

# **IMPACT OF ANTI-DEFECTION LAW IN THE DEMOCRATIC INSTITUTIONAL FRAMEWORK OF INDIA**

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## **CERTIFICATE**

This is to certify that Namrata Das has completed his/her dissertation titled **“IMPACT OF ANTI-DEFECTION LAW IN THE DEMOCRATIC INSTITUTIONAL FRAMEWORK OF INDIA”** under my supervision for the award of the degree of MASTER OF LAWS/ ONE YEAR LL.M DEGREE PROGRAMME of National Law University and Judicial Academy, Assam.

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## **DECLARATION**

I, Namrata Das, do hereby declare that the dissertation titled “**IMPACT OF ANTI-DEFECTION LAW IN THE DEMOCRATIC INSTITUTIONAL FRAMEWORK OF INDIA**”, submitted by me for the award of the degree of MASTER OF LAWS/ ONE YEAR LL.M. DEGREE PROGRAMME of National Law University and Judicial Academy, Assam is a bonafide work and has not been submitted, either in part or full anywhere else for any purpose, academic or otherwise.

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The Constitution of Jammu and Kashmir (Eighteenth Amendment) Act, 1987

The Constitution (Ninety-first Amendment) Act, 2003

The Constitution (Amendment) Bill, 2010, Bill No. 16 of 2010

## LIST OF ABBREVIATIONS

AP	Andhra Pradesh
AAP	Aam Aadmi Party
ADMK	Anna Dravida Munnetra Kazhagam
AGP	Asom Gana Parishad
AIADMK	All India Anna Dravida Munnetra Kazhagam
AIR	All India Reporter
Art.	Article
BJP	Bharatiya Janata Party
BSP	Bahujan Samaj Party
C.J	Chief Justice
Cong(I)	Congress (Indira)
Cong. (T)	Congress (Tiwari)
CPI	Communist Party of India
CPI(M)	Communist Party of India (Marxist)
CPI(ML)	Communist Party of India (Marxist-Leninist)
DMK	Dravida Munnetra Kazhagam
Gau.LR	Gauhati Law Reports
Gau.LT	Gauhati Law Times
Govt.	Government
GPCP	Goan People' Congress Party
GPP	Goan People's Party
HC	High Court
HJC	Haryana Janahit Congress
HLD	Haryana Lok Dal
HLD(R)	Haryana Lok Dal (Rashtriya)
HT	The Hindustan Times
i.e	That is
I.L.R	Indian Law Reports
Ibid/Id	Ibidem ( in the same place)

ILI	Indian Law Institute
INC	Indian National Congress
J&K	Jammu and Kashmir
JILI	Journal of Indian Law Institute
J.	Justice
JD	Janata Dal
JD(U)	Janata Dal (United)
LSD	Lok Sabha Debates
MP	Madhya Pradesh/ Member of Parliament
MLA	Member of Legislative Assembly
MGP	Maharashtrawadi Gomantak Party
NCP	Nationalist Congress Party
NDA	National Democratic Alliance
NDP	National Democratic Party
Ori.	Odisha
PPA	People's Party of Arunachal
PSP	Praja Socialist Party
RSP	Revolutionary Socialist Party
S.C.C	Supreme Court Cases
SC	Supreme Court
TMC	Tamil Manila Congress
UP	Uttar Pradesh
UDF	United Democratic Front
UDP	United Democratic Party
V.	Versus

# CHAPTER I

## INTRODUCTION

### 1.1 Introduction

In India, parliamentary democracy appears to be hindered by the politics of defection. For a while now, defections have been increasing in India, especially at the regional level. Defection, which entails a switch of loyalties, is also frequently referred to as floor-crossing. The primary cause of unstable governments is defection. A competent administration could fall apart as a result of the followers leaving for the opposing side or rival political group, leaving the running government with a minority and ultimately leading to its defeat. Defection is appropriately labeled as an undemocratic activity because it disobeys election regulations. The basic intent of holding regular elections, which are seen as a standard for democracy, can be defied by a political group that was unable to create their own party through fair elections by using such tactics to manipulate the House and try to create a government in defiance of the outcome of the election.

The term defection seems to owe its roots to the Latin term ‘defection,’<sup>1</sup> that denotes a demonstration of relinquishment of something or a reason such individual has been confined by the bond of loyalty, or to something which he has to be connected with. When an individual switches allegiance from one side of the state in place of another in politics, and which is deemed to be illegitimate is what a defector does.

Broadly speaking, defection is the switching from a group, person or cause, where someone has close ties with it due to obligations that stem from it. In that sense, defectors are often called back stabbers for betraying their own. Thus, defection is the process by which someone switches their allegiance from one party to another and disregards their obligation. This feat is typically referred to as "floor crossing." It is not incorrect to state our country has gone through a tumultuous government and has since 1866 recognized political parties from where 6 national parties and 54 state

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<sup>1</sup> “Definition of DEFECTOR” (*Defector Definition & Meaning - Merriam-Webster*, May 15, 2023) <<https://www.merriam-webster.com/dictionary/defector>>

parties are recognized and 2,597 are unrecognized parties<sup>2</sup>. And since India's independence and establishing itself as a democratic country, we have time and again witnessed this evil known as defection which has now become a bane in the democracy in our nation.

## **1.2. Statement of Problem**

For nearly two decades after independence, elected members have tried to be committed to the ideals of democratic parliamentary government. Yet somehow along the lines, elected representatives who once were rigidly committed to the party's philosophy started switching sides due to various reasons. Frequent moving from one political party to another became a nationwide problem. Floor crossing ended up being a usual occurrence.<sup>3</sup>

In March 1967 and February 1968, following the country's fourth general election, it was common for numerous legislators in several states to switch parties. Overthrowing old administrations and creating new ones had left an array of political uncertainty. In order to improve Parliamentary conduct and decorum, the issue of floor crossing had to be addressed. The Tenth Schedule was adopted as an amendment as measures against this scourge that was causing alarm all over the nation. The subject of discussion in paragraph 2(1)(a) is members who willingly resign, whereas paragraph 2(1)(b) deals with persons who disobey party directives issued by their parties. Both defections and dissent are acknowledged in the paragraph.

When a political party does not condone such voting or abstains from it for 15 days, honest dissent is permitted; otherwise, the opposition becomes desertion. However, if they are incorrectly administered by the presiding officer of the house, they are disqualified from their parties and then they have no option left but to seek the help of courts. The broad phraseology has led to abuse of power in which members of the House's freedom of speech is not respected in the Parliamentary system and they are asked to vote in accordance with party directives and the party whip. When honest dissent is misinterpreted as defection, there is confusion.

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<sup>2</sup> "Recognized National Parties" <<https://eci.gov.in/files/category/261-recognized-national-parties/>> accessed May 23, 2023.

<sup>3</sup> "L.S.D (January 30, 1985) at p. 70" <[https://eparlib.nic.in/bitstream/123456789/319/1/lzd\\_08\\_1\\_30-01-1985.pdf](https://eparlib.nic.in/bitstream/123456789/319/1/lzd_08_1_30-01-1985.pdf)> accessed May 23, 2023

Because of this, research is required to determine the legislative intent behind enacting the Anti-Defection Law and the basis for its application in a representative democracy and its issues that emerge with various cases in the country.

### **1.3. Review of relevant literature**

#### **Seervai H.M. “Constitutional Law of India”(1983)<sup>4</sup>**

The Constitution of India is the subject of much research. Extensive analysis and clarification of provisions dealing with the resignation or expulsion of legislators on account of defection.

#### **Kashyap Subhash C, “The Anti-Defection Law and Parliamentary Privileges (1993)”. Bom: Tripathi Private Limited.<sup>5</sup>**

The work of a prolific author Subhash C. Kashyap. The book by is an outstanding dissertation that examines and interprets the provisions of the tenth schedule in order to assess the efficacy of the schedule, anti-defection legislation, in addition to the basic shortcomings of the current law. According to the author, abandonment occurs when a person "renounces dependability, duty, law, or a person's leadership or purpose." All of the significant decisions handed down by the Supreme Court and other High Courts, as well as the changes brought about by the Ninety-First Amendment of 2003, have been incorporated into the text and given a comprehensive analysis at the appropriate locations.

#### **Malhotra G.C, “Anti Defection Law in India and Commonwealth”(2005).<sup>6</sup>**

It compares and contrasts comprehensively the anti-defection laws of various nations. The law concerning informants and traitors. Certain parliaments use conventions to deal with political defectors, while others use constitutional or legal provisions and norms of procedure. Numerous parliaments continue to struggle with defections by politicians, which can jeopardize government stability and even bring about their downfall. The research as a whole sheds light on how various nations have approached the issue of political defectors.

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<sup>4</sup> HM Seervai, *Constitutional Law of India* (1983).

<sup>5</sup> Kashyap SC and Shaunak Kashyap, *Anti-Defection Law and Parliamentary Privileges* (Universal Law Pub Co 2011)

<sup>6</sup> Malhotra GC, *Anti-Defection Law in India and the Commonwealth* (2005)

**Jain M.P. “Indian Constitutional Law”(2010)<sup>7</sup>**

It is a dependable and exhaustive examination of India's establishing document. In order to facilitate the reader's understanding of the topic at hand, the book provides an overview of the legislation and includes pertinent case facts.

**Karthick Khanna and Dhvani Shah, “Anti-Defection law: A Death Toll For Parliamentary Dissent”(2016)<sup>8</sup>**

The article argues that a modification to section 2(1)(b) of the Constitution is required because disqualification for disobeying a party whip should be applied with extreme caution. The article contends that the vague language of the provisions permits party elites to abuse their power by silencing dissidents, preventing those who are sympathetic to the people who elected them from performing their duties, and otherwise stifling dissent. It is therefore not democratic.

**Nitika Bagaria and Vedika Shah, “Decoding Intra-Party Dissent: The Lawful Undoing of Constitutional Machinery” (2021)<sup>9</sup>**

This article elaborates on how the tenth schedule's provisions stifle debate inside parties, strip representatives of the ability to act in accordance with their personal convictions, and reduce them to little more than a rubber stamp for political parties. The authors of this piece have also provided suggestions for improving the law by learning from the experiences of other countries

**1.4. Objectives of the research**

The following are the research objectives:

1. To assess the situation of political defections in India since Independence.
2. To examine the constitutional provisions of the Anti-defection law and its efficacy in the present political scenario in India.

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<sup>7</sup> Mahabir Prashad Jain, Jasti Chelameswar and Dama Seshadri Naidu, *Indian Constitutional Law* (Lexisnexis, (Third Reprint 2019).

<sup>8</sup> Shah KK & D, ‘Anti-Defection Law: A Death Knell for Parliamentary Dissent? – NUJS Law Review’ <<http://nujlawreview.org/2016/12/03/anti-defection-law-a-death-knell-for-parliamentary-dissent/>> accessed 21 June 2023

<sup>9</sup> Nitika Bagaria and Vedika Shah, ‘Decoding Intra-Party Dissent: The Lawful Undoing of Constitutional Machinery’(2021) 7(2) NLUJ L Rev 115

3. To analyze the impact of the Anti- Defection Law in democratic Institutions in India.
4. To analyze the judicial stand concerning Anti-defection law in India.
5. To understand the challenges and provide a road map for better functioning of the Anti-Defection Laws in India.

### **1.5. Scope of the Research**

When the Anti-Defection Law was passed, it attempted to reduce defections. But because of the corrupt nature of few politicians and their dishonest ways in securing power, the legislation was unable to do what it set out to do and did not achieve its intended aim. In order to advance their own personal agendas, politicians exploited loopholes in the legislation. In the course of this investigation, a number of challenges associated with the current Anti-Defection law's execution have been discussed. The following are some of the most important concerns:

1. Party membership being voluntarily given up
2. Vote against the 'whip' or 'any directive' of a party in the House;
3. The Speaker or Chairman's role in making decisions;
4. Merger allowing group defection;
5. Defection and dissent.

The primary objective of implementing the Anti-Defection law is to prevent instances of electoral betrayal. When a constituency electorate selects a Member of Parliament (MP) to represent them in the Parliament, their decision is influenced by the ideological alignment of the political party to which the MP belongs. Over the course of time, the detrimental impact of unscrupulous and illegal political defections gradually undermined the robustness and adaptability of India's parliamentary democracy, leading to periodic shifts in allegiance among groups of lawmakers and subsequent changes in administration. Unjust defecting, which refers to the act of defecting for personal gain such as obtaining political office, benefiting from office-related privileges, or acquiring financial rewards, has increasingly become a



prevailing practice. The Tenth Schedule has been established by the legislative body in order to address and mitigate this particular concern.

Even when the Anti-Defection Act is implemented in India, governing regimes have fallen in numerous parts of India because of defecting, notably in 1989 political party defections in Goa and Arunachal Pradesh in 1999 and 2003. These are simply illustrative and not exhaustive examples. Most members of Parliament or state legislatures in modern democracies are elected with major backing and support is sought from political parties and is contingent upon alignment with their respective party manifestos. Common people who vote for contesting candidates base their votes on more than just their personal traits. As a result, according to prevailing beliefs, an elected official who wins is obligated to uphold the commitments given by his or her party throughout the electoral process. It is incumbent upon him to exhibit loyalty towards his political party and adhere to the regulations set forth by the party. In the event that he elects to depart from the gathering, he is likewise required to relinquish his affiliation.

However, there has been criticism of the legislation due to its perceived infringement upon the fundamental rights, privileges, and exemptions of members in exercising their freedom of speech and expression, as well as their freedom of action, encompassing the right to vote. There exists a perspective that posits anti-defection legislation as a deterrent against political party switching, thereby diminishing the efficacy of the legislative body.<sup>10</sup>

Political parties are viewed as agents of defection and destabilization of elected governments. The study, therefore, focuses with a deeper analysis of dissent inside a political party, which is important to untangle the basic elements that provide breeding grounds for defection, in addition to focusing on the immediate, perceptible worry of defection. The research also offers revisions to the anti-defection legislation that would render it more efficient and stringent without undermining the country's democratic fabric.

However, because the research study is based on a subject that affects the nation as a whole and consists of a vast number of areas of population, it is difficult to analyze

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<sup>10</sup> Arvind P Datar, “Commentary on the Constitution of India”, Vol.2, 2nd Edn (2010) 2253.

each and every case critically. The Anti-defection law has been applied in various political cases that greatly differ from one another because of various reasons. Because of time constraints the research study has been done by selecting only a few cases but not all. There was a limited time period for the research of such a large geographical scope of study. There might be limitations in this research study due to restraints in data collecting and needs further researching in this matter in the future.

### **1.6. Research Questions**

1. What are the ambiguities within the law that hinders in the functioning of the Anti-Defection Law in India?
2. To what extent does the Anti-Defection Law impose limitations on the internal democratic processes of political parties, specifically with regards to the freedom of expression and the right to dissent?
3. What impact does the legislation have on the structure and functioning of government and the legislative process?

### **1.7. Research Methodology**

The present study employs a strictly doctrinal research methodology. This study analyses the legislative framework pertaining to the Anti-Defection Law and its repercussions within the parliamentary chambers of the Rajya Sabha and the Lok Sabha, as well as the State Legislative Assemblies in India. A comprehensive analysis is conducted on the constitutional provisions outlined in this Law. The present study employs an analytical research method to examine and analyze several significant rulings delivered by the Supreme Court of India and the High Courts.

In this research critical analysis has been done through the interpretation of relevant primary and secondary sources of law which includes the provisions according to the Anti-Defection Law, i.e. the Tenth Schedule of the Indian Constitution and synthesizing those sources to suggest ways in which the law should further develop to find A proposed roadmap aimed at enhancing the efficacy of the Anti-defection law in India. The researcher has gathered information and data from various secondary sources, including books, websites, articles, journals, legal judgments, and online sources.

