**“Defection Game And India’s Anti-defection Law – A Reflection”**

Sri. Manas Halder

Assistant Professor

Bikash Bharati Law College

Joyrampur, Amtala

Kolkata, India

**ABSTRACT**

Defections are one of the banes of Indian Political System and defectors have decided the fate of many Governments time to time. It toys with the democratic values enshrined in our country and betrays the faith respond upon them by the electorates. Political Leaders for better pay, perks and prized posts often trick their own party and switch to other party. Even though Anti-Defection Law has been enacted but it does not yield result. This article is a modest endeavor of the Author to cater before the readers the nuances of defection game played by the political leaders. The Author express their utmost gratitude and remain deeply indebted to prolific authors of books, journals and newspaper and the pertinent websites on the internet in writing this article.

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

# INTRODUCTION

Defections are one of the banes of Indian Political System and defectors have decided the fate of many Governments time to time. Globally, defection is referred to with different nomenclatures such as “floor crossing” in the United Kingdom, “carpet crossing” in Nigeria and also a “horse trading” and defectors are called “fence-sitters” or “turn coats”. 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 one who is elected from one party and enjoys power in another party. No one can forget that the most famous defector of the twentieth century was Winston Churchill, who switched parties thrice in his political career; from the Conservatives to Liberals in 1904, from the Liberals to being an independent in 1992, and back to the Conservatives in 1924. Though ideological concerns played a vital role behind Churchill’s party hopping, it is well known that the predominant reason for switching parties was his massive ego and his hankering for the top and prized post. Neither morality nor law has failed to rein in defections and it appears that most legislators would readily join any political formation even with a diametrically opposite ideology if the right incentives in the form of money, freebies or prized political posts are offered. Like business executives who switch companies for better pay and perks, politicians of today also do not mind or bourne any qualms in changing parties for ‘better prospects forgetting the pious purpose of becoming a voice for the voiceless.

# INDIAN SCENARIO

When sixteen Indian states went for polls in 1967 and according to verdicts the Congress party failed to bag majority in more than half and was able to form government in only state[[1]](#footnote-1) (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, first defecting from the Congress to the United Front, then back to Congress, and again defecting, within nine hours, to the United Front giving the phrase “Aaya Ram Gaya Ram”. When Gaya Lal finally defected from the United Front to the Congress, Congress leaders gave an infamous tag “Gaya Ram is now Aya Ram”. Recognising the menance of defections, in 1976, a committee was formed under the chairmanship of Y.B.Chavan which proposed an anti-defection legislation and it was referred to a Joint Select Committee (JSC). The Bill lapsed because the JSC did not submit its recommendations within the currency of the Fifth Lok Sabha. Three Years later, defection of 76 M.P.s led to the fall of the Janata Government. But nothing is there to stop the defection of Chandrashekhar and 61 ofhis followers from the Janata Dal. Though the Speaker disqualified eight M.P.s, Chandrashekhar went on to become Prime Minister later and the defectors became ministers and were relieved of their offices only after a public outcry. This trend has gained momentum recently with regional parties trying to grow into national-level parties by treading in this same path. It is seen that political parties like TMC[[2]](#footnote-2) and AAP[[3]](#footnote-3) are banking fully on defectors in Goa. Defectors have got their just desserts aided by sharp lawyers, partisan Governors and Speakers, a somnolent judiciary and an absence of public disapproval. In some instances Governors have also encouraged defections as is seen in State elections[[4]](#footnote-4) where even though the Congress emerged as the largest party, yet, ignoring the recommendations of the Justice Sarkaria Commission which mandated that the largest party be called first to form the Government, the BJP was called in to form the Government, which is managed through defections. In the State Elections at Sikkim[[5]](#footnote-5), BJP has emerged as the main opposition party despite the fact that it got as little as 1.6 percent of the overall vote with the aid of defectors. Appararently, no stigma attaches to defections in the public mind, because most “turncoats” who resigned from State Assemblies in the last two or three years were re-elected from their constituencies. Of course, defectors contend that anti-defection laws stifle their right to free speech, glossing over the fact that they are not individuals with a free will but representatives of an electorate that voted for them on the basis of certain assurances – including that of party affiliation. Seen in this perspective, defection is rather an act of betrayal of the people’s trust. Besides, before every vote of confidence in an Assembly, legislators are whisked away to far-off resorts in friendly States, and guarded day and night against blandishments held out by opposite parties. Sometimes, enforcement agencies chip in to frighten the detainees. The success of such measures also determines whether the government will survive or collapse. All these are a big blot on the constitutionally endorsed democracy of the nation. As soon as elections are announced, many legislators of the ruling party, who have enjoyed the perks of office for the last five years finding fault with their party, and an equal number of M.L.A.s from Opposition Party try to defect to the ruling party, in anticipation of the plum ministries**/** positions in governments including chief minister-ship. Thus the anti-defection law has been unable to stop defections because of the rapacity of legislators and their pursuit of power at any cost. As things stand, Speakers, who are interested persons belonging to the ruling party, keep disqualification petitions pending, till some Court directs them to expedite their decision. Courts, in turn, do not take up disqualification petitions are often dismissed as ‘infructuous.’

