

An Analytical Study on the Politics of Defection in India

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Abstract—In a parliamentary system, party discipline is the impulse; when it falls short, the government usually falls. Conceivably, the platform of Indian politics suffers with innumerable practical disorders. The politics of defection is one such specie entailing gross miscarriage of fair conduct turning politics into a game of thrones (powers). This practice of political nomaditude can trace its seed in the womb of British House of Commons. Therein, if a legislator was found to cross the floor, the party considered him disloyal. In other words, the legislator lost his allegiance to his former party by joining another party. This very phenomenon, in practice has a two way traffic i.e. ruling party to the opposition party or vice versa. The democracies like USA, Australia and Canada were also aware of this fashion of swapping loyalties. There have been several instances of great politicians changing party allegiance, for example Winston Churchill, Ramsay McDonald, William Gladstone etc. Nevertheless, it is interesting to cite that irrespective of such practice of changing party allegiance, none of the democracies in the west ever desired or felt the need to legislatively ban defections. But, exceptionally India can be traced to have passed anti-defection laws. The politics of defection had been a unique popular phenomenon on the floor of Indian Parliamentary system gradually gulping the democratic essence and synchronization of the Federation. This study is both analytical and doctrinal, which tries to examine whether representative democracy has lost its essence due to political nomadism. The present study also analyzes the classical as well as contemporary pulse of floor crossing amidst dynastic politics in a representative democracy. It will briefly discuss the panorama of defections under the Indian federal structure in the light of the anti-defection law and an attempt has been made to add valuable suggestions to streamline remedy for the still prevalent political defections.

Keywords—Constitutional law, defection, democracy, political anti-trust.

I. INTRODUCTION

THE Constitution framers envisaged a “sovereign republican democracy” for India. They ornamented the law of the land with paramount ideals to attain the long desired absolute objectives. In theory, representatives of the government ought to be chosen by the people, for the people and of the people. In practice, perhaps one of the causes that are fading away the democracy of dreams is due to the smog of political defection. It is a continuing hazard irrespective of the preventive legislative measures. On one hand, this political

ritual is a must have in the parliamentary democracy, while on the other hand it is source of abridging the essence of democracy. The negatives of the very political ritual are evident through the political chronicles.

Generically, “*defection*” connotes to mean transfer of loyalty. Likely, in political terms, it means the transfer of allegiance by a legislator from one political party to another. Traditionally, the idea of floor-crossing is synonymous to the term. Hence, when a member of one political party joins another party, it amounts to defection. In other words, any member is supposed to have defected when he abandons his loyalty or allegiance towards one’s leader or cause. It is a political jargon which connotes change of party association or loyalty by an elected representative. The Ministry of Home Affairs in a study has defined “defection” to mean *inter alia* the relocation of loyalty by a legislator from one political party to another or a political clan which is identifiable [1]. Fig. 1, for example, depicts a member defecting from his political party. The practice of defection finds its seeds in the British House of Commons wherein, by crossing the floor, a legislator changed his party allegiance. However, it is pertinent to note that the words defection and dissent are not relative and connote distinct meanings. A member of a political party when resists to a party whip or direction, it may be an expression of dissent but it is not defection. Consequently, in response to a party whip or direction, there is no castigation if members sometimes vote in defiance. Hence, merely not complying with a party directive is not considered to be political defection because he continues to remain a member of his party. To mean defection, such a member has to either change sides or cross the floor.



Fig. 1 Depicting a member defecting

India is a federal nation and it consists of two layered legislature i.e. the central legislature and the State legislatures. Therefore, the representation of a member depends primarily on the fact whether he is a member of House of People (Lok Sabha) or State legislative Assembly. Appropriately in a representative democracy like India, the prime loyalty of a representative lies to the electorate and the nation. However, a party manifesto is the bed rock upon which a candidate gets

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elected. The problem lies while settling as to whom he owes his allegiance, i.e., the nation or the party through which he is elected. At one place it is to serve people's interest and at another place to abide by the party manifesto.

