



A CRITICAL ANALYSIS OF ANTI-DEFECTION LAWS IN INDIA

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Abstract

The Anti-defection statute has a great relevance in Indian democracy. Political defections in India persist despite the Anti-Defection Laws being put into place, which begs the question of how efficient these laws are at preserving political stability and discouraging opportunistic behavior on the part of elected officials. This study looks into the causes of political defections' continued occurrence in India and assesses how well the Anti-Defection Laws work to solve the problem. The law's historical context, its clauses, their effects on political parties, and how the legislative process operates will all be examined in this paper. In addition to looking at proposed changes to the current system, the report will also analyze the arguments and complaints made against the law.

Keywords- Anti-Defection, Democracy, Elected Representatives, Legislative process Political-Defection.

Introduction

Unexpected consequences result from the Anti-defection statute, which was passed with the intention of preventing defection and upholding party discipline. Its opponents claim that it weakens democracy by limiting the right to vote for representatives in government and making it more difficult to install stable administrations. Additionally, as political parties resort to threats and inducements, it has been accused of fostering a culture of insider dealing and horse-trading.

The paper conducts a critical analysis of the Indian Anti-defection Law, focusing on the impact on Indian democracy. The analysis covers the legal requirements, historical background, implications for political parties,

and the legislative process. Arguments for and against the statute are reviewed, along with possible modifications to the current system. The objective is to provide a comprehensive understanding of the Anti-defection law and its implications for India's democratic system.

Even after anti-defection laws were implemented, political defections in India persist, raising questions about how effective these rules are at maintaining political stability and discouraging opportunistic behavior by elected officials. This research aims to investigate the reasons behind the persistent incidence of political defections in India and evaluate the efficacy of anti-defection legislation in mitigating the issue.

The political, legal, and social factors that influence the application of the anti-defection statute are examined in research questions. The impact of the law on India's parliamentary democracy is thoroughly examined, along with the challenges, criticisms, and proposed solutions. The Anti-defection law was passed in India in an attempt to curb political defections, and it has been said to be successful in maintaining party discipline and lowering political instability. However, it is blamed for promoting horse-trading and limiting Members of Parliament's freedom of speech. The study's focus is on how political defections continue to occur in India even after anti-defection laws have been put in place. The objective is to look into the causes of these defections and assess how well the laws are keeping the political system stable.

The study methodology uses primary sources of statutes in conjunction with a doctrinal approach. The paper uses secondary sources like books, journals, and the internet, which is justified by the choice of doctrinal

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research. To gain a thorough understanding of India's anti-defection statute, an analytical approach is used.

Anti-Defection Law in India

The defections in India can be found in earlier days when the British were present. Shri Shyam Lai Nehru who was a member of the Central Legislature shifted parties and changed his allegiance from the Congress to the British side.³ Similarly, in 1937, Shri Hafiz Mohammed Ibrahim was elected to the Muslim League Ticket in Uttar Pradesh, but he switched parties and joined Congress. According to the Chavan Committee Report (1969), within the span of one year between March 1967 and February 1968, Indian politics took a turn for such a huge change that there were constant changes of party allegiances by the legislators.⁴ Further, between the First and Fourth General elections, the average rate of defections in a period of 12 months was 438 defections. Due to this, there was a need for change in the Indian political scenario and laws were to be made for defections so that one could not leak secrets of one party to the other. Thus, started the evolution of the Anti-Defection Law. As a result, there was a need for reform in the Indian political situation, and regulations for defections had to be enacted so that one could not leak secrets of one party to the other. The Anti-Defection Law therefore began to develop.

Evolution of Anti-Defection Law

The Anti-Defection Law was originally adopted in India in 1985 as the Constitution's 52nd Amendment. In order to prevent political instability and a lack of responsibility, it was intended to counteract the growing practice of political defections, in which elected officials would change political parties in order to further their own agendas. The rule forbade elected officials from switching parties while they were in office in an effort to maintain the stability of the administration.

