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<u>The Speaker as an Adjudicator in Anti-Defection Proceedings:</u> <u>Constitutional Challenges and Legal Perspectives</u>

Adv. Monica Madaan¹ & Arryan Mohanty²

Abstract

The act of disowning one's family or association is known as defection. This discussion pertains to elected representatives who change their political affiliation after becoming candidates on a particular party's ticket. These modifications are frequently the result of more advantageous proposals, often in the form of financial incentives from other parties. It is regarded as a breach of public trust with the founding political party and an even more profound betrayal of the electorate, as candidates are elected based on what their party values and has promised, changing their affiliation after an election breaks this foundation, which voters believed was crucial. While the anti-defection law was implemented to prevent the immoral practice of legislators switching sides for personal gain, this type of behaviour persists even today. Thus, the disqualification mechanism is ineffective mainly because it depends on the political alignment of the authority that issues its decision. Although the schedule has some limitations, it is essential to review its provisions carefully to identify areas where it fails to meet those requirements. As per the Indian constitution, the Speaker is a constitutionally appointed official and must maintain high standards of integrity. Because of this prestigious position, the Speaker was given discretion in making choices under the Tenth Schedule. Nevertheless, it has been observed in recent times that certain elected officials can bypass the law. Court proceedings have become more frequent in challenging the Speaker's rulings, often due to concerns of a lack of impartiality and dissatisfaction with the outcomes. This paper focuses on the Speaker's role in deciding disqualification matters and explores the relationship between the Anti-Defection Law and Administrative Law. Additionally, it examines the ongoing debate on whether the Speaker's decisions should be subject to judicial scrutiny, particularly considering the separation of powers doctrine and the principles of natural justice and procedural fairness. It also points out the critical role that the Speaker assumes in fulfilling quasi-judicial functions, which raises questions about whether these duties are impartial, given their dual status as a political figure. In addition, it is discussed that the Speaker's dual responsibilities as both a

¹ The author is a student of law at KR Mangalam University, Gurugram, India.

² The co-author is a student of law at Symbiosis Law School, Nagpur, India.

partisan leader and presiding over disqualification proceedings can lead to biased decisions that could undermine public faith in the legislative process. To counteract concerns, the paper reviews proposals by the Dinesh Goswami Committee and the 170th Report of the Law Commission of India, which propose transferring disqualification authority to the President or Governor, acting on the recommendation of an independent body. The paper proposes a balanced strategy that preserves and enhances the Speaker's constitutional duties while strengthening judicial oversight to promote transparency and democratic governance.

Introduction

The increasing significance of political parties in democratic societies has made it nearly impossible to separate the two. Why is this so? A democratic society needs multiple political parties, as merely one party is incompatible with democracy. A rapid proliferation of political parties has been observed in countries that have embraced a multi-party system, particularly in parliamentary democracies, leading to increased political competition. Although competition is typically a sign of democratic vitality, many parties lack clear doctrines or long-term goals. Why? Often, their primary concern is power acquisition, and they tend to disregard the methods used to achieve this goal. As a result of this relentless pursuit of political dominance, defections within the political realm have become more common. The legitimacy of democratic institutions is compromised by such deviations, which are commonly viewed as a betrayal of political values. They misrepresent democracy and reduce governance to a political game instead of principled leadership.³ The Oxford dictionary defines Defection as leaving your country or political party and joining an opposing party. As described in the 1967 Committee on Defection report, a Defector is an elected legislature member designated as a reserve symbol for any political party. Suppose a person is elected to a parliamentary or legislative assembly position in southeastern states. In that case, they can be considered resigning if they no longer identify or support their party, but instead choose not to participate due to the party's decision.⁴ The Anti-Defection Law was implemented to prevent any political shift by elected and nominated members of Parliament and State Legislatures after elections, even if only for ideological reasons. The organisation aimed to eliminate departures based on personal gain or other inappropriate factors. Political parties were granted formal constitutional recognition for

³ Nuvita Kalra, Karun Sanjaya, and Jimmy Jose, Role of the Office of Speaker as an Adjudicatory Authority under Anti-Defection in India: A Critical Study, Vol. 10 Issue 2, RLJ, 9-18 (2022) <u>https://russianlawjournal.org/index.php/journal/article/download/280/277</u>

⁴ Sidharth Sharma, Anti-Defection Laws: A Critical Analysis, iPleaders (August 12, 2020, 08:14 PM) <u>https://blog.ipleaders.in/explained-anti-defection-laws/</u>

participating in the democratic process through this law, which was enshrined in Section VIII of the Tenth Schedule of India's Constitution. The Presiding Officer of the respective House was responsible for disqualification cases under this law and is obligated to represent constitutional honesty and neutrality.' The Presiding Officer's response, whether excessively prompt, unduly tardy, or absent altogether, has frequently distorted the legislative intent in practice.⁵ The Indian Constitution initially did not mention any political parties. With the establishment of a multiparty system, political defections became more common within parliament. Despite their initial resignation from their party, elected representatives frequently switched sides, often for personal or political reasons. A decline in public confidence towards democratic institutions resulted from this trend, which was frequently accompanied by horsetrading and corruption. There were many defections after the 1967 general elections, with approximately 142 individuals being elected or disqualified-members of Parliament and 1,900. The members of the Legislative Assemblies changed their political parties. The Rajiv Gandhi-led government introduced the Anti-Defection Law with an amendment to the Constitution in 1985 to address these practices. This legal structure was established to ensure that elected legislators would remain loyal to maintain the stability and integrity of the legislative process.⁶ The neutrality of the Speaker is crucial for the smooth and fair operation of legislative processes at both the national and state levels. These processes form the backbone of a functioning democracy, providing the forum where elected representatives deliberate and enact laws. However, perceived partiality in the Speaker's handling of disqualification cases has often been cited as a major reason behind the system's ineffectiveness. Even with a top-tier political position, the Speaker often finds itself mired in the very political context it is expected to transcend. In Nabam Rebia v. In the Deputy Speaker case, however, the Supreme Court questioned whether the Speaker could remain "politically neutral" when dealing with disqualification matters under the Tenth Schedule.⁷ Recently, Subhas Desai v. Principal Secretary,⁸ the Court referred the Nabam Rebia judgment to a seven-judge bench because it appeared to contradict earlier Kihoto Hollohan's decision⁹ that upheld the Speaker's "neutrality" and rejected any form of judicial doubt about their impartiality. The legal conflict

⁵ Rakesh Kumar & Vandana Singh, Anti-Defection Law in India: Emerging Issues and Challenges, Summer Issue, ILILR, 234-262 (2021) <u>https://ili.ac.in/pdf/10.pdf</u>

⁶ Suresh Ashok Thorat, Anti-Defection Law in India: A Review, Vol 4 Issue 9, IJPREMS, 571-574 (2024) <u>https://www.ijprems.com/uploadedfiles/paper//issue_9_september_2024/35996/final/fin_ijprems1726766600.pd</u> f

