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Anti-Defection Law and Democratic Governance in India: An Analytical Study

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ABSTRACT

The Fifty-Second Constitutional Amendment Act, 1985 introduced the anti-defection provisions contained in the Tenth Schedule of the Constitution, with the principal object of curbing political defections and preserving stability in government. This paper examines the extent to which the anti-defection law fulfils its purpose of protecting democratic governance in India. It traces the constitutional and statutory basis of the law, the historical circumstances that necessitated it, the grounds for disqualification and the exceptions permitted, including the revision effected by the Ninety-First Amendment, 2003. The study analyses the judicial treatment of the law, particularly the delineation of the Speaker's powers and the scope of judicial review, and considers a recent instance of party realignment in the Rajya Sabha. It concludes that, notwithstanding criticism that the law suppresses freedom of conscience, its restraint on unprincipled defection serves the larger interest of parliamentary democracy.

Keywords: *Anti-defection, democratic institution, democracy, defector, political disturbance, Fifty-Second Amendment Act.*

I. INTRODUCTION

The anti-defection law in India is intended to protect democratic governance. It is therefore necessary to assess how effectively it performs this function. This study examines what the Constitution provides in relation to the anti-defection law and how the courts have interpreted those provisions. Over time, several difficulties have emerged in the working of the law, and it has been tested in litigation on more than one occasion. A significant decision in this regard is *Kihoto Hollohan v. Zachillhu*, which clarified the powers of the Speaker and the extent to which courts may intervene.

The anti-defection law has also attracted renewed attention in light of recent developments in Parliament, including the announced merger of a group of Aam Aadmi Party members of the Rajya Sabha, led by Raghav Chadha, with the Bharatiya Janata Party. Such episodes prompt reflection on whether democratic institutions in India are functioning in a fair and neutral

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manner, and on how the constitutional scheme should be reconciled with the interests of democracy.

II. THE MEANING OF DEFECTION

In politics, "defection" refers to floor-crossing by a member from one political party to another. The Committee on Defections defined a defector as a person who, being an elected member of the legislature and having been allotted the reserved symbol of a political party, may be said to have defected if, after being elected as a member of either House of Parliament or of the Legislative Council or Legislative Assembly of a State or Union Territory, he voluntarily renounces allegiance to or association with such party, provided that his action is not in consequence of a decision of the party concerned.

III. CONSTITUTIONAL AND STATUTORY BASIS OF THE ANTI-DEFECTION LAW

The anti-defection provisions were incorporated into the Constitution through the Tenth Schedule by the Fifty-Second Amendment in 1985. These provisions operate alongside ARTICLE 102(2), which deals with the disqualification of members of Parliament, and ARTICLE 191(2), which deals with the disqualification of members of a State Legislative Assembly. Under these constitutional provisions, a legislator may be disqualified if he is so disqualified under the Tenth Schedule.

The law is designed to secure the stability of government, to encourage discipline within political parties, and to protect the mandate given by the electorate. It was enacted during the tenure of Prime Minister Rajiv Gandhi and introduced rules governing the consequences that follow when a member of Parliament or of a State Legislature changes party.

Under the anti-defection law, a member may be disqualified if he voluntarily gives up the membership of his party; if he votes, or abstains from voting, contrary to the direction of the party whip; if an independently elected member joins a political party after election; or if a nominated member joins a political party after the expiry of six months from the date on which he takes his seat.

In *Kihoto Hollohan v. Zachillhu*,¹ the Supreme Court examined the rationale underlying the Tenth Schedule. The Court held that the Schedule rests on the premise that political propriety and morality demand that a member of a legislature who, after election, changes his political affiliation and leaves the party on whose behalf he was elected should give up his seat and

¹ *Kihoto Hollohan v. Zachillhu*, (1992) 1 SCC 309.

contest a fresh election. The Court observed that the Schedule provides a remedy for the evil of unprincipled and unethical political defections.

IV. HISTORY AND NEED FOR THE ANTI-DEFECTION LAW

The expression "Aaya Ram Gaya Ram" traces its origin to 1967, when Gaya Lal, a member of the Haryana Legislative Assembly, crossed over from the Indian National Congress to the United Front, returned to the Congress, and then crossed back again, all within a short span of time.

Writing in the *Journal of the Indian Law Institute* in 1979, in an article titled "Aya Ram Gaya Ram: The Politics of Defection," it was noted that between 1967 and 1969 more than 1,500 party defections and 313 defections by independent candidates took place across twelve States. By 1971, a substantial proportion of legislators was believed to have changed parties. To arrest this tendency, the Constitution was amended in 1985 through the Fifty-Second Amendment Act, which brought the anti-defection law into effect.

The Tenth Schedule defines certain key terms. A "House" means either House of Parliament or a House of the Legislature of a State. A "legislature party" comprises the members of a party belonging to a House. The "original political party" is the political party to which a member belongs. The Schedule sets out the grounds of disqualification on account of defection, namely voluntarily giving up membership of a political party, and voting or abstaining from voting contrary to the direction of the whip without prior permission.

The Schedule also provides an exception in the case of merger, and further provides that the presiding officer, such as the Speaker or Chairman, who resigns from his party on assuming office may rejoin it after demitting office without incurring disqualification. Paragraph 7, which originally barred the jurisdiction of courts in disqualification matters, was subsequently struck down by the Supreme Court in the *Kihoto Hollohan* case. The Schedule further empowers the Speaker or Chairman to make rules of procedure, to maintain records of party membership, and to regulate the decision-making process.

