



India's Anti-Defection law: Its Shortcomings¹

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PANDIT JAWAHAR LAL NEHRU: "FAILURE COMES ONLY WHEN WE FORGET OUR IDEALS, OBJECTIVES, AND PRINCIPLES"

Abstract

The main goal of India's Anti Defection Law is to prevent political defection, but the law never developed correctly because of desired political goals and a rise in political gluttony, dishonesty, and corruption. With the passage of the Constitutional (52nd) Amendment Act, 1985, which added Schedule 10 to the Constitution, the Indian Parliament took some action to outlaw defection activities and implement an Anti Defection Law. The Anti Defection Law is expressly included in Schedule 10 of the Constitution. In the area of anti-defection law, this constitutional amendment is seen as a turning point. However, 38 years after the 52nd Amendment was passed and Schedule 10 was added, the issue of defection in India still exists and has grown to be a serious threat to democracy. Politicians take advantage of the Anti Defection Law's many loopholes to further their own agendas. In order to achieve the intended aims, it is imperative that the shortcomings and inadequacies of the Anti Defection Law be reexamined, and that the required and suitable steps be taken to eliminate them. This essay will primarily address the anti-defection legislative framework that currently exists in India while also highlighting the shortcomings of the anti-defection legislation.

OVERVIEW

A democratic system requires elections as a fundamental element. A progressive democracy's foundation is a free and fair election process. India is a parliamentary democracy with a multiparty system of governance. Different political groups compete with one another to establish a stable administration. However, some political figures, motivated by their own avarice and ambitions, leave one party after winning an election, shattering the trust in a system of governance where the people choose their representatives. These actions are typically referred to as desertion. Defection has grown to be a significant problem in the Indian political system these days. Ever since independence, this is a contentious topic. Numerous instances might be considered when talking about Defection in India. The political crises in Madhya Pradesh and Maharashtra are the most notable. In both cases, a few MLAs from the Indian National Congress and Shiv Sena, respectively, broke away from their parties' alliances and supported the opposing party. This betrayal caused the elected governments in both states to fall. One of the worst defection issues in the nation is the political situation in Maharashtra. In its ruling, the Supreme Court decided that Uddhav Thackeray's Mahavikas Aghadi Government could not be reinstated because he quit before the floor test was conducted. The Supreme Court further ruled that there was no basis for Mr. Bhagat Singh Koshiyari, the state governor, to conclude that the house no longer had trust in him based on objective data. A five-judge panel led by Chief Justice D Y Chandrachud unanimously found that it was unlawful for the Speaker to designate Bharat Gogawale of the Shinde faction as the Shiv Sena whip. Additionally, it was decided that the Governor lacked

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justification for asking Mr. Thackeray to demonstrate his majority on the house floor. But since Mr. Thackeray resigned his resignation² without taking the floor test, the status quo ante cannot be reinstated.

The Indian Constitution does not, at first, contain any explicit anti-defection language. However, the need for an anti-defection law was realized because of the unchecked defection and horse dealing in Indian politics. One of the most significant events happened during the 1967 election, when over 1500 MLAs and 142 MPs switched parties. GAYA LAL, a member of the Haryana Legislative Assembly, switched parties many times in one day. Following that incident, the phrase "AAYA RAM, GAYA RAM" gained notoriety. The government had its eyes opened by this tragedy. In 1979, the Indian Law Institute reported that 313 independent defections and over 1500 party defections had occurred during 1967 and 1968. Over forty-five percent of legislators were said to have changed parties between 2016 and 2020³. Back then, as it is now, horse trafficking was quite popular. Rajiv Gandhi presented a bill on anti-defection legislation in Parliament in 1987, and it became operative on March 18, 1985, as a means of putting an end to these defection activities. Schedule 10 was created by implementing Article 268 through the 52nd Constitutional Amendment Act. This amendment's primary goals are to stabilize politics and eradicate the evil of defection from the Indian political system.

