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**ANTI DEFECTION LAWS AROUND THE COUNTRY: STUDY OF
INTENT AND IMPACT**- Siddheshwar Ashok Kashid¹**ABSTRACT**

Protections against sabotage help maintain citizens' faith in the democratic process. Sixteen states held elections that year. Large-scale defections were also triggered by this election. Some 142 members of parliament and nearly 1900 members of the lower house switched political parties between 1967 and 1971. It took another 17 years until 1985 for the anti-defection statute to be passed after the governments of numerous states fell. Provisions related to disqualification on the premise of defection were added to the Constitution as part of the 52nd amendment in 1985. Defection is now illegal in India and other nations like the United States and Australia. In India, the Anti-defection law states that any elected member who wishes to defect to another party must do so with at least two-thirds of the party's total elected members. If he wants to accomplish it on his own, he must resign from the party he was elected to and his position in the party. The same position will then be up for election again. An unstable government is the result of a defection. As a result of voter switching, the opposition party has gained enough support to become the country's largest. Since it undermines the results of the vote, defection is anti-democratic. Even though one party receives a majority of votes in an election and is therefore legally obligated to form the government, this may not happen if enough of its members defect. The research problem is to investigate the provisions of Anti-Defection law and its application in our nation and other countries around the world. To prevent corruption among those who have the people's

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trust, lawmakers have an obligation to prevent defection. A provision prohibiting a defecting member from running for office is necessary. The study's overarching goal is to learn how anti-defection legislation influences representatives' bargaining power in cases of defection. Whether or if it puts a halt to sabotage in the right place.

Key words:-Constitution, Defection, representatives, MPs,MLAs, Collapsed.

1) Meaning of Anti-defection law:-

In 1985, the Constitution was amended to include the Tenth Schedule. It specifies how any other House member may petition the Presiding Officer to have a legislator removed from office for defection. Defection occurs when a lawmaker either knowingly and willingly abandons his party membership or votes against the wishes of his party's leadership. This means that a lawmaker can be expelled from the House for breaking the party whip on any topic (by abstaining or voting against it). Parliament and state legislatures are both bound by the law.

2) Exception to Anti-defection law:-

There are exceptions to the disqualification rule for lawmakers who switch political parties. If two-thirds of a party's legislators support the merger, the legislation permits the two parties to combine. Neither the members who choose to merge nor the members who choose to remain with the original party would be disqualified under these circumstances.

Rather than the Presiding Officer, many expert groups have advised that the President (in the case of MPs) or the Governor (in the case of MLAs) make the decision to disqualify a member based on the advice of the Election Commission. The procedure for disqualification from holding a profit-making office is analogous to this (i.e. the person holds an office under the central or state government which carries a remuneration, and has not been excluded in a list made by the legislature).

3) Anti-defection law in India:-

Schedule 10 of the Constitution contains the anti-defection statute. In 1985, Parliament passed the law into law. On March 1, 1985, it was officially implemented.

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The constitutional provision prohibiting defection can be found in Schedule 10. In 1985, parliament passed this law. On March 1, 1985, it entered into force.

For a long time, political defectors from the Indian Parliament tarnished the country's political landscape. The political system became more stable as a result of these events. In light of the legislator's persistent betrayals, the now-infamous "AayaRam Gaya Ram" slogan was developed. When governments collapsed, legislators regularly switched parties, creating chaos in the legislature. Politico-social unrest was a common result in various countries. The right-thinking political leaders of the country were understandably alarmed by this.

A number of bills intended to punish spies were introduced. The government has introduced a number of bills over the years, many of which began as the work of private members of Congress. For various reasons, no Bill was able to gain approval. But the main reason was that no one could agree on what an anti-defection statute should include. Members of Parliament were worried that a strict legislation on defection would limit the constitutionally protected right to free speech enjoyed by legislators in Parliament and other legislatures. It took a long time for everyone to agree on this.

By 1985, the Gandhi government had introduced a bill to modify the Constitution and reduce dissent. This amendment introduced the anti-defection statute to the Constitution as the 10th Schedule.

4) Grounds of disqualification:-

The obvious goal is to reduce the number of lawmakers who switch parties. A lawmaker can be kicked out of office for one of two reasons.

To begin with, he will be kicked out of the party if he voluntarily resigns his membership. Leaving a political party and doing so voluntarily is different from resigning from it. A lawmaker can be removed from office even if they haven't resigned if the Speaker or Chairman of their respective chamber concludes, based on their actions, that they no longer wish to be members of that party.

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Second, a lawmaker can be expelled from his party if he votes against the party line in the House of Representatives without the support of his own caucus. A lawmaker's ability to serve in the House of Representatives can be revoked for one of these reasons.

However, the statute includes a safeguard to prevent disqualification of politicians from taking part in lobbying activities. If two political parties unite and two-thirds of a legislature party approves of the merger, then neither party will be banned from participating in future elections, as stated in the 10th Schedule.

5) Kihota Hollohon:-

For the Kihoto Hollohan case, the Supreme Court's constitution bench carefully examined the 52nd amendment to the constitution, which added the Tenth schedule. The central issue before the Supreme Court was whether the Speaker's extensive powers were in line with the doctrine of Basic Structure, the judicial principle that certain fundamental aspects of the Constitution cannot be changed through legislation. This doctrine was first articulated in the seminal judgement *KesavanandaBharati vs. State of Kerala* (1973).

