



Defections in Indian Politics: A Study

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Abstract

Since Independence, the practice of defection has been a debatable issue in India. Political defections have existed for a long time and are very common in Indian politics as well as other democracies. Politicians are always seen shifting their loyalties in pursuit of power which has become a part of the political system. Defections will continue in all parliamentary democracies. All forms of defections are not wrong. In rare cases, they are based on ideological principles or conscience. But, most of the times members defections are due to lure of office or as they seek opportunities which has to be considered as an offense. Unlawful defections have an ill effect on the working of democracy. To curb the menace of defections, 52nd Constitutional Amendment Bill was introduced in the parliament by the Rajiv Gandhi government in the year 1985 and it became law on March 1, 1985. It was popularly known as Anti-Defection Law. The Tenth Schedule was added to the constitution for this purpose. It provides for disqualification of any elected member of the Parliament or a State legislature if he relinquishes membership in his party or votes or abstains from voting contrary to the party directive, provided that such act is not condoned by the party within 15 days. To make the existing law more effective in dealing with the frequent defections, an amendment was proposed to the Tenth Schedule in 2003 through 91st constitutional amendment. The law which was criticized was the role of the Speaker in deciding the cases arising out of political defections. The impartiality of the Speakers of various houses was questioned in regard to granting official recognition to different factions of political parties. After analyzing the defections in politics, there are a few major flaws identified regarding the defections:

Need of the Study

At present democracy is the best form of government across the world. India is also adopted the representative form of democracy. In this form of government any political party reached the magic figure (more than half) to form the government. Sometimes the elected government lost its majority and collapsed due to defections. It is immoral and to cheat the people's mandate. Although the Anti-Defection Law was enacted to curb the defections but the purpose of the law is not materialized completely due to some loopholes in the law. Hence the researcher tries to trace out the flaws in law and also to recommend the possible remedies to defections.

Hypothesis

- 1.To know the importance of representative democracy
- 2.To understand the historical background of political defections in India.
- 3.To analyze the changing scenario in the election politics in India.
- 4.To trace out the flaws in the Anti-Defection Law.
- 5.To explore the possible solutions to curb the defections.

Introduction

In recent times, Defection Law has been a fundamental issue due to violation of the defection rules in the country by the leaders. Since independence, the practice of defection has been a debatable issue in India. The preamble of the constitution declared India is a Sovereign, Secular, Socialist, Democratic and Republic. One of the most intrinsic features of our representative democracy is holding of periodic elections to elect members for different levels of governance. The elections are to be free and fair. Along the years there has been increase in the involvement of voters in politics.

In India, there have been many threats and strains to the institutions of democracy. The groups in opposition strive for power and the ruling party to retain their power without any principle or ideology. Political defections are integral part of all parliamentary democracies. But they have been opportunistic, unprincipled in our Indian politics and are seen as a major threat.

Political defections have existed for a long time and are very common in Indian politics as well as other democracies. Politicians are always seen shifting their loyalties in pursuit of power which has become a part of the political system. Defections will continue in all parliamentary democracies.

Definition of Defection

There are different terms used for this phenomenon which is popularly known as ‘politics of defection’.

Some of the terms used are floor crossing in England, carpet crossing in Nigeria etc.

According to a study by the Ministry of Home Affairs, “defection” means the “transfer of allegiance by a legislator from one party to another political party or an identifiable political group”.

According to the report of committee on defection in 1967, Defector was defined as a person “who is an elected member of the legislature and had been allotted the reserve symbol of any political party. He can be said to have defected it, if after being elected as a member of either house of Parliament or at legislative council or legislative assembly of state or union territory and he voluntarily renounces allegiance or association with such political party provided that his action is not in consequence of the decision of the party concerned”¹

All forms of defection are not wrong. In rare cases, they are based on ideological principles or conscience. But, most of the times members defect due to lure of office or as they seek opportunities which has to be considered as an offense. Unprincipled defections have an ill effect on the working of democracy.

Circumstances led to origin of Anti-Defection Law

Defection, which is colloquially referred to as "Aya Ram Gaya Ram" in Indian politics, is the act of elected representatives changing their political affiliations while still in office. This practice originated in Haryana in 1967 when Gaya Lal, a member of the legislative assembly, switched parties three times in just two weeks, prompting his colleague Rao Birendra Singh to come up with the famous term. Since then, this practice has become widespread, affecting the entire political system like a contagion.

Till 1967 Congress had been a dominant party so there was no need for it to get more legislators in order to achieve stability. The weakness of congress after 1967 general elections led to its own members changing loyalties.

The fourth general elections resulted in the breakdown of virtual monopoly of a single party. Congress couldn't form government in 7 out of 8 states where it didn't form a majority. Though no other party had taken the place of congress this was still the evidence of its declining strength. Coalitions started being formed by opposition parties in order to run the government.

