



## EMERGENCE OF ANTI-DEFECTION LAW IN INDIA

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## KEYWORDS :

## INTRODUCTION

Political defections became the most conspicuous phenomenon of the politics of Indian States after the fourth General Elections. It does not mean that defections did not exist before, but the cases were very few, and whenever there was any, did not attract much public attention and did not affect the fortune of the ruling party or of the defector in any big way. The evidence of this assertion was that prior to that Election no scholar, either in India or abroad, writing on Indian government and politics, had said a word on this; in fact, the term did not find any place anywhere in their publications. After that Election, the subject of political defections became so important that it was talked about inside State Legislatures, inside Parliament, in public forums, party platforms, and academic institutions, and even in common parlance.

## Meaning of Political Defections

If any person who was allotted the reserved symbol of any political party and got elected as a member of either House of Parliament or of the Legislative Assembly or Legislative Council of a State or Union Territory, voluntarily renounced allegiance to or association with such political party, he was said to have defected. An individual member or group of members defected for the greed of office or other patronage. Sometimes, he was, or they were, inveigled by a group or a political party so that group or party could stake a claim for the government. The individual most active in inveigling might put up a claim for Chief Minister ship. Changing of party loyalty and crossing of floor were not unknown in a Parliamentary system of government, but these became too common and too widespread in State Legislatures after the fourth General Elections, and the result was that an accepted and recognized practice became a nuisance and a menace to the system of government itself. What was normal before 1967 after *Aaya Ram Gaya Ram* situation became abominable thereafter.

## Causes of Defections

The causes of defections were several. First and foremost was, of course, the ambition for power. The unfortunate but in reality, the Indian political life after Independence was that politicians fought and maneuvered for power and government offices. The Congress Party ruled at the Centre and in most of the States for full two decades, 1947-1967, and, therefore, during that period this evil remained confined within the Congress men, that is, within those who could succeed in securing government office, usually Minister ship, and those who could not. As a result of the fourth General Election the strength of this party was considerably reduced in Parliament and State Legislatures. Had it decided to share power with like-minded parties and formed coalition governments in States, there was a possibility that unscrupulous politicians might not have got the chance of indulging in defections. But the Central Parliamentary Board of Congress took a decision, on February 27, 1957, that the Congress should not enter a coalition government in any State where it did not have an absolute majority, and that the door should be left open for Independence, join the Congress Legislature Party- of course on the promise of a prize- and enable it to seize power. Indirectly, this was an invitation and encouragement to smaller Parties and groups also. Once the Congress, the oldest and the strongest party, showed the way, the other parties followed it up. When a legislator failed to obtain some office or status in the party to which he belonged he began to look towards other parties or groups that stood in a precarious balance and whose position was likely to so improve by his defection as to put it in governmental office, the reward was offered or promised and the crossing of the floor took place.

The second factor that led to defections was that there was a big difference between the emoluments, status and benefits attached to the office of a Minister and that of an ordinary legislator. If and when a

legislator was offered or promised Minister ship, he did not hesitate to leave the party on whose ticket and symbol he was elected. Not all defecting legislators got the Minister ship, but they were satisfied if one or two from among their group or party got it, for in that case they would utilize their office the office of that Minister or Ministers to fulfil their personal ends.

There were also cases of legislators who lost faith in the policies and programmes of the party to which they originally belonged, and developed a genuine liking for the ideology of some other party and therefore they crossed the floor. This was quite legitimate and democratic but such cases were only rare. Most of the defectors were motivated by personal gain and lust for power.

The lack of stout and dynamic leadership within the parties, in fighting and factionalism within those parties, and the marginal and unstable majorities in the State Legislative Assemblies were also responsible for the malady of defections.

Another factor that encouraged defection was the almost complete indifference of the electorate to acts defection by their representatives, particularly in Uttar Pradesh, Haryana and Bihar. In terms of averages and percentages the showing of the defectors as a group was better than that of all the organized political parties except the Congress. The defectors as a group won over 32 per cent of the seats contested by them as against 59 per cent, 6 per cent and 16 per cent won by the Congress, the Jan Sangh and the Swatantra Party respectively. In U.P., Charan Singh's party in the State Legislature, and in Bihar, most of the prominent defectors were re-elected. With no fear of losing the support of their electors the legislators indulged in the vice of defection as repeatedly as necessary to bring them fortune.

## Introduction of Defection Law in India

India is closing in on nearly three decades of having an anti-defection law in force. Inserted in the Constitution of India by way of the 52nd Amendment in 1985, the concerned law is enshrined in the Tenth Schedule ('Schedule X'). India was spurred to introduce this law after witnessing as many defections in one year as it had in the four Lok Sabha's preceding it. The amendment was intended to bring stability to the structure of political parties and strengthen parliamentary practice by banning floor-crossing. The prior failure to deal with this issue had led to rampant horse-trading and corruption in daily parliamentary functioning. Schedule X was thus seen as a tool to cure this malaise. The import of this constitutional measure meant that once a member was elected under the symbol of a political party to Parliament, the member could not later opt to leave that party or switch to another party. Independent members of Parliament on the other hand would be liable upon moving to the folds of a political party subsequent to the election.