⁷ AIR 2016 SC 3209

⁸ (2024) 2 SCC 719

⁹ Kihoto Hollohan vs Zachillhu and Others, 1992 SCR (1) 686

raises two important inquiries: Is the Speaker genuinely impartial in their role? Why? In the absence of political manipulation, what steps can be taken to ensure that disqualification proceedings are conducted impartially and without sway? Academics often view the election of the Speaker as a political manoeuvre. The Speaker is elected by a majority vote in the respective legislative houses, which the national and state-level ruling party typically controls. Even though the Speaker is constitutionally independent, it can still be used as a political tool within the ruling party.¹⁰ To ensure the smooth and just operation of legislative processes at national and state levels, the Speaker must remain impartial.' These legislative sessions constitute the basis of democratic rule and governance, where elected representatives negotiate and pass laws. The function of the Speaker as a quasi-judicial entity under the Anti-Defection Law has been a subject of extensive scholarly discourse. Numerous instances have arisen wherein the presiding officials of legislative assemblies have either postponed the resolution of defection matters or engaged in actions that surpass their constitutionally prescribed authority. This examination utilises three case studies-one derived from the Calcutta High Court and two contemporary rulings from the Supreme Court-to evaluate whether the Speaker has operated as a prejudiced constitutional authority in the management of defection petitions.¹¹ Claims of bias in disgualification rulings under the Tenth Schedule have been cited as a significant reason for the Anti-Defection Law's failure to control political defections effectively. The integrity of India's constitutional democracy is at stake when the ruling party uses the Speaker's office to evade scrutiny and promote defections. As stated in this issue, exploring methods to guarantee unbiased representation in parliament is crucial. Democracies frequently experience deviations from party ethos, although the extent to which these shifts in party loyalties are managed or tolerated differs greatly across nations. There are specific countries where defections cannot be done without legal restrictions, while others allow them, subject to conditions. In India, the occurrence has frequently been distinguished by opportunistic and unprincipled shifts in allegiance, which expose patterns of political favouritism and a lack of democratic maturity. The enactment of anti-defection measures in the Tenth Schedule resulted from these alarming developments. However, the efficacy of these regulations has been frequently questioned because of variations in the application process and

¹⁰ Shubham Thakare, Reforming the Speaker's Office: Ensuring Impartiality in Defection Disqualifications, TSCLD (30 December 2024, 09:16 PM) <u>https://www.tscld.com/speaker-impartiality-defection-disqualifications-india</u>

¹¹ Rongeet Poddar, Evaluating the Speaker's Role under India's Anti-Defection Law: A 'Partisan' Constitutional Functionary, Vol. 2 Issue 2, SLSNMLR, 13-25 (2023) https://www.researchgate.net/publication/375758019_Evaluating_the_Speaker_'s_Role_under_India_'s_Anti-Defection_Law_A 'Partisan' Constitutional Functionary

procedural delays. Unlike other democracies that have been more flexible, India's strict legal system has drawn criticism from many.¹²

Office of the Speaker

The Speaker holds the highest position in the Lok Sabha and chairs its sessions. He is granted powers derived from the House's control, which it exercises for convenience and efficiency. As per Article 93 of the Constitution, both the Speaker and the Deputy Speaker are chosen from the members of the Lok Sabha.¹³ If the Speaker's post is taken over, the Deputy Speaker takes over those duties. If both positions are vacant, the President may appoint one member of the House to serve as Speaker until they are elected.¹⁴ The Deputy Speaker takes on the task when the Speaker is absent. If neither is present, the role is either filled by a member under House rules or, if not, by the House itself.¹⁵ If they remain members of the Lok Sabha, both officials are entitled to office under Article 94(a).¹⁶ The Speaker remains in their position until the new session begins, as stated in Article 94's provision. By submitting written notice, both officials can step down.¹⁷ A majority of the House must pass a resolution with at least 14 days' notice for the removal of either the Speaker or Deputy Speaker.¹⁸ While the session is under consideration, the Speaker cannot preside over or vote on the matter. However, if there is a tie, they can attend and vote.¹⁹ That same thing applies to the Deputy Speaker. Their wages and benefits are determined by legislation passed in Parliament or, until now, subject to the Second Schedule of the Constitution.²⁰ They are credited to the Consolidated Fund of India, providing financial stability and security in their functions.²¹ Members of Parliament hold a high level of respect and influence and are empowered to direct all matters concerning the House. He interprets procedural rules and traditions while preserving discipline, order, etc. It is generally impossible to dispute his rulings without a formal decision. The Speaker is empowered to determine if a bill qualifies as a 'Money Bill' under Article 110(3).²² Constitutional questions

²⁰ The Constitution of India, 1949, Art. 97

¹² Charith Reddy & Shagun Bhargava, For Laws may come and Laws may go, but Defections go on Forever: A Critical Analysis of the Role of the Speaker in Indian Anti-Defection Laws, Vol 10 Issue 1, NLIULR, 328-352 (2020) <u>https://nliulawreview.nliu.ac.in/wp-content/uploads/2022/01/Volume-X-Issue-I-344-368.pdf</u>

¹³ The Constitution of India, 1949, Art. 93

¹⁴ The Constitution of India, 1949, Art. 95(1)

¹⁵ The Constitution of India, 1949, Art. 95(2)

¹⁶ The Constitution of India, 1949, Art. 94(a)

¹⁷ The Constitution of India, 1949, Art. 94(b)

¹⁸ The Constitution of India, 1949, Art. 94(c)

¹⁹ The Constitution of India, 1949, Art. 96(1)(1) & (2)

²¹ The Constitution of India, 1949, Art. 112(3)(b)

²² The Constitution of India, 1949, Art. 110(3)

about the validity of laws are subject to judicial review by the courts. Apart from presiding over sessions, the Speaker also serves as the official representative and voice of the Lok Sabha. He has to ensure the protection of his rights and privileges.' The Supreme Court in Kihoto Hollon affirmed the importance and worth of the Speaker's position in parliamentary democracy, portraying the office as a symbol of propriety and fairness. Certain constitutional safeguards are in place to ensure the Speaker and Deputy Speaker remain politically neutral and independent. Annual parliamentary consent is not required for their compensation, and there's limited opportunity to challenge those who behave differently in the House. Moreover, they can only be removed through a formal resolution of the House itself. A practice in the UK that involved voting no contest for the Speaker's seat during general elections has been gradually abandoned. This convention is not followed in India, and the possibility of being re-elected is uncertain, as is whether the Speaker's party is still in power. Impartiality is necessary for the Speaker's essential role. The British system mandates that the Speaker resign from their political party to maintain neutrality. In India, this convention is not strictly enforced, with the Speaker typically retaining party membership but abstaining from participating in parties other than ceremonial events. The Speaker's independence was emphasised in 2008 when Somnath Chatterjee, elected Speaker while affiliated with the Communist Party of India (Marxist), refused to step down after the party lost support from the coalition government. This event is noteworthy. He was expelled from the party after he refused. The Speaker's responsibilities are those of the House and not any political party, as per the Constitution. His resignation at the party's direction could have undermined his position's impartiality.²³

