

Global Perspectives on Anti-Defection Laws: Assessing Impacts on Constitutionalism and Democratic Governance of Bangladesh

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ABSTRACT

Though 'political defection' is connected with some fundamental rights like personal liberty, freedom of expression, freedom of association, etc., it has been a growing political disease. Many countries of the world have incorporated anti-defection laws, as has Bangladesh. Our constitution is the embodiment of the aspirations and emotions of millions of Bangalees and is reckoned as the beacon light of the nation, but some repugnancies hold opposite norms of the aspirations of the republic. These repugnant provisions not only make it an instrument of abuse but also obstruct the development of the nation. Anti-defection law is one of the most debated and abusive instruments of the constitution where all the aspirations, such as solemn expression of the will of the people, the long cherished dream of democracy, a responsible government, some fundamental rights guaranteed by the constitution, etc. are lost. Similarly, the provision of anti-defection law incorporated in the constitution of Bangladesh is not only contradictory to the provision of articles 7 (2), 11, 26, 39 (1), 39 (2A), 44, 55 (3), 65, 102 and the expression of preamble of the constitution, but also enslaves the MPs to the command of their respective political parties. So, it's high time we started working on it for the betterment of our nation.

Keywords: Political defection; Millions of Bangalees; Political disease; Fundamental rights; Democracy; Responsible government

INTRODUCTION

Political defection or side swapping is related to fundamental rights like personal liberty, freedom of expression, association, etc. A growing number of parliaments around the world, including Bangladesh, India, Pakistan and some African countries, have also adopted anti-defection laws that protect the unity of legislative party groups rather than the interest of the nations, threatening their very political development and hampering the institutionalization of democracy in many ways. The anti-defection law punishes individual legislators for leaving one party to another but does not penalize political parties for encouraging or accepting defecting legislators [1].

Anti-defection law aims at strengthening the smooth functioning of democracy to prevent defection in the government. Many countries practicing this provision are using the best of its mode, yet to say that the constitution makers of our country have done more than was necessary to prevent defection and sustain the

stability of the government. As a result, the provision of anti-defection law has not strengthened our democracy, rather, it has built a strong barrier between the expectations of the republic and the practice of democracy, though it curbed unethical political defections. Moreover, because of the limitation of article 70, the constitution has become an instrument for the government to restrain the people's expectations and uphold the party interest instead of the nation.

MATERIALS AND METHODS

Knowing of anti-defection law

Political defection originated from the British house of commons and generally means to resign from one's party or to desert a political party to join another one. The term is otherwise called floor crossing, side swapping or hopping from one side to the other. In constitutional and political

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terminology, it means to cross one member's party floor to another floor at the time of voting in the house. GC Malhotra, in his book "anti-defection law in India and the commonwealth", mentions defection by different nomenclatures such as floor crossing, carpet crossing, party hopping, dispute and waka jumping [2].

In a broader sense 'floor-crossing' has application in changing a member's allegiance from one party to another, being absent in the parliament, ignoring the direction of the party at the time of voting, voting against the party, abstaining from voting, being present in the house, etc. Political defection causes government instability; for a government may be toppled over due to the defection of some of its supporters to the opposition party converting it from a minority into a majority, an undemocratic form as it negates the electoral verdict.

Aspects of anti-defection law

The provision of anti-defection law was 'designed to ensure that the party which forms the government can continue to govern the country and not be destabilized and dethroned by floor-crossing' since horse trading is allured by the other side and vice versa. This provision was deliberately inserted given the prevailing political culture of the country. The framers of the constitution wanted to secure stability and continuity of government and ensure discipline among the members of the political parties to check corruption and instability in national politics.

Anti-defection law in the constitution of Bangladesh: The constitution (fourth Amendment) act, 1975 prohibits the MPs from being unseated, ignoring the direction of their respective party and also binds them to vote on parties' decisions or else MPs would have lost their membership in the parliament. The 12th amendment gave it an extended meaning. Fortunately, the 15th amendment has brought back the original provisions of article 70, leaving no chance of providing any extended meaning of the expression 'votes in parliament against that party'.

