioned therein. This right is guaranteed to every citizen including the legislators and the parliamentarians thus this was made a ground to question the legitimacy of the Para 2 of the schedule (Grounds for disqualification). It was held by the supreme court in this Kihoto Hollohan case that the tenth schedule does not subvert the rights of elected members of parliament and the legislature thus it did not violate Article 105 and 195 of the Constitution while holding this it was expressed by the Supreme Court that the provisions of the tenth schedule are salutary and were intended to strengthen the fabric of Indian parliament democracy while curbing unprincipled and unethical political defections.

Disqualification on voluntarily giving up membership Para 2(1)(a) of the Anti-Defection law explains the voluntary giving up of the membership by the members. This was cleared in the Ravi S Naik v Union of India (1994). In this case, the Supreme Court gave a wider prospect to resignation by voluntarily giving the membership. The court observed that a person may voluntarily give up his membership of a political party even though he has not tendered his resignation from the membership of that party. Even in the absence of a formal resignation from membership inference can be drawn from the conduct of a member that he has voluntarily given up his membership of the political party to which he belongs”. The act of giving up membership can be expressed or implied this was observed in G. Viswanathan & Ors. v. Hon’ble Speaker Tamil Nadu Legislative Assembly & Ors in 1996. It was opined that the act of voluntarily giving up the membership of the political party may be either express or implied. When a person who has been thrown out or expelled from the party which set him up as a candidate and got elected, joins another (new) party, it will certainly amount to his voluntarily giving up the membership of the political party which had set him up as a candidate for election as such a member.”

Powers of the court: The speaker is not absolutely immune from judicial review, the immunity provided to the speaker by Para 6 of the tenth schedule. This was affirmed in Rajendra Singh Rana and Ors. vs. Swami Prasad Maurya and Ors. (2007), in this case, the speaker had not made a finding into the split and had accepted the split by merely a claim by the members. The court further contended that ignoring a petition for disqualification is not merely an irregularity but a violation of constitutional duties.

Defiance of a party whip what is a Party Whip whip is an instruction issued by political parties to vote according to the party line in a legislature. In *Shri Rajeev Ranjan Singh (Lalan) v Dr PP Koya JD (U)(2009)*- In this case, Dr Koya defied a party whip requiring him to vote against the motion of confidence for the government. He abstained from voting by remaining absent and the evidence of his illness was not considered sufficient for his absence at the house. Thus there has to be a sufficient reason to satisfy the speaker about the absence from the house by a member when he is bound by the whip to be there.

Burden of proof: The burden of proof that there was no willingness to leave the party will always be against the legislator against whom charges are made. This point was observed in the *Ravi S Naik* judgement by the Supreme Court.

Limitation on scope of inquiry of the speaker: *Shrimanth Balasahib Patil v Hon'ble Speaker of Karnataka legislative assembly (Karnataka legislative assembly case)*: This is a recent judgement of the Supreme Court in 2019 in which 15 MLAs had resigned from the Congress and JD(S) resigned. The government collapsed after this and the speaker disqualified and ruled that they cease to be so till 2023 till the end of the expiry of the assembly till 2023.

Observations by the Supreme Court: The decision of disqualification by the speaker was upheld by the Supreme Court. However, it was not fully upheld by the Court and the parts of disqualification which prescribed the time period for disqualification were set aside. The following observations were made by the court: "The Speaker's scope of inquiry with respect to acceptance or rejection of a resignation tendered by a member of the legislature is limited to examine whether such resignation was tendered voluntarily or genuinely. It is constitutionally impermissible for the Speaker to take into account any extraneous factors while considering the resignation. The satisfaction of the Speaker is subject to judicial review". It was further held that the speaker does not have the power to describe the period for which the member is disqualified. The resignation does not take away the right of the speaker to disqualify. Horse trading and corrupt practices associated with defection and change of loyalty for the lure of office or wrong reasons have not abated. Thereby the citizens are denied stable governments. In these circumstances, there is a need to strengthen certain aspects, so that such undemocratic practices are discouraged and checked. Grounds for review of the decision of the speaker In this case the Supreme Court laid down grounds for review of the decision of the speaker.

