



THE ANTI- DEFECTION LAWS IN INDIA: WHIP SYSTEMS AND MEMBER WITHDRAWAL MECHANISMS

¹*Khushi Vashisht*¹, ²*MR. Vatsal Chaudhary*

¹ Law College Dehradun, Uttarakhand University

² Assistant Professor, Law College Dehradun, Uttarakhand University

ABSTRACT:

In the Indian democracy the Anti defections law pertains to hold a great importance. Political defections in India continue to occur despite the implementation of anti defection laws that continue to occur despite the implementations of the Anti-Defection laws, raising concerns about the effectiveness of these laws, in maintaining political stability and deterring opportunistic actions by elected officials. This study investigates the reasons behind the ongoing incidence. Numerous defection occurred within state legislatures, impacting the destinies of ministers and the political trajectory system. Many constitutional democratic systems in India were remained undermined due to the foundational constitutional democratic system in India.

Keywords: democracy, constitution, defection laws, whips, independent members, legislative houses

INTRODUCTION

Individuals and the state hold connection between significant importances from historical times to the present. The term “state” has been incorporated in various ways by different philosophers throughout different periods by society. The importance and insinuation of the association between the creature and the condition by the thoughts and perception of traditional, medieval, and contemporary theorist, one give increase a deeper understandings. In conjecture the derivation of state is enclosed. However, later theorists were skeptical of the divine origins of state and explained the emergence of political society through the hypothesis of an “original contract”, a theory primarily advocated by a Hugo Grotius. Development of a governmental state

Contributed to the robust political society. Key factors that played a role in the evolution of the state include human sociability, kinship, religion and industry. Additionally, warfare led to the emergence of a larger social organizational form known as the state, aimed at ensuring the protection and self preservation of its populace. In the scheme conventional supporting theory the state has emerged as an middle subject matter among it.

Democracy’s is the primary column is the parliamentary structure of governance. Democracies are characterized by popular power, which includes the ability of populace to choose representatives to preside over the nation.

SCHEDULE X OF THE INDIAN CONSTITUTION, 1950

As per the Indian constitution the article comprising of 102(2) and the 191 (2), in conjunction with schedule Xth, establish the criteria for defection in order the disqualify the Member of Parliament and the state legislatures. This is done in order to maintain stability in the governance and at the aim to reduce political defection. As per the schedule X there are specific basis for disqualification:

- Resignation from party membership: If any person is elected as an candidate of the political party or any nominated member for that political party at the time of assuming office. If that candidate voluntarily gives away resign from their party membership he will automatically get disqualified.
- Party whip violation²: The nominated person of the political party if abstains from voting against party’s directive without preceding consent or succeeding approval within 15 days, they risk disqualification³.
- Post election joining: A candidate is subject to disqualification if that person joins political party after election⁴.
- Six Month Period Defection: A candidate has assumed his office six months prior but he has not joined since the six months then that person who is nominated will be disqualified.

² Xth schedule, paragraph 2 (1) (b), Constitution of India, 1950

³ Xth schedule, paragraph 2(1) (b), Constitution of India, 1950

⁴ Xth schedule, paragraph 2(2), Constitution of India, 1950

Situations where Disqualification of the political party Members not Apply:

Amalgamation of the Existing Parties: When the political party 2:3 constituent affiliated members assent for the amalgamation of two or more political parties, those existing candidates will not be disqualified⁵. A lawful narrative is created by the existing rulings, acknowledging such mergers as legitimate under the axiom “shall be deemed to have occurred”.

Repealed provision: Priory, there was Split provision mentioned in the constitution which was repealed by the 91st constitutional Amendment Act, 2003. The split means where the nominated candidates of the existing political party in the ratio of 1:3 were renowned as the resistance. They were considered against disqualifications. This provision in the constitutions was exploited to enable mass defections of the political party elected members. The supreme court Further Explains In The Case Of Rameshwar Prasad and others V. Union of India⁶ contended that the rules of Anti defection laws should not promote the shifting of political party members fidelity and later affirming the revoking split provisions in the 91st AA, 2003.

Further the Supreme Court in the case of Kihoto Hollohan V. Zachilhu and others⁷, the court contended that claims of the democratic rights of the elected members of the party and parliamentary social equality violate the fundamental principles which are deemed to be rejected.

The clause due to the possibility of political bias is invalidated if the speaker by himself does it, who is conferring adjudicatory powers within the tenth schedule.

HISTORICAL BACKGROUND OF ANTI- DEFECTION LAW IN INDIA

In the Indian parliamentary democracy, the issue of defection laws is not new-fangled occurrence. Following the fourth general elections held on February, 1967 the level of the unethical and unprincipled defection laws in India escalated. Within the succinct instant border the numerous state governments collapsed. This unethical defection laws in India needed to be addressed sincerely and quickly.

The parliament adopting a motion decided to find a solution to address the defection laws pertaining in India. This motion was adopted by Lok Sabha as on December, 8 1967 forming a committee by the government of India electing the chairperson Yashwantrao Chavan in order to inspect the issue. As on January, 7 1969 the problem was addressed by submitting a report by the chairperson of the committee saying that problem relating to defection laws needed to be addressed through principled, political, legitimate, governmental procedures at the same time.

