

Estrangement of Loyalties in Politics: Anti-Defection Law; The Need of the Hour

• NAEESHA HALAI
SVKM'S PRAVIN GANDHI COLLEGE OF LAW, MUMBAI

The disqualification of dissident Janata Dal leaders Sharad Yadav and Ali Anwar as members of the Rajya Sabha in 2017 was redundant as it could have been considered whether it had any effect against its spirit. Anti-defection does not pose a threat to any government to warrant such fast-tracking of the disqualification process. But in order to avert political defection, the Tenth Schedule was interpolated in the Constitution of India, 1985. The main intention of this law is to establish political stability and prevent legislators from being bribed to defect and indulge in floor crossing. The law will examine whether elected lawmakers can defy the party whip, abstain from voting, resign and join a rival political platform without breaching provisions of stringent anti-defection laws. This law was introduced when defections were rampant, so to prevent it the Anti-Defection Law was introduced. This article analyses the Anti - Defection Law and deals with multifarious cases of defection.

Introduction

In politics, a defector is a person who gives up allegiance to one state in exchange for allegiance to another, in a way which is considered illegitimate by the first state. More broadly, it involves abandoning a person, cause or doctrine to which one is bound by some tie, as of allegiance or duty.¹ The term anti-defection law has been tossed around since the election fever set in.²

Defection in India started after the Fourth General Elections held in 1967 and thereafter it continued to draw serious attention of people. Prior to this there were also political defections when persons like *Dr. Raghu Vira, Ashok Mehta and T. Prakasham* left their parties.³ But those times were not really serious because such instances were few and far between. The cases being very few

¹ www.politicaldefectioninindia.com

² www.prsindia.org

³ <http://www.politicalscience.com/india/defection-politics/defection-politics-in-india-with-statistics/1028>.

⁴ Defection Politics in India (with statistics) by Shubhangi R.

caused only ripples but not storms. Leaving aside the states of Kerala, Tamil Nadu, Maharashtra and Nagaland, the problem of defection was existing almost everywhere, in some states that being very serious. This does not mean that in other states/union territories there was no problem of defection. All that is meant is that there it was comparatively less serious. The Parliament was also not free from defections.⁴ As far as disqualifications under anti-defection law are concerned, till 2009, 88 such cases have been complained out of which 26 have been disqualified in the Parliament. In the states, till 2004 there had been 268 complaints registered and 113 have been disqualified.⁵ This politics of defection or what was then began to be called as that of 'Aya Ram' and 'Gaya Ram' seemed playing such a prominent role that in many states, governments survived and went out of power on the activities and attitudes of these political turn coats.⁶ This political defection was also called as the anti-defection. The anti-defection law comes up with various pros and cons.

The Anti-Defection Law

The Tenth Schedule — popularly known as the *Anti-Defection Act* — was included in the Constitution in 1985 by the *Rajiv Gandhi ministry* and sets the provisions for disqualification of elected members on the grounds of defection to another political party. The question whether a member has become subject to the disqualification will be decided by the presiding officer of the House. The Speaker/Chairperson has been empowered to make rules for giving effect to the provisions of the Schedule.⁷ The law was added via the *52nd Amendment Act, 1985*, soon after the Rajiv government came to power with a thumping majority in the wake of the assassination of Prime Minister *Indira Gandhi*. The Congress had won 401 seats in the Lok Sabha.⁸

The Grounds for Disqualification Under The Anti-Defection Law's Articles 102 (2) And 191 (2)

The Constitution (Fifty-second Amendment) Act, 1985 popularly known as the anti-defection law came into force w.e.f. 1 March 1985. It amended articles 101, 102, 190 and 191 of the Constitution regarding vacation of seats and disqualification from membership of Parliament and the State Legislatures and added a new schedule i.e. the Tenth Schedule to the Constitution setting out certain provisions as to disqualification on ground of defection.⁹

- If an elected member voluntarily gives up his membership of a political party;

⁵ Times of Assam, analyzing the trend of defection in Indian politics

⁶ <http://www.politics.com/india/anti-defection-politics/anti-defection-politics-in-india>.