V. GROUNDS FOR DISQUALIFICATION ON DEFECTION

A member of a House belonging to a political party is liable to be disqualified in the following circumstances: where he voluntarily gives up the membership of the political party on whose ticket he was elected; where he votes, or abstains from voting, contrary to any direction given by his political party; where an independently elected member joins a political party; and where

a nominated member joins a political party after the expiry of six months from the date on which he takes his seat.

Under Paragraph 6 of the Tenth Schedule, the question of disqualification is decided by the Chairman in the case of the Rajya Sabha and by the Speaker in the case of the Lok Sabha, and not by the President of India. Paragraph 7 originally provided that no court would have jurisdiction to decide the question of disqualification of a member under the Schedule.

In *Kihoto Hollohan v. Zachillhu*,² the Supreme Court held that the anti-defection law contained in the Tenth Schedule is constitutionally valid, but struck down Paragraph 7 as unconstitutional. The Court held that the function of the Speaker or Chairman in applying the anti-defection law is that of a tribunal and is therefore open to judicial review. The order of the Speaker or Chairman would be amenable to judicial review on grounds of jurisdictional error arising from a violation of the constitutional mandate, mala fides, non-compliance with the rules of natural justice, and perversity.

VI. EXCEPTIONS TO THE ANTI-DEFECTION LAW

One of the significant defects in the anti-defection law as originally enacted was that it permitted group defection. Where a group consisting of not less than one-third of the members of the legislature party defected, the members were not disqualified on the ground of defection.

This exception was revised by the Ninety-First Amendment to the Constitution, which eliminated the provision relating to splits. The law now requires that not less than two-thirds of the members of a party agree to a merger with another party.

Paragraph 4 of the Tenth Schedule provides that the disqualification on the ground of defection does not apply in the case of a merger. It provides that a member of a House is not to be disqualified where his original political party merges with another political party and he claims, along with any other member of his original party, either that he and any other member have not accepted the merger and have opted to function as a separate group, or that they have separated from the original party without joining any other party.

VII. A RECENT INSTANCE

On 24 April 2026, Raghav Chadha, a prominent Aam Aadmi Party leader, announced his decision to leave the party and join the Bharatiya Janata Party, together with six other Aam Aadmi Party members of the Rajya Sabha. The announcement followed his removal as deputy

² *Kihoto Hollohan v. Zachillhu*, (1992) 1 SCC 309.

leader of the party in the Rajya Sabha, and he stated that the party had deviated from its founding principles.³

According to the announcement, the group invoked the merger provision of the Constitution on the footing that two-thirds of the party's members in the Rajya Sabha had decided to merge with the Bharatiya Janata Party, so as to avoid disqualification under the anti-defection law. The six members named as joining the Bharatiya Janata Party along with Raghav Chadha were Ashok Mittal, Sandeep Pathak, Harbhajan Singh, Rajinder Gupta, Vikram Sahney and Swati Maliwal. Raghav Chadha stated that the requisite papers had been signed and submitted to the Chairman of the Rajya Sabha, and he addressed a press conference at which he was joined by Ashok Mittal and Sandeep Pathak.

Since the departing members claimed the benefit of the merger provision, they contended that they would retain their seats in the Rajya Sabha and could not be disqualified under the anti-defection law. The episode illustrates the continuing use of the merger exception as a route by which the disqualification provisions may be avoided.

VIII. JUDICIAL REVIEW

In *Kihoto Hollohan v. Zachillhu* (1992),⁴ the Supreme Court, by a majority of three to two, upheld the validity of the anti-defection law, while holding that the decision of the Speaker is subject to judicial review on grounds of mala fides, violation of the constitutional mandate, and non-compliance with the principles of natural justice, among others. In *Mayawati v. Markandeya Chand* (1998),⁵ the Supreme Court was unable to reach a common view on whether the Speaker's recognition of a split in the Bahujan Samaj Party could be reconsidered, and the split exception was subsequently eliminated in 2003. In *Rajendra Singh Rana v. Swami Prasad Maurya* (2007),⁶ the Supreme Court held the Speaker's order to be illegal and itself disqualified the members without remanding the matter.

IX. CONCLUSION

The anti-defection law has been criticised on the ground that it suppresses freedom of conscience and conscientious objection and is therefore contrary to the spirit of parliamentary democracy. This objection does not appear to be well founded. Unrestricted freedom in the matter of voting within the House has, in practice, given rise to political confusion and

³ *Kihoto Hollohan v. Zachillhu*, (1992) 1 SCC 309.

⁴ *Mayawati v. Markandeya Chand*, (1998) 7 SCC 517.

⁵ *Rajendra Singh Rana v. Swami Prasad Maurya*, (2007) 4 SCC 270.

⁶ *AAP Rocked as Raghav Chadha, Six Rajya Sabha MPs Announce Merger with BJP*, INDIA TV (Apr. 24, 2026).

instability. Frequent defection has made a mockery of democracy and has seriously damaged the image of the politician and of the Indian polity. The restraint imposed by the law on unprincipled defection therefore serves the larger interest of stable and principled democratic governance.

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