

# DEFECTION GAME AND INDIA'S ANTI-DEFECTION LAW – A REFLECTION

## Abstract

In the intricate landscape of Indian politics, the phenomenon of defection has long been a subject of critical examination and debate. This abstract provides a glimpse into the forthcoming study, "Defection Game and India's Anti-defection Law – A Reflection," which delves into the complex interplay between political manoeuvring and legislative efforts to curb defection. Defections are one of the banes of the Indian Political System and defectors have decided the fate of many Governments from time to time. It toys with the democratic values enshrined in our country and betrays the faith response upon them by the electorates. Political Leaders for better pay, perks and prized posts often trick their party and switch to other parties. Even though the Anti-Defection Law has been enacted it does not yield results. This study endeavours to provide a comprehensive understanding of the multifaceted issue of defection in Indian politics. By critically reflecting on the Anti-defection Law's strengths and weaknesses, it aims to contribute to informed discourse and potential reforms in this critical area of India's democratic governance. This study seeks to critically reflect upon the dynamics of defection in India's political landscape and the efficacy of the Anti-defection Law.

**Keywords:** Defection; turn coats; political parties, money etc.

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## I. INTRODUCTION

Defections are one of the banes of the Indian Political System and the players of this game have played a vital role in mutating and bringing down several governments from time to time. Globally, defection is referred to by different nomenclatures such as “floor crossing” in the United Kingdom, “carpet crossing” in Nigeria and also “horse trading” and defectors are called “fence-sitters” or “turncoats”. Defection in the Indian context can generally be addressed as ‘an elected representative joining another party for benefits without resigning from his/her present party. Inferentially, therefore, a defector is elected from one party and enjoys power in another party. No one can forget that history has witnessed that Winston Churchill was also accused of playing the game of defection first by embracing the Conservative Party and then moving to the Liberals and finally again to the Conservative Party in due course of time (between 1904 and 1924), critics acclaimed this party hoping for Churchill due to his ego and mongering after power, position and authority. Here there is no morality in the minds of defectors who always rush towards prized pasts. Their behaviour is similar to that of business executives or company salesmen who for better pay and perks, join other ones by drowning their conscience and commitment and accountability towards other companies or bourn any qualms in changing parties for ‘better prospects forgetting the pious purpose of becoming a voice for the voiceless.

## II. INDIAN SCENARIO

When sixteen Indian states went to polls in 1967 according to verdicts the Congress party failed to bag a majority in more than half and was able to form government in the only state (Zoramthanga, 2016). This marks the beginning of the coalition era in India which in turn witnessed large-scale defections between the years 1967 and 1971, with many M.P.s and M.L.A.s migrating from their political parties and transferring allegiance to the other leading to collapse and/or creating political turmoil in the country. A legislator with the name Gaya Lal an independent Harayana M.L.A. of 1967 vintage, marked the beginning of the defecting which earned him the notaries infamous tag “Gaya Ram is now Aya Ram” because he deliberately hopped between National Congress to the erstwhile United Front in the fond hope that he will get plum pasts and can elevate himself by securing a ministerial berth.

To contain the evil machination of defection this tells upon the healthy democracy in India. Anti-defection Legislation was a dire necessity. Therefore to remedy this malady a committee sphere headed by Y.V. Chavan was constituted which anticipated that anti-defection legislation may be the solution to this complexity in 1976. And so, a bill was initiated but unfortunately, it did not see the light of the day initially as the Joint Select Committee (JSC) was unable to provide suitable recommendations during its tenure. After that India reeled down and suffered tremendously under this defection game in umpteen numbers of times. This trend has also gained momentum when small political parties in some states come into the limelight and start treading the same path by banking on the support of defectors. In some instances, partisan Governors have also encouraged defections as seen in State elections ignoring the recommendations of the Justice Sarkaria Commission which mandated that to sustain a democracy, at first the party be called first to form the Government, The BJP was called in to form the Government, which is managed through defections.

Since the memory of the public is short, they at the time of elections often choose them forgetting the fact that then defections switched to other political parties having different political ideologies or agendas. Of course, the other side of the coin is that the defectors complained that the top brass of the political party often gag their voice and they have no say and cannot exercise their free will and are thus compelled to submit to their dictates. Therefore they contend that they for the greater good hopped among parties. Many legislators for their vested interest in securing plum ministries often find fault and give the system a lead name and switch to other ones with no qualms at heart. There are plenty of instances where some legislators are virtually abducted by opposition to materialize their cherished dream which they nurtured.

It has also been alleged that fear of engaging enforcement agencies like the Enforcement Directorate to surface out evil deeds led some politicians to resort to defection. All these are a big blot on the constitutionally endorsed democracy of the nation. Thus other allegations that can be levelled for not containing defection excessive greed and avarice of the defections, partisan speakers in the assembly who are busy in keeping the petitions relating to disqualifications awaiting for a long time till the Court intervenes and sometimes the somnolent adjudicating authority do not accept such petitions till the completion of the tenure of the Assembly which ultimately in turn are dismissed as 'infructuous'.

