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ANTI DEFECTION LAW AND ITS EFFECT ON POLITICS- Poonam Mohapatra¹**ABSTRACT**

The 52nd Constitutional Amendment Act of 1985 which is being added in the Tenth schedule of the Indian Constitution commonly known by the name of “Anti Defection” Law. This particular law to some extent got success in bringing a stability in party politics and curbing defections, which contained in it many inaccurate provisions within it. It is very surprising to know that the members of the Parliament who moves on to other parties after their election, can be drum out as they infringe the legal provision of that country. And my paper deals with that aspect of Indian Law which is “Anti Defection” Law. The law has gained a lot of success in maintaining a stability in the party. The Tenth schedule which contain in it the anti defection law says that the members who by there own discretion give up the membership in that particular party they belong to and disregard the rules laid down by the party shall amount to disqualification of the member. The main contention behind framing this law was to stop the legislators from defecting from one party to another. With the passage of time the corruption increases, the politician used a lot of dishonest tactics to fulfil there personal vested interest which can be one of the main reason of the law being unsuccessful to a lot of extent. My article would be talking about the loopholes present in the law which failed the law to become successful to many extent.

Keywords: Anti Defection, Defection, Corruption, Political Stability, Constitutional supremacy.

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INTRODUCTION²

The Anti Defection Law has been introduced in the Indian Constitution by fifty second constitutional amendment inserted in the tenth schedule. This particular amendment was being done to bring political stability among the parties by banning defection and thus strengthening the parliamentary practice. The means and motive behind framing this law is when an individual was appointed as a member of one particular party than that member could not leave that particular party and also it cannot switch on to another party due to there own vested interest. This particular act of changing one political party to another is generally known as horse trading. MLA's and MP's switch to other political parties. With a separate goal, to check upon this particular result, Rajiv Gandhi government has framed Anti Defection law in the Indian Constitution. The thinking behind implementing this law was to compress the continuous clash with this political uneasiness. The Indian Constitution laid down many grounds by which MLA and MP can be disqualified and among them one such ground is defection. The meaning that has been carried out in defection is one member of a particular party switch to another for personal profits. In India after a lot of this type of events happened a step was being taken for eradicating this problem during 1967 election which was a pioneering movement in India's history. In 1962 a vast number of defection is being observed nearly 150 MPs and 2000 MLAs performed defection and from there only the phrase arise "Aaya Ram Gaya Ram" which is being particularly denoted to a MLA who has switch to three other political parties within one day. This is the landmark movement why the government has decided to take measures for combating this. After this there was formation of committee by Central government under the chairmanship of then Home minister Shri Y.B Chavan and other renowned people. They had given suggestions that political parties must contain with them code of conduct. It was stated in there suggestions that if defection was result of ideological clashes then the member who has defected would be disqualified to continue as a member, but could stand again in a fresh election. But if that particular member has defected due to pecuniary reasons then he shall not only be disqualified but also would be stopped to stand in election for a particular period. And before the bill could be passed the house was dissolved and all the efforts had gone in vain. After this tragic event another attempt is being taken by passing forty eighth amendment bill in 1985. And finally the parliament has passed the Anti defection law. And finally it amended various article like 101,

²The Anti- Defection Law and its effect on politics <https://www.hindustantimes.com> (Last Visited on November 2, 2022)

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102, 190 and 191. And the purpose of this amendment was that the member who defect from one party to another could be disqualified. The step taken by the Rajiv Gandhi government was really praise worthy. Earlier it was known as floor crossing that is crossing the floor and shifting from one party to another. As defection became a national concern that is the reason I have chosen the topic of Anti defection Law its effect and consequence upon the politics.

REASONS FOR THE DEFECTION³

There are so many reasons for defection:

1. When the member of the political party who had own the election is offered a good naming in the opposition party they tend to flew to that party.
2. If ministership is being offered to one MLA then also they tend to flew to opposite party.
3. Another core factor lies with the ideology, there occurs ideological differnces then also defection occurs.
4. Dynamic leadership is being absent in the party.

EFFECTS OF DEFECTION

Defection causes a lot of negative effects upon the nation state among them are:

1. Creation of lot of trouble in the bureaucracy and as a result it become strong and powerful.
2. The Chief Minister office get devaluated.
3. And the obvious effect the corruption increases.
4. And also one of the major effect is eluding the voters who would have given there votes either to that particular party or to the member.

