

UNRAVELLING THE ANTI- DEFECTION LAW IN INDIA: A CRITICAL EXAMINATION OF ITS CONSTITUTIONALITY

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Abstract

Since its introduction in 1985 to prevent political defections and maintain political stability, India's Anti-Defection Law has been widely misused, leading to a heated constitutional debate. The anti-defection law's constitutional ramifications are critically examined in this paper, focusing on how it has been misused within the Indian political landscape. It examines the background and purpose of the law, highlighting its fundamental objective of ensuring political stability. It also discusses the legal framework within which the law operates. Subsequently, it explores instances of abuse and misuse, such as politically driven defections, intimidation and threats, and horse-trading and inducements, exposing the deterioration of democratic principles in the country's political landscape by examining important defection episodes of the recent past in the states of Karnataka (2019), Goa (2019), Telangana (2019), Madhya Pradesh (2020) Maharashtra (2022). The article also considers judicial perspectives, particularly in the context of the role of the Speaker, to provide insight into the evolving legal landscape surrounding the law. Given the multi-faceted issues compromising the effectiveness of the anti-defection law, the paper's conclusion emphasizes the necessity of looking for alternatives to the anti-defection law, such as building robust democratic conventions and practices and party cohesion, to defend the political conscience of Indian democracy.

Keywords: Anti-defection law; Constitutional validity; Political instability; The constitution (fifty-second amendment) act of 1985; Tenth schedule

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I. INTRODUCTION

Over the past few decades, several democracies have adopted anti-defection laws that penalise legislators for switching parties between elections.¹ Some have even constitutionalised these rules, making political parties, rather than individual representatives, the primary bearers of the voters' mandate.² India is one such case. When legislators abandon the parties on whose platforms they were elected, often in pursuit of office or other gains, they weaken the link between electoral choice and government formation. In India's fragmented, coalition-prone party system, such moves generate short-term instability and deepen public mistrust of political parties and democratic institutions.³

Indian democracy is particularly prone to the scourge of defection due to its diverse population, complex sociopolitical system, and a multitude of regional parties.⁴ The historical narrative of defections in India is as old as the system of elected representation introduced by the British through successive reforms before Independence. For instance, Shri Shyam Lal Nehru, a member of the Central Legislative, switched his allegiance from the Congress Party to the British side.⁵ To give another example, Shri Hafiz Mohammed Ibrahim, a Muslim League candidate who was elected to the Uttar Pradesh Legislative Assembly, switched parties and joined the Congress in 1937.⁶ However, since the late 1960s, the phenomenon of defection began to permeate the entire Indian polity, from the Parliament to the state legislatures. In fact, the infamous slogan, "*Aaya Ram, Gaya Ram*", coined in the 1960s and loosely translated as "I have come, I have gone", emerged as a damning reminder of the prevalent trend of continuous defections by the legislators.⁷ This slogan can be traced to the disconcerting tale

¹ Csaba Nikolenyi, "The Adoption of Anti-Defection Laws in Parliamentary Democracies," *Election Law Journal: Rules, Politics, and Policy* 15, no. 1 (2016): 96-108.

² Nikolenyi, "The Adoption of Anti-Defection Laws," 96.

³ Csaba Nikolenyi, "Government Termination and Anti-Defection Laws in Parliamentary Democracies," *West European Politics* 45, no. 3 (2022): 638-62.

⁴ Chirag Balyan, "An Integrated Approach to Resolve the Crisis of Defection in India," *SSRN Electronic Journal*, ahead of print, 2020.

⁵ G. C. Malhotra, *Anti-Defection Law in India and the Commonwealth* (New Delhi: Metropolitan Book Co., 2005), 4.

⁶ Malhotra, *Anti-Defection Law in India*, 5.

⁷ Paras Diwan, "Aya Ram Gaya Ram: The Politics of Defection," *Journal of the Indian Law Institute* 21, no. 3 (July-September 1979): 291.

of Gaya Lal, an elected Member of the Legislative Assembly representing Hodal in Haryana. In 1967, after being elected as an independent candidate, Gaya Lal joined the Indian National Congress (INC) and thereafter changed parties thrice in a fortnight.⁸ Another noticeable trend in Indian Polity is that the problem of defection has been observed to be much more rampant in state legislatures resulting in government instability. The committee of governors reported in 1971 that in the states, the defections became widespread after the elections of 1967. From March 1967 to August 1970, there were 1240 defections in the states, and shockingly most of these defections took place on promise of reward of office or for a gain of other means “considered not too honourable.”⁹

Ultimately to discourage defections both in the Indian Parliament as well as the state legislatures, the anti-defection law was passed, after several attempts, in the form of the Constitution (Fifty-second Amendment) Act of 1985 which amended Articles 101, 102, 190, and 191 of the Indian constitution and also inserted the Tenth schedule.¹⁰ These provisions provided for the disqualification of members of Parliament and state legislatures on the grounds of defection. The law also vested the power to decide such questions in the Speaker or Chairman of the House. Arguing in favour of the adoption of the Constitution (Fifty-second Amendment) Bill, Rajiv Gandhi (then Prime Minister of India) remarked, “This bill is the first step towards cleaning our public life.”¹¹ However, more than three and a half decades since its adoption, India’s anti-defection law has not only braced constitutional challenges and intense debate but has also not proved to be adequately effective in checking defections in state legislatures. The fall of governments in the last decade in the states of Karnataka (2019),¹² Goa (2019),¹³

⁸ Ritwika Sharma and Mayuri Gupta, “Anatomy of India’s Anti-Defection Law” (New Delhi: Vidhi Centre for Legal Policy, 2023), 4.

⁹ M. P. Jain, *Indian Constitutional Law*, 8th ed. (New Delhi: LexisNexis, 2018), 325.

¹⁰ Madhav Khosla and Milan Vaishnav, “Democracy and Defections,” *International Journal of Constitutional Law* 22, no. 2 (April 1, 2024): 405.

¹¹ Abhishek Dey, “India’s Anti-Defection Law Didn’t Stop Power Politics. It Just Moved from Farmhouse to Resort,” *The Print*, July 17, 2022.

¹² PTI, “Eight Turncoats of 2019 ‘Coup’ Who Helped BJP Form Government in Karnataka, Lose Election,” *The Economic Times*, May 13, 2023.

¹³ Marcus Mergulhao, “Goa’s Tryst with Defections Goes Back over Half a Century,” *The Times of India*, September 15, 2022.

Telangana (2019), Madhya Pradesh (2020),¹⁴ and Maharashtra (2022)¹⁵ bare the shadowy side of the anti-defection law, exposing its fragility and susceptibility to manipulation. Political actors have learned to work around its provisions through mass resignations, engineered mergers and strategic litigation. At the same time, Speakers have often faced allegations of partisanship and delay in deciding disqualification petitions.¹⁶ Additionally, the anti-defection law has also been severely criticized as it curtails the freedom of speech and expression of the legislators by restricting their ability to express dissenting opinions and encourages a party's autocratic functioning.¹⁷

Against this backdrop, the paper asks how far the anti-defection law succeeds in curbing defections while preserving democratic values and remaining consistent with constitutional principles. It adopts a socio-legal methodology, examining the anti-defection law not only as a set of constitutional and statutory provisions, but also as it operates within India's party system, coalition politics, and process of government formation. This is complemented by case law analysis through close reading of key Supreme Court and High Court decisions applying the anti-defection provisions in varied factual situations.

The paper addresses four core issues: the rationale for the anti-defection law in India and its evolution in scope and impact; the constitutional soundness of the Tenth Schedule; the role of the Speaker or Chairman in deciding defection cases and the adequacy of safeguards for neutrality; and the practical functioning of the framework in light of recent political developments, including the falls of governments in Karnataka (2019), Goa (2019), Telangana (2019), Madhya Pradesh (2020) and Maharashtra (2022). This paper is divided into six parts. After setting out the background, Part II examines the rationale, scope and evolution of the law; Part III analyses constitutional challenges and judicial responses; Part IV

¹⁴ Mukesh Rawat, "MP Govt Crisis: Kamal Nath Announces Resignation, Congress Falls and BJP Rejoices," *India Today*, March 20, 2020.

