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# Anti-Defection Laws: A Boon or a Bane

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## ABSTRACT

*The issue of political defections stands as a grave national concern, potentially eroding the very principle upon which our democracy thrives (freedom of speech, free will etc.). It is of paramount necessity that political entities heed the resounding calls for electoral reform and undertake substantive measures to institute intraparty democracy, a measure that would curtail candidate defections and thereby fortify the structural integrity of our national political system. The notable absence of intraparty democracy has, regrettably, contributed to the transformation of political parties into closed and autocratic entities. This transformation has precipitated an increase in internal divisions, the nomination of subpar candidates for electoral contests, and a troubling surge in the criminalization of politics, coupled with the undue influence of financial power in electoral processes. In the absence of a clearly delineated and transparent process for candidate selection preceding elections, electoral tickets are frequently awarded based on nebulous notions of winnability. This approach, however, tragically disregards the significance of robust debate and dissent, thereby creating an environment where strict adherence to party directives resembles the tyranny within the party, rather than serving as a bulwark of ethical party conduct. Furthermore, this practice jeopardizes the fundamental role of parliamentary representation, as it curtails the ability of members within the legislature to voice opinions contrary to the party's official stance. However, despite these shortcomings, many people are calling for the strengthening of anti-defection laws instead of relinquishing them. Many times, this law blurs the line between expressing legitimate disagreement and outright defection. This regrettable situation stifles a crucial aspect of parliamentary democracy. The anti-defection law, designed to bolster political party stability, unintentionally curtails meaningful parliamentary discussions. Legislators often refrain from expressing dissent or engaging in open debates due to fears of disqualification or punitive action for deviating from party lines. This limitation impedes the democratic process by stifling the exploration of alternative perspectives and potential improvements to proposed laws. The law's intended purpose appears to conflict with the essence of a thriving democracy, which relies on diverse thought and open discourse. Policymakers should reconsider the balance between party discipline and robust parliamentary deliberation to better align with both political stability and democratic principles.*

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## I. INTRODUCTION

In 1962, a significant number of defections occurred, involving about 142 MPs and 1900 MLAs<sup>4</sup>. In 1967, during the Indian elections, the problem of defection and the urgent necessity to eliminate it came to the forefront<sup>5</sup>. The catalyst for this occurrence was the formation of the very popular phrase 'Aaya Ram Gaya Ram' in reference to a Haryana MLA Gaya Lal who changed his party thrice within the same day in 1967. Henceforth, 'Aaya Ram, Gaya Ram' emerged as a well-known expression in Indian politics, to describe legislators who frequently change their political allegiance—"here today, gone tomorrow."<sup>6</sup> The surge in significant political defections can be attributed to a combination of factors in India, including: (1) the historical nature of political parties, (2) leadership issues like autocracy and vested interests, (3) a lack of strong ideological foundations, (4) limited public engagement with party activities, (5) internal party conflicts, (6) unstable legislative majorities, personal disputes, (7) the allure of office, (8) disparities between ministerial and legislator perks, (9) influential interest groups, and (10) the Congress party's reluctance to form effective coalitions with similar parties<sup>7</sup>. The predominant factor in these patterns appears to be the dominant role of the Congress Party within a multiparty system<sup>8</sup>. Historically, during periods of Congress Party dominance, particularly at the Centre, defections have primarily flown towards the Congress Party, resulting in mostly one-way traffic<sup>9</sup>. Conversely, when anti-Congress forces have gained prominence, even briefly, defections have occurred in both directions but have predominantly favoured anti-Congress parties<sup>10</sup>. To preserve political legitimacy, the Rajiv Gandhi Government introduced the Anti-Defection Bill on January 23, 1985, which received presidential approval on February 15, 1985, becoming the 52<sup>nd</sup> constitutional amendment<sup>11</sup>. Effective from March 1, 1985, it added the Tenth Schedule to the Indian Constitution, containing provisions for the disqualification of elected representatives, addressing the issue of defection in Indian politics<sup>12</sup>. The prevalent view on political defection in India commonly portrays it as a morally reprehensible action. For instance, the statement of

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<sup>4</sup> Arushi Saumya & Aishik Majumder, Anti-Defection Law in India - A Boon or a Bane, 6 *Supremo Amicus* 24 (2018).

