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Anti-defection laws in India: A critical analysis

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Abstract

The Anti-Defection Law as contained in Schedule X of the Constitution of India holds significant importance in the Indian democracy. Despite its implementation, political defections continue to occur, raising concerns about its effectiveness in maintaining political stability and curbing opportunistic conduct among elected representatives. This paper explores the reasons for the persistence of defections and evaluates the extent to which the Anti-Defection Law addresses these challenges. It delves into the origin of the Anti - Defection Law, key provisions, its impact on political parties, and the functioning of the legislative process. Furthermore, the study will consider suggested reforms and critically examine the criticisms and debates surrounding the law.

This paper presents a critical examination of India's Anti-Defection Law, with a focus on its influence on democratic governance. It explores the statute's legal framework, historical evolution, impact on political parties, and its role in the legislative process. The study also evaluates both the support and opposition surrounding the law, while considering potential reforms to improve its effectiveness.

The study investigates the political, legal, and societal dimensions that shape the enforcement of the Anti-Defection Law. It thoroughly analyzes its effects on parliamentary democracy, the criticisms it faces, and the proposed solutions to enhance its functionality. While the law has been credited with promoting party discipline and reducing instability, it is also criticized for enabling horse-trading and curtailing the freedom of speech of Members of Parliament. The paper employs a doctrinal research methodology, the study draws on primary legal texts and supplements them with secondary sources such as academic literature and online materials. An analytical lens is applied to gain a comprehensive understanding of the implications of Anti-Defection Law for democratic framework in India.

Keywords: Defection, democracy, elected representatives, opposition, political defections, parliamentary democracy, instability, horse - trading

Introduction

Election is a vital component in a democratic system of governance, where emergence of political parties with different and diverse ideologies is but natural. Free and fair competition amongst political parties at the hustings for wresting power to govern the country is indicative of a vibrant democracy. Political parties give concrete shape to divergent ideologies and are essential for the success of any democracy.

Politics is a means to gain power. It has great attraction for most of the people who aspire to seek political authority, access through the corridors of political power has always been an experience full of thrills. But it is the most hazardous of all professions, as, it involves great uncertainty and insecurity, still, it is preferred by many as the noblest career. Persons enter into the profession of politics for a number of considerations, the prominent among them is social service. Persons in such profession do form associations, in the name of political parties, carry on political activities and try to get into or to retain power. Capturing of power is the ultimate goal of humankind, but in a democratic society, the people or the electorate is the ultimate source of political power.

In India, Parliament Political parties represent such institutions through which people participate in legislative processes by electing parties' nominees into legislative bodies. They also mobilize people into political activities. Through such activities parties raise concerns of people. They are one of the essential features of a democratic political system.

One of the earliest documented instances of political defections in India involves Shri Shyam Lal Nehru, who was a member of the Central Legislature during British rule. He notably defected from the Indian National Congress and aligned himself with the British authorities, a move that drew sharp criticism from leaders like Pandit Motilal Nehru, who reportedly expelled him for this shift in allegiance. This episode is often cited as

the first recorded case of political defection in India, and it laid the groundwork for understanding how shifting loyalties could destabilize political movements.

Similarly, in 1937, Shri Hafiz Mohammed Ibrahim, elected on a Muslim League ticket in Uttar Pradesh, later joined the Congress party ^[1]. The Chavan Committee Report of 1969, ^[2] highlighted a dramatic surge in party-switching between March 1967 and February 1968, marking a period of significant political instability. During the time between the First and Fourth General Elections, the average number of defections per year reached 438.

This rampant shifting of allegiances underscored the urgent need for legislative reform to safeguard party integrity and prevent the misuse of insider information. Consequently, the groundwork for the Anti-Defection Law was laid, aiming to regulate political conduct and bring greater stability to the Indian political landscape.

Historical Development of Anti-Defection Law in India

The Anti-Defection Law was formally introduced in 1985 through the 52nd Amendment to the Indian Constitution in the form of Schedule X to the Indian Constitution ^[3]. Its primary aim is to curb the rising trend of political defections, where elected representatives would switch parties to serve personal interests, thereby undermining administrative stability and accountability. The law prohibits legislators from changing their party affiliation during their tenure, seeking to preserve the integrity of the political system.