¹⁵ Bilal Kuchay, "How BJP Wrested Back Control of India's Richest State Maharashtra," *Al Jazeera*, January 7, 2022.

¹⁶ Charith Reddy and 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," *NLIU Law Review X*, no. 1 (2022): 339.

¹⁷ Jishnutosh Majumdar, "India Must Reform Its Anti-Defection Law to Prevent Further Corrosion of Democracy," *JURIST*, July 19, 2022.

evaluates the Speaker's position; Part V uses the recent state episodes to test the law in practice; and the conclusion reassesses its overall effectiveness and the need to consider alternatives.

II. THE RATIONALE, SCOPE, AND EVOLUTION OF THE ANTI-DEFECTION LAW IN INDIA

The introduction of the anti-defection law in India was driven by the imperative to mitigate the destabilizing impact of defections and strengthen the foundations of Indian democracy.¹⁸ This section explains why such a far-reaching constraint on legislators' behaviour was thought necessary, and why its history still matters. It traces the rationale behind the law to the chronic instability of the late 1960s and early 1970s, outlines the original design of the Tenth Schedule, and then follows its evolution through later constitutional amendments and key judicial decisions. Understanding this trajectory is essential for assessing whether the current framework addresses the problem it set out to solve, or whether its scope and operation have created new tensions for democratic representation and constitutional principles.

2.1. Rationale of Introducing the Anti-Defection Law in India

Democratic systems should be made resilient to withstand the disruptive impact of defections. Defections can destabilize legitimately elected governments with relative ease, toppling a government in majority by reducing it to a minority through defection.¹⁹ Through deceitful inducements, a party that otherwise fails to get a majority through elections in the legislative assembly may yet be able to maneuver a majority and thereby form a government by inducing defections from other parties. During the 1960s and 1970s, the country witnessed rampant defections at the state and center levels.²⁰ Therefore, the anti-defection law was introduced with the awareness that if the evils of political defection were not contained, it would undermine the foundations of Indian democracy. At the same

¹⁸ *The Constitution (Fifty-second Amendment) Act, 1985*, Statement of Objects and Reasons, Bill No. 22 of 1985.

¹⁹ Nikolenyi, "Government Termination and Anti-Defection Laws in Parliamentary Democracies," 4.

²⁰ Diwan, "Aya Ram Gaya Ram."

time, recent scholarship suggests that Indian parties cannot be understood only as vehicles of patronage and clientelism; they also embody distinct ideological positions on the role of the state in the economy and on the recognition of social and religious groups.²¹ For many voters, party labels signal not just access to material benefits but also broader commitments regarding redistribution, secularism and minority protection.²² In this setting, defections disrupt not only the numerical balance of legislatures but also the ideological link between voters and their elected representatives.

The anti-defection law, which forms part of the Constitution (Fifty-second Amendment) Act, was ultimately enacted by the Parliament in 1985 after extensive deliberations. Reflecting the urgency and dire need for the anti-defection law for the Indian democracy, the statement of objects and reasons accompanying the Bill specifically stated that,

*“The evil of defection has been a matter of national concern, and if it is not combated, it is likely to undermine the very foundation of our democracy and the principle which sustain it.”*²³

Therefore, the main objective of the anti-defection law was to deter political defections. It stipulated that any elected member who switched their political affiliations after elections could lose their legislative membership as a consequence. As a result, the Constitution (Fifty-second Amendment) Act of 1985 amended Articles 101, 102, 190, and 191 of the Constitution regarding the vacation of seats and disqualification from membership of Parliament and the State Legislatures and also added the Tenth Schedule to the Constitution outlining specific provisions as to disqualification based on defection²⁴ and established the authority of the Speaker/Chairman²⁵ to decide on defection cases.

²¹ Pradeep K. Chhibber and Rahul Verma, *Ideology and Identity: The Changing Party Systems of India* (Oxford: Oxford University Press, 2018).

²² Adnan Naseemullah, “Patronage vs. Ideology in Indian Politics,” *Commonwealth & Comparative Politics* 59, no. 2 (2021): 193-214.

²³ *The Constitution (Fifty-second Amendment) Act, 1985*, Statement of Objects and Reasons, Bill No. 22 of 1985.

²⁴ *The Constitution of India, 1950*, Tenth Schedule, para. 2.

²⁵ *The Constitution of India, 1950*, Tenth Schedule, para. 6.

2.2. Scope and Evolution of the Anti-Defection Law

India has a bi-cameral federal legislature at the Union level (Lok Sabha and Rajya Sabha in Parliament)²⁶ and separate legislatures in each State (Legislative Assembly, and in some States also a Legislative Council),²⁷ which together share law-making powers as divided by the Constitution. The anti-defection law operates in broadly the same way at both the Union and State levels, but the forums and actors differ.²⁸ At the Union level, it applies to members of Parliament (MPs) in the Lok Sabha and the Rajya Sabha, with disqualification petitions decided by the Speaker of the Lok Sabha or the Chairman of the Rajya Sabha, as the case may be.²⁹ At the State level, it applies to members of the State Legislative Assembly (MLAs) and, where they exist, members of the State Legislative Council, with petitions decided by the Speaker of the Assembly or the Chairman of the Council.³⁰ In both settings, the grounds and consequences of defection are identical, since they flow from the same constitutional provisions;³¹ what differs is the institutional and political context in which the law is applied.

Therefore, the anti-defection law applies to elected members of Parliament and State Legislative Assemblies who switch parties or vote contrary to the party line. In this context, it is prudent to refer to Articles 102(2) and 191(2), read with the Tenth Schedule of the Constitution. A conjoint reading of these provisions implies that a member of the Parliament or State legislature can be disqualified from membership of the House upon the occurrence of the following contingencies. First, if the member voluntarily gives up their membership of the political party to which they belong.³² Second, if the member votes, or abstains from voting, contrary to the direction or whip issued by their political party, without obtaining prior permission, and the party fails to condone such action within fifteen days.³³ Third, if an elected member, who was not set up

²⁶ *The Constitution of India, 1950*, Art. 79.

²⁷ *The Constitution of India, 1950*, Art. 168.

²⁸ *The Constitution of India, 1950*, Tenth Schedule, para. 1(a). "House" means either House of Parliament or the Legislative Assembly or, as the case may be, either House of the Legislature of a State.

²⁹ *The Constitution of India, 1950*, Tenth Schedule, para. 6(1).

³⁰ *The Constitution of India, 1950*, Tenth Schedule, para. 1(a).

³¹ *The Constitution of India, 1950*, Arts. 102(2), 191(2), and Tenth Schedule.

³² *The Constitution of India, 1950*, Tenth Schedule, para. 2(1)(a).

³³ *The Constitution of India, 1950*, Tenth Schedule, para. 2(1)(b).

as a candidate by any political party, chooses to join a political party after the election.³⁴ Fourth, if a nominated member joins a political party six months after taking their seat in the House.³⁵

It is important to note that, in its current form, the law covers both individual defections and collective defections by a group of legislators through the mechanism of merger. When the Tenth Schedule was first incorporated into the Indian Constitution, it created two specific exemptions from disqualification for certain forms of collective defection. First, under Paragraph 3 of the Tenth Schedule, a member of Parliament or a State legislature was exempt from disqualification if they left their party due to a split, provided that the faction resulting from the split comprised at least one-third of the party's total membership in the House.³⁶ This exemption for collective defections on the ground of a "split" within the political party was subsequently removed from the Constitution in 2003. Second, under Paragraph 4 of the Tenth Schedule, disqualification would not apply in the event of a merger of political parties. Specifically, if a member's original political party merged with another, and at least two-thirds of the members of the concerned legislative party agreed to such a merger, it would be deemed valid. In that case, the member and similarly placed members could declare that they had either joined the merged political party or chosen to function as a separate group. From the time of such a merger, the new entity—whether the merged party or the separate group—would be considered the member's political party for the purposes of the anti-defection rules.³⁷

These two provisions provided exemption to collective defections on the ground of split or merger aimed at accommodating a genuine shift in political ideologies or facilitating alignment of smaller political parties to help form stable governments. However, soon after its adoption, the provision related to splits (Paragraph 3 of the Tenth Schedule) in political parties became a problem. It began to be misused by unscrupulous politicians to effect vertical splits in political

³⁴ *The Constitution of India, 1950*, Tenth Schedule, para. 2(2).