Scenario of political defection during Pakistan regime

After the unprecedented victory of the united front under the leadership of A.K. Fazlul Huq in 1954, Abu Hossain Sarkar's government was defeated since it couldn't remain united due to political defections. Aatur Rahman Khan formed the new government that was also defeated when Moulana Abdul Hamid Khan Bhashani came out of the Awami league and formed a new party on March 31, 1958. Governor AK Fazlul Huq invited Abu Hossain Sarkar to form a new cabinet. At this juncture, the central government led by Firoze Khan Noon dismissed Fazlul Huq from the post of governor to keep the Awami league government in power in east Pakistan, but the newly re-established ministry of the Awami league was again defeated on a cut-motion on June 18, 1958 and Abu Hossain Sarkar was again commissioned to form a new ministry [3].

Reasons for adoption of anti-defection law

The history of floor crossing is quite old in this subcontinent region. Differences of opinion are quite natural in a multiparty parliament and different parties tend to serve their agenda. In the overpopulated region, there is never any scarcity of political parties. One Bengali is one party, two Bengalis two political parties; and three Bengalis, two political parties with dissident faction in one of them. To explain the reason behind the adoption of such a provision in the constitution, Dr. Kamal Hossain mentions.

Interpretation of the constitution

The supreme court of Bangladesh is tasked by the responsibility of protecting and upholding the constitution. Since the inception of Bangladesh, it has played an active role in the interpretation of our constitution. But, it hasn't given any effort to interpret the provision of anti-defection law since the term 'vote against the party' is still undefined. While framers of the constitution are blamed for the failure of separation of power in Bangladesh, the judiciary may not avoid the burden. In various cases, the supreme court took a conservative attitude in interpreting article 70. The function of the court in interpreting any provision of a constitution is to ascertain the intention of its makers. Since the purpose of incorporation of anti-defection law was to curb political defection, its implementation should be limited to vote on confidence or non-confidence only, as the general bills have nothing to do with political defection. According to Dr. Kamal, 'ascertainment of intention' might be handy in interpreting this provision [4].

Positive impact of anti-defection law

While we were led by leaders like AK Fazlul Huq, Huseyn Shaheed Suhrawardy and Maulana Bhasani, we could have reached the pinnacle of development, but the continuous political defection left us at the bottom of the political, social and financial crisis. The inclusion of anti-defection laws in our constitution has succeeded in changing the context of our domestic politics. While we are witnessing the downfall of governments in other countries, our government is becoming more stable because of these laws.

Safeguard to democracy: Anti-defection law works as a safeguard to democracy. A high court bench of justice Abu Taher and Md. Saifur Rahman, on March 18, 2018, upheld article 70, summarily rejecting a writ petition that challenged the legality of the article and observed: "I think the present article 70 does not contravene the constitution at all; rather it works as a safeguard for our democracy." Justice Ashraful Kamal summarily rejected the petition rule issued by justice Moyeenul Islam Chowdhury, asking why not the provision of article 70 should be declared unconstitutional and observed that raising questions over article 70 was demeaning the 403 members of the national assembly, including father of the nation Bangabandhu Sheikh Mujibur Rahman and the people of Bangladesh as well as the constitution.

Reduces horse-trading: Members were offered in various ways, some with money, some with special privileges like jobs for

relatives, huge company shares or some with ministerships. Therefore, thanks to this provision, these issues are rarely happening. A crystal clear scenario of political horse-trading has been drawn by Dr. Kamal while talking about anti-defection law: Negative impact of anti-defection law.

Self-contradiction of the constitution: The constitution is the living, dynamic organism that, at any point in time, will reflect the moral and political values of the people it governs, and accordingly, the law of the constitution must be appreciated within the socio-political context in which it operates. Our constitution should also work as an organism to reflect moral and political values. We can see that the provision of anti-defection law incorporated in article 70 is clearly contradictory to the provision of articles 7 (2), 11, 26, 27, 39 (1), 39 (2A), 44, 55 (3), 65, 102 and the expression of the preamble. Dr. Kamal agrees- "There is an apparent contradiction between article 70 and some other articles of the constitution. As a chairman of the drafting committee, I submitted to Bangabandhu that, in my view, there seems to be contradictory" [5].