Despite the implementation of Anti-Defection Law, political defections remain prevalent in India, raising concerns about its ability to ensure political stability and deter opportunistic behaviour among elected officials. This research seeks to uncover the factors behind this ongoing trend and assess how well the law addresses these challenges.

The Anti-Defection Law, originally enacted to prevent political defections and reinforce party discipline, has led to several unintended outcomes. Critics argue that it undermines democratic principles by restricting legislators' voting rights and complicating the formation of stable governments. Moreover, this law has been accused of encouraging unethical practices such as coercion, inducements, and political bargaining.

The urgency for such legislation to curb the evil of political defections became evident in the year 1967 when Haryana politician and an independent candidate Gaya Lal, infamously changed his party allegiance three times in a single day, within hours. This incident of changing of allegiance to a political party led to the popularized of the phrase "Aaya Ram Gaya Ram," ^[4] symbolizing the rampant

party-hopping culture. In response, a resolution passed on December 8, 1967, led to the formation of a high-level committee comprising political leaders and constitutional experts to address the issue of frequent defections and floor-crossing.

Over the years, the law has been revised to enhance its clarity and effectiveness. The 91st Amendment Act ^[5] in 2003, introducing stricter provisions, including disqualification for legislators who voluntarily resigned from the party under whose banner they were elected. It also clarified that internal splits within a party would not be considered valid mergers.

In the landmark decision of 2006, in the case of *Kihoto Hollohan vs. Zachillhu and others* ^[6], the Supreme Court upheld the constitutionality of the Anti-Defection Law, affirming that it did not violate the freedom of speech and expression of representatives of the people.

The 52nd Amendment Act, ^[7] prescribing Anti-Defection law has underwent several changes. The period for the Speaker to decide on disqualification petitions had been extended from three to six months. It was also proposed to establish an independent panel to handle such decisions, rather than leaving the matter solely to the Speaker.

Throughout its evolution, the Anti-Defection Law has aimed to strike a balance, between ensuring governmental stability and safeguarding the democratic rights of elected representatives.

Anti-Defection Law and its Validity

The Anti-Defection Law has been subject to several constitutional challenges over the years. Despite these allegations, the Supreme Court has consistently upheld its legitimacy through various judgments.

One of the primary criticisms is that the law restricts the freedom of speech and expression of elected representatives. However, the Court clarified that the law only prohibits members from voting against the party whip on crucial matters. It does not prevent them from expressing their views or criticizing their party's policies, thereby preserving their fundamental rights.

Another point of contention is the perceived overreach of central authority, with critics arguing that the law undermines the federal structure by allowing the Centre to disqualify elected members. The Supreme Court, however, affirmed that the law does not violate federal principles, as it pertains solely to the disqualification of defecting legislators and does not interfere with the powers of state legislatures.

¹ K.P.S. Mahalwar, "Disqualification on the Basis of Defection A Need for Strengthening Anti-Defection Law", NALSAR Law Review

² Deepak Pandey, Congress-Muslim League Relations 1937-39: The Parting of the Ways, Modern Asian Studies, Vol. 12, No. 4 (1978), pp. 629-654. Available via JSTOR

² <https://indianculture.gov.in/reports-proceedings/reports-committee-defections> (last visited at 10:40 PM on Sep. 22, 2025)

³ Supra 4

⁴ It was actually former Haryana CM, Rao Birender Singh who coined this term 57 years ago in 1967 when a Congress dissident Gaya Lal had contested and won as an Independent candidate from Hasanpur constituency.