<sup>5</sup> *Id.*

<sup>6</sup> Salam, Z.U. (2021) Anti-defection law ridden with loopholes, prone to misuse, *Frontline*.

<sup>7</sup> Kashyap, S. C. (1970). The Politics of Defection: The Changing Contours of the Political Power Structure in State Politics in India. *Asian Survey*, 10(3), 195-208. <https://doi.org/10.2307/2642574>

<sup>8</sup> Kamath, P. M. (1985). Politics of Defection in India in the 1980s. *Asian Survey*, 25(10), 1039-1054. <https://doi.org/10.2307/2644180>

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> GEHLOT, N. S. (1991). THE ANTI-DEFECTION ACT, 1985 AND THE ROLE OF THE SPEAKER. *The Indian Journal of Political Science*, 52(3), 327-340. <http://www.jstor.org/stable/41855565>

<sup>12</sup> *Id.*

intent in the Constitution (Fifty-Second Amendment) Act of 1985, which introduced anti-defection provisions via the tenth schedule, asserts that '[t]he evil of political defections ... is likely to undermine the very foundations of our democracy<sup>13</sup>.' When elected representatives switch parties, it can disrupt the balance of power, erode trust in the democratic process, and make it challenging to implement coherent policies. This instability can hinder the effective functioning of a representative democracy<sup>14</sup>, as it may not reflect the will of the voters as originally expressed in elections.

## II. ANALYSING THE RATIONALES FOR POLITICAL LEADERS' DEFECTION IN CONTEMPORARY POLITICS

One of the primary motives driving political defections is the pursuit of political opportunism. Leaders often switch parties with the aim of acquiring or maintaining political power and influential positions. In *Rajendra Singh Rana v. Swami Prasad Maurya (2007)*<sup>15</sup>, the evidence of political opportunism was evident. Swami Prasad Maurya's defection to a party in power coincided with his appointment to a ministerial position. This timing strongly suggests that the pursuit of power played a pivotal role in his decision to defect. Ideological differences with their current party represent another compelling motive for leaders to defect. They may believe that their new political affiliation aligns more closely with their core beliefs. However, these shifts can lead to allegations of hypocrisy and opportunism, especially if the leader previously espoused contrasting ideologies. In cases like *Kesham Meghachandra Singh v. Hon'ble Speaker Manipur (2020)*<sup>16</sup>, leaders quoted ideological differences with their former parties as the reason for their defection. Dissatisfaction with party leadership, internal dynamics, or decision-making processes also serves as a catalyst for defections. Disputes with party leadership, issues ranging from autocracy to nepotism, have led to numerous instances of leaders leaving parties. Notably, in *Kesham Meghachandra Singh v. Hon'ble Speaker Manipur (2020)*<sup>17</sup>, leaders adduced autocratic practices within their former party as a reason for their defection. This demonstrates that internal party dynamics and leadership discontent were evident in the case. Electoral calculations play a pivotal role in leaders' decisions to defect. They may perceive higher chances of winning elections with a different party. In *Kihoto Hollohan v. Zachillhu*<sup>18</sup>, the evidence of

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<sup>13</sup> Guruvayurappan, D., 2023. Rethinking defection: An analysis of anti-defection laws in India. *Parliamentary Affairs*, 76(2), pp.443-464.

<sup>14</sup> 'The Constitution (Fifty-Second Amendment) Act, 1985 | National Portal of India' 2020.

<sup>15</sup> *Rajendra Singh Rana and Ors vs swami prasad maurya and ORS* on 14 February, 2007. Available at: <https://indiankanoon.org/doc/1620629/> (Accessed: 28 September 2023).