As per the suggestions and outcomes proposed by the Chavan headed committee, the constitutional 23rd bill, 1973 was presented in the Lok Sabha⁸, to revise the existing articles on defection which are Article 102 and 191 of the constitution and to stipulate among other things, the disqualifications of a Member from the house for voluntarily relinquishing their membership in a political party or for voting or abstaining from voting in opposition to any directive issued by that political party. The bill presented in Lok Sabha not encompasses nonpartisan legislators. The bill presented in 1973 precluded the ten clauses which is considered as the succinct bill presented. Therefore, the disbanding of the Lok Sabha took place due to which it in the end erstwhile.

DISQUALIFICATIONS OF MEMBERSHIP

The disqualification of the political party members may be executed on the aforementioned reasons:

As per the X schedule if an elected member shall be disqualified from either house of parliament he shall be considered as a disqualified member⁹. Article 102 prior to its amendment by the constitution (fifth- second amendment) Act, 1985 stipulated that a person could be disqualified from being elected as well as from being a member of parliament on the basis of holding an office of profit, being insane on the basis of holding an office of profit, being an un-discharged in receivership, non citizenship of India, or being debarred by any supplementary regulation.

The anti- defection laws procedures were conventional by the 52nd constitutional Amendment Act, 1985 by amending the following Articles 101, 102 and 190 and 191.

Prior to the modifications made, article 191 disqualified individual from being elected or serving as constituent of assembly or state administration on the basis of holding an office of profit, being insane, on the basis of holding an office of profit, being an un-discharged in receivership, non citizenship of India. In the constitution of India the disqualification made on the basis of defection in India the Article 102 (2) and the article 191 were amended and on the other hand Articles 101 and 190 clause (3) (a) was revised.

VOLUNTARILY GIVING UP OF MEMBERSHIP EITHER EXPRESSED OR IMPLIED

The Action of voluntarily relinquishing membership in a political party can be either explicit or implied. If any person who has been nominated as a candidate for any existing political party and his elections was assisted by that political party. Poles apart the contender modify the party that had designated him for ballot vote.

As per the schedule X of the constitution of India, 1950 mentioned in the paragraph 2(a) does not instruct to elected member to resign in writing from the nominated political party. The risk of verbal agreement is more rather than the oral resignation. The Supreme Court clarified in the case of Ravi S.

⁵ Xth schedule, paragraph 4, Constitution of India, 1950

⁶ (2006) 2 SCC 1 AT 87, PARAGRAPH 76

⁷ (1992) SCR (1) 686

⁸ As on May 16, 1973

⁹ Article 102 of constitution of India, 1950, PARAGRAPH 4 and 5 of schedule X

Naik V. Union Of India as on February 9, 1994¹⁰ the court contended that the expression mentioned in the schedule X¹¹ of the Indian constitution it does not equate to resignation. And inference regarding their voluntary relinquishment can be abstracted from their manners.

CONSTITUTIONAL VALIDITY OF DEFECTION LAWS

Further the Supreme Court in the case of Kihoto Hollohan V. Zachilhu and others¹², Merging with the case of Prakash Singh Badal and others V. Union of India¹³ contended that xth schedule of the legitimate authenticity regulating defection of the political party member on the bases of defection. Central issues included whether individuals owe greater allegiances to their political party or their consistency and whether constitutional acknowledgment should be meet the expense of to party allegiance. The role of speaker is also examined by the courts for determining disqualification and the exclusion of judicial review¹⁴.

The Punjab and Haryana high court, Chandigarh deemed schedule X paragraph no 7 as unconstitutional as per the article 368(2) due to deficient in of endorsement by condition administration. The court rules that jurisdictions of high court and the supreme courts were unlawfully removed. The court underscored that judicial review is an essential feature of the constitution and that decisions made by the speakers are subject to it.

The court determined that these provisions did not infringe upon the freedoms of speech, vote or conscience as per article 105 and 194 and were necessary to prevent political defections. However, it annul paragraph no 7 as it modified the power of legal evaluation under article 136, 226 and 227 without suitable endorsement. The court further clarified that any directive (or whip) issued by a political party must explicitly state that its violation could result in disqualification.

JUDICIAL VIEW ON DISQUALIFICATION BY THE SPEAKER FOR DEFECTION

Regarding the case of Lalan or Shri Rajeev Ranjan Singh (lalan) V. Dr PP Koya¹⁵, in this instance Mr PP Koya defended that they disagreed a party whip order to be present in the house in order to take part in an election alongside the administration proposal of self-assurance. He explained that his absence was due to illness. By staying at home, the defendant essentially withdrew from voting, according to the speaker, and the evidence of his illness was not considered sufficient to support his findings.

Shri Prasad also disregarded the party whip's directive to attend the house. He contended that no whip had been issued or enforced in his defense. the speaker concluded that it could not be argued that Shri prasad was unaware of the whip, as there is evidence indicating that it had been delivered to his residence and duly received.