The Supreme Court declared that the Speaker or Chairman of the House is a crucial figure in Parliamentary democracy and is responsible for protecting the House's privileges and rights. In a Parliamentary democracy, they must and often do make extremely important policy decisions. They should not be the exception to the rule when it comes to vesting power to decide matters under the Tenth Schedule in them.

In *Kihota Hollohon vs. Zachilhu*, the Supreme Court ruled 3 to 2 that the Anti-Detection statute is constitutional. But the court has also held that the Speaker's ruling dismissing a lawmaker for defection is reviewable.

6) Incidents like that in Karnataka has raised various questions wrt Anti Defection law and role of Speaker-

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Whether or not resignation and disqualification should be linked is an issue that has arisen as a result.

A) There has been a resignation offered, and a disqualification procedure has also been started.

B) The Speaker is in a bind, as he or she must decide whether to accept the resignation first, which would render the disqualification unnecessary, or to take a call on the disqualification first, which would render the resignation unnecessary.

C) Three articles of the Constitution, Article 190 (vacation of seats), Article 164 (1B), and the Xth schedule, require interpretation in light of this incidence.

D) The Speaker may refuse to accept a resignation if the Speaker determines that there is reason to believe that the resignation was the result of coercion or other improper influence or enticement. A job or place somewhere is another possible interpretation of "inducement."

E) If the Speaker determines that the resignation is inextricably intertwined with the issue of defection, then perhaps the resignation in question can be tabled and not accepted.

This defection is being prompted by the promise of high salaries and cabinet positions, which is why.

G) Choosing to quit prior to disqualification so that one can serve as a minister in the present House, rather than having to wait until either re-election or the end of one's tenure, whichever comes first.

H) Things have gotten worse in Andhra Pradesh and Telangana. For example, the Telangana RashtraSamiti (TRS) has been in power since 2014, and 27 legislators have allegedly switched allegiances to the party since then. The Speaker has yet to rule on the disqualification petitions submitted against these MLAs.²

7) Subsequent Developments:-

The goal of the Anti-defection law is to prevent members of one party from switching allegiances to another, but it must also allow for the free and fair consolidation or dissolution of

²*Indian Constitutional Law* by,47(M.P Jain,7th ed,2014).

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political parties inside the House, as required by the Constitution. While the Anti-defection law was initially welcomed as a positive development toward a more honest public sector in India, it has since been found to have serious flaws that make it considerably less effective than originally thought.

Even after amendments were made, the law still wasn't able to completely stop spies.

Paragraph 3 of the Tenth Schedule allowed and even promoted mass defections and splinters, which weakened regimes. The Chairman or the Speaker of the House had the final say on whether or not there was a tie vote. Defections and splinters occurred not because of a change of ideology but rather because of a hunger for power and to serve personal interests, with the potential of political prejudice on the part of the Chairman or Speaker being the only other possible explanation. Defectors were almost always given cabinet positions as a reward for their treachery.

8) Anti-defection laws in other countries:-

Parliamentary practises and customs in other democracies throughout the world would suggest that anti-defection measures are still in their early stages. Twenty-three of the Commonwealth's 53 countries have some form of anti-defection legislation on the books. When a lawmaker in Bangladesh, Kenya, South Africa, or Singapore stops being a member of the party or is expelled from the party, he is automatically disqualified from office under the anti-defection law.

Countries with anti-defection legislation tend to be democracies in transition, when lawmakers are less versed in democratic values and more interested in consolidating power for personal gain.

The political climate in mature democracies, on the other hand, gives the impression that lawmakers there have a healthy respect for both democracy and free speech. The "collective conscience" of the electorate, to whom legislators are ultimately accountable, protects lawmakers' right to disagree with the policies of the political party to which they pledge allegiance.

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There is no law in the United Kingdom that would prevent a lawmaker from switching parties. When it comes to party affiliation, lawmakers in the United States, Canada, and Australia are free to switch at any time.

9) Anti-defection Law and horse treading:-

When members of the British Parliament or the United States Congress vote against the party line, it is usually because they disagree with the party's position on a particular piece of legislation or topic, or because their constituents don't support the party line. Regrettably, principles are rarely at play when Indian lawmakers depart from Parliament or legislative assemblies.

Consider the show that is currently unfolding in Maharashtra, where Shiv Sena and Congress legislators have been ordered to retreat to nearby hotels. This happened in Karnataka not too long ago, and it has happened in many other states in the recent decades. There are a few legal protections in place to prevent people from defecting, but they haven't done much to stop people from leaving. The moment has come to increase the stringency of the rules.

The argument that legislators should be able to disagree with their parties is compelling, but the rebuttal is that voters in a parliamentary democracy care about the policies of the parties they choose as much as the candidates they support. The individual's choice to resign from or defect from the house should be subject to the party's approval.

It's true that holding a by-election quickly and barring all but the official candidates from using party emblems won't totally eliminate horse-trading, but it should at least slow things down. Decisions about defections should not be left to the House Speaker and the judges. While court precedents have become convoluted due to multiple variations of horse trading and internal differences in parties, speakers arrive at conclusions that benefit the prevailing government of the day. Another ongoing issue that helps the ruling administration, which may be a minority government, is the excessive length of time it takes for the courts to rule on petitions.

10) Conclusion:-

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When the Anti-Defection Law was originally enacted, its stated goal was to reduce political defection. However, with the rise of political dishonesty and corruption, the law has failed to mature as intended, and now the question arises as to whether or not its stated goals are achievable.

Politicians took advantage of the law's ambiguities to advance their own agendas. It is past time that our parliament was given a watchdog, and our constitutional experts should look into the problem of corruption and defection that has weakened our democracy.



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