

# LEGALFOXES LAW TIMES

## THE ANTI-DEFECTION LAW: A DERELICTION OR VITALITY TO THE SANCTITY OF DEMOCRACY IN INDIA.

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### ABSTRACT

The true allegiance of an individual who is elected by the people is the paramount area of disquietude. Thus, Anti-Defection Law is instrumental in tutelage of a vigilant contemplate to these members staunchness to their respective political party. The polity is still being haunted by the potency of defection. <sup>1</sup>.

This paper tries to throw light on the evil of the political defection by the in-depth analysis of the Anti-Defection Law along with the backdrop of the evolution and impact of this law. Saving the original sanctity of the Anti-Defection Law has now become the need of the hour. This paper also examines and bestows insights of the exemplar wherein the Schedule X went through various scrutinies which led to dwindle of the representative democracy and how the Federal structure of India has been put a strain on the provisions of Defections under the Anti-Defection Law.

**Keywords:** - Anti-Defection Law, Schedule X, political defection, representative democracy, Federal structure.

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<sup>1</sup>B. V. Kumar. "Anti-defection law: welcome reforms," Economic and Political Weekly, vol. 38 no. 19, pp. 1837–1838, May 2003.

## INTRODUCTION

India has espoused a Parliamentary semblance of Government and for its subsistence and also for safeguarding the perennality of the Parliamentary form of Government the Anti-Defection Law proves out to play an instrumental mantle as whenever the regime of a party is hampered the party gets collapsed. The pursuit of dishonesty in the vicinity of one's own political party has been time-honored. The obduracy for authority has been *dernier cri* since time immemorial. However, the virtue of constitutionalism is annihilating by the ill-effects of defection.

The Ministry of Home Affairs in one of its studies has given the definition of defection and it defines defection as it means *inter alia* to a legislator's loyalty's diaspora from one political party to another which *seriatim* is identifiable.<sup>2</sup>

Anti-Defection law was incorporated under our Indian Constitution by the virtue of 52nd Amendment Act, 1985 which resulted in an epitome of the Xth Schedule in the Indian Constitution, and it also ended up amending the Articles 101, 102, 190 and 191 of the Indian Constitution<sup>3</sup> which provides for the process and grounds for disqualification of any member of either the Parliament or State Legislature. This amendment was brought during the time period when the government of Rajiv Gandhi was in competence.

*The 52nd Amendment Act's statement of Objects and Reasons read as follows: -*

The ungodly of political defections has been a matter of national perturb. If it is not combated, it is likely to undermine the very substratum of our democracy and the principles which sustain it.<sup>4</sup>

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<sup>2</sup>L.P. Singh, "Political development or political decay in India?" Research Planning and Review Division, Ministry of Home Affairs, Government of India, Defections, 1968. University of British Columbia, Pacific Affairs, vol. 44, no. 1, pp. 65-80, Spring 1971.

<sup>3</sup>INDIA CONST., arts. 101, 102, 190, 191.

<sup>4</sup>Jenna Narayan, 'Defect-Shun': Understanding Schedule X to the Constitution of India, INDIA LAW JOURNAL (2007).

## **EVOLUTION**

The fourth general elections of 1967 which is customarily known as the watershed moment in the democracy of India has laid down the foundation stone for the evolution of the Anti-Defection Law in India. During this election, the Congress lost the election majority amongst the sixteen states that went for the polls for the elections, as a result of which Congress was successful in deploying Government in just a single state out of those sixteen states. Horse-Trading was a well versed phrase used to the practice wherein the changing of political parties took place by the members for the gain of office.<sup>5</sup>The ‘ *Aaya Ram Gaya Ram* ’ is a vogueish phrase which was a result of Gaya Lal, a MLA of Haryana swapping his party thrice in a single day in 1967. This year of 1967 beholds the founding of a coalition government.

Hence, in the year 1967, emergence of a new committee took place in order to exclusively deal with the matter of disqualification and which in turn gave ample exhortation on the subject matter of disqualification. In between the time span of 1967 to 1971, more than 1900 MLAs and nearly 142 Mps switched their interest from their political parties as a result of which the Government of many states inclusive of that of Haryana was collapsed. Later, after pondering those recommendations made by the committee, a 32nd Constitution Amendment Bill was introduced in the year 1973 which dealt with the recommendations which were put forward by the committee however this bill was lapsed and then 48th Constitution Amendment Bill, 1984 was introduced and this bill was later passed and called the ‘Anti Defection law’ in the year 1985.

However, not sufficient heed was paid to these issues initially and it was not grappled with congruously for verging on for a longer span of time and well-nigh after seventeen years from the general election mishap of 1967, the Anti-Defection law was introduced in the year 1985 in order to deal with these defectors.

## **PROVISIONS UNDER ANTI-DEFECTION LAW**

The copious grounds for disqualification are enumerated under rule 2 of the Tenth Schedule, of the Indian Constitution, which are as follows: -

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<sup>5</sup>J. K. Mittal, Parliamentary Dissent, Defection and Democracy, 35 J. INDIAN L. INSTI. vii (1991).