## **1.8. Chapterization**

### **CHAPTER I: INTRODUCTION**

The first chapter gives an introduction to the whole study. It gives a succinct introduction to the topic, research problem, the scope of study of the topic, research questions, objectives of the study, and research methodology adopted for the study.

### **CHAPTER II: HISTORICAL BACKGROUND OF THE ANTI-DEFECTION LAW**

The second chapter gives the historical background of the legislation. It touches briefly on topics about how the legislation came to be as it is today. It touches on the evolution of the law since independence till the current day and mentions about the political scenario at the time when defections from one party to the other was rampant and causing disruption to the running of the administration.

### **CHAPTER III: CONSTITUTIONAL PROVISIONS CONCERNING THE ANTI-DEFECTION LAW**

The third chapter talks about the provisions that have been enshrined in the Tenth Schedule of The Constitution of India. Additionally, it briefly touches on the lacuna of the legislation and its impact on both the Houses of Parliament and the State Legislatures of the country.

### **CHAPTER IV: ANTI-DEFECTION LAW AND INTRA-PARTY DISSENT**

The fourth chapter talks about the interpretations of the provisions of the Law and how various kinds of challenges have arisen because of the undefined provisions. It comprehensively talks about how the legislation hampers with a member's freedom of speech and expression and how showing of dissent does not necessarily mean members revolting against their parties.

## **CHAPTER V: JUDICIAL PRONOUNCEMENTS ON ANTI-DEFECTION LAW**

The fifth chapter critically analyses selective cases regarding the legislation. This chapter brings to light the various judicial rulings that have been delivered by the judiciary concerning the Anti-Defection Law.

## **CHAPTER VI: CONCLUSION AND FINDINGS**

The sixth chapter gives this research study's conclusion and its findings. This chapter gives out some suggestion which might help with the betterment of the Anti-Defection Law in India.

## CHAPTER II

### HISTORICAL BACKGROUND OF POLITICAL DEFECTIONS IN INDIA

India is a Sovereign Secular Socialist Democratic Republic. The conduct of regular elections for electing representatives for different kinds of government is one of the most fundamental aspects of our democratic system. Elections must be impartial and free of bias. Voter participation in politics has grown throughout the years. There have always been numerous dangers and constraints on India's democratic institutions. The opposition groups seek power, and the ruling party seeks to maintain power, regardless of philosophy or belief. Political defections are common in all parliamentary systems. However, they have been unscrupulous and rampant in modern Indian politics, and they are regarded as a big concern.

Parties have evolved into an important organizational component in modern democracy. Political organizations can be well-known, properly structured, and built on some philosophy or principle, or they can spring up rapidly around an individual or a team of politicians with no vision, driven solely by the desire to capture and share power in politics. The political parties in power strive to remain in power and the political party or parties in opposition strive to attain power. There is nothing wrong in it. This is the usual mode of functioning of the party's democracy. But what is becoming more unusual, and, therefore distressing, in India, is the haste with which the political parties and political groups in opposition want to capture power, with no ideology or principle involved, with no constraint, no qualm of conscience, only the *mens rea* of capturing political power remaining in focus: how the power is captured is immaterial.<sup>11</sup>

A democracy of representatives, which has been recognized as a suitable system of government for a highly populous and diverse nation such as India, is primarily encouraged for ensuring adequate representation based on the principle of popular sovereignty and to safeguard a fair and unwavering tone of the population in the

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<sup>11</sup> Paras Diwan, "Paras Aya Ram Gaya Ram. The Politics of Defection," (1979) Vol. XXI. No. III, Journal of Indian Law Institute, 292.

governing body. The essence of any democratic system is the existence of various political parties, each with its own set of ideals. The rule of just one political party may result in tyranny which is the polar opposite of democracy.

Nevertheless, the rapidity with which those in opposition want to seize power is a severe issue that our political system continues to be dealing with for quite some time. The problem of political defection, by parties, before their tenure of their ruling party is over, they are influenced by corrupt practices such as monetary bribes made by opposition parties are commonly known as ‘Horse Trading’, and pose a very serious and threatening problem to our democracy.

Political defections have been around for centuries and are widespread in Indian politics alongside those in other democratic nations worldwide. Politicians’ allegiances are constantly shifting in pursuit of power, which has become a component of the structure of politics. Most democratic republics with parliaments are bound to have defections one way or the other.

There are differing perspectives on the influence and implications of defections on Indian elections. Many early researchers judged it to be the demise of India’s advancement in democracy. Many others afterwards expressed the opinion that this behavior has emerged as an emerging norm in politics, breaking down the barriers that traditionally divide politicians. They establish this because defection is not the sole evil in politics. There must be the efforts that were made by the voters to eliminate the circumstances that contribute to defection, as well as a shift in focus to other elements that damage the political system.

## **2.1. Definition of Anti-Defection**

These happenings, often known as ‘politics of defection’, are known by several names, such as in England, it is called Floor crossing. The origin of the aforementioned phrase can be traced back to the seating configuration within the Chamber, where members of the Government party are positioned collectively on the right side, while members of the Opposition are situated collectively on the left side.

<sup>12</sup>A shift in party allegiance can entail physically moving across the floor of the

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<sup>12</sup>Crossing the Floor” (*UK Parliament*) <<https://www.parliament.uk/>>.

legislative chamber, transitioning from one side to the opposite. Similarly, in Nigeria, it is known as carpet crossing because the phenomenon and the concept are frequently linked to the act of departing from one organization with the intention of attaining a more advantageous position or increased personal financial gain in another. This phenomenon exhibits a close correlation with, and is likely an offshoot of, the practice of floor-crossing.<sup>13</sup>

These terms and other phrases have been employed to give definition to this phenomenon. In actuality, the meanings of these phrases are not the same. However, Subhash Kashyap claims that they are still utilized arbitrarily. There is no agreement on the term to use or the precise meaning of this phenomenon's existence.

According to a study conducted by the Ministry of Home Affairs, the term 'defection' is defined as the act of a legislator shifting their loyalty from one political party to another political party or an identifiable political group. In response to a significant number of defections that had a detrimental impact on the Congress Party in 1967, the Fourth Lok Sabha (House of the People) established a Committee on Defections. This committee, led by the then-Home Minister Y. B. Chavan, formulated a definition of defection as follows: "A duly elected member of a legislative body, who has been assigned a reserved symbol of any political party, shall be deemed to have defected if, subsequent to their election as a member of either the Parliament, Legislative Assembly, Legislative Council of a State, or a Union Territory, they voluntarily renounce their allegiance to or association with said political party, provided that such action is not a result of a decision made by the aforementioned political party."<sup>14</sup>

The definition of 'defection' in a dictionary is 'abandoning allegiance to a leader.' Party, desertion, apostasy, religion or duty. Thus, when an employee of a political party abandons or fails to owe allegiance to his political party, he 'defects' from his party. So, in general, a defector is a political apostate.<sup>15</sup>

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<sup>13</sup> Oxford University Press, "Cross Carpeting" (2019) <<https://www.oxfordreference.com/view/10.1093/acref/9780191828836.001.0001/acref-9780191828836-e-92>>.

<sup>14</sup> PM Kamath, "Politics of Defection in India in the 1980s" (1985) 25 Asian Survey 1039 <<http://dx.doi.org/10.2307/2644180>>.

<sup>15</sup> SS Visweswaraiyah, "DEPLORABLE DEFECTIONS : IN SEARCH OF A PANACEA" (1997) 39 Journal of Indian Law Institute, <<http://www.jstor.org/stable/43951678>>.

Defection in whatever form is not bad. They are rarely based on views of ideology or morality. However, most members desert owing to the allure of office or the pursuit of chances, which must be regarded a crime. Unprincipled defectors harm the functioning of democracy.

## **2.2. Historical background of defection: since independence**

Defections in politics were a feature of Indian polity long before the 1967 national elections. The roots of official defecting in India are able to be tracked back to Rama's reign in prehistoric India. Indeed, the similar occurrence of desertion may be traced back to the Ramayana, when Ravana's sibling, Vibhishana, left him and supported Rama.<sup>16</sup>

During the Montford Reforms in the twentieth century, Pt. M. L. Nehru, the appointed head of the Legislative Assembly, had rebuked and expelled a member, Shyam Lal Nehru because he crossed floors and was in the league of supporting the British party instead of his own Congress.<sup>17</sup>

The Congress Socialist (CSP) Party had split from the grand old Congress and additionally, advised the remaining members to vacate their posts in the assembly and run for re-election again, in 1948. This instance, however, did not set a precedent. Later, in 1950, 23 MLAs left the Congress Party initiating the establishment of an entirely new political faction known as the Jana Congress in the state of Uttar Pradesh.

The Praja Socialist (PSP) Party also has an interesting study on defections. In 1953, Prakasam, a PSP pioneer, had in a similar case defected from his own political party and joined the Congress party to create a new type of administration in Andhra Pradesh. In 1962, the Governor of Madras (Chennai) Mr. Prakash invited Chakravarti Rajagopalachari to become the Chief Minister despite a minority vote, and 16

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<sup>16</sup>GC Malhotra, "ANTI-DEFECTION LAW IN INDIA AND THE COMMONWEALTH" <[https://eparlib.nic.in/bitstream/123456789/58674/1/Anti\\_Defection\\_Law.pdf](https://eparlib.nic.in/bitstream/123456789/58674/1/Anti_Defection_Law.pdf)> accessed June 6, 2023

<sup>17</sup> ibid.



opposition members switched sides and joined the Congress and gave him a majority.<sup>18</sup>

Thanu Pillai, the Chief Minister of Travancore-Cochin, is another example of defecting from the same party. A handful of defections were happening in each of the states, but they did not amount to a significant trend. For example, between 1957 to 1967, 97 members left the Congress party and 419 joined it. During 1967-68 (a one-year period), 175 people left and 139 joined. Political parties and politicians use defection politics to capture and retain power in this scenario. This unethical and rash conduct of the representative erodes the democratic fiber and governing structure of a state built on the system of democratization of representatives.

### **2.3. Elections after 1967**

Between 25 October 1951 and 21 February 1952, the first general elections after the independence of India were held. The state legislature elections also were taking place simultaneously. For the years 1951, 1957 and 1962, Congress had won the elections consecutively for three years with Pt. Jawaharlal Nehru as its leader. During the Fourth Lok Sabha elections in 1967, the leadership had been transferred to Indira Gandhi and The Congress party won 283 seats out of 520 securing a winning margin, but lost a clear major part in 8 of the 16 states that went to the elections. Congress had been the majority party until 1967, therefore there was no need for it to gain more legislators in order to achieve stability. But because of the following election, the Congress's weakness caused its own members to shift loyalties.

Even in regions where Congress should have been in control, the unity among the party had declined severely. Nonetheless, in the 8 states where Congress did not win an overall majority, no single party could fill the vacancy. Following the fourth general election, the Congress party's electoral dominance had been shattered. The opposing parties saw this as their chance to seize power. The political parties that competed against each other in the polls set aside their differences of opinion and became united to split authority on the framework of what was referred to as a consensus minimal agenda.

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<sup>18</sup> Paras Diwan, "Paras Aya Ram Gaya Ram. The Politics of Defection," (1979) Vol. XXI. No. III, Journal of Indian Law Institute, 292

At first, those in opposition sought to thwart the Congress party out from power and agreed to work together to destabilize the states where Congress parties were in control. Defection was used to accomplish this, and as a result, non-Congress mixed administrations was formed in 9 of the country's 17 states. These governments, however, could not continue long and were quickly deposed. Following with these developments, the establishment of coalition government parties with significantly different constituents in several states was a notable advancement following the fourth election period. There was increased extent of defection from March 1967 to March 1970.<sup>19</sup>

Following the elections, the ruling Congress party created cabinets in Uttar Pradesh, Haryana, and Madhya Pradesh, but these coalitions disintegrated due to unrest within the Congress, and rival parties formed a coalition government, however, did not endure long and were quickly replaced. Congress did not get majority in 8 out of 16 states, these states were Bihar, Rajasthan, UP, Kerala, Punjab, Tamil Nadu, Orissa, and West Bengal. In six of these states, opposition parties formed joint governments on the baseline of minimal consensus agenda.

Defections were increasingly frequent and visible during 1967 elections. Additionally, there were around 400 defections up until the fourth election in 1967, and in just a year following that election's outcome, a total of approximately 500 or so defections, 118 of whom proceeded on to become ministers or ministers of state. The 1967 election witnessed the expansion of political parties, revealing that there was no clear doctrinal route to which most of the parties agreed to. The several existing parties lacked political restraint and structure. It is simple for members of these groups who have no principles of ideology to leave the party and join another.

Another notable development that occurred during the fourth general election was the huge transfer of legislators in many states from one political party to another by obtaining financial profits or additional private gains, or by aiding in the breaking down of liberal regimes and casting others to take over their place. The problem turned out to be a very serious matter in terms of protecting the practices of a democracy, as well as establishing certain basic rules for political behavior by

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<sup>19</sup> *ibid*; p.299

politicians.<sup>20</sup> The non-Congress mixed government parties that were formed in 9 out of 17 states of the country following the general elections are as follows:

### **2.3.1. Haryana**

In 1967, Bhagwat Dayal Sharma established his government after the Congress won 48 out of 81 seats in the 1967 parliamentary election. However, the Congress Party's candidate for Speaker of the legislative assembly was lost by three votes a week later. Discontented the Congress MLAs split from the party and created the New Haryana Dal. The Congress party created a United Front administration with the Naveen Haryana Dal, however during this period Rao Virendra Singh was appointed in place of Naveen Haryana Dal leader Bhagwat Dayal Sharma. Many members of the Naveen Haryana Dal were appointed to the cabinet office. That legislature could not last long. 31 MLAs of Congress defected during the Legislative Assembly's 8-month tenure. One MLA switched parties five times. MLA Gayalal switched parties three times in 15 days, giving rise to the term 'Gaya Ram-Aaya Ram' in politics.<sup>21</sup>

### **2.3.2. Uttar Pradesh**

In the 4th general elections, Congress failed to secure a complete victory in UP. The cabinet was created with Charan Singh as the MLA of the Congress party. He insisted on the then Chief Minister Chandra Bhanu Gupta to appoint few of his allies into the office of the cabinet, but the Chief Minister refused. At the end Charan Singh launched the creation of a fresh party coalition and along with him 16 MLAs defected from Congress. Charan Singh created the 'Bharatiya Kranti Dal' (BKD) a shortly after. And then, he joined the party in the United Legislature Party (SVD). Even that also could not last long due to internal strife.<sup>22</sup>

### **2.3.3. Bihar**

Bihar could not win a clear majority in the fourth general election. During 1967 to 1969, six cabinets were put together but collapsed in the hands of the government.

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<sup>20</sup> *ibid.*

<sup>21</sup> *ibid.*; para 14, p. 302.

<sup>22</sup> Paul R Brass, "An Indian Political Life: Charan Singh and Congress Politics, 1967 to 1987" *Studies in Indian Politics* 148.

Meanwhile, over 200 cases of defection transpired which caused the imposition of President's rule.

#### **2.3.4. Punjab**

7 non-Congress groups and unaffiliated parties established a coalition government in Punjab following the 1967 election. The Congress and opposition parties attempted to dismantle it. On November 1, 1967, with the assistance of Congress, 16 MLAs deserted the front under the direction of Laxman Singh Gill, resulting in the collapse of the government. Mr. Gill formed the administration, but it only ran about 9 months before President's rule was installed in 1968.<sup>23</sup>

#### **2.3.5. Rajasthan**

The Congress won 88 seats in the Rajasthan Legislative Assembly in the 1967 general election. Sukhadia was made the Chief Minister. Congress urged defectors to become part of its party. Sukhadia served his term despite facing allegations of defecting.

