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## **A DETAILED OVERHAUL OF ANTI-DEFECITION LAW IN THE LIGHT OF SUBHASH DESAI CASE**

Adv Monica Madaan<sup>1</sup>& Arryan Mohanty<sup>2</sup>

### **ABSTRACT**

India's legislative environment has long been characterised by elected officials' frequent changes in political allegiance. Often known as 'political defection,' it refers to the departure of an elected official from the political party that supported their campaign and allowed them to be elected to Parliament or a State Legislative Assembly. Through the Constitution (Fifty-Second Amendment) Act, 1985, also referred to as the anti-defection law, the Indian government added the Tenth Schedule to the Constitution in response to the instability brought on by such defections. This clause in the constitution allows lawmakers to be disqualified if they voluntarily leave their party or vote or abstain from voting against the party's official stance in the legislature. At first, members could avoid disqualification if their group broke away from or merged with another political party, thanks to the Tenth Schedule's few exceptions. The 'merger' clause is still in effect, but the 'split' exception was eliminated by the 91st Amendment in 2003. Paradoxically, the legislation designed to prevent defections has become a contentious issue in and of itself, frequently making the issue worse rather than better. As a result, the anti-defection policy is now being examined just as closely as the defection itself. In light of the historic Subhash Desai ruling, this paper conducts a thorough re-evaluation of India's anti-defection framework. By challenging previous court interpretations and highlighting enduring ambiguities in the constitutional design, the ruling represents a sea change. Through a critical examination of the law's historical evolution, legislative disqualification jurisprudence, and the logic in Subhash Desai, this study shows how current provisions may unintentionally erode democratic accountability by limiting elected officials' autonomy. To strike a balance between maintaining legislators' individual independence and maintaining party cohesion, it ultimately makes the case for a targeted reform of the anti-defection regime.

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<sup>1</sup> The co-author is a LLM student at KR Mangalam University.

<sup>2</sup> The co-author is a law student of Symbiosis Law School, Nagpur.

## **INTRODUCTION**

The practice of defection stands out as one of the most detrimental factors to governmental stability among the political issues that have persisted throughout India's democratic experience. A recurring topic of discussion regarding the institutional and moral strength of India's parliamentary system is political defection, which occurs when an elected official breaks with the party to which they were elected. This problem is neither new nor exclusive to India. Similar instances of floor-crossing and political realignment have been documented in nations like Israel, Australia, and the United Kingdom, highlighting the fact that representative democracies face a common dilemma in balancing party discipline with individual conscience. Any democracy that wants to be healthy must constantly avoid actions that erode the public's trust in its institutions. One such corrosive element has long been identified as defection, which undermines governments and violates voter mandates. The anti-defection law, which was created to improve political accountability and stop opportunistic changes in allegiance, was the Indian government's response to this ailment. The law, however, stifles intra-party dissent and discussion while guaranteeing that members continue to answer to the political party that elected them. Under this law, party leaderships are given almost total control over their members' legislative behaviour, which marginalises individual judgement and turns parliamentary debates into compliance exercises rather than deliberations. In the past, the defection issue was extremely serious. About 542 Members of Legislative Assemblies (MLAs) changed their political affiliations between 1951 and 1967, and 438 more lawmakers defected in the year 1967–68 alone. These mass defections threatened the stability of representative government and represented a deeper ethical and constitutional crisis than just numerical anomalies. A statutory mechanism to prevent defections was eventually demanded because of this trend of political instability and the frequent overthrow of state governments. As a result, the anti-defection law was created as a moral response to the ongoing subversion of the electoral mandate, in addition to being a legal reform. This response still influences the current state of Indian democracy.<sup>3</sup>

Political leaders' repeated disregard for the guiding principles of defection laws has caused them to reappear as a major constitutional concern in recent decades. Political defection has been a controversial and frequently brought up topic in discussions of representative

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<sup>3</sup>Amit Kumar, Understanding the Anti-Defection Law in India: Provisions, Significance, and Criticisms (Manupatra, September 22, 2023) <<https://articles.manupatra.com/article-details/Understanding-the-Anti-Defection-Law-in-India-Provisions-Significance-and-Criticisms>> accessed September 13, 2024

democracy ever since India gained its independence. The Oxford Dictionary's definition of 'defection,' which encapsulates the moral heinousness of political treachery, is the act of leaving one's nation or political party to join another. A more precise definition appropriate for India's parliamentary setting was provided by the 1967 Committee on Defection, which was established to investigate this escalating threat. Unless it is the direct result of a collective party decision, it defines a defector as an elected member of a legislature who, after being granted the reserved symbol of a political party, voluntarily renounces allegiance to that party after election.<sup>4</sup>

An extraordinary spike of political defections occurred in India by the late 1960s and early 1970s, indicating a serious decline in public confidence in the political system. Disregarding the mandate of the electorate, lawmakers routinely changed parties to obtain ministerial positions or political advantage. A major turning point was the 1967 general elections, which demonstrated how defection had undermined democratic governance by causing the fall of multiple state governments because of Members of Legislative Assemblies (MLAs) 'party-hopping'. Parliament had to step in because of this political unrest. A unanimous decision was made to form a Parliamentary Committee, chaired by Shri Y. B. Chavan, to investigate the matter thoroughly and suggest solutions.

The Thirty-second Constitutional Amendment Bill, which aimed to bar defectors from serving as ministers, was introduced because of the Committee's conclusions. The subsequent Forty-Eighth Amendment Bill, with a similar goal, was the result of the persistent demand for reform, even though this Bill expired with the dissolution of the Lok Sabha. The Constitution (Fifty-Second Amendment) Act, which was passed by the government of Prime Minister Rajiv Gandhi in 1985 and introduced the Tenth Schedule to the Constitution, also referred to as the Anti-Defection Law, was a watershed moment. This historic law marked a turning point in India's attempts to balance democratic accountability with party discipline by institutionalising measures to combat the pervasive culture of political opportunism.<sup>5</sup>

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<sup>4</sup>Sidharth Sharma, Anti-Defection Laws: A Critical Analysis (iPleaders, August 12, 2020) <<https://blog.ipleaders.in/explained-anti-defection-laws/>> accessed September 16, 2024

<sup>5</sup>Ansruta Debnath, Breaking down the 10th Schedule of the Indian Constitution (iPleaders, January 25, 2022) <[https://blog.ipleaders.in/breaking-down-10th-schedule-indian-constitution/#Historical\\_background\\_of\\_the\\_10th\\_Schedule\\_of\\_Indian\\_Constitution](https://blog.ipleaders.in/breaking-down-10th-schedule-indian-constitution/#Historical_background_of_the_10th_Schedule_of_Indian_Constitution)> accessed September 17, 2024

## **FEATURES & PROVISIONS OF THE TENTH SCHEDULE OF THE INDIAN CONSTITUTION**

The Tenth Schedule was added to the Indian Constitution by the Constitution (Fifty-Second Amendment) Act of 1985, primarily to prevent opportunistic and immoral political defections that endangered the stability of elected governments. The statutory structure and procedural procedures for disqualification on the grounds of defection are outlined in the eight-paragraph Schedule. Its first paragraph creates conceptual clarity in the legislative design by defining key terms and expressions required for interpreting the following provisions.<sup>6</sup> The 1985 Amendment added Clause (2) to Articles 102 and 191 of the Constitution in addition to adding the Tenth Schedule. While Article 191(2) applies to members of State Legislative Assemblies and Councils, Article 102(2) specifies the conditions under which a member of Parliament may be disqualified for defection.<sup>7</sup> By guaranteeing that the concept of political fidelity is applied consistently in both national and state legislatures, these clauses collectively constitute the constitutional foundation of India's anti-defection framework. The Fifty-Second Amendment essentially aimed to protect electoral mandates from the disruptive forces of political realignment while instituting party discipline within India's parliamentary democracy.