When a candidate wins in election under a specific party banner, it is expected that the elected representative

would represent the interests, ideologies and beliefs that the political party stands for. However, when sides are changed, the elected representative breaks the trust of his/her voters, deprives the nominating party of its representation, and forgoes the values, principles, and ideologies that he/she had promised to abide by. It is a situation where elected representatives prioritize their personal interests over the interests of their constituents.

Anti-Defection Law

To curb the menace of defections, 52nd constitutional amendment bill was introduced in the parliament by the Rajiv Gandhi government in the year 1985 and it became law on March 1, 1985. It was popularly known as Anti-Defection Law. The Tenth schedule was added to the constitution for this purpose. It provides for disqualification of any elected member of the Parliament or a State legislature if he/she relinquishes membership in his party or votes or abstains from voting contrary to the party directive, provided that such act is not condoned by the party within 15 days. It also covers independent members if they change their status. The speakers of different legislatures are empowered to decide on issues relating to the disqualification of their members. This was chiefly done in order to avoid political defections. This would have in turn made politics stable which would result in strengthening of democracy.

The anti-defection law comprises 8 paragraphs. The brief summary of the contents of the law:

Paragraph-1: Interpretation. This section handles the definitions of distinct terms applied in laying out the legislation.

Paragraph-2: Disqualification on grounds of defection. This section deals with the crux of the legislation, specifying factors on which a member could be disqualified from the Parliament or the State assembly.

paragraph 2.1(a) provide disqualification of a member if he or she "voluntarily gives up the membership of such political party", whereas

paragraph 2.1(b) provisions, addresses a situation when a member votes or abstains from any crucial voting contrary to the directive circulated by his/her respective political party.

Paragraph 2.2 states that any member, after being elected as a representative of a certain political party, shall be disqualified if he/she joins any other political party after the election.

Paragraph 2.3 states that a nominated member shall be disqualified if he/she joins any political party after six months from the date he/she takes his seat.

Paragraph-3: Omitted after amending the schedule by the Ninety-First Amendment act – 2003, which exempted disqualifications arising out of splits with one-third of the members defecting from a political party.

Paragraph-4: Disqualification on ground of defection not to apply in case of merger. This paragraph excludes from disqualification in the case of mergers of political parties. Provided if the said merger is with two-thirds of the members of the legislative party who have consented to merge with another political party.

Paragraph-5: Exemption. This paragraph provides exemptions to the Speaker, Chairman and Deputy-Chairman of various Legislative Houses.

Paragraph-6: Decision on questions as to disqualification on ground of defection. This provision mandates the Chairman or the Speaker of the respective legislative house to be the ultimate decision-making authority in case of any disqualification that arises.

Paragraph-7: Bar of jurisdiction of courts. This provision bars any court jurisdiction in the case of disqualification of a member under this schedule. The Court held that the decision of the speaker or chairman is subject to judicial review under Article 32 and 226 of the Indian Constitution.

Paragraph-8: This paragraph deals with framing the rules for disqualification. The schedule allows the Chairman and the Speaker to frame rules concerning their respective legislative houses to deal with the disqualification of members of their various houses of the legislature.²

According to this Law a member can be disqualified his/her Membership in the parliament and in the state legislatures under the following circumstances:

- He/she voluntarily gives up his membership in such political party;
- He/she voted or abstained from voting in such House contrary to any direction issued by his/her political party whip.
- According to the preceding condition, a member elected on a party ticket must remain in the party and follow the party's rules.
- If an independent member of a House is elected without being nominated as a candidate by any political party, he is prohibited from continuing to serve in the House.

Exceptions

- If two-thirds of the elected members of a political party decide to merge into another party, the law is not applicable. .
- Any person elected as Chairman or a Speaker can resign from his party, and rejoin the party if he abandons that post.
- Earlier, the splitting of political parties was permitted, but currently, it is not allowed.
- Nominated members who are not members of any party can choose to join a party within six months; after which they are treated as a party member or an independent member.

Power to Disqualify

- The decision on disqualification questions on the ground of defection is referred to the Speaker or the Chairman of the House, whose decision is final.
- If a complaint is received regarding the defection of the Chairman or the Speaker, a member of the House who must be elected within the House, shall take the decision.
- 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.

Rule Making Power

- The presiding officer of a House has the authority to enact rules to carry out the requirements of the Tenth Schedule.
- All such regulations must be laid before the House for a period of 30 days. They may be approved, modified, or rejected by the House.
- Furthermore, he/she may require that any intentional violation of such regulations by any member be dealt with in the same manner as a breach of House privilege.
- The presiding officer can only take up a defection issue if he receives a complaint from a member of the House, according to the rules.
- Before making a final judgment, he/she must offer the member (against whom the complaint has been lodged) an opportunity to explain himself.
- He may also send the matter to the Privileges Committee for investigation. As a result, desertion has no immediate and automatic consequences.