#### **2.3.6. Madhya Pradesh**

The Indian Congress won a clear victory in the 1967 election, and D. P. Mishra formed the government on March 8, 1967. On 19 July, Govind Narayan Singh along with 35 of his MLAs defected, which led to the fall of Mishra's government. Govind Narayan Singh created the Lok Sewak Dal administration along with the opposing party in 1968, and it remained till March 1969. Following that, Govind Narayan Singh and his defectors rejoined the Indian National Congress party.

#### **2.3.7. West Bengal**

The 4<sup>th</sup> general election, led Bangla Congress's figurehead Ajoy Mukherjee in West Bengal, to co-govern a United Front government that did not survive long. P. C. Ghosh, one of its members, defected from it, together with 17 additional members, resulting in the collapse of the coalition administration. Afterwards, P. C. Ghosh created a minority party with the INC as well as with the remaining defectors, but that too collapsed and Bengal had been imposed the President's rule.

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<sup>23</sup> Paras Diwan, "Paras Aya Ram Gaya Ram. The Politics of Defection, " (1979) Vol. XXI. No. III, Journal of Indian Law Institute, para 15, 303.

Karnataka Chief Minister Virendra Patil had to resign from his 34-month-old government because of defection. 314 members (about 99% of the total strength) of the state legislatures switched parties in a span of nine months from March 1967 to December 1967, out of the total 3,447 members (with the exception of Himachal Pradesh and Tripura). People with no party affiliation who switched parties for office in politics or profit are also included. There were also a few people who had defected multiple times. People who defected from the Indian National Congress during this era were a number of 98, while the number of members who joined the Congress was 419. In 1967-68, the Congress lost elections. Throughout this time, the members who were quitting Congress were 175 while the number of new party members joining was 139. This plainly shows that the defection was partial until 1967, when it turned two-sided.<sup>24</sup>

## **2.4. Significant committees and legislative approaches**

### **2.4.1. Y. B. Chavan committee**

The anti-defection bill has had a lengthy and bumpy legislative path. It encompasses the Parliamentary institution that created it, the Legislative Assembly's Speaker, who implements it, and most importantly, the judiciary who interprets the legislation. The primary stakeholders touched by the anti-defection statute are MPs, MLAs, and their political parties. It is a statute whose unforeseen implications surpass its intended aim and its path since its approval in 1985 reflects the country's ongoing political turmoil.

The idea of an anti-defecting statute was incepted, following the 1967 general elections. The outcome of the campaigns was an odd one for Congress. It constituted of the majority party at the central part, but its Lok Sabha strength dropped from 361 to 283. In the year, it dropped power over 7 state legislatures as MLAs switched parties.<sup>25</sup>

P.Venkatasubbaiah, in 1967 on August 11, an eminent Congress politician from the Lok Sabha, proposed in parliament, the creation of a defections panel. He recommended the formation of a committee at the highest level to give proposals on

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<sup>24</sup> *ibid.*

<sup>25</sup> "Articles by PRS Team" (*Articles by PRS Team*) <<https://prsindia.org/articles-by-prs-team/explained-the-limits-of-anti-defection>>.

how to address The issue at hand that pertains to the phenomenon of legislators changing their political affiliation from one party to another. The proposal incited a vigorous debate within the Legislative Assembly. The members affiliated with the opposing political party suggested labelling the concept as “save Congress”, whereas the party currently in power levied accusations against them, alleging that they were instigating Members of Legislative Assembly to leave the party.

The Legislative Assembly deliberated on the topic in comprehensively, and lastly, on February 18, 1969, the Committee’s report was presented on the floor of Lok Sabha for debate. The panel proposed that a committee comprised of representatives from the different political groups in legislative bodies and state assemblies be formed, to develop a set of tenets for party leaders to adhere to with particular regard to the matter of defection as well as hold out their execution through a consensus within the parties. It further urged that no one other than a legitimately nominated member of the Lok Sabha be appointed as minister or a chief minister. The panel also proposed a constitutional amendment that would have no effect on the incumbent office holders. The Committee additionally suggested that a member who has defected from a political group should be prohibited from holding any positions within the office of the minister, speaker, deputy speaker, or any other position that entails financial benefits and remuneration to be deducted from the union's or the states’ or other government funds for at least a year, or till the time he resigns from his position and seeks re-election.<sup>26</sup>

Defection was defined by the panel, with an exemption for real defectors. The Committee defined defection as the voluntarily abandonment of loyalty to the political faction under its emblem when the representative had been elected, unless such action was the outcome of a party decision. The Committee stated in its findings, “the lure of office played a dominant role in legislators’ decisions to defect.” and stated that 116 of the 210 defected members in seven states were appointed to cabinet positions in administrations that they helped build through their defections.

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<sup>26</sup>Subhash C Kashyap, “The Politics of Defection: The Changing Contours of the Political Power Structure in State Politics in India” (1970) 10 Asian Survey 195 <<http://dx.doi.org/10.2307/2642574>>.

To prevent this, the Committee proposed prohibiting the defected legislators from withholding positions in the minister's office for a year – or till the time of their next election, when they could run for the seats again. It also advocated for a comparatively smaller Council of Ministers who would meet at both the national and state levels of the Assembly. The group supported political parties who were collaborating to develop a set of rules of conduct for successfully dealing with disturbances.

#### **2.4.2. The Constitution (Thirty-second Amendment) Bill, 1973**

Because the proposals of the Y.B. Chavan Committee were insufficient to address the issue of defections, the Constitution (Thirty-second Amendment) was implemented. On May 16, 1973, the Fifth Lok Sabha passed the Defections Bill, which established disqualification based on defections.<sup>27</sup>

The proposed legislation entails the disqualification of a member from their position in either House of Parliament under two circumstances: voluntary resignation from the political party that endorsed them as a candidate in elections, or voting or abstaining from voting in the House contrary to the directives issued by their affiliated political party.

The Bill also stated that such someone would not be barred if he willingly resigned from such an organization due to a split within. A split's numeric strength was, not indicated. Members of unregistered political groups, the independents, and nominated representatives were not covered by the Bill. The Bill delegated authority to the President of India for the event of legislators in Parliament and the Governors in the event of disqualifying members from the State Legislatures.<sup>28</sup>

On December 13, 1973, the Lok Sabha passed a motion referring the Constitution (32<sup>nd</sup> Amendment) Bill, 1973 to a Joint Committee comprising of both the Houses. The Rajya Sabha passed a consent motion in this regard on December 17, 1973. The

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<sup>27</sup> “Articles by PRS Team” (*Articles by PRS Team*) <<https://prsindia.org/articles-by-prs-team/explained-the-limits-of-anti-defection>>.

<sup>28</sup> GC Malhotra, “ANTI-DEFECTION LAW IN INDIA AND THE COMMONWEALTH” <[https://eparlib.nic.in/bitstream/123456789/58674/1/Anti\\_Defection\\_Law.pdf](https://eparlib.nic.in/bitstream/123456789/58674/1/Anti_Defection_Law.pdf)> accessed June 6, 2023

Joint Committee was however, dissolved on January 18, 1977, with the Fifth Lok Sabha being dissolved.

#### **2.4.3. The Constitution (Forty- eighth Amendment) Bill, 1978**

A second attempt was put forward in 1978, when the Const. (Forty-eighth Amendment) Bill, 1978, was presented in the Lok Sabha. A few members of both the government and opposition parties expressed concerns of the Bill during its drafting stage. The members raised major concerns about the alleged manipulation of facts in the Bill's Statement of Objects and Reasons, claiming that the members were not included in the consultation about the Bill's provisions, despite the fact that the Statement of Objects and Reasons stating that 'the problem cuts across all parties.'<sup>29</sup>

The following were some of the Bill's most notable features:

1. Independent and selected members could only join political parties once after being elected.
2. A political party member could get barred for having willingly surrendered the party's membership or could be dismissed from the organization for voting against party policy without prior approval, and would face expulsion within 30 days of such voting.
3. If one-fourth of the legislature party's members, or fewer than 20 but not less than 5 members, formed a fresh political group that had been approved by the Presiding Officer or enrolled with the Election Commission, then those members of the newly formed political party would not be considered disqualified.
4. The Bill exclusively covered the members of political groups that were registered with the Election Commission of India or were approved by The Speaker of the House.

The Minister took back the motion to present the Bill i.e., to ask leave of the House, in light of the strong opposition.

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<sup>29</sup> ibid



#### **2.4.4. The Constitution (Fifty- second Amendment) Bill, 1985**

The 8th general elections took place in December, during which President Zail Singh delivered addresses to both the Houses, then, on 17 Jan 1985, stated the plan to adopt a legislation that will make defections illegal. Thus, in order to fulfill the promise, the Govt. presented the Const. (52<sup>nd</sup> Amendment) Bill in the Lower House, on Jan 1985. The Bill's attached Statement of Objects and Reasons provided an explanation for its purpose and intent:

“The evil of political defections has been a matter of national concern. If it is not combated, it is likely to undermine the very foundations of our democracy and the principles which sustain it. With this object, an assurance was given in the Address by the President to Parliament that the Government intended to introduce in the current session of Parliament an anti-defection Bill. The Bill is meant for out-lawing defection and fulfilling the above assurance.”<sup>30</sup>

Prime Minister had extensive discussions with the heads of Opposition parties/groups with the goal to achieve general agreement on the Bill. The government agreed to remove a contentious clause from the bill, dealing to a member's disqualification if he had to face expulsion because of his misconduct and behavior outside the Assembly, from his political party. The Bill was approved by the Parliament on January 1985. On February 15, 1985, the President signed it into law. The Act, which went into effect on March 1, 1985, after the appropriate announcement on The Official Gazette, included this 10<sup>th</sup> Schedule to the Indian Constitution.

According to Clause 2 of Article 102 of the Constitution, an individual is rendered ineligible to hold office in either of the Houses of Parliament if they are disqualified in accordance with the provisions outlined in the 10th Schedule. Prior to the 52<sup>nd</sup> Amendment Act of 1985, Article 102 offered that the person's disqualification from being an elected member of legislature on the basis of having a profit-making office or of being mentally unstable i.e., unsound mind or being someone who has yet to pay his debts, i.e.; an undischarged insolvent, or by not having been an Indian citizen, or being barred because of or pursuant to any other legislative law. The Representation of Peoples Act of 1951 bars an individual from serving his term as a member in his

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<sup>30</sup> *ibid.*

political group in a legislature if they have been in conviction of electoral offenses such as corruption, bribery, etc.

According to Article 191(2), which aligns with Article 102(2), an individual is prohibited from completing their tenure as an elected official of the State's legislative body or its legislative council if they are disqualified under the provisions of the 10th Schedule. Consequently, there exists a parallel provision in Articles 102(2) and 191(2) pertaining to the disqualification of an elected official of the state legislative body under the 10th Schedule. This provision specifically pertains to the act of defecting from one political party to another. The 10<sup>th</sup> Schedule is unable to read or interpreted in isolation.

“The Disqualification on the Ground of Defection Rules, 1985”, were formulated by the Assembly Speaker, in compliance with Paragraph 8 of the 10th Schedule, in order to implement the provisions outlined in the 10th Schedule, which became operative on 18 March 1986.

#### **2.4.5. The Constitution (Ninety- first Amendment) Bill, 2003**

Several requests for amending the Anti-Defection Law were required due to the belief that the clauses of the 10<sup>th</sup> Schedule of the Indian Const. have effectively managed to accomplish the intended objective of preventing defections. In 2003, The 91<sup>st</sup> Amendment Act, got introduced by the government in the Lok Sabha on May 5. In 2003, it was being referred to “The Standing Committee of Home Affairs”, and then to the Rajya Sabha on 5 December, and was put on the Lok Sabha table on that same date.<sup>31</sup>

On December 16, 2003, Shri Arun Jaitley the Minister of Law and Justice, proposed to the Lok Sabha for the consideration of the 2003 Constitutional (Ninety-first Amendment) Bill. He also proposed modifications that included certain suggestions made by the Standing Committee. The modifications were approved, and the Lok Sabha passed the Bill on that day as modified. On December 18, 2003, the Rajya Sabha passed the Bill. The Constitution (91st Amendment) Act, 2003, was

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<sup>31</sup> *ibid.*

signed by the President on January 1, 2004, and subsequently published in the Indian Gazette on January 2, 2004.

The legislation removed the clause regarding splits from the anti-defection law that states that any individual from both the two Houses or a Legislative Assembly who has been debarred according to para 2 of the 10<sup>th</sup> Schedule shall also make him disqualified from assuming a ministerial position or holding a profitable political post within the time frame since the beginning of the day of disqualification and ending on the date when the duration of his tenure as such a member will run out, or, if he challenges for an election for from both the two Houses or a Legislative Assembly before his tenure is over, until the date of his election, whatever comes before. According to the Act, it is stipulated that the total number of Ministers in both Parliament and State Assemblies should not surpass 15% of the total number of members in the Lower House. Additionally, each State is required to have a minimum of 12 cabinet Ministers.

#### **2.4.6. Anti- defection law in the state of Jammu and first Kashmir**

After the approval of the 52<sup>nd</sup> Amendment Act, legislation was passed by the legislative body of Jammu and Kashmir that was the modified version of the 1957 Jammu and Kashmir Representation of the People Act, in order to prevent a politician who defected by switching allegiance from becoming a member of the Legislature there. The legislation enacted by the two houses of the Assembly came into effect on September 29, 1979. The Act, among the provisions, stated the grounds for disqualification of a member of both the Upper House and Lower House.

1. In the event he willingly relinquishes his membership in a political organization through which he initially signed up as a contender during the elections, or joined to become a member after those elections,
2. If he participates in or refrains from casting votes in that House in contradiction to the directions given by a whip provided by that political group or any individual authorized by the group for such purpose.

The 52<sup>nd</sup> Amendment to the Constitution, commonly known as the Anti-defection Law, resulted in the inclusion of the 7<sup>th</sup> Schedule into the J&K Constitution in 1987.

Furthermore, it is important to highlight that, despite the inclusion of provisions with regard to splits in the 10th Schedule, as mandated by the enactment of the Constitution (91st Amendment) Act, the provision pertaining to splits continues to be applicable in the Jammu and Kashmir Anti-defection statute.<sup>32</sup>

It is worth noting that when it comes to the context of J&K, if the Legislature's member is now susceptible to being debarred according to the provisions of the law, the matter will be sent to the Supreme Court for judgment.

The Speaker of the Legislative House's decision regarding where such people belong to is conclusive. Nevertheless, if the matter concerns a member of a political group that has yet not chosen a leader for its group, then the issue goes to the Presiding Officer, whose decision shall be binding. Similarly, a member who does not belong to a particular party, then The Presiding Officer, will decide on the matter, and the ruling he makes will be binding. So far, no anti-defection legislation has been reported in Jammu and Kashmir.

As a result, anti-defection legislation is flexible. The legislation has been changed in accordance with evolving demands. The law's effectiveness is revealed only after it has been tested and tried. As a result, there is always room for growth.