<sup>16</sup> *Keisham Meghachandra Singh vs the Honble speaker Manipur* on 21 January, 2020. Available at: <https://indiankanoon.org/doc/102050163/> (Accessed: 27 September 2023).

<sup>17</sup> *Id.*

<sup>18</sup> 1922 Supp (2) SCC 651.

electoral calculations was apparent as leaders switched parties just before crucial elections, indicating a strategic move to enhance their electoral prospects. Regional and local dynamics can be influential factors, compelling leaders to switch parties to align with dominant regional forces or address local grievances. Regional parties often attract defectors who believe that joining them will strengthen their regional influence. This aspect is reinforced by research such as Aradhya Sethia's work in 2019<sup>19</sup>. In this context, leaders who switched parties to align with regional forces were likely driven by regional and local considerations. Legal troubles can also drive leaders to defect, seeking protection from prosecution. This raises questions about the impartiality of legal proceedings and the potential misuse of political power. In a coalition-driven political scenario, defections can strategically bolster or weaken alliances, leading to political instability. Darsan Guruvayurappan's Analysis (2021) provides insights into the strategic dimensions of defections in coalition politics<sup>20</sup>. A defection potentially shifts the numerical strength of one coalition partner over another, thereby affecting the balance of power within the coalition. Therefore, leaders can use their switch as a bargaining tool in coalition negotiations, demanding concessions or favorable positions for themselves. India's Anti-Defection Laws, designed to prevent unethical party-switching, have influenced the motives behind defections. Some leaders strategically exploit legal loopholes to avoid disqualification, raising concerns about their effectiveness. Occasionally, parties undergo mergers or splits that result in mass defections, posing questions about the legality and fairness of such events and their impact on political representation. The allegations of monetary inducements, promises of political positions, and other forms of allurements that often accompany defections further contribute to the ongoing debate on the ethical aspects of party-switching. These allegations, along with the timing of defections during merger or split events, provide logical reasons to suspect that monetary and political promises are influential in such cases. In conclusion, defections by political leaders are influenced by a myriad of motives, as evidenced.

### III. FAILINGS OF THE LAW

India operates as a democratic republic, wherein the political involvement of its citizens in governing the nation is highly valued. The esteemed Supreme Court, in the *R.C. Poudyal v. Union of India*<sup>21</sup> case, elucidated that the term 'democratic republic' signifies the assurance of

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<sup>19</sup> Mr Aradhya Sethia (no date) Faculty of Law. Available at: <https://www.law.cam.ac.uk/people/research-students/aradhya-sethia/79111> (Accessed: 01 October 2023).

<sup>20</sup> Guruvayurappan, D. (2021) *Rethinking defection: An analysis of anti-defection laws in India*, OUP Academic. Available at: <https://academic.oup.com/pa/article/76/2/443/6409917> (Accessed: 25 September 2023).

<sup>21</sup> Legal 60 (1969) *Case study: R.C. Poudyal v. Union of India [Air 1993 SC 1804]*, Legal 60. Available at: <https://legal60.com/case-study-r-c-poudyal-v-union-of-india-air-1993-sc-1804/> (Accessed: 26 September 2023).