It was at that point Gaya Lal first joined the United Front but after

a while, his heart changed, and he joined Congress. Again, within a few hours, he re-joined the United Front. With this, he switched his loyalty thrice in one day. At this, the then Chief Minister, Rao Birender Singh said, "Jo Gaya Ram The, Wo Aaya Ram hao Gaye Hain" (The person who had left earlier has come back) Read more at:

http://timesofindia.indiatimes.com/articleshow/114059312.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst (last visited at 07:25 AM on Sep. 23, 2025)

⁵ The Constitution (Ninety - First Amendment) Act, 2003 (w.e.f. 7-7-2004) (amending Art. 75, 164 and inserting Art 361B)

⁶ *Kihoto Hollohan vs. Zachillhu and others* [1992 SCR (1) 686], [1992 SCC Supl. (2) 651]

⁷ The Constitution (Fifty-second Amendment) Act, 1985, s. 6 (w.e.f. 1-3-1985).

Anti-Defection Law and Amendments

Since its inception, the Anti-Defection Law has undergone several changes through constitutional amendments to address its initial limitations and improve its effectiveness. An overview of the key constitutional changes is as follows: 52nd Amendment Act, 1985^[8] this amendment introduced the provisions regulating Anti-Defection in the Indian Constitution by adding the Tenth Schedule. It laid out the framework for disqualifying legislators who defect from their political parties.

91st Amendment Act, 2003^[9] the object of this amendment is to prevent the formation of excessively large Councils of Ministers and to curb defection. It establishes a ceiling on the total number of ministers, including the Prime Minister or Chief Minister, limiting them to 15% of the Lok Sabha's or State Legislative Assembly's total strength. This amendment also strengthened anti-defection laws by disqualifying members who defect from holding remunerative posts and making it more difficult for a party to merge with another. This amendment made insertion in Art. 75 and modified Article 164 and 361B of the Constitution.

Exemption from Anti-Defection Law

While the Anti-Defection Law aims to prevent political instability caused by party-switching, it includes specific exemptions under exceptions that allow flexibility under certain circumstances:

- **Independent Legislators:** Members of the legislature who are elected as independents and are not affiliated with any political party are exempt from the law. They are free to vote based on their personal judgment and are not obligated to follow any party directives.
- **Pre-Election Alliances:** Legislators who change their party affiliation to join a pre-poll alliance before elections are not subject to disqualification, provided the alliance remains intact.
- **Party Mergers:** When two or more political parties merge to form a new entity, members of the original parties are not disqualified if at least two-thirds of them agree to the merger and join the newly formed party.
- **Party Splits:** The law permits elected representatives to align with a faction resulting from a split in their original party, without facing disqualification. This is valid only if at least one-third of the party's members form the breakaway group.
- **Conscience Voting:** On matters of national significance such as the election of the President or Vice-President, or a vote of no-confidence legislators are allowed to vote independently, even if it goes against the party whip.

Hindrances in the enforcement of the Anti-Defection Law in India: The Anti-Defection Law i.e. Schedule X of the Indian Constitution, introduced through the 52nd Amendment Act to the Indian Constitution in 1985, was designed to prevent elected representatives from switching political allegiances for personal gains leading to the shakig of the trust of the electorates. Its primary goal is to uphold the democratic process and ensure administrative stability of

the government. Several political, legal, and social hindrances affect the implementation of this law across India's legislative bodies.

Social Hindrances

There are certain social factors which act as obstacles for the proper implementation of the anti- defection Law in India. Some of the major factors are as follows:

- **Sentiments of the voters** - Public reaction can impact the enforcement of the law. If voters perceive defections as self-serving rather than in the public interest, it can lead to backlash and pressure on political institutions to act. It is the voters, whose trust and confidence is shaken by defections, can opt not to elect the defectors.
- **Discipline within the party** Strong internal discipline within political parties can deter members from defecting. Conversely, weak party cohesion leads to frequent shifts in allegiance, contributing to political instability.

Political Hindrances

There are certain political factors which act as obstacles for the proper implementation of the anti- defection Law in India. Some of the major factors are as follows:

- **Non-enjoyment of majority:** When none of the political party secures a clear majority in the House, the risk of defections increases as parties attempt to lure legislators from rival factions to form a government. The Anti-Defection Law seeks to curb such practices, including horse-trading and opportunistic alliances, which can destabilize governance.
- **Political Aspirations of the Representatives:** Elected Representatives may switch parties to advance their careers or gain influence within a different political setup. Such moves can disrupt democratic functioning and threaten the stability of elected governments. These moves of the elected representatives also produce threat to the political parties.
- **Political Aspirations of the Political Parties:** Some or the other evil motives of the political parties lead to the defections. In India, we are having the government at the Centre and in the States, many a times, there is rift to occupy power in majority of States by the Centre which lead to the defections. Therefore, the political parties in power / majority are not inclined to implement the law prohibiting the defections.