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<sup>32</sup> 'The Constitution of Jammu and Kashmir' (*web.archive.org* 3 September 2014) <[https://web.archive.org/web/20140903234618/http://jklegislativeassembly.nic.in/Costitution\\_of\\_J%26K.pdf](https://web.archive.org/web/20140903234618/http://jklegislativeassembly.nic.in/Costitution_of_J%26K.pdf)> accessed 10 June 2023

## **CHAPTER III**

### **CONSTITUTIONAL PROVISIONS CONCERNING ANTI- DEFECTION**

The Tenth Schedule, commonly referred to as “The Anti-Defection Law”, was incorporated into the Indian Constitution through the enactment of the Constitution (Fifty-second Amendment) Act in 1985. The primary objective of the legislation was to address the issue of “political defections” in order to mitigate its negative consequences. The aforementioned legislation encompasses provisions pertaining to the disqualification of members from both Houses of Parliament and the legislatures of States, specifically on the basis of defection from political parties. The (52<sup>nd</sup> Amendment) Act added the 10th Schedule to the Const. of India, as well as Clauses (2) in Articles 102 and 191. Art. 102 provided the provisions for the defecting member’s disqualification in Parliament, Clause (2) empowered the X<sup>th</sup> Schedule, to hold valid grounds for disqualification. Art. 191 addressed the aforementioned issue, but for State Legislatures.

Following that, after a few years, in 2003 the Constitution (91st Amendment) Act, implemented an alteration to the Tenth Schedule’s clauses. It deleted an exemption provision, which stated that disqualification for defection would not apply in the event of Split.

#### **3.1. Constitutional mandate**

Articles 102(2) and 191(2) of the Indian Const. was incorporated by the addition of the Tenth Schedule consist of eight paragraphs. The following is a concise description of the law's provisions:

##### **3.1.1. Interpretation**

The first paragraph is an interpretation. This section provides the various terminologies that is applied in the legislative framework. It describes “House as any of the Parliament Houses or the Legislative Assembly or House of a State Legislature, Legislature party, an organization that includes the elected officials from their parties

of a House, and Original political party as the political group of which a defected member belonged to before defecting.”<sup>33</sup>

### **3.1.2. Disqualification grounds**

The second paragraph discusses disqualification due to defection for members of political parties in India. In broad terms, any individual belonging to a political party which is a representative of either of the Houses, gets debarred from that Legislature so long as they voluntarily renounce their seat in the party in question.

Also, if a member chooses to vote or refrain from voting whilst belonging to a party of a Legislative Assembly, in contrast to the pathway offered by their party and if this behavior is lacking the authorization of the member’s political party and also fails to receive its subsequent party member’s approvals, in less than 15 days since they voted or abstained from voting, then they would be subjected such as that they are disqualified on grounds of defection as stated in the sub-clause (b) of para 2 . Furthermore, it is to be emphasized that an individual who is regarded to be a representative of a political party, is considered to be one, only if they were running for that particular party before the starting of elections.

#### **3.1.2.1. Disqualification provisions relating to an Independent member**

Subparagraph (2) states that members elected to any of the Houses, as an independent candidate chosen by a political party is barred from entering a political party after being elected.

#### **3.1.2.2. Disqualification provisions for a Nominated member**

Clause of sub-paragraph (1), explains that members who have been nominated are allowed from the date of their nomination to become members of a political party. They have the option within six months of swearing the oath of office from their date of nomination if they have not yet registered themselves as a member of a House under Art.99, or Art.188 of the Const. to choose a political party of their choice.<sup>34</sup> However, sub-para (3) discusses nominated members getting disqualified, stating that

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<sup>33</sup> <https://www.mea.gov.in/Images/pdf1/S10.pdf>

<sup>34</sup> *ibid.*

a Legislature's nominated members might get debarred after they have joined in any legislative group after the six-month time has expired.

### **3.1.3. Paragraph 3**

The Amendment Act of 2003 i.e. the 91<sup>st</sup> Amendment Act had repealed this paragraph from the Indian Constitution. Originally, paragraph 3 stated that split of a political party would not be applied with regards to disqualification of that party and if at least one-third of the old political party's members joined the newly created side.

The 91st Amendment tried to prohibit individuals from defecting whilst retaining offices, and also tried to strengthen this anti-defection legislation. Any individual disqualified as per the provisions of the law, was as a matter of course, also barred from getting nominated as a ministerial candidate at the central or state levels. The introduction of clause 1(b) in Art.75 and clause 1(b) in Art.164 of the Indian Const. caused the change in law.

### **3.1.4. Disqualification in case of merger**

This provision exempted members from disqualification if the member's original party amalgamated with another new political party and then represented themselves as new members of this other party after the merging of the two parties. A member belonging to a Legislative Assembly shall also not get debarred if they, along with any other individuals affiliated with the initial political party, has decided to function as a separate group by not accepting the merging of the two parties. A merger was regarded to be genuine if at least two-thirds of the members of the merged parties agreed to the merging. In such instances, if a member refuses to join the new political party and forms a separate organization with certain other members, they will not be disqualified.

### **3.1.5. Exemption**

This paragraph states that "The Speaker, Deputy Speaker, Chairman, or Deputy Chairman are not disqualified in the event that, as a result of their election to that position, they willingly give up membership in their original political party just before the election to that office or rejoin their first party otherwise become a representative

of a new one, after they leave that office. This safeguard remains in effect provided that the individual refrains from rejoining their initial political affiliation or a different party throughout their tenure of service.”<sup>35</sup>

### **3.1.6. Resolution regarding disqualification**

According to this clause, when The Speaker makes the final resolution regarding the debarment of a representative of the Legislature. When the Presiding Officer’s verdict on a disqualification is called into inquiry, the House then elects a representative from the Legislature who would have the authorizing power regarding the matter. Where the matter is whether the Speaker or the Chairman of a House has been in a similar state of disqualification, then the case shall be presented to such a member who has been elected in the House, and he shall make the decision, and that member’s choice shall be final.

Sub-para (1) of this particular section with respect to questions concerning a member’s disqualification from a political party as per this Tenth Schedule should be considered to be Parliament procedures under Art.122 or, such that, a State Legislature’s proceedings under Art.212.<sup>36</sup>

### **3.1.7. Bar of jurisdiction of courts**

Courts' jurisdiction is denied. Regardless of anything else in this Const., Courts shall not have any jurisdiction over the matters of disqualification of members by this Schedule.

While affirming the Tenth Schedule's constitutional validity, a Supreme Court’s Bench in *Kihoto Hollohan v. Zachillhu and Others* (1991)<sup>37</sup> deemed para 7 unlawful and further said that the decision of the Speaker might be challenged in judicial review due to the reason being that they operated like a tribunal when deciding on cases under this legislation.

### **3.1.8. Rules**

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<sup>35</sup> ‘Tenth Schedule, MEA <https://www.mea.gov.in/Images/Pdf/S10.Pdf>.

<sup>36</sup> <https://indiankanoon.org/doc/1283667/>

<sup>37</sup> 1992 SCR (1) 686, 1992 SCC Supl. (2) 651



Discussions regarding the Speaker's or Chairman's rulemaking authority for when there is need for the keeping of documentation belonging to political parties, and to which various members of the Legislative Assembly they are in, is made. In the second paragraph's, sub-paragraph (1) containing clause (b), mentions the tidings, the head of a party must provide regarding any waiver with respect to that member, the period during which as well as the responsibility to who such information shall be reported is stated.

Paragraph 8 of the document also addresses the requirements pertaining to the submission of observations by a political faction concerning the candidature of House members to said party. Additionally, it outlines the designated officer of the House to whom these reports must be submitted. Furthermore, it outlines the procedure for selecting any issue mentioned in subparagraph (1) of paragraph 6, which encompasses the methodology for conducting any necessary inquiries aimed at resolving such matters.

The Chairman or Speaker of a House must present any regulations established as per sub-para (1) of aforementioned paragraph must be put before the House once they are adopted for an overall duration of 30 days, i.e. within a single session or spread across multiple subsequent sessions, and shall become The aforementioned measures will become effective after a time frame of thirty days, as long as they receive earlier approval regardless of the changes or are declined by the House. If they are indeed approved, they will go into effect after the thirty-day period.

### **3.2. Recommendations of Committees and Commissions to remove lacuna in the Anti-defection law**

The Constitution (Fifty-second Amendment) Act of 1985 gave rise to the long-awaited anti-defection statute, which is enshrined in The Constitution. Yet, the ailment of political defections is not treated to its desired level, but it could be controlled to a significant extent. The Tenth Schedule remained a source of contention in both the judiciary and the legislative. The Anti-Defection Law has been heavily criticized since its inception, with numerous loopholes identified. As a result, numerous committees/commissions were formed to address the law's gaps and flaws, and their recommendations are presented below-

### **3.2.1. Dinesh Goswami Electoral Reforms Committee (1990)<sup>38</sup>**

The Commission also known as the Goswami Committee submitted its report in 1990.

Its recommendations are -

- “1. The disqualification clause be narrowed to scenarios in which a member voluntarily gives up his political party membership, and
2. A member of a legislative body refrains from casting a vote or casts a vote that goes against the political party’s whip in an action pertaining to a motion of confidence, a vote of no-confidence, a money Bill, or a motion expressing gratitude for the President’s address.
3. The resolution of disqualification ought to be undertaken by the President or Governor, based on the guidance provided by the Election Commission, rather than by the Presiding Officer.
4. It is proposed that House members who choose to affiliate with a political party at any point in time should be rendered ineligible for nomination.

### **3.2.2. Halim Anti-Defection Law Committee (1994)<sup>39</sup>**

Chaired by Basudev Acharia, an MP, the recommendations given by the Halim Committee were as follows -

1. The concept of ‘voluntarily relinquishing membership in a political party’ necessitates a comprehensive elucidation;
2. Members who have been expelled should face limitations such as being denied the opportunity to join another party or assuming any governmental office;

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<sup>38</sup> ‘Dinesh Goswami Report on Electoral Reforms’ (1990)  
<<https://adrindia.org/sites/default/files/Dinesh%20Goswami%20Report%20on%20Electoral%20Reforms.pdf>>

<sup>39</sup> ‘Anti-Defection Law in India’  
<[https://loksabhadocs.nic.in/Refinput/New\\_Reference\\_Notes/English/15072022\\_111659\\_1021205175.pdf](https://loksabhadocs.nic.in/Refinput/New_Reference_Notes/English/15072022_111659_1021205175.pdf)>.

3. The phrase ‘political party’ should be defined unambiguously so that opportunistic political merges and defection be prevented.

4. The committee suggested in enhancing the Speaker’s authorizing role in the deciding of cases against disqualified members of Houses.

### **3.2.3. Suggestion made by The Law Commission related to the Anti-Defection Law (170th report)<sup>40</sup>**

The proposed adjustments to the anti-defection laws were outlined in the 170th Report on “Reform of Electoral Laws” released by the Law Commission of India in May 1999, with the intention of implementing the anti-defection rules.<sup>41</sup>

1. Provisions of splits and mergers mentioned in paragraphs 3 and 4 that protects members from without being disqualified due to defecting ought to be eliminated.

2. The authority to make decisions regarding disqualifications of members by the 10th Schedule should be delegated to the President in the context of Parliament and the Governor in the event of State Legislatures, who will make the decision on the recommendations of the Election Commission.

3. In terms of the issuing of Whips, the Commission proposed that they be provided solely when the outcome of votes in the House impacts the continuation of the current government rather than on each and every cause. This will protect both political faction’s control and member’s right to express their opinion.

4. Parties in politics ought to be considered as pre-election electoral fronts.

5. The expression “Original Political Party” could potentially be subject to varying interpretations and it may be advisable to include the term “political party” in its place for added clarity.

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<sup>40</sup> ‘The Anti-Defection Law’ <[https://prsindia.org/files/parliament/discussion\\_papers/The\\_Anti-Defection\\_Law.pdf](https://prsindia.org/files/parliament/discussion_papers/The_Anti-Defection_Law.pdf)> accessed 20 June 2023.

<sup>41</sup> Law Commission, 170th Report, 1999 under the Chairmanship of Justice BP Jeevan Reddy Submitted on May 1999, Pg.84-89’

6. “Political Party” with regard to a member of a Legislature indicates the political group that the member was elected to office from, if that party has formed a coalition before a general election in order to contest such election, such a coalition needs to be informed in writing by all of the constituent parties before the poll begins that the said front/coalition was officially formed.

### **3.2.4. National Commission to Review Constitutional Workings (2002) Report<sup>42</sup>**

Here, the report submitted to the Government of India in March 2002, the Commission that reviews how the Const. works, chaired by Justice M.N. Venkatachaliah, pointed out that an increase in defections were occurring even after the implementation of the legislation and hence, suggested the following anti-defection statute amendments:

1. Membership shall be promptly denied to individuals seeking to defect on the basis of divisions or amalgamations. There is a need for specific amendments to be made to the Tenth Schedule, which would require members who defect from their initial party or partnership parties, either individually or as a collective, to vacate their positions in Parliament or the positions in State Assemblies and participate in fresh elections.
2. It is imperative to implement measures that deter defectors from attaining ministerial or comparable financially rewarding positions during the remaining tenure of the present legislative body or until the subsequent electoral cycle.
3. The electoral vote of a defected member aiming at toppling an administration should be disregarded or deemed invalid.
4. The investigation and determination of calls made under the anti-defection law should be entrusted to the Election Commission rather than the presiding officer of the legislative body.
5. The proposal suggests that the size of the Cabinet Ministers in office should be restricted to 10% of the total membership of the majority of the House. Additionally,

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<sup>42</sup> ‘National Commission to Review the Working of the Constitution (NCRWC) Report’ <<https://legalaffairs.gov.in/national-commission-review-working-constitution-ncrwc-report>> accessed 22 June 2023.

it argues that it should be deemed illegal to maintain a Council of Ministers that exceeds this limit.<sup>43</sup>

### **3.2.5. Report of the Conference of Legislative Bodies' Presiding Officers<sup>44</sup>**

The Committee, which advocated amending the Constitution's 10th Schedule, submitted a report titled "A Review of Anti-Defection Law". Some of its recommendations were:

1. Provisions pertaining to splits and mergers that exempt a member from disqualification on the basis of defecting should be omitted.
2. The concept of "voluntarily relinquishing membership in a political party" necessitates a comprehensive elucidation.
3. The legislation against a member who is removed from a party should be directly stated in the Tenth Schedule.
4. A disqualified member shall not be mistreated by the political party that ousted him, and they should be barred from joining any other party or assuming any ministerial position.

The power to decide questions of disqualification should be taken away from the Speaker/Chairman and given to the Election Commission of India when it's a matter regarding an MP and the relevant State Election Commission bodies, when it's a matter regarding someone from the State Legislative Assemblies, with the Supreme Court and the High Court serving as the respective appellate authorities. Nominated members should be regarded the same as independent members.

### **3.2.6. Report of the Election Commission on Proposed Electoral Reforms (2004)<sup>45</sup>**

In its Report the ECI stated that -

1. "The ECI suggested the authority to resolve questions on disqualification on grounds of defection should lie in the President of India and the Governors of respective States. The Governor or the President, the outcome may vary

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<sup>43</sup> Chapter 4, Para 4.19 of the National Commission to Review the Working of the Constitution Report (2002)

<sup>44</sup> 'Report of the Conference of Legislative Bodies' Presiding Officers' <[https://uplegisassembly.gov.in/Library/pdf/Archives/conferences\\_presiding\\_officers\\_Legislative\\_bodies\\_india\\_oct\\_1984\\_june\\_2001.pdf](https://uplegisassembly.gov.in/Library/pdf/Archives/conferences_presiding_officers_Legislative_bodies_india_oct_1984_june_2001.pdf)>.

<sup>45</sup> 'Proposed Electoral Reforms' <[https://prsindia.org/files/bills\\_acts/bills\\_parliament/2008/bill200\\_20081202200\\_Election\\_Commission\\_Proposed\\_Electoral\\_Reforms.pdf](https://prsindia.org/files/bills_acts/bills_parliament/2008/bill200_20081202200_Election_Commission_Proposed_Electoral_Reforms.pdf)> accessed 22 June 2023.

according to the circumstances at hand, must adhere to the directives set forth by the Election Commission.