The Speaker's office is a crucial role model for the legislature, as stated by Jawaharlal Nehru, India's premier, who also highlighted the importance of this position. With the House acting as the nation's representative, the Speaker becomes a symbol of national sovereignty and democratic ideals. It is a highly respected position, and it will be necessary for the Speaker to remain impartial in all legislative proceedings. In India, following the Westminster parliamentary system, it was natural to add the office of the Speaker to manage legislative functions. While the Indian Speaker's office has a similar structure to that of the UK in theory, there are noticeable disparities. India has faced challenges in imitating the Speaker's independence and neutrality, which are aided by well-established parliamentary conventions in the United Kingdom. For instance:

²³ Justice Jasti Chelameswar & Justice Dama Seshadri Naidu, MP Jain Indian Constitutional Law, 57-58 (8th Edn., 2018)

- 1. Members of the British House of Commons then vote for the Speaker in a secret ballot that goes through multiple rounds, with the lowest-ranking candidates eliminated at each stage. Since 2009, the selection process has included the issuance of manifestos and formal campaigning. Previously, the Speaker was usually chosen by the central government.
- After being elected, the Speaker resigns from their political party. According to tradition, candidates are not expected to run against opponents if they run for reelection. Although the Speaker remains in charge of their constituency, they are primarily elected through their role as Speaker.
- 3. If there is a tie, the Speaker loses voting rights in the House.
- 4. Financial independence is ensured by the fact that they are compensated through the Consolidated Fund, and Parliament does not influence their pay.

Some of these practices have been implemented in India, but key elements like 'freedom from political affiliations' remain unfulfilled. Even though there is a growing trend of the Speaker leaving party politics, most Indian Party Speakers remain loyal to their parties. Moreover, the selection of the Speaker is not entirely free of democratic elements, as it is now standard practice for the ruling party to nominate the Speaker and the opposition to select the Deputy Speaker. Despite the usual absence of any opposition, the election process is not always smooth. India's Speaker has financial independence, like the UK, and salaries are credited to the Consolidated Fund of India. However, unlike in the UK system, whereby the Speaker and Deputy Speaker submit their resignations to each other rather than the President, this is done in India. Dr. B.R. During the Constituent Assembly debates, Ambedkar clarified that since the House chooses both the Speaker and Deputy Speaker, they should resign from the position of their respective houses. The House, being a collective body, essentially resigns to each other. Although the President has no role in their appointment, they are omitted. This design aimed to protect the Speaker from any interference by the executive. Although Indian Speakers are in a quasi-judicial position to determine disqualification under the anti-defection law, they often maintain active links with their political parties. They have been accused of making biased decisions, leading to concerns about their impartiality. Therefore, the judiciary has been more involved in such matters, resulting in questions regarding the constitutionality of the division of powers between the legislature and the judicial branch of justice. The Speaker's decision on defection matters is regarded as an administrative function, meaning it falls within the scope of administrative law and can be reviewed by the judiciary. This connection between

constitutional statutes and administrative law was recognised in the case of P. M. Kaliappan v. P. M. Sayeed, in which the Supreme Court acknowledged the Speaker's quasi-judicial authority.²⁴ The ruling emphasised the importance of the Speaker's role in maintaining legislative discipline and constitutional integrity. Even though the Speaker is meant to act as an unbiased witness on defection matters, the judiciary has acknowledged that such verdicts can be reviewed, albeit on limited conditions. In Ramesh Kumar v. State of Karnataka, the Court highlighted that the Speaker's role in disqualification cases should be handled with a focus on fairness and transparency, emphasising the importance of following constitutional norms and values.²⁵ The Speaker's role in such matters is still a topic of debate. As the Speaker is often a member of whichever political party, their role as an impartial judge is called into question.

Defection Laws in India

Political defections in India can be traced back to colonial rule. A prominent case is that of Shri Shyam Lal Nehru, a member of the Central Legislature, who shifted his allegiance from the Indian National Congress to support the British authorities. Similarly, in 1937, Shri Hafiz Mohammed Ibrahim, initially elected on a Muslim League ticket in Uttar Pradesh, later joined the Congress Party. The Chavan Committee Report (1969) reveals that between March 1967 and February 1968, there was a significant surge in political defections, with legislators often altering their party affiliations.

Additionally, the country experienced an average of 438 defections yearly from the first through the fourth general elections. This prevalent party-switching raised significant concerns, such as the potential to leak internal party information to competitors, which compromised party integrity. These occurrences highlighted the urgent need for legal reforms to govern such behaviour, leading to the establishment of anti-defection regulations. The Anti-Defection Law was officially enacted through the 52nd Amendment of the Constitution in 1985 to tackle these challenges. The main aim was to limit political opportunism and enhance accountability among elected officials. By preventing lawmakers from changing parties while in office, the law sought to foster political stability and maintain the integrity of the democratic system. The Anti-Defection Law forbids elected representatives from altering their political affiliations after being elected. This matter received nationwide attention in 1967 when Haryana politician Gaya

²⁴ (1999) 4 SCC 412 ²⁵ (2019) 4 SCC 810

Lal famously shifted his party allegiance thrice in just one day. This episode led to the popular political phrase "Aaya Ram Gaya Ram," which symbolises the rampant defections of that era. In reaction to these events, and following a resolution passed on 8 December 1967, it was collectively decided to form a high-level committee composed of political leaders and constitutional experts to investigate the growing issue of defections and the frequent changes in legislative loyalty.

Several amendments have been made over the years to enhance the effectiveness of the law. The 91st Amendment, enacted in 2003, clarified that legislators would be disqualified if they voluntarily resigned from the political party under whose ticket they were elected. It also specified that internal party conflicts would not be deemed legitimate mergers or splits. Subsequently, the 52nd Constitutional Amendment was further amended in 2018 to prolong the Speaker's deadline to decide on disqualification petitions from three months to six months. It also proposed the creation of an independent tribunal to manage such matters, rather than relying solely on the Speaker for the decision. These modifications have been designed to enhance governmental stability and accountability while also striving to safeguard the democratic rights of elected officials.²⁶ The Anti-Defection Law has frequently faced scrutiny predicated on asserting that it contravenes constitutional tenets. Notwithstanding, the Supreme Court has affirmed its legitimacy in numerous seminal rulings. One of the principal objections to the law is that it curtails legislators' freedom of speech and expression. Nevertheless, the Court has elucidated that the law does not violate this right, as it restricts legislators from opposing their party's directives on significant issues. Legislators remain authorised to articulate their opinions and critique their party's policies without transgressing the provisions of the law. An additional point of dispute is the purported infringement on the federal character of the Constitution, given that the law bestows upon the central authority the capability to disqualify elected representatives. In reply, the Supreme Court has asserted that the law does not disrupt the federal structure, as it relates solely to the disqualification of defecting members and does not encroach upon the prerogatives of state legislatures.