Shri akhlaque repordelty joined the Samajwadi party during a public event. During this occasion, Shri Akhlaque allegedly expressed that he had always been a supporter of the sp at heart. The speaker remarked that there is no basis for media reports and articles to be inaccurate. Consequently, following Shri Akhaque's voluntary resignation from the BSP, the speaker announced his ineligibility.

CHALLENGES TO ANTI- DEFECTION LAW

Ambiguity in the phrase “voluntarily giving of membership” : One of the central challenges is the vague and broader interpretations of “voluntarily giving up of membership”. The supreme court in the case of Ravi S. Naik V. Union of India¹⁶ clarified that this does not Mean only formal resignation, but can be inferred from conduct. If a member conducts themselves in the manner that suggests they have abandoned their party, they may be disqualified. This raises concern about subjective interpretations.

Misusing of Whip and Threat to representative Democracy: The whip system is intended to ensure party discipline. However, its blanket and uncritical application has turned it into a tool for party leadership to control members, often at a cost of democratic debate and autonomy.

The distinction between essential and non essential votes was not made, which meant whips could be issued for all matters, even those involving conscience or constituents interests. This means legislators, instead of representing the electorate, are compelled to vote per party lines, turning parliament into a rubber stamp. The recent use of whips even in presidential elections or legislative council elections, which are supposed to be by secret ballot and based on individual judgment, further aggravates the problem.

Speaker roles and the question of the bias: Another significant concern is the role of the speaker as the adjudicating authority under the tenth schedule. The speaker is usually a member of the ruling party or coalition, raising questions about impartiality and fairness.

In the case of Shrimanth Balasaheb Patil V. Speaker Karnataka Legislative Assembly¹⁷ the supreme court examined the disqualification of 17 Karnataka MLAs to contest the re- elections, thereby partially defeating the purpose of disqualification and allowing a loophole for engineered defections.

¹⁰ (1994) AIR 1558

¹¹ Paragraph 2 (1) (a)

¹² (1992) SCR (1) 686

¹³ AIR 1987 PUNJAB AND HARYANA 263

¹⁴ Xth schedule, paragraph 7, Constitution of India, 1950

¹⁵ JD (U) (2009)

¹⁶ (1994) supp (2) Scc 641

¹⁷ (2020) 2 SCC 595

- Lack of judicial review in initial stages: while Kahioto Halohan allowed judicial review of the speakers decision, it excluded the process prior to the final decision. This meant that interim conduct delays, or the non application of the mind of the speaker cannot be challenged until a final order is passed. This precludes timely judicial intervention, allowing for abuse of the system during politically sensitive periods.
- Erosion of federal structure: The anti defection laws, especially when applied to Rajya sabha and legislative councils affects federalism, as it restricts the independent decisions making powers of representatives from states. In smaller parties or regional coalitions, national parties often impose central leadership decisions, creating a democratic deficit at the state level.

CURRENT SCENARIO AND SUGGESTIONS OF ANTI- DEFECTION LAW IN INDIA

In the recent years, the Anti defection law has come under increased scrutiny due to its inconsistent application and frequent misuse in the political power plays. The political crises in Karnataka (2019), Madhya Pradesh (2020), Maharashtra (2022) and Bihar (2022-2023) have highlighted the law's inability to prevent large-scale defections despite its original intent. Legislators continue to resign en masse, often to facilitate the collapse of governments and enable defections without facing disqualifications under the tenth schedule. This phenomenon, sometimes referred to as "defection through resignation" renders the anti- defection law ineffective.

The role of speaker remains highly contentious. In many recent cases, speakers have delayed disqualification decisions for months, which has allowed defecting members to participate in trust votes and government formation. While the supreme court in *Keisham Meghachandra Singh V. The Honble Speaker Manipur Legislative* urged for decisions within a reasonable time, the lacking of binding statutory timelines still leaves room for manipulations.

Furthermore, the blanket use of the whip on the legislative matters, rather than on the confidence or money bills alone, continues to erode legislative independence. This turns MP and MLAs into mere agents of their party leadership, curtailing meaningful parliamentary debate and weakening the democratic mandate of individual representatives.

In the Maharashtra Political crises (2022), the Ekanth Shinde faction was not disqualified despite openly rebelling against the Uddhav Thackeray led Shiv Sena. The supreme court, in its 2003 ruling, observed procedural improprieties but did not reinstate the previous government, citing limits to its jurisdiction. This underscores the legal and institutional limitations in effectively dealing with political defections.

CONCLUSION

In conclusion we can mention that legislation must clearly express the words to remove ambiguities. The provision regarding mergers, which exempts individuals from disqualifications. The threat to defections has not been a new phenomenon in the operation of the Indian parliamentary democracy. However, the level of unethical and unprincipled defection has escalated following the fourth general elections, which presents a significant threat to Indian democracy. Numerous state governments collapsed in a brief timeframe. A considerable number of individuals believed that the malady of unethical defection must be addressed.

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