Article 70 and democracy: In many places of the constitution of Bangladesh, democracy has taken place as the high aspect of the republic. Democracy is the root through which Bangladesh has managed its place on the world map. In para 2 and 3 of the

preamble of the constitution of Bangladesh, democracy is envisaged and article 7 (2) indirectly mentions democracy as the solemn expression of the will of the people. Democracy has been extended in administration through elected representatives at all levels through article 11 and it is assured in the root level through article 9 of the constitution. Besides, democracy is recognized as the fundamental principle of state policy also.

But, there is a conflict between 'article 8, 11' and 'article 70 (1)' in the constitution based on the point of democracy. Article 8 describes the four fundamental rights of Bangladeshi citizens; democracy is one of them. In addition, article 11 talks about democracy and human rights. However, article 70 (1) does not fulfill the condition of these three articles and the expression of the constitution. Those who argue that in many countries the parliament is empowered to impeach an apex court judge forget the fact that there is no article 70 hanging as the damocles sword on the head of those MPs. Article 70 of the constitution was one of the factors considered in the ruling against the 16th amendment (Table 1).

Table 1: Surveys of 102 university teachers and 325 LL.B and LL.M students reveal public expectations regarding anti-defection law in Bangladesh.

Concerned matter	Participants	Yes	No
Article 39 guarantees the freedom of thought, conscience and speech. From the broader point of view, the right to vote against a party decision, to be absent from the house in protest of the party's undemocratic decision or to abstain from voting, is connected with the personal liberty of a member. The provision has made the MPs a puppet to their parties as they cannot disobey the party decision. Justice Moyeenul and Justice Quazi Reza-Ul Hoque observed			
Do you want the seat of the Parliament to be vacated even if the member of Parliament elected by you resigns from the party?	Teacher and advocates-112 Students-325	Teacher and advocates-49% Students-61%	Teacher and advocates-51% Students-39%
Do you want the member of the parliament elected by you to abide by any decisions of the party in the parliament forgetting the welfare of nation?	Teacher and advocates-112 Students-325	Teacher and advocates-0% Students-0%	Teacher and advocates-100% Students-100%
Do you want the seat of the parliament to be vacated, if the member of parliament elected by you votes against the party decision, while the party's decision is not a blessing for you?	Teacher and advocates-112 Students-25	Teacher and advocates-99% Students-88%	Teacher and advocates-1% Students-12%

Do you consider the provision of article 70 of the people's republic of Bangladesh to be an obstacle to democracy?	Teacher and advocates-112 Students-325	Teacher and advocates-98% Students-78%	Teacher and advocates-2% Students-22%
Do you consider the provision of article 70 is an obstacle to the freedom of speech which is guaranteed by the constitution?	Teacher and advocates-112 Students-325	Teacher and advocates-62% Students-83%	Teacher and advocates-62% Students-3%
Do you expect any reasonable change to the provision of article 70 of the constitution?	Teacher and advocates-112 Students-325	Teacher and advocates-96% Students-88%	Teacher and advocates-4% Students-12%

Article 70 and articles 44, article 102: The constitution guarantees fundamental rights in part VIII, including the right to move the high court division to enforce those rights under article 44 following article 102 (1). The voting power of MPs in the parliament is their absolute expression of their freedom of conscience and speech. Due to their inability to exercise their voting power as they desire, their fundamental rights to freedom of conscience and speech are being violated. Moreover, they cannot even go to the supreme court to enforce their rights guaranteed by the constitution. Article 70 allows the party's decisions to supersede fundamental rights [6].

Article 70 and article 55 (3): The original philosophy of the doctrine of collective responsibility is that the government should continuously be held accountable for its actions so that it always faces the possibility that a minor mistake may result in a withdrawal of parliamentary support. Our constitution assures the collective responsibility of government to the parliament.

