



Anti-defection law in India

10 mins read

At a Glance

- The anti-defection law deals with situations of defection in Parliament or state legislatures by: (a) members of a political party, (b) independent members, and (c) nominated members.
- In political scenario it is a situation when a member of a political party leaves his party and joins hands with other parties
- The practice of 'defection' in Indian politics has always been the breeding ground of political instability and uncertainty in the country.
- A Member could be disqualified:
 - If he or she voluntarily gives up the membership of a political party or joins any other political party after the election, votes or abstains from any crucial voting contrary to the directive circulated by his/her respective political party.
 - A nominated member if he/she joins any political party after six months from the date he/she takes his seat.
- If, not less than two-thirds of the members of the legislature party have agreed to merge with other party they are exempted from disqualification.
- Chairman or the Speaker of the House have absolute power in deciding the cases pertaining to disqualification of members on the ground of defection.
- Though the law has succeeded in a reasonable way but due to some of its loopholes, it has not been able to achieve the best it can.
- The government may consider suggestions given by various committees and make suitable amendments to the existing law to help it to develop to the best possible extent.

Introduction

Election is a vital component in a democratic system of governance, where emergence of political parties with different and diverse ideologies is but natural. Free and fair competition amongst political parties at the hustings for wresting power to govern the country is indicative of a vibrant democracy. Political parties give concrete shape to divergent ideologies and are essential for the success of any democracy. However, defections are a matter of concern for the party system. The anti-defection law deals with situations of defection in Parliament or state legislatures by: (a) members of a political party, (b) independent members, and (c) nominated members. In limited circumstances, the law allows legislators to change their party without incurring the risk of disqualification.

Feedback : refdiv-lss@sansad.nic.in

Prepared by Political & Parliamentary Affairs Desk, Reference Division; Officers associated with the preparation – Shri Vinod Kumar Khuyahama, Joint Director; supervised by Shri S.Holkhopao Baite, Director, Shri Pulin Bhutia, Joint Secretary and Shri Prasenjit Singh, Additional Secretary.

The Reference Note is for personal use of the Members in the discharge of their Parliamentary duties, and is not for publication.

Etymology of the term 'defection'

The term defection indicates revolt, dissent, and rebellion by a person or a party. Generally defection refers to leaving an association to join another. In political scenario it is a situation when a member of a political party leaves his party and joins hands with other parties. Traditionally, this phenomenon is known as 'floor crossing' which had its origin in the British House of Commons where a legislator changed his allegiance when he crossed the floor and moved from the Government to the Opposition side, or vice-versa.

Defections in India

Indian politics has been no exception to this phenomenon of defections. The practice of 'defection' in Indian politics has always been the breeding ground of political instability and uncertainty in the country, often tending to shift the focus from 'governance' to 'governments'. The infamous "*Aaya Ram, Gaya Ram*" slogan was coined against the background of continuous defections by the legislators in the 1960s. In fact, the history of defections in India can be traced back to the days of Central Legislature when Shri Shyam Lai Nehru, a member of Central Legislature changed his allegiance from Congress Party to British side. To cite one more instance, in 1937 Shri Hafiz Mohammed Ibrahim, who was elected to the Uttar Pradesh Legislative Assembly on the Muslim League ticket defected to join the Congress. In late sixties, the phenomenon of changing political party for reasons other than ideological, engulfed the Indian polity. According to the Chavan Committee Report (1969), following the Fourth General Elections, in the short period between March 1967 and February 1968, the Indian political scene was characterized by numerous instances of change of party allegiance by legislators in several States. Out of roughly 542 cases in the entire two-decade period between the First and the Fourth General Elections, at least 438 defections occurred in these 12 months alone. Among Independents, 157 out of a total of 376 elected, joined various parties in this period. That the lure of office played a dominant part in decisions of legislators to defect was obvious from the fact that out of 210 defecting legislators of various States, 116 were included in the Councils of Ministers which they helped to form by defections.

Evolution of Anti-defection Law in India

Steps for bringing forward a legislation in India to curb the malaise of defections can be traced to a private member's resolution moved in the Fourth Lok Sabha on 11 August 1967 by Shri P. Venkatasubbaiah. His resolution was discussed in Lok Sabha on 24 November and 8 December 1967. The resolution in its final form was passed unanimously by the Lok Sabha on 8 December 1967. In consonance with the opinion expressed in the resolution, a Committee on Defections, was set up by the Government under the chairmanship of the then Union Home Minister, Shri Y.B. Chavan which submitted its report on 18 February 1969. The Report of the Committee was laid on the Table of Lok Sabha.