equal participation in the political sphere for every citizen. This participation is achieved through the election of representatives who enjoy the freedom of speech and expression, enabling them to articulate the interests of their constituents in the parliament or state legislature. However, Paragraph 2 (1) (b) of the Tenth Schedule of the Indian Constitution establishes that any member of parliament or state legislature who acts contrary to the wishes of their political party faces disqualification on grounds of defection. This provision obliges the member to adhere to the party's directives, essentially reducing their role to that of a puppet under the party's control<sup>22</sup>. This concept of directed voting severely curtails their freedom of speech and expression. Even if a member decides to leave the party or renounce its membership, such an action still qualifies as defection under Paragraph 2 (1) (a) of the Tenth Schedule<sup>23</sup>. This leaves no alternative for the legislator but to conform to the party's instructions, thereby impinging upon their autonomy. In essence, the prevailing perspective should regard a party candidate elected to parliament as a 'delegate' of their constituency, rather than a 'trustee' or a mere instrument of the party under whose banner they were elected. This viewpoint underscores a clear and prima facie violation of the foundational principles of democracy in India. Consequently, the Anti-Defection Law appears incongruous with the core ideals of democracy, as it furnishes political parties with significant power to quell internal dissent by coercing their Members of Parliament (MPs) and Members of Legislative Assemblies (MLAs) with the threat of disqualification from the legislature<sup>24</sup>. Notably, in the *Kihoto Hollohan v. Zachillhu* (1993)<sup>25</sup> case, the Supreme Court upheld the constitutional validity of anti-defection laws, acknowledging their purpose to deter opportunistic defections. Nevertheless, it is imperative to recognize that this decision, while seeking to prevent such defections, concurrently restrains the independence of legislators. Consider a hypothetical scenario where a legislator within a political party raises concerns about corruption or unethical practices within the party. In the event that they choose to voice their concerns or deviate from the party line, the party's leadership might resort to invoking anti-defection laws. In such instances, these laws can be wielded to suppress dissent and criticism within the party, potentially coercing legislators into silence or compliance, even when their actions are genuinely motivated by the public interest. This misuse poses a direct challenge to the democratic principles of accountability and

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<sup>22</sup> Admin, Y. (2020) The role of political whips under the tenth schedule: Dhiyaaneswar, ILSJCLL. Available at: <https://journal.indianlegalsolution.com/2020/10/15/the-role-of-political-whips-under-the-tenth-schedule-dhiyaaneswar/> (Accessed: 26 September 2023).

<sup>23</sup> Explanation (a) to paragraph 2(1) of the tenth schedule of the constitution - Constitutional Law (no date) lawyersclubindia. Available at: <https://www.lawyersclubindia.com/judiciary/Explanation-a-to-paragraph-2-1-of-the-Tenth-Schedule-of-the-Constitution-2287.asp> (Accessed: 28 September 2023).

<sup>24</sup> D.N. Panigarhi, India's Partition Routledge Publications (2004), p.193.

<sup>25</sup> 1922 Supp (2) SCC 651

transparency. Legislators expressing dissent within their political parties may not always result in government destabilization. Consider, for instance, an opposition Member of the Legislative Assembly (MLA) who disagrees with their party; such disagreement does not directly impact the ruling government. Similarly, Rajya Sabha Members of Parliament (MPs) and Members of Legislative Councils in states lack a role in government formation or its continuity. Yet, it is noteworthy that anti-defection laws apply to these categories as well. This underscores that the law's applicability is not primarily geared towards ensuring government stability but rather towards consolidating the authority of political party leadership in handling dissenting legislators. In the formulation of the anti-defection law, the government of that time had justified exceptions for one-third splits and two-thirds mergers as mechanisms to safeguard legislators who opposed their party's stance. However, over the initial 15 years of the law's implementation, it became evident that political parties were exploiting the one-third split provision to fracture their rivals and orchestrate mass defections. A notable example of this was observed in Goa between 1990 and 2000, where there were seven different chief ministers, with some serving multiple terms, and only two completing more than two years in office<sup>26</sup>. In India, recommendations have been proposed over the years to strengthen the anti-defection law. These recommendations include prohibiting both individual and group defections, entrusting an independent authority with the prompt resolution of defection cases, and disregarding the votes of defecting legislators attempting to topple a government. While these proposals hold promise for ensuring stable governments, practical experience with political parties has demonstrated their adeptness at circumventing laws. For instance, stringent laws designed to prevent convicted individuals from participating in elections have proven ineffective, as political parties simply substitute such individuals with others who can secure electoral victory, even if they possess criminal backgrounds, provided they meet the eligibility criteria for contesting elections. Furthermore, there is a considerable influence exerted on the Speaker to make decisions favoring the appointing party, often the ruling one. This stems from the fact that the Speaker's selection relies on the majority votes of House members, and there exists no mechanism akin to Articles 103 and 192, which require consultation with the Election Commission<sup>27</sup>. The Speaker's exclusive authority to decide defection cases under the Tenth Schedule, without checks on this power, raises concerns of arbitrariness and potential violations of Article 14.

