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## **Preface**

The term Defection is considered to be derived from a Latin term 'Defectio' which states "the desertion of one's country, group of people, authority, community or cause in favour of an opposing one." Sometimes it shows the similarities with revolt or rebel with his people, party or authority. The Anti-Defection law was firstly introduced in the House of Commons of Britain for the legislator who change the allegiance and moved from one Political Party to another opposition and vice versa.

As the time passes with the democracy, the Law of Anti-Defection became very common. In India it came at the time when Rajiv Gandhi was the Prime Minister of Independent India and added to Indian Constitution through 52<sup>nd</sup> Amendment in Tenth Schedule. Under which many provisions are made as well as the ground of defection has also been mentioned. The Tenth Schedule is quite sufficient to avoid the defection in the happening in the Indian Legislature House, which some general concerns.

## **Table of Case Laws**

1. Kihoto Hollohan v. Zachillhu
2. Jagjit Singh v. State of Haryana

## Does Anti Defection Law Require Strict Implementation?

Once Chanakya said:

“If one limb of the body is defected or inflicted with, disease, the whole feels the pain. Same way if any department, minister or official of the state is faulty, the whole country is affected. An administrator should try hard to curb it”<sup>1</sup>

### Introduction:

India is considered to have the largest democracy with the Parliamentary form of Governance. The Parliament is Bicameral in nature, having two houses named as Lok Sabha and Rajya Sabha. These elected representatives are meant to work for their respective constituencies and the nation but nowadays these politicians are just becoming ‘Aya Ram Gaya Ram’ by the malpractice of using the Anti-Defection Law mentioned in the Tenth Schedule which was added by the 52<sup>nd</sup> Amendment, 1985 in the Constitution of India. The Anti-Defection Law was added in the Constitution to prevent the scourge of the defection of the members of the Parliament but these days, due to corruption and political dishonesty the act(law) can’t be evolved and used properly<sup>2</sup>. This is used by the politicians to change their political parties for the sake of more power and money. It’s just like that any party which will offer more money and a seat to access more power these political leaders will shift into that particular political party. The ‘Aya Ram Gaya Ram’ trend started in 1967 from Haryana Legislative Assembly when Gaya Lal joined Congress after quitting United Front (a Local Political Party). Due to this event, Congress leader brought him to the Chandigarh Press and gave the slogan of ‘Aya Ram and Gaya Ram’.

Even to avoid this defection the constitution has some **Grounds of defection** which are mentioned under Paragraph 2 of Tenth Schedule as follows:

1. Subjects to the provisions of a member of a House belonging to any political party shall be disqualified for being a member of the house-
  - (a) if he has voluntarily given up his membership of such political party; or<sup>3</sup>

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<sup>1</sup> Chanakya Neeti, B.K. Chaturvedi

<sup>2</sup> Article ‘History of Anti-Defection’, Legallaw.com

<sup>3</sup> Tenth Schedule, Paragraph 2, Page no. 2025, Indian Constitutional law, Jain M.P.

(b) if he votes or abstains from voting in such House contrary to any direction issued by the political party, to which he belongs then such voting or abstention has not been condoned by such political party within fifteen days from the date of such voting or abstention.

2. If an elected member changes his political party after being elected as a candidate of the party of a House will be considered to be disqualified for being a member of the House.

3. (a) 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<sup>4</sup>.

(b) If any member who was elected as an independent candidate later on joins any Political Party of the house shall be considered as the attempt of defection and will be disqualified.

### **Judicial Approach:**

The anti-defection law was introduced to maintain the soberness of the parliament and to avoid the members of the house to jump among the political parties for the sake of materialistic benefits because around 438 defections took place which is quite a lot in number during February and March 1967. The intention to add this law to provide floor testing of the members over honest dissent.<sup>5</sup>

The Tenth Schedule is quite strict enough to avoid any member to perform defection because of the reasons:

(a) There is a clause in the 4<sup>th</sup> Paragraph of the Tenth Schedule which states that 'No defection will be created if any two Political Parties get merged or any Political party gets split. But if any member is cross changing the party should have the strength not less than one-third of the member of their legislative party in the house'. This is one of the ways to join another political party but the vote to avoid defection is quite efficient in number and for a member, it's very difficult to change the political party on lame excuse because for any pathetic excuse such amount of support can't get easily. This clause was formed to avoid frequent defection.

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<sup>4</sup> Tenth Schedule, Page no. 386, Indian Constitution, Bakshi P.M.