Legal Hindrances

- **Judicial Interpretation:** The Supreme Court's rulings play a crucial role in shaping the application of the law. In *Kihoto Hollohan v. Zachillhu and others*^[10], the Court held that decisions made by the presiding officer regarding defections are subject to judicial review, thereby reinforcing legal oversight, but this legal oversight is so delayed that the term of the House expires, thereby, leading to the dilution of the object of the law.
- **Role of the Presiding Officer:** The Speaker or Chairperson of the legislature has the authority to decide on disqualification cases. The Speaker or the

⁸ Supra 4

⁹ The Constitution (Ninety - First Amendment) Act, 2003 (w.e.f. 2-01-2003)

¹⁰ Supra 11

Chairperson, being belonging to the majority party are not interested in deciding the matters relating to the defections, as the defectors have move to their parties, thereby providing majority in the House. These decisions are often contested in court, and their interpretation significantly influence how the law is enforced.

The effectiveness of the Anti-Defection Law in India is shaped by a complex interplay of societal expectations, political dynamics, and judicial interpretations. Its role in safeguarding democratic integrity and promoting stable governance remains vital, but its application continues to evolve in response to these influencing factors.

Parliamentary Democracy in India and the Anti-Defection Law: Introduced in 1985, the Anti-Defection Law prohibits Members of Parliament (MPs) and Members of Legislative Assemblies (MLAs) from changing their political allegiance or supporting a vote of no confidence against their own party without prior approval of the party. The law was designed to curb the growing trend of legislators switching sides for personal gain, rather than serving the interests of their constituents.

This legislation has significantly influenced the functioning of India's parliamentary system. By discouraging party-hopping, it has contributed to greater governmental stability and reduced the risk of frequent collapses. However, it has also led to a decline in the autonomy of elected representatives, who are now compelled to follow party directives, limiting their role as independent voices in the legislature.

The Anti-Defection Law codified in the Tenth Schedule of the Constitution, mandates disqualification for any member who voluntarily gives up their party membership or fails to vote in line with the party whip during crucial votes such as confidence or no-confidence motions. It also requires that the presiding officer of the house provide the accused member an opportunity to present their case before making a disqualification decision.

The law has been tested in several landmark Supreme Court cases. In the year 1992, *Kihoto Hollohan v. Zachillhu and others* ^[11] case, the Court upheld the law's constitutionality while affirming that the presiding officer's decisions are subject to judicial review. It emphasized the importance of giving legislators a fair hearing before disqualification.

In another notable ruling in the year 1996 in *G. Vishwanathan vs speaker, Tamil Nadu Legislative Assembly* ^[12], the Court clarified that the law applies only to members affiliated with political parties and not to independents. It also ruled that abstaining from voting does not equate to defying the party whip and therefore does not warrant disqualification under the Act.

Overall, while the Anti-Defection Law has played a vital role in maintaining party discipline and political stability, it has also curtailed the individual agency of legislators. Despite facing constitutional scrutiny, the law remains a key mechanism for regulating political conduct and preserving the integrity of India's Democratic Institutions.

Challenges and Criticisms of the Anti-Defection Law in India: The enactment of the Anti-Defection Law through the 52nd Amendment Act ^[13] to the Constitution in 1985 was aimed at curbing the frequent and opportunistic switching of political loyalties by elected representatives. However, over time, the law has faced several criticisms and practical challenges.

Freedom of Expression of the Representatives

Critics argue that the law infringes upon Article 19 (1) (a) of the Constitution ^[14], which guarantees the right to free speech and expression to the citizens. By compelling Members of Parliament (M.Ps) and Members of Legislative Assemblies (M.L.As) to vote strictly according to party directives, the law is seen as limiting their personal judgment and conscience. Moreover, it also hampers the trust and confidence of the voters, who have elected the representative to place their voice in the House.