## **DISCUSSION OF THE PROVISIONS OF THE TENTH SCHEDULE OF THE INDIAN CONSTITUTION**

### **First Paragraph**

The Tenth Schedule's opening paragraph serves as an interpretation clause, providing the fundamental definitions required for the anti-defection provisions to be applied effectively. It makes clear that the word 'House' can refer to either a State Legislative Assembly or the House of Parliament. 'Original Political Party' refers to the political organisation to which a lawmaker belonged before defecting, whereas 'Legislature Party' refers to the grouping of all members of a political party represented in the House. These definitional provisions are essential because they guarantee accuracy in interpreting the law's reach and the status of its participants.<sup>8</sup>

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<sup>6</sup>Ayushi Sharma & Aishik Majumder, 'Anti-Defection Law in India, A Boon or A Bane,' (2018) 6 SA <<https://supremoamicus.org/wp-content/uploads/2018/07/A3.pdf>> accessed September 18, 2024

<sup>7</sup>The Constitution of India, 1949, Art. 191(2): The Constitution of India, Art. 102(2)

<sup>8</sup>The Constitution of India, 1949, Schedule X, ¶ 1

## Second Paragraph

The Tenth Schedule's substantive core is paragraph 2, which outlines the circumstances in which a lawmaker could be disqualified for defection.<sup>9</sup>

### Members of political parties

If a member of a legislature who is a member of a recognised political party voluntarily resigns from that party, or if they vote or abstain from voting against party directives without first obtaining consent and do not receive an additional acknowledgement of their action within fifteen days, they may be disqualified.

Crucially, the phrase “voluntarily giving up membership” does not only refer to official resignation. The Supreme Court ruled in *Ravi Naik v. Union of India* that a legislator's behaviour or actions could also be interpreted as indicating such relinquishment.<sup>10</sup> This interpretation expanded the scope of the law and occasionally made it difficult to distinguish between defection and lawful dissent. As a result, actions like publicly criticising party leadership or policy choices have occasionally been interpreted as grounds for disqualification. The Speaker or Chairman of the House has the power to decide these cases, and their political affiliation and discretion frequently affect the result, a feature that has drawn heavy constitutional criticism for undermining neutrality.

### Independent Members

Legislators elected as independents are prohibited from joining any political party following their election, per sub-paragraph 2. Since the principle presumes that independent candidates are chosen based more on their personal credibility than their party affiliation, they will be disqualified if they do.<sup>11</sup>

### Nominated Members

The status of nominated members is governed by sub-paragraph 3. After taking the oath of office, these members have six months to join a political party. They risk being disqualified, though, if they join a political party after these six months have passed. While permitting some leeway for alignment soon after nomination, this rule guarantees nominated members'

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<sup>9</sup>The Constitution of India, 1949, Schedule X, ¶ 2

<sup>10</sup>1994 AIR 1558

<sup>11</sup>The Constitution of India, 1949, Schedule X, ¶ 2(2)

political independence. Though its implementation has frequently resulted in conflicts between freedom of expression and party discipline within the legislature, Paragraph 2 generally embodies the balancing act between party cohesion and individual autonomy.<sup>12</sup>

### **Third Paragraph**

Initially, Paragraph 3 stated that a ‘split’ in which one-third of a legislature party’s members left to form a new organisation would not result in disqualification. However, this clause was repealed by the Constitution (91st Amendment) Act, 2003, which acknowledged that it justified mass defections under the pretence of group rebellion. By adding Clauses (1B) to Articles 75 and 164, the same Amendment also attempted to fortify the anti-defection regime by prohibiting defectors from serving as ministers at the State and Union levels.<sup>13</sup> A major loophole that had previously permitted defectors to receive executive rewards despite breaking the electorate's mandate was intended to be closed by this reform.<sup>14</sup>

### **Fourth Paragraph**

‘Mergers’ of the political parties are covered in paragraph 4, which offers an exemption from disqualification. When at least two-thirds of a legislative party's members consent to merge with another political organisation, the merger is deemed legitimate. Members are also shielded from disqualification if they decide to start their own group rather than join the new party. Instead of encouraging opportunistic defections, the clause was meant to support legal political realignments that reflected broader ideological convergence.<sup>15</sup>

### **Fifth Paragraph**

The Speaker, Deputy Speaker, Chairman, and Deputy Chairman are the presiding officers who are protected by this clause. After being elected to these unbiased positions, it permits them to leave their political party without facing disqualification. If they do not join another political party while serving, the immunity is still in effect, guaranteeing that those in these positions carry out their constitutional responsibilities free from partisan interference.<sup>16</sup>

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<sup>12</sup>The Constitution of India, 1949, Schedule X, ¶ 2(3)

<sup>13</sup> The Constitution of India, 1949, Art 75(1B); The Constitution of India, 1949, Art 164(1B)

<sup>14</sup> The Constitution of India, 1949, Schedule X, ¶ 3

<sup>15</sup>The Constitution of India, 1949, Schedule X, ¶ 4

<sup>16</sup>The Constitution of India, 1949, Schedule X, ¶ 5

### **Sixth Paragraph**

The Speaker or Chairman of the relevant House has the power to decide disqualification issues under paragraph 6. Another member chosen by the House decides if the disqualification of the presiding officer is being considered. This clause gives the Speaker quasi-judicial authority, but because the presiding officer frequently supports the ruling party, it has raised questions about impartiality.<sup>17</sup>

### **Seventh Paragraph**

By denying the court's jurisdiction over disqualification proceedings, paragraph 7 limits judicial intervention.<sup>18</sup> To maintain a limited check on the Speaker's power, the Supreme Court later explained in *Kihoto Hollohan v. Zachillhu*<sup>19</sup> that judicial review under Articles 136, 226, and 227 is still open to irregularities in the procedure or violations of constitutional mandates.<sup>20</sup>

### **Eighth Paragraph**

The Speaker or Chairman of each legislative body may create comprehensive rules governing the Tenth Schedule disqualification process with the authority granted by paragraph 8. This clause guarantees that, in line with its internal autonomy, each House may choose its own procedure for dealing with defection cases. Additionally, Sub-paragraph 3 gives the presiding officer the authority to consider any wilful violation of these procedural guidelines to be a 'breach of privilege' of the House. By highlighting the Speaker's power to uphold procedural compliance, this clause strengthens legislative sovereignty and the legislature's institutional discipline. The conflict between procedural autonomy and unbiased adjudication within the anti-defection framework has been brought to light once more by criticism that it concentrates too much discretionary power in the hands of the presiding officer.<sup>21</sup>

Collectively, the eight paragraphs of the Tenth Schedule represent a complex framework intended to balance political accountability with representative freedom—though, in practice, the balance has often tilted toward party control at the cost of individual legislative independence.

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<sup>17</sup>The Constitution of India, 1949, Schedule X, ¶ 6

<sup>18</sup>The Constitution of India, 1949, Schedule X, ¶ 7

<sup>19</sup>1992 SCR (1) 686

<sup>20</sup>The Constitution of India, 1949, Art 136: The Constitution of India, 1949, Art. 226: The Constitution of India, 1949, Art 227

<sup>21</sup>The Constitution of India, 1949, Schedule X, ¶ 8

## **ADVANTAGES**

The legislation passed in 1985 has been crucial in tackling the ongoing problem of political defections. It aims to bring stability and accountability to India's democratic governance. This law was designed to keep elected representatives loyal to the party under which they ran in elections. It seeks to prevent sudden changes in loyalty that could disrupt the government. By limiting opportunistic defections, the law aims to maintain a steady administration and protect the decisions made by voters. This ensures the government can operate without the fear of sudden political shifts.