For a member of a house who are aligned to any political party: -

When he voluntarily resigns from his political party or when he votes or steer clear of voting in the legislature in accordance with the directives of his political party.

However, there subsists an exception to this rule i.e. if that member of the political party has taken antecedent consent or is connive from the political party within a time period of fifteen days from such voting or abstention, he shall not be disqualified.

For an Independent Member: -

Disqualification of an Independent Member shall take place when he joins a political member right after the election, if he has been elected as an independent member.

For a Nominated Member: -

Disqualification of a nominated member takes place under the Anti-Defection Law if such a nominated member who wasn't a member of any political party earlier joins a political party six months right after he becomes a member of the legislature.

**EXCEPTIONS: -**

The rule 3, 4 and rule 5 explains the exceptions to the disqualification: -

An individual either member of a house who be an adherent of a political party, or an independent member or even a nominated member will not be disqualified if his original political party has come into a merger with another political party, and in such a merger, if he along with some of the other members of that old political party joins and become members of the political party so formed by the virtue of such merger, or if he and the other members of the old political

party form and function as a separate group by the way of opting out from the old political party. However, this provision of merger of the political parties would be permissible and operative only if not less than the two-third members out of the total members of the political party in the house have agreed to such merger.

Later, the 91st Amendment Act, 2003 made the change that at least two-third members of the old political party must be in support of the merger which was earlier one-third of the elected members of a political party were prerequisite to be in benevolence of the merger of the political party.

### **Disqualification Power: -**

According to rule 6 of the law, the disqualification power is vested with the Presiding Officer who is the Chairman or the Speaker of the House regarding the final decision of disqualification of any member.

However, if the disqualification in question is regarding a complaint filed against the Chairman or the Speaker of the House, then in such a situation the decision for disqualification is conferred with a member of the house who is elected by that particular House.

In the words of a member of Congress during a Lok Sabha session, Mr. K.P. Unnikrishnan said that the role of Speaker as a sole depot of all the judgment regarding the disqualification of members, the speaker gets power to play havoc.<sup>6</sup>

### **Judicial review under the law: -**

According to the Rule 7 of the law, the High Court's under Article 226 and 227 of the Constitution and the Supreme Court under the Article Articles 32 and 136 of the Constitution couldn't exercise the power of Judicial Review of the decision of the Speaker or Chairperson in case of the matters related to the disqualification of a member of a house.

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<sup>6</sup>Javed M. Ansari, Anti-defection law: The great divide, INDIA TODAY (Jun. 20, 2013), <http://indiatoday.intoday.in/story/controversy-over-anti-defection-law-interpretation-puts-judiciary-and-executiveon-collision-course/1/306142.html>.

There existed various loops holes in the Anti-Defection law which were raised as an issue before the Supreme Court which the Supreme Court resolved by the aid of judicial pronouncements which are as follows: -

- The first issue rose before the Supreme Court was whether schedule X was in violation of Article 105 as well as Article 194 of the Indian Constitution freedom of speech and expression enumerated under Article 19(1) of the Indian constitution and even the basic structure of the Indian constitution?

The Supreme Court in the case of *KihotoHollohon v. Zachilhu and Others*<sup>7</sup>, held that the provisions under schedule X are not in violation of Article 105 and Article 194 of the Indian Constitution, freedom of speech and expression and even the basic structure of the Indian constitution.

- The next issue was raised regarding the rule 7 of the Schedule X regarding the bar put on the Jurisdiction of all the courts in India regarding the power of Judicial Review?

The Supreme Court in the case of *KihotoHollohon v. Zachilhu and Others*<sup>8</sup>, held that the Speaker while deciding on the matters related to disqualification of the members of a politician party, acts merely as a tribunal and his decisions are subjected to the scrutiny under judicial review by the High Court as well the Supreme Court.

- The next issue raised before the Supreme Court was does a mere registration would amount to voluntarily giving up the membership of a political party?

The Supreme Court gave the answer to this issue in the case of *Ravi S Naik v. Union India*<sup>9</sup>and it was held that the term voluntarily giving up the membership as a wider term and even an

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<sup>7</sup>*KihotoHollohon v. Zachilhu and Others*, AIR 1993 SC 412.

<sup>8</sup>*KihotoHollohon v. Zachilhu and Others*, AIR 1993 SC 412.

<sup>9</sup>*Ravi S Naik v. Union India*, AIR 1994 SC 1558.

conduct of a member of a political party can also be instrumental to drawn inference apropos to the giving up of the membership.

In the case of,Shri Rajesh Verma v. Shri Mohammad ShahidAkhlauque, BSP, <sup>10</sup>it was held by the court that if a member of a political party gives any speech in a public place that he is in affiliation to any other political party by heart, then it will lead to the disqualification of that particular member from his original political party.

- The next issue raised was that after being expelled out from the original political party if that individual joins another political party does it lead to voluntarily giving up the membership or not?