The main goals of the anti-defection law were to support accountability among elected officials and political coherence.²⁷ These laws aim to deter, punish, and stop legislative members from

²⁶ Sumit Vashishtha & Dr. Bhoomanna Reddy, A Critical Analysis of Anti-Defection Laws in India, Vol. 9 Issue 1, IJLS, 70-77 (2023) https://www.alliance.edu.in/ijls/ijls-2023/assets/documents/a-critical-analysis-of-antidefection-laws-in-india.pdf ²⁷ Valerian Rodrigues, Parliamentary Opposition and Government Backbenchers in India, ResearchGate (January

^{2018,} 04:29 PM)

defecting. Legislators in India have historically switched parties frequently and opportunistically, often straddling ideological lines only to obtain wealth or power for themselves.²⁸ This resulted in calls for a legislative framework to address and restrict such behaviour. The need for such laws was further highlighted by the rise of coalition politics, which was essential for maintaining political unity and averting the government's fall. Political parties, not specific candidates, are the foundation of electoral representation, another distinctively Indian justification for the anti-defection framework.²⁹

As a result, voters typically back candidates based more on their party affiliation than on their qualifications. The Tenth Schedule of the Constitution reflects the goals of this legal mechanism. The conditions that result in disqualification are described in Paragraph 2 of this Schedule to maintain political stability and party discipline. In Ravi Naik v. Union of India, the Supreme Court broadened its application, ruling that relinquishing party membership could also be inferred from a member's conduct, even though it lists specific acts of defection.³⁰ Because of this interpretation, there have been instances where openly criticising party leadership has been interpreted as defection.³¹ Since the Speaker of the House is responsible for adjudicating such cases, their personal biases often influence the outcomes.

When drafting the legislation, the Parliament had to decide between a complete prohibition on defections and a restricted allowance under certain conditions. It chose the latter. For example, Paragraph 4 allows political parties to combine with the approval of at least two-thirds of their members without disqualifying them. Members are not subject to disqualification if they choose to join the combined party or start a new political party. At first, group defections involving one-third of the party's lawmakers were permitted under paragraph 3, but the 91st Constitutional Amendment eliminated this clause in 2003 because of its destabilising effects.³² The Speaker can determine disqualifications under paragraph 6 of the Tenth Schedule.

²⁸ Paras Diwan, Aya Ram Gaya Ram: The Politics of Defection, Vol. 21 No.3, JILI, 291-312 (1979) <u>http://14.139.60.116:8080/jspui/bitstream/123456789/16623/1/007_Aya%20Ram%20Gaya%20Ram%20-</u> %20The%20Politices%20of%20Defection%20%28291-312%29.pdf

https://www.researchgate.net/publication/320235847_Parliamentary_Opposition_and_Government_Backbenche rs_in_India

²⁹ Udit Bhatia, Cracking the Whip: The Deliberate Costs of Strict Party Discipline, Vol. 23 Issue 2, CRISPP, 254-279 (2020) <u>https://www.tandfonline.com/doi/abs/10.1080/13698230.2018.1479813</u>

³⁰ 1994 SCR (1) 754

³¹ AIR 2020 SC 2847

³² Clemens Spieß & Malte Pehl, Floor Crossing and Nascent Democracies: A Neglected Aspect of Electoral Systems? The Current South African Debate in the Light of the Indian Experience, ResearchGate (January 2004, 04:58

https://www.researchgate.net/publication/276055931_Floor_Crossing_and_Nascent_Democracies_a_Neglected Aspect_of_Electoral_Systems_The_Current_South_African_Debate_in_the_Light_of_the_Indian_Experience

However, the law does not specify a timeframe or thorough process for handling these issues.³³ Despite its declaration that decisions must be made quickly, the lack of precise deadlines has allowed Speakers to stall or influence the process.³⁴

The anti-defection law has drawn a lot of criticism despite its noble goals. Critics contend that restricting lawmakers' autonomy compromises democracy's deliberative character. Furthermore, insufficient empirical data supports its effectiveness in stopping political wrongdoing or arbitrary party switching.³⁵ As a result, there have been increasing calls to repeal the law altogether.³⁶ Critics argue that using legal tools to resolve political issues is fundamentally flawed. However, calls for total repeal are viewed as being too extreme. The comparatively undeveloped state of India's political culture must be considered, even though it is widely acknowledged that the law may not address political issues. Anti-defection laws are primarily found in younger democracies like South Africa and India, according to comparative studies of 40 Commonwealth nations. Established democracies, such as the UK, Canada, and Australia, on the other hand, rely on political norms and conventions to deter defection. Considering this, India still needs anti-defection legislation, at least temporarily. Despite their shortcomings, these laws are essential to upholding democratic discipline and order until a more responsible and mature political culture develops.

Revisions to the Anti-Defection Law

Since its establishment, the Anti-Defection Law has seen numerous revisions to tackle the difficulties and gaps identified in the original legislation. The main amendments are detailed below:

• 52nd Amendment Act, 1985: This initial legislation introduced the Anti-Defection Law in India and added the Tenth Schedule to the Constitution, which sets forth the rules and procedures for disqualifying elected officials who switch parties.

³³ K Vijaya Bhaskara Reddy, Sabotage of Anti-Defection Law in Telangana, Vol 1 No.50, EPW, 24-27 (2016) <u>https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2722754</u>

³⁴ Utkarsh Tyagi, Anti-Defection Laws in India- An Appraisal of the Effectiveness of the Law, Vol 9, PAJ, 1-13 (2020) <u>https://www.penacclaims.com/wp-content/uploads/2020/04/Utkarsh-Tyagi.pdf</u>

³⁵ Shoaib Daniyal, The Political Fix: Has the anti-defection law hollowed out India's representative democracy? Scroll. in (22 July 2019, 09:30 AM) <u>https://scroll.in/article/931323/the-political-fix-has-the-anti-defection-law-hollowed-out-india-s-representative-democracy</u>

³⁶ Chakshu Roy, What an Indian law can do to MLAs defecting in Karnataka & Goa-Nothing, The Print (12 July 2019, 09:42 AM) <u>https://theprint.in/opinion/what-an-indian-law-can-do-to-mlas-defecting-in-karnataka-goa-nothing/261920/</u>