<sup>5</sup> Article on 'Anti-Defection Law', [economictimes.com](http://economictimes.com)

(b) The 170<sup>th</sup> Report of Law commission made the observation on Tenth Schedule which is like: “The nation is not quite happy with the introduction of the Tenth Schedule in the Constitution of India. It has led to the innumerable abuses and undesirable and immoral practices in the Parliament. But the intention of adding the ground of disqualification on the basis of defection is quite accurate and correct.”<sup>6</sup>

(c) The Political Party too can't merge into another political party until and unless not less than two- third of the member of the Legislature has agreed for such a proposed merger. Thus, it's a quiet condition to avoid the merger of two Political Parties.

(d) The Speaker of the House has the power to disqualify on the ground of defection. But his power is not absolute and can come under Judicial Review which was later on overruled by the decision of Apex Court which stated that ‘distrust towards the Speaker of the House who holds a pivotal position would be quite inappropriate over mere allegations and to ensure unbiased and mala fides.’ The court provided rules and regulations in the case of **Kihota Hollohan v. Zachillhu**.<sup>7</sup>

Many times, it has happened that the anti-defection law's existence became quite debatable because earlier a ‘majority party’ used to form the government but as the time passes the style of democracy got underlined by the merge of two, three political parties come together to form a government of majority which is called as ‘coalition government’. Under these circumstances, defections take place very frequently but it's an exception under the Tenth Schedule of the Constitution. It seems that the government formed by the full majority has come to an end and there will be no use to strict the Anti-Defection Law. The Political Parties are taking lots of measures to avoid defection in the legislature. If we'll see the case **Jagjit Singh v. State of Haryana**<sup>8</sup> the Supreme Court of India tried to have a check on the instances of defection where it was found that no split had occurred in the Republic Party but such split was deliberately and intentionally made to escape defection.

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<sup>6</sup> 170<sup>th</sup> report of Law Commission, pib.gov.in

<sup>7</sup> AIR 1993, SCC 651

<sup>8</sup> AIR 2007, SC 590

## **International Scenario:**

A survey of Parliamentary work took place among all the democratic nations in the world stated that the Anti-Defection laws are very infant level. Among all the Commonwealth Nations, around 23 nations are there in which, the anti-defection law is prevalent. The anti-defection law in Bangladesh, Kenya, South Africa, and Singapore disqualifies a legislator as he gets expelled or moves out of his political party, just like India. This is the scenario of the states which are either underdeveloped or in developing situation.

On the other hand, if one will see the democratic states which are developed in nature is having quite different provisions for Anti-Defection laws. These developed countries showed up the picture of the legislators with democratic values and freedom of speech and expression, but the freedom of dissent with the policy of the political party which to which a legislator allegiance is promised and ensured by “collective conscience” of the electorate for which the legislator is solely responsible.

In the Parliament of the United Kingdom, the members of the house are free to move and change political parties at any time. The member is free to do cross over without having any sort of tension. In fact, legislators of the United States of America, Canada, and Australia can also change the political parties without having getting restricted from the house.

So, if the Anti-Defection law of India will be compared with the other developed countries then one can clearly see that its existence even does not make any sort of sense. If sensible people will be elected as the member of the house, then just like other developed nations won't have to face any sort of defection in the legislature. Despite of making the Tenth schedule even more strict, one house works with the provisions for the qualifications and make some changes in the oath of the elected members where they give a “collective conscience” towards their Political Parties as well so the Defection can be avoided. It has been considered earlier that to make anything flawless, that thing should be set free or with fewer rules and regulations. In the same way, if the Anti-Defection law will be made strict then before then it may happen that the member will start revolting against the Indian Constitution and Democracy and more issues can be raised in the context of a developing nation and can be harmful as well.

## **Conclusion**

It is a known fact that the Anti-Defection law has been adopted by many democratic nations and has been consumed as well to avoid the defection occurred in the legislature by the Legislators. The Tenth Schedule was formed to build up the patience and trust among the members of Political Party and to avoid frequent cross changing among the political parties. This provision was made to avoid corruption in the name of more money and power. But this provision was always in criticism by various law commission, in fact, by many reputed lawyers and judges of Indian Union. So, instead of making this law strict, the makers (Parliament) should ask the Political parties to have more faithful and good candidates on whom they can relied upon and ask them to have some commitments towards their party as well because even though the provisions will be strict but the intentions are mala fide, corruption won't be stopped and it will also somehow violate the Freedom of Speech and Expressions of the members of the House.



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