2. The Election Commission advised that, all parties involved in defecting from their parties be given a chance to be heard, and then the Commission body shall give its opinion to the President or the Governor.

### **3.2.7. The Fourth Report on Ethics in Governance of the Second Administrative Reforms Commission - (2007)**

According to the 4th Report on “Ethics in Governance” by the Second Administrative Reforms Commission, it was noted that the 10th Schedule of the Indian Constitution prohibits individual defection, but permitted group defection in the pretext of merger and gave party members opportunity to violate political ethics. The Commission’s major suggestion was that by the counsel of the ECI, the Governor or the President should have the last say on decisions regarding disqualification because of defection. The report stated that defection is a malaise of the political life in India.

Additionally, the third paragraph was suggested to be removed by the above mentioned Committees. It had dealt with members who will be exempted to be disqualified on matters relating to splits. In 2003, The Constitution (91st Amendment) Act states that

1. The overall no. of Cabinet Members in both the Central and The State levels, must not exceed fifteen percent of the total no. of representatives in the Legislature. It should be noted that no state is permitted to have fewer than twelve ministers.
2. A parliamentarian or state legislator who is a member of a political group that is prohibited under para 2 of the 10th Schedule is also ineligible for appointment as a minister of state or retaining a high-profile controversial position. This disqualification begins on the date of disqualification and continues until the expiration of their term of office. If they choose to contest a race for election to either the House of Parliament or the State Legislature, this disqualification

remains in effect until the date they are elected, or until the expiration of the aforementioned period, whichever occurs earlier.<sup>46</sup>

3. The provision concerning splits was excluded from the 10th Schedule of the Indian Constitution by the Act.”<sup>47</sup>

### **3.3. Loopholes concerning the Tenth Schedule**

The Law had certain gaps within it, thus the 91st Amendment Act of 2003 amended it. The significant modification brought about by the 91st amendment to the 10<sup>th</sup> Schedule was when the party had split with 1/3<sup>rd</sup> of its members then they would be exempted. Over time, defectors have developed new and unique techniques of circumventing the anti-defection law. Rather than voting against their political party in a confidence motion or openly crossing the floor, legislators nowadays virtually abandon the party, reducing the majority and therefore disrupting the incumbent government. When the following by-elections are held, the same MLAs run as candidates for opposing parties and return to the assembly. In the recent past, this method has proved very effective in destabilizing state administrations. Such incidents which happened in Indian states in the recent past are explained below:

#### **3.3.1. Karnataka**

Despite its status as the dominant political party in the 15th Karnataka legislature, the Bharatiya Janata Party (BJP) encountered difficulties in successfully establishing a government. Karnataka is geographically partitioned into a total of 224 electoral constituencies. During the 2019 elections, the Indian National Congress (INC) secured a total of 79 seats, while the Janata Dal (Secular) (JD(S)) obtained 37 seats. The Bharatiya Janata Party (BJP) emerged as the leading party with 105 seats. Despite possessing the largest number of seats, the Bharatiya Janata Party (BJP) encountered difficulties in establishing a government due to the prerequisite of securing a minimum of 113 seats to demonstrate a majority in the parliamentary setting. Consequently, the Indian National Congress (INC) and the Janata Dal (Secular) (JD(S)) form a coalition government, securing a majority, under the leadership of

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<sup>46</sup> Section 4, The Constitution (Ninety-first Amendment) Act, 2003

<sup>47</sup> ‘Second Administrative Reforms Commission’ <<https://darp.gov.in/arc-reports>> accessed 22 June 2023.

H.D. Kumaraswamy.<sup>48</sup> Nevertheless, a notable development occurred as a result of the political landscape, with 13 Members of the Legislative Assembly (MLAs) affiliated with the Indian National Congress (INC) and 3 MLAs associated with the Janata Dal (Secular) (JD(S)) tendering their resignations. This event led to a reduction in the overall number of seats in the legislative house, bringing it down to 208. Consequently, in order to secure a majority, a minimum of 104 members was required. The Bharatiya Janata Party (BJP) was granted an opportunity due to the failure of the Indian National Congress (INC) and Janata Dal (Secular) (JD(S)) to demonstrate their majority in the legislative assembly.

The crisis commenced on the first of July, when the Members of the Legislative Assembly (MLAs) for Vijayanagara, Anand Singh, and Gokak, Ramesh Jarkiholi, tendered their resignations. Ramesh had previously faced expulsion from the Congress party due to allegations of engaging in anti-party behaviour. In the span of one week, approximately thirteen additional members of Congress and J.D. (S) legislative assemblies tendered their resignations. The individuals had engaged in a camping activity within the city of Mumbai, while benefiting from the security provided by the government led by the Bharatiya Janata Party (BJP). Nevertheless, the speaker of the assembly refrained from taking any measures in response to the aforementioned individuals' resignation.

The resignation of the MLAs, made the 13-month-old administration of the Congress suffer a setback, was counter-offensive as they contacted Speaker of the Legislative Assembly, K R Ramesh Kumar and delivered the petition demanding disqualification of the dissident legislators under the tenth schedule.<sup>49</sup>

Since the resignations of disgruntled MLAs were not accepted and the trust vote was approaching, the majority of MLAs approached the court, saying that the speaker was inept in his constitutional obligation by purposefully delaying acceptance of their

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<sup>48</sup>Poovanna S, 'Karnataka: Alliance in Trouble as CM Kumaraswamy Accused of Bias' (*mint* 13 December 2018) <<https://www.livemint.com/Politics/UF5DJQkx92semy5kLMm8M/Karnataka-Kumaraswamy-govt-comes-under-fire-by-its-own-MLAs.html>> accessed 24 June 2023

<sup>49</sup>'SC Judgment on Disqualified Karnataka MLAs Could Further Weaken Anti-Defection Act' (*The Wire*) <<https://thewire.in/law/supreme-court-karnataka-mlas-defection>>.



resignations. The bench, led by then-C.J. Ranjan Gogoi, asked the speaker to make a judgment on resignations as soon as possible and to lay the decision before this court.

The presiding officer in response, refused to comply with the Court's instruction, asserting that he possessed a legal duty as outlined in Article 190(3)(b) to make certain all resigning from members were freely given and in good faith. Additionally, he emphasized the importance of verifying whether the rebel members of parliament were attempting to evade expulsion by submitting resignations, and stated that it was the Presiding officer's responsibility to investigate whether they had violated the anti-defection provisions outlined in the tenth schedule of the constitution.

Subsequently, on July 12, 2019, the Indian National Congress (INC) and the Janata Dal (Secular) (J.D. (S)) issued a directive, commonly known as a whip, mandating their respective members to attend legislative sessions and cautioning them about the potential consequences of non-compliance, including disqualification.

Following a lengthy hearing, the court directed the speaker of the house to rule on the resignation applications of 15 MLAs "within such time period as the Hon'ble speaker may consider adequate" on July 17th. The speaker then issued urgent notices to all MLAs between the dates of 18.07.2019 and 20.07.2019 to appear before him on the scheduled hearing dates (23.07.2019 and 24.07.2019). Later, on 20.07.2019, the INC issued another whip ordering their legislative assembly members to attend the house sessions on 22.07.2019.

On July 23, 2019, the trust vote was ultimately called up for discussion. The rebel MLAs did not show up to the house. As a result, the INC and J.D. (S) coalition government led by Mr. Kumaraswamy was in the minority, prompting Mr. Kumaraswamy to quit as chief minister. After the trust vote, the then-speaker dismissed the MLAs, stating that until their tenure ended in 2023, they will cease in becoming members taking effect immediately<sup>50</sup>.

The Apex Court agreed with the order of disqualifying 7 dissident MLAs for defection. It did, however, rule that the disqualification could not last until the

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<sup>50</sup>ShrimanthBalasahebPatil v Hon'ble Speaker, Karnataka Legislative Assembly and others,W.P (CIVIL) NO. 992 of (2019).

conclusion of the House's term and allowed MLAs to file nominations for by-elections.

The Karnataka MLAs disqualification case presented the Supreme Court with an unprecedented quandary in determining whether defecting MLAs might avoid the provisions of the 10<sup>th</sup> Schedule by resigning. "The court was cognizant of the fact that the Members of Legislative Assembly expressed their intention to tender resignations as a means to evade disqualification by the speaker. Consequently, they sought to avail themselves of the privileges associated with holding of their official posts, which were being provided by the Bharatiya Janata Party (BJP) at that time. This offer was contingent upon the BJP assuming power subsequent to the dissolution of the Janata Dal (Secular)-Indian National Congress (JD(S)-Congress) a partnership administration, which was headed by previous Chief Minister H.D. Kumaraswamy. Due to the provision in the law that permits outsiders to serve as ministers for a period of six months, provided they do not possess any disqualifications as members, these individuals opted to tender their resignations from the legislature instead of withdrawing via the political parties they belong to."

By accepting their disqualification, the bench has made resignations and disqualifications look the same. In both cases, the MLAs must run again in order to be re-elected to the legislature. As a result, whether the Speaker accepts or disqualifies their resignations is unimportant, but only when a member who resigns and is not debarred may serve as a minister for a six-month period without requiring being re-elected.

### **3.3.2. Madhya Pradesh**

Conversely, a political crisis unfolded in Madhya Pradesh in March 2020, leading to the voluntary resignation of 22 incumbent Members of the Legislative Assembly affiliated with the Indian National Congress. The Kamal Nath government fell and the Shivraj Singh Chouhan government was formed. The mutiny of Jyotiraditya Scindia, because of him leaving Congress in March and allying the BJP, was the immediate cause of his demise. By then, 22 MLAs, majority of them Scindia

supporters, had resigned, ostensibly in protest of what they saw as a disrespect to their leader.<sup>51</sup>

### 3.3.3. Goa

The phenomenon of desertion has occurred often in Goa's political system. Peter deSouza investigated the period from 1989 to 1999 and discovered an increase in defections.<sup>52</sup> The act of defection, in which MLAs abandoned one party and joined another without quitting or facing the electorate, was the most common feature of this period. Regardless of the limits of the 52nd amendment, members regarded politics only in terms of their personal short-term interests following elections and, thus, unconstrained by party philosophy, shifted sides rather frequently, firmly establishing the politics of pragmatism.

Politician's frequent switching of parties and affiliations has gotten worse over the years. Twenty-seven of the forty MPs in the 2022 election represented parties other than that for which they ran in 2017. Some have also claimed that the ruling party threatened and harassed opposition candidates.

Over the last five years, a total of 15 Members of Parliament (MPs) have defected to different political factions, comprising two individuals from the Maharashtra Gomantaka Party (MGP) and three individuals running as independents who were elected in 2017. A total of four individuals who were previously affiliated with the Bharatiya Janata Party have recently switched their allegiance to alternative political parties. Additionally, an additional four party members have either chosen to run as independent candidates or have expressed their interest in joining the Nationalist Congress Party, as indicated by their inclusion on the party's list of potential recruits.

Congress, in collaboration with the Goa Forward Party, wished to avoid being labeled as a defector-oriented party and had sworn not to accept any defectors, requiring 40 alliance candidates to formally swear not to defect.

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<sup>51</sup> Aditya Menon, 'Madhya Pradesh: Why Did Kamal Nath Govt Fall & What Happens Next?' (TheQuint20 March 2020) <<https://www.thequint.com/news/politics/madhya-pradesh-kamal-nath-resigns-shivraj-chouhan-jyotiraditya-scindia#read-more>>.

<sup>52</sup>P.R. Desouza, *Constituency Capture*. *OHeraldo*, [www.heralddgoa.in](http://www.heralddgoa.in)

In the 2017 election, Congress was the largest single party, with 17 seats in the assembly out of the 40. However, the Bharatiya Janata Party (BJP), having secured 13 seats, successfully established a governing coalition in Goa with the assistance of the Goa Forward Party, the Maharashtrawadi Gomantak Party (MGP), and Independent candidates. Notwithstanding their prior extensive campaign against the BJP, these parties and individuals agreed to lend their support upon the understanding that Manohar Parrikar, the former Union Defence Minister, assume the role of Chief Minister in Goa once again. Later, the Congress was struck by defections, with 10 of its MLAs defecting to the BJP in 2019, reducing the party to just two MLAs ahead of the 2022 election. Apostasy was also a common theme following the 2022 election.<sup>53</sup>

Defection has grown so regular in Goa that even voters are unsurprised by the size of the defection. Members who vowed allegiance to their old Party defected during the state election. These Congress MPs have repeatedly denounced the BJP, and now they are members of the same party. The government in power did manage to persuade two-thirds of the elected members of Congress to defect in accordance with the 91st amendment of 2003.

### **3.3.4. Manipur**

In March 2017, the 11th legislative assembly of Manipur was conducted. The outcomes of the assembly elections were dubious because no political party had won the majority in the Assembly of 60 seats. With 28 seats, the INC appeared to be the largest political party. With, the BJP coming in second with 21 seats. Thounaojam Shyamkumar ran for election on the ticket of the Congress party as well as he was legally elected to represent the Congress party in his seat.

Following the announcement of the results, Thounaojam Shyamkumar, together with other BJP representatives, met with the governor of Manipur on March 12, 2017 to submit a request of establishing a Bharatiya Janata Party led the governing body. On March 15, 2017, the state governor extended an invitation to the group headed by the Bharatiya Janata Party to assume control of Manipur's administration. About that time, the candidate for chief minister addressed a mail to the governor requesting that

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<sup>53</sup>‘Congress Collapses in Goa: 8 of 11 MLAs Join BJP’ (NDTV.com) <<https://www.ndtv.com/india-news/eight-go-congress-mlas-to-join-bjp-says-state-party-chief-sadanand-tanavade-news-agency-pti-3342680>> accessed 23 June 2023.

eight selected MLAs be sworn in as ministers, including Thounaojam Shyamkumar, and on the exact same day, he was selected as a minister. Between April till July 2017, 13 petitions asking the Speaker for his disqualification from the Legislature, claiming that he was disqualified under paragraph (a) of section 2 of the legislation.<sup>54</sup>

Despite this, the Speaker did not take any action on the petitions that were previously discussed. As a result of the Honorable speaker's lack of activity, a suit was filed in Manipur's High Court. The complaint asked the high court to direct the Honorable speaker to make a decision regarding the disqualification inside a sensible timeframe. From September 8, 2017, the Court refused to intervene in the matter. The current deliberation by a panel of five esteemed judges from the Supreme Court pertains to the question of whether the High Court possesses the authority to instruct a Speaker to render a decision on a disqualification petition within a designated timeframe. It is important to note that until the aforementioned panel reached a verdict on this matter, the High Court was not empowered to enforce any directives.

After that, the Supreme Court came out and said that the high court had made a mistake when it decided that the question of the court's ability to direct the speaker was going to come up soon. The bench observed that the issue was expressly addressed in *Rajendra Singh Rana v. Swamy Prasad Maurya* in 2007<sup>55</sup>, when it was ruled that the speaker's incompetence to exercise his jurisdiction would give rise to the court's power of judicial review. According to the proceedings, the speaker holds a quasi-judicial position and is legally obligated to render a final decision within a reasonable timeframe as stipulated by statute. It is apparent that this timeframe should not exceed five years, given that the term of the house is five years.

On January 21st, 2020, a panel of three judges in the Supreme Court, headed by Justice Nariman, expressed the view that the voluntary act of relinquishing one's affiliation with a political organisation can be effectively conveyed or suggested through one's behavior. They additionally asserted that the unequivocal actions of Thounaojam Shyamkumar, wherein he assumed a ministerial role in a government led by the BJP, despite being elected under the Congress Party's affiliation, would serve

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<sup>54</sup>KeishamMeghachandra Singh v. the Hon'ble Speaker Manipur Legislative Assembly & Ors, SLP (CIVIL) NO.18659 (2019)

<sup>55</sup> AIR 2007 SC 1305

as clear evidence that the disqualification stipulated in paragraph 2(1)(a) of the 10th Schedule has been activated.

