

# A Study of Anti-Defection Law

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**ABSTRACT:** *Party discipline is the impulse in a parliamentary system; when it falls short, the government typically falls. The forum of Indian politics undoubtedly suffers from countless practical disorders. The defection policy is one such species that involves gross miscarriage of equal actions that turns politics into a throne game (powers). In the womb of the British House of Commons, this tradition of political nomaditude can trace its seeds. Therein, if it was found that a legislator crossed the floor, the party considered him disloyal. In other words, by joining another party, the legislator lost his allegiance to his former party. In fact, this very phenomenon has two-way traffic, i.e. the ruling party to the opposition party or vice versa. Democracies such as the United States, Australia and Canada were also aware of this method of sharing loyalties. There have been many cases of great politicians, such as Winston Churchill, Ramsay McDonald, William Gladstone, etc., shifting party loyalty. Nevertheless, it is important to note that none of the democracies in the West ever chose or felt the need to legally prohibit defections, because of such a tradition of shifting party loyalty. Exceptionally, however, India can be traced to have passed anti-defection legislation. On the floor of the Indian Parliamentary system, the politics of defection had been a distinctive common practice steadily gulping the Federation's political nature and synchronization. This research, which seeks to analyze whether parliamentary democracy has lost its meaning due to democratic nomadism, is both empirical and doctrinal. In a democratic democracy, the present study also analyzes the classical as well as contemporary pulse of floor crossing amid dynastic politics. In view of the anti-defection statute, it will briefly address the panorama of defections under the Indian federal system and an effort has been made to add useful suggestions to streamline solutions for the still prevalent political defections.*

**KEYWORDS:** *Constitutional law; defection; democracy; and political anti-trust.*

## INTRODUCTION

Initially, there was no mention of political parties in the Constitution of India. "But, as the multi-party system gradually evolved, there were defections in the Indian Parliamentary System where people were moved from one political party to another, resulting in the breakdown of public trust in a democratic form of government. Defection is "desertion of allegiance to his political party by one member of the party," or basically it means If an elected official joins another party without resigning for benefits from its present party.[1]

This tradition of shifting political sides to get office by elected officials is also known as Horse-Trading. In the U.K., it is also known as Floor Crossing. and Nigeria's "Carpet Crossing." "The individual who performs such an act has been chosen from one party and enjoys benefits from another party is referred to as "Defector" or "Fence Sitters" or "Switch Coats.[2]

Uncontrolled horse-trading and corruption in political parties also prevailed. After the elections of 1967, one of the major events in India's Political History took place; where their respective political parties had been modified by around 142 MPs and 1900 MLAs. The Rajiv Gandhi Government introduced Anti-Defection laws in the Indian Constitution in 1985 in order to restrain such activity. It was incorporated in the Constitution by way of the 52nd Amendment, which introduced the 10th Schedule in the Constitution; which is known as the anti-defection rule. This amendment helped to prohibit the elected representatives of a political party from leaving the party to move to another legislative party.[3]

*International scenario on Anti Defection Law: -*

Not only is anti-defection law practiced in India, it is widespread in other countries such as Bangladesh, Kenya, South Africa, etc. Article 70 of the Constitution of Bangladesh states that when a member resigns or votes against the instructions provided by his party, he shall vacate his seat. The disagreement will be referred to the Election Commission by the Speaker.

The Kenyan Constitution states in section 40 that a member who resigns from his party must vacate his seat. The decision shall be taken by the Speaker and the member will bring an appeal before the High Court. [4]

Article 46 of the Constitution of Singapore states that if a member resigns or is excluded from his party, he must vacate his seat. Article 48 states that any issue relating to the disqualification of a member shall be determined by Parliament. Section 47 of the South African Constitution states that if a member fails to be a member of the party that elected him, he will forfeit membership of Parliament.[5]

*The philosophical foundation of floor crossing*

In a parliamentary democracy, the principle of adding legislation to encourage defections acknowledges the prevalence of free will and conscience. However, when a member changes his political affiliation because of genuine concerns, it is very rare to trace such principled defections, since he does not conscientiously agree with the policies of the party to which he belongs. In that case, the member leaving the substantive party (with whose vote he was elected to the House) must resign and seek a new election to the House of Representatives.[6]

Again, to indicate defection, it is not always appropriate for a member to formally resign from his party; rather, he will formally indicate by his actions that he has swapped party loyalty. In the case of Mahachandra Prasad Singh v. Bihar Legislative Council, for example, the Supreme Court held that it was fair to infer that Mr. Singh willingly gave up his membership in Congress by contesting the election as an independent candidate for Parliament.

