

LEGALFOXES LAW TIMES

DOES ANTI-DEFECTION LAW NEED RESTRUCTURING?

By Anshuman Srivastava

What is Anti-Defection law?

Anti-defection law was introduced in 1985 when the constitution was amended for the 52nd time by adding the **tenth schedule** with intent to fight the corruptness of political defections. Defection allows corruption and horse-trading between the political parties to get the majority and form the Government. The MLA and MPs hop parties by accepting a bribe from the other party in the form of money or a political post making the mockery of democracy.

52nd Amendment also known as anti-defection law explains how and when the members will be disqualified. Let us look at the various provisions of the anti-defection law: -

A member of any house of any party will be disqualified from being a member of that house when: -

- if the person voluntarily gives up his membership of the political party; or
- if he restrains himself from voting or votes not according to the guidelines issued by his political party or any person authorized to do so unless and until he has the permission of the party or the person authorized and such restraint or voting is not been forgiven by the party and the authorized person within the **fifteen days** from the date of such voting or restraint.
- An elected member of the House who does not belong to any political party i.e., any independent member of the House and if that member joins a political party after getting elected, he/she will be disqualified under the anti-defection law.

- Any nominated person of the House who joins any political party after the expiry of the sixth months from the date on which he was elected will be disqualified under the anti-defection law.¹

Exceptions

- If **two-third** of the total members of the political party decides to join another party then they won't be disqualified under the anti-defection law. The remaining one-third have the right to either be a part of the same existing party or they can continue as a separate political group or entity without getting disqualified. This came in 2003 with the **91st amendment**, before this amendment the merger was accepted up to **one-third** members.

- If the speaker or the deputy speaker of the house of the people or the speaker or the deputy speaker of the legislative assembly and deputy chairman of the council of states or the chairman or the deputy chairman of the legislative council voluntarily gives up the membership of his political party just after getting elected to such constitutional office he/she won't be disqualified but if they subsequently rejoin that political party or any other in future till their terms are completed they will be disqualified under the anti-defection law. After completing the term or after being removed from the office they all can rejoin the party which gave him/her the ticket to contest the election².



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What was the need for the Anti-Defection Law?

There were certain instances of defection which made the mockery of democracy after India got its independence and which made it necessary to have anti-defection law for the defectors to punish and stop such hopping between the parties to safeguard our democracy. In 1967 when Haryana was going to have its very first election after getting separated from Punjab and there was a man named Gaya lal who won the election as an independent candidate hopped between

¹ PD T Achary, 'Explained: What does the anti-defection law say? What can disqualify a legislator?' The Indian EXPRESS (Noida, 24 July 2019)

²Vibhor Relhan, 'The Anti-Defection Law Explained' (prsindia, 6 Dec 2017) <<https://www.prsindia.org/theprsblog/anti-defection-law-explained>> accessed 1 September 2020

the parties 3 times in a fortnight. When finally, he landed at INC, the leader of INC Rao Birendra Singh who addressed a press conference and said "**Gaya Ram was now Aya Ram**". This example of political defecation is still an irremovable stain on the democratic structure of our constitution and it didn't stop there and just after a few years in 1979, Haryana again came into the news with another big name Bhajan Lal who was too involved with political defecation. So, all these instances resulted in the introduction of the anti-defection law which was the need for that hour.

Decision-Making Power

The final call or decision stays with the Speaker or the chairman of the house whether to disqualify a member or not but then in a landmark case **Kihoto Hollohan vs Zachillhu and others** in 1992 it was held by the Supreme Court of India that the final call remains with the Speaker or Chairman but their decision can be Judicial Reviewed by Supreme Court of India as Judicial Review is part of the basic structure of the constitution.

Loopholes in anti-defection law

Speaker or Chairman may be biased - The Speaker or the chairperson may belong to the ruling party and hence they sometimes make a decision in favor of their party and will be biased against the opposition party.