WHAT IS DEFINED AS DEFECTION:

A party member's disloyalty or departure is known as defection. In terms of politics, we can say that turning unfaithful towards his party amounts to betrayal. It describes the situation in which an elected official leaves his current party to join a new one in exchange for advantages. We also refer to this practice as floor crossing or horse dealing.

Defection, as defined by the **Oxford Dictionary**, is the act of joining a political party that is opposed to your own.

Merriam Webster defines defection as the deliberate renunciation of loyalty or obligation.⁴

As per the **Committee on Defection (1967)**, a defector is an individual who is elected to the legislature and bears the reserved symbol of a political party. Once elected, they voluntarily give up their affiliation with that political party without the party's consent.

Therefore, we can define defection as the act of an elected member of the legislature leaving their own party in order to join another in order to gain political advantages. He is betraying his own political party with this. Any political defection is mostly the result of corruption, political gluttony, and political aspirations.

ANTI DEFECTION LAW AND DISQUALIFICATION GROUNDS

It is a typical occurrence to watch politicians defecting in every democracy. Defection as a practice has the potential to erode the foundations of democracy and political stability. The largest democratic nation has been concerned about political defection because, if unchecked, it will undermine the fundamental principles that underpin democracy. There has to be a strong legal structure in place for these activities to be discontinued. Anti-defection laws are those that forbid engaging in defection-related activities or outright outlaw defection in political affairs. The state's anti-defection law lays out a number of reasons why a lawmaker may be excluded from the legislature or state assembly. The Indian Constitution's

² Subhash Desai v. Principal Secretary, Governor of Maharashtra & ors, writ petition (c) no. 493 of 2022

³ <https://thewire.in/politics/mlas-defection-2016-2020-bjp-congress-adr>

⁴ <https://www.merriam-webster.com/dictionary/defection>



Tenth Schedule lists these several justifications. The following is a quick explanation of the many grounds covered under Schedule 10:⁵

- i) An elected member of the legislature, whether it be the state legislature or the parliament, may be removed from the relevant house if they willingly resign from their current party or refrain from voting against party lines. That being said, he won't be disqualified if he obtains previous consent within 15 days of the earlier voting or abstention.
- ii) if a independent decides to join a political party.
- iii) Upon the expiration of six months from the date of their house election, a nominated member may join any political party.

DISQUALIFICATION EXEMPTION

The following situations are excluded from disqualification under 10th Schedule Rules 4 and 5:

Should a political party merge with another, the member will remain eligible in such scenario and if – They joined the other political party created by the merger, or a new political party was formed. remain a distinct and autonomous organization and have not embraced the recent union.

A merger is only considered legitimate if two thirds of the original members have joined another political organization.

Rule 5 of the 10th Schedule also exempts the Speaker or Deputy Speaker of the Lok Sabha, Rajya Sabha, or state assembly from disqualification.

AIM OF THE TENTH SCHEDULE

The law's main goals are to stop the evil of defection from our political system and restore public trust in democracy. Anti-defection laws also aim to achieve the following other goals:

- 1) is to stop desertion brought on by a desire for power.
- 2) to discourage lawmakers from abruptly switching parties on a frequent basis.
- 3) Anti-defection legislation offers political and governmental stability.
- 4) Anti-defection legislation is essential to bolstering democratic institutions and curbing corruption.
- 5) It offers a responsible and accountable political system.

The Anti-Defection Law and the Bar on Court Jurisdiction

The court's jurisdiction over disqualification is barred by Rule 7 of the 10th Schedule. The Kasavananda Bharti case established that the basic structure theory of the constitution includes judicial review. Rule 7 was questioned in Kihoto Hollohon v. Zachillu for this reason. The court noted that basic structural theory and the constitution are violated by regulation 7 of the tenth schedule. It was further decided that rule 7 also has an impact on articles 136, 226, and 227. It was also noted that although the speaker's or chairman's decision to be disqualified is deemed genuine, it is susceptible to judicial scrutiny. The Supreme Court may review the speaker's decision in the following cases:

- 1) if it goes against the mandate of the constitution.
- 2) if it is manufactured dishonestly.
- 3) if it is against the law of nature.