*The 52nd Constitutional Amendment*

The Fifty-second Amendment Act of 1985 led to the amendment of Articles 101, 102, 190 and 191 of the Constitution providing reasons for vacation of seats for the disqualification of members; and the Tenth Schedule was also added. The statement of purposes and reasons given for the amendment is as follows:

*“The evil of political defections has been a matter of national concern. If it is not combated, it is likely to undermine the very foundation of our democracy and the principles which sustain it.”*

Important rules incorporated under Tenth Schedule can be cited as follows- Rule 2 which incorporates grounds for disqualification of the member; Rule 4 and 5 lays down exemption from disqualification. Rule 3 provides another exemption on the ground of splitting political parties.[7]

*Evaluation of legal provisions of the tenth schedule*

## (i) Split Provision

The former Tenth Schedule included, before the 91st amendment of 2003, a clause concerning split cases which was later omitted in the aforementioned amendment. This clause was later excluded because it was thought that this unique provision implicitly legitimized the overthrow of governing regimes by supporting factions within parties by attracting them through money or muscle power. It was also considered that the general opinion of members of a political party was not reflected by less than one-third of the members.[8]

In two separate cases, which were the driving forces in the later omission of this clause, this provision was seriously misused. These two examples, Mr. V.P. Singh and cynicism, belong to the collapse of

governments under the then Prime Ministers. The government of the National Front founded by Mr. V.P. Singh was a robust response to the INC for neglecting and side-lining him in the party.[9]

This government was an insane combination of liberals, socialists, and right-wingers that once again established the collapse of political ideologies in political parties and reinforced the need for legislation such as the Anti Defection Law. This government was supposed to collapse later or earlier, and so it happened when the BJP pulled out its government support for the demolition of Babri Masjid.

Likewise, Mr. Chandrashekhar, who was a "unfortunate" V.P. minister. The government of Singh formed an alliance with INC that was just searching for the precise time to get back into power and roll the Parliament's numbers. The creation of these unholy alliances and unstable states, even after passing such a law known as the anti-defection law, was an absolute failure to enforce this law. In the name of the split, lawmakers collectively switched parties without any fear of disqualification, representing a significant flaw in the legislation that should be fixed.

## (ii) Merger Provision

The next clause under review of this law is the merger provision, which is somewhat close to the split provision under paragraph 10 of the 10th Schedule, and which has been one of those provisions that have been critically addressed throughout. In the anti-defection statute, this clause poses a significant paradox.

In a way, this clause establishes that political parties are free to defect, but it is possible to disqualify an individual legislator representing a dissident voice. It seems superfluous to allow 2/3 members of a political party to become members of a new political party after their elections without taking into account the reason for the merger. This also poses a challenge to the existence in the legislature of small parties.[10]

If there is a minimal margin between the two, large opposition political parties always wait for a perfect time to overthrow the ruling government. In this process, in accordance with the above exemption, larger parties can very easily try to get the majority of members of small parties in the legislature on their side with complete immunity, which may or may not be ideologically correct. It is also criticized on the grounds that 'wholesale' defection is allowed in the form of split provision, but not 'retail' ones.

## CONCLUSION

In the Indian Constitution, the adoption of the Tenth Schedule was aimed at curbing political defections. While the legislation has worked in a fair way, it has not been able to do the best it can, due to some of its loopholes. Via their dishonesty, crooked politicians have been able to find the loopholes in the legislation in the best way possible to meet their needs. It will be encouraged to grow to the highest possible degree by the following amendments in the law:

The power of the party whip should be reduced so that in a not-so-important matter or a matter that is not central to the party manifesto, only those members who vote against the party manifesto are subject to disqualification and not those who vote against the party. In a way, this will allow the members to have some individual point of view on different issues. To prevent any misunderstanding, the legislation must specifically set out what it means by the words 'voluntarily give up membership'.

The clause relating to mergers under which members are exempted from disqualification if they are deficient in significant numbers, i.e. two-thirds, must be changed to make the cause for defection the justification for the exemption from disqualification rather than merely numbers. On the basis of Rules 6 and 7 of the Schedule, the legislation must be checked so as to put an end to any disputes between the legislature and the judiciary.

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