In the event that there are no exceptional circumstances, the bench arrived at the conclusion that the Presiding Officer of the State Legislative Assembly ought to provide a conclusive verdict on the petition that asserts the disqualification of a member under the tenth schedule of the constitution within a reasonable period of three months. Additionally, the bench mandated that the decision on the disqualification petition be made within four weeks. On March 18, 2020, the Supreme Court exercised its plenary authority under Article 142 and issued a rare order for the immediate expulsion of Thounaojam Shyamkumar out of the cabinet's ranks and his subsequent prohibition from accessing the legislature until additional notification, after the Honorable speaker failed to meet consecutive deadlines. In accordance with these directives, the orator rendered him ineligible for defection.<sup>56</sup>

### **3.3.5. Assam**

In Assam Legislative Assembly, the Opposition Congress wrote to the Speaker Biswajit Daimary in 2021, requesting that Sushanta Borgohain be disqualified as an MLA under anti-defection statute. Debabrata Saikia, the head of the Opposition in the Assembly, has corresponded with Mr. Daimary, urging them to undertake the requisite actions in accordance with the provisions outlined in the 10th Schedule of the Indian Constitution, with the aim of effecting the removal of Mr. Borgohain.

Bhupen Bora, the leader of the Assam Pradesh Congress Committee (APCC), has acknowledged the voluntary departure of Mr. Borgohain from his initial position within the party. Subsequent to this, a General Secretary of the APCC corresponded with the Head of the Party, Wazed Ali Choudhury, in order to apprise him of the circumstances and enable him to set up the contact with the Speaker of the Legislature regarding the disqualification of Mr. Borgohain. Within a span of less than three months since the establishment of Assam's 2nd BJP-led administration,

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<sup>56</sup>ibid.

Mr. Borgohain has become the second Congress MLA to tender his resignation from the party.<sup>57</sup>

Rupjyoti Kurmi, the sole Tea Tribe community representative elected by the Congress, said on June 18 that she would be resigning from her position as a member of the Assembly, and on June 21 she joined the BJP. Barnali Saikia Bora, the general secretary of the APCC and an (OSD) The Office of the State Director under the leadership of former Chief Minister Tarun Gogoi, tendered their resignation from the Congress party on Friday. The old Congress is currently dealing with the defection of many more party officials in the state to the saffron party, in addition to the departure of two members of parliament.

### **3.3.6. Tripura**

During June of 2016, a group of six Congress MLAs who were in opposition, under the leadership by Sudip Roy Burman, sent in an official document addressed to the Presiding officer of the Tripura Assembly. The letter indicated their departure out of Congress and their decision to join the Trinamool Congress. This move was made in response to their dissatisfaction with the Congress-Left alliance during the 2016 West Bengal Assembly election. The individuals expressed discontent with the operational methods of the upper echelon of the political party.

In 2022, eight National Democratic Alliance MLAs (five from the Bharatiya Janata Party and three from the Indigenous People's Front of Tripura) resigned and left the BJP, with four joining the Tipraha Indigenous Progressive Regional Alliance, TIPRA, three joining the Indian National Congress, and one joining the Trinamool Congress (albeit later resigning from the party). Defections have occurred in the TTAADC, with BJP MDC leader Hangsha Kumar Tripura joining TIPRA.<sup>58</sup>

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<sup>57</sup>Assam Opposition Congress Seeks Disqualification of Party MLA SushantaBorgohain for Quitting Party' *The Hindu* (31 July 2021) <<https://www.thehindu.com/news/national/other-states/assam-opposition-congress-seeks-disqualification-of-party-mla-sushanta-borgohain-for-quitting-party/article35649936.ece>>.

<sup>58</sup>Top BJP Leader in Tripura Joins New Party with 6,000 Tribal Supporters' (*NDTV.com*) <<https://www.ndtv.com/india-news/top-bjp-leader-in-tripura-joins-new-party-with-6000-tribal-supporters-3281027>> accessed 21 June 2023.

### 3.3.7. Arunachal Pradesh

The case of, *Pema Khandu v. The Speaker of Arunachal Pradesh Legislative Assembly*<sup>59</sup> pertains to the disqualification of 14 Congress MLAs who had participated in a revolt against Chief Minister Nabam Tuki. The Speaker based his decision on the premise that these MLAs had voluntarily relinquished their party membership. The INC MLAs presented divergent perspectives on the leadership of Shri Nabam Tuki in his role as the Chief Minister. The Members of the Legislative Assembly (MLAs) belonging to the opposition party engaged in communication with the Governor in an effort to initiate the replacement of the current Chief Minister, Nabam Tuki. The representative from the Congress challenged the validity of the directive issued by the Speaker in the Gauhati High Court. As a result, the Court temporarily suspended the implementation of the ruling made by The Presiding Officer after the matter is settled.

The Gauhati High Court, in a decision rendered on December 15, 2015, has reversed the expulsion order due to insufficient notice provided to the opposing legislators. The court found that this action violated the principle of natural justice and ordered a new hearing to be conducted by the Speaker.

The operational approach of the Chief Minister was not well-received because of dissent shown by the Legislative Assembly Members of the Indian National Congress. The legislators in question have demonstrated their commitment to the party while also expressing their democratic concerns regarding the need for an upgrade in party leadership or Chief Minister. This change is deemed necessary in order to enhance the social and economic conditions of Arunachal Pradesh. The expression of disagreement in this manner is advantageous in favor of the promotion of effective governance and democratic principles. These Members of Legislative Assembly (MLAs) refrained from expressing dissent towards their political party or casting a vote against the ruling government, thereby circumventing disqualification under the Tenth Schedule.<sup>60</sup>

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<sup>59</sup>*Pema Khandu & 13 Ors v. The Speaker & 4 Ors on 1 April, 2016* (<https://indiankanoon.org/doc/183971800/>).

<sup>60</sup>'Arunachal Pradesh Crisis: CM Nabam Tuki, Ministers Dismissed Following President's Rule Imposition' (DNA India) <<https://www.dnaindia.com/india/report-arunachal-pradesh-crisis-cm-nabam-tuki-ministers-dismissed-following-president-s-rule-imposition-2171022>> accessed 21 June 2023.



### 3.3.8. Maharashtra

In the elections for the Maharashtra Legislative Assembly in 2019, the Bharatiya Janata Party (BJP) and the Shiv Sena (SHS) ran together as part of an alliance called Mahayuti. Along with other parties, INC and NCP were members of the Maha Aghadi coalition. The Bharatiya Janata Party (BJP) secured 105 seats, followed by Shiv Sena with 56 seats, The Nationalist Congress Party (NCP) holds a total of 54 seats, while the Indian National Congress (INC) possesses 44 seats. After the declaration of the Maharashtra election outcomes, a dispute arose between the Shiv Sena and the BJP regarding power-sharing. The Shiv Sena made a formal request for an equitable distribution of power, which was purportedly resolved by the BJP.

Devendra Fadnavis, the serving Chief Minister of the BJP refuted the existence of any such agreement. The Bharatiya Janata Party (BJP) terminated its longstanding alliance with the Shiv Sena, which marked the onset of the political turmoil in Maharashtra in 2019. The Shiv Sena eventually formed a coalition known as the Maha Vikas Aghadi (MVA) with the INC and NCP as part of an effort to establish an administration headed by Uddhav Thackeray in the capacity of Chief Minister.

Eknath Shinde, a prominent politician affiliated with the Shiv Sena party, was initially unresponsive and untraceable subsequent to the announcement of the Legislative Council election outcomes. In an effort to prevent further losses, Shiv Sena relocated its remaining MLAs to hotels. The individuals eventually migrated to Guwahati, Assam, which is another state governed by the BJP. Sanjay Raut, a prominent leader of the Shiv Sena, has alleged that the Bharatiya Janata Party (BJP) is responsible for instigating the Shiv Sena's rebellion and seeking to undermine the stability of the Maha Vikas Aghadi (MVA) coalition government.<sup>61</sup>

Eknath Shinde instigated a rebellion against Uddhav Thackeray on account of the latter's reluctance to dissolve the alliance with Maha Vikas Aghadi, despite the entreaties of a significant majority of Shiv Sena constituents. Ultimately, Shinde's faction assumed dominance within the political party and subsequently established a distinct entity.

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<sup>61</sup>Livemint, 'Maharashtra Crisis: 37 MLAs Declare Eknath Shinde as Leader in Signed Letter' (mint24 June 2022) <<https://www.livemint.com/news/india/maharashtra-crisis-37-rebel-mlas-declare-eknath-shinde-as-leader-in-signed-letter-11656032303264.html>> accessed 20 June 2023

On June 23, Shinde was officially designated to be the head among the Shiv Sena party by a group of 37 MLAs. The Shiv Sena lodged a formal plea on June 24th, urging the Maharashtra Assembly's Deputy Speaker Narahari Zirwal to expel 16 MLAs from the Shinde faction, citing their dissenting behavior. A no-confidence motion was introduced against Zirwal<sup>62</sup> by two MLAs acting independently. The purported no-confidence motion, which was endorsed by 34 Members of the Legislative Assembly (MLAs), was reportedly dismissed by Zirwal on the grounds that the petition was submitted anonymously via email and was not formally submitted by an MLA.

Eknath Shinde filed a petition with the Apex Court on June 26, seeking to challenge the dismissal of the confidence vote against the Deputy Speaker and the disqualification of 16 members. On June 27, during a hearing in the Supreme Court of India, Deputy Speaker Zirwal was requested to furnish a comprehensive affidavit pertaining to the no-confidence motion that was filed against him.

The Governor of Maharashtra, Bhagat Singh Koshiyari, issued a directive on June 29th for a vote of confidence to be conducted, with the aim of verifying the assembly strength of the government by June 30th. In prompt reaction to the aforementioned order, Shiv Sena lodged an appeal with the Supreme Court. Simultaneously, the Supreme Court declined to grant a stay on the no-confidence motion and sanctioned its conduction on the subsequent day, i.e., June 30, affirming that "the resolution of this issue can only be achieved through the floor of the House."<sup>63</sup>

During a social media address, Uddhav Thackeray tendered his resignation as CM of Maharashtra and declared his intention to relinquish his membership in the Maharashtra Legislative Assembly in light of the recent ruling by the Supreme Court.

On February 17, 2023, the Shiv Sena faction led by Eknath Shinde was bestowed with the party name and emblem of a bow and arrow by the Electoral Commission. The

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<sup>62</sup> 'Maharashtra Political Crisis: As Sena Files Plea to Disqualify 16 Rebel MLAs, Two Independents File No-Confidence Motion against Deputy Speaker' (Free Press Journal) <<https://www.freepressjournal.in/mumbai/maharashtra-political-crisis-as-sena-files-plea-to-disqualify-16-rebel-mlas-two-independents-file-no-confidence-motion-against-deputy-speaker>> accessed 20 June 2023

<sup>63</sup> NETWORK LN, 'Maharashtra Floor Test- Supreme Court Hearing- LIVE UPDATES' (www.livelaw.in 29 June 2022) <<https://www.livelaw.in/top-stories/maharashtra-floor-test-supreme-court-shiv-sena-eknath-shinde-uddhav-thackeray-202596>> accessed 20 June 2023

resolution of the political unrest and the subsequent establishment of Eknath Shinde as the sole leader of Shiv Sena were successfully achieved.

## CHAPTER IV

### ANTI-DEFECTION LAW AND INTRA-PARTY DISSENT

The term ‘dissent’ is commonly characterized as a state of holding a viewpoint that is in opposition to the prevailing or authorized perspective, as denoted by the definitions ‘contrariety of opinion’ or ‘difference from established or official opinion.’ Justice DY Chandrachud has stated that dissent is indicative of a thriving democracy.<sup>64</sup> There exist numerous occurrences where individuals belonging to a common political faction hold divergent perspectives on internal party issues that deviate from those espoused by individuals occupying positions of power. The phenomenon of divergent views within a political party is commonly referred to as ‘intra-party dissent’.

In numerous democratic establishments across the globe, the expression of intra-party disagreement is perceived as an extension of lawmaker’s innate claim for expression of free speech. It is considered a crucial element that fosters open discussion and the interchange of concepts. Permitting intra-party dissent provides party members with the liberty to differentiate their viewpoints and evaluations from those of their political party, thereby enabling them to express their individual opinions and assertively advocate for their beliefs. The establishment of such an environment would facilitate conducive conditions for advancement in the realm of equitable and impartial involvement of constituents within the political organization, and ultimately, in the legislative bodies of the nation.<sup>65</sup>

The political impasse that had gripped the state of Rajasthan in July 2020, with competing factions led by Mr. Ashok Gehlot and Mr. Sachin Pilot vying for power and influence, was marked by a high degree of drama.

Nineteen members of the State Assembly in Rajasthan were at risk of disqualification due to their non-attendance of two party meetings and non-compliance with guidelines issued by the Chief of INC.<sup>66</sup> The Whip of the Congress party has

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<sup>64</sup>RomilaThapparv.Union Of India, AIR 2018 SC 4683

<sup>65</sup>Ruchi Singh, Intra-Party Democracy and Indian Political Parties, 71 Hindu Centre for Politics and Public Policy (2015)

<sup>66</sup>Sachin Pilot, Disqualification and the Tenth Schedule: An Explainer’ (*Hindustan Times* 16 July 2020) <<https://www.hindustantimes.com/india-news/sachin-pilot-disqualification-and-the-tenth-schedule-an-explainer/story->

submitted an appeal for disqualification of the MLAs under section 2(1)(a) of the tenth schedule, to the Speaker of the legislative assembly of Rajasthan, citing their actions as the reason. Subsequently, the speaker issued a notice to the purportedly errant MLAs for providing a justification regarding the complaint within a period of 30 days.

As per the Gehlot faction's assertion, Sachin Pilot and a select group of MLAs purportedly relinquished their affiliation with the Congress Party on their own volition by abstaining from party gatherings. Consequently, they were subjected to disqualification in accordance with the anti-defection law. The Pilot camp vehemently objected to this notion, contending that the act of expressing dissenting viewpoints regarding certain policies or decisions made by a party whip, without any intention of defecting to another political party, cannot be construed as defection or voluntary relinquishment of party membership. The intra-party discord within the Congress Party had escalated to the point of legal intervention, with petitions being filed to challenge the speaker's issuance of a show cause notice.

Despite the fervently defended arguments and accusations presented by both parties, the matter at hand was not conclusively resolved by either the Rajasthan High Court or the Supreme Court. Consequently, the two warring factions reached a mutual agreement to discontinue hostilities, thereby resolving the political dispute.<sup>67</sup>

The political landscape of India is characterized by intricate party systems, where subtle variations are inevitable even among groups sharing similar ideological underpinnings. In addition, the incorporation of varied and unique perspectives, coupled with thorough analysis and discourse, serves to facilitate the implementation of equitable and all-encompassing measures, while duly considering the multitude of stakeholders at play.

In 2019, Mr. Ashok Tanwar, who held the position of chief of the Congress Party in Haryana, submitted his resignation letter. In his letter, he conveyed his discontentment

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[ZrfFVKmYZZnLKPuA1UX1DL.html#:~:text=Sachin%20Pilot%20and%2018%20dissident>](#) accessed 20 June 2023.

<sup>67</sup>Harsha Singh, Smiles, Handshake as Sachin Pilot, Ashok Gehlot Meet After Congress Truce, NDTV, <https://www.ndtv.com/india-news/rajasthan-ashok-gehlot-ahead-of-sachin-pilot-meetspirit-of-forget-and-forgive-2278840>

that his voice, which represented the aspirations of numerous Congress Party supporters, citizens, and community leaders, had not been acknowledged.

