



## DOES ANTI- DEFECTION LAW REQUIRE STRICT IMPLEMENTATION?

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On the need of a new anti-defection law, Atal Bihari Vajpayee once said, “There are facilities available even for a heart transplant but this syndrome of political defection is yet to find remedy”

After Independence, Democracy was the most beautiful gift given by the framers of the constitution of India to the Indians. They insured that the citizens will elect their representatives with free will and their vote will decide the government. They also chose parliamentary form of government over presidential form of government to make the voice of the common strong and decisive. One more feature added by them in Indian polity was multi- party system with infinite number of political parties. However, it was not described in the Constitution of India. This was done because the social and geographical diversity in such vast country cannot be easily absorbed by two or three parties and also to provide more choices. Gradually, when this multi-party system evolved, there was a raise in defection in political system where a member of one party shifts to another. The problem with the defection was actually break down of public confidence in democracy. In political galleries, it is also termed as ‘Horse-Trading’, ‘Floor Crossing’ etc. To stop this horrifying process, Anti-Defection Law was

introduced in the Constitution of India by 52<sup>nd</sup> Amendment in 1985. It was the need of the hour as defection was considered as a hidden enemy of democracy.

The strict implementation of the Anti-Defection law was first felt in 1967 by Indian politics. However, also before 1967 there were certain events of defection as:

1. Defection by 52 Congress members in 1948 who joined communist party,
2. 12 members of congress formed a new party ‘Jana Congress’
3. Fall of Sampurnanand Government in Uttar Pradesh.<sup>1</sup>

But the incident of 1967 was considered as watershed movement in India’s democracy as about 142 MPs and 1900 MLAs left their parties and joined another. Due to one such defector ‘Gaya Ram’, all defectors were started to be called as ‘Aaya Ram- Gaya Ram’. After a while in 1985, provisions for disqualification on ground of defection were provided. However, even after such a solid step, defections have become an inseparable part of Indian part of Indian Politics with raise of coalition governments.

In Tenth Schedule of the Constitution of India, several provisions are provided for conditions of disqualification as:

- Voluntarily gives up membership of political party.

<sup>1</sup> Kashyap Subhash C., Parliamentary Procedure: the law, privileges, practice and precedents, VOL II



- Votes or abstain to vote contrary to direction of political party.
- Nominated or Independent members joins political party<sup>2</sup>.

These provisions were enough to curb the end of defection but due to tremendous need in coalition government and due to benefit of all political and due to certain loopholes, it was not observed properly.

Now the question is that is it really necessary to strictly implicate the anti-defection law? To understand and answer the question, certain points need to be evaluated and those are: -

Firstly, the defection from one party to another is an open form of corruption where members defect for certain greed. The juicy ministries, money, posts and other favours are the basic causes of such defections. In present political scenario, it is not a reason of difference of opinion or unparalleled ideologies but the heavy offers from other side are the reason. However, exceptionally in certain cases, the opinion, ideologies and inferiority feeling inside the party becomes a cause but the truth is these types of cases are exception. It is a form of corruption, which is open and legal, and the party with more resources and more donations, is the winner in this corrupt context. The selling of public elected post for own interest in a corruption of high level.

Secondly, the defection is an open threat to democracy. The office which is elected by people due to the ideology, thoughts, party belonging of the person is changing the party

on his own is polluting the democracy. In democracy, the government is framed by the people and not by the elected members, they are the mere representatives. It can be evaluated as treason to democracy as by defection, the citizens are left as spectators of foul play with their primary right, where the elected ones are teasing and managing that whomsoever you elect, the government will be of money holder's. The defection makes a voter disabled after voting because the defection is a decision taken by the elected member alone by leaving no choice for those who elected him. This practice was even condemned by Motilal Nehru before independence because of its severe threat to democracy and socialist approach of Indian political system and need of welfare government.

Thirdly, the defection has given rise to a practice where political parties are more focused on framing government or strengthening government rather than welfare of people. The latest cases of Karnataka and Madhya Pradesh for forming government and of Rajasthan for strengthening the government are the examples where the parties wants to make their government on the cost of public welfare, wastage of time of house or session of house schemes and laws. The main motive of elections or formation of government is the welfare of the nation and after an election it should be assessed and secured by the government and opposition but the focus on how to maintain the power has made the political houses so blind that the definition of democracy is converted into 'to the power, for the power, by the power'. The primary objective of the government has been lost

<sup>2</sup> The Constitution (52<sup>nd</sup> Amendment) Act, 1985



and every party wants to be in power by ignoring the original needs and by destroying democracy.

Fourthly, the defection is also a reason of instability and insecurity in political system. After Rajiv Gandhi's government, the political scenario of India was disastrous as there was instability in state as well as central government. Even after insertion of Tenth schedule in the Constitution of Indian and constitutional validation by Supreme Court of India in *Kihota hollohan v. zachilhu*<sup>3</sup> case, the defections were very normal. Also in present condition, the falling of government without completion of tenure within a year or two is visible. This practice makes a just majority government insecure and highly unstable, as it is likely to happen that some delicious offer comes to the member and the majority collapses. It is harmful for working and programming of a government as their policy and bills also comes on brink with the insecurity of majority. The defection is dangerous for political infirmity and functioning of government.