Before 2003, the Tenth Schedule allowed for a 'split' within a political party. If one-third of a party's elected members left to form a new group, they were exempt from disqualification. This rule faced much criticism for being too lenient and allowing political manipulation that could weaken governance. To address this loophole, the law was amended, with changes effective from January 2004 that removed recognition of such splits. The new provision only allowed exemptions in cases of a 'merger,' where two-thirds of a party's members joined another party or formed a new one together. This tougher requirement greatly strengthened the law's aim of keeping legislative stability and discouraging individual opportunism.

The anti-defection law does more than just secure government stability. It also promotes accountability among elected representatives. Voters not only consider the personal qualities and integrity of candidates but also look at the ideological stance and policy platform of the political party that puts them forward. These factors shape the expectations voters have for their representatives. When an elected official switches allegiance to another party, it undermines fundamental principles of electoral democracy. This act subverts the decision made by voters and weakens the connection between the electorate and the governing body. Such behaviour undermines the representative's duty to keep promises made during the campaign, reduces transparency, and erodes public trust in the political system.

In short, the anti-defection law sits at the crossroads of political stability and democratic accountability. It aims to prevent party fragmentation that could lead to frequent government changes and reinforce the ethical obligations of elected officials. By limiting individuals from switching parties at will, the law upholds the integrity of the electoral mandate. It ensures that representatives act in line with their personal commitments and the wider ideological goals of the political groups that supported their election. This dual aim, ensuring continuity in governance while protecting voter trust, highlights the law's ongoing importance in India's

diverse democratic landscape.<sup>22</sup> Historically, political leaders, after electoral victories, have tended to perceive politics predominantly through the lens of immediate interests, thereby rendering themselves unrestrained by party ideology and principles, subsequently engendering a novel political paradigm.

Over time, this framework has undergone significant change, especially after a key decision by the Union Cabinet to modify the constitutional rules related to the Anti-Defection Law. The revision changed the earlier methods that regulated party loyalty among elected officials. Before, the law allowed legislators to avoid disqualification if a “split” occurred within their party. This was defined as the separation of at least one-third of its members to create a new faction. However, this rule faced criticism for allowing strategic defections that could disrupt governments. The constitutional amendment removed this flexibility and introduced stricter conditions. Now, only a “merger” between two political parties or the creation of a new party, which has the support of at least two-thirds of the original party’s members, will not count as defection. This change not only strengthened the anti-defection framework but also reinforced the law’s main goal of ensuring legislative stability and upholding the voters’ mandate.

In the important case of *Jagjit Singh v. State of Haryana*, the Supreme Court further explained how these rules apply, particularly for independent legislators.<sup>23</sup> The Court stressed that, to determine if an independent member has joined a political party, it is important to examine whether that member has given up the independent status that formed the basis of their election. Simply claiming affiliation or showing support for a party does not automatically mean joining that party. Instead, the classification relies on clear evidence showing the representative’s voluntary connection or merger with the political group. Each situation must be assessed on its own details, with a thorough review of relevant records, communications, and legislative actions to ensure that conclusions about defection are well-supported.

By redefining the criteria for allowable mergers and focusing on evidence-based evaluations of party affiliation, these amendments and court rulings together enhance the integrity of the electoral process. They help maintain the delicate balance between preventing opportunistic changes in party loyalty and protecting the legitimate independence of representatives. This

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<sup>22</sup> *Radha Krishna Mishra v. Tara Chand Maheshwar*, 12 E.L.R. 276

<sup>23</sup> AIR 2007 SC590

way, they bolster both political stability and the accountability of elected officials to their constituents. This change in the law highlights the ongoing relationship between legislative reform and judicial oversight in making sure the anti-defection framework stays relevant to the practical realities of India's parliamentary democracy.

The Anti-Defection Law was introduced to strengthen unity and coherence within Parliament and among political parties. This law aimed to reduce unethical practices like political opportunism, horse-trading, and the misuse of power, which threatened the integrity of democratic governance. A key part of the law focuses on party loyalty. This encourages legislators to feel responsible to the political organisations that helped get them elected. However, it is also crucial to see that both Parliament and state legislatures are meant to be places for informed discussion, debate, and deliberation. Here, diverse viewpoints can be shared openly. The functioning of these institutions is backed by constitutional privileges in Articles 105 and 194.<sup>24</sup> These articles protect members' rights to take part in legislative discussions without fear of outside retaliation. By laying out the rules in the Tenth Schedule, the law aims to preserve party discipline and create an environment that promotes productive legislative debate. In the end, these measures seek to keep the legislative process transparent, accountable, and focused on the broader interests of the public.

### **EXISTING LACUNAS**

A thorough look at the Tenth Schedule requires a careful assessment of its effectiveness over the years. The law was created to limit political defections and keep legislative stability, but it has faced criticism. One of the main concerns is when legislators must follow the party whip. This is especially troubling when the moral or ethical implications of the directives are unclear. These situations raise questions about whether following party orders undermines individual conscience and a representative's responsibility to serve the public. In addition, there are other challenges, such as unclear decision-making authority, inconsistencies in legislative procedures, and the need for better planning and timely policy implementation. Critics say these issues can weaken the law's intended impact and create delays that hinder governance and accountability. Through these discussions, the limitations and practical problems of the Tenth Schedule have become clear. This highlights areas where reform or

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<sup>24</sup>The Constitution of India, 1949, Art 105: The Constitution of India, 1949, Art 194

clarification may be needed to better align the law with the democratic principles it aims to support.<sup>25</sup>

### The complexity of large-scale defections

Individual defections are clearly addressed in the law, with specific legal consequences that include disqualification from membership in the House. Legislators who leave their party without meeting the conditions set in the Tenth Schedule are held accountable. This reflects the law's goal of maintaining party discipline and ensuring a stable legislative framework. However, a strange issue arises with mass defections. When two-thirds or more of a party's members move to another political faction, these defections do not lead to disqualification. This rule raises questions about its logic and consistency. It seems to excuse actions that would normally be seen as opportunistic or harmful, if they happen on a large scale. Effectively, the law punishes individual legislators while allowing larger groups to act freely. This creates tension between being accountable and allowing collective movements within political parties. Some argue that collective defections can be justified because they often stem from shared beliefs or goals, making them more acceptable than individual acts of defiance. However, this distinction is controversial. Collective defections, no matter their size or reasoning, still undermine the main goals of the Anti-Defection Law. These goals are to protect the stability of elected bodies and to uphold the trust that voters place in their legislators. By skirting the law's restrictions, large party shifts can weaken public confidence in democratic processes, reduce predictable governance, and undermine accountability measures. Ultimately, both individual and collective defections challenge the principles of Indian democracy. Each instance departs from the ethical and institutional norms that the law aims to protect. Therefore, despite the legal differences between individual and mass defections, both have serious consequences for democratic stability and the integrity of institutions.<sup>26</sup>

A particularly interesting situation arises when political party members are expelled instead of choosing to resign. Under India's Tenth Schedule, the law mainly deals with voluntary defection. It focuses on cases where legislators decide to leave their party affiliation. On the

<sup>25</sup> Akash Dixit, Abhishek Bhatt & Shubham Saini, 'The Efficacy of Anti-Defection Law in India: A Comprehensive Analysis,' (2022) 2(1) IJIRL <<https://ijirl.com/wp-content/uploads/2022/01/THE-EFFICACY-OF-ANTI-DEFLECTION-LAW-IN-INDIA-A-COMPREHENSIVE-ANALYSIS.pdf>> accessed September 19, 2024

<sup>26</sup> HR Saviprasad & Vinay Reddy, 'The Law on Anti-Defection: An Appraisal' (1999) 11(116) SA <[https://heinonline.org/HOL/LandingPage?handle=hein.journals/nlsind11&div=15&id=&page=>](https://heinonline.org/HOL/LandingPage?handle=hein.journals/nlsind11&div=15&id=&page=) accessed September 19, 2024

other hand, expulsion is not clearly addressed, and this distinction has important implications in the parliamentary framework. Notably, a member expelled from their party does not automatically lose their seat in the House. The law views defection as a deliberate act, reflecting a member's conscious choice to leave the party and its guiding principles.

