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## Avinash Kumar



*Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship. He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi. Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi. He has qualified UGC - NET examination and has been awarded ICSSR - Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research methodology and teaching and learning.*

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# ANTI DEFECTION LAW IN INDIA

AUTHORED BY: ADV. NICOLA PINTO

## ABSTRACT

The author of this paper attempts to analyze the Anti Defection Law, one of the most conflicting legislation issued by the Indian Parliament. This paper has discussed the various clauses of the 52<sup>nd</sup> Amendment and its following amendments. A number of case studies and insights into the challenges of its real ramifications have been provided.

## OVERVIEW

In a democratic system of government, where political parties with a wide range of beliefs are bound to arise, elections are an essential component. Political parties competing in a free and fair manner. Political parties are crucial to the success of because they provide opposing beliefs a tangible form.

## EVALUATION OF THE ACT

The 10<sup>th</sup> schedule of the constitution which embodies the anti defection law is designed to prevent the evil mischief of political defections motivated by the lure of office or material benefits or similar considerations. It is intended to strengthen the fabric of Indian parliamentary democracy by curbing unprincipled and unethical political defections.

### **The constitution fifty second amendment bill 1985 (anti defection law)**

The 52<sup>nd</sup> amendment act of 1985 provided for the disqualifications of the members of parliament and state legislatures on the ground of defection from one political party to another. For this purpose it made changes in four articles of the constitution and added a new schedule the tenth schedule to the constitution. This act is often referred to as the anti defection law. Later the 91<sup>st</sup> amendment act of 2003 made one change in the provisions of the 10<sup>th</sup> schedule , it omitted an exception provision i.e. disqualifications on the ground of defection not to apply in case of a split.

### **1. Provisions of the Act**

The tenth schedule contains the following provisions with respect to the disqualifications of members of parliament and the state legislatures on ground of defection.

- 1. Members of political parties:** A member of a house belonging to any political party becomes disqualified for being a member of the house (a) if he voluntarily gives up the

membership of such political party or (b) if he votes or abstains from voting in such house contrary to any direction issued by his political party without obtaining the permission of such party and such act has not been condoned by the party within 15 days.

2. **Independent members:** an independent member of a house becomes disqualified to remain a member of the house if he joins any political party after such election.
3. **Nominated members:** a nominated member becomes disqualified for being a Member of the house if he joins any political party after the expiry of six months from the date on which he takes his seat in the house.

## 2. Exceptions

Following are the exceptions:

1. If a member goes out of his party as a result of a merger of the party with another party.
2. If the member after being elected as a presiding officer of the house voluntarily gives up the membership of the party or rejoins it after he ceases to hold that office.

## 4. Deciding authority

Any question regarding disqualifications arising out of anti defection is to be decided by the presiding officer of the house. Originally the act provided that the decision of the presiding officer is final and binding and cannot be questioned in the court. However ***Kihoto hollohan case 1993*** the Supreme court declared this provision **unconstitutional** on the ground that it seeks to take away the jurisdiction of the supreme court and high court. Hence the decision of the presiding officer is subject to judicial review on the grounds of mala fides. But the court rejected the contention that the vesting of adjudicatory powers in the presiding officer is by itself invalid on the ground of political bias.

## 5. Rule making power

The presiding officer in the house is empowered to make rules to give effect to the provisions of the tenth schedule. All such rules must be placed before the house 30 days. The house may modify or disapprove them. The presiding officer can take the case only when he receives a complaint from member of the house. He can refer the matter to the committee on privileges for inquiry. Hence defection is no immediate

and automatic effect.

### **6.Evaluation of the act**

This act is designed to prevent the evil or mischief of political defections motivated by the lure of office or material benefits. It is intended to strengthen the fabric of Indian parliamentary democracy by curbing unprincipled political defections. The then central minister stated that passing of the 52<sup>nd</sup> amendment bill by a unanimous vote by both the houses of parliament was a proof of any of the maturity and stability in Indian democracy.

### **7.Advantages**

The following can be cited as the advantages of the anti defection law:

1. It facilitates democratic realignment of parties in the legislatures by way of merger of parties.
2. It reduces corruption at the political level as well as non developmental expenditure incurred on irregular elections.

### **8.Critisms**

1. It does not make a differentiation between dissent and defection. It curbs the legislators right to dissent and freedom of conscience.
2. Its difference between individual defection and group defection is irrational.
3. It does not provide for the expulsion of a legislator from his party for his activities outside the legislature.

### **91<sup>st</sup> amendment act 2003**

The 91<sup>st</sup> amendment act of 2003 has made the following provisions to limit the size of council of ministers to debate defections from holding public offices and to strengthen the anti defection law:

1. The total number of ministers including the prime minister in the central council of ministers shall not exceed 15% of the total strength of the Lok Sabha.
2. A member of either house of parliament belonging to any political party who is disqualified on the ground of defection shall also be disqualified to be appointed as a minister.

3. A member of either house of parliament or either house of state legislature belonging to any political party who is disqualified to hold any remunerative post.
4. The total number of ministers, including the chief minister in the council of ministers in a state shall not exceed 15 per cent of the total strength of the legislative assembly of the state. But the number of ministers including the Chief Minister, in a state shall not be less than 12.
5. The provisions of the Tenth schedule pertaining to exemption from disqualifications in case of split by one third members of legislature party has been deleted. It means that defectors have no more protection on grounds of split