³⁵ *The Constitution of India, 1950*, Tenth Schedule, para. 2(3).

³⁶ *The Constitution of India, 1950*, Tenth Schedule, para. 3.

³⁷ *The Constitution of India, 1950*, Tenth Schedule, para. 4.

parties and thereby facilitate defections of elected members while avoiding their disqualification under the anti-defection law.³⁸

The case of *Mayawati v Markendeya Chand*³⁹ stands out as a noticeable example that highlights the misuse of the provision related to splits in political parties to facilitate defections. In this case, twenty-two members of the Indian National Congress (INC) and twelve members of the Bahujan Samaj Party (BSP) defected in October 1997 from their parties. They supported the confidence motion of the Bhartiya Janta Party (BJP) government led by then Chief Minister Kalyan Singh to give it a majority in the Uttar Pradesh Legislative Assembly. Shortly after that, all the defectors were made ministers in the BJP government. Mayawati, the leader of BSP, filed a complaint before the Speaker that the twelve members who had defected from the party should be disqualified from the membership of the Legislative Assembly. The Speaker procrastinated the matter related to the disqualification of the defecting Members of Legislative Assembly (MLAs) and ultimately decided that there was a split in the BSP and one-third of the members of the party (numbering twenty-three MLAs) had split and hence the defecting MLAs (twelve in number) were exempt from disqualification. The claim that twenty-three and not twelve MLAs had split from the BSP was disputed and never substantiated. However, the Speaker relying upon certain proceedings conducted before him, came to this conclusion. It is also worth noting that the Speaker belonged to the ruling BJP government. When the Speaker's decision was appealed before the Supreme Court, it was heard by a bench of three judges. All three judges gave separate judgments. Justice K.T. Thomas allowed the appeal and held that the decision of the Speaker was perverse as there was, in fact, no split in the BSP within the meaning of paragraph 3 of the Tenth Schedule, and the defecting members stood disqualified.⁴⁰ Justice M. Srinivasan dismissed the appeal and upheld the decision of the Speaker.⁴¹ Punchhi, CJ refrained from giving a definitive opinion and acknowledged the need for clarification on the

³⁸ Malhotra, *Anti-Defection Law in India and the Commonwealth*, 973.

³⁹ *Mayawati v. Markendeya Chand*, AIR 1998 SC 3340 (Supreme Court of India, 1998).

⁴⁰ *Mayawati v. Markendeya Chand*, AIR 1998 SC 3340 (Supreme Court of India, 1998), para. 68.

⁴¹ *Mayawati v. Markendeya Chand*, AIR 1998 SC 3340 (Supreme Court of India, 1998), para. 72.

procedure to be followed by the Speaker/Chairman in cases of reference to the question of disqualification along with the alleged split in the party relatable to paragraph 3 of the Tenth Schedule.⁴² He, therefore, referred the matter to the constitution bench for decision, given the apparent silence of the *Kihoto Hollohan*⁴³ case on the procedure to be followed by the Speaker/Chairman in such cases. However, the Constitution Bench left the difference of opinion unresolved, and the appeal was disposed of as infructuous in November 2004.

Following the Mayawati case, the chorus grew within the country to strengthen the anti-defection law by preventing the misuse of paragraph 3 of the Tenth Schedule. The Law Commission of India, in its 170th Report in 1999 on the “Reform of Electoral laws,” recommended the omission of paragraph 3 of the 10th schedule.⁴⁴ The same view was endorsed by the National Commission to Review the Working of the Constitution (NCRWC) set up in 2000.⁴⁵ The NCRWC also recommended that a defector should be penalised by debarring him or her from holding any public office as a Minister or any other remunerative political post for at least the remaining term or until next the next elections, whichever is earlier. Both these recommendations were accepted by the Parliament and the provision related to split in political parties, i.e., paragraph 3 of the Tenth Schedule, was deleted from the Tenth Schedule with the passage of the Constitution (Ninety-First Amendment) Act of 2003.⁴⁶ Further, Article 164 was amended with the introduction of Clause 1B for disqualifying defectors from being appointed as Ministers⁴⁷ for the period suggested by the NCRWC. The Constitution (Ninety-First Amendment) Act of 2003 also introduced Article 361B, which disqualified defectors from holding any remunerative political post for the same period.⁴⁸

Subsequently, the Supreme Court in *Rameshwar Prasad v. Union of India*⁴⁹ had observed in the context of this amendment that,

⁴² *Mayawati v. Markendeya Chand*, AIR 1998 SC 3340 (Supreme Court of India, 1998), para. 1.

⁴³ *Kihoto Hollohan v. Zachilhu and Others*, AIR 1993 SC 412 (Supreme Court of India, 1993).

⁴⁴ Jain, *Indian Constitutional Law*, 52.

⁴⁵ Jain, *Indian Constitutional Law*, 52.

⁴⁶ *The Constitution (Ninety-First Amendment) Act of 2003*, Section 5.

⁴⁷ *The Constitution*, Section 3.

⁴⁸ *The Constitution*, Section 4.

⁴⁹ *Rameshwar Prasad v. Union of India*, (2006) 2 SCC 1 (Supreme Court of India, 2006).

“By the 91st Amendment, defection was made more difficult by deleting the provision which did not treat mass shifting of loyalty by one-third members as defection and by making defection altogether impermissible and only permitting the merger of the parties in the manner provided in the Tenth Schedule.”⁵⁰

Other important provisions of the Tenth Schedule include paragraph 6, which states that the question of disqualification under the Tenth Schedule is to be determined by the Speaker/Chairman of the concerned House. However, the Speaker/Chairman is not empowered to take notice of an alleged defection on their own motion or *suo motu*, but only upon receiving a petition in writing from a fellow member of the House. Further, paragraph 6 of the Tenth Schedule clarifies that the speaker’s decision is final. Paragraph 7 of the Tenth Schedule, now rendered void given the decision of the Supreme Court in *Kihoto Hollohon* case, ousted the jurisdiction of the courts to decide question/s of disqualification of a member of the House under the Tenth Schedule. Paragraph 8 authorizes the chairman speaker of a house to «make rules for giving effect to the provisions of the Tenth Schedule.» Relying upon this provision, the Speaker of Lok Sabha framed the Members of the Lok Sabha (Disqualification on ground of Defection) Rules, 1985, for giving effect to the provisions of the Tenth Schedule, which came into force with effect on March 18, 1986.⁵¹

This part shows that the anti-defection law emerged as a strong response to real fears of instability and manufactured majorities. The deletion of the split provision and the retention of the merger exception, the central role of the Speaker, and the pattern of partisan misuse revealed in cases such as *Mayawati v. Markandeya Chand* all suggest that design choices within the anti-defection law framework have significant constitutional and democratic implications. Having traced how the anti-defection law came into being and how it has been reshaped over time, the next part turns to a closer examination of its constitutional foundations, the challenges it has attracted, and the judiciary’s efforts to reconcile party discipline with core principles of representative democracy.

⁵⁰ *Rameshwar Prasad v. Union of India*, 87.

⁵¹ Jain, *Indian Constitutional Law*, 116.

III. CONSTITUTIONAL VALIDITY OF THE ANTI-DEFECTION LAW AND THE TENTH SCHEDULE

Wherever they are adopted, anti-defection laws provoke intense debate about their compatibility with the political freedoms of elected legislators, including the plausible freedom to change party affiliation.⁵² In India, the introduction of the anti-defection law through the Constitution (Fifty-second Amendment) Act of 1985 has had significant implications for democratic practices. Although designed to promote political stability and curb opportunistic defections, it has raised complex constitutional questions and adversely affected legislators' freedom of speech, expression and dissent, which are protected as fundamental freedoms under Indian Constitution.⁵³ In the case of *Kihota Hollohon v. Zachilhu and Others*,⁵⁴ a constitutional challenge was mounted against the anti-defection law on multiple grounds. First, it was contended that the Tenth Schedule violates fundamental principles of parliamentary democracy and undermines a basic feature of the Indian Constitution by imposing penalties and disqualifications on elected representatives. Second, the validity of Paragraph 7 of the Tenth Schedule was questioned on the ground that it bars judicial review and, in doing so, alters the scope of Articles 136, 226, and 227 of the Constitution. It was argued that such an alteration would require ratification by at least half of the states, as mandated by the proviso to Article 368(2). Third, the provision in Paragraph 6(1), which confers constitutional finality on the decisions of the Speaker or Chairman, was challenged for potentially ousting the jurisdiction of courts and thereby undermining judicial review. Fourth, concerns were raised regarding whether the Speaker or Chairman, as adjudicating authorities under the Tenth Schedule, meet the standards of an independent and impartial tribunal, or whether their institutional role within the legislature introduces a reasonable apprehension of bias in the adjudication of defection cases.