⁵ Rule 2 of the 10th Schedule of Indian Constitution.



The Supreme Court ruled in *Rajendra Singh Rana and Others v. Swami Prashad Maurya* that the judicial review power kicks in to take action in the event of defection when the Governor of State fails. If the Speaker approves a split or merger without making any findings or does not act in accordance with the Tenth Schedule, the court may review the Speaker's decision.

ANTI DEFECTION LAW'S DEFECTS AND FLAWS

There are numerous serious flaws in India's Anti Defection statute. Defection in our political system is therefore on the rise. Defection is a bad thing for a progressive democracy, so we must identify these flaws and fix them as soon as we can. The following are some significant flaws in the Indian Anti Defection Law, or what we might call its main flows:

Combination in accordance with Rule 4:

The idea of merger is covered under Rule 4 of the Tenth Schedule. In the event of a merger, it offers a few exemptions from disqualification. It states that members of a political party are not liable to disqualification if two thirds or more of the party combine with another political party. The problem with rule 4 is that it permits defection based just on numerical values rather than rational justifications. Obtaining lucrative positions or any ministerial role is the primary motivation for the majority of political defections. Therefore, the rationale for the merger should receive greater attention than the figures.

Removal Based on Political Party:

Another significant aspect of this regulation is that it makes no mention of a member's removal from their political party. Political parties often have the authority to expel members of the house, however the issue is that if a member of the house is expelled by his party, he will not lose his eligibility.

Unlimited authority for the Speaker/Chairman:

Rule 6 of the 10th schedule granted the Speaker and the Chairman of the People's Elected House and the Council of States, respectively, incredibly broad authority to handle matters pertaining to disqualification. The President or the Governor should exercise this authority, according to the committee led by Dinesh Goswami, after consulting with the Election Commission.

Resigning From Membership Electively:

The 10th schedule's Rule 2(a) addresses the possibility of disqualification in the event that a member voluntarily resigns from membership. Working against the party's interests and supporting a member of a different party may in some circumstances be construed as constituting a resignation under the 10th Schedule, even though it is technically not.

No particular stance taken by any members:

Members are required to abide by the party's policies and whip. It is offered in accordance with Tenth Schedule Rule 2. This regulation limits the party member's ability to object to the wrongdoing of the party in the house. Political parties can be autocratic at times. It is the transgression of the representational democracy ideal.

The 10th Schedule of the Indian Constitution has several significant shortcomings, which are reflected in the issues mentioned above. The legislature has a responsibility to resolve these matters and take the necessary action in this regard.

FINALLY, SOME SUGGESTIONS

As we previously discussed, the main goal of the Anti Defection Law is to curb political defection; but, as political corruption, political gluttony, and political dishonesty rise, defection is becoming more and more common. India passed rules regarding defection, however it's time to update or modify the current



legislation to better suit the country's demands. The Indian judiciary has issued a number of rules regarding defection, but Parliament has not taken any concrete action to guarantee that the statute prohibiting defection is strictly adhered to. Democracy is weakened by defection. It's time to take the necessary action to guarantee that the anti-defection statute operates as intended. The researcher wishes to make some recommendations to guarantee the anti-defective statute operates well. They are listed in the following order:

Power of Adjudication in Schedule 10

The President of India or the Governors of the States should have the authority to settle the matter of disqualification if found engaging in defection, and they should act on the advise of the Election Commission. The adjudicatory power of the Speaker and the Chairman should be eliminated.

It's time to provide a thorough definition of "voluntarily giving up membership," as well as to define "Political Party" in accordance with the 10th Schedule.

The 10th Schedule shall provide an explanation of the status and position of those members who have been expelled by their political parties. It is also vital to prohibit members of previous party expulsions from joining other political parties or from holding any kind of office.

The 10th schedule's merger-related provisions ought to be removed.

Additionally, voters must have the ability to petition for the disqualification of any party member who deviates from the party in case of defection.

The Speaker or Chairman's decision about a member's disqualification should have a deadline.

These are some recommendations that could greatly aid in fortifying India's anti-defection legislation.

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