⁷ www.delhiassembly.nic.in/antidefection.htm

⁸ http://164.100.47.132/LssNew/abstract/disqualification_on_ground_of_de.html

⁹ www.prsindia.org

- If he votes or abstains from voting in such House contrary to any direction issued by his political party or anyone authorized to do so, without obtaining prior permission.

As a pre-condition for his disqualification, his abstention from voting should not be condoned by his party or the authorized person within 15 days of such incident.¹⁰

The Loopholes of the Indian Political Defection Act

As per the 1985 Act, a 'defection' by one-third of the elected members of a political party was considered a 'merger'. Such defections were not actionable against. The Dinesh Goswami Committee on Electoral Reforms, the Law Commission in its report on "Reform of Electoral Laws" and the National Commission to Review the Working of the Constitution (NCRWC) all recommended the deletion of the Tenth Schedule provision regarding exemption from disqualification in case of a split. Finally, the 91st Constitutional Amendment Act, 2003, changed this.¹¹

So now at least two-thirds of the members of a party have to be in favour of a "merger" for it to have validity in the eyes of the law. "The merger of the original political party or a member of a House shall be deemed to have taken place if, and only if, not less than two-thirds of the members of the legislature party concerned have agreed to such merger," states the Tenth Schedule.¹²

People Related to Political Defection

1. Mohammed Ali Jinnah

One of the oldest defections from a political party in India, Jinnah's resignation and later confrontation with the Congress is surely the most impactful one, as it resulted in the partition of an entire country. Although he took up the cause of a separate Pakistan much later, Jinnah resigned from Congress in 1920 when Gandhi launched the non-cooperation, which enjoyed support of Khilafat Muslims. He claimed to denounce, the zealots, both Hindu and Muslim, who he said were harming the national cause. Years later Jinnah went on to lead the Muslim League and made Pakistan a political reality, through a partition which triggered riots, resulting in millions of deaths.

2. Subhas Chandra Bose

Another high profile and highly controversial political dissident in Indian political history, Netaji Subhas Chandra Bose was also a twice elected president of the Indian National Congress. But he was pushed out of the party following differences with Mahatma Gandhi, who disagreed with his policy of armed action against the

British. Bose went on to form the forward bloc and lead the Azad Hind Fauj, which he founded in 1943. He died in 1945 in a plane crash that has been shrouded in mystery, as his death has been the centre of several conspiracy theory. Although the Congress disagreed with his tactics, they hailed him as an important leader of the independence movement.¹³

3. Morarji Desai

One of the major game changers in Indian political history, Morarji Desai's career began as a dissident in a way, as he joined Congress in the freedom movement after being forced to resign as collector of Godhra on accusations of going soft on Hindus during riots by the British regime. Post independence, he was always uncomfortable with Nehru and his allies, and was defeated by Indira Gandhi for Congress leadership despite being a senior and efficient candidate, leading to a split in the Congress. He later led the Nav Nirman movement against Congress in Gujarat and joined Jayprakash Narayan's anti-corruption movement and the anti emergency wave that came later. After the end of emergency, Desai defeated Indira as the candidate of the Janata alliance, and served as Prime Minister from 1977-79. He is the only Indian national to be awarded the Nishan-e-Pakistan.¹⁴

4. Jayaprakash Narayan

Known popularly as JP or even Lok Nayak, Narayan started off as a freedom fighter and joined the Indian National Congress on Jawaharlal Nehru's invitation. But he went on to part ways from the Congress, a break up which changed the face of a Congress-dominated Indian political scene forever. Narayan returned to state politics much after independence but led the Bihar movement in 1974. Following a lathi charge on his silent procession, JP called for peaceful total revolution, garnering support of people fed up by corruption and inflation. During emergency, he was arrested by the Indira Gandhi administration as he attracted gatherings of over 100,000 people to Ramlila Maidan. He guided formation of the Janata Party after the emergency ended, which proved to be the first strong political alternative apart from the Congress in India. It was also a platform for the BJP and other strong regional parties of present day India.