⁵² Zdzisław Kędzia and Agata Hauser, *The Impact of Political Party Control over the Exercise of the Parliamentary Mandate* (Inter-Parliamentary Union, 2011).

⁵³ *The Constitution of India*, 1950, Art. 19.

⁵⁴ *Kihota Hollohon v. Zachilhu and Others*, AIR 1993 SC 412 (Supreme Court of India, 1993).

The Supreme Court ruled 3:2 in favor of the anti-defection law while upholding its constitutionality. It endorsed the view that its provisions aim to curb unprincipled and unethical political defections. At the same time, the Court held that the speaker's order of disqualification of a member of the House on the grounds of defection is subject to Judicial Review. Justices L.M. Sharma and J.S. Verma made up the minority, while Justices M. N. Venkatachaliah, K. J. Reddy, and S. C. Agrawal made up the majority.

Explaining the rationale underlying the Tenth Schedule, Justice M.N. Venkatachaliah, in his majority opinion, stated that the provisions of the Tenth Schedule recognize the role of political parties in the political process. Therefore, any defection by the elected members in pursuit of power and wealth would be in utter disregard of the electoral mandate. In this context, he observed that,

“These provisions in the Tenth Schedule give recognition to the role of political parties in the political process. A political party goes before the electorate with a particular programme and it sets up candidates at the election on the basis of such programme. A person who gets elected as a candidate set up by a political party is so elected on the basis of the programme of that political party. The provisions of Paragraph 2(1) (a) proceed on the premise that political propriety and morality demand that if such a person, after the election, changes his affiliation and leaves and political party which had set him up as a candidate at the election, then he should give up his Membership of the legislature and go back before the electorate.”⁵⁵

The following paragraphs discuss in detail the various grounds of constitutional challenge and the reasoning given by the Supreme Court.

3.1. Issue No. 1: Violation of Fundamental Principles of Parliamentary Democracy

The petitioners had contended that paragraph 2(1)(b) of the Tenth Schedule, which provided for disqualification of a member from the House for voting or abstaining from voting against the direction or *whip* issued by their political party, was violative of the principles underlying Parliamentary democracy (in particular Articles 105 & 194 of the Indian Constitution) and infringed upon the

⁵⁵ *Kihota Hollohon v. Zachilhu and Others*, 425.

freedom of speech, the right to dissent and the freedom of conscience of the legislators. The said provision is, therefore, unconstitutional and destructive of the basic feature of the Indian Constitution.

The majority ruled that paragraph 2(1)(b) of the Tenth Schedule is constitutionally valid. It aims to target unprincipled defections, which cannot be protected under freedom of conscience, the right to dissent, or intellectual freedom. The court specifically stated,

*“The provisions of Paragraph 2 do not violate any rights or freedom under Article 105 and 194 of the Constitution. The provisions are salutary and are intended to strengthen the fabric of Indian parliamentary democracy by curbing unprincipled and unethical political defections.”*⁵⁶

3.2. Issue No. 2: Need for Ratification of the Amendment by State Legislatures under Article 368(2)

Secondly, it was contended that paragraph 7 of the Tenth Schedule, which bars judicial review and excludes the jurisdiction of all Courts, including the Supreme Court and High courts, thus altering the operation and effect of Articles 136, 226, and 227 of the Indian Constitution, necessitates ratification by half of the state legislatures in accordance with Article 368 (2) of the Indian Constitution. As the Constitution (Fifty-Second Amendment) Act of 1985 had not been so ratified, it became constitutionally invalid.

While dealing with this contention, the majority accepted that considering the effect of paragraph 7 of the Tenth Schedule on Articles 136, 226, and 227 of the Indian Constitution, it needed ratification by state legislatures, as provided by Article 368(2). Therefore, paragraph 7 of the Tenth Schedule was declared constitutionally invalid for want of ratification. However, the majority held a consistent view that this omission did not mean that the entire Tenth Schedule had become constitutionally invalid. In their opinion, paragraph 7 of the Tenth Schedule was independent of and stood apart from its main provisions. Therefore, after applying the doctrine of severability, the majority held that as the remaining provisions of Schedule 10 are severable from paragraph 7, they

⁵⁶ *Kihota Hollohon v. Zachilhu and Others*, 412.

can stand independently of para 7 and are complete and workable by excision of paragraph 7.⁵⁷

In contrast, the minority view was that the assent of the President to the Constitution (Fifty-Second Amendment) Act of 1985 was *non est*, null, and void given the absence of ratification by half of the state legislatures as required under Article 368(2).⁵⁸ Therefore, according to them, in the absence of such ratification, it is not merely paragraph 7 of the Tenth Schedule but the entire Constitution (Fifty-Second Amendment) Act of 1985 that is unconstitutional.

3.3. Issue No. 3: Paragraph 6 of the Tenth Schedule and Bar to Judicial Review

As to the contention that paragraph 6(1) of the Tenth Schedule conferring constitutional “finality” to decisions of Chairmen/Speakers bars judicial review and is, therefore, unconstitutional, the majority responded by reiterating that the said provision, to the extent it seeks to impart finality to the decision of the Speakers/Chairmen, is valid. However, that does not mean that the decision of the Speaker/Chairman is immune from judicial review. When exercising their authority and carrying out their duties under the Tenth Schedule, the Speaker/Chairman operates as a tribunal, adjudicating the rights and obligations outlined in the Tenth Schedule. The decisions they make in that capacity are subject to judicial review. In this context, the court observed that,

*“The concept of statutory finality embodied in Paragraph 6 (1) does not detract from or abrogate judicial review under Articles 136, 226, and 227 of the Constitution in so far as infirmities based on violations of constitutional mandates, mala fides, non-compliance with Rules of Natural Justice and perversity, are concerned.”*⁵⁹

Further, while setting the limits of judicial review, the majority opined that any stage before the speaker or chairperson makes a decision should not be subject to judicial review, the only exception being the cases wherein (a) the Speaker suspends or takes action during the pendency of disqualification proceedings;

⁵⁷ *Kihota Hollohon v. Zachilhu and Others*, 421.

⁵⁸ *Kihota Hollohon v. Zachilhu and Others*, 457.

⁵⁹ *Kihota Hollohon v. Zachilhu and Others*, 451.

and (b) disqualifications or suspensions which may have grave, immediate and irreversible repercussions.⁶⁰

3.4. Issue No. 4: Role of the Speaker/Chairman as a Non-Biased Adjudicator

Concerns were also raised about the speaker's position and whether the Chairman/Speaker of the House met the requirements of an impartial adjudicatory system or if his authority to render decisions on defection cases creates a plausible possibility of bias. On this issue, the majority rejected the contention that the investiture of adjudicatory functions in the Speaker/Chairman is invalid on the grounds of political bias and lack of impartiality. The majority noted that,

“The Speakers/Chairmen hold a pivotal position in the scheme of Parliamentary democracy and are guardians of the rights and privileges of the House. They are expected to and do take far reaching decisions in the Parliamentary democracy. Vestiture of power to adjudicate questions under the Tenth Schedule in them should not be considered exceptionable.”⁶¹

Further, alluding to the high constitutional status conferred upon the Speaker/Chairman as guardians of rights and privileges of the House, Justice Venkatachaliah categorically observed that,

“It would, indeed be unfair to the high traditions of that great office to say that the investiture in it of this jurisdiction would be vitiated for violation of a basic feature of democracy... Accordingly, the contention that the vesting of adjudicatory functions in the Speakers/Chairmen would by itself vitiate the provision on the ground of likelihood of political bias is unsound and is rejected.”⁶²

In contrast, the minority was of the view that the speaker could not be given the role of the sole arbiter in the defection cases as it would be against the basic structure of the Constitution. The Speaker/Chairman cannot be regarded as an independent adjudicating authority because he is constantly dependent on the support of the majority in the house. The further observed that,

“Democracy is a part of the basic structure of the Constitution and free and fair elections with provision for resolution of disputes relating to the same

⁶⁰ *Kihota Hollohon v. Zachilhu and Others*, 421.