Expulsion operates in a different context. It involves removing a member who does not willingly leave. Therefore, it is assumed that the individual still supports, at least in principle, the party's platform and the mandate given to them by voters. However, this situation also raises potential loopholes. Legislators could create scenarios where they are intentionally expelled to avoid the legal consequences of voluntary defection. In these cases, even though a member has not consciously left the party, they might still lose roles such as ministerial positions. Once expelled, the legislator is officially regarded as an independent member within the House and can choose to join another political party. This creates a strange yet believable way for the provisions of the Schedule to be misused, emphasising the complex challenges in managing party discipline. The Supreme Court had the chance to address these issues in the case of *G. Vishwanathan v. Speaker, Tamil Nadu Legislative Assembly*, which investigated the legal consequences of such expulsions and their effects on parliamentary functioning.<sup>27</sup>

### **Accountability of the elected member vis-à-vis right to dissent**

The responsibility of elected representatives to their constituents is a key part of a working representative democracy. When someone is elected to represent a specific district, their main job is to ensure that the concerns, needs, and hopes of their constituents are heard and addressed in the legislative process. This responsibility naturally involves keeping an eye on the government's actions and holding it accountable when public needs or promises are not met. However, the anti-defection rules in the Tenth Schedule, especially when interpreted strictly, can greatly limit this accountability. When lawmakers must vote strictly according to party directives, regardless of whether these actions are in the best interest of their constituents, the fear of losing their position might prevent them from making independent decisions. In these cases, the law, while aiming to maintain party unity, can unintentionally hinder true democratic accountability.

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<sup>27</sup> (1996) 2 SCC 353

A major point of contention in this legislation is Paragraph 2(1)(b) of the Tenth Schedule. This paragraph allows for the disqualification of a legislator who votes against the official party position or who abstains from voting. This rule has drawn significant criticism because it effectively prioritizes party loyalty over the duty to the voters. This creates ethical challenges for representatives who must balance loyalty to their party with their responsibility to the people who elected them. These situations often raise questions about the moral and practical integrity of legislative decisions, as lawmakers may feel pressured to please party leaders instead of reflecting the true interests of their constituents.

This conflict highlights a deeper issue within representative democracy: the need to balance a legislator's accountability to their voters with their obligations to the political party that backed their election. While political parties are important for shaping debates and policies, the fundamental principle of a representative system is that elected officials should serve the voters first. When legal tools like the anti-defection law give too much power to party control, they threaten to undermine the essence of democratic governance. This can weaken public trust in legislative bodies and damage the essential connection between representatives and the people they are meant to serve.<sup>28</sup>

When strict enforcement of party rules stifles the independent judgment and voice of individual legislators, it poses a serious threat to the basic principles of representative democracy. This situation not only limits a legislator's ability to vote according to their personal beliefs but also raises important questions about the duties and responsibilities elected officials have toward their constituents. Central to this regulatory framework is the Representation of the People Act, which establishes the legal and institutional foundation for political party operations and affiliations. Political parties gain official recognition through methods like emblems, financial disclosures, and registration with the Election Commission. These measures ensure transparency and accountability in the electoral process.

However, the line between legitimate dissent and punishable defection often gets unclear, especially when legislators face disqualification after raising valid concerns or opposing party directives for principled reasons. This confusion undermines the idea of constructive debate within legislative bodies, which should serve as spaces for discussion, deliberation, and the sharing of diverse perspectives. Section 2(1)(b) of the Tenth Schedule penalises legislators

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<sup>28</sup> Subhash C Kashyap, 'The Politics of Defection: The Changing Contours of the Political Power Structure in State Politics in India' (1970) 10(3) UCP <<https://www.jstor.org/stable/2642574>> accessed September 19, 2024

who vote against the party whip or abstain from voting. This rule limits representatives' ability to question or challenge party instructions, even when those instructions conflict with the needs and demands of the electorate. Thus, while the law aims to maintain party discipline, it unintentionally limits the deliberative nature of legislative processes and reduces the capacity of elected officials to make independent judgments that serve the public interest.<sup>29</sup>

### **The problem of the proper adjudicating mechanism**

The authority that decides disqualification cases is crucial for removing a legislator from a parliamentary body. In India, this duty falls to the Speaker of the Lok Sabha or the Chairman of the Rajya Sabha, depending on the chamber where the member serves. Until these officials make a formal decision, there is no other way to disqualify a member beforehand. This highlights the importance of their judging role. However, this arrangement has challenges. One major concern is the need for the judging authority to stay completely impartial, as their decision has serious political and constitutional impacts. Questions about bias may come up, especially since the Speaker or Chairman often has ties to a political party, which could affect how fair they seem. Another key issue is the need for timely decisions. Delays in ruling on disqualification can create uncertainty in the legislative process, hinder governance, and lower public trust in the system. It is also worth mentioning that, under Article 93 of the Indian Constitution, the Speaker of the Lok Sabha does not have to give up their party membership when they take office. This distinctive aspect creates a structural conflict in legislative oversight.<sup>30</sup> The person responsible for enforcing the anti-defection law continues to hold political ties. Therefore, handling defection cases requires a careful balance among constitutional authority, procedural efficiency, and the perception of impartiality, all of which are crucial for maintaining the credibility and integrity of India's parliamentary system.

This concern is supported by the recommendations in the 170th Report of the Law Commission of India. The report pointed out the conflict of interest when the Speaker or Chairman, who is a political figure and part of a specific party, acts as the decision-maker in disqualification cases under the Tenth Schedule. To address this issue, the Commission proposed that an impartial constitutional authority, like the President or the Governor, should have the power to decide on disqualifications. This authority would operate based on the

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<sup>29</sup> The Representation of People Act, 1951, s 2(1)(b)

<sup>30</sup> The Constitution of India, 1949, Art.93

Election Commission's binding opinion or recommendation. The goal of this proposal was to promote transparency, neutrality, and fairness in the decision-making process, preventing the anti-defection law from being misused for political gain. A more in-depth discussion on Kihoto Hollohan will come later, but it is important to highlight that transferring the decision-making power to a neutral entity was a key argument made by critics of the anti-defection law. They argued that giving such power to the Presiding Officer undermines the aim of constitutional objectivity, as this individual often has political ties and may not act impartially. Additionally, the delay in making decisions further complicates this issue. The Tenth Schedule does not set a clear time limit for the Speaker or Chairman to finish disqualification proceedings. This lack of guidance allows for indefinite delays in making decisions, leaving affected members uncertain about their status. As a result, petitioners lack a way to ensure a timely ruling and must wait for the Presiding Officer to decide. As noted in several court rulings, such delays can be strategically used for political gain, which weakens public trust in the fairness and effectiveness of the anti-defection law.<sup>31</sup> Although individual members of the legislature can be disqualified for leaving their political party, there are situations where many members defect at once. These collective defections can involve a large portion of the House, sometimes more than two-thirds of its total members.