It is against the Anti-Defection Law for legislators to change their party affiliation. This came to light in 1967 when Haryana politician Gay Lal switched allegiance to three separate political parties on the same day. As a result of political party members frequently switching allegiances, the phrase "Aaya Ram Gaya Ram" became well-known.⁵ It was unanimously decided to form a high-level committee composed of political party representatives and constitutional experts in response to a resolution passed on December 8, 1967, which stated that the government needed to address the issues of legislator defections and frequent floor crossings right away.

The Anti-Defection Law has undergone multiple revisions to make its provisions stronger and more understandable over time. The 91st Amendment was proposed in 2003 and included a clause that permitted members to be disqualified if they willingly left the party whose ticket they were elected on. The fact that divisions within a political party would not be regarded as mergers or splits was also made clear by this amendment.

In the 2006 case of *Kihoto Hollohan vs. Zachillhu*, the Indian Supreme Court upheld the legality of the Anti-Defection Law and ruled that it did not infringe upon the legislators' right to free speech and expression.⁶

After Parliament ratified the 52nd Amendment to the Constitution in 2018, the Anti-Defection Law underwent several amendments. The amendment extended the time frame for the Speaker of the House to make a decision on a disqualification petition from three to six months. It also suggested that instead of leaving the Speaker of the House alone to decide on disqualification pleas, an impartial panel should be established.

Attempts have been made throughout the Anti-Defection Law's creation to ensure the stability and account-

3. LOK SABHA DOCS, https://loksabhadocs.nic.in/Refinput/New_Reference_Notes/English/15072022_111659_1021205175.pdf (last visited on Apr. 15, 2022).
4. INDIAN CULTURE, <https://indianculture.gov.in/reports-proceedings/report-committee-defections> (last visited on Apr. 15, 2022).
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6. Aditya Mehrotra, *Case Analysis of Kihoto Hollohon V. Zachilhu And Others with Close Reference to Anti-Defection Law*, MANUPATRA ARTICLES (Accessed: April 16, 2023), <https://articles.manupatra.com/article-details/CASE-ANALYSIS-OF-KIHOTA-HOLLOHON-V-ZACHILHU-AND-OTHERS-WITH-CLOSE-REFERENCE-TO-ANTI-DEFLECTION-LAW>.

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ability of the government while simultaneously ensuring that the law upholds the rights of elected officials.

Constitutional Validity

The Anti-Defection law has faced multiple challenges on the grounds of constitutional violations. Nonetheless, the Supreme Court has maintained the law's constitutionality in a number of significant rulings.⁷

The law is criticized mostly for limiting the freedom of speech and expression of elected officials. The Supreme Court, however, ruled that because the law only forbids representatives from defying the party whip on important issues, it does not infringe upon this fundamental right. Representatives are free to voice their opinions and critique the policies of their party without violating the law.

The power of the Center to invalidate elected representatives is another reason why the law has been criticized on the grounds that it violates the federal character of the Constitution. Nevertheless, the Supreme Court ruled that the statute does not go against the federal structure of the Constitution because it solely deals with the disqualification of elected officials for defecting and leaves state legislatures' authority unaffected.

Amendments to the Anti-Defection Law:

The Anti-Defection law has been amended multiple times since it was first introduced in order to solve various issues and shortcomings in the initial law. The specifics of every law amendment are as follows:

The 52nd Amendment Act, 1985:

India's anti-defection statute was enacted by the 52nd Amendment Act. The Tenth Schedule, which specifies the procedures for disqualifying elected officials for defection, was added to the Constitution by the statute amending it.⁸

The 61st Amendment Act, 1988:

By amending the Tenth Schedule, the 61st Amendment Act made it possible for political parties to merge without being disqualified⁹. The purpose of this amendment was to stop political parties from abusing the law to remove elected officials who wanted to join another party from office.

The 65th Amendment Act, 1991:

Tenth Schedule amendments made possible by the 65th Amendment Act allowed for a separation of political parties without resultant disqualification.¹⁰ This amendment was introduced to stop political parties from abusing the legislation to remove elected officials who wanted to leave their party from office.

