
INTERNATIONAL ASPECT OF ANTI-DEFECTION LAW

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ABSTRACT

Democracy, as one of the most efficient forms of governance, relies heavily on political parties to channel public opinion and facilitate policymaking. While party systems—whether bi-party as in the United States and Great Britain or multi-party as in India and France—serve as essential institutions, they also give rise to the issue of political defection. Defection, often associated with political bargaining, opportunism, and instability, has been a persistent concern in many democratic nations. In established democracies, ethical standards, political culture, and constitutional conventions have limited the need for legal deterrence against defections. However, in nascent democracies, the phenomenon threatens government stability, leading to legislative interventions.

Globally, nations have adopted different approaches to managing defections. While mature democracies have historically allowed party-switching without legal repercussions, countries like India, Kenya, Sri Lanka, and Pakistan have enacted anti-defection laws to prevent political instability. The practice of defection—variously termed as "floor-crossing," "party-hopping," or "waka-jumping"—has been observed in the United Kingdom, Canada, Australia, and the United States, often influencing political landscapes. However, these countries have largely refrained from legal prohibitions, relying instead on political norms and public accountability.

This study explores the international dimensions of anti-defection laws, tracing their historical evolution and comparative application across different political systems. It examines whether such laws strengthen democracy by ensuring party discipline or undermine it by restricting legislative independence. By analyzing the experiences of various nations, this research provides insights into the necessity, effectiveness, and consequences of anti-defection laws in maintaining political stability and democratic integrity worldwide.

INTRODUCTION

Democracy, as one of the most effective political systems, ensures governance by the people for their own benefit. A fundamental element of democracy is the existence of political parties, which serve as crucial institutions for structuring political discourse and policymaking. Whether in the form of a two-party system, as seen in the United States and Great Britain, or a multi-party system, as in India and France, political parties play an indispensable role in democratic governance.¹ Although political parties originally emerged as private associations of individuals, they have evolved into state institutions and government agencies through which sovereign power is exercised. As Nigel Nicholson aptly noted, “The party system reduces multiple points of view to two or three, and makes opinion inside and outside Parliament more manageable... A party makes vague aspirations articulate and effective.”

The principle of majority rule is central to democracy, but the challenges of coalition-building and political negotiations often lead to party defections, commonly known as “floor-crossing,” “carpet-crossing,” or “party-hopping.” In developed democracies, strong ethical and constitutional frameworks have minimized the need for anti-defection laws. However, in emerging democracies, frequent defections have disrupted governance, prompting legal interventions to curb this practice.² Countries such as Kenya, Sri Lanka, and Pakistan have implemented anti-defection laws to maintain political stability, while others, including the United States, the United Kingdom, and Canada, have relied on political conventions rather than legal prohibitions.³

Despite the absence of explicit anti-defection laws in many western democracies, defections have historically influenced political outcomes. Notable figures such as William Gladstone, Joseph Chamberlain, Winston Churchill, and Ramsay MacDonald in the United Kingdom have switched party allegiance, sometimes multiple times. Similarly, party defections have shaped political landscapes in Canada, Australia, and the United States. While some democracies view defections as a non-issue, in others, they have threatened governmental stability. Consequently, different nations have adopted diverse legislative approaches to address the phenomenon.

This chapter explores the international dimensions of anti-defection laws, examining their

¹ Nicholson, Nigel, *People and Parliament*, Weidenfeld & Nicolson, 1958, p. 16.

² Mitchell, Austin, *The Whigs in Opposition 1815*, Oxford University Press, 1967.

³ Janda, Kenneth, “*Laws Against Party Switching, Defecting, or Floor-Crossing in National Parliaments*,” The Legal Regulation of Political Parties Working Paper 2, August 2009, p. 23.

historical evolution, legal frameworks, and impact on political stability. It investigates why some nations regulate party-switching through constitutional measures while others rely on political norms. By comparing anti-defection policies across various democratic systems, this research seeks to evaluate the effectiveness and consequences of such laws in ensuring political accountability and safeguarding democratic institutions.