- 61st Amendment Act, 1988: This amendment modified the Tenth Schedule to allow for the mergers of political parties without triggering disqualification. The intention was to obstruct the exploitation of the law by political parties that aimed to expel members who wished to merge with another party.
- 65th Amendment Act, 1991: By amending the Tenth Schedule, this revision permitted splits within parties without resulting in disqualification. This change was intended to safeguard legislators who left their political party from being unjustly removed under the Anti-Defection provisions.
- 91st Amendment Act, 2003: This amendment updated Article 191 of the Constitution, establishing that members must be disqualified if they voluntarily resign from their party or disregard party directives. Its objective was to fortify the law by limiting strategic defections and enhancing party discipline among elected officials.³⁷

Exceptions to the Anti-Defection Law

- Independent Legislators: Lawmakers elected without affiliation with any political party are exempt from the Anti-Defection Law. These individuals are free to vote in the legislature according to their judgment, as they are not required to adhere to any party directives.
- Pre-Election Alliances: The law does not affect members who switch their party loyalty to join a pre-election coalition, provided the alliance was established before the elections and continues to exist afterwards. Such actions do not result in disqualification under the law.
- Party Mergers: Members of political parties that decide to merge and create a new entity will not be disqualified, as long as at least two-thirds of the legislators from the original party consent to the merger and join the new organisation.
- Party Splits: In a situation of a split within a political party, elected members may align with any of the newly formed factions without facing disqualification. Nonetheless, this exemption applies only if at least one-third of the original party members separate to establish a new group.
- Voting Based on Conscience: Lawmakers can vote independently of the party's directive, exercising what is referred to as a conscience vote on matters of national

³⁷ The Constitution of India, 1949, Art. 191

significance, such as the elections of the President or Vice-President, or a no-confidence motion.

Elements Affecting the Implementation of the Anti-Defection Law

The Anti-Defection Law, established through the 52nd Amendment to the Indian Constitution in 1985, was created to dissuade elected officials from changing political alignments for personal benefit. Its main objective is to maintain the integrity of democracy and ensure the stability of the government. This provision is vital in tackling defections both in Parliament and State Legislatures. Several factors influence the enforcement of this law in India, as outlined below:

- 1) Political Considerations
 - a) When no single party achieves a definitive majority in the legislature, the likelihood of political manoeuvring rises. Parties may seek to entice legislators from competing factions to establish a coalition, resulting in instability. The Anti-Defection Law aims to prevent such activities, including horse-trading and opportunistic defections.
 - b) At times, lawmakers may switch parties to enhance their political careers or to exert more influence. Such actions can disrupt democratic governance and undermine the framework of a stable administration.
- 2) Legal Considerations
 - a) How the Supreme Court interprets the Anti-Defection Law significantly influences its enforcement. Important rulings, such as Kihoto Hollohan v. Zachillhu, have clarified the boundaries and applicability of the law, including that decisions made by the legislature's presiding officer are subject to judicial review.
 - b) Law enforcement is also contingent upon how the Speaker or Chairman assesses cases of defection. Their decisions are frequently challenged in courts, and judicial interpretations can affect the ultimate application of the law.
- 3) Social Considerations
 - a) The public's reactions can impact the enforcement of the Anti-Defection Law. If citizens believe that a lawmaker has defected for selfish reasons, it may lead to public backlash and political repercussions for that individual.
 - b) Robust internal discipline within political parties can discourage members from defecting. Conversely, weak party structures may promote frequent party-switching, contributing to political instability.

A mix of political, legal, and social factors influences the functionality of the Anti-Defection Law in India. Judicial interpretations, actions by legislative leaders, public perceptions, and the strength of party discipline all play crucial roles in determining the law's effectiveness. Ultimately, the Anti-Defection Law is vital for preserving democratic principles and ensuring governmental stability.

Influence of the Anti-Defection Law on India's Parliamentary Democracy

The Anti-Defection Law, established in 1985, prevents Members of Parliament (MPs) and Members of Legislative Assemblies (MLAs) from switching parties or disregarding party instructions, especially during votes such as confidence or no-confidence motions, unless prior consent is granted. This law was intended to discourage politicians from changing allegiance for personal gain, thus maintaining the electorate's trust and preserving democratic principles. This legislation has profoundly impacted the operation of India's parliamentary democracy. A significant benefit has been the enhancement of political stability, as it has reduced occurrences of party-switching that could otherwise result in the collapse of elected administrations. However, the law has drawn criticism for constraining the independence of legislators, who may be compelled to adhere closely to party decisions, thereby limiting their ability to act autonomously.

Located within the Tenth Schedule of the Constitution, the law stipulates that a legislator forfeits their seat if they voluntarily abandon their party or oppose the party whip during critical votes. Furthermore, if a member joins another party without proper authorisation, they risk disqualification. The legislation also guarantees that the affected legislator can present their defence before the presiding officer of the House decides on their dismissal. Over the years, the Supreme Court of India has investigated numerous constitutional issues related to the law, in an important ruling—G. Vishwanathan v. Speaker, Tamil Nadu Legislative Assembly, the Court determined that the law only pertains to those associated with political parties, not independent members.³⁸ It also clarified that abstaining from voting does not violate party directives and is thus not subject to penalties under the Act. While the Anti-Defection Law has succeeded in fostering governmental stability, it has been critiqued for diminishing the capacity of elected representatives to make independent decisions. Despite facing legal challenges, the Supreme Court has continually upheld the law and provided frameworks for its enforcement. The Anti-Defection Law is a crucial legal tool to bolster party discipline and avert opportunistic

³⁸ 1996 SCC (2) 353

defections, ensuring that legislators remain answerable to their political mandates and the constituents who elected them.

Speaker under the 10th Schedule

The Speaker of the House has the last say in disqualification cases under the Tenth Schedule. As the guardian of democratic processes in both Parliament and State Legislative Assemblies, the Speaker or Presiding Officer plays a vital role. The Speaker holds a position of considerable importance just below the President, Vice-President, and Prime Minister. However, only after a formal complaint of disqualification is filed following Paragraph 2 of the Tenth Schedule does the Speaker have the authority to disqualify a lawmaker. When this clause is interpreted in conjunction with Articles 102 and 191 of the Constitution, it is evident that the Speaker's function in these situations is quasi-judicial, necessitating the filing of a petition before any action is taken.³⁹ Paragraph 6 of the Tenth Schedule designates the Speaker or Chairman as responsible for making decisions regarding disqualification petitions involving members of the House. Their verdicts on these matters are considered final and obligatory. Nonetheless, during the discussions in Parliament regarding the Bill, multiple Members of Parliament raised concerns about empowering the Speaker with such adjudicatory roles. They worried that having the Speaker involved in these decisions could lead to avoidable disputes, as any ruling from the Speaker would be interpreted as a decision of the entire House, thus limiting members from expressing their concerns during House sessions. Moreover, there was apprehension that the Bill weakened the separation of powers outlined by the Constitution, which establishes an independent judiciary, executive, and legislature-yet in this case, the legislature was being assigned roles typically associated with the judiciary. According to Paragraph 8 of the Tenth Schedule, the Speaker and Chairman are also permitted to create rules essential for executing the provisions of the Schedule. These rules, considered a type of delegated legislation, must be consistent with the objectives and constraints of the parent legislation. Following this mandate, the Lok Sabha Members (Disgualification on Ground of Defection) Rules, 1985 were implemented. State Legislative Assemblies later adopted comparable rules, heavily influenced by the framework set forth by the Lok Sabha.⁴⁰ Paragraph 5 of the Tenth Schedule offers certain

