

# **INTERNATIONAL JOURNAL OF LEGAL STUDIES AND SOCIAL SCIENCES [IJLSSS]**

ISSN: 2584-1513 (Online)

Volume 2 | Issue 4 [2024] | Page 176 - 186

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# EVALUATING INDIA'S ANTI-DEFECTION LAW: CHALLENGES AND PATHWAYS TO REFORM

- Alok Singh<sup>1</sup>

'Democracy', a system of government by the people, for the people, and of the people, where citizens choose their representative on their behalf with '**trust**' in the individual in this electoral festival. But what they get in return, a betray, the party representative for whom they vote **changes its original party** for shake of money or ministerial post, leading to erosion of democratic norms and valuable trust of people, and this practice is generally termed as 'DEFECTION'.

As per the Reference Notes on Lok Sabha <sup>2</sup> the term 'Defection' in political scenario means a situation when a member of a political party leaves his party and joins hands with other parties. Traditionally, known as 'floor crossing' having its origin in the British House of Commons where a legislator changed his allegiance when he crossed the floor and moved from the Government to the Opposition side, or vice-versa.

Later on, laws are made to address the issue but leaves much power in the '**hand of speaker**', the recent case where Goa speaker Ramesh Tawadkar, dismisses disqualification plea against 8 Cong MLAs who joined BJP <sup>3</sup> once again stirs the question regarding the effectiveness of Anti-Defection Law (herein after referred as law), speaker's role and future discourse.

In this paper, we will delve into the historical context analysing the need for the law, 52<sup>nd</sup> Constitutional Amendment, the changes via 91<sup>st</sup> Constitutional Amendment. We will look into some most important cases like Kihoto Hollohan v. Zachillhu (1992 and try to understand this law in detail.

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<sup>2</sup> "Reference Notes on Lok Sabha." *Lok Sabha Documentation*, 15 July 2022, 15072022\_111659\_1021205175.pdf. Accessed 2 Nov. 2023.

<sup>3</sup> "Goa Speaker Dismisses Disqualification Plea Against 8 Cong MLAs Who Joined BJP." *Hindustan Times*, 1 Nov. 2023, Goa speaker dismisses disqualification plea against 8 Cong MLAs who joined BJP | Latest News India - Hindustan Times. Accessed 2 Nov. 2023.

# THESIS

The Anti-Defection Law in India, originally designed to uphold democratic integrity by preventing political defections, has proven largely ineffective due to its procedural ambiguities, excessive discretionary power vested in the Speaker, and susceptibility to partisan manipulation. This paper argues that without substantial reforms—such as the establishment of an independent tribunal, defined timelines for disqualification rulings, and periodic judicial oversight—the law will continue to fail.

## ABSTRACT

The Anti-Defection Law in India, legislated with the intention to prevent political defections, has proven sort of ineffective. This paper highlights some weaknesses or lacuna, including vague procedural guidelines, excessive reliance on the Speaker's discretion, and the absence of clear timelines for disqualification. In this paper, we will delve into the historical context analysing the need for the law, 52nd Constitutional Amendment, the changes via 91st Constitutional Amendment. We will look into most important cases like *Kihoto Hollohan v. Zachillhu* (1992) and try to understand this law in detail. Then some probable reforms such as establishing an independent tribunal and enforcing judicial oversight, aiming to restore the law's effectiveness and safeguard democratic integrity in India.

## INTRODUCTION

The Indian politics has been impacted by instability, particularly because of the phenomenon of political defections or sometime attributed as horse trading. The history of political defections in India can be traced back since independence with its first major wave of defections in the 1960s and 1970s because of the growing influence of regional parties in Lok Sabha elections. The infamous “Aaya Ram, Gaya Ram” slogan was coined against the background of continuous defections by the legislators in the 1960s.

For example, the 1967's election, a turning point that shaped the polity and political landscape of our nation since Independence<sup>4</sup> when the Congress Party lost its majority in several state

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<sup>4</sup> "Elections That Shaped India: 1967 Elections and the Rise of Indira Gandhi." *The Hindu*, 24 May 2024, [www.thehindu.com/news/national/ten-elections-that-shaped-india-1967-elections-and-the-rise-of-indira-gandhi/article67606873.ece](http://www.thehindu.com/news/national/ten-elections-that-shaped-india-1967-elections-and-the-rise-of-indira-gandhi/article67606873.ece). Accessed 2 Nov. 2023.

assemblies, with non-Congress governments came to power for the first time in several states<sup>5</sup> leading to a series of defections that resulted in the formation of unstable coalition governments.