- If it is in violation of constitutional mandate.
- If it is made in a mala fide way.
- If the decision of speaker is perverse.
- If it is in noncompliance with rules of natural justice and perversity.

Problems of Anti - Defection Law

Paragraph 4 of the law: Paragraph 4 of the Anti - Defection Law creates an exception for mergers between political parties by introducing three crucial concepts:

Original Party: The political party to which a member belongs (this can refer to the party generally, outside of the House).

Legislature Party: Consisting of all elected members of a House for the time being belonging to one political party.

Deemed Merger Paragraph 4 does not clarify whether the original political party refers to the party at the national level or the regional level, despite the fact that that is how the [Election Commission of India](#) recognises political parties.

Paragraph 4 states that: a merger can take place only when an original party merges with another political party, and at least two thirds of the members of the legislature party have agreed to this merger. Paragraph 4 seems to be creating a "legal fiction" so as to indicate that a merger of two third members of a legislature party can be deemed to be a merger of political parties, even if there is no actual merger of the original political party with another party.

Undermining Representative & Parliamentary Democracy After enactment of the Anti-defection law, the MP or MLA has to follow the party's direction blindly and has no freedom to vote in their judgment. Due to Anti-Defection law, the chain of accountability has been broken by making legislators accountable primarily to the political party.

Controversial Role of Speaker: There is 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. There are cases that are disposed - off after the term is over.

No Recognition of Split: Due to the [91st Constitutional Amendment Act, 2003](#), 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'.

Allows only Wholesale Defection: It allows wholesale defection, but retail defection is not allowed. Amendments are required to plug the loopholes. He raised concern that if a politician is leaving a party, s/he may do so, but they should not be given a post in the new party.

Affects the debate and discussion: The Anti-Defection Law has created a democracy of parties and numbers in India, rather than a democracy of debate and discussion. In this way, it does not make a differentiation between dissent and defection and weaken the Parliamentary deliberations on any law.

Conclusion. This law is very important for stability of government it can be said that to some extent the law has been successful in limiting the political defections but to a larger extent there still exist some loopholes, like in terms of the time limit for deciding the disqualification plea etc. Still apart from

these loopholes the larger harm of frequent defections has been contained to some extent. Defections within political parties are on rise in various states. Although the Anti-defection Law makes an effort to reduce these occurrences, it has not been adequately effective thus far. There is also a need for building up a political consensus so that there is room for political expression in the Parliament for the members. There is an urgent need for a watchdog to stop future incidences of defection and escalating levels of corruption within the Indian political system.

References.

- Committee on Electoral Reforms (1990): "Anti-Defection Law," Ministry of Law and Justice, New Delhi: Government Press.
- Kaushik, Rahul (2020): An Overview on Tenth Schedule of the Constitution. The Economic Times Daily, October 27.
- Law Commission of India 170th report (1999): "Analysis of views and conclusions regarding amendments to the Tenth Schedule to the Constitution," Ministry of Law and Justice, New Delhi: Government Press.
- Legislative Department (1985): The Constitution (Fifty-Second Amendment) Act, 1985. Ministry of Law and Justice, New Delhi. • Malhotra, GC (2005): Anti-Defection Law in India and the Commonwealth, New Delhi: Lok Sabha Secretariat.
- https://www.researchgate.net/publication/365854012_Anti-defection_Law_-_A_Review
- <https://web.toppersnotes.com/current-affairs/blog/the-anti-defection-law-its-failure-to-check-defections-VxKm>
- <https://www.drishtiiias.com/daily-updates/daily-news-editorials/law-of-anti-defection-law>
- <https://bnwjournal.com/2020/07/03/anti-defection-law-in-india-10th-schedule/>
- <https://www.latestlaws.com/adr/articles/analysis-of-anti-defection-laws-in-india-by-sakshi-rewaria>
- <https://www.iasexpress.net/anti-defection-law-tenth-schedule-upsc/>
- <https://byjus.com/free-ias-prep/this-day-in-history-jan31/>