### III. ANTI DEFECTION LAW IN INDIA

Anti-defection law which remained unaddressed for a long time was such a kind of lying with the democracy that remained unaddressed for a long time until 1978. The Anti-Defection Law in India, officially known as the Tenth Schedule of the Indian Constitution, was introduced to address the growing issue of political defections that were destabilizing the Indian political landscape. However, keeping in mind the gravity of the situation a law was enacted at least to deter such activities when Rajiv Gandhi, the then Prime Minister of India, took the initiative of removing the evils of defection from the political scenario of the country by introducing the anti-defection bill in the parliament. Soon, after, the parliament passed this Bill and India got its Anti-Defection Act. By this Act, many Articles of the sacrosanct Constitution of India were duly amended to lay down the process to disqualify legislators on grounds of defection. According to this process, a legislator or a member of parliament may be disqualified on the following grounds:

- When a member of a political party voluntarily resigns from his/her party;
- Or disobeys directives of the party leadership on a vote.
- Or when she/he does not vote/ abstain from voting against the order of the party whip.

**1. Independent Member:** If a member is elected as an independent candidate and later joins a political party, she/he will be disqualified.

**2. Nominated Members:** Members can exercise their right to join any political party within 6 months provided that they do not possess membership in any party. After that period, they are to be treated either independently or as a party member, whatever is the case.

**3. Exceptions:** If an elected member of a Political Party has a minimum strength of one-third members as a speaker or chairman of the house, she/he can then resign from his/her

party and rejoin it after demitting that office. No disqualification will be attracted in this case. However, if the members of a Political Party have a minimum strength of at least one-third members can opt to merge with a new party. The provision disintegrated parties and therefore it was amended through the 91st Amendment Act of 2003 to require at least two third members to defect cohesively to be exempted from disqualification.

4. **91<sup>st</sup> Amendment Act, 2003:** Until this Amendment, the scenario was that a merger by one-third of elected members was considered to be defection into another party. This Amendment to the Constitution of 2003, changed this scenario entirely. Accordingly, now at least two-thirds of elected members of a party have to be in favour of a merger, for it to be considered as valid before the eyes of law. It also makes it mandatory for all those switching political sides whether individually or in groups to resign from their legislative membership. They now have to seek re-election if they defect.

The introduction to the Tenth Schedule of the Constitution reads: “The evil of political defections has been a matter of national concern. If it is not combated, it is likely to undermine the very foundations of our democracy and the principles which sustain it.” As soon as the anti-defection law saw the light of day, it was met with severe opposition to the logic that it impinged on the right to free speech and expression of legislators. A public interest litigation (PIL) was filed in the Supreme Court, titled “Kihoto Hollowhon v. Zachiiilo and Others” which challenged the constitutional validity of the 10th Schedule of the Constitution. The Supreme Court, deciding on the case held that this Act did not violate any right of free speech or basic structure of parliamentary democracy and made some observations on section 2(1)(b) of the tenth Schedule which reads that a member shall be disqualified if she/he votes or abstains from voting contrary to any direction issued by his/her political party. The judgment highlighted the need to limit disqualifications to votes crucial to the existence of the government and matters integral to the electoral programme of the party, to not unduly impinge on the freedom of speech of the members.

Before independence, political parties were not as prominent as they are today. Defections and floor-crossing were relatively rare. After gaining independence in 1947, India adopted a parliamentary democracy. The early years of the republic saw political stability, with the dominance of the Indian National Congress (INC). The first major defection in independent India occurred in the Kerala Legislative Assembly in 1967, when several members of the ruling party defected, leading to the fall of the government to address the increasing problem of defections; there was a growing consensus among political leaders that legal measures were needed. In 1985, the Rajiv Gandhi-led government introduced the Fifty-Second Amendment to the Indian Constitution, which contained provisions related to anti-defection.

#### IV. CONCLUSION

Anti-defection law, when enacted, aimed at decelerating political defect. However, due to the ever-increasing political dishonestly and corruption, this could never adequately evolve to serve the intended purpose thus leading to a persistent question on the rationality of the goals of this as law cannot be considered to be a panacea for defection as it centres around more upon political and moral issues. Effective implementation and adherence to the

provisions under this law continues to be a far-fetched dream given the gap in provisions which are abused and misused for personal beneficence by several politicians. It is time that a watchdog is provided to our parliamentary democracy. Even though election-related disputes are heard generally by the Election Commission of India and Courts, the law can have more piercing teeth through the Tribunal exclusively dedicated to trying and acting on petitions about disqualifications if they arise. However, defections can be at least contained if the legislators awake from their deep slumber and the units of democracy i.e., the voters can understand and realize its significance and opt accordingly. Also, there emerges a dire need to address the issue of combating corruption which has eroded the foundational values of democracy. The Anti-Defection Law in India was introduced to address the growing problem of political defections that were seen as undermining the democratic process and political stability. While it has brought some discipline to party politics, it has also faced criticism for certain ambiguities and challenges in its implementation. The law remains a crucial aspect of India's parliamentary democracy, shaping the behaviour of elected representatives and political parties.