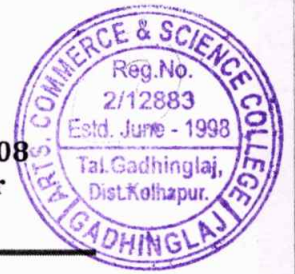


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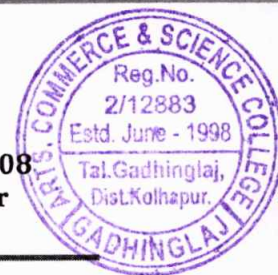
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Indian Parliamentary Democracy and Anti Defection Act- 1985: An Analysis

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Introduction:

India has adopted Parliamentary Democracy after lot of debate on it in the Constituent Assembly seven decades ago. No system is perfect. However, it was decided by majority in the Constituent Assembly that, 'Parliamentary Democracy' is more suitable to plural society like India. Perhaps Parliamentary Democracy is relatively the best form of Representative Government in modern times. In this system, People elect their representatives and representatives of the people elect 'executive body'; or in practical words, what we call 'government'. In this system Executive, that is government, is directly responsible to Representatives; these elected representatives are directly responsible to people. If elected representatives fail to fulfill the aspirations of people they may face its repercussions in next elections. And if executive fails to consider the views or expectations of representatives it may lose power at any point of time. Because, executive, that is Prime Minister and Council of Minister shall remain in power as long as it enjoy the confidence of the lower house of the legislature. Thus, theoretically it is ideal form of democracy. But practice is something else.

Since 1952 till 1967 Loksabha Elections there was no issue of anti defection in the Indian Politics. From 1967 there was gradual beginning of defection. When elected member of particular party in the House tries to change his party affiliation is called as 'defection'. To prevent this change of party affiliation after getting elected on the symbol and ticket of the particular party, Anti defection act was passed by the parliament in 1985. Which created lot of havoc in Indian Parliamentary democracy. It means there was no ban on the part of legislators to change the party affiliation before this act. Due to this act, now there is limitation of the party on the legislator to change his affiliation. In this research paper we are going to analyse pre 1985 position and post 1985 position of Indian Parliamentary democracy with special reference to recent political dram took place in Maharashtra.

Objective:

- In this paper we are going to deal with following objectives.
- To discuss the ideals of Parliamentary Democracy and its Practice.
- To examine who is supreme 'political party' or 'people'?
- To understand the objectives of the anti defection act 1985.
- To examine the Role of Presiding Officers in the act.

Background:

In General Election of 1967 there were many ups and downs took place in Congress Party. On one side there was veteran leaders like Moraji Desai and S. Nijalingappa and on other side there was group in the Congress who accepted the charismatic leadership of Indira Gandhi. After election members elected on the ticket of Congress party tried to change their party affiliation. Thus culture of *ayaram- gayaram* become part and parcel of Indian Politics. Though there was ethical bounding on the part of elected representative regarding not to change party in the House for selfish motto. After 1970s there was gradual growth in defection by members of Parliament as well as members of state legislative bodies. Due to defection there was adverse impact on stability of the governments. So in 1985 this act was passed by the parliament to prevent defection. However, there are some limitations to this act like any other act.

Let us start with major provision of the act. There are provisions of anti defection act in the 10th Schedule of the Constitution. Provision of disqualification of members of the House under Article 190 and 191 were amended. In 1985 there was 52nd Constitution Amendment Act was passed and 10th Schedule was added to the constitution. It deals with Anti Defection provisions. It was further amended in 2003 by doing 91st Constitution Amendment.

The anti defection law punishes individual members of Parliament or Members of State Legislature for leaving one party for another. Even if an elected member voluntarily gives up his membership of a political party it is called as defection. If an elected member of the House disobey the direction, especially in the House, given by party whip is considered as defection. But, there is one



provision in this act that, if more than 2/3 members of any House leave the original party and joins other party it is not considered as defection. It is considered as merger of the party. Before 2003, if more than 1/3 members do so, it was considered as merger and not defection.

