

## ANTI DEFECTION LAWS IN INDIA: AN ANALYSYS

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### ABSTRACT

The Tenth Schedule, also popularly known as the 'Anti Defection Law' was added to the Constitution of India by the 52<sup>nd</sup> Constitutional Amendment, 1985 with an aim to safeguard the political stability of the governments and to tackle the 'evil of political defections. The number of instances of defection the country witnessed in that one year was much higher than the total number of defections in the past few Lok Sabhas. The sudden rise in the number of cases of floor-crossing deeply affected the political stability of the country and was a threat to the very foundation of democratic integrity. This led to the addition of Tenth Schedule in the constitution, under which, once a candidate was elected under the symbol of particular party was no longer allowed to leave that party and switch to another political party. Anti-Defection was introduced with an aim to ensure that the legislators do not switch their parties and destabilize the government. The recent political crises in Maharashtra introduced us to the term defection and the Anti-Defection Law in India. This research paper is an attempt to understand the Tenth Schedule of the constitution and the intent behind it.

### INTRODUCTION

The Constitution of India, initially, did not have any provision for defection or floor crossing and political parties in general. The need for an 'anti-defection' law was first raised in 1960s. "It was in 1962 when a large number of defections was witnessed where approximately 142 MPs and 1900 MLAs committed defection"<sup>1</sup>. This also led to creation of a very popular phrase- Aaya Ram, Gaya Ram which came into relevance when a Gaya Lal, a Member of Legislative Assembly of Haryana, switched parties thrice within the same day. The large-scale defections in 1960s and particularly 1967, forced the government to pass a resolution against the same and a committee was formed by the Union Government, under the chairmanship of Shri. Y.B Chavan in 1967 to tackle the rising number of cases of floor-crossing. This committee was composed of distinguished personalities like M.C. Setalvad, Jayaprakash Narayan, H.N. Kunzru, M. Kumaramangalam and Madhu Limaye

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<sup>1</sup> Yash Patil, *Analysis of the Anti-Defection Law in India*, published on 24<sup>th</sup> December 2020, <https://www.probono-india.in/research-paper-detail.php?id=711>

and the recommendations and suggestions of each of the members of this committee were diverse and catered to the needs of the parties of different ideologies. The Committee headed by Shri. Y.B Chavan its report in 1968 but this report was sent to a Joint Committee for further consideration by the then Prime Minister Indira Gandhi thereby making the first attempt to pass an 'Anti-Defection Bill', unsuccessful. The period between 1977 and 1980 was quite important in the history of Anti Defection Law in India and India Politics in general. The first ever Non-Congress Government of India led by Shri. Morarji Desai encountered a political crisis and eventually collapsed when around 76 of its Members of Parliament defected and switched their sides. An attempt was made in 1985, in the form of Constitution (Forty Eighth Amendment) Bill. "The Central Government led by Rajiv Gandhi, brought this bill with an aim to tackle the issue of defections, which was a danger to the political stability and integrity of the country. The bill was finally passed by the parliament in 1985 and came into effect on March 1, 1985. The Tenth Schedule, also popularly known as the 'Anti Defection Law' was added to the Constitution of India by the 52<sup>nd</sup> Constitutional Amendment, 1985. As stated, the objective behind this amendment was:

"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."<sup>2</sup> Defection may be defined as desertion of loyalty, Principle or duty, or of his leader or clause<sup>3</sup> While an 'Anti-Defection' law does exist in India, there hasn't been any substantial decrease in the number of cases of floor crossing. The report of the Committee headed by Shri Y.B Chavan defined Defection as "an elected member of a legislature said to have defected, if after being elected as a member of either house of parliament or legislative council or the legislative assembly has voluntarily renounced allegiance to or Association with such a political party provided that his action is not in consequence of a decision of the party concerned".

### **THE TENTH SCHEDULE (ANTI-DEFECTION LAW)**

The inclusion of the tenth schedule was to tackle the issue of floor-crossing or defection. It was aimed at penalizing the members of parliament and legislative assemblies who were elected under the symbol of a particular party but switch their parties after getting elected.

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<sup>2</sup>Jenna Narayan, *Defect-Shun, Understanding Schedule X to the Constitution of India*, INDIA LAW JOURNAL, published in 2007.

<sup>3</sup>Subhash, Kashyap C. *Anti-Defection Law and Parliamentary Privileges*, 3<sup>rd</sup> Edition.

