

The combat law of floor crossings in India: The tenth schedule to the constitution of India

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ARTICLE DETAILS

Article History

Published Online: 07 September 2018

Keywords

Anti-defection law, floor-crossings, tenth schedule, defections, disqualification

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ABSTRACT

This paper on the anti-defection law of the tenth schedule to the constitution of India, has a central objective to assess whether India requires an anti-defection law or not. It is entirely based on secondary data analysis. It opens up with an introduction, followed by historical background to defection politics, the rationale behind the law and the provisions of the law. It also analyses the strengths and weaknesses of the schedule and it also gives recommendations to strengthen the schedule. It terminates with a conclusion that, India definitely requires an anti-defection law.

1. Introduction

The tenth schedule to the constitution of India was not present when the constitution of India is enacted in 1949. It was added by the constitution (fifty second amendment) act, 1985 in Rajiv Gandhi's prime minister ship. The objective of introducing this schedule in the constitution is to terminate the politics of defection seriously. It serves as a cautionary notice to the defecting politicians, explaining about the consequences of their defection. It lists out the grounds on which a member of parliament or state legislature can be disqualified by the speaker under articles 102(2) and 191(2) respectively. The bill to amendment addresses the issue of political defection as an evil and as a matter of national concernⁱ. The object to introduce this schedule is read as "If it is not combated properly, then it is likely to shake the foundations of Indian democracy and its sustaining principles"ⁱⁱⁱ. The bill further says that it is meant for outlawing defection.

The objective(s) of this research are listed below.

1. To assess that, whether India requires an anti-defection law or not?
2. If so, does the current anti-defection law in the tenth schedule of the Indian constitution is sufficient enough to curb political defections?

2. Significance of the research topic

Several research articles are already written in the tenth schedule, while some supports the presence of an anti-defection law and others do not support it. Therefore, the need for an anti-defection law is a matter of great debate today. This research is intended to solve this debate, and will answer the need of the anti-defection law. Secondly, there are many cases of due significance related to disqualification of members of a house under the tenth schedule, the Tamil Nadu case of disqualification of eighteen MLAs by the speaker of the Tamil Nadu legislative assembly in particular. In view of these contemporary cases, a consolidation of the past landmark anti-defection cases is arisen. This research shall serve the same.

3. Research methods

This descriptive research applied a qualitative research technique. The need of the anti-defection law is assessed by looking at the past before the anti-defection law was not enacted. The research solely relies on the secondary data from already published sources and do not involve any primary or first-hand data.

4. What is defection?

Defection is an act of leaving a political party to go to another oneⁱⁱⁱ. The word *defection* is not widely used worldwide. The corresponding term is *floor-crossing*. The official website of the UK parliament says that 'crossing the floor' means to change sides (i.e.) to leave one political party and join another^{iv}. The word comes from the seating arrangement of the UK parliament, where the Government sits together on the left while the opposition on the right. A change of floor literally means crossing the floor from one side to another^v. The advanced law lexicon defines defection as "crossing the floor by a member of legislature"^{vi}. Because of the numerous floor crossings by the members of Haryana legislature after the fourth general assembly elections, a new term or epithet has arisen- *Aya ram Gaya ram* (I have come, I have gone)^{vii}. The Chavan committee defined defector as "An elected member of state legislature who had been allotted the reserved symbol of any political party can be said to have defected, if, after being elected as a member of either house of parliament or of the legislative council or the legislative assembly of a state or union territory, he voluntarily renounces allegiance to, or association with such political party provided his action is not in consequence of a decision of the party concerned"^{viii}. In rough terms, defection simply means switching of loyalty of an elected member from one political party to another.

5. The Rationale behind the anti-defection law

In a democratic government, members of legislature are elected from constituencies on behalf of their political party. Primarily people vote a contestant in elections based on the party ideology and manifesto. The personal qualities of a

candidate do not have a major impact in attracting votes. Therefore, a candidate is expected to be loyal to the political party in which he is affiliated and contested elections on their registered party symbol. He shall be bound to obey the orders of the party. If he wants to leave the party, then correspondingly his candidature as an elected member should also be left.