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<sup>26</sup> Roy, C. (2022) *The anti-defection law that does not aid stability*, *The India Forum*. Available at: <https://www.theindiaforum.in/law/anti-defection-law-does-not-aid-stability> (Accessed: 27 September 2023).

<sup>27</sup> *Id.*

#### IV. A COMPARATIVE ANALYSIS OF ANTI-DEFECTION LAWS OF INDIA WITH OTHER COUNTRIES

In the Indian context, distinct from the democratic paradigms of other nations, the significance of each legislator's vote is underscored. However, this significance is intrinsically linked to the rigors of anti-defection provisions. Diverging from democratic nations such as Israel or the United Kingdom, where dissension within party ranks is tolerated, Indian legislators are legally obligated to adhere to their party's voting directive. A contravention of this directive may culminate in disqualification, consequently transmuting parliamentary debates into ritualistic formalities while quashing dissenting voices<sup>28</sup>. For instance, in Israel, when Prime Minister Ariel Sharon sought legislative approval to withdraw Israeli troops from the Gaza Strip, he garnered support from members of the opposition party, despite some dissent from his own party's members. Similarly, in the United Kingdom, when Prime Minister Tony Blair aimed to involve Great Britain in the Iraq War, over 150 members of his own party voted against it. In this case, he had to rely on the support of Conservative Party members to pass the motion<sup>29</sup>. These examples illustrate that differences of opinion within the same political party are tolerated in other democracies. Members of the UK's Labour Party, for instance, didn't have to leave their party simply because they disagreed with the party's stance. As a result, the primary form of opposition in India has increasingly taken on a disruptive nature<sup>30</sup>. Research conducted during votes on the Nolan Committee Recommendations reveals that dissent is most commonly observed among long-serving backbenchers, lawmakers with plans to retire, and individuals whose views oppose the interests of their constituents. To mitigate these effects, a comprehensive examination of the laissez-faire policies adopted by the United States and the United Kingdom is important<sup>31</sup>. In the United States, notwithstanding the absence of anti-defection legislation, party discipline is upheld through the imposition of internal sanctions, obviating the necessity for legal repercussions. The underlying idea of a connection between the First Amendment and disciplinary action that can be taken by a political party decision as established in *Bond v. Floyd*<sup>32</sup> was further extended in the case of *Gewertz v. Jackman*<sup>33</sup>. As a

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<sup>28</sup>Subramaniam Vincent, Dissent isn't Defection available online at [www.indiatogether.org/2005/apr/edtdissent.htm](http://www.indiatogether.org/2005/apr/edtdissent.htm) [Last accessed on 25th September, 2023].

<sup>29</sup> Gupta, H. (2009) Defecting from anti-defection, mint. Available at: <https://www.livemint.com/Opinion/wtY0yGwCtxQ7URWxrlfXpL/Defecting-from-antidefection.html> (Accessed: 02 October 2023).

<sup>30</sup> Mahesh, A. (2003) Democracy without dissent?, Rediff. Available at: <https://www.rediff.com/news/report/ash/20030729.htm> (Accessed: 28 September 2023).