According to the Tenth Schedule, reaching this numerical threshold is important, as defections of two-thirds or more of a party's legislators are often seen as a legitimate merger instead of a disqualifiable defection. Even when large-scale defections happen, the members involved keep their official roles and benefits as legislators until the Presiding Officer makes a formal decision. This means that no member can be removed from the House based solely on their defection; the Presiding Officer must decide on disqualification after considering the facts and circumstances. In practice, this can lead to situations where, despite many legislators switching their political affiliation, the makeup of the House stays the same for a long time. Delays in the Presiding Officer's rulings can let defecting members continue to take part in legislative activities, vote on important bills, and influence the government's stability. This reveals a significant gap in the anti-defection rules, where procedural delays and no set timelines can weaken the political accountability that the Tenth Schedule was meant to ensure.

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<sup>31</sup> Speaker, Haryana Vidhan Sabha v. Kuldeep Bishnoi and Ors., (2015) 12 SCC 381 (India); See also Mayawati v. Markandeya Chand and Ors., AIR 1998 SC 3340

## **CONSTITUTIONAL VALIDITY OF THE ANTI-DEFECTION LAW**

The Anti-Defection statute has encountered numerous challenges predicated on alleged constitutional infringements. Nevertheless, the Supreme Court has consistently upheld the statute's constitutionality through several pivotal adjudications. The statute is predominantly criticized for restricting elected officials' freedom of speech and expression. However, the Supreme Court adjudicated that the law merely prohibits representatives from contravening the party directive on significant matters, thus not infringing upon this fundamental right. Elected officials can express their perspectives and critique their party's policies without violating the statute. The authority of the Central government to disqualify elected representatives constitutes an additional basis for criticism, as it is argued that this undermines the federal character of the Constitution. Nonetheless, the Supreme Court determined that the legislation does not contradict the federal framework of the Constitution, as it exclusively pertains to the disqualification of elected officials for defection while preserving the autonomy of state legislatures.<sup>32</sup>

The legitimacy of the 10th Schedule was contested in the judicial proceedings of Kihoto Hollohan. In this seminal ruling, the Supreme Court of India affirmed the constitutionality of the 10th Schedule while addressing several pivotal dispute issues.

- The 10th Schedule was contested on the basis that the 52nd Amendment Act, which instituted it, modified provisions in Chapter IV of Part V and Chapter V of Part VI of the Constitution, thereby necessitating ratification by the legislatures of a minimum of half the Indian states as stipulated in Article 368(2).<sup>33</sup>
- Furthermore, it was argued that even without the applicability of Article 368(2), the Amendment Act effectively curtailed the power of judicial review, rendering it susceptible to nullification. Another significant issue in this case was the potential infringement of Articles 105 and 194 and the rights enshrined by the 10th Schedule. According to subparagraph (1) of Paragraph 2, members would face disqualification should they vote contrary to the directives issued by the party whip. The petitioner contested this provision because disqualification based on dissenting opinions contravened Articles 105 and 194 and infringed upon the freedoms of speech and

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<sup>32</sup> Sumit Vashistha & Dr. Bhoomanna Reddy, 'A Critical Analysis of Anti-defection Laws in India' (2023) 9(1) IJLSS <<https://www.alliance.edu.in/ijls/ijls-2023/assets/documents/a-critical-analysis-of-anti-defection-laws-in-india.pdf>> accessed September 21, 2024

<sup>33</sup> The Constitution of India, 1949, Art.368(2)

expression articulated in Article 19<sup>34</sup> of the Indian Constitution and the rights to dissent and conscience.

- Ultimately, it was contended before the Apex Court that the authority to adjudicate disqualifications should not be delegated to Chairpersons or Speakers, as these individuals were party appointees and had no obligation to renounce their party affiliations.

The Supreme Court determined that Article 368(2) was indeed applicable to the 52nd Amendment Act; however, it concurrently affirmed that the appointment of the Speaker or Chairman as adjudicator was warranted. Additionally, it concluded that Paragraph 6 did not preclude the extraordinary jurisdiction of the Supreme and High Courts as conferred by Articles 136, 226, and 227. Regarding the rights to freedom of speech and expression, it was posited that such liberties could be restricted in the interest of the nation. Notably, the dissenting opinion deemed the anti-defection law unconstitutional, presaging its implementation in a manner devoid of impartiality by the appointed adjudicators. This foreboding judgment remains particularly pertinent in the contemporary political landscape.

### **AMENDMENTS TO THE ANTI-DEFECTION LAW**

The Anti-Defection law has undergone numerous amendments since its initial enactment to address challenges and deficiencies inherent in the original legislation. The particulars of each amendment to the law are delineated as follows:

- **The 52nd Amendment Act 1985:** The anti-defection statute of India was instituted by enacting the 52nd Amendment Act. This legislative act introduced the Tenth Schedule to the Constitution, which delineates the procedures for disqualifying elected representatives on the grounds of defection.
- **The 61st Amendment Act, 1988:** The 61st Amendment Act facilitated the merging of political parties by amending the Tenth Schedule, thereby preventing disqualification. This amendment aimed to mitigate the potential exploitation of the law by political entities aiming to oust elected representatives who sought to affiliate with an alternative party.
- **The 65th Amendment Act, 1991:** Amendments to the Tenth Schedule, enabled by the 65th Amendment Act, permitted the separation of political parties without

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<sup>34</sup> The Constitution of India, 1949, Art.19

incurring disqualification. This legislative change was introduced to curtail the misuse of the law by political parties seeking to displace elected officials wishing to dissociate from their party.

- **The 91st Amendment Act, 2003:** The 91st Amendment Act amended Article 191 of the Constitution to stipulate that elected representatives shall be removed from office upon departure from their party or violate party directives. The objective of this amendment is to deter elected officials from abandoning their political party as a strategy to evade disqualification under the Anti-Defection law.

### **THE ROLE & IMPORTANCE OF THE SPEAKER OF THE HOUSE**

The function of the Speaker is essential to parliamentary democracy. Similar to Australia, Ireland, and Canada, the Westminster model has a significant influence on the role and duties of the Speaker in India. The Speaker's office is very important because he or she is the Chief Officer and the highest-ranking official in the Lower House of Parliament. The Speaker is normally chosen at the House's inaugural meeting and serves a five-year term. As is customary in Canada, the Prime Minister, who represents the ruling party, puts out the candidacy for Speaker, and another cabinet member seconds it.<sup>35</sup>

The Speaker plays a crucial role in the operational efficacy of the House. The responsibilities of the Speaker can be categorized into three broad domains.<sup>36</sup> Firstly, the Speaker facilitates the discussions and deliberations within the House. In executing this role, they are expected to maintain apolitical neutrality and refrain from active participation in the House's proceedings. The Speaker helps the House hold the executive branch responsible and is a key player in deciding which motions are admissible. The Speaker improves the parliamentary process of representing the people by carrying out these duties. In addition, the Speaker serves as a disciplinarian, having the power to adjourn meetings and suspend members for egregious behaviour. During discussions, the Speaker may intervene to preserve decorum and may give members instructions to remove remarks that are out of order. Finally, the Speaker acts as a tribunal and carries out quasi-judicial duties. On a petition from any member of the House, the Presiding Officer is the only person with the authority to disqualify elected

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<sup>35</sup> Hari Chand, 'Powers of the Speaker' (1974) 16(1) JILI <<https://www.jstor.org/stable/43950318>> accessed September 22, 2024

