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ENFORCING STABILITY: THE ROLE OF INDIA'S ANTI-DEFECTION LEGISLATION IN PARLIAMENTARY INTEGRITY

- Keerthana. S¹

ABSTRACT

This research paper goes into India's anti-defection law, looking at its history, present concerns, and proposed improvements. The Anti-Defection Law, a cornerstone of India's democratic administration, seeks to promote political stability by discouraging elected officials from switching parties after the election.

The research begins by examining the origins of anti-defection law in reaction to post-independence political dynamics characterized by frequent defections and coalition administrations. It then goes over the legal structure established by the Tenth Schedule of the Constitution, emphasizing its role in dismissing members who disobey party directions without sufficient authority.

While the legislation has been effective in discouraging defections for personal benefit, it faces other hurdles. These include worries about repressed dissent, loopholes that allow for "horse-trading," issues about unbiased adjudication, and the sufficiency of punishments. In response to these issues, the report suggests a multidimensional strategy to reform. This contains proposals for strengthening institutional procedures, promoting intra-party democracy, using technology for transparency, engaging civil society, and fostering international collaboration.

Finally, the study emphasizes the significance of resolving the deficiencies of India's anti-defection law in order to enhance the country's democracy. By implementing substantial changes, India can protect the integrity of its election procedures and safeguard democratic norms.

Keywords: Anti-Defection Law, India, democracy, challenges, reforms.

¹ 3rd year B. Com LL. B (Hons.) student, School of law, Sathyabama Institute of Science and Technology.

INTRODUCTION

India's democracy is based on a strong system of checks and balances and a vibrant tapestry of various political ideologies. The Anti-Defection Law, which is contained in the Tenth Schedule of the Constitution, is a vital component of this system. The goal of this legislation is to stop elected officials from defecting—that is, changing parties after winning office—because it is a destabilizing phenomenon. The Anti-Defection Law aims to protect electoral mandates, maintain parliamentary integrity, and advance governmental stability by discouraging such opportunistic actions.

This essay explores the legal foundation, historical background, and real-world applications of India's Anti-Defection Law. It examines scholarly works that shed light on the political and social context surrounding defections in India as well as significant case laws that have influenced the interpretation and application of the law.

THE HISTORY OF ANTI-DEFECTION LEGISLATION

The post-independence political landscape of India has seen an increase in split mandates and coalition governments. This, together with the infamous "*Aya Ram Gaya Ram*" phenomena, epitomized by the frequent defections of Haryana member Gaya Lal, highlighted the need for laws to prevent defections. In the 1960s and 1970s, worries grew about the erosion of political stability and the subversion of election mandates as a result of frequent defections driven by personal gain or political expediency.²

The judiciary had a critical role in establishing anti-defection legislation. The seminal case of *Kihoto Hollohan v. Zachillhu and Others (1992)*³ established the constitutionality of defection laws. The Supreme Court's decision affirmed the constitutional requirement to prevent defections that weaken the legislature's representational character and destroy public trust in democratic institutions. This decision cleared the path for legislative action to codify anti-defection rules and give them legal support. The Act sought to discourage defections by forcing disqualification from parliamentary seats for people who either voluntarily switch parties or vote against the party whip on critical issues. However, the legislation makes exceptions for legitimate splits and mergers under

² SUBHASH C. KASHYAP, THE POLITICS OF DEFECTION: THE AYA RAM GAYA RAM PHENOMENON (NATIONAL BOOK CENTRE 1992)

³ *Kihoto Hollohan v. Zachillhu and Others*, 1992 Supp. (1) SCC 603 (India)

certain conditions, as explained in the Supreme Court's decision in *Ravi S. Naik v. Union of India (1994)*⁴

The political elite responded by enacting the *52nd Amendment Act in 1985*. This amendment act inserted the Tenth Schedule to the Constitution, which specifies the grounds for disqualification of elected parliamentarians who defect from their party.

THE LEGAL FRAMEWORK: BALANCING STABILITY AND REPRESENTATION

The Anti-Defection Law, found in *Articles 102(2)*⁵ and *191(2)*⁶ of the Constitution, discourages defections by specifying the penalty for elected representatives who break from their party's policy. These articles state that a member of a political party shall be disqualified from membership in the House.