Floor-crossing, therefore, is not the only form of defection envisaged under Schedule X, the defector questioning the verdict of the people. In the occasion of a direction being issued by a political party to vote in a particular manner on a matter, the member of the party is mandated to comply with the direction. Anything contrary to this directive is also perceived as an act amounting to defection.

The relaxation of anti-defection law in times of voting will not contravene the intention behind enacting Schedule X. Fostering free and fearless voting shall instead, as in the case of America and Britain, cement the credentials of our Parliament as an impervious pillar of government. To establish a case for the same, the problems arising out of Paragraph 2(1)(b) that persist in spite of a 'purposive interpretation of the same by the Supreme Court'. Part-III will look at legislative

practice in Britain and the United States to glean the wisdom behind allowing members to speak and vote freely with limited restrictions, internal to political parties. In Part-IV, we will conclude with suggestions as to how to reconcile this provision with the Indian ideals of parliamentary democracy.

Defection law was introduced in the country in order to check the rampant practice of parliamentarians abandoning their original parties to join rival political groups. The need to check this mischief was heightened by the fact that defection was being used as a weapon to engineer the toppling and creation of governments. Anti-defection law was thus seen as a reaffirmation of India's democratic ideals by ensuring that only citizens have a say in government making.

Paradoxically, Schedule X has created profound anti-democratic ramifications in the Indian polity. In our parliamentary system where work should be conducted through debate and discussion, Paragraph 2(1)(b) seems to have curtailed both. It mandates that once the political party or its authorised person has directed voting on a matter in a particular way, a parliamentarian cannot vote in a contrary manner. The authorised person specified in Paragraph 2(1)(b) refers to the whip of a political party, a formulation borrowed from the British Parliament. *Whips*, as parliamentary functionaries, ensure attendance of party members and enforce voting according to party lines.

The latter half of 1960 saw thousands of political defections. In fact, the Fourth Lok Sabha saw nearly as many cases of defection as the three preceding it as was noted by the Committee on Defections, created by the Lok Sabha to tackle the said malaise.<sup>51</sup> The Janata government of Morarji Desai, for instance, enjoyed two-third support in the Lower House. This safety net proved transitory when the Government fell owing to the defection of 76 MPs, mostly the supporters of Charan Singh. Defections have resulted in positive consequences for parties as well. The Congress (R) had managed to secure 57 seats in the Karnataka assembly prior to the 1971 elections. After it won the elections, this strength rose to 120, owing to defections from the Congress (O) party.

Defections are seen as an action subverting the democratic nature of the Parliament. Being disloyal to the party, on the strength of which a member has come to power, was widely seen as an act stemming from corruption and bribery. Consider the case of parliamentarians who aid the toppling of their own government and then jump ship to become ministers in consequent governments. It would surely require a leap of faith to consider that such acts stem from uncoloured dissent and not from an illegal incentive. So, it is very much essential that an effective legislation is required to combat this problem arose in India.

#### **Emergence of Anti-Defection Law**

Evolution of Anti-defection Law in India Steps for bringing forward a legislation in India to curb the malaise of defections can be traced to a private member's resolution moved in the Fourth Lok Sabha on 11 August 1967 by Shri P. Venkatasubbaiah. His resolution was discussed in Lok Sabha on 24 November and 8 December 1967. The resolution in its final form was passed unanimously by the Lok Sabha on 8 December 1967. In consonance with the opinion expressed in the resolution, a Committee on Defections, was set up by the Government under the chairmanship of the then Union Home Minister, Shri Y.B. Chavan which submitted its report on 18 February 1969. The Report of the Committee was laid on the Table of Lok Sabha.

#### **The Constitution (Thirty-second Amendment) Bill, 1973**

As the Y.B. Chavan Committee's recommendations could not provide adequate solution to the problem of defections, the Constitution (Thirty-second Amendment) Bill, 1973 was introduced in the Lok Sabha on 16 May 1973 for constitutionally providing for disqualification on defections. A motion for reference of the bill to a Joint Committee of the Houses of Parliament was adopted in the Lok Sabha on 13 December 1973 and in the Rajya Sabha on 17 December 1973. The Joint Committee became defunct upon dissolution of the Fifth Lok Sabha on 18 January 1977.

#### **The Constitution (Forty-Eighth Amendment) Bill, 1978**

On 28 August 1978, another attempt was made in this direction by bringing forward the Constitution (Forty-eighth Amendment) Bill, 1978 in Lok Sabha. Several members belonging to both ruling party and opposition parties opposed the Bill at the introduction stage itself. The members took serious objections to the alleged misrepresentation of facts in the Statement of Objects and Reasons in as much as the

members were not consulted over the provisions of the Bill, whereas the Statement of Objects and Reasons of the Bill said "the problem cuts across all parties. It has been examined in consultation with the leaders of political parties". In view of stiff opposition, the Minister withdrew the motion for leave to introduce the Bill.