<sup>36</sup> Harsimran Kalra, 'Decisional Analysis and the Role of the Speaker' (2013) 1 The Hindu Centre for Politics and Public Policy <<https://www.thehinducentre.com/publications/policy-report/article5137287.e>> Accessed September 22, 2024

members for defection under paragraph 6 of the Tenth Schedule. As a result, the Speaker must, by law, serve as an unbiased arbiter to ascertain the truth and decide whether or not the members have deserted.<sup>37</sup>

The Speaker represents the whole House throughout these responsibilities. Maintaining neutrality is a vital need for this profession. This demand for impartiality is not specified in the Constitution but exists as a constitutional convention. It is anticipated that the Speaker will uphold this norm out of a sense of civic duty or in anticipation of court intervention. Thus, impartiality and disinterest are crucial facets of the Speaker's job description. While the Deputy Speaker is selected from the opposition, a concerning tendency has evolved where Speakers are largely elected from the ruling party, even though the Speaker can theoretically come from any political party. Because of his ties to the ruling party, the Speaker has frequently taken positions that further the objectives of the party. For instance, in certain instances, Speakers overindulged in their deliberations when it came to disqualifying elected members for defecting, which helped the ruling party by causing delays. As a result of being torn between their party allegiance and their constitutional obligations, speakers have frequently put their political ties ahead of their constitutional duties. Herein lies the inherent contradiction - the Speaker, elected by a specific political party, is anticipated to resolve disputes impartially.

There has always been concern about giving the Speaker unlimited authority. In this sense, the Kihoto Hollohan decision of the Supreme Court is significant. This conversation raises two important issues: first, should the Speaker: who is still a member of their political party, be given such substantial power? Secondly, does the courts' jurisdiction get limited by Paragraph 6(1), which gives the Speaker's judgments constitutional "finality"?

The petitioners contended that there was a plausible possibility of prejudice because of the Speaker's political connections and associations as well as the substantial powers granted by the Constitution. Nonetheless, the majority decision in Kihoto Hollohan categorically disregarded these worries, stating that it would be unjust to have mistrust for the Speaker's institution. The minority position, on the other hand, voiced doubts about this viewpoint, and with good reason. Referencing the Constitutional Assembly Debates—in particular, the

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<sup>37</sup> Charith Reddy & Shagun Bhargava, 'For Laws may come & Laws may go, but Defections go on Forever: A Critical Analysis of the role of the Speaker in Indian Anti-Defection Laws.' (2020) 10(1) NLIULR <<https://nliulawreview.nliu.ac.in/wp-content/uploads/2022/01/Volume-X-Issue-I-344-368.pdf>> accessed September 22, 2024

drafting history of Articles 102, 103, and 192—the minority bolstered its position.<sup>38</sup> Article 102 specifies the grounds for disqualification from membership. These grounds include holding a profit-related position with the Indian government, being undischarged from insolvency, lacking Indian citizenship, or exhibiting signs of mental instability. According to Articles 103 and 192, the determination of these disqualifications is to be made by the President or the Governor, respectively, based on recommendations from the Election Commission. The minority ruling highlighted that during the deliberations, a proposal was made to grant the Speaker the power to adjudicate disqualifications; however, the framers of the Constitution deliberately chose not to confer this authority on the Speaker. Instead, they assigned it to the President and Governors.

Furthermore, the minority judgment emphasized that since the Speaker's tenure is contingent upon the majority's will, the potential for bias cannot be disregarded. Additionally, even the possibility of bias influencing the Speaker's determinations could infringe upon a fundamental characteristic of the Constitution: the principle of free and fair trials. Consequently, Justice Nariman's assertion in *Keisham Meghachandra Singh* that the apprehensions articulated in the minority judgment of Kihoto have materialized is indeed substantiated.<sup>39</sup>

Concerning the secondary query, it was determined that the Speaker operates in a capacity akin to that of a tribunal. The court referenced its prior rulings in *Indira Nehru Gandhi v. Raj Narain*<sup>40</sup> and *Brundaban Nayak v. Election Commission of India and Anr.*,<sup>41</sup> asserting that the finality clause does not negate the jurisdictional authority of the courts as outlined in Articles 136, 226, and 227.

It was acknowledged, although, that the court's ability to step in is restricted to circumstances in which the acting authority is operating beyond its authority, in which acts are corrupted by dishonesty, or in which there is an appearance of lawful authority being used. As a result, the court ruled that neither before the Speaker's decision-making process nor at the interlocutory stage of proceedings could judicial review be used because of the finality clause. As a result, courts cannot get involved until the Speaker has decided whether to disqualify someone.

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<sup>38</sup> The Constitution of India, 1949, Art.192

<sup>39</sup> *Keisham Meghachandra Singh v. Hon'ble Speaker Manipur Legislative Assembly and Others* 2020 SCC OnLine SC 55

<sup>40</sup> [1976] 2 SCR 347

<sup>41</sup> [1965] 3 SCR 53

Furthermore, the Speaker is not given a deadline to address anti-defection concerns, which has frequently helped the ruling parties.

This legal stance has resulted in various odd situations. While remaining unusually silent on the issue of defection, the Speaker did his best to safeguard the defected members. Surprisingly, the Speaker assigned one defected MPs a seat on the Treasury benches. Similar circumstances have occurred in the past. In the matter of *Balachandra L. Jarkhioli v. B.S. Yeddyurappa*,<sup>42</sup> it was observed that the Speaker exhibited a clear bias in favor of a member of parliament. The Speaker needed more time for members to respond to show cause notices and conducted the inquiry rushed, demonstrating complete neglect of the principles underpinning a fair trial. This propensity of the Speaker to act in contravention of the constitutional imperative to uphold a neutral stance was brought to light in the case of *Shrimanth Balasaheb Patil v. Hon'ble Speaker, Karnataka Legislative Assembly*.<sup>43</sup> This case addressed the improper exercise of discretion afforded to the Speaker regarding the rejection of resignations. The court elucidated that, when exercising discretion, the Speaker must assess the voluntariness or authenticity of the resignation through objective criteria. Such instances draw attention to the pervasive misuse of the discretion granted to the Speaker, suggesting that any legal ambiguities may be exploited to benefit the majority party. This misuse stems not only from deficiencies within the law itself but also from inherent structural inadequacies associated with the role of the Speaker. These structural inadequacies were similarly underscored in a recent Arunachal Pradesh High Court ruling.<sup>44</sup> It's unclear if the Speaker can effectively enforce anti-defection legislation without addressing structural weaknesses. As a result of this insight, the Supreme Court's recommended alternatives become prominent.

Over time, Speakers have exploited major gaps in defection legislation, creating an urgent need for reforms to tackle issues of partisanship and abuse of power. Various viable recommendations have been proposed, yet none have been implemented. In the case of *Keisham Meghachandra Singh*, the Supreme Court took two significant steps. First, it significantly limited the Speaker's powers by allowing for judicial review before the Speaker issues any decision. This barrier was removed through a conjunctive interpretation of *Kihoto*

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<sup>42</sup> (2011) 7 SCC 1

<sup>43</sup> 2019 SCC OnLine SC 1454

<sup>44</sup> 2016 SCC OnLine Gau 284

Hollohan and Rajendra Singh Rana,<sup>45</sup> concluding that the failure to exercise jurisdiction does not fall under the inherent limitation delineated in Paragraph 6. Second, in order to replace the Speaker, the court suggested that Parliament look into the establishment of an impartial tribunal. The Supreme Court suggested that a retired Chief Justice of the High Court for the state and a retired Supreme Court Justice for the federal level would preside over this panel. The establishment of a quasi-judicial body headed by a member of the judiciary has the potential to erode the fragile separation of powers and increase the likelihood of judicial overreach into matters that are fundamentally political in nature.