Lastly, the defection process is against political ethics. It creates the differences among the parties beyond ideologies. It violates the ethical competitiveness and companionship in the house. It affects the functioning of house and creates enmity and feeling of revenge in parties respectively. It is also unethical for the members who defected as it defeats the idea of ideology and belongingness of party. It makes that person unauthentic and unreliable for upcoming affairs. This unethical political practice was even not dreamt by our founding fathers so

they didn't insert any provision regarding the defection, in our constitution. Certainly, they wanted a political environment, which is independent, secured and dedicated for the nation and its people. The spread of defection is defeating that thought of our nation's framers, as this unethical practice is not only affecting the democracy but the entire concept of Indian polity.

Many of eminent politicians has considered it against the freedom of members of the house and once Shashi Tharoor said that 'Anti-defection law has negative impact on democracy' but the truth is democracy is in more danger in absence of this law. Such concern of politicians can be cured by amendment in law.

However. With the strict implementation of anti-defection law, it is also necessary that certain reforms should be introduced in anti-defection law. The review of decision-making power of speaker or chairman of house is largely needed to be revised as the credibility and unbiased approach of the office of chairman or speaker is no more visible. Supreme court has, however, pronounced that the decision under anti-defection law is under judicial review<sup>4</sup>.

The expression "Voluntarily giving up membership" is confusing and vague, and its proper explanation and interpretation is to be provided. In the cases of *Ravi s. Nayak v. Union of India*<sup>5</sup>, And

*G. Vishwanathan v. Speaker, Tamil Nadu assembly*<sup>6</sup>

<sup>3</sup> AIR 1993 SC 412

<sup>4</sup> *Kihota Hollohan v. Zachillu and others* (AIR 1993 SC 412)

<sup>5</sup> AIR 1994 SC 1558

<sup>6</sup> AIR 1996 SCC 353



The Supreme Court has interpreted the expression according to the situation but now it is necessary that legislature to revise it comprehensively.

A guideline structure should also be provided through law for the political parties regarding issuances of whips, binding the members and its authority over the members. The excessive use of whips by political parties is also a threat to freedom of speech and expression. So, a limitation over the whips will make the law more objective and meaningful.

Many of commissions and the committees has provided about utility, significance and needed suggestions for anti-defection law. Law commission, 1999 has given a very important advisory that pre-poll electoral fronts should be treated as political parties under anti-defection law as defection from electoral fronts can also create the similar problems as defection in political parties. The example of pre-poll alliance of JD(U) and RJD in Bihar is suitable here which collapsed later on.

The Election commission and Dinesh Goswami Committee on electoral reforms (1990) had also recommended that issue of disqualification should be decided by President and Governor on the recommendation of Election Commission. All these commissions and committees were intended to combat the corruption and defection, dangerous to democracy and implementation of a safe, sound and effective anti-defection law.

The fact that the 52<sup>nd</sup> Amendment Act 1985, got passed because there was a huge majority

of Rajiv Gandhi's government. No political party and their members wanted such law because it was a legislation, which was banning the corruption of legislatures. For its reformation, revision and enforcement, the government and politics of similar enthusiasm and ethics is needed. 91<sup>st</sup> Amendment Act, 2004 was an example of such courage, which has, strengthens the anti-defection law. This modern tradition of Indian politics, the defection, is actually a curse to a democracy. It was a vision of those who wanted that our polity and our Constitution get forbidden and banished by citizens of India. It is a threat of highest level as it is promoting authoritarian form of government as well as capitalistic approach in place of socialism. In modern India, the largest democracy should be a strongest and most alive democracy of the world. It should not be shaken up its products only. The Parliament and State Legislatures are the temples of democracy where the constitution, its principles and welfare approach of state is to be propagated. These are the places where whole nations is dependent and looking for their hopes and needs to get served. The defection is converting the temple into a fighting arena where the different political groups are fighting for power and authority. After the elections, the government should work for public welfare policies and opposition should keep check over it and force the government to deliver productivity to the public. A developing country can afford politically differences and rivalries but it cannot afford the battles of power in regular interval as it hardened the achievement of progress and prosperity. The defection is such a battle of power, which creates chaos in house of legislature as well as in country or state.



Conclusively, the present Anti-Defection Law requires urgent strict implementation to bring down the jeopardy of democracy and violation of Constitution. The Anti-Defection Law is aimed to delete the political defection but due to inability, discourage, dishonesty or corruption; this law remained in textual words only which has yet not been fully enforced or implemented. This law is mere spectator rather than a player against the mockery of democracy. Due to such conditions and situations, this law has failed to seek the needed attention, thus it has not evolved properly. Now a question has arrived in political mind, in India or elsewhere, that whether the anti-defection law is a reality or myth? It is a high time to answer this question because for a long time, politicians have found loopholes and played with the law but now is the time to protect our constitutional values and revisit the issue of defection strictly to fight the corruption through defection to regenerate the value of democracy. To frame our political system more progressive and productive, such disease in democracy should be treated so that substantial matters are given more importance in our politics. The hunger of power never be satisfied, it can only be treated through strict and logical laws. Defection is a challenge to our modern India and revision of anti-defection laws can deal with such challenge. Strict implementation of Anti-Defection law can save the eroding values of our Constitution and depletion of democracy.

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