5. Sharad Pawar

Mentored by Yashwantrao Chawan, Sharad Pawar became an MLA from Baramati, Maharashtra on a Congress Party ticket in 1967. He first left the Indira-led Congress in 1980 to form a coalition with the Janata Party in 1978 and was later leader of opposition in Maharashtra during the 80s. He later rejoined Congress under Rajiv Gandhi in 1987 to "save Congress culture in

¹⁰Articles 101, 102, 190 and 191 of the Constitution, Tenth Schedule to the Constitution and Members of Lok Sabha (Disqualification on Ground of Defection) Rules, 1985

¹¹Articles by PRS Team In the Parliament by M R Madhavan, Pragati, December 2009

¹²http://164.100.47.132/LssNew/abstract/disqualification_n_on_ground_of_de.htm

¹³Articles by PRS Team In the Parliament by M R Madhavan, Pragati, December 2009

¹⁴Articles by PRS Team In the Parliament by M R Madhavan, Pragati, December 2009

Maharashtra", and soon became Chief Minister of Maharashtra. After a short stint as defence minister and failure to become president of the Congress party, he broke away and formed the Nationalist Congress Party (NCP) along with Tariq Anwar in 1999, citing Italian-born Sonia Gandhi's appointment as Prime Ministerial candidate. Despite the differences, the NCP continued to be an ally of the Congress.¹⁵

6. Yogendra Yadav

One of the founding members of the Aam Aadmi Party and formerly Arvind Kejriwal's close aide, Yogendra Yadav, along with Prashant Bhushan, started having problems with Kejriwal's dictatorial ways and his new inner circle in 2015. The dissent that came just after AAP's sparkling victory in Delhi elections caused much embarrassment, as the leader came out in the streets against Kejriwal. Yadav was voted out of AAP's political affairs committee in March 2015 and was later expelled on charges of 'anti party activities'. After what was to be the first of many turmoils for Arvind Kejriwal, Yadav and Bhushan formed a new organisation called the Swaraj Abhiyan.¹⁶

7. Mamata Banerjee

The fiery leader also known as Didi of Trinamool Congress, started off as the angry young woman of Indian National Congress in West Bengal, and grew to prominence by defeating CPI-M veteran Somnath Chatterjee in 1984 general elections. She served the party till 1997, when she decided to part ways and form the Trinamool Congress which proved to be a tough contender for CPI-M in Bengal. Later, Mamata Banerjee joined the BJP led NDA in 1999 and became Railway Minister, only to leave the coalition in 2001 and ally with Congress. She then returned to NDA in 2004, and then again allied with the UPA in 2009, when CPI-M left the coalition.¹⁷

8. Raj Thackeray

Although the defector from the Shiv Sena has not achieved much success, Raj Thackeray's revolt was also against his own family, as he stood against uncle and mentor Bal Thackeray. Raj's resignation from the Sena and formation of the MNS brought the succession row out in the open, as cousin Uddhav was announced Bal Thackeray's heir. Apart from his infamous aggressive stance against north Indians, Raj was also able to trouble Shiv Sena by rising as a challenger for the post of the top regional party in Maharashtra. Like the Shiv Sena, the MNS has also been known for strong arm tactics.¹⁸

¹⁵ <http://archive.indianexpress.com/news/antidefection-law/339606/>

¹⁶ <https://www.timesofassam.com/articles/analyzing-trend-defection-indian-politics/>

¹⁷ <http://www.dnaindia.com/india/report-here-s-everything-you-need-to-know-about-anti-defection-law-1978277>

¹⁸ <https://www.timesofassam.com/articles/analyzing-trend-defection-indian-politics/>