Moreover, there exists a substantial probability that the judicial members delineated in the proposal would be appointed to the tribunals via an appointment mechanism that may exhibit similarities to the collegium system. The collegium has endured severe criticism in previous instances due to its lack of transparency—a characteristic that could render the tribunal's operations superficial and invoke equity concerns. In a parallel vein, another potential scenario entails the Central Government exercising influence over selecting judicial members for the tribunal.<sup>46</sup> This scenario may destabilize the delicate dynamics between the central and state governments, as it would empower the central government to exert control over the judicial members, thereby influencing the political manoeuvring of elected representatives across party affiliations through these individuals. Such a situation could facilitate the Central Government's orchestration of candidate movements across party lines, thereby entrenching the dominance of the ruling party or coalition.

Consequently, the proposal to supplant the Speaker with an independent tribunal is myopic and poses a significant threat to the constitutional principle of separation of powers. Another alternative that has garnered some support is delegating this responsibility to the Election Commission—a quasi-judicial entity comprising three members. The appeal of this alternative can be ascribed to the perceived impartiality and autonomy of the Commission. A different approach that has garnered some traction is assigning this duty to the Election Commission, a three-member quasi-judicial organization. This option is appealing because of the Commission's supposed independence and impartiality.<sup>47</sup> The Election Commission is already responsible for adjudicating the disqualification of members under Section 8A of the

<sup>45</sup> Rajendra Singh Rana and Ors v. Swami Prasad Maurya and Ors (2007) 4 SCC 270

<sup>46</sup> Prarthana Kashinath, 'SC Urges Rethink of Speaker's Disqualification Powers: Why Plumping for 'Impartial Tribunal' to Deal with Political Turncoats is No Panacea' (Firstpost 26 January 2020)

<<https://www.firstpost.com/india/sc-urges->> accessed September 23, 2024

<sup>47</sup> Pardeep Sachdeva, 'Comabting Political Corruption: A Critique of Anti-Defection Legislation' (1989) 50(2) TIJPS <<https://www.jstor.org/stable/41855903>> accessed September 23, 2024

Representation of the People Act, 1951.<sup>48</sup> By Section 8A, the Election Commission undertakes a judicial function, as it adjudicates cases concerning allegations of corruption that are automatically referred to it by the Governor or the President. This underscores the Election Commission's capability to assume the role traditionally held by the Speaker.<sup>49</sup>

**AN INSIGHT ON MAHARASHTRA POLITICAL CRISIS 2022: SUMMARY OF  
“SUBHASH DESAI V. PRINCIPAL SECRETARY, GOVERNOR OF  
MAHARASHTRA & ORS.”**

The anti-defection statute has garnered notoriety for exacerbating the issues it was designed to address, and it has proven ineffective in mitigating the phenomenon of defections. This legislation is now scrutinized as thoroughly as the act of defection itself. Notably, the exemption provided for mergers between political parties has significantly undermined the intended efficacy of this statute. While individual defections are subject to punitive measures, collective defections evade the provisions of the law due to the protections afforded to mergers. The harmful consequences of the merger exemption have become evident through numerous instances in which governments have disintegrated due to legislators' mass floor crossings. The past couple of years have given a dismissal of elected state governments in Goa (2019), Madhya Pradesh (2020), Manipur (2020), and Karnataka (2019), mainly through the breakaway of large parties. This law has caused negative implications to manifest in Maharashtra politics in 2022 more than ever. In light of the political turmoil engendered by the operational shortcomings of the anti-defection law, this report contributes to the existing corpus of literature that examines the inadequacies afflicting India's anti-defection legislation.<sup>50</sup>

As discussed above, one of the paramount figures in this procedural context is the Speaker, whose essential function in ascertaining the outcomes for legislators who defect has frequently been highlighted. An illustrative case in point is the seminal ruling in *Nabam Rebia v. Deputy Speaker, Arunachal Pradesh Legislative Assembly*.<sup>51</sup> In this context, it was established that the Speaker cannot assess disqualification petitions after a notice has been

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<sup>48</sup> The Representation of People Act, 1951, § 8A

<sup>49</sup> Bhavdeep Kang, 'We Can Rule on Defectors, Instead of the Speaker' (Outlook, 30 March 1998) <<https://www.outlookindia.com/magazine/story/we-can-rule-on-defectors-instead-of-the-speaker/205283>> accessed September 23, 2024

<sup>50</sup> Ritwika Sharma & Mayuri Gupta, Anatomy of India's Anti-Defection Law (Vidhi Centre for Legal Policy, November 23, 2023) <<https://vidhilegalpolicy.in/research/anatomy-of-indias-anti-defection-law/>> accessed on September 23, 2024

<sup>51</sup> AIR 2016 SC 3209

issued to initiate a motion for their removal from office. However, this principle has recently been challenged in the case of *Subhash Desai v. Principal Secretary, Governor of Maharashtra & Ors*,<sup>52</sup> as it undermines the intent of the Tenth Schedule by being susceptible to exploitation by Members of the Legislative Assembly who are wary of disqualification. This development engenders significant inquiries that necessitate thorough examination.

The case's background dates back to October 2019, after the Maharashtra Legislative Assembly elections results were declared, where the National Democratic Alliance (NDA) led by then Chief Minister Devendra Fadnavis won the majority of seats in 288 membered Assembly. However, Uddhav Thackeray, leader of the Shiv Sena party, withdrew support from the NDA and joined the opposition-led alliance of the Nationalist Congress Party (NCP) and the Indian National Congress, forming the Maha Vikas Aghadi (MVA). Uddhav Thackeray was sworn in as the new Chief Minister of Maharashtra after a month of political drama. However, after three years of assuming the office, the MVA government saw political instability after one of the senior ministers and ShivSena leader, Eknath Shinde, who was serving as the leader of the Shiv Sena Legislative Party, became untraceable alongside several Members of the Legislative Assembly (MLAs) and declined to participate in party assemblies, asserting that the MVA no longer aligned with the foundational principles of Shiv Sena. For this reason, the faction led by Thackeray started proceedings in the Maharashtra legislature that Shetty and other members of the opposing faction should be disqualified from the legislative body. Meanwhile, the MLAs belonging to Shinde's faction of the party presented a formal notice to the Deputy Speaker, Mr Narhari Zirwal in this regard to have him pass a Vote of No Confidence against himself in respect of the Offending Speaker. But, within a short while after receiving the above notice, Mr. Zirwal proceeded to issue notices concerning the disqualification petitions.<sup>53</sup>

Consequently, the Shiv Sena Legislature Party (SSLP) experienced a schism resulting in the emergence of two distinct factions: one faction was led by the then Chief Minister Uddhav Thackeray, while Group Leader Eknath Shinde spearheaded the opposing faction. Each faction asserted its claim to embody the "original" political party and enacted a series of

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<sup>52</sup> 2023 SCC OnLine SC 607

<sup>53</sup> "Manvi Sahni, Navigating the 'Neutrality' Quagmire: Unpacking *Subhash Desai v. Principal Secretary and the Nabam Rebia Conundrum* (Constitutional Law Society, National Law University Odisha, November 24, 2023) <<https://clsnluo.com/2023/11/24/navigating-the-neutrality-quagmire-unpacking-subhash-desai-v-principal-secretary-and-the-nabam-rebia-conundrum/>> accessed September 23, 2024

resolutions concerning the operational matters of the SSLP.<sup>54</sup> This event signified the commencement of a significant political spectacle, culminating in proceedings that escalated to the Supreme Court; notably, Uddhav Thackeray resigned from his position as Chief Minister before the floor test, ultimately leading to Eknath Shinde establishing a government in Maharashtra through a coalition that included his faction of the Shiv Sena, the BJP, and several independent Members of the Legislative Assembly (MLAs). On 23-08-2022, the Supreme Court delegated the issue to a five-judge Bench under Article 145(3)<sup>55</sup> of the Constitution.