According to PRS Legislative Research, in those four years, 142 defections were reported in Parliament, while 1,969 MLAs crossed over to other parties in state assemblies across the country.

“Thirty-two governments collapsed and 212 defectors were rewarded with ministerial positions,” according to the agency. The political chaos ignited the debate about the need for an anti-defection law in the country.<sup>6</sup>

This was following by the Emergency (1975-1977) imposed by then-Prime Minister Indira Gandhi, which magnified the political defections. Many Congress leaders defected to opposition parties like Janata Party. During this period defections was being used as a political tool to reshape the opposition landscape.

Till 1980s, this trend continued, especially in states like UP and Bihar where several MLAs defect from the Janata Party to the Congress causing a shift in power dynamics, leading to instability of state governments.

## IMPACT OF DEFECTION

The defection of elected representatives had negative implications for governance and its stability. Frequent defections led to the collapse of governments leading to the imposition of President's Rule (under article 356 of the Constitution of India) in various states disrupting the administrative functions and erode public trust in democratic institutions.

But, if the defected members after joining another political party and form a new government, then Article 356 is not applicable. As stated in **Rameshwar Prasad and Ors. vs. Union of India (UOI) and Ors**<sup>7</sup> that, if political party with support of other political party stakes claim to form government and satisfies the Governor about its majority to form stable government, Governor

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<sup>5</sup> "After Wars, Deaths, Political Turmoil: How the 1967 Lok Sabha Elections Saw the Indira Gandhi Era Begin." *The Indian Express*, 24 Apr. 2024, 06:30 IST, [www.indianexpress.com/article/explained/explained-history/lok-sabha-elections-after-wars-deaths-political-turmoil-the-era-of-indira-gandhi-9287333/](https://www.indianexpress.com/article/explained/explained-history/lok-sabha-elections-after-wars-deaths-political-turmoil-the-era-of-indira-gandhi-9287333/). Accessed 2 Nov. 2023.

<sup>6</sup> Nagvenkar, Mayabhushan. "Does India's Anti-Defection Law Work in the Era of Uneasy Coalitions?" *Association for Democratic Reforms*, 7 Oct. 2022, <https://adrindia.org/content/does-indias-anti-defection-law-work-era-uneasy-coalitions>. Accessed 3 Nov. 2024.

<sup>7</sup> Rameshwar Prasad and Ors. vs. Union of India (UOI) and Ors. (24.01.2006 - SC) : MANU/SC/0399/2006

cannot refuse formation of Government and override the majority claim because of his subjective assessment that majority was cobbled by illegal and unethical means since grounds of mal-administration by State Government enjoying majority is not available for invoking power under Article 356, implying that the defection can be used as a weapon to form a new government out of present one.

Defections leads to internal conflicts within the political parties, making it challenging and hard to maintain their original ideology upon which their whole party constitution is relied making it difficult to project a united front and their stance. Additionally, political defections are used by parties to gain power without going through the electoral process raising a doubt on legitimacy of governance.

Apart from the moral and ethical concern, the instability of the government and frequent change of entire council of ministers will grossly affect the legislative and executive functioning, hampering the law-making process since it will become nearly impossible to pass any bill or act upon it with the fear of losing the power.

## PROVISIONS OF ANTI-DEFECTION LAW

Anti-Defection Law was passed by the Parliament of India via **52nd Constitutional Amendment Act 1985**, with the intention to reduce and tackle the issue of defection and penalise if occur. This amendment introduced Articles 102(2) and 191(2) providing ground for the disqualification and a new schedule i.e. Tenth Schedule <sup>8</sup> which provides Provisions as to disqualification on ground of defection. This law is applicable to either House of Parliament or the Legislative Assembly or even the Legislative Council.

This law provides that a member of a House belonging to any political party shall be disqualified for being a member of the House—

- (a) if voluntarily given up his membership of such political party; or

Even calling the leader of other party to collab and form a new government amount to voluntarily giving up membership as observed by the Supreme Court in *Rajendra Singh Rana and Ors. Vs. Swami Prasad Maurya and Ors.*

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<sup>8</sup> "Tenth Schedule." *Ministry of External Affairs*, Government of India, S10.pdf. Accessed 2 Nov. 2023.