<sup>31</sup> Majumdar, J. (2022). India must reform its anti-defection law to prevent further corrosion of democracy. Retrieved from <https://www.jurist.org/commentary/2022/07/jishnutosh-majumdar-anti-defection-india/>

<sup>32</sup> *Bond v. Floyd*, 385 U.S. 116 (1966)

<sup>33</sup> *Gewertz v Jackman*, [1979] 467 F Supp. 1047.



result, it is clear that a legislator in the United States is not subject to removal if he chooses to disagree with his political party on a particular issue. He could be barred from a particular party, but not from the House despite the fact that the U.S. controls the defection process internally rather than through constitutional restrictions like India does. On a divergent tangent, the United Kingdom permits dissent within party ranks sans the specter of disqualification, relying on internal party mechanisms for the administration of dissent. Thus, pressure can be applied to political parties to tighten internal member regulation. In the United Kingdom, akin to the United States, there is an absence of legal recourse against defectors, aligning with the freedom of speech and expression enshrined for Indian legislators under Article 105 of the Indian Constitution. Disputes arising from the passage of legislation within the UK are discretely resolved within the confines of party membership. While India's parliamentary democracy is substantively rooted in the Westminster Model, the UK lacks specific legislative mechanisms governing defection, relying on the internal tenets of political parties for the governance of such occurrences. In summation, the anti-defection laws operative in India, the United States, and the United Kingdom spotlight diverse methodologies for addressing legislative dissent. India's stringent legislative provisions stymie the course of parliamentary debates, with the United States maintaining party discipline via internal sanctions and the United Kingdom accommodating dissent within party structures. For instance, ten Republican congressmen and seven Republican senators joined their Democratic counterparts in voting to remove US President Donald Trump from US President<sup>34</sup>. They could not be coerced by a party whip to vote in favor of the president. Liz Cheney, a congresswoman, was one of them. Her party demoted her from her leadership position in the House of Representatives because she defied party policy. In an effort to defeat her re-election earlier this year, Trump supported a competing candidate<sup>35</sup>. As India grapples with the repercussions of its anti-defection laws, it becomes imperative to contemplate alternative methodologies that strike a harmonious balance between party discipline and the individual's prerogative of free expression. This cross-national inquiry underscores the compelling necessity for India to undertake a comprehensive reassessment of its anti-defection legislation, aiming to cultivate a parliamentary democracy that is both dynamic and robust.

## V. CONCLUSION

The issue of political defections stands as a grave national concern, potentially eroding the very

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<sup>34</sup> Roy, C. (2022). The anti-defection law that does not aid stability. Retrieved from <https://www.theindiaforum.in/law/anti-defection-law-does-not-aid-stability>

<sup>35</sup> *Id.*

principle upon which our democracy thrives (freedom of speech, free will etc.). It is of paramount necessity that political entities heed the resounding calls for electoral reform and undertake substantive measures to institute intraparty democracy, a measure that would curtail candidate defections and thereby fortify the structural integrity of our national political system. The notable absence of intraparty democracy has, regrettably, contributed to the transformation of political parties into closed and autocratic entities. This transformation has precipitated an increase in internal divisions, the nomination of subpar candidates for electoral contests, and a troubling surge in the criminalization of politics, coupled with the undue influence of financial power in electoral processes. In the absence of a clearly delineated and transparent process for candidate selection preceding elections, electoral tickets are frequently awarded based on nebulous notions of winnability. This approach, however, tragically disregards the significance of robust debate and dissent, thereby creating an environment where strict adherence to party directives resembles the tyranny within the party, rather than serving as a bulwark of ethical party conduct. Furthermore, this practice jeopardizes the fundamental role of parliamentary representation, as it curtails the ability of members within the legislature to voice opinions contrary to the party's official stance. However, despite these shortcomings, many people are calling for the strengthening of anti-defection laws instead of relinquishing them. Many times, this law blurs the line between expressing legitimate disagreement and outright defection. This regrettable situation stifles a crucial aspect of parliamentary democracy. The anti-defection law, designed to bolster political party stability, unintentionally curtails meaningful parliamentary discussions. Legislators often refrain from expressing dissent or engaging in open debates due to fears of disqualification or punitive action for deviating from party lines. This limitation impedes the democratic process by stifling the exploration of alternative perspectives and potential improvements to proposed laws. The law's intended purpose appears to conflict with the essence of a thriving democracy, which relies on diverse thought and open discourse. Policymakers should reconsider the balance between party discipline and robust parliamentary deliberation to better align with both political stability and democratic principles.

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