II. THE PHILOSOPHICAL FOUNDATION OF FLOOR CROSSING

The idea of incorporating provisions to enable defections in a parliamentary democracy recognizes the prevalence of free will and conscience. However, it is very rare to trace such principled defections when a member alters his political association out of sincere concerns because he may not conscientiously agree with the policies of the party to which he belongs. In that case, the member leaving the substantive party (with whose support he has been elected to the House), has to resign his membership and seek for a fresh election to the house. Again, it is not always necessary for a member to formally resign from his party to indicate defection; rather he may formally indicate through his conduct that he swapped party allegiance. For instance, in the case of *Mahachandra Prasad Singh v. Bihar Legislative Council*, [2] the Supreme Court held that it is reasonable to conclude that Mr. Singh had voluntarily given up his Congress party membership by contesting election for Parliament as independent candidate [3].

III. THE POLITICAL APATHY AND ITS ANTIDOTE

It is unfortunate to state that most of the floor crossings arise out of colored, self-centered motive that they hope to be appointed ministers in the Council of ministers. The thrust is not welfare driven, rather power seeking. It can be illustrated in the light of the bulky Kalyan Singh government of Uttar Pradesh. In 1997 the Bharatiya Janata Party (*hereinafter* BJP) formed the government with the support of the defected members from the Congress Party and the Bahujan Samaj Party (*hereinafter* BSP) [4]. Interestingly, most of the defectors lately got appointed as ministers. This immoral, opportunistic and indicative defection was an unprecedented event in political history of India. It involves breach of faith of electorate. Such a practice of defection multiplies defects in a democracy like governmental instability; contributes to distrust in the minds of the voters and ideologically imbalances the political dynamics. It negates the electoral outcome because the party which does not attain majority in the House through ballot may in order to form the government conspire to get a majority in the House by inducing defections. Conversely, the party which won the mandate from the people to represent the government may not succeed due to the defection problem.

History entails that the politics of defection has been the crooked weapon to dissect the democratic spirit in India posing a doubt as to political development or decay. Since the pre-independent times (Central legislative Assembly and Provincial autonomy) the malady of defection has been a pain in the throat of democracy. However, prior to 1967, The Congress Party enjoyed a power monopoly in the absence of competitors. But the election of 1967 is an unmatched period

in the India's political development and destruction. This period marked the dawn of party split and floor crossing in India. It was a phase which diminished the strength of Congress through dispersion of power and mushroomed coalition governments in 9 out of 17 States. Since then, the politicians inculcated the habit of defection as their favorite pastime [5]. It was all about instability and chaos and somewhere in the smog; politics and political thought was lost. A rat race for power and possession became the order on the day. The process was further aggravated by the incentives offered by the non-Congress parties. The lust for office converted the Indian political scenario into barter for exchanging individualistic interests. After Jawahar Lal Nehru, the arrival of Indira Gandhi marked a very disturbed atmosphere of political ethos and led to an inevitable political split. This time India got another reason to witness defection, as "Congress", the heart of India's political miracle broke into two. [6] With every passing day, the Indian Political parties steadily fragmented and proliferated. Hence, an intrinsic need to regulate the act of defection was felt necessary. The democratic principles and its foundations were putrefying in the absence of any such controlling mechanism. It was therefore thought indispensable to enact a legislation to restrain the vice. Subsequently, during 1984, Rajiv Gandhi took a different approach to the defection politics and the government, after securing a massive mandate, immediately announced its intention to amend the Constitution to ban the political defections and hence introduced the Constitution's 52nd Amendment Act, 1985. [7] On incorporation, it altered the following provisions of the Constitution, viz. clause (3) (a) of articles 101; clause (2) of article 102; clause (3) (a) of 190 and clause (2) of article 191 and also incorporated thereto the Tenth Schedule (*hereinafter* schedule). This schedule is often referred as Anti-Defection Law.