⁶¹ *Kihota Hollohon v. Zachilhu and Others*, 453.

⁶² *Kihota Hollohon v. Zachilhu and Others*, 453.

as also for adjudication of those relating to subsequent disqualification by an independent body outside the House are essential features of the democratic system in our Constitution. Accordingly, an independent adjudicatory machinery for resolving disputes relating to the competence of Members of the House is envisaged as an attribute of this basic feature.”⁶³

Upon careful examination, it becomes evident that the Supreme Court dismissed all constitutional challenges except for the ground related to the ouster of judicial review under paragraph 7 of the Tenth Schedule. However, it is submitted that the mere rejection of these constitutional challenges does not fully address the adverse impact of the anti-defection law on the country’s parliamentary democracy.

In this context, it is proper to refer to paragraph 2(1)(a) of the Tenth Schedule, which provides that an elected member can be disqualified from the House if he has “voluntarily given up the membership of the political party” on whose ticket he was elected to the House. Although the said provision listed out specific overt acts that could lead to disqualification, the Supreme Court in *Ravi Naik v. Union of India*⁶⁴ interpreted paragraph 2(1)(a) of the Tenth Schedule broadly by suggesting that voluntary giving up of membership could also be inferred by the conduct or actions of the member. Such interpretation has created several awkward situations when even public criticism of the party leader’s orders and decisions was interpreted as a defection. For instance, in 2017, relying upon the decision of the Supreme Court in *Ravi Naik’s* case, then Rajya Sabha Chairman M. Venkaiah Naidu disqualified former JD(U) President Sharad Yadav and Ali Anwar Ansari from membership of Rajya Sabha under Paragraph 2(1)(a) of the Tenth Schedule.⁶⁵ Interestingly, they were disqualified even though they had not tendered any resignation from JD(U) on the grounds that they had disobeyed party orders by attending an opposition party rally in Patna.

Taken together, *Kihoto Hollohon* and subsequent decisions upheld the core architecture of the Tenth Schedule. At the same time, by treating unprincipled

⁶³ *Kihoto Hollohon v. Zachilhu and Others*, 457.

⁶⁴ *Ravi Naik v. Union of India*, 1994 Supp. (2) SCC 641 (Supreme Court of India, 1994).

⁶⁵ PTI, “Sharad Yadav Disqualified from RS,” *The Hindu*, December 4, 2017.

defection as the primary constitutional evil and reading paragraph 2(1)(a) expansively, the Court has endorsed a model of parliamentary democracy in which party loyalty is prioritised over individual conscience and intra-party dissent. The result is a framework that concentrates adjudicatory power in politically situated Speakers and allows disqualification threats to be used to discipline criticism as much as to deter opportunism. These tensions may not render the law formally unconstitutional, but they raise serious doubts about its compatibility with political freedoms of elected legislators. The next Part therefore turns from abstract validity to institutional design and practice, asking how this combination of strong party control and Speaker-centred adjudication shapes the functioning of India's parliamentary democracy.

IV. EXAMINATION OF THE ROLE OF THE SPEAKER/CHAIRMAN IN DEFECTION CASES

In order to investigate the weaknesses of the anti-defection law, it is essential to critically evaluate the role and significance of the office of the Speaker, as he is the most important functionary under the anti-defection law. The Speaker's position is vital for parliamentary democracy. The role and functions of the Speaker in the Indian Parliament are based on the Westminster model, much like its counterparts in UK, Ireland, Australia, and Canada.⁶⁶ A Speaker (along with the Deputy Speaker) is elected generally in the first meeting of the House after general/state assembly elections for five years.⁶⁷

The Speaker's role in the Indian parliamentary system is multifaceted and pivotal to the effective functioning of the House. The Speaker has three primary responsibilities in the House: (1) facilitating discussions and deliberations; (2) enforcing discipline to maintain decorum within the House; and (3) carrying out quasi-judicial duties such as adjudicating cases of defection under the provision of the Tenth Schedule.⁶⁸ For the performance of these functions,

⁶⁶ Reddy and Bhargava, "For Laws May Come," 337.

⁶⁷ *The Constitution of India*, Arts 93 and 178.

⁶⁸ Harsimran Kalra, "Decisional Analysis and the Role of the Speaker" (The Hindu Centre for Politics and Public Policy, September 17, 2013), 4-10.

Speaker's impartiality and non-partisanship are essential qualities. These values are respected as constitutional conventions even if they are not expressly stated in the Constitution.

While the Speaker can hail from any political party, he is often frequently elected from the ruling party. Because of this setup, there have been times when the Speaker's decisions have favored the ruling party. For instance, the Speaker's decisions have been postponed in cases of disqualification for defection, ostensibly to the ruling party's advantage. The Speaker, chosen by a particular political party, is expected to uphold neutrality in resolving conflicts, which leads to a paradoxical setting. The conflict between constitutional responsibility and party loyalty makes it difficult for Speakers to uphold their impartial position..

As discussed in the previous section, in *Kihota Hollohan's* case, the petitioners had raised concerns about the potential bias of the Speaker considering his political affiliations and extensive powers bestowed upon him by the Constitution. The majority opinion in *Kihoto Hollohan* disregarded these concerns and put its faith in the Speaker's office. However, the minority view referenced Constitutional Assembly debates to argue that the Speaker was purposefully left out of the decision-making process when the President and Governors were given the authority to resolve disqualification matters under Articles 102, 103, and 192. The minority also opined that the Speaker's position being dependent on the majority may result in bias and compromise the integrity of trials.

Further, it is pertinent to note that under Articles 136, 226, and 227, the Speaker's decisions as a tribunal are susceptible to limited judicial scrutiny on the grounds of violations of constitutional mandates, *mala fides*, and non-compliance with principles of Natural Justice. As prescribed in *Kihoto Hollohan*, the courts can only interfere in the defection matters once the Speaker makes a decision, creating loopholes that benefit the ruling parties when the Speaker abstains from deciding the anti-defection petition. In fact, the Tenth Schedule does not prescribe any timeline within which a Speaker must decide on anti-defection matters. To illustrate this deficiency of law, reference may be made to the case of

*Meisham Meghachandra Singh v. Hon'ble Speaker Manipur Legislative Assembly.*⁶⁹ In this case, after being elected to the House on a BJP ticket, Mukul Roy, a West Bengal State Assembly legislator, left the party and joined the government of Trinamool Congress Party in June 2021. The BJP tried to get him disqualified from the state Assembly under the anti-defection law. However, the Speaker, affiliated with the Trinamool Congress, did not adjudicate the disqualification petition even after six months. In Supreme Court, a bench comprising Justices R. F. Nariman, Aniruddha Bose, and V. Ramasubramanian held that the Speaker has to decide disqualification petition within a “reasonable period”. While clarifying the meaning of the expression, the court held that,

*“What is reasonable will depend on the facts of each case, but absent exceptional circumstances for which there is good reason, a period of three months from the date on which the petition is filed is the outer limit within which disqualification petitions filed before the Speaker must be decided...”*⁷⁰

There have been other instances when disqualification petitions have been left pending for prolonged periods, sometimes even spanning years. For instance, in 2017, YSR Congress, the main Opposition party in Andhra Pradesh, boycotted the state assembly due to the Speaker's delay of over eighteen months in hearing disqualification petitions of twenty MLAs who had defected.⁷¹ Similarly, in the Telangana assembly, twenty-six defections were left unresolved for years, leading to the dissolution of the House in 2018 without any consequences for the defectors.⁷²

The misuse of powers by the Speaker extends beyond prolonged delays in disposing of disqualification petitions. Numerous instances have involved the improper exercise of powers granted to the Speaker under the Tenth Schedule. In the case of *Rajendra Singh Rana v Swami Prasad Maurya*,⁷³ a case related to the disqualification of members on the grounds of defection from the Uttar Pradesh

⁶⁹ *Meisham Meghachandra Singh v. Hon'ble Speaker Manipur Legislative Assembly*, 2020 SCC OnLine SC 55 (Supreme Court of India, 2020).