Concerns regarding Transparency and Accountability

The decision to disqualify a legislator lies with the presiding officer of the House, who is often affiliated with the ruling party. This has raised concerns about impartiality and fairness, potentially undermining the credibility of the legal process regarding the implementation of the provisions of the constitution.

Political Misuse: The law has occasionally been exploited by political parties to manipulate defections for their own gain and to occupy and maintain majority in the House. Legislators have reportedly been enticed with positions of power, financial incentives, or other benefits to switch sides, defeating the law's original intent.

Legal Ambiguity: The provisions of the Anti-Defection Law are often criticized for being vague and open to varied interpretations. The lack of clarity in provisions regarding what constitutes a legitimate reason for changing party affiliation has led to inconsistent enforcement and potential misuse.

Key Judicial Decisions on the Anti-Defection Law in India: Over the years, several significant court rulings have shaped the interpretation and application of India's Anti-Defection Law. These judgments have clarified legal procedures, reinforced constitutional principles, and addressed concerns about fairness and accountability.

Kihoto Hollohan v. Zachillhu and Others (1992) ^[15]: This was the first major legal test of the Anti-Defection Law. The Supreme Court upheld its constitutionality and affirmed that decisions made under the law such as disqualifying a legislator are subject to judicial review.

Ravi S. Naik and Sanjay Bandekar v. Union of India and others (1994) ^[16]: The case involved the alleged defection of Goa's Chief Minister. The Supreme Court clarified that

¹¹ Supra 11

¹² *G. Vishwanathan vs speaker, Tamil Nadu Legislative Assembly* [1996 AIR 1060], [1996 SCC (2) 353]

¹³ Supra 4

¹⁴ The Constitution of India, Article 19(1)(a) to freedom of Speech and Expression

¹⁵ Supra 11

¹⁶ *Ravi S. Naik and Sanjay Bandekar v. Union of India and others* [AIR 1994 SC1558], [1994 SCR (1) 754]

“voluntarily giving up his membership” does not imply resignation. Even in the absence of a formal resignation from membership, a member’s actions can be interpreted as indicating that he has willingly resigned from the political party to which he belongs.

G. Vishwanathan v. Speaker, Tamil Nadu Legislative Assembly (1996) ^[17]: 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 after complying with the requirements of Article 99 or, as the case may be, Article 188.

Rajendra Singh Rana v. Swami Prasad Maurya (2007) ^[18]: The Court held that the disqualification would be said to have taken place the moment the members commit the act of defection. They further held that the Speaker could not initiate disqualification proceedings *suo moto*, and would have to be approached with a petition first.

Balchandra L. Jarkiholi Vs. B.S. Yeddyurappa (2010) ^[19]: The court held that any independent member of Legislative Assembly who joins the Ministry in a coalition government without joining the main party will retain their independence. So, becoming a member of the Council of Ministers does not preclude one’s candidature.

Karnataka Political Crisis (2019) ^[20]: A wave of resignations by MLAs triggered a political crisis. The Speaker disqualified the members under the Anti-Defection Law and barred them from contesting elections during their term. The Supreme Court upheld the disqualifications.

Shri Yengkhom Surchandra Singh v. The Hon’ble Speaker (2020) ^[21]: In this Manipur Legislative Assembly case, the Supreme Court upheld the Speaker’s decision to disqualify nine MLAs. It reiterated that while the Speaker has the authority to decide on disqualification petitions, such decisions remain open to judicial scrutiny.

Meghalaya Speaker’s Decision (2019): Five MLAs were disqualified under the Anti-Defection Law. Despite their legal challenge, the High Court upheld the Speaker’s decision, and the Supreme Court later refused to overturn it. While the Anti-Defection Law has faced numerous legal challenges, but the judiciary has played a crucial role in refining its application. At the same time, experts continue to propose reforms such as secret ballots and ethical codes to strengthen democratic accountability.