COUNTRIES WITH LEGISLATION ON POLITICAL DEFECTION

Political defection, or party switching, has been a longstanding concern in many democracies, often leading to instability in governance. While some countries rely on conventions to manage defections, several others have enacted laws to regulate and control party-switching among legislators. Nations such as Singapore, Kenya, New Zealand, Pakistan, Sri Lanka, South Africa, Bangladesh, and Nigeria have specific legal frameworks to address this issue.

In **Singapore**, the Constitution of the Republic of Singapore, 1965, mandates that a Member of Parliament loses their seat if they resign from, are expelled by, or otherwise cease to be a member of the party on whose ticket they were elected.⁴ This provision ensures political stability by discouraging defections that could disrupt governance. Similarly, in **Kenya**, the law dictates that a member of the National Assembly who resigns from their party or joins another must vacate their seat immediately.⁵ This regulation was first introduced in 1966 and has since been reinforced through amendments to prevent political instability.

New Zealand adopted the Electoral (Integrity) Amendment Act in 2001, which requires members to vacate their seats if they resign from their party or are expelled for distorting the proportionality of political representation.⁶ This law was enacted to maintain the integrity of the proportional representation system and prevent party-hopping, which had previously led to instability.

In **Pakistan**, Article 63A of the Constitution disqualifies a legislator who resigns from their party or votes against party directives on key issues such as the election of the Prime Minister, votes of confidence or no-confidence, and money bills.⁷ The law aims to enforce party discipline and prevent elected representatives from destabilizing the government. Similarly, **Sri Lanka** enforces strict anti-defection rules under Article 99(13) of its Constitution, requiring

⁴ The Constitution of the Republic of Singapore, 1965, Article 46(2)(b).

⁵ The Constitution of Kenya, Section 40.

⁶ Electoral (Integrity) Amendment Act, 2001, Public Act 105.

⁷ The Constitution of the Islamic Republic of Pakistan, 1973, Article 63A.

members to vacate their seats if they resign from, are expelled by, or otherwise leave their party.⁸ However, a member can challenge their expulsion in the Supreme Court, and their seat remains intact until the court issues a ruling.

South Africa had a unique system that initially allowed defections under controlled circumstances but later imposed restrictions through constitutional amendments.⁹ The 1996 Constitution permitted floor-crossing during a designated "window period," allowing members to change allegiance without losing their seats. However, due to widespread instability, the Fourteenth Amendment to the Constitution abolished this provision in 2009, effectively banning defections.

Bangladesh has one of the most stringent anti-defection laws. Under Article 70 of its Constitution, a legislator who resigns from or votes against their party automatically loses their seat.¹⁰ Additionally, the Member of Parliament (Determination of Dispute) Act, 1980, grants the Election Commission the authority to decide disputes related to defections, ensuring a legal mechanism for enforcement.

Finally, **Nigeria** addresses defection under Section 68(1)(g) of its Constitution, which requires legislators to vacate their seats if they switch parties before the expiration of their term.¹¹ However, an exception exists for instances where a political party undergoes a split or merger, allowing members to realign without losing their positions. Despite this provision, Nigeria continues to experience frequent defections, often leading to legal and political disputes.

Overall, these countries have implemented legal measures to curb political defections, ensuring stability in their democratic institutions. While the effectiveness of these laws varies, they collectively aim to maintain party discipline and uphold the integrity of elected governments.

COUNTRIES WITHOUT LEGISLATION ON POLITICAL DEFECTION

While many nations have enacted legal frameworks to regulate political defections, several democratic countries have chosen not to impose such restrictions. Instead, they rely on established political conventions, internal party discipline, and public accountability to manage instances of party-switching. Countries such as the United Kingdom, Australia, Canada,

⁸ The Constitution of the Democratic Socialist Republic of Sri Lanka, 1977, Chapter XIV.