Buried the parliamentary form of democracy: Democracy was introduced in Bangladesh during the British colonial rule of South Asia from 1757 to 1947. At the time, the Westminster style of democracy was prevalent in Britain. The parliamentary form of democracy is also a basic structure of our constitution and to execute this, we follow the Westminster type of democracy. The expectation of the parliamentary form of democracy is as old as the expectation of democracy in the Indian subcontinent. We have cherished the parliamentary form of democracy as long as we have cherished the democracy in our hearts. The six points movement by Banga bandhu was the ultimate expression of the parliamentary form of democracy during the Pakistan regime and point no. expressed the basic demand for a parliamentary form of government to which almost everyone was committed. Prime minister Sheikh Hasina expresses her concern that Bangladesh is following the Westminster type of democracy in the British model.

The doctrine of constitutionalism suggests that the power conferred on institutions within a state-whether legislative, executive or judicial be sufficiently dispersed between the various institutions to avoid the abuse of power. In summary, constitutionalism suggests the limitation of power. Balancing these three powers against each other is the possible way to check and restrain human nature's efforts toward tyranny and to preserve any degree of freedom in the constitution. But, the constitution of Bangladesh has vested enormous power through

article 70 to the executive that the legislature cannot guard the executive. When legislators cannot vote independently on laws, they cannot effectively check the government. The check and balance policy is destroyed in our system, where the legislature affects little over the executive [7].

Leads to elective dictatorship: Parliamentary members are elected for five years, making pledges to their constituencies based on a political agenda. Therefore, it is undemocratic to tie them down to the dictates of a political party. Due to anti-defection law, the members of parliament are not allowed to be guided by their judgment for providing views and decisions on any matter during parliament sessions. The leader becomes the only one acceptable to all and needs to make all the decisions, wielding absolute power in party matters, leading to a dictatorial regime within the parliamentary system. Asiatictimes.com raises alarms about a potential dictatorship, citing instances of violent repression of political opponents, manipulation of laws for arrests and a controversial 'war on drugs' resulting in over 100 deaths and thousands of arrests under prime minister Hasina's leadership.

Obstacle to rule of laws: In the constitution of Bangladesh, the rule of law has its place as follows: "It shall be a fundamental aim of the state to realize through the democratic process a socialist society, free from exploitation a society in which the rule of law, fundamental human rights and freedom, equality and justice, political economic and social, will be secured for all citizens." Article 27 and article 31 are crucial in guaranteeing the protection of law. The constitutional arrangement has ensured effective enforcement of 18 fundamental rights through articles 44 and 102. However, it's unfortunate that article 70 limits dissenting opinions from members of the ruling party, which could result in undemocratic bills being quickly passed or approved.

Anti-defection law in international perspective

The scope of anti-defection law is not deniable in the international arena. This political defection has been happening in different countries since time immemorial. The famous British prime minister Winston Churchill left the party three times in his political career. The impact of anti-defection laws in the newly independent African states is remarkable. Party switching is common in developed countries like the UK, USA,

Brazil, Italy, Romania, Ukraine, India and Malaysia. There is a constant flow from the party in the developed world, but the defection is considered a political right [8].

Provision guarding defection in different countries: In this section, we shall explore the anti-defection laws of the constitutional provision of 54 countries worldwide. We will see that some countries have strict provisions against political defection, while others have imposed restrictions only with reasonable grounds. To have an extensive knowledge of the phenomena of the anti-defection laws of the world, we'll conduct a comparative study of many countries worldwide.