6. Historical background

The idea of defection is not a new phenomenon observed after India's independence. The term defection can be traced to the age of Ramayana. In this great epic, Vibhishana, the younger brother of Raavana crossed the floor of Raavana and came to the side of Lord Rama^x. After independence defection can be traced to 1948, when the socialist members decided to leave the Indian national congress and resigned their seats for re-election. In 1950, 23 members of congress floor crossed to form Jana congress in Uttar Pradesh^x. In 1953, Prakasam, the leader of the Praja socialist party (PSP) defected from the party and joined congress to form Government in Andhra Pradesh. Thanu Pillai, another PSP leader floor crossed and joined the congress party. Totally 97 members had floor crossed from congress and 419 members from various political parties joined congress between 1957-1967^{xi}. In 1967-1975, 32 governments were fall down because of defection. In the year 1967 alone, more than 500 legislators floor crossed and switched their allegiance. In 1967-1968, 175 MLAs defected from congress and 139 defected to join congress. To reduce the problem of defection, P. V. Venkatasubhiah, a congress member, moved a private member resolution in 1968 in Lok Sabha. Afterwards, a high-level committee under the chairmanship of Chavan, the then home minister of India was formed with representatives from various political parties and experts. Chavan mentions defections as "A national malady which is eating into the vitals of our democracy"^{xii}.

An attempt was made in 1973, when a constitution (thirty second amendment) bill was brought in the parliament but not passed because of the dissolution of Lok Sabha. In 1978, Morarji Desai brought a bill, but got opposed at the introductory stage itself by both ruling and opposition parties and subsequently withdrawn. In the year 1985, under the prime minister ship of Rajiv Gandhi, the present anti-defection law-the tenth schedule to the constitution of India was successfully inserted by means of the constitution (fifty second amendment) act, 1985.

7. What are the provisions of disqualification in the tenth schedule?

The tenth schedule contains eight paragraphs- the first paragraph talks about the definitions, the second one sets out the grounds on which disqualification can be done, the third paragraph is omitted by the constitution (ninety first amendment) act, 2003. The fourth paragraph lists out the grounds on which defection do not apply, the fifth paragraph sets out the exemption cases of the speaker or deputy speaker of Lok Sabha, State legislatures and legislative councils and deputy chairman of the council of states. The sixth paragraph decides who would decide disputes while the seventh and eighth paragraphs talks about the barring of jurisdiction of

courts connected with disqualification of a member of house under the tenth schedule and enables the speaker or chairman to frame rules to give effect to the provisions of the schedule respectively.

The essence of the tenth schedule can be read from the second paragraph, that lists out the grounds of disqualification. A member of parliament or any state legislature can be disqualified if he,

- a) Voluntarily gives up his membership.
- b) Abstains from voting or voting in contradiction to the orders of the political party, without getting prior permission from the party. If the contradictory voting or absence from voting is approved by the party within fifteen days of voting, then it will not attract disqualification.
- c) If an independent candidate joins a political party after election.
- d) If a nominated member joins any political party after six months, from the date on which he takes his seat.

The fourth and fifth paragraph sets out the following exemption cases.

A member cannot be disqualified, if the political party on which he contested elections joins with another political party and he along with other members of his party,

- a) Have become members of the other party or a new party formed by the such merger.
- b) Do not accepted the merger and functions as a separate group.

This disqualification does not apply for a person elected to the office of speaker or deputy speaker of the house of the people or the deputy chairman of the council of states or the chairman or the deputy chairman of legislative council of states or the speaker or deputy speaker of state legislatures.

The sixth paragraph says that the decision of the speaker or the chairman shall be the final on the subject of disqualifications under the tenth schedule. The seventh paragraph is the most powerful statement of the schedule as it bars the jurisdiction of any courts in respect of any matter connected with the disqualification of an elected member of a house under the tenth schedule. The eighth paragraph empowers the chairman or the speaker to make rules for giving effect to the provisions of the tenth schedule.

8. The strengths of the anti-defection law

1. The tenth schedule serves as an effective deterrence tool against the elected and nominated members, who wants to change their loyalty to other political parties.
2. The provisions of the tenth schedule are more powerful to curb the defections of the members of the ruling party, as the power to disqualify a member is vested with the speaker, who will also be a member of the same ruling party.
3. The tenth schedule to a large extent prevented several governments from falling down and ensured their stability. A good illustration to support this

statement may be the disqualification of eighteen members of the Tamil Nadu state legislature by the speaker of the state assembly in September 2017^{xiii}.

4. The provisions of disqualifying a member under paragraph 2(1)(a), 'voluntarily giving up membership' is of wider scope, as there are no explicit provisions mentioning the actions leading to voluntarily giving up membership of a party. The speaker may interpret several new actions and conduct under this area.
5. To a great extent, the tenth schedule ensured party discipline among elected members by appointing a deterrent person, the chief whip of the political party.
6. The tenth schedule has provisions not only to disqualify an elected member, but also a nominated member of a house.