It is to be noted that at the very inception, the Constitution of India nowhere carried any reference of a political party in its functioning. However, the involvement of a political party is inherent in a democracy. The mushrooming political parties in the political font led to the rise in its instability and massive growth of corruption. The very phenomenon thus led to splitting and re-splitting of the same to grab ministerial berths. This led to imbalance and distrust. By March 1967 and February 1968, 438 defections occurred. [8] This nature of departure from political morality and nomaditude alarmed for constructing safe walls to curb political volatility. The foremost intention was to contrast between ethical and unethical political conduct. [9] Consecutively, the Anti-Defection law was enacted in 1985 to curb the vice of defection. It sculpted a classification of criteria based approach. The main intention of the law is to combat the evil of opportunistic party swapping. [10] The scheme of Anti-Defection law is embedded in the Constitution through Clause (2) of article 102; and the Schedule X. The Schedule was added to the Constitution by virtue of the 52nd Amendment Act in 1985; however, the same was amended in 2003 by the 91st Amendment Act. It aims to thwart upon the ailment leading to democracy decay. It is found to incorporate the

provisions for disqualification in case of party split and party merger. It stratifies members into Independent; Nominated; & Members of a party. The Independent members cannot join any party after election; and if they do then they are subjected to disqualification. Conversely, the Nominated members get disqualified if they do not join a political party within six months. While for those who are elected through political party ticket, they will have to remain loyal to the party and will have to vote according to the party; otherwise they get disqualified. Also, if they abstain from voting after the party whip has been issued, they can be subjected to disqualification.

On being disqualified as a defector, a member attracts penalty which desists him from continuing as a Member of the House until he contests for a fresh election. Furthermore, till he is re-elected, he can neither be appointed as a member to the Council of Ministers nor can he hold any other post of which wages or other allowances are remunerated through public money. Interestingly, certain amalgamations do not attract disqualification to a member for defecting. The instances are as follows: *Firstly*, if the members of his original political party merge with other party to form a new political party; or if he does not accept the merger and chooses to function as a separate group; *Secondly*, it shall amount to be a merger only if there is a blend of 2/3rd members of a party with another. Such a party blending shall not tantamount into a defection. In addition, *para.5* of the Schedule exempts certain members of the House from disqualification. If any of these members by virtue of the office held *viz.*, Chairman; Deputy Chairman; Speaker; or Deputy Speaker depart from their political party, shall not be subjected to disqualification. Conversely also he is not disqualified, when such a member rejoins his party when he ceases to hold the office mentioned above.

IV. DECIDING AUTHORITY FOR DEFECTION ISSUES

The schedule empowers the Speaker of the Lok Sabha to craft rules for disqualification on the ground of defection. It also empowers the presiding officer of each house to decide upon the cases of defections as a matter of internal administration as indicated by Articles 122 and 212 of the Constitution of India. Articles 122 and 212 restrict the courts from interfering into the Parliamentary proceedings and State Legislatures. In other words, such proceedings cannot be questioned on the ground of aberration in any court. The Chairman or, the Speaker, of the House has been authorized through the schedule under paragraph 6, to preside and decide the questions pertaining to disqualification on the ground of defection. In this case the decision of the presiding officer shall be final. However, if a situation arises wherein the presiding officer himself is disqualified, in that case the house chooses a member, who decides the matter. The schedule expressly states that the proceedings shall be purely parliamentary. Consequently, the Courts cannot thump in to inquire into these proceedings.