⁷⁰ *Meisham Meghachandra Singh v. Hon'ble Speaker Manipur Legislative Assembly*, 2020 SCC OnLine SC 55 (Supreme Court of India, 2020), para. 28.

⁷¹ PTI, “YSR Congress to Boycott AP House over Defection of MLAs to TDP,” *The Indian Express* (Amaravati), November 8, 2017.

⁷² Umang Poddar, “Explainer: How Speakers Are Undermining the Anti-Defection Law by Simply Sitting on Petitions,” *Scroll.in*, December 14, 2021.

⁷³ *Rajendra Singh Rana v. Swami Prasad Maurya*, (2007) 4 SCC 270 (Supreme Court of India, 2007).

Legislative Assembly, the Supreme Court had to intervene. The facts of the case are such that in 2003, Mulayam Singh Yadav, the leader of the Samajwadi Party (SP), attempted to form the U. P. government with the backing of 13 Bahujan Samaj Party (BSP) MLAs. The BSP leader, Swami Prasad Maurya, petitioned the Speaker to remove these thirteen MLAs from the House on the grounds of defection. The Speaker dismissed the petition and refused to disqualify the defecting MLAs on the grounds that there was a split in the BSP. A five-judge Constitution Bench ruled that the thirteen BSP MLAs were disqualified and had voluntarily given up their membership since they had sent a letter to Governor T.V. Rajeswar asking him to invite the Samajwadi Party to form the government. The Court decided that the disqualification would be deemed to have taken place as soon as the members committed the act of defection. The Constitution Bench further declared the decision of the Speaker, when he refused to disqualify the members on the grounds of defection and acknowledged a split in BSP, as unconstitutional because it was based on no evidence.

Illustrating the precariousness of the post of the Speaker, reference may be made to the facts of *Kashinath G. Jalmi (Dr) v. The Speaker*.⁷⁴ Ravi S. Naik was elected as a member of the Goa Legislative Assembly in November 1989. On January 25, 1991, Ravi S. Naik became the Chief Minister. On the same day, Dr. Kashinath Jalmi, another Member of the Assembly, filed a petition seeking Naik's disqualification on the grounds of defection. On February 16, 1991, the Speaker, Sirsat, disqualified Ravi S. Naik on the grounds of defection. Naik challenged this order by filing a writ petition before the Goa Bench of the Bombay High Court. During the pendency of the writ petition, Simon Peter D'Souza was elected Deputy Speaker on February 27, 1991, and Speaker Sirsat was removed. On the same day, Ravi S. Naik submitted an application to the Deputy Speaker, Simon Peter D'Souza, asking for a review of the earlier disqualification order. On March 8, 1991, D'Souza set aside the earlier disqualification order issued by Speaker Sirsat and restored the membership of Ravi S. Naik to the House. When the matter came before the Supreme Court, the Court quashed the order

⁷⁴ *Kashinath G. Jalmi (Dr) v. The Speaker*, (1993) 2 SCC 703 (Supreme Court of India, 1993).

made by the deputy speaker on the ground that there were no inherent powers of review vested in the office of the Speaker under the Tenth Schedule.

Most recently, in the case of *Subhash Desai v. Principal Secretary Governor of Maharashtra*,⁷⁵ the Supreme Court called out to the Speaker (affiliated to the BJP, part of the ruling coalition) of the Maharashtra Legislative Assembly that its decision to appoint Bharat Gogawale (from the Eknath Shinde group) as chief Whip and Eknath Shinde as Leader of the Shiv Sena party was contrary to law. The said decision triggered events that led to the fall of the Uddhav Thackeray government. In 2019, a coalition comprising the Shiv Sena, Nationalist Congress Party, Indian National Congress, and independent Members formed the government in Maharashtra, led by Chief Minister Uddhav Thackeray of the Shiv Sena. However, in mid-2022, certain events led to the formation of a new government by a coalition of a faction claiming to be the “real” Shiv Sena, BJP, and independent MLAs, with Mr. Eknath Shinde as the Chief Minister. The change in government composition was triggered by the emergence of two factions within the Shiv Sena – each headed by Uddhav Thackeray and Eknath Shinde. The Supreme Court categorically observed that,

*“The political party and not the legislature party appoints the Whip and the Leader of the party in the House. Further, the direction to vote in a particular manner or to abstain from voting is issued by the political party and not the legislature party... The Speaker shall recognize the Whip and the Leader who are duly authorised by the Shiv Sena political party with reference to the provisions of the party constitution, after conducting an enquiry in this regard and in keeping with the principles discussed in this judgement.”*⁷⁶

The above discussion amply demonstrates that although the speaker/chairman is expected to act as a neutral arbiter in disqualification petitions arising from the anti-defection law, in reality, it is seen that the Speaker is rarely able to rise above his political affiliation, his position being dependent upon the support of the majority of the House. Noted constitutional law scholar Prof. M. P. Jain has also remarked that the Speaker of the Legislature is a political creature; therefore,

⁷⁵ *Subhash Desai v. Principal Secretary Governor of Maharashtra*, AIR 2023 SC 2406 (Supreme Court of India, 2023).

⁷⁶ *Subhash Desai v. Principal Secretary Governor of Maharashtra*, AIR 2023 SC 2406 (Supreme Court of India, 2023), para 206(d).

he is generally not impartial.⁷⁷ Most of the time, he takes the view that is in the interest of the party to which he belongs. Thus, under the present state of the anti-defection law, a paradoxical situation arises where a Speaker/Chairman is torn between his constitutional responsibility to be impartial and party loyalty. This inherent conflict makes it challenging for the Speaker to maintain an impartial and non-partisan position. Nevertheless, the anti-defection law fails to provide a solution to address this challenge.

V. INSIGHTS FROM THE RECENT FALL OF STATE GOVERNMENTS: SHORTCOMINGS OF THE ANTI-DEFECTION LAW

The anti-defection law has been a subject of significant controversies since its inception. Although the anti-defection law was enacted to preserve political stability and safeguard democratic values, its execution has been far from ideal. This section examines the recent fall of state governments in Karnataka (2019), Madhya Pradesh (2020), and Maharashtra (2022) to highlight the shortcomings of the anti-defection law. Politicians have effectively found ways to get around the anti-defection law, as can be seen by looking at the defections and counter-defections of the recent past. One thing is sure, the dynamics of coalition governments, a mainstay of the Indian political landscape, where party affiliations remain fluid, provide unique challenges for the strict enforcement of the anti-defection law.

5.1. Fall of Congress-Janata Dal (Secular) Government in Karnataka (2019)

The fall of the Congress-Janata Dal (Secular) coalition government in Karnataka in 2019 highlighted the challenges of enforcing the anti-defection law in coalition politics. In July 2019, seventeen MLAs from the ruling coalition submitted their resignations to the Speaker. The MLAs desired to quit to avoid disqualification from the House on the grounds of defection. In this way, they wanted to avail benefits of office provided by the then-opposition BJP, should it form the government following the dissolution of the JD(s)-Congress alliance.

⁷⁷ Jain, *Indian Constitutional Law*, 53.

The Speaker of the House was called upon to decide on these resignations and disqualification petitions filed against the defectors under the anti-defection law. According to the ruling coalition, the opposition party - BJP, used political pressure and inducements to induce the resignations, which were not voluntary. On the other hand, the defectors insisted that their resignations were genuine and voluntary. The Speaker made a controversial decision to disqualify the seventeen MLAs from contesting in by-elections to seek re-election and resume their membership in the House for the remainder of its tenure.

In the case of *Srimanth Balasaheb Patil v. Speaker, Karnataka Legislative Assembly*,⁷⁸ the court had to decide whether the Speaker had the power to prevent defecting members from contesting elections during the remaining term of the House and to reject a resignation that had been tendered voluntarily. A three-judge bench of the Supreme Court ruled that the Speaker will be able to disqualify members under Paragraph 2(1) of the Tenth Schedule but will not have the authority to prevent them from contesting election during the current term of the House. Second, the right to resign from the House is unqualified, and the Speaker's power is limited to determining whether the resignation was offered voluntarily and genuinely. The Constitution does not permit the Speaker to consider any extraneous factors while deciding upon the authenticity of the resignation. Further, the Speaker's satisfaction is open to judicial challenge.