Resigns from the party on their own volition; Votes in the House against the party whip's direction without permission from the party leader. Abstaining from voting in the House on a confidence or no-confidence resolution unless the party leader gives permission⁷. This approach seeks to achieve a compromise between maintaining party discipline and protecting the right to dissent. However, the interpretation of these articles has altered as a result of subsequent modifications and judicial decisions.

The addition of the Tenth Schedule to the Constitution strengthened the legal underpinning for combatting defections. It created a defined set of standards for disqualification and authorized the Speaker of the chamber or the Chairperson of the Rajya Sabha (upper chamber) to hear defection cases. However, the adjudication procedure prompted questions about potential prejudice and the importance of following procedural fairness guidelines. Landmark instances, such as *G. Viswanathan v. Speaker, Tamil Nadu Legislative Assembly (1996)*⁸, highlighted the Speaker's quasi-judicial role in adjudicating defection issues. The Supreme Court emphasized the significance of a fair and impartial procedure, ensuring that defection proceedings follow constitutional norms and allow appropriate opportunity for defense.

⁴ Ravi S. Naik v. Union of India, 1994 Supp. (1) SCC 1 (India)

⁵ INDIA CONST. art. 102(2)

⁶ INDIA CONST. art. 191(2)

⁷ D.D. MISHRA, LAW OF DEFECTION (Central Law Publications 2018)

⁸ G. Viswanathan v. Speaker, Tamil Nadu Legislative Assembly, 1996 (5) SCC 644 (India)

The legislative framework governing defections has been further refined via successive revisions and judicial interpretations. For example, the decision in *Rajendra Singh Rana v. Swami Prasad Maurya (2007)*⁹ defined the extent of disqualification under the Anti-Defection Law. The Court concluded that even abstaining from voting in violation of the party whip might result in disqualification, emphasizing the need of ensuring party discipline to avoid personal defections and guarantee legislative responsibility.

While India's Anti-Defection Law has been effective in reducing defections for personal benefit, it is facing issues that require introspection and change. Here, we go into some of the significant critiques and investigate various paths for increasing the law's effectiveness:

1. STIFLING DISSENT AND EROSION OF INDIVIDUAL CONSCIENCE

Critics argue that the Anti-Defection Law restricts elected officials' right to vote based on their convictions, potentially stifling dissent. Critics further say that the rule suppresses disagreement within parties, potentially leading to a "rubber-stamp" parliament in which lawmakers just follow party lines without question.¹⁰ This can impede constructive discourse and limit elected officials' responsibility to their people.

2. LEGAL GAPS: THE "HORSE-TRADING" PHENOMENON

The Anti-Defection Law primarily addresses individual defections. However, it fails to adequately handle the issue of "**horse-trading**," in which parties engage in covert discussions to entice lawmakers from opposing parties with promises of ministerial posts, cash incentives, or other inducements. These actions violate the spirit of the law and weaken the democratic process by converting electoral mandates to mere negotiating chips.¹¹

3. IMPARTIALITY AND EFFICACY OF ADJUDICATION

The efficacy of the Anti-Defection Law depends on the impartiality and autonomy of the adjudicating organizations. These entities, notably the Speaker of the House or the Chairperson of the Rajya Sabha, are frequently associated with political parties themselves. This raises concerns

⁹ *Rajendra Singh Rana v. Swami Prasad Maurya*, 2007 (6) SCC 1 (India)

¹⁰ JAGDISH S. JAIN, *Anti-Defection Law: Does It Stifle Dissent?* 50 J. Ind. L. Inst. 1 (2015)

¹¹ PRANAB KUMAR DASGUPTA & SANJUKTA ROY, *Electoral Reforms and Democratic Consolidation in India*, 40 Asian J. Pol. Sci. 211 (2009)

regarding potential prejudice in favor of the ruling party, which might lead to selective implementation of the legislation and undermine public trust in the defection adjudication process.

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4. WEAK PENALTIES AND JUDICIAL DELAYS

The Anti-Defection Law imposes disqualification from the House as the principal penalty for defection. However, some contend that this punishment is insufficient deterrent, particularly for politicians reaching the end of their mandate. Furthermore, significant judicial delays in resolving defection cases undermine the law's deterrence impact. Defectors frequently continue to enjoy the perks of their position for lengthy periods of time while their cases are being adjudicated, allowing them to break the law without consequence.