9. Weaknesses of the anti-defection law

1. As per the paragraph 6(1) of the schedule, the power to disqualify a member is vested with the speaker or chairman of the house. If the speaker is prejudice to his own party, then it will probably reflect in his decision on disqualifying petitions.
2. Some of the provisions of the tenth schedule lacks in terms of adequate clarity. A good illustration of this statement may be the fact, that the schedule does not mention any time frame to take decisions on disqualifying petitions under the schedule by the speaker. Another illustration to support this statement is the fact that, many of the cases arising from the tenth schedule are due to lack of enough clarity.
3. To a considerable extent, it curtails the freedom of speech of members inside the house.

10. Some landmark cases and their interpretations

Is the tenth schedule violating the freedom of speech and expression of the elected members? – The case of *Kihoto Hollohan*^{xiv}

This case can be considered as the principal case, regarding the tenth schedule. The reason for pointing this one as the 'principal case', because it resolves the following important issues.

1. The constitutional validity of the schedule and article 191(2).
2. Are the provisions of disqualification under the tenth schedule, are violative of the rights and freedom of the members of a house, under article 105?
3. The validity of the paragraph 7, that bars the jurisdiction of courts to hear matters on disqualification under the tenth schedule.
4. Whether the decision of the speaker/chairman on disqualification petitions under the paragraph 6, clause 1 excludes judicial review or not?

According to the petitioners of this case, every member of a house has the right to dissent, under the freedom of speech and freedom of conscience. These are the basic principles of democracy. A member of a house can have varied opinion from the party and he should reflect the same, by means of voting in the house. But the schedule curbs the above said

freedom and it needs to be struck down. The petitioners are of the opinion, that the schedule is violative of the basic structure of the constitution.

Honorable Justice Venkatchalliah is of the opinion that, in areas of experimental legislation, the constitutional validity and invalidity is marked up by 'hazy grey line', and there is no litmus test of constitutionality. The majority of the judges upheld the constitutional validity of the schedule by saying that, the freedom of speech of a member is not absolute and the constitution is flexible, according to the needs of the changing times. The judgement considers the provisions of the second paragraph, as salutary and they are kept to strengthen the fabric of Indian democracy by curbing unprincipled and unpolitical floor-crossings.

Shri Ram Jethmalani, argued for the petitioners that, the distinction between the 'split' and 'defection' is very thin and the same is unacceptable of logic. This argument is extremely convincing. But the verdict, in response to the argument says that, the justification for the 'split' and 'defection' is that, all the 1/3rd members cannot be driven by dishonest intentions at the same time.

The paragraph 7 brings a change in the operation and effect of articles 136 and 226 of the Indian constitution and it needs ratification by the states under the article 368(2). The other provisions of the schedule can stand independently and are not affected by the removal of paragraph 7. Regarding the finality of the decision of the speaker/chairman in disqualifications made under the tenth schedule, the verdict says that, even if the jurisdiction of courts is removed, the courts have jurisdiction to hear cases, where the provisions of the act framed are not observed by the authority.

In my views, this question has to analyzed along with the question, whether the elected members are bound to the decisions of their party or not? In the house, they are elected members representing their party and shall be bound by the decisions of the party. If they have varying opinions or conflicting interests against the orders of the chief whip of their party, then the first place to express their freedom of speech, is their party office and get it clarified there itself. If they are fighting for a noble cause, which the party do not accept, then they should resign their membership from the party and must get elected again in the forthcoming by-election.

What amounts to voluntarily giving up the membership?

The paragraph 2(a) of the tenth schedule says that a member of a parliament or a state legislature can be disqualified from his membership if he voluntarily gives up his membership. It does not specify explicitly, the actions that amounts to voluntarily giving up the membership. This question of what amounts to voluntarily giving up membership was answered by the judgement of Ravi S Naik^{xv} versus the union of India case. A straight forward answer to the statement of 'voluntarily giving up membership' is the resignation from political party. But paragraph 2(a) is not only synonymous with resignation and has an extra wide meaning. A formal resignation is not needed and inference can be drawn from the

conduct^{xvi} of the elected members outside the house also. This conduct definitely includes the speeches, actions supporting other political parties and so on. The inference drawn from the conduct of the elected members must be done fairly, giving due chances for the members to explain their conduct.

If a member joins a new party after getting thrown away from the original party, will it attract disqualification under the provisions of the tenth schedule?

The judgement of G. Viswanath case^{xvii}, answers this question. Once an elected member is thrown out from his political party on whose symbol he contested elections, he is treated as an 'unattached member'^{xviii}. He continues to be a member of the party as per the tenth schedule. Therefore, if he joins a new party, that can come under the purview of voluntarily giving up membership. So even if a member is expelled from a party, he should obey the orders issued the party and remain loyal to it until he tenure of his membership gets expired.