Ultimately, the coalition government lost its majority in the Karnataka Legislative Assembly, and the BJP formed a new government in the state with the help of these resignations and defections.⁷⁹

Therefore, the elected legislators can easily circumvent the provisions of the anti-defection law by resigning from their membership of the House and the party, thus bringing down the collective strength of the House and facilitating the opposing party to form the government. After that, they can seek re-election on the tickets of the party which formed the new government and also enjoy other benefits of office.

⁷⁸ *Srimanth Balasaheb Patil v. Speaker, Karnataka Legislative Assembly* (2020) 2 SCC 595 (Supreme Court of India, 2020).

⁷⁹ Special Correspondent, "Karnataka Assembly: Congress-JD(S) Government Loses Trust Vote," *The Hindu*, July 23, 2019.

5.2. Fall of Congress Government in Madhya Pradesh (2020)

The Congress party was in power in Madhya Pradesh in March 2020, and Kamal Nath served as the state's Chief Minister. The stability of the government was jeopardized when twenty-two Congress MLAs, led by Jyotiraditya Scindia, rebelled against the party leadership. If these MLAs' resignations were accepted, it would have resulted in the government's collapse because it lost the majority in the House.⁸⁰

In the ideal scenario, the anti-defection law should prevent such defections and guarantee the stability of elected administrations. However, in this instance, the MLAs made a strategic move to avoid disqualification. As seen before in Karnataka in 2019, they circumvented the anti-defection law. They prevented the Speaker from acting on their petitions for disqualification by resigning from their legislature and the Congress party membership.

Kamal Nath, the state's Chief Minister, resigned due to the political crisis, which opened the door for the BJP to take over as the state's new government. When their resignations were accepted, the dissident MLAs received immediate support from the BJP, the opposition party. After joining the BJP, they contested in by-elections from various constituencies. Most of them won the subsequent by-elections, returning to the Legislative Assembly on BJP tickets and thus making a mockery of the anti-defection law.⁸¹

5.3. Fall of Shiv-Sena led coalition government in Maharashtra (2022)

The fall of the Shiv Sena-led coalition government in Maharashtra in 2022 provides yet another interesting case study. In Maharashtra, a coalition government was formed, with the Shiv Sena, the NCP, and the INC joining hands in 2019, and Shiv Sena's Uddhav Thackeray becoming the Chief Minister. However, internal conflicts emerged within the Shiv Sena, leading to the formation of a new government by a different faction of the party – led by Eknath Shinde,

⁸⁰ Mukesh Rawat, "MP Govt Crisis: Kamal Nath Announces Resignation, Congress Falls and BJP Rejoices," *India Today*, March 20, 2020.

⁸¹ Rakesh Kumar and Vandana Singh, "Anti Defection Law in India: Emerging Issues and Challenges," *ILI Law Review*, Summer Issue (2021): 252.

along with the BJP and some independent MLAs. Eknath Shinde was named the Chief Minister, and his faction claimed to be the “real” Shiv Sena, causing a political imbroglio in the state.⁸²

In this instance, the defection was not of the individual MLAs but involved a faction of the Shiv Sena leaving the existing coalition and aligning with a rival party. While still belonging to the same political party, these MLAs changed their allegiance inside the party. This maneuver did not include resignations from the legislative membership or party affiliation and technically permitted them to get over the Anti-Defection Law’s restrictions. The questionable role of the speaker in enabling the circumvention of the anti-defection law has already been discussed in detail in the previous section.

It is submitted that such actions severely hamper the anti-defection law’s effective implementation. The law primarily focuses on individual defections, but when factions within a party unite with opposition parties, the distinction between defection and intra-party conflict becomes muddled. A similar situation emerged once again in Maharashtra in July 2023. This time a vertical split was effected in the NCP party, led by Ajit Pawar. Both the factions, led by Sharad Pawar and Ajit Pawar, have laid claim to the NCP. As a political reward, Ajit Pawar was immediately made Deputy Chief Minister of Maharashtra upon effecting the vertical split.⁸³

5.4. Other notable cases of Defection

A significant political change happened in Goa in 2019 when ten out of fifteen Congress MLAs opted to join hands with the governing BJP under the leadership of Chandrakant Kavlekar, the leader of the opposition.⁸⁴ The BJP’s representation in the 40-seat house increased to 27 seats as a result of this merger. The move permitted the members of the Congress Legislative Party to escape any legal action under the anti-defection law because two-thirds of the party had joined the BJP, and the number of MLAs who switched sides was

⁸² *Subhash Desai v. Principal Secretary Governor of Maharashtra*, AIR 2023 SC 2406 (Supreme Court of India, 2023).

⁸³ Shailesh Gaikwad and Faisal Malik, “In Another Maha Twist, Ajit Splits NCP, Becomes Dy CM,” *Hindustan Times*, July 2, 2023.

⁸⁴ PTI, “Congress Decimated in Goa: 10 of 15 MLAs Defect to Ruling BJP,” *The Wire*, July 10, 2019.

sufficient to meet the requirements for a successful merger without attracting disqualification under the Tenth Schedule.

In 2019, there was a substantial defection of Congress legislators to the Telangana Rashtra Samithi (TRS). Twelve of the state's eighteen Congress legislators switched to the TRS, joining the party in power. This defection was carried out per paragraph 4 of the Tenth Schedule, which permits a legislative party to merge with another party provided at least two-thirds of its members do so without attracting disqualification on the grounds of defection.⁸⁵

VI. CONCLUDING REMARKS

This article has examined the anti-defection law's origins, design, constitutional validation and operation in practice in India. It has traced how the Tenth Schedule emerged as a response to genuine fears of instability and manufactured majorities, and analysed its treatment by the Supreme Court in *Kihoto Hollohon* and later cases. By referring to the recent instances of political upheavals in states like Karnataka (2019), Goa (2019), Telangana (2019), Madhya Pradesh (2020), and Maharashtra (2022), an attempt has been made to highlight its shortcomings and limitations in preventing defections.

On the research question, the analysis suggests that the anti-defection law has had only limited success in curbing defections, while generating serious tensions with democratic values and constitutional principles. It has reduced some forms of overt, individual floor crossing, but parties and legislators have quickly adapted through strategies such as mass resignations, engineered mergers and intra-party splits. These workarounds have allowed governments to be toppled and reconstituted without attracting disqualification, weakening the link between electoral mandate and government formation. At the same time, the law has imposed significant costs on representative democracy. By reading paragraph 2(1)(a) broadly and treating party loyalty as the central constitutional value, courts and Speakers have permitted the use of disqualification threats to

⁸⁵ PTI, "12 Congress MLAs Join TRS in Telangana, Speaker Recognises Merger," *The Times of India*, June 6, 2019.

suppress dissent, constrain freedom of speech and erode the space for intra-party debate. Concentrating adjudicatory power in politically affiliated Speakers, without strict timelines or robust safeguards, has further undermined confidence in the neutrality of the process and enabled partisan delay or manipulation.

Keeping aside the criticism of the effectiveness of the anti-defection law in India, the time is ripe to take a fresh perspective on the need for anti-defection in a democracy. According to a research covering forty Commonwealth nations, it was observed that only the relatively newer democracies, including India and South Africa, had adopted anti-defection laws. On the contrary, more advanced democracies, like those in the UK, Canada, and Australia, did not need anti-defection laws due to the development of conventions and practices that prevented such cross-party defections. For instance, Speakers in the United Kingdom renounce all party affiliation after being elected due to longstanding conventions.⁸⁶

Party cohesion is often the distinguishing feature in most advanced democracies.⁸⁷ The foundation of party cohesion lies in the unwavering loyalty of elected members toward their party's policies, programs, and ideologies.⁸⁸ Unfortunately, in the Indian political landscape, this essential concept is notably absent, and unprincipled defections have become the norm. It is crucial to recognize that the anti-defection laws should serve as a temporary measure to enforce party discipline and curb defections.⁸⁹ However, there are more sustainable solutions than relying on these laws. The Indian polity should consider the anti-defection laws as a starting point and work towards cultivating stronger party cohesion within the cadre. This requires fostering a culture of commitment, belief, and loyalty to the party's values among its members. Political parties should focus on promoting internal democracy, encouraging open dialogue,

⁸⁶ Matthew Laban, "More Westminster than Westminster? The Office of Speaker across the Commonwealth," *The Journal of Legislative Studies* 20, no. 2 (2014): 143-55.