Notwithstanding his efforts to assert his views, he ultimately opted to resign from his positions on multiple committees within the Congress Party. The speaker expressed dismay upon witnessing a limited cohort of Congress Party members, monopolies the decision-making processes, instead of facilitating straightforward, equitable, and unencumbered procedures.<sup>68</sup> Hence, in the event that members perceived that their opinions were getting acknowledged, it is plausible that their ideological aspirations would have been maximized whereas friction between the members would have been minimized.

The rationale behind the legislature's responsibility to engage in deliberations and discourse, in addition to enacting legislation and measures for the nation, is evident. In the absence of intra-party dissent within a vast nation such as India, the Lok Sabha, comprising 543 members, operates efficiently through a select group of members who wield significant influence in deliberating and evaluating crucial decisions. The remaining members of the legislature are essentially beholden to their political party, and their voting behavior is aligned with the directives issued by their respective party leadership. This effectively constrains the pool of individuals capable of addressing the country's issues to a limited cohort.

Conversely, the allowance of intra-party debates and opinion trading may result in advantageous outcomes for both the party and the legislature, as it enables the utilization of diverse experiences and lessons from a broad range of individuals with varying demographics. This measure would guarantee comprehensive deliberation and contemplation of a vast array of heterogeneous concerns that are intended to be addressed by large-scale legislative entities. Moreover, this would considerably enhance the quality of discussions in the legislative chamber, promoting the structure of proposed bills that would ultimately be enacted as legal statutes.

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<sup>68</sup>Former Haryana Congress Chief Ashok Tanwar Quits Party ahead of State Polls' (*Hindustan Times* 5 October 2019) <<https://www.hindustantimes.com/assembly-elections/former-haryana-congress-chief-ashok-tanwar-quits-party-ahead-of-state-polls/story-USTgALQVAUydgKTOzodOXO.html>> accessed 20 June 2023

Nonetheless, a drawback of discouraging internal disagreement within a political party was recently observed in the case of Dr. Shashi Tharoor, who serves as the Lok Sabha representative for Thiruvananthapuram. Dr. Tharoor publicly expressed opposition to the stance adopted by his own political party, the Congress, regarding the privatization of the development of an airport terminal in Thiruvananthapuram. Tharoor has released a public statement affirming his unwavering stance of non-compliance with his political party's directive regarding the privatization of air terminal development work, citing his robust endorsement of the aforementioned privatization as the reason for his position.

The leader of the Congress Party faced significant condemnation for failing to align with his party's stance on the matter. However, he remained resolute, asserting that his viewpoint has remained consistent and is in accordance with the welfare of the populace of India.<sup>69</sup>

Allowing for intra-party dissent can potentially resolve conflicts of interest for MLAs between their constituents and party leadership, leading to a more cohesive representation of all parties involved and ultimately increasing public confidence in the political party.

The possibility of terminating dynastic politics, a prevalent phenomenon in Indian politics, could be indicated by a genuinely comprehensive intra-party policy debate. The practice of dynasty politics is not limited to any particular political party, as it is observed in both local and national political spheres. The Indian political landscape is adversely affected by challenges in dynastic governance.

A recent occurrence in August 2020 involved 23 members of the Congress Party who composed a letter of dissent directed towards the party's Interim Leader, Sonia Gandhi. This event serves as a useful means of comprehension. The letter articulates a firm dissent towards the party's restricted membership attaining a majority, along with their followers obtaining crucial investments and enhanced promotional prospects. The written statement served as a call to action for the implementation of internal democratic processes, the fostering of thoughtful contemplation regarding

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<sup>69</sup> 'Shashi Tharoor Again Backs Takeover of Thiruvananthapuram Airport' (*The New Indian Express*) <<https://www.newindianexpress.com/states/kerala/2021/oct/13/shashi-tharoor-again-backs-takeover-of-thiruvananthapuram-airport-2370948.html>> accessed 20 June 2023

challenges faced by party constituents, and the cultivation of cooperative leadership within the party. During several meetings, the signatories expounded that their objective was not to assail the political party or its leaders, but rather to revive the Congress Party.<sup>70</sup>

Amidst this period of turmoil, a conference of the Congress Party was convened, wherein the aforementioned letter was duly recognized. However, the grievances and appeals articulated by the signatories were not redressed, and in fact, a significant proportion of these members were condemned for their perceived disloyalty to the party. Hence, it is apparent that the presence of intra-party disagreement within dynastic political parties can prove to be highly advantageous. This is because it not only promotes the viewpoints of members who are not aligned with the party's majority but also facilitates the advancement of perspectives held by members belonging to the party's minority.

#### **4.1. Understanding Dissent in Relation to Paragraph 2(1)(a)**

In accordance with the stipulations delineated in Paragraph 2(1)(a) of the schedule, an individual serving as a member of either the Lower House or the Upper House will be disqualified from holding membership in that house if they intentionally and willingly relinquish their affiliation with the political party that nominated them and facilitated their election to the respective house.

It is imperative to emphasize that the demarcation between a legitimate form of opposition and a voluntary renunciation of affiliation with a political organization as defined by paragraph 2(1)(a) is considerably blurred. The Apex Court, in the matter of *Ravi S Naik v. Union of India*,<sup>71</sup> expounded on the extent and range of paragraph 2(1)(a) to signify any form of behavior by a political party member that could imply the member's voluntary relinquishment of membership in the political party to which they are affiliated. The voluntary relinquishment of political party membership may

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<sup>70</sup>OpIndia Staff, 'Full Text of the Letter Written by Dissenting Congress Leaders to Sonia Gandhi' (*OpIndia*28 August 2020) <<https://www.opindia.com/2020/08/the-full-text-of-congress-letter-written-by-dissenting-leaders-demanding-structural-overhaul-party-leadership/>> accessed 20 June 2023.

<sup>70</sup>*Ravi S Naik v Union of India* AIR 1994 SC 1558.

<sup>71</sup>1 (1993) 2 SCC 703



be expressed explicitly or implicitly, and a formal resignation from the party is not mandatory.<sup>72</sup>

Several individuals, including the esteemed speaker of the Rajasthan assembly, have utilized the Ravi Naik ratio to contend that questioning one's own political party or criticizing any decisions made by the party constitutes a direct assault on party unity and coherence. Such actions are viewed as an endeavor to challenge both the party and the government. In accordance with this particular ideology, the actions of a delinquent member would be deemed as a voluntary relinquishment of membership under clause 2(1)(a), thereby warranting disqualification from the house.<sup>73</sup> Regarding Ravi Naik's case, a pair of MLAs affiliated with the Maharashtra Gomantak Party (MGP) accompanied by Congress leaders, approached the Governor of Goa to express their lack of support for the MGP and their desire to assist the Congress Party in establishing an alternative administration.

The case of *Jagjit Singh v. the State of Haryana*<sup>74</sup> pertains to a duly elected representative serving as a Member of the Haryana Legislative Assembly who belonged to the National Congress Party (NCP). The said MLA established an ideological group named Democratic Dal, allegedly due to a perceived division within the NCP. The inception of the political party occurred shortly following the establishment of a coalition between the Democratic Dal and the currently in power Congress party within the state.

The unethical tactics employed by the MLAs in the aforementioned instances have rendered them susceptible to the provisions outlined in paragraph 2(1)(a), leading the judiciary to uphold their disqualification on the basis of defection. The Supreme Court has demonstrated a proclivity for political opportunism, yet it has yet to clarify whether intra-party dissent constitutes a voluntary relinquishment of membership.

Although the Supreme Court has not yet arrived at a legal verdict on this matter, Justice N. Kumar of the Karnataka High Court has examined it in his dissenting

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<sup>72</sup> ET Correspondent, 'Ruling party as opposition' Economic Times, (Jul.11th, 2021, 5:00 PM), <https://economictimes.indiatimes.com/opinion/et-editorial/ruling-party-as-opposition/articleshow/6640457.cms>

<sup>73</sup> *ibid.*

<sup>74</sup> *Jagjit Singh v. the State of Haryana*, AIR 2007 SC 150.

opinion in the case of *Balchandra L Jarkiholi & Ors v. B Yeddyurappa and Ors*<sup>75</sup>, thereby paving the way for future litigation. Thirteen Members of the Legislative Assembly (MLAs) in Karnataka, who are associated with the Bhartiya Janata Party (BJP), submitted uniform documents to Karnataka's Governor. These letters indicated them being elected as MLAs under the BJP banner, but expressed discontent with the performance of the Karnataka government, which is led by Shri BS Yeddyurappa. Consequently, they pulled their backing for the Yeddyurappa led administration. The governor of Karnataka corresponded with Yeddyurappa subsequent to receiving these letters, urging him to demonstrate his possession of a majority of support within the parliament.

Consequently, Yeddyurappa, who serves as the Bharatiya Janata Party's (BJP) figures of authority in the Karnataka assembly, presented a petition to the Presiding officer, seeking the expulsion of the 13 MLAs based on the premise that they had relinquished their membership voluntarily, thereby rendering them disqualified. During the proceedings before the speaker, the 13 MLAs consistently asserted that their intention was not to retract their allegiance for the BJP, but solely for the Yeddyurappa-led administration due to their perception of his inadequate governance style.

The individuals in question argued that the act of withdrawing support from the Yeddyurappa government fell short of the criteria for defection as outlined in paragraph 2(1)(a). They emphasized that the term 'defection' typically refers to the act of leaving one's original political party and joining another, which was not the situation for the MLAs in question.

Notwithstanding, the Legislature's Speaker asserted how the 13 MLAs had intentionally relinquished their affiliation with the BJP by retracting their backing for the administration helmed by Yeddyurappa. Subsequent to this, the discontented Members of the Legislative Assembly lodged an appeal seeking to contest the decision made by the Speaker of the Karnataka High Court, in which a large majority of justices affirmed the Speaker's decision.<sup>76</sup>

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<sup>75</sup>Writ petition. No 3260-32670 of 2010 (high court of Karnataka, 15 November 2010).

<sup>76</sup>*Balchandra L Jarkiholi & Ors v BS Yeddyurappa & Ors* (Civil Appeal Nos 4444-4476 of 2011) MAY 13, 2011 10 S.C.R. 877.

Justice N. Kumar expressed dissent in his judgement, disagreeing with the majority bench's understanding of paragraph 2(1)(a). He argued that the act of MLAs demonstrating a lack of confidence in a government formed under a particular leader does not equate to a voluntary renunciation of party membership. Justice N. Kumar made a distinction between actions that constitute leaving and those that do not.

In light of this, Justice N. Kumar concluded that the directions of the speaker ought to be disregarded. Upon appeal, the Apex Court resolved whether the MLAs had relinquished their membership in the BJP voluntarily, was clarified by the content of the letters. The letters indicated that the MLAs had not withdrawn their support for the BJP, but had rather conveyed their distrust in the Yeddyurappa administration and expressed their willingness to aid any BJP government led by a different leader. The Supreme Court acknowledged that the actions of the MLAs did not preclude the BJP from forming a government in Karnataka. The BJP could still pursue this objective through lawful means, potentially in conjunction with other political parties.<sup>77</sup>

The case of Balachandran L Jarkiholi holds great significance in which the distinction between intraparty dissent and defection has been encompassed by the constitution's 10<sup>th</sup> Schedule. Though the Supreme Court did not describe the idea of intraparty dissent in detail, Justice N. Kumar's minority ruling has clearly and comprehensively reinforced lawmaker's right to votes. In a democracy, disagreement is sacred, and to deny it would be tantamount to suffocating parliamentary democracy.

#### **4.2. Paragraph 2(1)(a) and Freedom of Speech**

During the deliberations of the 52nd Amendment Bill of 1985, which introduced the 10th Schedule to the Constitution, certain modifications were made to paragraphs 2(1)(a) and (b) that were subsequently incorporated into the schedule. Notably, an additional clause (c) was included in the Bill, stipulating that any parliamentarian who was expelled from their political party would be ineligible to hold office.

The deletion of clause (c) was explicitly carried out during the bill's enactment. Under such circumstances, it can be inferred that the parliament anticipates a sufficient level

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<sup>77</sup>G.O.I, Report of Committee on Electoral Reforms (Ministry of Law and Justice, Legislative Department, 1990).

of certainty that a representative who has faced expulsion by their political parties would not face disqualification. Consequently, any actions taken by the member after their removal would not render them liable for disqualification according to para 2(1)(a) or para 2(1)(b).

In addition, it is evident from the speeches delivered by prominent parliamentarians, including Sharad Dighe, that clause (c) was explicitly revoked with the aim of disqualifying members who were expelled from their party due to their behavior and misconduct outside of the Legislature. The clause was deemed problematic as it would have resulted in ministers being subjected to arbitrary decisions made by their party.<sup>78</sup>

In the course of the legislation's deliberations, Professor Madhu Dandavate expressed his support for the removal of clause (c) on the grounds that "there are sufficient occurrences in the current political landscape of our nation, individuals have been subjected to removal solely for the purpose of expressing political disagreement towards a leader."<sup>79</sup> Moreover, in the *Kihoto Hollohan* case, the High Court explicitly asserted that the clauses of the Schedule ought to be interpreted in conformity with and with regard to the objectives and justifications for which the Schedule was initially enacted, which did not encompass the inclusion of expelled members.

In consideration of the matter, the judges made a reference to a larger bench of the Supreme Court to address legal inquiries, such as whether the 10th Schedule provisions encompass a candidate who has been expelled from the political party which nominated them for the election at first, and whether the status of the members who have faced expulsion aligns with the regulations outlined in the 10th Schedule.

Nonetheless, the Supreme Court's three-judge panel ultimately abstained from adjudicating on these issues due to the petitioner's invalidation at that juncture. This was due to the petitioner's cessation of a tenure-track in the Rajya Sabha during the pendency of the matter.

A comparable instance was deliberated upon by a divided panel of the Apex Court subsequent to the re-election of the petitioner to the Rajya Sabha position for a tenure

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<sup>78</sup>LS Debates 30 January 1985, vol 1 no 11, series 8.

<sup>79</sup> Ibid.

concluding in 2022.<sup>80</sup> The aforementioned legal issues were also referred to a larger bench of the Supreme Court for judicial review by this bench. The eagerly anticipated legitimate decision-making by the Supreme Court on this issue notwithstanding is evident that penalizing members of parliament who exhibit resilience in upholding their convictions, even if it results in expulsion from their party and exposure to ridicule and censure from their colleagues, is excessively severe and discriminatory.

#### **4.3. The Whip's Function According to paragraph 2(1)(b),**

As per this stipulation, a member stands to lose eligibility on account of defection if they cast their vote or abstain to vote in contravention of an order or whip given by their political party, or any other authorized individual or entity on behalf of the party's account, obtaining no prior approval from said party.

This foundation is considered to be unequivocal, except in cases where prior authorization has been granted. Consequently, it is impermissible for a party member to express their valid and commendable viewpoints on a particular matter that diverges from the party's stance. The individual responsible for directing and coordinating the actions of the members within a political party is commonly referred to as the whip.

The only clause which allows a whip their outstanding powers is in Section 2(1)(b), yet there are no governing norms dictating how to use it. This unrestrained authority placed on the whip is frequently utilized by the ruling party to establish complete dominance over its members, completely restricting their free choice. In India, there have been several occurrences where the party whip has instructed legislators to act in a particular manner, in accordance with the party's mandate. This encompasses practices such as the utilization of whips during attendance at political party gatherings, casting votes in favor of the dominant party, impeding interactions with individuals affiliated with opposing parties, and similar actions. Although intended as a form of punishment, it is frequently employed as a tool of authoritarianism to suppress dissent within a group.