# ANTI DEFECTION LAW IN INDIA

Anti-defection law which remained unaddressed for a long time was enacted to deter such opportunistic tendencies of politicians and political parties but they are always a step ahead of the law. It took almost 17 years from the year 1978 for the anti-defection law to come into being in the year 1985[[6]](#footnote-6) 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.[[7]](#footnote-7) By this Act, many Articles[[8]](#footnote-8) 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:

1. When a member of a political party voluntarily resigns from his/her party;
2. Or disobeys directives of the party leadership on a vote.
3. Or when she/he does not vote/ abstain from voting against the order of the party whip. However, if the members has taken prior permission or his/her act is condoned by the party within 15 days of such voting or abstention, the member shall not be disqualified.
4. **Independent Member:** If a member is elected as an independent candidate and later joins a political party, she/he would be disqualified.
5. **Nominated Members:** Nominated members who were not members of a party could choose to join a party within six months of their election to the House. After that period, they are to be treated either independent or as a party member, whatever is the case.
6. **Exceptions:** If a person is elected as a speaker or chairman of the house, she/he can then resign from his/her party and rejoins it after demitting that office. No disqualification will be attracted in this case. If at least one third members of a political party chose to merge with another political party, their defection will be exempted from disqualification. The provision resulted in disintegration of parties and therefore it was amended through 91st Amendment Act of 2003 to require at least two third members to defect cohesively in order to be exempted from disqualification.
7. **91st Amendment Act, 2003:** Until this Amendment,[[9]](#footnote-9) a defection by one third of the elected members of a political party was considered a merger into another party. This Amendment to the Constitution 2003, changed this scenario entirely. Accordingly, now at least two third elected members of a party have to be in favor of a merger into another party to be treated as valid before law. It also makes 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 the day, it was met with severe opposition on 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. Zachiilo And Others”[[10]](#footnote-10) 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 to matters intergral to the electoral programme of the party, so as to not unduly impinge on the freedom of speech of the members.

# 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 law as defection is more of a political and moral problem that cannot be solved by purely legal means. Effective implementation and adherence to the provisions under this law continues to be a far-fetched dream given that 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. Perhaps, the law can be made more effective by constituting a Tribunal to decide upon disqualification of legislators. Additionally, timelines can be prescribed for various authorities to decide disqualification petitions. However, the problem of political defections would still persist if the legislators who are of sterling character and the electorates are not well disposed towards defectors. Also, there emerges a dire need to address the issue of combating corruption which has eroded the foundational values of democracy.

1. Zoramthanga, K. (2016) Tensions in Centre – State Relation in India with Reference to the Position and Role of a Governor of State. Journal of Advances and Scholarly Researches in Allied Education, Multidisciplinary Academic Research. From http://shodhganga.inflibnet.ac.in/bitstream/10603/15141/7/07\_chapter % 203.pdf [↑](#footnote-ref-1)
2. (Trinamool Congress) [↑](#footnote-ref-2)
3. (Aam Aadmi Party) [↑](#footnote-ref-3)
4. Goa (2017), Manipur (2017) and Meghalaya (2018) [↑](#footnote-ref-4)
5. 2019 [↑](#footnote-ref-5)
6. The Constitution (Fifty-Second Amendment) Act, 1985. From https://www.india.gov.in/my-government/constitution-india/amendments/constitution-india-fifty-second-amendment-act-1985 [↑](#footnote-ref-6)
7. 52nd Amendment in the Constitution of India [↑](#footnote-ref-7)
8. Articles 101,102,190 and 191 of the Constitution of India [↑](#footnote-ref-8)
9. The Constitution (91st Amendment) Act, 2003. From http://legislative.gov.in/sites/default/files/amend91.pdf [↑](#footnote-ref-9)
10. (1912) SCR (1) 686, 1992 SCC Sup. (2) 651 [↑](#footnote-ref-10)