

POLITICAL PARTY



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Political Party

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Political Party

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Defection Prohibition Act and existing provisions

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Abstract-In democracy, many politicians are defecting. Defection of MLAs and MPs reduces the strength of the government. This often leads to a change in power. Under the 52nd Constitutional Amendment In 1985, the Prohibition of Defection Act was enacted in India to curb such frequent defections. In this, members of the Lok Sabha and state legislatures are disqualified on the basis of defection Provision has been made to decide. Also a detailed 10th Appendix has been included in this regard. The main purpose of the Prohibition of Defection Act was that a member elected on a party ticket should remain in the party and obey the orders of the party.

Back ground

Before the Anti-Defection Act, there was no provision against defection in Indian politics. Membership was not canceled even if an MP or MLA defected. First, after 1967, the need for Prohibition of Defection Act was felt. In 1967, Gaya Lal, an MLA from Haryana, changed his party three times in one day, and since then the phrase 'Ayaram Gayaram' has become popular in Indian politics. About 50 percent of the more than 125 MPs and 4,000 MLAs elected in the 1967 and 1971 elections had defected, causing considerable political turmoil in the country. Haryana Chief Minister Bhajan Lal had defected along with the cabinet. In 1979, the Janata Party's Morarji Desai government collapsed due to the rebellion of 76 MPs. As the defections increased, the Defection Act became necessary to curb such malpractices. The then Prime Minister Rajiv Gandhi constituted a committee and the 52nd Amendment was passed in 1985 with the consensus of all parties as per the committee's recommendation. The 10th Schedule was hereby added to the Constitution. Articles 102 and 191 disqualifying MLA were also amended. All these provisions are known as 'Anti-defection Act' or 'Defection Act'. If an independently elected member of a House under this Act If he joins any political party after such election, he becomes ineligible to be a member of the House.

Law

The Anti-Defection Act, inserted by the introduction of the Tenth Schedule to the Constitution of India, consists of 8 paragraphs.

Clause -1: Definition. This paragraph provides definitions of certain terms used in the making of the Act.

Clause -2: Disqualification on grounds of defection. This section deals with the main points of law, on the basis of which a member can be disqualified from Parliament or a State Legislature.

As per clause 2.1(c) a member may be disqualified if he "voluntarily leaves the membership of the Party", as per clause 2.1(b) if a member broadcasts through his party. In case of voting or abstaining from voting against the instructions given, the party may cancel their membership. Clause 2.2 states that any member, after being elected as a representative of a particular political party, joins any other political party after the election shall be disqualified. Paragraph 2.3 states that If a nominated member joins any political party after a period of six months after joining the House, he shall be disqualified from being a member of that House.

Clause -3: This paragraph was deleted by amending the 10th Schedule by the 91st Constitutional Amendment in 2003, as per the provision in this paragraph, if one-third of the members defected from a political party, they were exempted.

Clause-4: Disqualification shall not apply in case of merger. This paragraph excludes from disqualification in case of merger of political parties. If two-thirds of the MLAs or MPs of any party move to another party, their membership is not cancelled.

Clause 5: Exemption. Subject to the provisions of paragraph 1, this Schedule, notwithstanding, exempts persons appointed to the posts of Speaker and Deputy Speaker of the Lok Sabha, Deputy Speaker of the Rajya Sabha, Speaker and Deputy Speaker of the Legislative Council of the State and Speaker and Deputy Speaker of the Legislative Assembly.

Clause -6: Decision on questions of disqualification on grounds of defection. In the case of any disqualification under this provision, the Speaker or Speaker of the House concerned shall be the final decision-making authority.

Clause -7: Bar of Jurisdiction of Courts. No court shall have any jurisdiction in respect of any matter relating to the disqualification of a member of the House under this Schedule.

Clause -8: Rules. This paragraph deals with framing of rules for disqualification. Subject to the provisions of this paragraph, the Speaker or Speaker of the House may make rules for carrying out the provisions of this Schedule.

Supreme Court decision

The decision of the Speaker of the House to disqualify or cancel the membership of the People's Representatives is final as per the provisions of the sixth paragraph of the 10th Schedule. And the seventh paragraph states that the court cannot interfere with their decision. But in 1991, the Supreme Court Declaring the Tenth Schedule valid, Article 7 is held to be unconstitutional. The decision of the Speaker can be appealed to the court and the court can also change the decision.

Repair

The Anti-Defection Act was a reasonable reform but its exceptions weakened the force of the law. Defections that used to be done alone have now started to take place collectively. Therefore, in 2003, Parliament had to pass the 91st Amendment, which declared not only individual but also collective defection as unconstitutional.

The size of the cabinet was also limited to 15 percent by this amendment. However, the number of members in the Council of Ministers shall not be less than 12. By this amendment, Article 3 of the 10th Schedule was repealed, which provided that one-third of the party's membership would not be canceled if they defected at once.

The Prime Minister Rajiv Gandhi government constituted a committee and the 52nd amendment was passed in 1985 with the consensus of all parties as recommended by the committee. The 10th Schedule was hereby added to the Constitution. Accordingly, Article 191 Articles disqualifying MLA-Khasdars were also amended. All these provisions are known as 'Anti-defection Act' or 'Defection Act'.