The Anti-Defection Law in India addresses the growing issue of political defections that are destabilizing governments and eroding accountability. Over the years, the law has been amended through various amendments, including the significant one of the 2003 i.e. the 91st

Amendment Act ^[22], which prohibited elected representatives from defying party whips or abandoning their party affiliations. While the law excludes independent legislators, its broader aim remains to promote governmental stability and uphold democratic responsibility.

Despite its stabilizing role, the law has faced substantial criticism:

Democratic Limitations: Critics argue that the law restricts legislators’ ability to vote according to their conscience, thereby weakening their accountability to the electorate.

Suppression of Debate: The obligation to follow party lines has diminished the role of M.Ps and M.L.As as independent voices, limiting the scope for open legislative discourse.

Political Exploitation: Political Parties have misused the law to suppress dissent within their ranks, often issuing whips to silence opposition and consolidate power.

Delays in Disqualification: The process of disqualifying defectors can be prolonged, sometimes taking years, which may disrupt governance and fuel political uncertainty. Thereby, declaring the law as nonest.

Difficulty in Reform: As the law is embedded in the Tenth Schedule of the Constitution, any amendment requires a two-thirds majority in Parliament a challenging feat given political resistance to reforms that may weaken party control.

While anti-defection laws are vital in maintaining party cohesion and political stability in parliamentary democracies, they must be carefully designed to avoid infringing on democratic freedoms. Concerns over misuse and suppression of dissent highlight the need for thoughtful reform.

Suggestion and Recommendations

Several suggestions have been proposed as alternative approaches to improve or replace the current Anti-Defection Law, aiming to strengthen democratic values and reduce misuse:

Implementation of Secret Ballots in House - Introducing a secret voting system in Legislative Assemblies and Parliament has been recommended to protect legislators from party pressure. This would allow M.Ps and M.L.As to vote freely based on their conscience, without fear of retaliation from their political parties.

Adoption of Code of Conduct: Another proposed measure is the adoption of a formal code of ethics for elected representatives which will act as code of conduct for the elected representatives. Such a framework would promote integrity and ensure that lawmakers prioritize the public interest over party loyalty.

Reforming the Existing Law: Many scholars advocate for revising the Anti-Defection Law to address its shortcomings. Suggested changes include enhancing transparency in the decision-making process, ensuring

¹⁷ Supra 17

¹⁸ Rajendra Singh Rana v. Swami Prasad Maurya [AIR 2007 SUPREME COURT 1305]

¹⁹ Balchandra L. Jarkiholi Vs. B.S. Yeddyurappa SLPs (C) Nos. 33123-55 of 2010

²⁰ Shrimanth Balasaheb Patil v Hon’ble Speaker, Karnataka Legislative Assembly (2020) 2 SCC 595

²¹ Shri Yengkhom Surchandra Singh v. The Hon’ble Speaker (2020) WP(C) No. 316 of 2020.

²² Supra 14

greater accountability, and clearly defining valid grounds for switching party affiliations.

Clarify Disqualification Criteria: Establishing clear and objective grounds for disqualification such as voting against party policy, voluntarily resigning from the party, or defying the whip during confidence votes can reduce arbitrary enforcement of the law.

Ensure Independent Adjudication: To avoid bias, defection cases should be handled by a neutral and independent body rather than the Speaker or Presiding Officer, who may have political affiliations. It may be Election Commission or an independent tribunal.

Encourage Intra-Party Democracy: Promoting democratic practices within political parties, including transparent leadership selection and decision-making, can reduce the motivation for defections and enhance internal accountability.

Raise Awareness Among Stakeholders: Educating both legislators and the public about the consequences of defections and the importance of democratic integrity can foster a more responsible political culture.

Periodic Review of the Law: Regular assessments of the Anti-Defection Law, informed by feedback from stakeholders and comparative studies, can help identify shortcomings and guide necessary reforms.

At last, it can be summed up that while the Anti-Defection Law has contributed to political stability, it must evolve to reflect better democratic values. Therefore, balancing party discipline with the freedom of expression and dissent is essential for a healthy parliamentary democracy. The recommendations outlined in this study will offer a foundation for future discussions and legislative improvements in the law relating to defections.

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17. Supra 11.
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