The 91st Amendment Act, 2003:

Article 191 of the Constitution was changed by the 91st Amendment Act to provide that elected officials will be removed from office if they leave their party or disobey party rules.¹¹ The purpose of this amendment is to stop elected officials from leaving their party in order to avoid being disqualified by the Anti-Defection law.

Exceptions to the Anti-Defection Law:

Independent Members:

The Anti-Defection law does not apply to independent members of the legislature who are not associated with any political party. Such members are free to vote in the house as per their conscience and are not bound by any party whip.¹²

Pre-poll Alliances:

The Anti-Defection law does not apply to elected representatives who switch parties to join a pre-poll alliance before the elections. Such members are exempt from disqualification as long as the alliance continues to exist.

7. PRS INDIA, <https://prsindia.org/theprsblog/the-anti-defection-law-explained> (last visited on Apr. 15, 2022).

8. A Gaur, ANTI DEFECTION LAW IN INDIA, AMENDMENT AND SCHEDULE, ADDA24/7 SCHOOL, (accessed April 21, 2023). <https://www.adda247.com/school/anti-defection-law/>.

9. *Id.*

10. *Id.*

11. *Id.*

12. *Supra* note 5.

Merger of Political Parties:

The Anti-Defection Law empowers political parties to come together without being disqualified. The elected representatives of the original parties won't be disqualified if two-thirds or more of the original party's members switch over to the new party in the event that two or more political parties unite to form a new party.

Split in Political Parties:

The Anti-Defection law allows for a split in political parties without attracting disqualification. If a political party splits into two or more factions, the elected representatives can choose to join any of the factions without facing disqualification. However, at least one-third of the members of the original party must form a separate group for this exception to apply.

Conscience Vote:

The Anti-Defection law allows for a conscience vote on certain issues of national importance. Elected representatives can vote against the party whip if the issue involves the election of the President, Vice-President, or a motion of no-confidence against the government.

Factors Influencing the Application of Anti-Defection Law

The Indian Constitution's 52nd Amendment Act of 1985 established the country's anti-defection statute, which forbade elected officials from switching political parties or affiliations for their benefit. The ultimate objective of the law is to preserve the integrity of the democratic process and to guarantee the stability of the administration. It is an essential clause that governs state legislatures' or parliamentarians' defection. The factors that influence the application of the Anti-defection law in India are discussed below.

Political factors

Hung Assembly: The possibility of a hung assembly—one in which no party has a clear majority—may have an impact on how the anti-defection Act is applied. In such a situation, political parties would try to persuade legislators from opposing parties to join them in forming a majority administration. The anti-defection law aims to prevent instances of horse-trading, defection, and political instability because these things can result.

Political ambitions: The political ambitions of individual lawmakers can influence the application of anti-defection law. To achieve their political goals or to increase their standing and influence inside their party, legislators may change political parties. Such party turnover can seriously impair democracy's ability to function and the stability of the government.

Legal factors

Supreme Court's interpretation: The way the Supreme Court of India interprets the Anti-Defection Act could have an effect on how it is applied. Numerous noteworthy court rulings have interpreted the anti-defection statute, defining the law's scope and applicability. For instance, the Supreme Court ruled in the case of *Kihoto Hollohan v. Zachillhu* that the decision of the legislature's presiding officer regarding defection is subject to judicial review.¹³

Presiding officer's decision: The application of the Anti-defection Law may also be impacted by the presiding officer of the legislature's judgment regarding defection. The presiding officer's decision is frequently challenged in court, and the way the court interprets the legislation can greatly affect how it is applied.

Social factors

Public opinion: The enforcement of anti-defection laws can be influenced by public opinion. There can be a public uproar and serious repercussions for the MPs if it is believed by the public that their defecting is motivated by personal benefit rather than the good of the people.

Party discipline: Party discipline may also have an impact on how the Anti-defection law is applied. Politicians may be less inclined to leave their parties if they strictly maintain party discipline. Political instability could result from MPs switching parties more frequently if the parties do not uphold party discipline.