What is defect?

Defection is the abandonment of a position or party, often to join an opposition group.

When was the Defection Act implemented?

1. In 1985, the 52nd Amendment added the 10th Schedule to the Constitution of India.

2 .Amendments and amendments were added to Article 102 and Article 191. Both these clauses deal with disqualification of members.

3. It provided the procedure on which a defecting member would be disqualified.

4 Prohibition of Defection Act was implemented in the country from 1985 during the Rajiv Gandhi era.

5. In the original Act, it was provided that if one-third of the total number of members defected, it would not constitute defection.

Who does the Defection Act apply to?

The Act applies to both Houses of Parliament and State Legislatures. Party by party member.

The Anti-Defection Act was enacted to ensure that he did not violate the order and if he did so he would lose his membership of the House. The purpose of the Defection Act is to prevent MPs from switching political parties for any personal motive.

Amendments to Prohibition of Defection Act

In the original law, a defection by one-third of the members was considered valid. According to the 91st constitutional amendment made in 2003, membership can be retained only if two-thirds of the total members defect.

How does a member become disqualified?

1. A Member of Parliament or a State Legislature is disqualified if he does the following:
2. In case of non-observance of party order (WHIP).
3. If entering another party
4. If voting without party lines
5. Assisting other parties or attending their meetings
6. If a member elected as an independent accepts membership of any party
7. If a nominated member joins any party after a period of six months after joining, the member shall be disqualified.

Exception

Defection by two-thirds of the total number of members does not constitute defection. At such a time the membership of the Parliament or the State Legislature does not go away.

Defection Prohibition Act-1985 has been mentioned in the constitution. This means that from 1950 when the Constitution came into force, the Act did not exist until 1985. That is why during this period there was a huge number of party shifts in India. According to a report by the year 1967, about five and a half hundred in our country.

MLA/MP After the fourth general elections held in the year 1967, the defection literally took place. The famous and infamous incident of that time was the 'Ayaram-Gayaram' incident in the state of Haryana. During that period sixteen state governments fell in sixteen months. Such forms used to make Indian democracy a mockery in advanced western democratic countries. Taunts like 'Indian MLAs/Khasdars are sold like onions and potatoes'.

When Rajiv Gandhi became the Prime Minister in 1985, he promptly introduced this law. According to the then provisions, if an MLA changes party after being elected, his MLA will be cancelled. Similarly, if an MLA votes against the order of the party, his MLA/Khasdar will be cancelled. Exception to this is if at least 1/3rd of the elected MLA of the party leave the party.

Instead of saying 'defection', it will be called 'split in the party'. Such defecting MLAs/MPs will not be dismissed. After a stage the limit of 1/3 of the elected representatives started to be reduced. Hence this limit was increased to 2/3.

Political wisdom in our country is of such a quality that loopholes were soon taken out of it. Many examples can be given. A very recent example of this is Karnataka in July 2019. It is in the states. To understand the mathematics of these numbers, one has to look at the results of the assembly elections held in Karnataka in 2018. Karnataka has a total of 224 MLAs. In the elections held in May 2018, the BJP won 104 seats while the Congress won 80 seats and the Janata Dal (NI) 37 seats. That means nobody got a clear majority. Governor Ramesh Kumar The Janata Dal (NI) and Congress Aghadi took the lead as the leaders prepared to invite Yeddyurappa. Their number of MLAs became 117. So then the Governor had to swear in Kumaraswamy as Chief Minister. In July 2019, 15 MLAs from their own party resigned against the Janata Dal (NI) and Congress government. This led to the fall of Kumaraswamy's government. Similarly in Madhya Pradesh also in March 2020 Congress government went and BJP government came. Here too 22 Congress MLAs rebelled and Chief Minister Kamal Nath had to resign as the Congress government was reduced to a minority. After that Shivraj Singh of BJP became the Chief Minister.

As a matter of fact, party changes are taking place in democratic countries all over the world. If an MLA/MP does not agree with the policies of the party, then that MLA/Khasdar can join another party. Nothing wrong with that. The Speaker of the Vidhan Sabha/Lok Sabha was given extraordinary powers. The person who sits in the post of Speaker is omnipotent in the legislature. It can suspend, expel, and disenfranchise MLAs/Members. Havoc can cancel their MLA/MP. This often leads to misuse of rights. So now the defection ban law should be reconsidered. If you look at it, the reconsideration started in the year 2003. As mentioned above, the Prohibition of Defection Act came in the year 1985. At that time, there was a provision that if 1/3 of the people's representatives leave the party, then the MLA will not be held. In the

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Indian Union, there are small states like Goa, Manipur, etc., where the total number of members of the Legislative Assembly is as small as five and sometimes thirty. In such states, if a party has a total of nine elected MLAs and three of them split, defection is prohibited. It has happened in states like A, Manipur etc. Therefore, in the year 2003, the constitution was amended and the provision was made as '2/3' instead of '1/3'. However, the situation did not matter much.

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