A CALL FOR REFORM: A MULTIPRONGED APPROACH

In view of these issues, a multifaceted strategy is required to enhance India's Anti-Defection Law and assure its efficacy in protecting parliamentary integrity. Here, we investigate various pathways of reform:

1. ENHANCING INSTITUTIONAL MECHANISMS FOR DEFECTION MONITORING

Empower Adjudicatory agencies: Increase the capacity and independence of parliamentary ethics committees and election supervision agencies such as the Election Commission of India. These organizations need extensive training, technology, and money to adequately examine defection charges, resolve disagreements, and administer punishments. Collaboration with academic institutions can promote evidence-based policy research and new ideas for improving parliamentary integrity^{13 14}

Streamlining Defection Proceedings: It is critical to adjudicate defection matters quickly and within a reasonable time frame. Streamlining procedures, establishing clear timetables for probes, and reducing judicial delays can reduce frivolous defections and protect the rule of law.

¹² Panchajanya Editorial Board, Anti-Defection Law: A Flawed Concept, Panchajanya, June 21, 2009, at 23

¹³ D.D. MISHRA, LAW OF DEFECTION (Central Law Publications 2018)

¹⁴ Election Commission of India, Annual Reports [various years] (India)

2. PROMOTING INTRA-PARTY DEMOCRACY AND ETHICAL LEADERSHIP

Parties should cultivate a culture of internal discussion, accountability, and inclusion to prevent factionalism and defection-driven opportunism. Regular meetings with party members, open decision-making procedures, and effective grievance redressal systems can help political parties become more democratic and representational.¹⁵

Investing in Leadership Development: Mentorship programs, leadership training efforts, and code of conduct regulations can help to raise a new generation of ethical political leaders who are devoted to preserving democratic principles and public confidence.

3. USING TECHNOLOGY FOR DEFECTION MONITORING AND ACCOUNTABILITY

Transparency on Digital Platforms: Using digital technologies to track defections and encourage public engagement can improve openness and accountability. Online portals for reporting defection claims, real-time tracking of legislative voting habits, and open data repositories for political finance can help voters hold elected officials responsible.¹⁶

Blockchain for election Integrity: Blockchain technology presents a great opportunity to improve the verifiability and integrity of election procedures. Exploring its possibilities, as highlighted in "**Electoral Reforms and Democratic Consolidation in India**"¹⁷ can help to enhance India's democratic underpinnings. Blockchain technology may be used to produce a secure and tamper-proof record of voter registration and voting data, decreasing vote manipulation and the incentive for defections prompted by electoral fraud.

4. COLLABORATION AND PUBLIC ENGAGEMENT: CIVIL SOCIETY ADVOCACY

Civil society groups play an important role in raising public awareness and advocating for successful anti-defection policies. Civil society may organize public opinion in support of

¹⁵ V.R. RAO, *ETHICS AND INTEGRITY IN INDIAN POLITICS: CHALLENGES AND SOLUTIONS* (Routledge 2019)

¹⁶ MELISSA MOSSBERGER, DANIEL A. SCHILLER & ADRIAN KENNICKELL, *The Role of Digital Platforms in Strengthening Social Capital and Civic Engagement*, 85 *Ann. Rev. Soc.* 341 (2019)

¹⁷ ROY AND WALLACE, *Electoral Reforms and Democratic Consolidation in India* (2009)

legislative changes and institutional protections via research, educational campaigns, and community involvement efforts¹⁸.

Parliamentary Reforms and Citizen Participation: It is critical to strengthen parliamentary accountability through effective committee procedures, as well as to develop a culture of constructive interaction between lawmakers and citizens¹⁹ Regular public hearings, open access to parliamentary processes, and improved citizen interaction platforms can enable individuals to keep their legislators responsible while discouraging defections prompted by a lack of popular support.