Article 52 of the constitution of Angola, article 98 of the constitution of Armenia, article 70 of the constitution of Bangladesh, article 59 of the constitution of Belize, article 15 (10) of the constitution of Bhutan, article 85 of the constitution of Burkina Faso, article 171 of the constitution of Cape Verde, article 95 of the constitution of Cambodia, article 63 of the constitution of Fiji, article 97 of the constitution of Ghana, article 156 of the constitution of Guyana, article 102 and 191 of the constitution of India, section 6 (A) the basic law the Knesset of Israel, article 52 (3) of the constitution of Kazakhstan, article 40 of the constitution of Kenya, article 65 of the constitution of Malawi, article 14 (A)(1) of the constitution of Penang, article of the constitution of Maldives, article 178 of the constitution of Mozambique, article 48 (1)(b) of the constitution of Namibia, article 89 of the constitution of Nepal, article 68 of the constitution of Nigeria, section 55 (A) of the electoral act, 1993 of New Zealand, article 63 (9A)(1) of the constitution of Pakistan, article 114 and 130A of the constitution of Papua New Guinea, article 78 of the constitution of Rwanda, article 46 (3) of the constitution of Samoa, article 60 of the constitution of Senegal, article 46 (2) of the constitution of Singapore, article 77 (1) of the constitution of Sierra Leone, article 81 of the constitution of Seychelles, article 47 (3) of the constitution of South Africa, article 99 (13) of the constitution of Sri Lanka, article 87 (1) (e) of the constitution of Sudan, article 71 (e) of the constitution of Tanzania, article 106 of the constitution of Thailand, article 83 of the constitution of Uganda, article 81 (6) of the constitution of Ukraine, article 72 (2) of the constitution of Zambia and article 129 (1)(k) of the constitution of Zimbabwe hold provision of anti-defection laws.

Comparative study: Anti-defection laws are more indicative of weak democracy than of strong democracy. Anti-defection laws

were introduced in the 1970's but gained worldwide attention in the 1990's. Many African countries enacted this law in early 2000. Although this law merely exists in the developed world, the effect of the law is noticeable in developed countries, especially in Asian and African countries. The practice of this law is also remarkable in industrially developed South Africa and India, the world's largest democracy. In the advanced world, political defection is treated as a political right, while in the underdeveloped world, it is considered a blessing to the government and a curse to the commoners.

Prohibition of voluntary resignation or exclusion from the party: Almost every country that maintains anti-defection law, holds restrictions over either resigning from the party an MP was nominated for or joining another party or both. In some cases, it is observed that a member of parliament elected as an independent member is barred from joining any party during his office. Among 195 independent countries worldwide, 54 states have incorporated anti-defection laws to guard against political defection.

Prohibition of voting against the party: Only a few countries in the world practice the strict/absolute mode of anti-defection law, where MPs are barred from voting against the decision of the party to which they belong. Bangladesh, India and Sierra Leone are the only three countries among 195 independent countries of the world where the elected members of the legislative assembly have no rights to vote against the party's decision they belong to. I would like to call this term an 'absolute form of anti-defection law' [9].

Anti-defection laws in South Asia: An empirical overview: If we review the effect of anti-defection laws in South Asia, we see that almost all these countries have introduced anti-defection laws. The politics in this region has been wavering and the political parties are much concerned about defection, while the legislative members of this subcontinent are fond of personal gains rather than political idealism in general. Due to political defections, the government of Sri Lanka has been defeated twice. Recently, Imran Khan's government in Pakistan also faced defeat (Table 2).

Table 2: Anti-defection law in South Asia.

Country	Anti-defection law	Barred from resigning from/ joining another party	Barred from voting against party decision
Afghanistan	No	No	No
Bangladesh	Yes	Yes	Yes
Bhutan	Yes	Yes	No
India	Yes	Yes	Yes
Maldives	Yes	Yes	No

Nepal	Yes	Yes	No
Pakistan	Yes	Yes	No
Sri Lanka	Yes	Yes	No

Global acceptance of anti-defection laws based on population and land area: Now, in terms of population, if we consider the acceptability of the anti-defection law, we can see that 61.13% of the world's population is free from anti-defection law, whereas 35.87% is governed by anti-defection law. Besides, almost 20% of the world's population is governed by an absolute form of anti-defection law. It is also observed that 42.146% of the

world's surface area of is ruled by anti-defection laws, whereas only 6.097% by an absolute form of anti-defection laws (Table 3).

Table 3: Global acceptance of anti-defection law based on population and surface land area.