Judiciary is incapable at initial stages - The judiciary has the right of judicial review but not before the decision of the speaker. First, the speaker has to decide on the current issue then only the judiciary can invoke the process of judicial review if justice remains unserved and can alter the decision of the speaker.

No time limit for Speaker or Chairman - There is no time limit defined under the anti-defection law that in what time period the speaker has to take the call regarding the current issue.

Sometimes speaker or chairman just procrastinate their decision to delay the proceedings as they are biased towards the party, they belong to³.

Noteworthy Cases of defection in the past few months

Karnataka - BJP emerged as the single largest party and the governor invited BJP to form the Govt but unfortunately, BJP could not prove the majority subsequently which resulted in INC and JDU coalition proving the majority and forming the Govt. But soon some MLAs of JDU and INC voluntarily resigned and went to BJP which resulted in the fall of the coalition Govt and BJP was again in the position of forming the govt. The speaker who belongs to the INC disqualified all the defectors for the remaining term of the house means they won't be allowed to contest the elections for the remaining term. Then the issue went to the Supreme Court of India and the apex court held that the speaker was right in disqualifying the defectors but they should not be disqualified for the remaining term and should have the right to contest elections.

Madhya Pradesh - In Madhya Pradesh Jyotiraditya Scindia with his 22 other trusted MLAs resigned from the Indian National Congress and ultimately the strength of the legislative assembly reduced and subsequently Kamal Nath government fell and BJP was in the position to form the government again.

Manipur - In 2017 election was held in Manipur Legislative Assembly. Out of the total strength of Manipur's legislative assembly which is 60 INC emerged as a single largest party with 28 MLAs and BJP was just in line after INC. The governor of Manipur invited BJP to form the government and subsequently, 8 MLAs of the INC resigned and should have been disqualified but Speaker was not acting at all as the defectors were favoring the ruling government. One defector from the INC named T.H Shyamkumar was made the forest cabinet minister. The matter went to the Supreme Court of India and in an unprecedented move, the Apex Court held that

³ '10th Schedule - Anti-Defection & Role Of Speaker' (byjus, 3 July 2020) <<https://byjus.com/free-ias-prep/anti-defection-role-of-speaker-10th-schedule-upsc-notes/>> accessed 1 September 2020

T.H. Shyamkumar cannot enter the legislative assembly and also sacked him from the post till the speaker takes the call⁴.

CONCLUSION

Yes, that's true that anti-defection law was need of the hour and will definitely stop defection to some extent but this law needs to be made more comprehensive with several new amendments should be brought according to the current scenario as it has few loopholes which need to be fixed so that it can really prove to be a deterrence effect for the defectors. There are few solutions or alterations to the law that I would like to suggest to make it more robust are: -

Time Limit - There is no reasonable time limit defined for the speaker, Deputy Speaker, Chairman, and Deputy Chairman to take their decision regarding the defectors so that in case of injustice Supreme Court of India can use its power of judicial review.

Voluntarily resignation - Voluntarily resignation is a big loophole in this law as to when members resign due to bribe or other reasons which result in the decrease of the total strength of the legislative assembly and makes it possible for the opposition to form the government as the ruling party fell short of MLAs which has happened in past few months. The defector can resign get disqualified and can again contest the election and win it and can again be a member of the assembly which makes the complete mockery of the democracy.

Deterrence effect - Instead of just disqualifying the defectors there should be other punishment as well which will act as a deterrence effect in the future. Punishment like they should not be just disqualified but should be disqualified for the remaining term of the assembly so that they cannot contest the election soon after getting disqualified and can again become the member of the house. This will act as a deterrence effect for many and will also preserve democracy.

Its high time now to restructure the anti-defection law and make it more robust in order to preserve democracy by taking strict actions against the defectors and stop what we saw in the last few months or years in Madhya Pradesh, Manipur, and Karnataka which is making a mockery of the democracy.

⁴ Varun Ramesh Balan, 'Aaya Ram, Gaya Ram': A contemporary history of defections to the BJP' The Week (Kochi, 12 March 2020)