³⁹ Aswathy Vinod, Anti-Defection, Role of Speaker, and Quia Timet Action, iPleaders (August 12, 2020, 08:14 PM) https://blog.ipleaders.in/anti-defection-role-of-speaker-and-quia-timet-action/ ⁴⁰ Mahachandra Prasad Singh v. Bihar Legislative Council, (2002) 8 SCC 747

exceptions that shield the Presiding Officers of the House, such as the Speaker, from disqualification due to defection under two specific conditions:

- i. If the individual resigns from their political party immediately before being elected as the Presiding Officer and does not rejoin that or any other party while in office; or
- ii. If the person leaves the party solely due to being elected to the position, then rejoins the same party only after stepping down from the office.

No Presiding Officer has invoked this exemption by formally resigning from their political party. If the Speaker's conduct does not fall within this protection, they may be liable for disqualification. In such a case, the disqualification petition is submitted to the Secretary General, who must prepare and present a report to the House. Based on that report, the House elects a member to make the final determination.⁴¹ This exemption safeguards the Speaker's role from accusations of bias or partisanship, encouraging a separation from party affiliations to uphold the office's impartiality.

Paragraph 6(2) of the Tenth Schedule clarifies that proceedings related to disqualification due to defection are treated as legislative proceedings under Article 122⁴² and 212⁴³ of the Constitution. Despite Paragraph 6(1) granting finality to the Speaker's decisions, Paragraph 6(2) strengthens that finality by shielding such decisions from judicial scrutiny. Paragraph 7 further reinforces this by explicitly barring courts from intervening in disqualification matters under the Tenth Schedule.⁴⁴ This structure was intended to prevent judicial interference in decisions made by the Presiding Officers. However, the judiciary has ruled that the power of judicial review is an essential element of the Constitution's basic structure. This implies that no legislative provision can remove the courts' authority to review decisions for constitutional validity.

In Union of India v. Jyoti Prakash,⁴⁵ the Supreme Court interpreted the term "final" as used in Article 217(3),⁴⁶ asserting that courts have the authority to invalidate an order if it is found to be based on irrelevant considerations, issued without adherence to principles of natural justice, or influenced by executive bias or lack of evidence. Nevertheless, the Court emphasised it

⁴¹ Lok Sabha Members (Disqualification on Ground of Defection) Rules, 1985, Rule 6(2)

⁴² The Constitution of India, 1949, Art.122

⁴³ The Constitution of India, 1949, Art. 212

⁴⁴ Dr. Luis Proto Barbosa v. Union of India &Ors., AIR 1992 SC 1812

⁴⁵ Union of India v. Jyoti Prakash, AIR 1971 SC 1093

⁴⁶ The Constitution of India, 1949, Art. 217(3)

would not act as an appellate body over the President's decision.⁴⁷ Building on this precedent, while reviewing the constitutionality of the Tenth Schedule, the Punjab and Haryana High Court ruled that the word "final" merely limits the scope for appeals, reviews, or revisions—it does not eliminate judicial review altogether. Consequently, decisions described as "final" can still be reviewed by the High Courts under Article 226⁴⁸ and the Supreme Court under Article 32.⁴⁹ In Manilal Singh v. Dr. H. Borobabu Singh & Anr., the court held that any directive issued by the Supreme Court in matters involving the Speaker's decision on disqualification under the Tenth Schedule is binding on the Speaker. Therefore, the Speaker is obligated to comply with the Court's ruling.⁵⁰

Decision-making involves a multifaceted process that requires balancing numerous factors and weighing conflicting interests. To ensure fairness and neutrality in such decisions, decision-makers frequently rely on the principles of natural justice. A key element in maintaining such impartiality is the independence of the authority making the decision. Justice must not only be delivered fairly but must also visibly appear to be unbiased. Like any other authority, the Speaker's role is fundamentally rooted in neutrality. Without impartiality, the Speaker cannot uphold the dignity and responsibilities of the office. However, remaining a political party member compromises this neutrality, raising questions about the Speaker's objectivity. In India, this issue is particularly concerning. The framers of the Constitution anticipated that Presiding Officers might sometimes find it difficult to detach from partian politics, which could influence how they exercise their powers under the Tenth Schedule. Hence, a specific exemption was provided for them. This concern has led to significant debate over the Speaker's role under the Tenth Schedule, with impartiality being the central issue. The controversy intensified after the 1989 Janata Dal split, where it was alleged that the Speaker had shown bias in recognising a faction that had defied the party whip.

Instances of perceived partisanship have continued, where Speakers have seemingly ruled in favour of the ruling party to ensure a legislative majority. In one such example, a disqualification petition was filed by BS Yeddyurappa under Paragraph 2(1)(a) of the Tenth Schedule. The petition alleged that certain MLAs, though elected on BJP tickets, expressed dissatisfaction with Yeddyurappa's leadership in a letter to the Governor, claiming he lacked public support. The Speaker issued show-cause notices posted on locked quarters that

⁴⁷ Prakash Singh Badal v. Union of India, AIR 1987 P H 263

⁴⁸ The Constitution of India, 1949, Art. 226

⁴⁹ The Constitution of India, 1949, Art. 32

^{50 1993} SCR (1) 769

legislators only used during Assembly sessions. Relying on the letter and media reports, the Speaker concluded that the MLAs had forfeited their membership under Paragraph 2(1)(a), arguing that concerns about party leadership should be addressed within the party framework.

In making this decision, the Speaker cited the Supreme Court's ruling in *Rajendra Singh Rana* & *Ors. v. Swami Prasad Maurya*, where it was held that writing to the Governor requesting a change in government leadership could be seen as voluntarily giving up party membership.⁵¹ A similar rationale was applied in the *Shivraj Singh* case, where the Speaker declined to disqualify a legislator, asserting that voluntary resignation from the party must be explicitly shown for disqualification to apply.⁵² However, the Supreme Court clarified that merely leaving a party is not an automatic ground for disqualification.

The Speaker's decision in the Yeddyurappa case was challenged in a review petition before the Supreme Court.⁵³ The Court held that the Speaker had violated basic evidentiary rules by concluding disqualification solely on the respondents' failure to refute the allegations. The Court noted that the burden of proof lies with the accuser, and silence from the accused does not suffice as proof of guilt. It criticised the Speaker's hasty conduct and observed:

"This conduct on the part of the Speaker is also indicative of the hot haste with which the Speaker disposed of the petition as complained of by the appellants."