Do the courts have bar of jurisdiction to hear cases on disqualifications based on the tenth schedule?

The seventh paragraph bars the jurisdiction of courts to exercise their power of jurisdiction to hear cases based on the tenth schedule. It also says that the speaker's decision is the final. These provisions try to change the operation of articles 136, 226 and 227 of the Indian constitution and it requires one half ratification by state legislatures by the article 368(2). As the states have not ratified, the provision barring the bar of jurisdiction of courts becomes invalid and it is struck down in the case judgement of Kihoto holohan versus Zachilhu & Ors.

Do the speaker has any reviewing rights to change his earlier decision?

This is another puzzle of the tenth schedule that has no explicit answers in the provisions of the schedule. But this is solved by the verdict of **Dr. Kashinath G Jhalmi versus Speaker, Goa Legislative Assembly case^{xix}**. **The verdict clearly says that the speaker cannot review his own decision as there are no provisions for the same in the schedule. The verdict also mentions that there are no implicit powers that a speaker can enjoy to review his earlier decision.**

Is the speaker's decision constrained to judicial review?

It has been decided in the case of Ravi S Naik, that the speaker while discharging his power under the provisions of the tenth schedule acts as a tribunal^{xx}. So, his orders are subjected to judicial review. The tenth schedule is merely procedural in nature. If there are any violations in the procedures laid down by the tenth schedule, then it will attract the judicial review of courts.

When can a court exercise its power to review a speaker's decision?

In the swami prasad Maurya case^{xxi}, it has been decided that when a speaker fails to act on a complaint or accepts splits or mergers without due findings, he fails to act as per the provisions laid down in the tenth schedule. This will invite a court to exercise its power of judicial review to hear disqualification cases on tenth schedule. The judgement further says that, ignoring a petition is not only an irregularity but violation of a constitutional duty.

If an independent candidate supports the ruling party by joining the cabinet, will it amount to having a membership in the political party?

In October 2010, the speaker of the Karnataka state legislative assembly passed a disqualification order to five independently elected MLAs, but cabinet ministers in the Karnataka government, on the view that the conduct and association of these independent MLAs has led to achieve the status of members of the ruling party and hence disqualified under the tenth schedule. But the supreme court quashed the order of the speaker by saying "the mere extension of support to join the government, in our view was not sufficient to indicate that the MLAs have joined the ruling party and particularly on account of subsequent conduct in which they are treated differently from other members of the party". The mere fact that joining the cabinet as a minister do not amount to have a membership in the ruling party^{xxii}

11. Recommendations to strengthen the schedule

The author is of the opinion that, the tenth schedule is not so strong and the following recommendations shall serve to strengthen it.

1. The defectors should be barred from contesting elections for a period of five years from the date of his defection.
2. The defectors should be barred from holding the office of minister in both union and state governments for a period of five years, commencing from the date of his defection.
3. If a person had defected earlier, then he should be charged twice the amount of the caution deposit by the election commission in contesting elections.
4. There should be mandatory provisions, added in the affidavit, that whether the contestant defected a party earlier or not?
5. Once a member is defected he should be barred to contest to the office of speaker of Lok Sabha or state legislatures, as the office of speaker requires very high neutral standings and a person having a proven track record of changing loyalty should not be appointed.

12. Conclusion

In view of so many political defections discussed in the historical background section above, the need for an anti-defection law was correctly felt and enacted in 1985. After the enactment of the tenth schedule, the number of political defections is low in number^{xxiii}. Therefore, the need for a law to curb defections becomes indispensable and the tenth schedule served its purpose in a reasonably

good manner. I do not accept the view that, the tenth schedule curbs the freedom of elected members. Because if there is no law of anti-defection, then the stability of a government is a question mark. Members of a house can easily switch parties for nefarious political gains. So, India definitely needs an anti-defection law and the recommendations said above can be considered for strengthening it.

Acknowledgement

The author hereby thanks Dr. Christopher Chandran, Associate Professor, Department of Political Science, Madras Christian College, Chennai- 600059 for his guidance in writing this paper.