It was held by the Supreme Court in the case of G. Vishwanathan v. Speaker, Tamil Nadu Legislative Assembly,<sup>11</sup> that whenever a person is expelled out of a political party, he becomes an unattached member in the house and even then he holds on to be a member of his original party and owns a sense of locality to his original party and if he joins another political party after being expelled out, he is automatically said to have voluntarily given up the membership of the original political party.

- The other issue put forward before the Supreme Court was that validity of the finality of the decision of the Speaker regarding the disqualification of a member?

In the case of KihotaHollohon v. Zachilhu and others<sup>12</sup>, the Supreme Court held the finality of the decision of the Speaker regarding the disqualification of a member as valid however the High Court and Supreme Court can review such decision of the Speaker.

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<sup>10</sup>Shri Rajesh Verma v. Shri Mohammad ShahidAkhlauque, BSP (January 27, 2008).

<sup>11</sup>G. Vishwanathan v. Speaker, Tamil Nadu Legislative Assembly, (1996) SCC 353.

<sup>12</sup>KihotaHollohon v. Zachilhu and others, AIR 1993 SC 412.

- The other issue which was raised before the Supreme Court was whether the Speaker can review his own decision regarding the disqualification of a member?

In the case of Dr. Kashinath G Jhalmi v. Speaker, Goa Legislative Assembly<sup>13</sup>, the Supreme Court held that the schedule X doesn't provide for any such provisions wherein the Speaker can review his own decision.

### **Merits Of the Anti-Defection Law: -**

- ❖ Anti-Defection Law prevents the speedy shift of a member from one political party to another, which brings about stability in the political party.
- ❖ Anti-Defection Law tends to promote discipline within a political party.
- ❖ Anti-Defection Law prevents unsteadiness in the Government.
- ❖ Anti-Defection Law ensures the promotion of a cardinal relation between the Government and the people of a nation.
- ❖ The incorporation of Anti-Defection Law has led to establishment of moral values in the political backdrop.

### **De-Merits Of the Anti-Defection Law: -**

- ❖ The Anti-Defection Law somehow curtails the concept of basic freedom of speech and expression of the citizens of a nation as well the members of the Parliament.
- ❖ Anti-Defection law brings about a lack of accountability of the parliament.

### **Recommendations of various committees:-**

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<sup>13</sup>Dr. Kashinath G Jhalmi v. Speaker, Goa Legislative Assembly (1993), 2 SCC 703.



1st: Dinesh Goswami Committee on Electoral Reforms (1990): -

According to this committee, the disqualification should be decided by the President or the Governor of a state and on the recommendations and advice of the Election Commission.

2nd: Law Commission 170th Report, 1999: -

This Law Commission Report gave the suggestion regarding the provision in the law that leads to the exemption of mergers as well as splits should be removed.

The issuance of whips by the various political parties should be limited by these political parties and it should be issued only at the time when there is an imminent danger to the Government.

3rd: Election Commission: -

They gave similar recommendations like that of the Dinesh Goswami Committee on Electoral Reforms and they recommended that the decision regarding the disqualification of member under the Xth Schedule should be made by the President or the Government on the aid and advice of the Election Commission and this advice rendered by the Election Commission must not merely be advisory in nature but it must also be binding on the President or the Governor whoever decides the matter of disqualification under the Anti-Defection Law.

4th: Constitution Review Commission, 2002: -

This Commission made the following recommendation: -

The ones, who are so disqualified under Schedule X, must be refrained from holding any public office or any public post which is remunerative in nature as long as the duration of the remaining term.

Any vote which such defector casts must be treated as null and void in respect of the matter related to toppling the Government.

## **Conclusion**

The introduction of Anti-Defection law was for the purpose of strengthening the pillars of the political disruptions. However, due to the increase in corruption and disloyalty amongst the politicians the Anti-Defection Law was cut out from the efficient accomplishment its ascertaining objectives. The fate of the Anti-Defection Law was curtailed and due to the loopholes the corrupt politicians took undue advantage of them and used them for the fulfillment of their own mala-fide aspirations. The increase in exemplar defections has supervened in mislaying public credence in respect of political stability. The virtue of Anti-Defection Law is still not satisfactory in the state of the States of Karnataka<sup>14</sup>, Gujarat and Bihar<sup>15</sup>. However, the law has also manifested assorted efficacious and worthwhile denouement which has in turn created positive ramifications for the betterment of the political system and has assisted in bringing about party stability. A democratic flavor can be achieved within a political party only when there exists democratic out-turns in the leadership of that certain political party.

Hence in a nutshell, reformative measures must be taken for the upkeep of the sanctity of the Anti-Defection Law. Unearthing the sanctity of the Anti-Defection Law is not less than discovering God.<sup>16</sup>



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<sup>14</sup>"A Structural Malaise: Money power has torn apart the formal political institutions in Karnataka," Economic and Political Weekly, vol. 45, no. 43, p. 08, Oct. 2010.

<sup>15</sup>"Defections Galore," Economic and Political Weekly, vol. 01, no. 17, pp. 723–725, Dec. 1966.

<sup>16</sup>P. Bhutan, "Defections Galore," Economic and Political Weekly, vol. 01, no. 17, pp. 723–725, Dec. 1966.