Advantages of Anti-Defection Law

- The Anti-Defection Law promotes political stability by limiting politicians' proclivity to switch parties.
- It allows democratic realignment of parties in the legislature through party merger.
- It eliminates political corruption as well as non-development expenditures caused by irregular elections.
- It establishes the existence of political parties in the constitution for the first time.
- The law is intended to provide stability to the government by penalizing members for any party switches on their part.
- Furthermore, anti-defection rules attempt to instill in members a sense of allegiance to their own party.

- This is attempted by ensuring that the members chosen in the name of the party and its support, as well as the party manifesto, stay faithful to the political party to which he/she belongs and its principles.

Issues of Anti-Defection Law

- The Anti-Defection Law makes no distinction between disagreement and defection. It restricts the legislator's liberty to dissent and conscience. Thus, 'it plainly elevates party bossism and legitimizes party dictatorship in the name of party discipline.
- It prohibited just retail defections while permitting wholesale defections.
- It does not allow for the removal of a member from his party because of his activity outside of the legislature.
- It distinct between independent and nominated members is illogical. If the former joins a political party, he is disqualified, but the latter is permitted to do so.
- The presiding officer's decision-making authority is criticized on two grounds.
First, due to political constraints, he may not be able to use this power impartially and objectively.
Second, he/she lacks the legal expertise and experience required to hear the cases. In reality, two Lok Sabha Speakers (Rabi Ray in 1991 and Shivraj Patil in 1993) have raised reservations about their abilities to hear cases involving defections.³

91st Amendment to Anti- Defection Law

To make the existing law more effective in dealing with the frequent defections, 91st amendment was proposed to the Tenth Schedule in 2003. A committee headed by Pranab Mukharjee proposed the Constitution (Ninety-first Amendment) Bill, noting that the exception provided by allowing a split, granted in paragraph three of the Schedule, was being grossly exploited, causing multiple divisions in various political parties. Further, the committee observed, the lure of personal gain played a significant aspect in defections and resulted in political horse-trading.⁴ The bill was passed in one day by the Lok Sabha on 16 December 2003, and similarly passed by the Rajya Sabha on 18 December. Presidential consent was obtained on 1 January 2004 and the Constitution (Ninety-First Amendment) Act – 2003 was notified in the Gazette of India on 2 January 2004. The following provisions included in the Law:

- The amended act maintained that a member disqualified due to defection should not hold any ministerial post or any other remunerative political post until the term of his office as a member expired.
- The 2003 amended act excluded the provisions from the Tenth Schedule for authorizing the defections arising out of splits.
- The amended act also stipulated that the strength of ministers in the union, states and union territories should not exceed fifteen percent of the total number of members in the respective house.
- A member of either House of Parliament belonging to any political party who is disqualified on the premise of defection will likewise be ineligible to be appointed as a minister.
- The overall number of ministers in a state's Council of Ministers, including the Chief Minister, should not exceed 15% of the entire strength of that state's Legislative Assembly. However, the number of ministers in a state, including the Chief Minister, cannot be less than 12.
- A member of either House of a state legislature from any political party who is disqualified for defection is likewise disqualified for appointment as a minister.
- A member of either House of Parliament or either House of a State Legislature from any political party who is disqualified on the basis of defection is likewise barred from holding any remunerative political job.
- The term "remunerative political post" refers to
 - any office under the Central Government or a state government where the salary or remuneration for such office is paid out of the public revenue of the concerned government;
 - any office under a body, whether incorporated or not, which is wholly or partially owned by the Central Government or a state government and the salary or remuneration for such office is paid by such body, except where such salary.

- The clause in the Tenth Schedule (anti-defection statute) relating to exemption from disqualification if one-third of the legislature party separated has been removed.
- It means that defectors are no longer protected on the basis of splits.⁵

Speaker's Role

After enactment, some legislators and parties exploited loopholes in the law. There was evidence that the law did not fulfill the purpose of bringing a halt to political defection, and in fact legitimized mass defection act that it termed splits. Another aspect of the law which was criticised was the role of the Speaker in deciding the cases arising out of political defections. The impartiality of the Speakers and Chairmen of various houses was questioned in regard to granting official recognition to different factions of political parties. Questions were raised about the non-partisan role of the due to his/her political background with the party from which he/she was elected as the Speaker.