References [END NOTES]

1. ⁱ The Constitution (Fifty-second Amendment) Act, 1985. (n.d.). Retrieved 23 September 2018, from <https://www.india.gov.in/my-government/constitution-india/amendments/constitution-india-fifty-second-amendment-act-1985>
2. ⁱⁱ The Constitution (Fifty-second Amendment) Act, 1985. (n.d.). Retrieved 23 September 2018, from <https://www.india.gov.in/my-government/constitution-india/amendments/constitution-india-fifty-second-amendment-act-1985>
3. ⁱⁱⁱ defection Meaning in the Cambridge English Dictionary. (n.d.). Retrieved 23 September 2018, from <https://dictionary.cambridge.org/dictionary/english/defection>
4. ^{iv} Crossing the floor - Glossary page. (n.d.). Retrieved 23 September 2018, from <https://www.parliament.uk/site-information/glossary/crossing-the-floor/>
5. ^v Crossing the floor - Glossary page. (n.d.). Retrieved 23 September 2018, from <https://www.parliament.uk/site-information/glossary/crossing-the-floor/>
6. ^{vi} Aiyer, Ramanatha. (2015). Advanced law lexicon. Lexis Nexis.
7. ^{vii} Diwan, P. (1979). AYA RAM GAYA RAM: The politics of defection. *JOURNAL OF THE INDIAN LAW INSTITUTE*, 21(3), 291–312. Retrieved from http://14.139.60.114:8080/jspui/bitstream/123456789/16623/1/007_Aya%20Ram%20Gaya%20Ram%20-%20The%20Politics%20of%20Defection%20%28291-312%29.pdf
8. ^{viii} Diwan, P. (1979). AYA RAM GAYA RAM: The politics of defection. *JOURNAL OF THE INDIAN LAW INSTITUTE*, 21(3), 308. Retrieved from http://14.139.60.114:8080/jspui/bitstream/123456789/16623/1/007_Aya%20Ram%20Gaya%20Ram%20-%20The%20Politics%20of%20Defection%20%28291-312%29.pdf
9. ^{ix} Singh, V. (2012). *Anti-defection law in India: a study of emerging problems and issues*. Maharishi Dayanand University, Rohtak. Retrieved from <http://shodhganga.inflibnet.ac.in:8080/jspui/handle/10603/7931>
10. ^x Swarup, H. (2003, May 13). The Hindu Business Line: Another mission to stop defections. Retrieved 23 September 2018, from <https://www.thehindubusinessline.com/2003/05/13/stories/2003051300140900.htm>
11. ^{xi} Swarup, H. (2003, May 13). The Hindu Business Line: Another mission to stop defections. Retrieved 23 September 2018, from <https://www.thehindubusinessline.com/2003/05/13/stories/2003051300140900.htm>
12. ^{xii} Swarup, H. (2003, May 13). The Hindu Business Line: Another mission to stop defections. Retrieved 23 September 2018, from <https://www.thehindubusinessline.com/2003/05/13/stories/2003051300140900.htm>
13. ^{xiii} TAMIL NADU GOVERNMENT GAZETTE EXTRAORDINARY (2017). Retrieved from http://www.stationeryprinting.tn.gov.in/extraordinary/2017/294_Ex_II_1.pdf
14. ^{xiv} Kihota Hollohon V. Zachilhu and Others AIR 1993 SC 412
15. ^{xv} Ravi S. Naik V. Union of India, 1994 SCR (1) 754.
16. ^{xvi} Burman, A. (2009, November 23). The Anti-Defection Law – Intent and Impact. Retrieved 23 September 2018, from http://www.prsindia.org/administrator/uploads/general/1370583077_Anti-Defection%20Law.pdf
17. ^{xvii} G. Vishwanathan V. Speaker, Tamil Nadu Legislative Assembly (1996) 2 SCC 353
18. ^{xviii} Burman, A. (2009, November 23). The Anti-Defection Law – Intent and Impact. Retrieved 23 September 2018, from http://www.prsindia.org/administrator/uploads/general/1370583077_Anti-Defection%20Law.pdf
19. ^{xix} Dr. Kashinath G Jhalmi v. Speaker, Goa Legislative Assembly (1993) 2 SCC 703
20. ^{xx} Burman, A. (2009, November 23). The Anti-Defection Law – Intent and Impact. Retrieved 23 September 2018, from http://www.prsindia.org/administrator/uploads/general/1370583077_Anti-Defection%20Law.pdf
21. ^{xxi} Rajendra Singh Rana and Others vs. Swami Prasad Maurya and Others (2007) 4 SCC 270
22. ^{xxii} Balchandra L. Jarkiholi & Others v. B.S. Yeddiyurappa & Others, (2011) INSC 506.
23. ^{xxiii} Malhotra, G. C. (2005). *Anti-defection Law in India and the Commonwealth*. Metropolitan Book Company.