5. COMPARATIVE LEARNING AND GLOBAL COLLABORATION

Learning from Global Experiences: The rise of populist movements, identity politics, and digital media has transformed the dynamics of political defections throughout the world. India can benefit from seeing how other democracies have dealt with comparable difficulties. For example, the experiences of nations such as Brazil, which has imposed stiffer penalties for defectors, and Germany, which focuses on improving party discipline within a framework that respects individual conscience, can provide useful lessons for India.²⁰²¹

Sharing Best Practices via International Forums: International forums and collaborative efforts with other democracies can promote peer learning and the creation of global standards to overcome defection-related risks to democratic governance. This is consistent with the collaborative approach outlined in "**Democratic Governance and Political Stability in India**"²² Sharing best practices for defection prevention, encouraging openness in political finance, and supporting ethical leadership can all help to build a stronger and more resilient global democratic system.

¹⁸ PRANAB PRAKASH, The Role of Civil Society in Promoting Good Governance, 18 J. Democracy 132 (2008)

¹⁹ ZOYA HASAN, Parliamentary Accountability and the Role of Opposition in India, 48 J. Commonwealth & Comp. Pol. 301 (2014)

²⁰ VENKAT SIVARAMAKRISHNAN, Defection Laws and Democratic Governance: Comparative Perspectives, 23 J. Indian L. Inst. 1 (2017)

²¹ A. ALAN REYNOLDS & BENJAMIN REILLY, Strengthening Parliamentary Democracy: Lessons from Global Experiences, 24 Comp. Pol. Stud. 1 (2019)

²² ATUL KOHLI, DEMOCRATIC GOVERNANCE AND POLITICAL STABILITY IN INDIA (Cambridge Univ. Press 2001)

LANDMARK JUDGEMENTS

KIHOTO HOLLOHAN V. ZACHILLHU

Kihoto Hollohan v. Zachillhu (1992) is a landmark case in Indian constitutional law concerning the validity of the Anti-Defection Law, as outlined in the Tenth Schedule of the Constitution. The case was pivotal in shaping how defections and disqualifications of elected members are treated in India's parliamentary and legislative processes. The core issue in this case was the constitutionality of the Tenth Schedule, which gives the Speaker of the House the authority to decide on matters of defection, and whether such decisions should be subject to judicial review.

The Anti-Defection Law was introduced in 1985 through the 52nd Amendment, adding the Tenth Schedule to the Constitution. It was enacted to address the rampant issue of political defections by **Members of Parliament (MPs)** and **Members of Legislative Assemblies (MLAs)**, which threatened the stability of elected governments. Defections were becoming a significant concern, leading to instability in government and compromising the integrity of the democratic process. The Tenth Schedule empowers the Speaker of the concerned legislative body to disqualify members who defect from their political party, either by voting or abstaining from voting contrary to party directives, or by voluntarily giving up their party membership.

The case began when certain legislators challenged the provisions of the **Tenth Schedule**, arguing that it violated their fundamental rights, particularly the right to free speech and expression under **Article 19(1)(a)** of the Constitution. They contended that the law restricted their ability to dissent and express independent opinions within the legislature. Additionally, concerns were raised regarding the role of the Speaker, claiming that the Speaker's decision-making power in defection matters could be biased since the Speaker is typically affiliated with a political party.

The Supreme Court, in its judgment, upheld the constitutional validity of the Anti-Defection Law but introduced key limitations to its implementation. The Court held that the Tenth Schedule did not violate free speech or democratic principles because the law aimed to maintain the stability of the government and prevent unethical political defections. The Court recognized that political parties play a central role in the functioning of parliamentary democracy, and loyalty to party policies is essential to ensure that the government's mandate is respected. Therefore, disciplining legislators who defy their party's collective decision was deemed legitimate.

However, the Court did address the issue of the Speaker's powers and the concerns of potential bias. It held that the Speaker's decision in defection matters is subject to judicial review. This was a crucial element of the judgment, as it ensured that while the Speaker retained the authority to disqualify members under the Tenth Schedule, the judiciary could review the Speaker's decision if there were grounds for alleging bias or mala fide action. This balance between legislative authority and judicial oversight was significant in preventing misuse of the law for political purposes.