In conclusion, a number of political, legal, and societal issues affect how anti-defection laws are applied in India. The way a law is applied can be greatly influenced by the Supreme Court's interpretation of the legislation, the legislature's presiding officer's judgment, public opinion, and party discipline. The integrity of

13. *Supra note 4.*

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the democratic process and the stability of the administration are greatly aided by the Anti-defection statute.

Impact of Anti-Defection Law on the Functioning of Parliamentary Democracy in India

The Anti-Defection Law, implemented in 1985, forbids members of Parliament (MPs) and Legislative Assemblies (MLAs) from defecting from their party. It is against the law for elected officials to support a vote of no confidence in the government or switch parties without first obtaining consent from the party. The rule was enacted to stop lawmakers from increasingly switching parties to better serve their personal interests rather than the interests of the people they were elected to represent.

The Anti-Defection Law has had a major effect on how India's parliamentary system operates. Aside from the fact that elected officials are less likely to switch parties, which lowers the likelihood of governments collapsing, the rule has served to preserve stability in the government. However, because they are obligated to toe the party line, MPs and MLAs have become less influential as independent voices as a result of the statute.

The Anti-Defection Law is contained in the Tenth Schedule of the Indian Constitution. As per the legislation, a member of the house loses their eligibility to serve if they willingly abandon their affiliation with a political party or do not vote in favor of the party whip during a vote of confidence or a motion of no confidence. A political party member is legally disqualified from serving in the House if he or she joins another political party. The law additionally stipulates that the presiding officer of the house must determine whether to remove a member only after giving them an opportunity to present their case.

The Anti-Defection Law has faced numerous challenges before the Indian Supreme Court. Among the most significant cases was the Kihoto Hollohan case from 1992. The Supreme Court ruled in this case that the disqualification judgment made by the presiding officer may be subject to judicial review while maintaining the legality of the Anti-Defection Law. The court went on to say that before a decision is taken to keep a member from

participating, they should be given the opportunity to be heard.

In a different decision, the Supreme Court decided in the 1996 G. Vishwanathan case that the Anti-Defection Law did not apply to independents and only covered party members.¹⁴ Moreover, the court determined that since abstentions were not the same as voting against the party whip, they were not covered by the Act.

The effectiveness of India's parliamentary democracy has been significantly impacted by the Anti-Defection Law. It has diminished the importance of MPs and MLAs as independent voices, even though it has helped to stabilize the administration. The Supreme Court upheld the Act's legality in the face of several legal challenges and released directions for its execution. Taking everything into account, the Anti-Defection Law continues to be a crucial instrument for maintaining party discipline and discouraging elected officials from switching parties against the will of their constituents.

Challenges and Criticisms of The Anti-Defection Law in India

The issue of defection in the nation's political system led to the passage of the 52nd Amendment to the Indian Constitution in 1985, bringing in anti-defection legislation. The purpose of the rule was to stop public employees from suddenly switching political parties or allegiances. But the Act has encountered a number of difficulties and objections throughout time.

Article 19(1)(a) of the Indian Constitution guarantees the right to freedom of speech and expression, which is allegedly violated by the anti-defection act. By mandating that MPs and MLAs vote in line with the party whips issued by their respective parties, the act restricts their freedom of speech and conscience.

Violation of freedom of speech and expression: Article 19(1)(a) of the Indian Constitution guarantees the fundamental right to freedom of speech and expression, which is allegedly violated by the anti-defection act.

Lack of transparency and accountability: The absence of transparency and accountability in the anti-defection act has been a point of criticism. Legal dismissal of an MP or MLA is decided by the ruling party's member, the presiding officer of the House. This could lead to

14. G. Viswanathan vs The Hon'ble Speaker Tamil, 1996 AIR 1060.

unfair and biased rulings that undermine the legal system's credibility.