Shri Venkatasubbaiah's resolution in Lok Sabha read as under:-

"This House is of opinion that a high-level Committee consisting of representatives of political parties and constitutional experts be set up immediately by Government to consider the problem of legislators changing their allegiance from one party to another and their frequent crossing of the floor in all its aspects and make recommendations in this regard".

Main recommendations of the Y. B. Chavan Committee:

- A Committee of the representatives of the parties in Parliament and State Assemblies be constituted to draw up a code of conduct for the political parties with particular reference to the problem of defections and to observe its implementation.
- No person who was not a member of the lower House should be appointed as Minister/Chief Minister. The Committee advised for a Constitutional amendment in this regard without affecting the existing incumbents in office.
- The Committee further recommended that a defector should be debarred for one year or till such time he resigned his seat and got re-elected, from appointment to the office of a Minister, Speaker, Deputy Speaker or any post carrying salary and allowances to be paid from the Consolidated Fund of the Union or the States or from the funds of the Government Undertakings.

Source: https://eparlib.nic.in/bitstream/123456789/58674/1/Anti_Defection_Law.pdf

The Constitution (Thirty-second Amendment) Bill, 1973

As the Y.B. Chavan Committee's recommendations could not provide adequate solution to the problem of defections, the Constitution (Thirty-second Amendment) Bill, 1973 was introduced in the Lok Sabha on 16 May 1973 for constitutionally providing for disqualification on defections. A motion for reference of the bill to a Joint Committee of the Houses of Parliament was adopted in the Lok Sabha on 13 December 1973 and in the Rajya Sabha on 17 December 1973. The Joint Committee became defunct upon dissolution of the Fifth Lok Sabha on 18 January 1977.

The Constitution (Forty-Eighth Amendment) Bill, 1978

On 28 August 1978, another attempt was made in this direction by bringing forward the Constitution (Forty-eighth Amendment) Bill, 1978 in Lok Sabha. Several members belonging to both ruling party and opposition parties opposed the Bill at the introduction stage itself. The members took serious objections to the alleged misrepresentation of facts in the Statement of Objects and Reasons in as much as the members were not consulted over the provisions of the Bill, whereas the Statement of Objects and Reasons of the Bill said "the problem cuts across all parties. It has been examined in consultation with the leaders of political parties". In view of stiff opposition, the Minister withdrew the motion for leave to introduce the Bill.

The Constitution (Fifty-second Amendment) Bill, 1985 (Anti-defection Law)

The Government introduced the Constitution (Fifty-second Amendment) Bill in the Lok Sabha on 24 January 1985 which led to amendment in Article 101, 102, 190 and 191 of the Constitution to provide the grounds for vacation of seats for the disqualification of the members; and also inserted Tenth Schedule. It lays down provisions regarding

disqualification on the grounds of defection. The Bill was passed by the Lok Sabha and the Rajya Sabha on 30 and 31 January 1985, respectively. The Act, which came into force with effect from 1 March 1985. The Members of Lok Sabha (Disqualification on ground of Defection) Rules, 1985 framed by the Speaker, Lok Sabha (in terms of para 8 of the Tenth Schedule) for giving effect to the provisions of the Tenth Schedule came into force w.e.f. 18 March 1986.

Key Provisions of the Anti-defection Law (Tenth Schedule)

Rule 2- lays the grounds for disqualification of the member's i.e.:

- If a member of a House belonging to a political party:
 - a. Has voluntarily given up his membership of such political party, or
 - b. Votes, or abstains from voting in such House, contrary to the direction of his political party. However, if the member has taken prior permission, or is condoned by the party within 15 days from such voting or abstention, the member shall not be disqualified.
- If an independent candidate joins a political party after the election.
- If a nominated member of a house joins any political party after the expiry of six months from the date when he becomes a member of the legislature.

Rule 3- state that there will be no disqualification of members if they represent a faction of the original political party, which has arisen as a result of a split in the party. A defection by at least one-third members of such a political part was considered as a split which was not actionable. This provision was deleted by the 91st Amendment in 2003.