- According to the law, a legislator can be disqualified if he switches his party after he is elected under the symbol of a particular party.
- The legislators who are disqualified on the grounds of defection to other party can contest elections under the symbol of any party to become a member of the parliament or any legislative assembly.
- Under this law, a group of legislators from a particular party can join or merge with another party. As per the original law of 1985, switching of parties by about one third legislators of a political party were considered a ‘merger’ and not ‘defection.’  
As per the 91<sup>st</sup> Amendment Act, 2003, now at least two third elected members of a particular party must give their assent to a ‘merger’ for it to be not be considered a ‘defection’.
- The power to make decision on matters of ‘defection’ is vested with the ‘chairman’ or ‘speaker’ of the house and would be considered under the scope of judicial review.

### **JURIDICAL GROUNDS OF DEFECTION**

The Tenth Schedule in the constitution talks about the Anti-Defection Law and is composed of around eight paragraphs.

Paragraph number two of the Tenth Schedule talks about the disqualification on the grounds of defection.

The paragraph talks about four grounds of disqualification on the grounds of defection-

- “If he has voluntarily given up his membership of such political party; or”<sup>4</sup>
- “If he votes or abstains from voting in such House contrary to any direction issued by the political party to which he belongs or by any person or authority authorized by it in this behalf.”<sup>5</sup>
- “An elected member of a House who has been elected as such otherwise than as a candidate set up by any political party shall be disqualified for being a member of the House if he joins any political party after such election.”<sup>6</sup>

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<sup>4</sup> Para 2.1(a), Tenth Schedule, The Constitution of India ,1950

<sup>5</sup> Para 2.1(b), Tenth Schedule, The Constitution of India, 1950

<sup>6</sup> Para 2.2, Tenth Schedule, The Constitution of India,1950

- “A nominated member of a House shall be disqualified for being a member of the House if he joins any political party after the expiry of six months from the date on which he takes his seat”<sup>7</sup>

## CHALLENGES

An important consequence of the anti-defection law is the hollowing out of our legislatures.<sup>8</sup> There have been several instances of defection and cases of collapse of a government due to defection. One of these cases happened in Tamil Nadu in the year 2017. Something similar also happened in Goa where more than 2/3<sup>rd</sup> of the elected representatives of the ruling party ‘merged’ with one of the opposition parties (BJP). Recently, Maharashtra was embroiled in a major political crisis where several elected members of the Shiva Sena decided to withdraw their support from the coalition government that was in power during that period. This move by the rebel MLAs brought the Anti-Defection law into question. But the switching of the sides by the MLAs was considered ‘merger’ and not ‘defection’ as they were more than 2/3<sup>rd</sup> of the party’s strength in assembly. The anti-defection law provides that individuals from the ideological groups who disobey the whip or vote against the party in a confidence motion will confront disqualification.<sup>9</sup> The Anti-Defection law has been quite ineffective in countering the issue of Defection which plays a huge role in politically destabilizing the country. Defection also is considered as a disrespect to the mandate of the citizens of the country. Anti-Defection Law in general has made accountability of a legislator towards the political party more important than their responsibility and accountability towards the citizens of the country. The Anti-Defection law gives the absolute power to the speaker or Chairperson of a parliament or a legislative assembly to decide on the matters of disqualifications and defection but fails to mention the time frame that must be kept in mind by the speaker. This sometimes causes unnecessary delay in the decision-making process and can also lead to a biased decision.

## CONCLUSION

The Anti-Defection law aims at penalizing the members of parliament and legislative assemblies who were elected under the symbol of a particular party but switch their parties after getting elected. It was introduced with an aim to ensure that the legislators do not switch

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<sup>7</sup> Para 2.3, Tenth Schedule, The Constitution of India, 1950

<sup>8</sup> M R Madhavan, *The Absurdity of the Anti-Defection Law*, published on 26<sup>th</sup> February 2021, <https://prsindia.org/articles-by-prs-team/the-absurdity-of-the-anti-defection-law>

<sup>9</sup> Paras Gupta, *Anti Defection Law-A blessing or Disaster*, published on 9 April 2021, [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3811796](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3811796)

their parties and destabilize the government. Anti-Defection law promotes political integrity and promotes loyalty among the legislators and politicians in general towards their party. Anti-Defection law tries to uphold the electoral mandate of the citizens of the country by punishing the members of parliament and legislative assemblies who were elected under the symbol of a particular party but switch their parties after getting elected. Even after the Tenth Schedule came into effect there have been several instances of defection and cases of collapse of a government due to defection. The law gives absolute power to the speaker or Chairman of the house to decide on the matters related to defection without setting any limits on the power and without any mention of times constraints. This can lead to an arbitrary and delayed decision. Other authorities like the Election Commission must also have a say in the matters related to Defection to ensure fairness and effectiveness in the decision-making process. An independent authority can also be set up to exclusively deal with matters of disqualifications and defections. While dealing with matters of defection, not just the numbers and statistics but the intent and idea behind a particular defection must also be taken into account