The Court further noted that Yeddyurappa secured the House's confidence immediately after disqualifying the 11 MLAs, implying a possible motive behind the urgency. It stated:

"Unless it was to ensure that the trust vote did not go against the CM, there was no conceivable reason for the Speaker to have taken up the petition in such a great hurry... The Speaker proceeded as if he was required to meet the deadline set by the Governor, irrespective of whether he was ignoring the constitutional norms set out in the Tenth Schedule."

There is no statutory obligation for Speakers to promptly resolve issues related to antidefection, and this discretionary power has often worked in favour of ruling parties in certain states. Although the Tenth Schedule originally intended to enable swift adjudication of defection cases by assigning this authority to the Speaker or Chairman, this provision sparked

⁵¹ (2007) 4 SCC 270

⁵² Shivraj Singh Chauhan v. Hon'ble Speaker, Madhya Pradesh, AIRONLINE 2020 SC 439

⁵³ Balchandra L Jarkiholi & Ors vs BS Yeddyurappa & Ors, (2011) 7 SCC 1

intense discussion during the Bill's passage in Parliament. The reason for shifting adjudicative power to the Speaker was primarily to ensure quick resolution of such matters.

However, a significant issue arises due to the time-sensitive nature of proceedings under the Tenth Schedule. The Speaker can only act within the lifespan of the existing legislative assembly, as pending petitions lapse with the formation of a new House. Recently, there have been instances where Speakers have taken advantage of the absence of a fixed timeframe to deliberately delay decisions until the House is dissolved. Consequently, defecting legislators continue to hold office or even ministerial posts without fear of disqualification, thereby undermining the very purpose of the anti-defection law. Judicial decisions have also limited the scope of court intervention before the Speaker issues a ruling. Courts have held that they cannot interfere at any stage prior to the Speaker's decision, thereby ruling out qua timet actions-legal steps taken to prevent expected harm. An exception exists only for situations that are urgent and could result in irreparable damage if not addressed. Despite this, several petitions have been filed in courts seeking directives for the Speaker to act within a specific time limit. However, courts usually dismiss such petitions to avoid institutional conflict between the judiciary and the legislature, thereby respecting the principle of separation of powers. Under Rule 7(4) of the Members of the Lok Sabha (Disqualification on Ground of Defection) Rules, 1985, the Speaker or Chairman is permitted to refer disgualification petitions to the Committee of Privileges for preliminary examination.⁵⁴ Though this referral is discretionary, it has become standard practice in many cases, further delaying the resolution process. In Mayawati v. Markandeva Chand,⁵⁵ the Supreme Court emphasized the need to establish a definitive timeline for disposing of defection cases. The Court observed:

"...it is absolutely necessary for every Speaker to fix a time schedule in the relevant Rules for disposal of the proceedings for disqualification of MLAs and MPs... all such proceedings shall be concluded and orders should be passed within a period of three weeks from the date on which the petitions are taken on file." Due to the imminent dissolution of the Assembly, the Court had to intervene and issue a ruling in place of the Speaker.

A similar scenario arose in Speaker, Haryana Vidhan Sabha v. Kuldeep Bishnoi & Ors.⁵⁶ where disqualification petitions against five Haryana MLAs were pending. The High Court issued an

⁵⁴ Lok Sabha Members (Disqualification on Ground of Defection) Rules, 1985, Rule 7(4)

^{55 (1998) 7} SCC 517

⁵⁶ AIR 2013 SC 120

interim order barring the MLAs from functioning and imposed a four-month deadline for the Speaker to decide the matter. Upon review, the Supreme Court ruled that:

"Restraining the Speaker from taking any decision under paragraph 6 of the Tenth Schedule is, in our view, beyond the jurisdiction of the High Court..." It clarified that the Speaker's authority is constitutionally enshrined and final until challenged post-decision. Nonetheless, the Court upheld the High Court's directive to impose a time limit and ordered the Speaker to conclude the matter within three months of its judgment.

Judicial Review of the Speaker's Decision

Severance of Paragraph 7 of the Tenth Schedule of the Indian Constitution

Initially, the Tenth Schedule included Paragraph 7, which stated that courts had no jurisdiction over disqualification matters concerning legislators. In *Ravi Naik*, the court acknowledged that the authority to decide on disqualification lies with the Speaker. However, in *Kihoto Hollohan*, the Supreme Court held that disqualification is essentially a judicial matter and cannot be treated as a legislative function. Therefore, it declared Paragraph 7 unconstitutional, emphasizing that judicial review is part of the Constitution's basic structure. Applying the doctrine of severability, the Court removed only the unconstitutional provision (Paragraph 7), while retaining the rest of the Tenth Schedule as valid. The doctrine allows for the exclusion of invalid sections from an Act without affecting the remainder of the statute.

b) Doctrine of Separation of Powers

The principle of separation of powers dictates that one branch of government must not usurp the essential functions of another.⁵⁷ The judiciary ensures that power is exercised within legal limits, preventing arbitrary use of authority.⁵⁸ In Bhim Singh v. Union of India, the Supreme Court laid down certain criteria to determine when there is encroachment by one branch upon another, stating that any branch should refrain from taking over the core functions of another as this would breach the doctrine.⁵⁹

Under the Tenth Schedule, the Speaker is empowered to act in both judicial and legislative capacities to ensure administrative efficiency. In Jayantilal Amrit Lal Shodhan v. F.N. Rana,⁶⁰

⁵⁷ State of Punjab v. Salil Sabhlok, (2013) 7 SCC 266

⁵⁸ State of West Bengal v Anwar Ali Sarkar, (1952) SCR 284

⁵⁹ (2010) 5 SCC 538

⁶⁰ (1964) 5 SCR 294

the Court observed that an executive authority may assume legislative and adjudicative roles to facilitate smooth governance. Since the Speaker frames procedural rules and adjudicates internal legislative disputes, this dual role does not violate the separation of powers. The Supreme Court reaffirmed this position in Ram Jawaya Kapur & Ors. vs. The State of Punjab, highlighting that combining such functions serves the effective implementation of the Tenth Schedule.⁶¹

Priority of the Speaker's Decision Over Judicial Review

In the *Kihoto Hollohan* case, the Supreme Court acknowledged that although some constitutional principles might be violated, the Speaker's decision must precede judicial review for the Tenth Schedule to function smoothly. While courts can later intervene if the Speaker's ruling is found to be biased or unfair, they must not interfere before the Speaker has decided. Thus, judicial intervention is only permissible after the Speaker has acted. The Court also took note of concerns such as violations of natural justice and the separation of powers, but maintained that the Speaker should act first.