#### **The Constitution (Fifty-second Amendment) Bill, 1985 (Anti-defection Law)**

The Government introduced the Constitution (Fifty-second Amendment) Bill in the Lok Sabha on 24 January 1985 which led to amendment in Article 101, 102, 190 and 191 of the Constitution to provide the grounds for vacation of seats for the disqualification of the members; and also inserted Tenth Schedule. It lays down provisions regarding Shri Venkatasubbaiah's resolution in Lok Sabha read as under: - "This House is of opinion that a high-level Committee consisting of representatives of political parties and constitutional experts be set up immediately by Government to consider the problem of legislators changing their allegiance from one party to another and their frequent crossing of the floor in all its aspects and make recommendations in this regard".

#### **Main recommendations of the Y. B. Chavan Committee:**

- A Committee of the representatives of the parties in Parliament and State Assemblies be constituted to draw up a code of conduct for the political parties with particular reference to the problem of defections and to observe its implementation.
- No person who was not a member of the lower House should be appointed as Minister/Chief Minister. The Committee advised for a Constitutional amendment in this regard without affecting the existing incumbents in office.
- The Committee further recommended that a defector should be debarred for one year or till such time he resigned his seat and got re-elected, from appointment to the office of a Minister, Speaker, Deputy Speaker or any post carrying salary and allowances to be paid from the Consolidated Fund of the Union or the States or from the funds of the Government Undertakings

#### **Disqualification On The Grounds Of Defection**

The Bill was passed by the Lok Sabha and the Rajya Sabha on 30 and 31 January 1985, respectively. The Act, which came into force with effect from 1 March 1985. The Members of Lok Sabha (Disqualification on ground of Defection) Rules, 1985 framed by the Speaker, Lok Sabha (in terms of para 8 of the Tenth Schedule) for giving effect to the provisions of the Tenth Schedule came into force w.e.f. 18 March 1986.

#### **Key Provisions of the Anti-defection Law (Tenth Schedule)**

Rule 2- lays the grounds for disqualification of the member's i.e.: If a member of a House belonging to a political party: a. Has voluntarily given up his membership of such political party, or b. Votes, or abstains from voting in such House, contrary to the direction of his political party. However, if the member has taken prior permission, or is condoned by the party within 15 days from such voting or abstention, the member shall not be disqualified. If an independent candidate joins a political party after the election. If a nominated member of a house joins any political party after the expiry of six months from the date when he becomes a member of the legislature.

Rule 3- state that there will be no disqualification of members if they represent a faction of the original political party, which has arisen as a result of a split in the party. A defection by at least one-third members of such a political part was considered as a split which was not actionable. This provision was deleted by the 91st Amendment in 2003.

Rule 4 and 5- states the exemption from disqualifications i.e.: - A member of the House shall not be disqualified where his original political party merges with another political party, and he and any other member of his political party: a. Have become members of the other political party, or of a new political party formed by such merger b. Have not accepted the merger and opted to function as a separate group. For the purposes sub-paragraph (a) of this paragraph, the merger of the original political party of 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. Rule 6- confers power on the Speaker or the Chairman of a House, before which the question of disqualification of a member has arisen, to answer on the question of disqualification of such member, with the decision of such Chairman or Speaker being final.

Rule 8- confers power on the Chairman or Speaker of a House to make rules for giving effect to the provisions of the Tenth Schedule.

### **The Constitution (Ninety-first Amendment) Act, 2003**

The Government introduced the Constitution (Ninety-seventh) Amendment Bill, 2003 in the Lok Sabha on 5 May 2003. After the Standing Committee on Home Affairs to which the Bill was referred presented its report, the Bill with some amendments as suggested by the committee was passed by the Lok Sabha and the Rajya Sabha on 16 December 2003 5 5 and 18 December 2003 respectively. It was assented to by the President on 1 January 2004 as the Constitution (Ninety-first Amendment) Act, 2003 and was notified in the Gazette of India on 2 January 2004. The Act omitted the provision regarding splits from the Tenth Schedule to the Constitution. It provided that a member who is disqualified under paragraph 2 of the Tenth Schedule shall also be disqualified to be appointed a Minister or hold a remunerative political post for the duration of the period commencing from the date of disqualification till the date on which the term of his office as such member would expire or where he contests an election to either House of Parliament or Legislature of a State, before the expiry of such period, till the date on which he is declared elected, whichever is earlier.

### **CONCLUSION**

The introduction of the Tenth Schedule in the Indian Constitution was aimed at curbing political defections. Though the law has succeeded in a reasonable way but due to some of its loopholes, it has not been able to achieve the best it can. Over the years the law has been examined by various committees and several recommendations have been given in their reports. The government should relook at these suggestions and make suitable amendments to the existing law to help it to develop to the best possible extent. The main purpose of the defection is to reduce the disqualification of the members of the House because of causing defection. But unfortunately, if you take example of present scenario in State of Karnataka clearly says there is need of Strict implication of this Law