⁹ Government Gazette Vol. 523, Constitution Fourteenth Amendment Act of 2008 (South Africa).

¹⁰ The Constitution of Bangladesh, 1972, Article 70.

¹¹ Constitution of the Federal Republic of Nigeria, 1999, Section 68(1)(g).

Malaysia, the United States, and Germany do not have specific anti-defection laws, allowing legislators the freedom to change their party affiliation without the risk of losing their seats.

In the **United Kingdom**, party defections are managed through political norms rather than legal provisions. Members of Parliament (MPs) who switch parties are not required to resign from the House of Commons. Instead, they typically move to different seating arrangements as determined by their new party or sit as independents.¹² The absence of anti-defection laws reflects the UK's deep-rooted political traditions, where party loyalty is enforced through internal party mechanisms rather than legal mandates.

Similarly, **Australia** does not have any constitutional or legal provisions governing defections.¹³ Political parties in Australia maintain strong control over their members, which has led to relatively few instances of defections. However, when defections do occur, they rarely impact the balance of power significantly. The Australian Parliament relies on internal party rules and conventions to address party discipline, rather than enacting formal anti-defection legislation.

In **Canada**, there are no laws preventing legislators from changing party affiliations.¹⁴ Although most Members of Parliament (MPs) are elected under a party banner, they are not legally bound to remain with that party for the duration of their term. The absence of anti-defection laws allows Canadian legislators to shift allegiances based on ideological or strategic considerations. Over the years, several MPs have crossed the floor to join opposing parties or sit as independents without facing legal repercussions.

Malaysia has encountered political defections but has not implemented formal anti-defection laws.¹⁵ Although there was an attempt to introduce legislation through the Members of Parliament (Prevention of Defection) Bill in 1978, it was never enacted. The Malaysian courts have ruled that restricting party-switching violates the constitutional right to freedom of association.¹⁶ As a result, elected representatives are permitted to change party allegiance without any legal consequences.

In the **United States**, party discipline is relatively weak compared to other parliamentary democracies, and legislators frequently vote against party lines without facing

¹² The Political Parties, Elections and Referendums Act, 2000 (United Kingdom).

¹³ James Jupp, *Australian Party Politics*, Melbourne University Press, 1964.

¹⁴ Canada Elections Act, Part 18.

¹⁵ The Members of Parliament (Prevention of Defection) Bill, 1978 (Malaysia).

¹⁶ *Nordin bin Salleh v. Dewan Undangan Negeri Kelantan*, [1992] 1 MLJ 343 (Malaysia High Court).

disqualification.¹⁷ The U.S. Congress operates under a system where party affiliation does not determine a legislator's ability to remain in office. While party-switching is not uncommon, it does not lead to automatic expulsion or electoral consequences unless challenged within party structures. Prominent examples include senators and congressmen who have switched parties but retained their seats until the next election cycle.

Germany also does not have anti-defection laws, as its political system is structured to allow legislators to act according to their conscience rather than strict party loyalty.¹⁸ The Basic Law of Germany states that members of the Bundestag are representatives of the entire people and are not bound by mandates or party instructions. This legal framework ensures that legislators retain their independence, even if they choose to defect from their political party.

Overall, these countries have opted not to criminalize political defections, relying instead on internal party structures, political accountability, and electoral consequences to manage party discipline. While defections can lead to short-term instability, these democracies have historically absorbed such shifts without significant disruption to governance.