"The act of giving a letter requesting the Governor to call upon the leader of the other party to form a Government, itself would amount to an act of voluntarily giving up the membership of the party on whose ticket the said members had got elected"<sup>9</sup>

- (b) if **votes or abstains** from voting in such House **contrary to any direction** issued by the political party to which he belongs or against the chief whip, without obtaining, in either case, the prior permission of such political party, person or authority and such voting or abstention and has **not been condoned** by such political party, person or authority **within fifteen days** from the date of such voting or abstention.
- (c) A **nominated member** shall be 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 after complying with the requirements of article 99 or, as the case may be, article 188.

Earlier, tenth schedule provide protection to both, in case of split (para 3) and merger (para 4); because of misuse of split protection and using it as loophole, it was repealed via 91<sup>st</sup> Amendment Act, 2003<sup>10</sup>. A committee headed by Pranab Mukherjee proposed the Constitution (Ninety-first Amendment) Bill.

Now comes the main provision of today discussion, **PARA 6** of Tenth Schedule which authorised the Chairman or, as the case may be, the Speaker of such House to decide if any question arises regarding the disqualification of a member(s) under this Schedule and his decision shall be final.

This empowers the Speaker to evaluate the claims/pleas of defection and determine whether a member has violated the provisions laid out in the Tenth Schedule and his/her decision is having significance because their decisions can impact the composition of the House and the stability of the government.

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<sup>9</sup> Rajendra Singh Rana and Ors. vs. Swami Prasad Maurya and Ors. (14.02.2007 - SC): MANU/SC/0993/2007

<sup>10</sup> National Commission to Review the Working of the Constitution [2002] has recommended the delete of Paragraph 3 (protection in case of split). NCRWC Report (n 98), paras 4.18.1-4.18.2.

Additionally, Law Commission of India [1999] recommended the removal of both para 3 and para 4. Law Commission of India, Reform of the Electoral Laws (170th Report, Ministry of Law and Justice, Government of India 1999), paras 3.4.1-3.4.7. 2022082424.pdf. Accessed 3 November 2024 ('170th LCI Report').

## PARA 7 AND KIHOTO HOLLOHAN V. ZACHILLHU CASE

**Para 7** which puts **Bar of jurisdiction of courts** holding that no court shall have any jurisdiction in respect of any matter connected with the disqualification of a member of a House under this Schedule, directly challenging the Doctrine of Basic Structure<sup>11</sup> and Judicial Review.

Ultimately, this was struck down in **Kihoto Hollohan v. Zachillhu case**<sup>12</sup>The Court said that preventing judicial review went against the very core of the Indian Constitution, as judicial review is essential since it let the courts to check if decisions made by the legislature or executive are fair and lawful.

The Court recognized that without this power, there was a risk of unfairness or political misuse of the Anti-Defection Law, which could lead to arbitrary or biased decisions. Also, Paragraph 7 required ratification because it affected the powers of the judiciary under Articles 136, 226, and 227, which allow the Supreme Court and High Courts to review decisions.

Except for Paragraph 7, the Supreme Court upheld the rest of the Tenth Schedule as constitutional. The Court determined that the law's provisions for disqualifying members of Parliament and state legislatures for defection did not violate their rights under Articles 105 and 194.

## ROLE OF THE SPEAKER

While the Court agreed that the Speaker should have the power to decide on disqualifying members under the Tenth Schedule, they aren't beyond review. Their decisions could be challenged in court if there were signs of illegality, bad faith, bias, or if the decision violated basic principles of justice as they are expected to act impartially. However, the Court also stressed that it wouldn't interfere with every decision, but only those where clear legal issues, unfairness, or bias were present.

The decisions of the Speaker are can be classified as quasi-judicial, meaning thereby he must follow principles of natural justice their decisions and must be based on facts and legal standards, ensuring

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<sup>11</sup> "Kesavananda Bharati Sripadagalvaru and Ors v. State of Kerala and Anr." *Supreme Court of India*, 29981.pdf. Accessed 2 Nov. 2023.

<sup>12</sup> Kihoto Hollohan v Zachillhu 1992 SCR (1) 686.

fairness and objectivity. The Speaker should conduct an inquiry into the allegations and provide fair opportunity to present their case to the concerned parties.