Misuse of the law: In order to pursue their own objectives, political parties have misused the anti-defection rule to influence the defection of MPs and MLAs. The provision has been used to lure MPs and MLAs away from other parties by offering them ministerial jobs, money, and other benefits.

Ambiguity in the law: It is said that the anti-defection law is vague and subject to different interpretations. Because the legislation is ambiguous about what constitutes a good basis to switch political affiliations, exploitation, and misuse are possible.

Proposed Alternatives to The Anti-Defection Law

Secret ballot system: The adoption of a secret ballot system for voting in State and Parliament legislatures has been suggested by certain experts. This would remove any fear of retaliation or retribution from their political parties, enabling MPs and MLAs to vote in accordance with their conscience.

Code of conduct: Adopting a code of conduct for MLAs and MPs is an additional option to the anti-defection statute. By doing this, it would be possible to set moral guidelines for elected officials and guarantee that their actions serve their people's interests more than those of their political parties.

Reform of the law: Many experts think that in order to address the issues and complaints that the anti-defection law has encountered, reforms must be made to it. The law might be changed to make the decision-making process more accountable and transparent and to make it clearer what qualifies as a legitimate basis to switch political allegiances.

Landmark Judgments related to the anti-defection law

Kihoto Hollohan v. Zachillhu and Others (1992): In this case, the Indian anti-defection statute faced its first major legal challenge. The Supreme Court, which upheld the legality of the statute, stated that judicial

review was available for the decision to remove an MP or MLA from office in accordance with the statute.

Ravi S. Naik v. Union of India (1994): The lawsuit pertained to the matter of Ravi S. Naik, the Chief Minister of Goa, defecting.¹⁵ The Supreme Court ruled that a state's governor could not fire a chief minister without cause on the grounds that the minister had defected and that the decision may be challenged in court.

G. Vishwanathan v. Speaker, Tamil Nadu Legislative Assembly (1996): In this case, the Supreme Court ruled that a writ petition to the High Court may be used to contest the decision to remove an MP or MLA from office in line with the anti-defection law.¹⁶

Shri Yengkhom Surchandra Singh vs The Hon'ble Speaker (2020): The Speaker's decision to disqualify nine MLAs in line with the anti-defection law was upheld by the Supreme Court of India in a landmark decision in the Manipur Legislative Assembly Case in July 2020.¹⁷ The Speaker may evaluate disqualification petitions and make the decision to disqualify is subject to judicial review, the court made clear.

Political Crisis in Karnataka (2019): In July 2019, several MLAs resigned from the Karnataka Legislative Assembly, putting the government's survival in jeopardy and causing a political crisis. The Speaker disqualified the MLAs based on the anti-defection law, which was challenged in the Supreme Court. The Speaker's order banning the MLAs from seeking office until the end of their term was overturned by the court, however the MLAs' disqualification in November 2019 was upheld.

Rajendra Singh Rana vs. Swami Prasad Maurya (2007): In this case, the Supreme Court clarified that the disqualification of a member under the anti-defection law can be challenged only after the Speaker/Chairman has taken a decision on the disqualification petition.¹⁸

Meghalaya Speaker's Decision (2019): In January 2019, the Meghalaya Speaker disqualified five MLAs under the anti-defection law. The disqualification was affirmed by the High Court notwithstanding the MLAs' challenges to the ruling. The matter was brought before

15. *Ravi S. Naik v. Union of India*, 1994 AIR 1558.

16. *Supra* note 12.

17. *Shri Yengkhom Surchandra Singh vs The Hon'ble Speaker*, WP(C) No. 316 of 2020.

18. *Rajendra Singh Rana And Ors vs Swami Prasad Maurya And Ors*, Appeal (civil) 765 of 2007.

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the Supreme Court, which declined to overturn the Speaker's ruling in July 2019.

In conclusion, there have been many issues and complaints raised against India's anti-defection statute over time. However, other experts have suggested substitutes like the use of a secret ballot and the creation of a code of behavior.