⁸⁷ Shaun Bowler et al., eds., *Party Discipline and Parliamentary Government*, Parliaments and Legislatures Series (Ohio State University Press, 1999).

⁸⁸ Kenneth Janda, "Laws Against Party Switching, Defecting, or Floor Crossing in National Parliaments" (The Legal Regulation of Political Parties working paper no. 2, Northwestern University, 2009), 7.

⁸⁹ Reddy and Bhargava, "For Laws May Come," 351.

and providing opportunities for members to participate in decision-making processes actively. Moreover, as the Indian polity progresses towards nurturing party cohesion, the reliance on anti-defection laws can gradually be reduced.

BIBLIOGRAPHY

- Balyan, Chirag. "An Integrated Approach to Resolve the Crisis of Defection in India." *SSRN Electronic Journal*, ahead of print, 2020. <https://doi.org/10.2139/ssrn.3895868>.
- Bowler, Shaun, David M. Farrell, Richard S. Katz, and European Consortium for Political Research, eds. *Party Discipline and Parliamentary Government*. Parliaments and Legislatures Series. Columbus: Ohio State University Press, 1999.
- Chhibber, Pradeep K., and Rahul Verma. *Ideology and Identity: The Changing Party Systems of India*. New York: Oxford University Press, 2018.
- Correspondent, Special. "Karnataka Assembly: Congress-JD(S) Government Loses Trust Vote." *The Hindu*, July 23, 2019. <https://www.thehindu.com/news/national/karnataka/karnataka-assembly-congress-jds-government-loses-trust-vote/article28689149.ece>.
- Dey, Abhishek. "India's Anti-Defection Law Didn't Stop Power Politics. It Just Moved from Farmhouse to Resort." *The Print*, July 17, 2022. <https://theprint.in/past-forward/indias-anti-defection-law-didnt-stop-power-politics-it-just-moved-from-farmhouse-to-resort/1041656/>.
- Diwan, Paras. "Aya Ram Gaya Ram: The Politics of Defection." *Journal of the Indian Law Institute* 21, no. 3 (1979): 291-312. <https://www.jstor.org/stable/43950639>.
- Gaikwad, Shailesh, and Faisal Malik. "In Another Maha Twist, Ajit Splits NCP, Becomes Dy CM." *Hindustan Times*, July 2, 2023. <https://www.hindustantimes.com/india-news/ajit-pawar-s-surprise->

alignment-with-bjp-shakes-up-maharashtra-politics-raises-questions-for-opposition-in-2024-101688321439002.html.

- Jain, M. P. *Indian Constitutional Law*. 8th ed. Haryana: LexisNexis India, 2018.
- Kalra, Harsimran. *Decisional Analysis and the Role of the Speaker*. No. 1. Chennai: The Hindu Centre for Politics and Public Policy, 2013. <https://www.thehinducentre.com/publications/policy-report/decisional-analysis-and-the-role-of-the-speaker/article64935998.ece>.
- Kędzia, Zdzisław, and Agata Hauser. *The Impact of Political Party Control over the Exercise of the Parliamentary Mandate*. Geneva: Inter-Parliamentary Union, 2011. <http://archive.ipu.org/conf-e/129/control-study.pdf>.
- Khosla, Madhav, and Milan Vaishnav. "Democracy and Defections." *International Journal of Constitutional Law* 22, no. 2 (2024): 400-430. <https://doi.org/10.1093/icon/moae037>.
- Kuchay, Bilal. "How BJP Wrested Back Control of India's Richest State Maharashtra." *Al Jazeera*, January 7, 2022. <https://www.aljazeera.com/news/2022/7/1/how-bjp-wrested-back-control-of-indias-richest-state-maharashtra>.
- Kumar, Rakesh, and Vandana Singh. "Anti Defection Law in India: Emerging Issues and Challenges." *ILI Law Review*, Summer Issue (2021): 252.
- Laban, Matthew. "More Westminster than Westminster? The Office of Speaker across the Commonwealth." *The Journal of Legislative Studies* 20, no. 2 (2014): 143-55. <https://doi.org/10.1080/13572334.2014.895126>.
- Majumdar, Jishnutosh. "India Must Reform Its Anti-Defection Law to Prevent Further Corrosion of Democracy." *JURIST*, July 19, 2022. <https://www.jurist.org/commentary/2022/07/jishnutosh-majumdar-anti-defection-india/>.
- Malhotra, G. C. *Anti-Defection Law in India and the Commonwealth*. New Delhi: Metropolitan Book Co. for Lok Sabha Secretariat, 2005.

- Mergulhao, Marcus. "Goa's Tryst with Defections Goes Back over Half a Century." *The Times of India*, September 15, 2022. <https://timesofindia.indiatimes.com/city/goa/goas-tryst-with-defections-goes-back-over-half-a-century/articleshow/94211322.cms>.
- Naseemullah, Adnan. "Patronage vs. Ideology in Indian Politics." *Commonwealth & Comparative Politics* 59, no. 2 (2021): 193-214. <https://doi.org/10.1080/14662043.2021.1910397>.
- Nikolenyi, Csaba. "Government Termination and Anti-Defection Laws in Parliamentary Democracies." *West European Politics* 45, no. 3 (2022): 638-62. <https://doi.org/10.1080/01402382.2021.1880719>.
- Nikolenyi, Csaba. "The Adoption of Anti-Defection Laws in Parliamentary Democracies." *Election Law Journal: Rules, Politics, and Policy* 15, no. 1 (2016): 96-108. <https://doi.org/10.1089/elj.2015.0345>.
- Poddar, Umang. "Explainer: How Speakers Are Undermining the Anti-Defection Law by Simply Sitting on Petitions." *Scroll.in*, December 14, 2021. <https://scroll.in/article/1012515/explainer-how-speakers-are-undermining-the-anti-defection-law-by-simply-sitting-on-petitions>.
- PTI. "12 Congress MLAs Join TRS in Telangana, Speaker Recognises Merger." *The Times of India*, June 6, 2019. <https://timesofindia.indiatimes.com/india/12-congress-mlas-join-trs-in-telangana-speaker-recognises-merger/articleshow/69680344.cms>.
- PTI. "Congress Decimated in Goa: 10 of 15 MLAs Defect to Ruling BJP." *The Wire*, July 10, 2019. <https://thewire.in/politics/congress-decimated-go-defections-ruling-bjp>.
- PTI. "Eight Turncoats of 2019 'Coup' Who Helped BJP Form Government in Karnataka, Lose Election." *The Economic Times*, May 13, 2023. <https://economictimes.indiatimes.com/news/elections/assembly-elections/>

karnataka/eight-turncoats-of-2019-coup-who-helped-bjp-form-government-in-karnataka-lose-election/articleshow/100214524.cms?from=mdr.

PTI. "Sharad Yadav Disqualified from RS." *The Hindu*, December 4, 2017. <https://www.thehindu.com/news/national/sharad-yadav-disqualified-from-rs/article21262499.ece>.

PTI. "YSR Congress to Boycott AP House over Defection of MLAs to TDP." *The Indian Express*, November 8, 2017. <https://indianexpress.com/article/india/ysr-congress-to-boycott-ap-house-over-defection-of-mlas-to-tdp-4928511/>.

Rawat, Mukesh. "MP Govt Crisis: Kamal Nath Announces Resignation, Congress Falls and BJP Rejoices." *India Today*, March 20, 2020. <https://www.indiatoday.in/india/story/madhya-pradesh-govt-crisis-floor-test-kamal-nath-congress-bjp-1657768-2020-03-20>.

Reddy, Charith, and 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." *NLIU Law Review X*, no. 1 (2022): 339.

Sharma, Ritwika, and Mayuri Gupta. *Anatomy of India's Anti-Defection Law*. New Delhi: Vidhi Centre for Legal Policy, 2023. https://vidhilegalpolicy.in/wp-content/uploads/2023/11/Anatomy-of-Indias-Anti-Defection-Law_Sharma_Gupta_Vidhi-Centre.pdf.