**ANTI DEFECTION LAW**

About Author:

Kumari Sunaina (law student)

# ABSTRACT:

Initially, Anti Defection Law was not in the constitution of India. The multiple political parties is in existence after the Independence. But at that time, when the constitution of India was formed, there was one political party i.e Indian National Congress. But after independence, existence of multiple political parties, the members of different political parties started switching to other which was affecting the stability of the government. It becames the serious problem because so many members of political party switch to another party after the general election of 1967. In a representative democracy political parties are an essential concomitant of elections. Criminalisation of politics and role of money in elections are serious cause for failure. The evil of political defection has been a matter of national concern. On December 8, 1967, the lok sabha unanimously passed a resolution for setting up a high level committee consisting of representatives of political parties and constitutional experts to consider the problem and make recommendations in this regard. The said “Committee on Defection” in its report dated January 7, 1969 made certain recommendations for outlawing defections. Keeping in view these recommendations, a bill was enacted for the purpose, which was enacted into the Constitution (Fifty-Second Amendment) Act, 1985, which came into force on march 1, 1985. They was passed during the Rajiv Gandhi government in 1985 and they tried to solve that issue which was emerging that time. The well known phrase “Aaya Ram Gaya Ram”. The Anti Defection Law came into being after Gaya Lal, an MLA from Haryana, changed his party three times on the same day in 1967. It relates back to 1967, when Gaya Lal, who was a congress leader fortnight went from congress to janata party and then back to congress and then back to janata party. Due to frequent defections of elected and chosen party members, good administration became elusive and an unstable environment was established for the operation of the state and central government. It was realized that there was a requirement for an Anti Defection Law that would seek to ward off such political defections. The Fifty-Second Amendment Act, 1985, made necessary changes in Articles 101,102,190 and 191, besides adding the Tenth Schedule in the Constitution. The Tenth Schedule of the Indian Constitution widely described as the ‘Anti Defection Law’ was introduced, it contains the law relating to political defections. The object was to ensure loyalty of the legislators to a political party, which sponsored the candidature of such legislators at the election as also to curb the evil of widespread practice of unprincipled floor-crossing motivated by the concerns of personal benefit.

# INTRODUCTION:

The Anti Defection Law passed in 1985 in 52nd Amendment to Constitution came into effect on March 1, 1985.This law in formulating to bring stability in the Indian Political System. The Indian political system has long history of political defections. According to anti defection law a member of a house belonging to any political party can be disqualified if they voluntarily give up their membership of such political party or if they vote or abstain from voting in contrary to directions issued by their parties whip. The 52nd amendment act of 1985 provided for the disqualification of the members of parliament and the state legislatures on the ground of defection from one political party to another. For this purpose, it made changes in four articles of the Constitution and added a new schedule (the tenth schedule) to the constitution. This act is often referred to as the ‘anti defection law’. Later, the 91st amendment act of 2003 made one change in the provisions of the tenth schedule. It omitted an exception provision i.e. disqualification on ground of defection not to apply in case of split. Defection basically by one member of the party of his loyalty towards his political party or basically, it means “when an elected representative joins another party without resigning his present party for benefits”. Anti Defection Law prevents elected membe from hopping from one party to another and provides a penalty for the same. The object of this law was to curb the evil of political defections motivated by the lure of office or other similar considerations that endanger the foundations of our democracy.

# WHAT IS ANTI-DEFECTION LAW

The anti defection law is contained in the tenth schedule of the constitution. It was enacted by parliament and came into effect in 1985. The main purpose of the anti defection law is to curb political defection by the legislators. As in the Indian political scene for a long time, the legislators used to change parties frequently, the governments to fall due to the chaos. They often brought about political instability. This caused serious concerns to the right-thinking political leaders of the country and at last, the Anti Defection Law was enacted. The anti defection law penalizes individual members of parliament and member of legislative assembly for moving from one party to another. It was a response to the overthrowing of several state governments by party-hopping MLAs post the general elections in 1967. However, it permits a group of MP/MLAs to join (i.e. merge with) another party without attracting the penalty for defection, and it does not punish political parties for favouring or accepting defecting legislators.

# HISTORY OF ANTI DEFECTION LAW

Aaya Ram....Gaya Ram Hai Ram...

Became popular in the political vocabulary in India to describe the practice of frequent floor-crossing by legislators. Literally translated the terms, Ram came and Ram went. The expression originated in an amazing feat of floor crossing achieved by Gaya Lal an MLA in Haryana, in 1967. He changed his party thrice in a fortnight, from Congress to United front, back to congress and then within nine hours to front again. It is said that when Gaya Lal declared his intention to quit the United front and join the congress, the congress leader, Rao Birendra Singh brought him to Chandigarh press and declared “Gaya Ram was now Aya Ram”

P Venkatasubbaiah, a congress MP in lok Sabha who served in the cabinets of both Indira and Rajiv Gandhi, proposed the setting up of a high level committee to make recommendations to tackle the “problem of legislators changing their allegiance from one party to another” opposition members suggested renaming the proposal to “save congress”

THE YB CHAVAN PANEL 1967 SUGGESTED A LAW ON THIS:

The first one was made by Indira’s home minister Uma Shankar Dikshit in 1973; the second, in 1978, by Shanti Bhushan, Minister for law and Justice in the Janata Party Government of Morarji Desai. The third attempt-which was successful-was made in 1985, after the congress won more than 400 seats in lok sabha in the aftermath of Indira’s assassination.