Rule 4 and 5- states the exemption from disqualifications i.e.:-

- A member of the House shall not be disqualified where his original political party merges with another political party, and he and any other member of his political party:
 - a. Have become members of the other political party, or of a new political party formed by such merger
 - b. Have not accepted the merger and opted to function as a separate group.

For the purposes sub-paragraph (a) of this paragraph, the merger of the original political party of a member of a House shall be deemed to have taken place if, and only if, not less than two-thirds of the members of the legislature party concerned have agreed to such merger.

Rule 6- confers power on the Speaker or the Chairman of a House, before which the question of disqualification of a member has arisen, to answer on the question of disqualification of such member, with the decision of such Chairman or Speaker being final.

Rule 8- confers power on the Chairman or Speaker of a House to make rules for giving effect to the provisions of the Tenth Schedule

The Constitution (Ninety-first Amendment) Act, 2003

The Government introduced the Constitution (Ninety-seventh) Amendment Bill, 2003 in the Lok Sabha on 5 May 2003. After the Standing Committee on Home Affairs to which the Bill was referred presented its report, the Bill with some amendments as suggested by the committee was passed by the Lok Sabha and the Rajya Sabha on 16 December 2003

and 18 December 2003 respectively. It was assented to by the President on 1 January 2004 as the Constitution (Ninety-first Amendment) Act, 2003 and was notified in the Gazette of India on 2 January 2004.

- The Act omitted the provision regarding splits from the Tenth Schedule to the Constitution.
- It provided that a member who is disqualified under paragraph 2 of the Tenth Schedule shall also be disqualified to be appointed a Minister or hold a remunerative political post for the duration of the period commencing from the date of disqualification till the date on which the term of his office as such member would expire or where he contests an election to either House of Parliament or Legislature of a State, before the expiry of such period, till the date on which he is declared elected, whichever is earlier.

Lacunae and shortcomings

- ***Problem with merger-*** While Rule 4 of the Tenth Schedule seems to provide some exception from disqualification of members in the cases relating to mergers, there seems to be some loophole in the law. The provision tends to safeguard the members of a political party where the original political party merges with another party subject to the condition that at least two-third of the members of the legislature party concerned have agreed to such merger. The flaw seems to be that the exception is based on the number of members rather than the reason behind the defection. The common reasons for defection of individual members seems to be availability of lucrative office or ministerial posts with the other party. It can very well be expected that the very same reason might be available with those two-third members who have agreed to the merger.
- ***Expulsions-*** A lot of difficulties have been felt in the implementation of the Anti-defection Law on account of the law being silent on the aspect of expulsion of members from their political parties. A major lacuna in the Anti-defection Law is that it makes no provision to cope with the situation arising out of expulsion of a member from his political party. While the political parties continue to retain the power to expel their members from the party under the provisions of their party constitution, the non-existence of any provision in the Tenth Schedule with regard to such members, creates an anomalous situation inasmuch as the expelled member continues to be subject to the discipline and whips etc., of the party but may no longer enjoy any right under the party constitution.
- ***Voluntarily giving up of membership of a party-*** Rule 2(1)(a) of the Tenth Schedule mentions that a member of the House is disqualified from the party if he voluntarily gives up his membership of the political party. However, it is not very clear from this paragraph whether indulging in acts like working against the interests of the party, supporting a candidate of other party in elections, etc., which, technically speaking do not amount to giving up the membership of the party may be considered as the member having voluntarily given up the membership of the party.
- ***Wide power to the Speaker-*** Rule 6 of the Tenth Schedule has given wide and absolute power to the Chairman or the Speaker of the House in deciding the cases pertaining to disqualification of members on the ground of defection. However, it must be noted that the Speaker still remains the member of the party which nominated him/her for the post of

Speaker. In such a scenario, it is difficult to expect that the Speaker will act impartially in cases pertaining to his/ her political party. As per the Law, the Speaker's decision is final but there, however, is no time limit for him to arrive at any decision. A party can move court, but only after the Speaker has announced his decision. The Dinesh Goswami Committee on Electoral Reforms and the Election Commission recommended that the power to decide on the issue of disqualification under the Tenth Schedule should be given to the President or the Governor of the State, who shall act on the advice of the Election Commission. However, no amendments have been made in the Act giving effect to these recommendations.