“It is time Parliament rethinks on whether disqualification petitions ought to be entrusted to a Speaker as a quasi-judicial authority when such Speaker continues to belong to a particular political party either de jure or de facto,” an apex court bench headed by Justice RF Nariman had said.<sup>13</sup>

## CASE STUDIES AND EXAMPLES

1. Within the state assemblies of Madhya Pradesh (2020), several MLAs defected from the Congress party to BJP, bringing the government down in favour of the latter party<sup>14</sup>. Disqualification pleas against the defectors put the Speaker, N.P. Prajapati, under considerable pressure, leading him to put off decisions on disqualification appeals on the grounds that they need to be properly investigated. The SC said Speaker is to **act quickly without delay**, triggering more questions on the authority of Speaker and the process of deciding on disqualification.
2. In Karnataka (2019), several Congress and JD(S) MLAs defected to the BJP, leading to a change of government. Among other things, in determining disqualification petitions against these MLAs. Then speaker, K.R. Ramesh Kumar decided of disqualification of some members — at least, some of the disqualifications tracked to Speaker of the Assembly— that was subsequently challenged in Supreme Court. It has **upheld certain disqualifications but set aside the order on the term of their disqualification** also insisted that the **Speaker must act in dispassion and non-partisanship**.
3. In Goa (2022), 8 of 11 Congress MLAs relocated to the BJP<sup>15</sup> which led to disqualification petitions since this is more than the two-thirds of the members required for being exempted under the merger provision, they got protection.

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<sup>13</sup> Supra at 5.

<sup>14</sup> MLAs resigning their membership in the 15th legislative assembly, Madhya Pradesh Vidhan Sabha, [https://mpvidhansabha.nic.in/15thvs\\_bi-election.pdf](https://mpvidhansabha.nic.in/15thvs_bi-election.pdf).

<sup>15</sup> “Congress chodo, BJP ko jodo: Eight of 11 Congress MLAs join BJP in Goa, Financial Express, as accessed on December 10, 2022, <https://www.financialexpress.com/india-news/eight-go-congress-mlas-set-to-join-bjp-today-may-evade-anti-defection-law/2666181/>.



The Speaker's approach in this instance was **criticized as partisan** and raised doubts over the independent nature of the Speaker's office. This situation shown us how the problems of defection can lead to big political consequences and public scepticism about Speaker neutrality.

4. Maharashtra (2022): 40 out of 55 MLAs of the Shiv Sena walked out of the coalition government formed by the Shiv Sena, Nationalist Congress Party, and Indian National Congress in Maharashtra. While more than two-thirds of the Shiv Sena MLAs walked out of the earlier coalition, they did not merge with any political party subsequently. Both factions of the party now claim to be the original Shiv Sena. In an interim order, the Election Commission disallowed both factions of the party from only using the name Shiv Sena and the election symbol of the original party.<sup>16</sup>

## FINDINGS OF CASE STUDIES

### a. **Balance between Political Bias and Neutrality**

The Speaker dealing with plea of disqualification often criticised or found of alleged biases, challenging the ideal of neutrality as being a judge in the case, arising ethical questions regarding the Speaker's role as a protector of democratic norms.

### b. **Need of Proactive Judicial Intervention**

When the speaker or chairman is associated with the political party<sup>17</sup> it is highly necessary that the Supreme Court's timely and impartial overseeing and intervention, if needed, for the enforcement of standards on an otherwise politically-appointed officer.

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<sup>16</sup> Commission's Interim Order dated 08.10.2022 in case of Dispute No. 1 of 2022 in regard with Shivsena, Election Commission of India, October 8, 2022, <https://eci.gov.in/files/file/14449-commissions-interim-order-dated-08102022-in-case-of-dispute-no-1-of-2022-in-regard-with-shivsena/>.

<sup>17</sup> Given that Speakers are themselves part of a political party, it may not be possible for them to completely abjure all party considerations while deciding petitions under the Tenth Schedule.  
255th Law Commission of India Report (n 14) para 5.19.2.

## LOOPHOLES OF TENTH SCHEDULE

On an average, the country has witnessed more defections per year after the introduction of anti-defection laws.<sup>18</sup> From 1989 to 2004, two governments (the governments led by Prime Minister V.P Singh in 1990 and by Prime Minister A. B. Vajpayee in 1999) fell due to defection, and one government (the government led by Prime Minister Chandra Shekhar in 1990) was able to retain its power due to defections.<sup>19</sup>

There are few loopholes still existed leading to the unfulfillment of the aims of this law such as lack of clear procedural guidelines for disqualification, ambiguities in the Speaker's autonomy and discretionary power, lack of any defined time period for disposal of disqualification plea<sup>20</sup>, no detailing about the investigation process or the officer(s) who will look into.

## VIABLE SOLUTIONS AND ALTERNATIVES

As we identified some loopholes/challenges, now here are some solutions that might be helpful for making the present law more effective and be able to eliminate the escape clause.