MERITS AND DEMERITS

Every Law has certain merits and demerits similarly Anti Defection Law have merits as well as demerits. Firstly, let's look at the merit of Anti Defection Law is it brings stability among the party by punishing the member who shifts from one party to another. The sense of loyalty which is absent in defection, Anti Defection Law tries to bring a sense of devotion for the

³Anti-Defection Law- Legal Service India <https://www.legalserviceindia.com> (Last Visited on November 2, 2022)

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party from where they had own the election. The motive behind this is the party from where person is being selected must be loyal to that particular party.

Like merits it contains demerits also and that are curtailing the freedom of speech and expression by stopping to provide discording opinion about the party to whom the member belongs to. It has also been held in various judgement that article 105 and 194 is not an absolute right. Another demerit is reducing the accountability of the government to the people by stopping the members of the parties from changing it.

LOOPHOLES IN THE LAW

1. Power that is being vested with the speaker or chairman: As we know that the speaker or the chairman has been vested with absolute power in determining the case related to disqualification of the members due to defection. But we cannot give full guarantee that the speaker or the chairman would be acting impartially. So, this can be termed as one of the loophole of Anti Defection law.
2. Another assessment is that the speaker or the chairman might lack with the legal knowledge for deciding the cases of defection.
3. Another loophole can be barring the judicial review: It has been stated that the speaker or the chairman decision regarding disqualification would be final, there would not be any interference of the judiciary into it. It has also been stated that it is outside the jurisdiction of the courts to decide on this matter as well as outside the scope of article 136 of Supreme court and 226 and 227 of High Court.
4. Another loophole is it restricts freedom of speech and expression of the members of a particular party as a result of which restricting them to oppose the wrong acts of the party.
5. The term voluntary giving up has been mentioned but it has not been made clear that what is being counted under voluntary giving up. It has only been mentioned that a member of a house would be disqualified if he or she voluntarily gives up the party.
6. The law do not contains any backing for powers of election commission of India.
7. It allows a candidate for carrying out campaign by video conferencing from different location.

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INTENT AND IMPACT OF ANTI DEFECTION LAW⁴

The Anti Defection Law which was passed in 1985 by the fifty second amendment added in the tenth schedule having an intention of constraining the political defection. Under this the members who defected from one party to another are being disqualified. The Anti Defection law has been framed for checking upon defection but it is going against the fundamental democratic principles. There has also been accounted of many such situation where this law failed to check upon defection and also some cases has also been seen that some of members has also been offered ministry position.

Anti Defection law affecting the citizen's ability of holding there representative accountable: It tries to smash the accountability chain among elected representative and voters. In India citizens chose there member for a tenure of five years , in order to figure out the performance of their elected member based on there parliamentary records. Like a citizen having a powerful opinion upon the land issue. That citizen could ask that particular member to vote in the way the voters want. The member could also give justification if he differs from the view of the citizen. Thus this is how the voters as well as the elected representative vary in there opinion. However in this Anti Defection law the chain of accountability breaks down. As each and every member vote according to the requirement of the parties.

CONCLUSION⁵

At my concluding lines I would like to say that Anti Defection law has become unsuccessful in meeting the objective of curbing out political defection and failed in maintaining political stability. Also the law contains certain consequences which bar the members from carrying out there duties efficiently. As there is restriction imposed upon the members upon freedom of speech and expression for that reason they failed to discharge there constitutional duty of holding the government accountable. It has also folded the hands of the voters to hold there elected members accountable. That is why there is a pertinent question that whether the Anti Defection law should be repealed. In few years various suggestions were given for amending various provisions of this law. As we also knew the main purpose of introducing the law is

⁴Anti - Defection Law Intent and Impact – PRS India <https://prsindia.org/>(Last Visited on November 3, 2022)

⁵Anti – defection laws- A critical analysis- iPleaders <https://blog.iplayers.in/> (Last Visited on November 3, 2022)

maintaining stability. It has also been recommended that the law would not apply to the upper house of the legislature which is Rajya Sabha. Also there should be another independent bodies of deciding the cases of disqualification.



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