One of the major defect of this law is it undermines representative and parliamentary democracy. Representatives have limitations of Political Party, in the House and outside the House. Due to the limitation of this act, representatives may not express 'the will of the people' in true sense in the House. Many times MPs or MLAs have to follow the party direction blindly and has no freedom to vote in their judgment. Representatives become loyal to political party rather than people. The chain of accountability has broken. 'People are Sovereign in Democracy' becomes myth due to provisions of anti defection act. Representatives of the people in the House, either MP or MLA should have freedom of conscience while exercising his legislative powers. There are number of limitations in our Parliamentary Democracy. Representatives of People belonging to ruling party cannot express 'note of dissent' with any policy of the government in the House or outside the House. This is not fair. This is not expected in ideal parliamentary democracy. In this context question arises, if MPs and MLAs are party representatives? Or representatives of people?

Speaker or Presiding Officer plays important role in this law. He enjoys discretionary powers. Number of times disqualification of members is either not decided or decided after term comes to an end. Meanwhile affected Political Parties approach the Court and it becomes sub judicious matter. Election Commission also intervenes when there is split in the party. When both the groups claim over symbol and original party, it is the Election commission which takes final decision. In some cases original symbol is not given to either group. For instance there was split in Janata Dal in 1990s. Janta Dal (S), Janta Dal (U), RJD, these new parties emerged after bifurcation of original Janta Dal. In all above mentioned cases powers are misused by presiding officers. The very objective of Parliamentary Democracy is in danger.

Another important issue of contention is, if there is defection by a few members they may lose the membership of the House. But, if the same act is done by more than 2/3 members it is not considered as defection. When more than 2/3 members of a party leave original party and join other party or group, it is called as merger of the party. Though it is logically correct but practically harmful for small political parties. Parties with single digit membership in the House are influenced by major parties very easily. It is not impossible to convert 6 members out of 9 members from a particular party. If 6 members leave the party it becomes merger and not panelized as defection. This provision was misused by Congress till 2010 as it was one of the larger party in the houses. With emergence of BJP after 2010, same provision was misused by BJP. This is how, anti defection act is harmful for the existence of small parties in the House. The members of small parties can be manipulated easily.

Presiding officer belongs to ruling party, hence he hardly remain impartial in giving judgment in case of defection. So it is suggested that, this power of declaring defection should be given to Governor and President, as the case may be. There is no time bound on the part of presiding officer to declare defection. Some time it is declared too late, by that time his term comes to an end.

Since 1991, there are tremendous changes took place in all walks of life including political arena. After 1991 there is rapid decline in the value system in the politics. During these three decades almost all political parties suffered from defection syndrome. Unfortunately political parties take double standard on this issue. When act of defection is harmful for their own party they condemn and criticize it and when it is politically beneficial they accepts it.

In recent past if we examine the case of Maharashtra State Assembly we can conclude that all political parties are lost good faith among people. In 2019 Assembly Polls no political party got clear majority. BJP, Shivsena, NCP and Congress won 105, 56, 54 and 44 seats respectively in 2019 elections. Due to controversy over the post of Chief Minister there was breakdown of BJP-Shivsena alliance after 2019 elections. It ultimately resulted in new combination of Shivsena-NCP- Congress Alliance. Udhav Thakre became Chief Minister of this new alliance of Maharashtra in 2019. Critique called it auto riksa government. Attempts were made by BJP to destabilize Thakre Government. Attempt was made to split either Shivsena or NCP. Finally in August 2022 there was split in Shivsena and Thakre Government lost majority in the House. There was wholesale defection of MLAs from Shivsena. Mr. Eknath Shinde became leader of defected group of Shivsena. This split in Shivsena created number of issues in politics as well as court of law. The provisions of anti defection act were interpreted as per convenience by every group.