Conclusion and Suggestions

India's anti-defection law was first passed in 1985 in reaction to political defections that were leading to instability and an absence of accountability in the government. Over time, the law has undergone a number of revisions to enhance and clarify its provisions. The Supreme Court has upheld the validity of the statute in a number of major decisions, despite criticism that the law infringes several fundamental rights. The 91st Amendment, passed in 2003, made it unlawful for elected officials to defect from their party or disregard party whip policies, among other modifications to the law. The law does not apply to legislative independents who are not members of any political party. Apart from safeguarding the rights of elected officials, the Anti-Defection Law endeavors to uphold the stability and accountability of the government.

India's 1985 introduction of the Anti-Defection Law has drawn a number of criticisms. Below is a discussion of a few of the criticisms:

- i. Violation of Democratic Principles:** Since it limits elected officials' ability to exercise their right to vote in accordance with their conscience, the bill has come under fire for going against democratic ideals. Additionally, this can result in a reduction in the elected officials' accountability to their voters.
- ii. Reduction in Legislative Debate:** Due to their obligation to toe the party line, MPs and MLAs have become less influential as independent voices as a result of the law. Because members are unable to freely voice their opinions, this narrows the scope of legislative discussion and idea sharing.
- iii. Misuse of the Law:** Political parties have exploited the law improperly to quell internal opposition. Party leaders frequently give their members the whip, and disqualification results

from disobedience. Parties may become authoritarian as a result of this, which gives party leaders undue authority.

- iv. Delay in Disqualification:** The Anti-Defection Law's disqualification procedure can be drawn out, and it might take several years to reach a conclusion. This delay may cause political unrest and have an impact on how the government works.
- v. Need for a Constitutional Amendment:** Changes to the Anti-Defection Law, which is listed in the Tenth Schedule of the Indian Constitution, require a two-thirds majority in Parliament. This can be difficult to do since political parties frequently oppose revisions that could be harmful to their interests.

In parliamentary democracies, anti-defection laws have been crucial in preventing political defections and preserving political stability. These legal measures have aided in maintaining political party integrity and guaranteeing elected officials follow party rules. Anti-defection legislation, however, have raised concerns due to possible abuse and exploitation, which could limit elected officials' freedom of speech and criticism.

The research paper's conclusions led to the following recommendations for strengthening anti-defection legislation:

- i. Strengthening the provisions related to disqualification criteria:** Reducing arbitrary disqualifications can be aided by having precise and unambiguous standards for disqualification, such as voting against the party's stated policies, voluntarily leaving the party, and breaking the party whip in a vote of confidence.
- ii. Ensuring impartial and independent adjudication:** There has been debate regarding the Speaker's or Presiding Officer's decision-making authority in defection situations. Establishing an impartial and independent adjudicatory body or mechanism, separate from the political executive, can ensure fair and unbiased decisions on defection cases.
- iii. Promoting intra-party democracy and transparency:** Internal party democracy, including the election of party leaders and candidates, can reduce the incentives for defections. Transpar-

ent and participatory decision-making processes within political parties can also enhance the accountability of elected representatives to their party and constituents.

- iv. **Educating and sensitizing elected representatives and voters:** Creating awareness among elected representatives and voters about the implications of defections and the importance of upholding democratic values can contribute to a healthy political culture that discourages defections.
- v. **Reviewing the anti-defection laws periodically:** Regular evaluation of anti-defection legislation, grounded in stakeholder feedback and experiences from various jurisdictions, can facilitate the identification and correction of any inadequacies or unexpected outcomes.

The Anti-Defection Law has drawn criticism for a variety of reasons, but it has also helped to keep the administration stable. The provision has drawn criticism for undermining democratic ideals, narrowing the focus of parliamentary discussion, being abused by political parties, causing delays in the disqualification process, and necessitating a constitutional amendment to change.

Parliamentary democracies cannot function properly without anti-defection legislation, but their execution and design must carefully balance the need for party discipline with the democratic ideals of free speech and dissent. The suggestions offered in this research study can serve as a starting point for additional debates and

modifications to ensure the effectiveness and equity of anti-defection laws in the political arena.

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