Role of the Speaker in Disqualification as an Adjudicator

Several judicial decisions have underscored the importance of the Speaker remaining unbiased and impartial when adjudicating disqualification matters. The decision-making process must adhere to the principles of natural justice, and political affiliations should not influence the Speaker's actions. As the Speaker holds a pivotal role in maintaining legislative stability, their decisions must reflect fairness and transparency. Despite such expectations, there are instances suggesting potential bias. In the Nabam Rebia case, members of the Arunachal Pradesh Assembly expressed their mistrust in the Speaker's impartiality and sought the Governor's intervention. Although the Governor attempted to dismiss the Speaker, the latter responded by disqualifying 33 MLAs before the dismissal order could take effect. This incident highlights the limitations of the Tenth Schedule in ensuring objective adjudication.

In Union of India v. Tulshiram Patel, the Supreme Court held that Article 14 of the Constitution guarantees the right to natural justice.⁶² A key aspect of this principle is the doctrine of *nemo judex in causa sua*—no one should judge their own case.⁶³ In AK Kraipak v. Union of India, the Court confirmed that natural justice applies to administrative processes and that the rule

⁶¹ (1955) 2 SCR 225

⁶² 1985 AIR 1416

⁶³ The Constitution of India, Art. 14

against bias is a fundamental part of this principle.⁶⁴ Therefore, when the Speaker—who may be affiliated with a political party—acts as a judge, there is a risk of institutional bias. As the Tenth Schedule empowers the Speaker to adjudicate, it raises concerns about impartiality. Because of this potential conflict of interest, it has been argued that someone external to the legislature should handle such disputes. The Speaker's involvement in disqualification decisions may breach the principles of natural justice due to institutional loyalty.⁶⁵ In *Kihoto Hollohan*, the Court ruled that aside from Paragraph 7, which was struck down for affecting the Constitution's basic structure, the rest of the Tenth Schedule was constitutionally valid. In *R. Bhoopathi Reddy vs. The Chairman*, the court discussed Paragraph 8(2) of the Tenth Schedule, stating that rules made by the Speaker must be subject to democratic scrutiny, thus preserving the core value of democracy.⁶⁶

Regarding alleged violations of natural justice, Jagjit Singh vs. State of Haryana & Ors clarified that the principle is not absolute and must be evaluated on a case-by-case basis.⁶⁷ While the potential for bias exists, it does not apply to all situations, and Speakers can act fairly in many instances. To resolve these issues, recommendations have been made by the Dinesh Goswami Committee and the 170th Law Commission Report of India. Both suggest transferring the adjudicative authority from the Speaker to the President or Governor, who would act on the advice of the Election Commission of India. Under Article 103,⁶⁸ the President has the power to disqualify a member under Article 102(1)⁶⁹ based on the Election Commission's advice. Given that Article 102(2), which deals with disqualification under the Tenth Schedule, currently vests power in the Speaker, it would be consistent to vest this power in the President or Governor as well.⁷⁰ In Jagjit Singh case, the Supreme Court acknowledged and appreciated the Goswami Committee's recommendation, emphasizing the role of the Election Commission and democratic processes under Article 103 and 194(2).⁷¹

Conclusion

The Anti-Defection Law is frequently viewed as a significant legislative effort aimed at tackling the issue of political defections. It was established to regulate the behavior of Members

⁶⁴ (1969) 2 SCC 262

⁶⁵ Dimes v. Grand Junction Canal Co., 1852 3 HLC 759

^{66 (2022) 9} SCC 235

⁶⁷ (2006) 11 SCC 1

⁶⁸ The Constitution of India, 1949, Art. 103

⁶⁹ The Constitution of India, 1949, Art. 102(1)

⁷⁰ The Constitution of India, 1949, Art. 102(2)

⁷¹ The Constitution of India, 1949, Art. 194(2)

of Parliament and to ensure their loyalty to their respective political parties. This examination aims to assess whether the law has effectively fostered parliamentary discipline, ethical behavior, and integrity among politicians. While the law has played a crucial role in increasing governmental stability and has seen some success in limiting defections, it still has notable weaknesses—such as the lack of a defined timeline for resolving disqualification cases. Despite these issues, the law has been able to decrease the occurrence of opportunistic party switching to a certain degree. However, intra-party defections continue to be a significant concern in numerous states. Although the law is designed to prevent such actions, its execution has not been wholly effective. There is also an urgent need for political agreement to ensure that parliamentary activities continue to facilitate legitimate political expression. A more effective mechanism is urgently needed to avert future defections and tackle the rising levels of political corruption. In a democratic framework, the public is the primary stakeholder, while political parties operate as institutional conduits. Although the stability of political parties is essential for a functioning democracy, imposing excessive restrictions on legislators could undermine their representative functions. Thus, it is critical to address the existing legal shortcomings, as ongoing political instability primarily affects the public, who bear the brunt of the fallout.

The Tenth Schedule of the Constitution has assigned political parties a unique constitutional role. Legislators in the assembly are typically linked to the party that nominated them, and the party's ideology and platform significantly influence voter preferences. Under the current system, both party leaders and any member of the legislature can report cases of defection to the Presiding Officer of the House. Additionally, the party leadership has the power to initiate disciplinary actions, including recommending disqualification under Paragraph 2(1) of the Tenth Schedule. Paragraph 6 of the Tenth Schedule designates the Speaker or Chairman as the authority responsible for adjudicating disqualification cases. Although courts can review the Speaker's rulings, this review does not encompass situations where the Speaker fails to act or experiences undue delays. In those instances, judicial review proves ineffective, as it only applies to decisions made, not to inaction. The Supreme Court's decision in Keisham Meghchandra Singh v. Hon'ble Speaker, Manipur Legislative Assembly highlighted issues that remain unresolved and are currently awaiting consideration by a larger bench.⁷² This illustrates the complexity and sensitivity surrounding these constitutional matters, even for the judiciary. Assuming the Supreme Court has established binding law, imposing time limits on the Speaker's decisions presents various practical challenges. Nevertheless, any judicial

^{72 2020} SCC OnLine SC 55

intervention, even if temporary, is preferable to a total legal vacuum and acts as a safeguard for democratic values. Within the existing constitutional framework, Parliament has not sufficiently acknowledged the importance of prompt adjudication in defection cases, especially considering that governments face elections every five years. The Speaker has been granted such extensive power that their position sometimes appears to exceed constitutional boundaries. This overreach has resulted in unjustified delays in the decision-making process, contradicting the principles of democratic governance. At the same time, it is vital to uphold the right to legitimate dissent. Criticism of party leadership should not be readily dismissed as insubordination or misconduct. It is essential to differentiate between instances where legislators are genuinely abandoning party ideals and those where they are merely challenging leadership practices or expressing the concerns of their constituents. The goal should be to ensure accountability within parties while maintaining democratic discourse.