9. Ram Jethmalani

Rising on the political map by his opposition to Indira Gandhi and his campaign against emergency from exile in Canada, Jethmalani formed his own party in 1995 and later served as Law minister in the Atal Bihari Vajpayee-led government in 1996, he again served as law minister from 1999, but was forced to resign by Vajpayee, with whom he had differences and even contested against in 2004 general elections. While he always had differences with fellow party members, he was finally expelled in 2013 after he wrote in a letter to Nitin Gadkari that the BJP was sick and was "silent against huge corruption" in UPA. He later filed a defamation suit against BJP, for saying that he was not a fit person to be a member of the party.¹⁹

10. Arun Shourie

Another BJP veteran known to speak his mind, Shourie also rose to prominence for writing against the emergency in the Indian Express. He served as Minister of Disinvestment, Communication and Information Technology under Vajpayee's Prime Ministership, and was also ranked as the most outstanding minister in that cabinet. He voiced his dissent after BJP's loss in 2009 general elections, saying the party needed to introspect, and openly deplored factionalism. Although he is a supporter of the RSS, Shourie was finally disowned by the BJP when he said that Modi government was interested more in "managing the headlines."²⁰ The Uttarakhand high court on Monday decided to uphold speaker Govind Singh Kunjwal's decision to disqualify nine rebel Congress MLAs, a day before the crucial floor test to decide the fate of chief minister Harish Rawat, has brought the focus back on the anti-defection law.²¹

11. Shyamkumar Singh

After the 2017 elections in 5 states there are reports that the Congress is vulnerable, with over a dozen MLAs reportedly mulling splitting the legislature party and crossing over to the BJP. Should that happen, the Congress may well be tempted to call Manipur a "political dacoity". One Congress MLA, Shyamkumar Singh, has already defected and will reportedly resign and seek re-election on a BJP ticket. What it will do is to bring the House strength to 59, and the magic number to 30.

Current Scenario

Of late, there has been a wave of many prominent members joining *Bharatiya Janata Party* in Assam which is helping it to gain grounds in Assam politics which

¹⁹ <http://archive.indianexpress.com/news/antidefection-law/339606/>

²⁰

<https://www.google.co.in/amp/s/www.scoopwhoop.com/amp/political-defections-india-jinnah-bose-jp/>

²¹ Hindustan Times, Dated May 09, 2016, By Satya Prakash

hitherto witnessed the hegemony of Congress for 14 long years. Indian political system had seen such instances many a times. During 1967-71 there were 142 defections in Parliament and 1969 defections in State Assemblies across the country. Thirty-two governments collapsed and 212 defectors were rewarded with ministerial positions. The epic incident in this regard was that of Haryana legislator, *Gaya Lal*, who defected thrice within a fortnight. Changing loyalties have been a predominant phenomenon not only in Indian politics but also in other countries. One of the prominent cases of defection outside India is that of Ramsay Mc Donald. He defected from his party on account of disagreement on policy responses to the economic crisis. However, he didn't resign his seat because of this. Defections happened in Australia and US too. But these countries don't have an assigned law for anti-defection whereas countries like Bangladesh, Kenya, Singapore, South Africa and India has anti-defection laws.²²

In this context, one needs to look at the Anti-Defection law in India. The anti-defection law, according to some scholars, might lead to suppression of healthy intra-party debate and dissent. There might be some genuine cases where defection becomes the last resort specially when politicians get weary of the dictates of 'party whip' or when they have serious reservation toward any decision of the party. But such cases are very miniscule in number. And a close analysis of cases of defection hints mostly at political opportunism.²³

Committees

The *Goswami Committee*, the *Election Commission* and the *Venkatachaliah Commission to Review the Constitution* (2002) have recommended that the decision should be made by the president or the governor on the advice of the Election Commission. This would be similar to the process for disqualification on grounds of office of profit.²⁴

The *Venkatachaliah Commission* recommended that defectors should be barred from holding any ministerial or remunerative political office for the remaining term of the House. It also said that the vote of any defector should not be counted in a confidence or no-confidence motion.