Comparison	Countries	Population in billion	Percentage of population	Land area (in km ²)	Percentage of land
World	195	7.945	100%	57,510,000	100%
No anti-defection	141	5.095	64.13%	33271638	57.88%
Anti-defection (in total)	54	2.849	35.87%	24238362	42.146%
Absolute defection	anti- 3	1.582	20%	3506900	6.097%

Anti-defection laws worldwide: A continental empirical research: If we have a continental review of the introduction of anti-defection laws, we will see that its acceptance is very high in Asia and Africa. But it goes without saying that it is not acceptable in European countries. The influence of the European countries that have adopted this provision is negligible in world politics. Anti-defection laws have been adopted by 13 Asian, 28

African, 5 European, 3 North American, 2 South American and 4 Oceanian countries out of the total of 48, 54, 44, 23, 12 and 14 countries, respectively. Additionally, some provinces in various countries, such as Manitoba in Canada, also implement this law (Table 4).

Table 4: Anti-defection law according to the continents.

Continent	Number of countries	Countries with anti-defection law	Name of countries (Including independence year) with anti-defection law
Asia	48	13	Armenia-1991, Bangladesh-1971, Bhutan, Cambodia, India-1947, Nepal, Pakistan-1947, Singapore-1965, Sri Lanka-1948, Thailand, Kazakhstan-1991, Kyrgyzstan-1991, Israel-1948
Africa	54	28	Angola-1975, Burundi-1962, Burkina Faso-1960, Cameroon-1961, Cape Verde-1975, Democratic Republic of Congo-1960, Ethiopia-1941, Gabon-1960, Gambia-1956, Ghana-1957, Kenya-1963, Lesotho-1966, Malawi-1964, Mozambique-1975, Namibia-1990, Nigeria-1961, Niger-1960, Rwanda-1962, Sao Tome and Principe-1975,

			Senegal-1960, Seychelles-1976, Sierra Leone-1961, South Africa-, Sudan-1956, Tanzania-1961, Uganda-1962, Zambia-1964, Zimbabwe-1980
Europe	44	5	Bulgaria-1908, Hungary-1991, Macedonia-1991, Romania-1877, Ukraine-1991
North America	23	3	Belize-1981, Mexico-1810, Guyana-1966
South America	12	2	Suriname-1975, Trinidad and Tobago-1962
Oceania	14	4	Fiji-1970, New Zealand, Papua New Guinea-1975, Samoa-1962
Antarctica	0	0	

From the above discussion, it is clear that most of the newly independent countries in Africa and Asia who gained their independence during the middle to late twentieth century have accepted anti-defection laws as a safeguard for their democracies. Old democracies practice political defection as a political right, while the new democracies consider it a curse to their democracies. Furthermore, some countries such as Botswana, Jamaica and Malaysia seem to be adopting anti-defection laws to guard against political defection [10].

CONCLUSION

When anti-defection law was incorporated into our constitution, it aimed at bringing down political defection. To ensure the stability of government, the constitution makers have done so much that the basic demand for democracy has lost its value. The anti-defection law incorporated in our constitution has hampered the ability of our MPs to act as deliberative bodies that hold the administration on behalf of the citizens. We elect members of parliament to make laws for the proper functioning of the republic. An elected member of parliament represents 3 lakhs 70 thousand voters in the parliament. An MP's vote in parliament is meant to represent the views of 370,000 voters, but when crafting laws, individual votes may not fully capture the diverse opinions and demands of their constituents. In this way, democracy is constantly being defeated along with the will of the people. Through anti-defection law, MPs do not represent the people but represent that party as a member of the party and acknowledge the loyalty of their team or are forced to acknowledge it.

Anti-defection law ensures stability and smooth functioning of the government, helps to uphold the election manifesto and rigorously curbs horse trading in Bangladesh. To curb political defection, anti-defection laws have shown vigorous effectiveness in the politics of Bangladesh since its independence. Few incidents, but BNP leader's MA Mannan and Mahi B

Chowdhury's defection, have ever happened in the history of Bangladesh.

We hope that the government of Bangladesh shall feel the will and aspirations of our people and reflect our desires and aspirations in the constitution of the people's republic of Bangladesh. The parliament must establish a disciplinary system that allows MPs to uphold party unity while maintaining independence and the ability to create laws that benefit the country. Members of parliament should be free to practice their right to expression and the government should find a way so they can represent the will and expectation of their respective constituencies to serve the nation.

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