V. THE JURIDICAL APPROACH

The jurisdiction of the courts is barred in matters associated with disqualification of members in defection cases. Persistently, the Parliament's intention to rest the decision making power upon the presiding officer of the house is a concern and has attracted severe criticisms so far. It is also observed that it encourages public distrust and fails to bell the cat as desired. Nevertheless, the Apex Court, the guardian of the Constitution, has upheld the constitutional validity of the Anti-Defection law by a majority of 3:2 in the case of *Kihota Hollohon v. Zachilhu*. [11] Simultaneously the Court also ruled that the order by Speaker under the Tenth Schedule, which disqualifies a member of the legislature on the ground of defection, can be subjected to judicial review. The matter can be judicially reviewed under the following provisions: i.e., Article 136 [Special leave to appeal by the Supreme Court]; Article 226 [Power of High Courts to issue certain writs]; and Article 227 [Power of superintendence over all courts by the High Court] because the Speaker or Chairman acts as a tribunal. However, the power to judicial review shall not arise before the Speaker or the Chairman makes the decision. The majority in the present case has also clearly affirmed that the Speaker's order can be judicially reviewed only if there is jurisdictional error pertaining to violation of constitutional directive, *mala fide* or is done in bad faith, non-adherence with principles of natural justice and vicious [12]. In *Sh. Subodh Uniyal & ors. v. Speaker Legislative Assembly & anr.* and *Kumar Pranav Singh "Champion" & ors. v. Speaker Legislative Assembly & anr.* rulings, the court has expressed that the speaker is a quasi-judicial authority and his decision would be open to judicial review. In *Rajendra Singh Rana v. Swami Prasad Maurya* case, [13] the Apex court quashed the Speaker's decision terming it as unconstitutional because the decision was found to have no evidentiary support.

22 years ago the Supreme Court in the case of *G. Viswanathan v. Speaker, Tamil Nadu. Legislative Assembly*, [14] considered the question as to whether a candidate who is elected to the legislature through a political party and is found to be expelled from it at a later date, shall be subjected to disqualification he joins another political party. The question basically posed a concern towards an unattached member. But at this juncture the court negated the presence of the concept of unattached member under the *Tenth* Schedule. Also, the court has further added that if the member so mentioned is permitted to flee the legal dictum, it will demean the objective of the Anti-Defection provision.

The Supreme Court while deciding upon the immunity of a Speaker in the case of *Manilal Singh v. Dr. Borobabu Singh*, [15] stated that in a country which is governed by rule of law, no absolute immunity is guaranteed to any constitutional office. The apex court confirmed that the office of the Speaker is not immune from the court process. Therefore, the refusal to obey the orders of the court by the Speaker amounts to contempt. However, the series of judicial interpretations have implicated that Speaker being a creature of political wing is not free from subjectivity. Such has also been observed in the case of *Jagjit Singh v. State of Haryana* [16]. The minority

judges in the *Kihota Hollohan* case opined that the Speaker does not play a satisfactory role as an independent authority to adjudicate. The minority opinion can be observed to be sound.

VI. THE CRITICAL APPREHENSIONS

The pill of anti-defection has so far failed to cure the malady under concern. The growing instances of political defections nevertheless are a gigantic concern upon the rock of democracy and constitutionalism. To state critically, the defection limiting law has grossly failed its objective. Analogically the reasons may be entailed as follows:

Firstly, the defection cases exceptionally are decided by the presiding officer of the House concerned; whereas, in other matters of disqualification, decision making power rests with the President or the Governor of State.

Secondly, it is true that a party aggrieved by the decision of the presiding officer may approach the court. However, in the judicial decisions of *Mayawati v. Markandeya Chand* [17] and *Rajendra Singh Rana v. Swami Prasad Maurya* [13], it may be conversely observed that if the presiding officer does not dispose the matter and hence keeps it pending, the aggrieved fails to seek the aid of court. Perhaps, no remedy lies in this case as mingling with the pending proceedings by court shall tantamount to breach of parliamentary immunities.

Thirdly, the veil of parliamentary privileges may be removed only under certain irregularities like, violation of the Constitution and its mandate; abridge the principles of natural justice; and any act done perversely or in bad faith i.e. *mala fide*. The mentioned grounds of irregularities are anfractuous and not tenable practically. It is thus nearly unfeasible to establish *mala fides*; it is difficult to conclusively define the term "perverse", as it leads to wide interpretations; constitutional provisions are scarce pertaining to the issue of defections and the rules of natural justice is pliant.