The Court mandated that the case of Nabam Rebia be re-evaluated by a bench comprising seven judges due to a significant legal question that necessitates resolution. The Court has delineated the following inquiries: whether issuing a notification indicating an intention to initiate a resolution for the removal of the Speaker inhibits their capacity to adjudicate disqualification petitions following the Tenth Schedule of the Constitution. Nevertheless, in anticipation of the determination by the larger Bench, the Court has established the subsequent procedural framework to advance the aims of the Tenth Schedule, the Symbols Order, and Article 179(c).<sup>56</sup>

- (a) Allowing the speaker to be the sole judge in hearing and deciding on matters under the Tenth Schedule ensures the speaker deals with challenges on his jurisdiction.
- (b) It remains the purview of the Speaker to entertain applications whether in writing or oral where the intent is to request for recusal by the Speaker from hearing and determining Tenth Schedule matters and where the application is couched in a motion for removal of the Speaker as per Article 179. With such an arrangement, the Speaker can determine if the application is a genuine one, or a ploy to avoid the pronouncement of a verdict. They may suspend further prosecution of business under the Tenth Schedule if the Speaker finds that there is a proper motion for removal.
- (c) On the other hand, where the Speaker considers that the motion does not satisfy the constitutional/ procedural requirements, the Speaker may strike out the application and go to the hearing.

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<sup>54</sup> Prachi Bharadwaj, Decoding Maharashtra Political Crisis: From how it starts to Supreme Court's 'Big' Verdict (SCC Online Blog, May 12, 2023) <<https://www.scconline.com/blog/post/2023/05/12/decoding-supreme-court-constitution-bench-judgment-on-maharashtra-political-crisis/>> accessed September 23, 2024"

<sup>55</sup> The Constitution of India, 1949, Art.145(3)

<sup>56</sup> The Constitution of India, 1949, Art.179(c)

(d) The Speaker's decision that he was going to suspend tenth schedule proceeding due to the removal motion or that he was going to proceed with the removal hearing is amenable to being reviewed by the courts. The prohibition against a *qua timet* action that has been established in *Kihoto Hollohan* does not apply to this decision since this is issues of the Speaker's jurisdiction.

The Court determined that while it would not be fitting for it to resolve the disqualification petitions for the initial instance in the absence of a decision by the relevant authority, it would typically remit the matter to the Speaker or Chairman for a proper determination by legal standards, it nonetheless opted to adjudicate the disqualification petitions at issue because:

- (1) the Speaker of the Legislative Assembly, in this instance, failed to address the question of disqualification on time;
- (2) The speaker discussed the matter of whether there was a division within the party without first determining whether the MLAs in question were disqualified and
- (3) the imperative for a prompt resolution given that the disqualification petitions remained unresolved by the Speaker for over three years while the term of the Assembly was nearing its conclusion.

The Court expressly stated that the relevant constitutional authority should adjudicate the disqualification issue, specifically the Speaker of the Legislative Assembly, per the prescribed procedure.

*“The disqualification of an individual from membership in the House carries significant ramifications for the individual concerned and, by extension, for the constituents of that particular constituency. Consequently, any matter on disqualification must be resolved by adhering to the procedures established by law.”*

Even when the Speaker adjudicates disqualification petitions without conforming to the established legal procedures, this Court typically remands such petitions to the Speaker. Hence, without exceptional circumstances, the Speaker remains the appropriate authority to adjudicate disqualification petitions as delineated in the Tenth Schedule.

## **CONCLUSION**

The Tenth Schedule of the Indian Constitution grants political parties a distinctive constitutional standing by formally recognizing their integral role within the framework of representative democracy. Elected legislators derive their political legitimacy from the party under whose banner they contest elections, and voters typically make their choices based on the ideology, manifesto, and leadership of that party. Consequently, the party becomes not merely a vehicle for electoral contestation but a constitutional entity that links legislative governance with public mandate. Under the provisions of the Tenth Schedule, both the leader of a political party and any member of the legislature have the right to draw the attention of the Presiding Officer, either the Speaker or the Chairman, to acts that may constitute defection. Upon such reference, the party leadership is empowered to initiate disciplinary proceedings and, where warranted, to recommend disqualification under Paragraph 2(1) of the Schedule. This structure reinforces intra-party accountability by allowing parties to enforce ideological coherence among their members while preventing arbitrary deviations from collective policy positions. Paragraph 6 of the Tenth Schedule vests the adjudicatory power exclusively in the Speaker or Chairman of the respective House, designating them as the final authority in matters of disqualification. Although the intent behind this arrangement was to ensure swift and impartial resolution, its practical operation has raised concerns regarding neutrality and delay. The Supreme Court, through precedents such as *Kihoto Hollohan*, has clarified that while the Speaker's decisions possess a quasi-judicial character, they remain subject to limited judicial review by the High Courts and the Supreme Court under Articles 226, 227, and 136 of the Constitution.

However, a persistent challenge within this system lies in the inability of courts to intervene effectively when the Speaker refrains from acting or unduly delays proceedings. Judicial review, in its current form, extends only to the Speaker's final decision rather than their inaction. This gap allows defection cases to remain unresolved for extended periods, undermining the spirit of the anti-defection framework and eroding public confidence in legislative accountability. Hence, scholars and jurists alike have advocated procedural reforms, such as fixed time limits for adjudication or the creation of independent tribunals, to

ensure that the Tenth Schedule operates in alignment with both constitutional fairness and democratic expediency.<sup>57</sup>

Within the framework of India's Constitution, Parliament needs to pay much more attention to the time-related issues involved in cases of political defection. This need is particularly urgent because every ruling party must deal with the complicated and recurring process of elections every five years. This situation puts a lot of pressure on party unity and stability in legislation. Over time, the Speaker's office has gained powers that go beyond simply presiding over Assembly meetings. In practice, it has started to act in a quasi-judicial role, interpreting constitutional provisions and making decisions that can significantly impact the political scene. Lengthy discussions and delayed decisions by the Speaker on defection issues not only slow down governance but also undermine the basic democratic principles that support the nation, decreasing public trust in legislative processes. At the same time, we must recognize that democracy requires the protection of elected representatives' rights to express legitimate dissent, especially when they feel that the higher-ups in their parties make arbitrary or unfair decisions. Such dissent should not be quickly labelled as indiscipline, rebellion, or disobedience. Doing so could stifle important discussions and push aside the voices of those who genuinely represent their constituents' interests. A careful look is needed to determine whether lawmakers who seem to challenge party orders are intentionally overstepping their ideological loyalty or if they are voicing real concerns about how their party operates, how decisions are made, or what policies are prioritized. They may be trying to express the hopes, complaints, and needs of the people they represent. The real challenge is to find a careful balance between maintaining party discipline and ensuring that democratic representation is strong, responsive, and in line with the broader goals of participatory governance.<sup>58</sup>

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<sup>57</sup> Rakesh Kumar & Vandana Singh, 'Anti-Defection Law in India: Emerging Issues & Challenges' (2021) Summer Issue ILILR <<https://ili.ac.in/pdf/10.pdf>> accessed September 23, 2024

<sup>58</sup> Ibid