There is no ambiguity in the legality of current provisions related to these issues. Any change would require legislative action. There is, however, need for public debate on the working of the anti-defection law.²⁵

²²<http://archive.indianexpress.com/news/antidefection-law/339606/>

²³<http://www.dnaindia.com/india/report-here-s-everything-you-need-to-know-about-anti-defection-law-1978277>

²⁴ Times of Assam, December 2009

²⁵<http://www.prsindia.org/media/articles-by-prs-team/in-parliament-part-1-961/>

²⁶ *Ravi Naik v. Union of India*, Supreme Court Cases (SCC), 1994

VIII. CASES

In the 1994 *Ravi Naik vs. Union of India* case, the Supreme Court (SC) said: "Even in the absence of a formal resignation from membership, an inference can be drawn from the conduct of a member that he has voluntarily given up his membership of the political party to which he belongs."²⁶

In *G Viswanathan versus Hon'ble Speaker, Tamil Nadu State Assembly*, the Supreme Court ruled in 1996 that an expelled member was bound by the party's whip even after expulsion, and failure to adhere to it would result in his/her disqualification from the House.²⁷

However, the top court provided relief to Samajwadi Party leaders Amar Singh and Jaya Prada on November 15, 2010, declaring that they could not be disqualified from Parliament under the anti-defection law even if they defied the whip of their former party.²⁸

Paragraph 7 of the political defection act said, "Notwithstanding anything in this Constitution, no court shall have any jurisdiction in respect of any matter connected with the disqualification of a member of a House under this Schedule."²⁹

Impact of Anti-Defection Law

The evil of political defection has been a matter of national concern. If it is not combatted, then it is likely to undermine the very foundations of our democracy and the principles which sustain it. The anti-defection law, might lead to nuances of a healthy intra-party debate and dissent. It is violative of the freedom of speech and expression as the law says that if a person who is a member of the party does not think in the same line as the party to which he belongs and dissents their view point will be considered to be committing political defection. There might be some genuine cases where defection becomes the last solution of a problem specially when politicians become dictators. But such cases are very few. And a close analysis of cases of defection hints mostly at political opportunism.³⁰

Critical Analysis

Changing political equations and people leaving and rejoining political factions is part and parcel of Indian politics from mythological *Vibhishan* to *Jitan Ram Manjhi*, there are some defections that left a lasting effect, and others that paved the way for major political careers. We need to relax the anti-defection law. Restricting the rigors of the party whip would ensure that every government strives not only for cross-party consensus on legislation, but also reaches out to individual

²⁷ *G Viswanathan v. Hon'ble Speaker, Tamil Nadu State Assembly*, Supreme Court, 1996

²⁸ www.dnaindia.com/politicaldefection

²⁹ www.dnaindia.com

³⁰<http://www.dnaindia.com/india/report-here-s-everything-you-need-to-know-about-anti-defection-law-1978277>

lawmakers rather than just their leaderships. Our system strips the incentive for an MP to understand and think through any issue, as he has to finally just obey the party. For example, in December 2012, the government had to face a vote on permitting foreign direct investment in the retail sector. The members of all political parties voted (or abstained) on party lines. The irony is that the anti-defection law does not appear to be very effective in preventing defections that lead to the fall of the government.

To sum up, we need two reforms urgently: repeal the anti-defection law and require that all Bills be passed only through recorded voting.

Conclusion

Politics of defection has given rise to unpredictable alliances. Any notion of political ideology is relegated to the background in politics and defection from one party to another adhering to a completely opposite ideology is a reflection of the same. The main aim of most of the politicians has been narrowed down to contesting elections and get into positions of power.³¹

Thus, the political defection act is the one with both pros and cons. It is beneficial for good governance. It prevents the government from misusing its power and preventing the other political parties from being suffered. It is an act which requires some more amendments so that the government can work smoothly and there is no problem due to political defection in India.

³¹ <https://www.timesofassam.com/articles/analyzing-trend-defection-indian-politics/>