COMPARATIVE ANALYSIS OF COUNTRIES WITH AND WITHOUT ANTI-DEFECTION LAWS

The issue of political defection, or party-switching, is managed differently across democracies, with some nations enacting strict legal measures to prevent instability, while others rely on political conventions and internal party discipline. Countries with anti-defection laws, such as India, Pakistan, Kenya, Sri Lanka, Bangladesh, and South Africa, have codified legal provisions that disqualify legislators if they switch party allegiance. These laws aim to maintain political stability, ensure party discipline, and prevent opportunistic defections that could disrupt governance. For instance, Pakistan's Constitution under Article 63A disqualifies members who vote against their party's directives on key legislative matters, while Bangladesh's Article 70 mandates the automatic removal of defecting legislators from Parliament. In contrast, countries without anti-defection laws, including the United Kingdom, the United States, Canada, Australia, Germany, and Malaysia, allow legislators to switch parties freely, with political consequences rather than legal repercussions determining their fate. In these nations, party-switching is considered a natural part of political evolution, with legislators

¹⁷ Daniel M. Berman, "The Legislative Process in the U.S. Congress," *Journal of Constitutional and Parliamentary Studies*, 1968.

¹⁸ The Basic Law for the Federal Republic of Germany, 1949, Article 38(1).

retaining their independence to vote according to their conscience rather than strict party loyalty.

One of the key differences between these two categories of countries is their approach to party discipline and legislative independence. Nations with anti-defection laws enforce strict party discipline by preventing elected representatives from acting against party decisions. In countries like India and Bangladesh, such laws reduce political bargaining and discourage lawmakers from destabilizing governments. However, these laws also limit legislative independence, as representatives are often unable to vote based on their individual judgment or the interests of their constituents. In contrast, nations without anti-defection laws, such as the United States and Canada, provide legislators with greater freedom to vote independently. In these countries, party discipline is maintained through political norms rather than legal mandates, allowing lawmakers to vote against their party without the risk of disqualification. While this system promotes democratic representation and policy debates, it can also lead to fragmented political alignments and coalition instability, as seen in countries like Australia and Malaysia.

Another significant contrast is in the impact of these laws on political stability and democratic flexibility. Countries with strict anti-defection regulations argue that such provisions enhance political stability by ensuring that ruling parties maintain their majority without frequent disruptions. In coalition-based systems such as Kenya and Sri Lanka, anti-defection laws play a crucial role in preventing the collapse of governments due to shifting party allegiances. However, rigid laws can also lead to stagnation and reduced accountability, as lawmakers may be unable to leave a party even if its leadership becomes corrupt or unresponsive. On the other hand, countries without anti-defection laws emphasize democratic flexibility and accountability, placing the responsibility on voters rather than legal mechanisms. In Germany, for example, the Basic Law ensures that parliamentarians act as representatives of the entire electorate rather than being bound strictly to party mandates. While this fosters a more independent legislative process, frequent defections can lead to unstable governments, as observed in Canada and Australia, where minority administrations often struggle to maintain coalitions.

The method of enforcing party loyalty also differs between these two sets of nations. Countries with anti-defection laws impose immediate disqualification, requiring defectors to vacate their seats and contest fresh elections. In Singapore and Bangladesh, legislators who resign from

their party automatically lose their parliamentary positions, creating a strong deterrent against party-switching. However, this can also be exploited by party leadership to suppress internal dissent and force members to comply with party lines. In contrast, countries such as the UK and the US place the decision in the hands of voters rather than legal provisions. If an elected official defects, they may face public backlash and struggle for re-election, but they are not legally required to resign. This approach allows for greater political mobility while ensuring that defectors are ultimately held accountable by their constituents rather than party leadership.

CONCLUSION

Overall, both approaches have their advantages and challenges. Countries with anti-defection laws prioritize political stability and party discipline, preventing frequent realignments that could weaken governance. However, these laws can also be restrictive, limiting lawmakers' ability to act independently and challenge party leadership when necessary. Conversely, countries without anti-defection laws uphold democratic flexibility and individual representation but may face instability due to frequent defections and shifting political alliances. The effectiveness of these approaches largely depends on the political culture and governance structure of each country. While some democracies benefit from stringent regulations to maintain stability, others thrive under a more flexible system that allows legislators to change affiliations based on ideological shifts and public sentiment. Ultimately, a balanced approach that ensures both party discipline and legislative autonomy could provide the best solution for democratic governance.