Fourthly, if a legislature voluntarily leaves the party, he is subjected to punishment under Tenth schedule. While, when the same is expelled from the party, he is termed as an unattached member. The later seems imprecise and clearly lacks perspective as its letters are untouched by the anti-defection law yet the unattached member is not allowed to join another political party without laying his resignation to the House. As a result, it smashes the spirit of liberty as well as indicates the practice of puppetry within the party system of a so called parliamentary democracy.

VII. CONCLUSION

The thrust to tackle the problem of defections in Indian politics led towards the birth of an anti-defection law. Perhaps the hope was to curb the menace of defections in politics and broom out the anti-democratic spirit of political process. However, three decades have slipped since the introduction of the antibody. The efficacy of defection is still haunting the polity [18]. Most recently, it has been observed that the newly formed States are highly unstable politically. The states of Uttarakhand [20], Chattisgarh and Jharkhand [21] were born out of a struggle to curb injustice. Perhaps the rampant

defections are rendering their statehood to lose its quintessence and they are defecting from development [21]. Likewise, in Union Territory Goa [22] and States of Karnataka [23] Bihar, Gujarat [24] etc. the efficacy of anti-defection law is not satisfactory. The practice of disloyalty to the party is customary. In other words, in spite of a law on anti-defection, defection among political parties is order of the day. There shows no symptom of control, the show of perversity for power is in vogue. The continuing contempt to the electorate has ushered distrust upon the parliamentary affairs. The apparition of an unchecked parliament has drawn a picture of poor governance in India. The specter of the citizenry has abandoned all reliance from the institution. As a result the republic has higher reverence and faith in the judiciary and the trust in the political system is obsolete. [26] In the midst of the wrestle to govern, Indian judiciary has devised significant measures to introduce good governance by white washing the immunodeficiency's of the representative institutions. [27] However, there are instances when the anti-defection law has not only rendered the alleged defectors remediless but also the courts have been found to stand capitulated. Subsequently, in the words of Lord Acton, it is understood that power is something that tends to corrupt, and if the same is concentrated absolutely without a check it leads to cantankerous results. Power, married with lust is an immortal, invisible and a destructive constituent. It inch by inch gulps down the sanity of any system like that of a cricket. It is exceedingly difficult to testify the latent rationale of shifting party allegiance. A defector misleads by sketching the picture of his chocking free will as a means out of harm's way. On the contrary it is very intricate to establish the latent ill will. In other words, through facts it can be inferred that the purpose behind defecting is the lure for office and not any benevolent democratic spirit. Yet on record it is easier said than done to establish the same. Ironically, finding the sanity of the act is next to finding God. [28]

The politics of defection subverts the soul of constitutionalism. The history of defection entails that politicians have defected for vested interest and self enhancement. Nonetheless the edifice of law curbing the menace has failed to curtail the mishandling.

It will be incorrect to state that corrections are mandatory in the anti-defection law. There is no easy way to mend all the loop holes in it. Every effort to deal with the crisis will generate new predicament of its own. Though in certain situations the law can bear fruits but the adjudicating power concerted to the presiding officer is resulting into a miscarriage. [28] One of the probable solutions may be to divert the adjudicatory power towards the President for Parliamentary defections and the Governor of the state concerned for state legislature defections, similar to the other laws dealing with disqualification. It is now time tested that resting the power in the hands of the presiding officer of the house is in entirety diminishing the purpose behind the enactment. Otherwise, let an independent authority be assigned the task to keep a check on the mobility of the legislators. Last of all, it may seem practical to replace the

parliamentary democracy with the presidential democracy. Such an incorporation shall white wash the system and benefit the democracy.