KIHOTO HOLOHAN 1993:

The court held that while deciding a question under the 10th schedule, the presiding officer should function as an tribunal. Hence, his\her decision (like that of any other tribunal) was subject to judicial review on the grounds of malafides perversity etc. The court rejected the argument that the vesting of adjudicatory powers in the presiding officer is by itself invalid on the ground of political bias. Yet reform is being suggested to vest the powers in president/governor.

RAVI S NAIK V. UNION OF INDIA (Voluntary Resignation) (1994)

The supreme court held that once it is demonstrated that a member is willing to resign out of his free will, the speaker has no option but to accept the resignation. Conduct of member has to be seen.

KEISHAM MEGHACHANDRA SINGH VS. THE HON’BLE SPEAKER MANIPUR LEGISLATIVE ASSEMBLY AND Ors. (2020) “FINISH PROCEEDINGS IN THREE MONTHS”

SC sets three months as the outer limit for speaker to conclude disqualification proceedings against defectors. Recommends that parliament should amend constitution to set up a permanent tribunal to decide cases. Tribunal can be headed by retired supreme court judge or high court chief justice. Supreme court emphasis that ensuring purity of anti defection law under the 10th schedule is vital to democracy’s functioning. Supreme court decision came in a case related to Manipur congress MLA T Shyam Kumar, who switched to BJP and became a minister after the party formed government in 2017. A dozen pleas seeking Shyam’s disqualification were filed but speaker sat over them. Supreme court asks speaker to decide in four weeks.

# 52nd AMENDMENT OF INDIAN CONSTITUTION

The 52nd amendment act of 1985 provided for the disqualification of the member of parliament and the state legislature on the ground of defection from one political party to another. For this purpose , it made changes in four articles of the constitution and added a new schedule (the tenth schedule) to the constitution. The act is often referred to as the ‘anti defection law’ later, the 91st amendment act of 2003 made one charge in the provisions of the 10th schedule. The primary objective of this amendment was to curb the increasing cases of political defections which were directly undermining the constitutional principles and the democratic values of the country. The amendment also aims to strengthen the existing democratic system by ensuring political stability. This is so because the party which has the majority would be able to rule without any insecurity through any form of defection. This amendment also aimed at protecting the interest of the political parties especially the regional parties as the defection was the highest among these parties mostly used to defect to the majority national parties.

# 91st AMENDMENT OF INDIAN CONSTITUTION

1. Council of ministers at centre to be fixed at 15% of the lof sabha strength is in article 75 of Indian constitution.
2. Anyone disqualified on the grounds of defection at the centre is ineligible to become a minister article 75 of the Indian constitution.
3. State council of ministers to be limited to 15% of state legislative assembly but the number of ministers including CM to be not less than 12, article 164 of Indian constitution.
4. Anyone disqualified on the grounds of defection in the state is ineligible to become a minister, article 164 of the Indian constitution.
5. A member of either house of parliament or either house of a state legislature belonging to any political party who is disqualified on the ground of defection shall also be disqualified to hold any remunerative political post.
6. The provision of the tenth schedule (anti defection law) pertaining to exemption from disqualification in case of split by one third members of legislature party has been deleted. It means that the defectors have no more protection on grounds of splits.

# TENTH SCHEDULE – PROVISIONS UNDER ANTI DEFECTION LAW

GROUNDS FOR DISQUALIFICATION:

1. If an elected member gives up his membership of a political party voluntarily
2. If he votes or abstain from voting in the house, contrary to any direction issued by his political party.
3. If any member who is independently elected joins any party.
4. If any nominated member joins any political party after the end of 6 months.
5. The decision of disqualification questions on the ground of defection is referred to the speaker or the chairman of the house, and his\her decision is final.
6. All proceedings in relation to disqualification under this schedule are considered to be proceedings in parliament or the legislature of a state as is the case.

# EXCEPTIONS UNDER THE ANTI DEFECTION LAW:

1. The tenth schedule says that if there is a merger between two political parties.
2. Two third of the members of a legislature party agree to the merger, they will not disqualified. (91st amendment)

# MY OPINION

The tenth schedule in Indian constitution was aimed at curbing the political defections. The lawhas succeeded in a reasonable way but due to some of its loopholes, it has not been able to achieve the best it can. Firstly, the law must be reviewed so as to end any conflicts between the legislature and the judiciary on the basis of rules 6 and 7 of the schedule. Secondly, the law must explicitly set out what it means by the words ‘voluntarily giving up membership’ in order to avoid any confusion.

# CONCLUSION:

To strengthen democracy by bringing stability to administration and ensuring legislative programmes of the government are not jeopardised by a defecting parliamentarian. To make members of parliaments more responsible and loyal to the political parties with whom they were aligned at the time of their election. Anti defection law prevents MLAs and MPs from switching parties. Any candidate found guilty of defection is bound to lose their seat and membership of the house.

With the recent political turmoil in Maharashtra and the events in the past 10 years, we could see a common trend in the Indian political scenario, be it in Karnataka , Madhya Pradesh , or Goa, that despite members of legislative assemblies acting against the anti-defection law, they escaped from the charges of defection, this is the critical issue in our legal system.

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