The Kihoto Hollohan case thus established a critical precedent in India's democratic and legal framework. It reaffirmed the importance of the Anti-Defection Law in preserving political stability, while also safeguarding the rights of legislators through judicial review. By allowing courts to intervene in cases of potential bias or unfair decision-making by the Speaker, the ruling struck a balance between maintaining party discipline and protecting individual rights within the legislature. The case continues to be a reference point in matters related to defection and parliamentary integrity in India.

GIRISH CHODANKAR V. THE SPEAKER, GOA STATE LEGISLATIVE ASSEMBLY

*Goa Legislative Assembly Defection Case (2020)*²³ is yet another significant event in the context of India's Anti-Defection Law, highlighting the complexities of political defections and the role of the Speaker in handling disqualification petitions. The case involved the defection of 10 Congress MLAs to the ruling Bharatiya Janata Party (BJP) in 2019, raising critical legal questions about the application of the Tenth Schedule of the Indian Constitution, which governs defection and disqualification.

In the **2017 Goa Legislative Assembly elections**, the Congress emerged as the single largest party, winning 17 seats in the 40-member Assembly. However, it could not form the government, and the BJP, with 13 seats, formed a coalition government by allying with smaller regional parties and independents. In **July 2019**, in a significant political development, 10 out of the 15 Congress MLAs defected to the BJP. This defection enabled the BJP to strengthen its position in the Assembly and weaken the opposition considerably. The Congress party, in response, filed a disqualification petition against the defecting MLAs, arguing that their actions violated the provisions of the Anti-Defection Law.

²³ Girish Chodankar v. The Speaker, Goa State Legislative Assembly, (2017) 5 SCC 551

Under the Tenth Schedule, an MLA can be disqualified if they voluntarily give up their party membership or defy party directives, such as voting against the party line. However, the law provides an exception in cases where two-thirds of the members of a legislative party defect together. This is known as the "**merger clause**", which allows for mass defections without the risk of disqualification if a significant portion of the party joins another.

In this case, the 10 defecting MLAs argued that their defection was legal under the merger clause, as they represented more than two-thirds of the Congress Legislature Party. The Congress party, on the other hand, contended that this was a blatant case of political opportunism and horse-trading, and that the defection violated the spirit of the Anti-Defection Law, which was designed to prevent precisely such political maneuvering.

The Speaker of the Goa Legislative Assembly, who had the authority to adjudicate on the matter, accepted the merger of the 10 Congress MLAs into the BJP and declined to disqualify them. This decision was challenged in the Goa Bench of the Bombay High Court by Congress leaders, who argued that the Speaker's decision was biased and politically motivated.

The case highlighted several critical issues in the implementation of the Anti-Defection Law. First, it raised concerns about the impartiality of the Speaker in defection matters, as the Speaker often belongs to the ruling party or coalition, leading to accusations of bias. Second, it brought attention to the merger clause, which, while intended to provide stability and allow for legitimate political realignments, has been increasingly used as a loophole for mass defections.

In **2021, the Bombay High Court** dismissed the petitions challenging the Speaker's decision, stating that the defecting MLAs were protected by the merger clause. The Court also noted that the Speaker's decision, though open to judicial review, was in line with the provisions of the Tenth Schedule.

The Goa Legislative Assembly Defection Case underscored the need for reforms in the Anti-Defection Law to close loopholes that allow mass defections and to ensure that the law's original intent—preventing political instability through unethical defections—is upheld. It also reignited the debate over the impartiality of Speakers in adjudicating defection cases, highlighting the challenges of balancing party loyalty with democratic integrity in India's political system.

CONCLUSION

India's Anti-Defection Law demonstrates the country's dedication to maintaining parliamentary integrity and democratic norms. While it has had a substantial impact on reducing political maneuvering, its efficacy is dependent on continuing development. India can strengthen its democratic institutions and keep elected officials responsible to the people they serve by embracing creative techniques, strengthening intra-party democracy, capitalizing on technology improvements, and encouraging public involvement.

This multifaceted strategy, which includes institutional changes, supporting ethical leadership within political parties, using technology for transparency, and cultivating a culture of public involvement, has the potential to revive *India's Anti-Defection Law*. A strong legal framework, together with a diligent and involved citizenry, can protect the integrity of election mandates and guarantee that India's parliament remains a representative and responsible body working for the country's general welfare.

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