- a. Strengthening the existing Law by introducing clearer guidelines for **reasonable time limit**<sup>21</sup> and standardized **disqualification procedures** to minimize discretionary delays.
- b. Formation of a **panel or committee to review** Speaker's disqualification decisions comprising of the members such as PM, CM, LoP, senior members of bar, retired judges of HCs or retired bureaucrats.

Though this solution has its own demerits imbedded as it doesn't ensure that the members are not politically motivated with reviewing but it is better than letting the speaker unguided or clogging the Supreme Court with series of petitions for review of decision, since no

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<sup>18</sup> National Commission to Review the Working of the Constitution, Review of Election Law, Process and Reform Options (NCRWC Consultation Paper, August 2000).

<sup>19</sup> NLIU Law Review. "Volume XII Issue II." *NLIU Law Review*, Dec. 2023, pp. 96-115, <https://nliulawreview.nliu.ac.in/wp-content/uploads/2023/12/Volume-XII-Issue-II-96-115.pdf>. Accessed 3 Nov. 2024.

<sup>20</sup>"Supreme Court Disqualification Pleas: Maharashtra Assembly Speaker NCP vs. NCP (Ajit Pawar vs. Sharad Pawar)." *India Today*, 29 Jan. 2024, [www.indiatoday.in/law/supreme-court/story/supreme-court-disqualification-pleas-maharashtra-assembly-speaker-ncp-vs-ncp-ajit-pawar-sharad-pawar-2494815-2024-01-29](http://www.indiatoday.in/law/supreme-court/story/supreme-court-disqualification-pleas-maharashtra-assembly-speaker-ncp-vs-ncp-ajit-pawar-sharad-pawar-2494815-2024-01-29).

<sup>21</sup> Keisham Meghachandra Singh v. The Hon'ble Speaker, Manipur Legislative Assembly, 2020 SCC OnLine SC 55.

alternate solution is available. It doesn't mean to remove the judiciary rather provide an alternate solution.

- c. One more alternative could be formation of **separate tribunal** to handle defection cases or for review of the decision, which could reduce the burden on Speakers and enhance impartiality.
- d. Ultimately, the Court itself decide the challenges of the speaker decision in guided time limits without fully encroaching on Speaker authority.<sup>22</sup> Luckily, the Honourable Supreme Courts refrain itself from intervening unnecessary or taking Suo-moto cognizance in these cases.

The strict time frames may fasten the resolutions, but could increase pressure on Speakers, leading to insufficient analysis and potentially unfair and rushed decisions. Hence, the timeframe should be reasonable, and the question of reasonability should be decided with due deliberation in the Parliament. It could be expected that no political party will agree for ill-legislation in this regard as they might face challenges in future.

## CONCLUSION

Anti-Defection Law failed to restrain political expediency from its failure to prevent defections in India. Its aiming to preserve the integrity and stability of democratic governance appears to be failing. Enacted by the 52nd Constitutional Amendment, this law was later modified by the 91st Amendment that aimed to preserve the mandate of the electorate as a means by discouraging the members from switching the parties to which they were initially affiliated, for personal interest.

However, as enacted, the law had become, in the judgment of the critics, what they would term a **"toothless and spineless tiger."** The imprecise provisions regarding Speaker's discretion, the vagaries of timely decision making, and the legislative flux due to defections all left the law vulnerable to political manoeuvring.

Significant Cases like **Kihoto Hollohan v. Zachillhu** and recent events in Goa, Karnataka, and Maharashtra are some of the significant issues which plagued the implementing arm. The Speaker,

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<sup>22</sup> Take the case of Sharad Yadav. The Rajya Sabha chairman decided his disqualification in three months in 2017, and the case is still pending before the Delhi high court.

PRS Legislative Research. "The Anti-Defection Law Continues to Damage Indian Democracy." *PRS Legislative Research*, 10 Apr. 2023, Articles by PRS Team. Accessed 3 Nov. 2024.

expected to be impartial, becomes a failure in reality and even suffers due to political pressure often resulting in a loss of both neutrality and reliability for enforcing disqualifications.

Moreover, the absence of specific timelines and clear standards for disqualification further aggravates the law's inefficacy. The findings of this study pointed the need for considerable reforms like establishing a separate tribunal or committee to oversee disqualification cases, setting timelines for timely resolutions.

Additionally, strict judicial oversight might enhance accountability without encroaching to the autonomy of speaker or chairman. Only through collective steps and important reforms, India could hope to transform the Anti-Defection Law and protect the democratic values, which is one of the most important assets of India at global stage.

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