- **Scope of judicial review-** Rule 7 bars the jurisdiction of the courts in respect of any matter connected with disqualification of a member of a House, which means that it is outside the jurisdiction of all courts including the Supreme Court under Article 136 and High Courts under Article 226 and 227 of the Constitution to review the decisions made by the Speaker in this regard. The Supreme Court in various judgments has held that the law is valid in all respects except on the matter pertaining to judicial review, which was held to be unconstitutional. However, after several judicial pronouncements favoring the power of judicial review by the Courts, no amendment has been made in the Tenth Schedule in this regard.
- **No individual stand on part of members-** Rule 2, of the anti-defection law puts the party members into a bracket of obedience to the party whip and policies, curbing the legislator's freedom to oppose the wrong acts of the party, bad policies, leaders and bills. The political party in this sense acts as dictator for its members who are not allowed to dissent. This, in a way, violates the principle of representative democracy wherein the members are forced to obey the high command rather than the wishes of the people.

Courts on Judicial review of decisions of Speaker/Chairperson

- In *Keshavananda Bharati and Others v. State of Kerala and Another*, judicial review was held to be a basic feature of the Constitution and the Constitution cannot be amended so as to violate its basic structure.
- In *Ravi S Naik v. Union of India* case it has been held that the rules relating to anti-defection laws are merely procedural in nature and any violation of these, being a procedural irregularity, was immune from judicial scrutiny.
- In *Kihoto Hollohon v. Zachilhu and Others* case it was held that the law is valid in all respects except on the matter pertaining to judicial review, which was held to be unconstitutional. Any law affecting Articles 136, 226 and 227 of the Constitution is required to be ratified by the States under Article 368(2) of the Constitution. As the required number of State assemblies had not ratified the provision. The Court also held that the Speaker, while deciding cases pertaining to defection of party members, acts as a tribunal and nothing more than that, and that his/her decisions are subject to the review power of the High Courts and the Supreme Court.
- In *Rajendra Singh Rana and Others v. Swami Prasad Maurya and Others* case the Supreme Court held that the power of judicial review can be used: (a) when the Speaker fails to act on a complaint of defection, (b) When the Speaker accepts the claim of splits or mergers without any finding and reason, or (c) when the Speaker fails to act as per the Tenth Schedule. It also held that ignorance of a petition for disqualification is not a mere irregularity on the part of the Speaker but amounts to violation of a Constitutional duty.

Source: <http://iclrq.in/editions/apr/1.pdf>

Conclusion

The introduction of the Tenth Schedule in the Indian Constitution was aimed at curbing political defections. Though the law has succeeded in a reasonable way but due to some of its loopholes, it has not been able to achieve the best it can. Over the years the law has been examined by various committees and several recommendations have been given in their reports e.g. Dinesh Goswami committee report (1990), Hashim Abdul Halim committee report (1994), 170th report of the Law Commission of India (1999), Report of the National Commission to review the working of the Constitution of India (2002), Hashim Abdul Halim committee report (2003) and 255th report of the Law Commission of India (2015). The government should relook at these suggestions and make suitable amendments to the existing law to help it to develop to the best possible extent.

References:

01. Anti-Defection law in India and the Commonwealth by Shri G. C. Malhotra (pp: 3-9; 987-990 & 995)

https://eparlib.nic.in/bitstream/123456789/58674/1/Anti_Defection_Law.pdf

02. Anti Defection Law: a Critical Reappraisal by Dr. Vinod Patidar

<https://www.jetir.org/papers/JETIR1809664.pdf>

03. Anti-Defection Laws in India by Sakshi Rewaria

<https://www.latestlaws.com/wp-content/uploads/2018/07/The-Anti-Defection-Law-in-India-By-Sakshi-Rewaria.pdf>

04. Analysing the Anti-Devection Law by Anjali Gupta

<http://iclrq.in/editions/apr/1.pdf>

05. Anti-Defection Laws in India-An appraisal of the effectiveness of the Law by Utkarsh Tyagi

<http://www.penacclaims.com/wp-content/uploads/2020/04/Utkarsh-Tyagi.pdf>

06. Despite multiple defections, no disqualification recorded in Bengal Assembly in past decade

<https://www.newindianexpress.com/nation/2021/jun/28/despite-multiple-defections-no-disqualification-recorded-in-bengal-assembly-in-past-decade-2322567.html>