Some legal luminaries of the time suggested that a legitimate remedy be made accessible to legislators to seek protection from the Speaker's decision. They further proposed that the Speaker's decision pertaining to disqualification on grounds of defection should not be final, and recommended that a process of judicial review be made available to the members by empowering a judicial tribunal for dealing with such cases

Supreme Court Judgments

- In the **Kihoto Hollohan vs Zachillu and others Case of 1992**, the Supreme Court held that judicial review cannot be available at a stage prior to the making of a decision by the Speaker/Chairman. Nor would interference be permissible at an interlocutory stage of the proceedings carried by the Speaker/Chairman. However, before this case the decision of the Speaker/Chairman was considered final and was not subject to judicial review. This provision was rendered unconstitutional by the Supreme Court.
- In the **Ravi S Naik vs Union of India Case of 1994**, the Supreme Court cleared that the phrase “voluntary gives up membership of a political party” had wider connotations and was not synonymous with resignation.
- In the **Rajendra Singh Rana vs Swami Prasad Maurya Case of 2007**, the Supreme Court stated that if the Speaker fails to act on a complaint, or accepts claims of splits or mergers without making a finding, he fails to act as per the Tenth Schedule. He is also considered to be in violation of his constitutional duties.⁶

Major Flaws in the Law

After analyzing the defections in politics, there are three major flaws identified regarding the defections:

The first one pertains to define the original party, which becomes complicated in case of a party split. For example, when Shiv Sena split (or was made to split), in Maharashtra it resulted in a legal dispute over the party name and symbol. Similarly, in the case of Lok Janshakti Party in Bihar, the symbol was taken away from the original party, causing confusion among voters. This raises a broader question about who constitutes the party—only those elected or even those who work behind the scenes to get others elected. There are no easy answers to this offered by the Constitution or any specified piece of legislation.

The second demerit concerns the role of the chairperson or speaker, who is often a member of the ruling alliance. Although the speaker is expected to act as a neutral arbitrator, in practice, he/she often facilitates defections and mergers that benefit the ruling party, raising questions about his/her impartiality. Additionally, it is unclear what the scope of judicial review is on the speaker's decisions.

The third major flaw in Indian politics is the lack of consequences for members who defect, resulting in a loss of mandate and a sudden moral crisis. The Anti-Defection Law, implemented in 1985 to address this issue, has not been successful in preventing defections. One contributing factor is the provision that permits a group of MPs/MLAs to switch to another party without facing any penalty (Section 4 of the Xth Schedule). Furthermore, political parties are not penalised for enticing or accepting defectors, which intensified the problem.

The fourth one is, Most of the times the motivation behind defection is not due to change in ideology or views but a greedy for power. Defections are almost never due to genuineness of a candidate to do any good for the people or serious

ideological or moral conflicts within the party. Sometimes the legislators hide the actual personal ambitions behind the curtain of self-righteousness and fight for democracy.

Lastly, multiple times defectors also consider defection to be “homecoming” as in returning to their original party. Frequent change in Party weakens the government and also is a failure of democracy.

Recommendations

1. An unbiased tribunal should be established in the place of the speaker, who is often biased, to handle defection-related matters. This will ensure a just and unbiased decision-making process.
2. Compulsory waiting period for defectors should be fixed. This means that a lawmaker who changes allegiance must wait for a stipulated time before being eligible to contest for re-election (Even if he/she belongs to the group with 2/3rd of the party members as permissible in the Xth Schedule). This will give voters time to assess the reasons behind the defection and make an informed decision during the subsequent election.
3. It is crucial to accurately define the original party to distinguish between a few members and the party as a whole. This will prevent the chaos that occurs during party splits and avoid legal disputes over the usage of the party's name and emblem.

Conclusion

To sum up, defections in Indian politics poses a major obstacle that undermines the democratic system and the trustworthiness of elected representatives and political parties. The Anti-Defection Law has not been able to give solution to this issue effectively due to its inadequacies and flaws. Strengthening the act to curb defections would require a comprehensive strategy, which involves implementing multiple measures. With the rising levels of corruption and cases of defection within the Indian political system, there is an urgent need for a watchdog to prevent them in the future.

There is no use of efforts in introduction of laws only. Rather than only depending on legislative measures voters must themselves play their role. Voters often vote as they rely on the promises by a representative of benefits such as provide basic facilities, job opportunities. It's also seen that the money these ministers spend on winning the elections is extorted back from the public itself through unethical corrupt means. Thereby, it becomes very much responsibility of voters to let go of our personal interests and fight this unethical defection.

Defection does surely impede the development in a democracy. But, solely focusing on introducing measures against this sole phenomenon would not give required results for the growth of the country. The factors that lead to defection have to be eliminated for the same as they are far more on parasitic scale than the discussed phenomenon. Only then we can get some long-lasting positive outcomes.

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