Conclusively, politics of defection calls for a relook. The framers of the founding document of the Indian republic worked relentlessly to build the castle of democracy on the foundation of truth. The aorta of democracy pumps through elections. The opportunity given to the electorate to choose their representatives embarks the responsibility upon the ministers to be responsible to the legislatures and through it to the people. Defection as a practice usurps the aura of democracy. It negates the true spirit of a representative government and indicts a commission of fraud against the electorate.

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REFERENCES

- [1] L.P. Singh, "Political development or political decay in India?" Research Planning and Review Division, Ministry of Home Affairs, Government of India, *Defections*, 1968. University of British Columbia, Pacific Affairs, vol. 44, no. 1, pp. 65–80, Spring 1971.
- [2] (2004) 8 SCC 747.
- [3] U. R. Rai, *Constitutional Law – I*, 1st ed., Lukhnow: Eastern Book Company, 2016, pp. 192–193.
- [4] P.A. Kamath, "Politics of Defection in India in the 1980s," in *Asian Survey*, vol. 25, no. 10, University of California Press, 1985, pp. 1039–1054.
- [5] *The National Commission to Review the Working of the Constitution*, Final Report, par 4.19, 2002.
- [6] W.H. Jones, *India's political miracle*. Australian Journal of Politics and History, vol. XII, No. 2, pp. 213–220, Aug. 1966.
- [7] S.-C. Kashyap, *Anti-Defection Law and Parliamentary Privileges*. Delhi, 2nd ed., Universal Law Publishing Co. Pvt. Ltd. 2003, pp. 02–05.
- [8] K. C. Subhas, "Parliamentary Procedure, Law, Privileges, Practice and Precedents," 3rd edition, 2014.
- [9] J.T. Shotwell, *Democracy and political morality*. Political Science Quarterly, vol. 36 no. 1, pp. 01–08, Mar. 1921.
- [10] "Defection, disaffection" *The Hindu*, December 8, 2017.
- [11] 1992 SCR (1) 686.
- [12] *Mayawati v. Markendeya Chand*, AIR 1998 SC 3340: The Supreme Court held that the Speaker's decision was perverse.
- [13] (2007) 4 SCC 270.
- [14] AIR 1996 SC 1060.
- [15] 1993 SCR (1) 769.
- [16] 2006 (11) SCC 1.
- [17] (1998) 7 SCC 517.
- [18] B. V. Kumar. "Anti-defection law: welcome reforms," *Economic and Political Weekly*, vol. 38 no. 19, pp. 1837–1838, May 2003.
- [19] K. Upadhyay, "Two MLAs disqualified from Uttarakhand assembly," *The Hindu*, June 09, 2016.
- [20] N. Chandhoke, "The ironies of small states," *The Hindu*, Apr. 28, 2016.
- [21] "Defection from Development," *Economic and Political Weekly*, vol. 3 no. 1/2, pp. 5–9, Jan. 1968.
- [22] P. deSouza, S. Pawar, S. Silva and E. Carvalho, "Dynamics of a working democracy: representative politics in a Goa constituency," *Economic and Political Weekly*, vol. 41, no. 16, pp. 1574–1583, Apr. 2006.
- [23] "A Structural Malaise: Money power has torn apart the formal political institutions in Karnataka," *Economic and Political Weekly*, vol. 45, no. 43, p. 08, Oct. 2010.
- [24] "Defections Galore," *Economic and Political Weekly*, vol. 01, no. 17, pp. 723–725, Dec. 1966.
- [25] A. M. Singhvi, "Judicial activism is like an unruly horse," *Indian Express*, May 04, 2007.
- [26] N. Robinson, "Expanding Judiciaries: India and the Rise of the Good Governance Court," 8 *Wash. U. Global Stud. L. Rev.*, vol. 1, 2009.
- [27] Amarnath Tewary, "After Nitish quits as CM, Bihar mega alliance in crisis," *The Hindu*, p. 1, July 27, 2017.
- [28] P. Bhushan, "Are amendments required in the anti-defection act?" *Economic and Political Weekly*, vol. 32, no. 47, pp. 22–28, Nov. 1997.