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<sup>80</sup>Amar Singh v UOI (2017) SCC Online SC 405.

The utilization of the whip by different political parties has been observed on multiple instances as a means to advance their respective political objectives. The Karnataka legislative assembly serves as a pertinent example of this phenomenon, wherein a number of members belonging to the Bharatiya Janata Party (BJP) were expelled for defying a party directive mandating their support for a particular candidate during the electoral process for the position of the speaker of the assembly.<sup>81</sup>

A few years ago, Mamta Banerjee, the leader of the Trinamool Congress, issued a directive to her party members, mandating their support for Dinesh Trivedi, the candidate representing the Trinamool Congress party for the upper house of the Parliament. Non-compliance with this directive would result in disqualification.<sup>82</sup>

An additional instance of the curtailment of the right to unrestricted expression is evidenced by the utilization of the whip by Mayawati Prabhu Das, a member of the Bahujan Samaj Party (BSP), who provided it to six former MLAs of Rajasthan. They had been elected as members of the Rajasthan legislature, representing the BSP, but were subsequently expelled from the Party. Notwithstanding their expulsion, they were mandated to cast their vote in opposition to the Gehlot administration during a vote of confidence in the Assembly.<sup>83</sup> The utilization of the whip as a means of disciplining party members for expressing their viewpoints has the potential to inflict harm upon our constitutional democracy.

The whip's callous use of power has been called into doubt on countless occasions. For example, "The 170th Law Commission Report on Electoral Laws" demonstrated the pervasive utilization of the whip in the Indian parliament as a means of quashing dissent. It is said as follows:

The Dinesh Goswami Report of 1990 also took a comparative approach. Also, in the Kihoto case<sup>84</sup>, as per the ruling of the Supreme Court, disqualification resulting from

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<sup>81</sup>D Sudhakar v. DN Jeevaraju (2011)3 K.LJ 437.

<sup>82</sup>Madhuparna Das, 'Trinamool Didn't See It Coming but "Suffocated" Dinesh Trivedi Had Many Reasons to Quit' (*ThePrint* 13 February 2021) <<https://theprint.in/politics/trinamool-didnt-see-it-coming-but-suffocated-dinesh-trivedi-had-many-reasons-to-quit/604245/>> accessed 21 June 2023.

<sup>83</sup>Rajasthan Crisis: BSP Issues Whip to 6 MLAs to Vote against Gehlot Govt in Trust Motion' (*Business Today* 27 July 2020) <<https://www.businesstoday.in/latest/economy-politics/story/rajasthan-crisis-bsp-issues-whip-to-6-mlas-to-vote-against-gehlot-govt-in-trust-motion-268414-2020-07-27>> accessed 21 June 2023.

<sup>84</sup>1992 SCR (1) 686, 1992 SCC Supl. (2) 651

non-compliance with the whip's directives under paragraph 2(1)(b)<sup>85</sup> should only be permissible under the following circumstances:

1. When there is a possibility of a change or delay in the government, or
2. when the motion that is to be considered, pertains an essential plan of action and ideology of the political party.

Furthermore, the Supreme Court noted that when such orders are provided as a whip, defiance of which will result in disqualification, the conclusion should be clearly defined and read to the members to allow them to make informed decisions. Despite the fact that neither the Law Commission's ideas nor the legal explanation have once been incorporated into the schedule, the individual in charge of maintaining order within the group utilizes the whip to suppress any form of dissent expressed by the participants, regardless of its magnitude.

#### **4.4. Right to vote v. Right to dissent**

In the case of Kihoto Hollohon, The Apex Court has ruled the failure to comply with directives issued by a political organization that includes its people would result in expulsion pursuant to paragraph 2(1)(b). However, this disqualification should exclusively be applied in situations where a vote of confidence or lack thereof in the governing body is at stake, or when the argument being considered pertains to an essential program or strategy of the party in question that was presented to the electorate.

The act of deviating from the party's position is explicitly defined and rationalized in the vote of confidence and no-confidence votes, resulting in disqualification. The principal limitations of the suggested methodology are identified in the efficacy of the constituents who engage with the voting process. Demonstrating that a policy outlined in a political party's manifesto did not serve as a basis for the party's electoral victory can be a challenging task.

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<sup>85</sup>Anita Joshua, 'Congress MP Moves Bill to Amend Anti-Defection Law' The Hindu (9 February 2010) <<https://www.thehindu.com/news/states/Congress-MP-moves-Bill-to-amend-anti-defection-law/article16813597.ece>> accessed 21 June 2023.

The extensive and inefficient implementation of Para 2 (1) (b) of the Courts, has led to the prevalent utilization of directives or orders by their head of political parties in conventional congressional elections. Political factions have provided instructions towards their elected officials regarding minor issues, using the justification of essential policy initiatives. Not adhering to these directives may result in disqualification under the 10th Schedule. There was another example of political behavior in Karnataka Assembly which exhibited an unfavorable scene when a faction of BJP members was barred from voting for their infringement of a party directive mandating their support for a specific candidate in the election for the position of Assembly speaker.

In addition, in cases where specific limitations exist, a member has the option to challenge an incorrect disciplinary action following the disqualification process by citing its unconstitutional nature. The initiation of “a Private Member's Bill in Parliament” by Manish Tewari, a spokesperson for the Congress party, was a result of his dissatisfaction with the inability to express dissent on the House floor.

#### **4.5. Restricted Disqualification V. Restricted Whip**

The proposal that initiated the debate was put forth by Manish Tiwari, who is a Member of Parliament in the Lok Sabha. The proposition entails the introduction of a constitutional amendment aimed at restricting area of application of para 2(1)(b). The legislative proposal put forth by Manish Tiwari, seeks to restrict the disqualification outlined in paragraph 2(1)(b).<sup>86</sup> Instances where a member of a legislative body serves as an alternate imposition only when they dissent from a Whip directive under the following subsequent provisions are:<sup>87</sup>

1. A motion to express confidence or lack thereof in the Minister’s Council.
2. A motion to adjourn the House’s business,
3. A motion pertaining to financial matters.
4. Budget Act

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<sup>86</sup>Anita Joshua, ‘Congress MP Moves Bill to Amend Anti-Defection Law’ The Hindu (9 February 2010) <<https://www.thehindu.com/news/states/Congress-MP-moves-Bill-to-amend-anti-defection-law/article16813597.ece>> accessed 21 June 2023.

<sup>87</sup>The Constitution (Amendment) Bill, 2010, Bill No. 16 of 2010



The concepts that have been presented in the Constitution (Amendment) Bill of 2010 bear resemblance to those put forth by the ‘Dinesh Goswami Committee on Electoral Reform’. The committee recommended that disqualification ought to be restricted to instances of ‘vote of confidence or no-confidence’ resolutions.

The proposed legislation seeks to limit the scope of exclusion with the aim of creating additional room in Parliament for the expression of policy, robust debate, and discourse. With the exception of the potential loss of their membership, the implementation of such a law would grant politicians the freedom to act independently from party discipline.

An alternative proposal was put forth in the ‘170th Report of the Law Commission of India’, which posited the necessity of implementing rules and regulations pertaining to the utilization of whips.<sup>88</sup> It is a commonly held belief, the utilization of whips ought to be exclusively allocated for circumstances wherein the preservation of the government is in jeopardy.<sup>89</sup> The recommendation is contradictory to both, ‘The Constitution (Amendment) Bill of 2010’ and ‘The Goswami Committee Report’.

In comparison to the current situation, the proposed solution outlined in the Constitution (Amendment) Bill of 2010 appears quite attractive since, it effectively fulfils the main goal of the anti-defection law. Imposing limitations on the allocation of a whip may potentially curtail the capacity of political parties to govern their internal affairs. It is imperative that political parties possess the authority to enforce disciplinary measures upon members who express dissenting opinions in relation to the party's official stance. The restriction of Members of Parliament's freedom of expression should be avoided, as internal disciplinary procedures can effectively address any instances of dissent.

The researcher aims to strike an equilibrium within the fundamental rights of individuals to exercise their voting rights and express dissent, and the ability of political parties to form associations. It is imperative to eliminate any limitations on voting within the 10th Schedule to promote a more extensive and dynamic discourse in the legislative assembly, potentially leading to the creation of more refined and

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<sup>88</sup>B Venkatesh Kumar, ‘Anti-Defection Law: Welcome Reforms’ [2003] [www.epw.in](http://www.epw.in) <<https://www.epw.in/journal/2003/19/commentary/anti-defection-lawwelcome-reforms.html>>.

<sup>89</sup>170th Report of Law Commission of India

effective laws. It is crucial to note that the 10th Schedule safeguards the integrity of a political declaration as well as the longevity of a government.

#### **4.6. Opposition in other nations**

Disagreement is not the same thing as a defection. Their meanings are distinct from one another. Disobedience to the party whip is an indication of dissatisfaction rather than desertion. It is well-known that in countries with Parliamentary democracies similar to India's, such as the UK, Australia, Canada, and New Zealand, parliamentarians frequently dissent despite the party's whip without facing repercussions. In truth, opposition has played a major role in these countries. There is no possibility of displacing the dissident member in the United Kingdom or in any of the rest of the three countries indicated above.

Because the person in question i.e. the parliamentarian has not switched allegiances or floor crossed, he is still recognized to be a representative of the same political party despite his refusal to follow party directives.

Despite having a presidential system, the United States' legislative branch is very similar to India's parliamentary branch; nonetheless the country has no law as similar to India's Anti-Defection Law. A lawmaker in the United States Congress is not prohibited from voting on any legislation or bill. However, Legislators that go across party lines and floor crosses can face consequences and can be imposed sanctions to discipline them inside the US party system.

In the recent impeaching act concerning former U.S. President Donald Trump, it was observed that seven Republican members of the U.S. Senate opted to convict him. This decision does not entail any legal consequences. Naturally, the party has the potential to undertake measures (which it refrained from doing). Furthermore, constituents possess the ability to opt against re-electing a legislator, which constitutes a fundamental aspect of representative democracy. The elected representative is held responsible to the electorate, while the executive branch of government is held responsible to the legislative body.<sup>90</sup>

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<sup>90</sup>ABC News, 'Unprecedented Wave of GOP Defections as Trump Re-Nominated: ANALYSIS' (ABC News) <<https://abcnews.go.com/Politics/unprecedented-wave-gop-defections-trump-nominated-analysis/story?id=72597003>> accessed 23 June 2023.

## **CHAPTER V**

### **JUDICIAL PRONOUNCEMENTS ON ANTI-DEFECTION LAWS IN INDIA**

The Tenth Schedule was introduced into the Constitution of India via the 52nd Amendment Act of 1985 with the primary objective of curbing the detrimental practice of political defection that often resulted from the lure of power and other related factors. This practice had the potential to undermine the stability of democratically elected governments. However, the efficacy of this Schedule has been a subject of debate and disagreement since its inception. The Anti-Defection Law has faced significant criticism since its inception, with several loopholes being identified.

Certain circumstances that arose were seemingly unanticipated by the drafters of the 52nd Amendment, which restricted defections. Diverse interpretations of certain provisions within the 10th Schedule by different presiding officers have resulted in significant ambiguity and variability in the enforcement of the legislation, thereby exposing several inadequacies.

Critics have raised concerns about the potential infringement upon the rights of speech and expression of elected legislators by the anti-defection law. The legitimacy of the aforementioned has been challenged on various bases, such as its perceived contravention of the fundamental structure of the Constitution, its purported transgression of the jurisdiction of the legislative body, and its alleged preference for expediency over principles. Considerable apprehensions were expressed regarding the legitimacy and feasibility of this piece of legislation even prior to its ratification by the Parliament. It was projected that legislative measures alone would prove inadequate in tackling the issue of political defection within the political landscape of the nation.

The identification of specific inherent legal gaps and certain provisions within the Tenth Schedule has been observed to be prone to varying interpretations by different presiding officers, leading to significant ambiguity in the execution of the law. Consequently, the courts have been compelled to adjudicate and construe almost all

aspects of the 10th Schedule. Paragraph 2, which delineates the reasons for disqualifying a member, has likely undergone the most judicial examination.

## **5.1. Mr. Zachillhu & Others v. Kihota Hollohon<sup>91</sup>**

### **5.1.1. Facts**

On December 12, 1990, Shri Kihota Hollohan, an individual who holds a position in the Nagaland State Assembly, submitted five petitions under the 10<sup>th</sup> Schedule. The petitions were filed against ‘Sarvashri Konngam, Khusatho, T. Miachieo, L. Mekiye Sema, and Zachilhu’, who were also MLAs, for their voluntary departure from the Congress (I) political party.

The aforementioned members submitted their resignations individually, resulting in a division within the Congress (I) Party. It is worth noting that their combined number did not constitute even 1/3rd of the party’s present membership. The legislative assembly consisted of 24 members belonging to the Congress (I) party. Each of the aforementioned individuals had been dismissed from the legislature by the Presiding Officer. The decision made by the Speaker was challenged by the Gauhati High Court. The constitutionality of the 10th Schedule to the Const. which was incorporated by means of the Fifty-second Amendment Act of 1985, was additionally subject to challenge on constitutional grounds.

During that period, numerous petitions were filed before various Courts in reaction to varying interpretations of the 10th Schedule’s provisions by the Presiding Officers. The Speaker’s judgement and the constitutionality of the Act have been subject to legal challenges in various courts.

The Punjab & Haryana High Court has issued a ruling stating that the seventh paragraph of the 10<sup>th</sup> Schedule, that imposes limitations on the Court’s authority, is deemed unconstitutional. In response to the aforementioned order, the administration filed an appeal with the Supreme Court. Consequently, a Constitution Bench comprising of five judges was constituted to deliberate upon these requests.

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<sup>91</sup>1992 SCR (1) 686, 1992 SCC Supl. (2) 651

## **5.1.2. Issues**

### **5.1.2.1. The Tenth Schedule's Constitutionality**

In this case, the constitutionality of the 10<sup>th</sup> Schedule was subject to contestation. By a 3:2 margin, the Supreme Court upheld the amendment's validity as well as the 10<sup>th</sup> Schedule's contents, having the sole exemption of paragraph 7, which was declared unconstitutional.

### **5.1.2.2. Freedom of expression**

The legislation faced opposition on the basis that it compromises the basic framework of the Constitution by contravening essential principles of democratic government, unrestricted expression, and the entitlement to opposing views. This is due to the law's discouragement of the exercise of all of those fundamental liberties and rights, which are critical to the endurance of the democratic parliamentary structure.

As per the verdict of the Supreme Court, the regulations outlined in the Tenth Schedule do not infringe upon the privileges or liberties of those who are the elected representatives of the Parliament or State Legislatures, as enshrined in Articles 105 or 194 of the Indian Constitution and are therefore deemed to be valid under the Constitution. Contrary to the assertion made, it does not diminish their entitlement to freedom of speech, suffrage, and personal beliefs. The Tenth Schedule stipulates that an elected official's right to freedom of speech does not come without limitations, and those limitations do not aim to subject a House member to legal accountability for anything that they have once spoken or voted.

### **5.1.2.3. The court's jurisdiction**

Paragraph 7 of the Tenth Schedule of the Constitution of our country restricts the Supreme Court and High Court's authority, as outlined in Articles 136 and 226, respectively. This restriction applies to any matter concerning the expulsion of an affiliate. The 52<sup>nd</sup> Amendment Act,<sup>92</sup> which encompassed paragraph 7, has been deemed ultra vires due to its failure to receive the necessary approval from half of the

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<sup>92</sup><https://www.mea.gov.in/Images/pdf1/S10.pdf>

States' Assembly, as stipulated by the exception to the second clause of Art. 368. Nonetheless, due to the unconstitutionality of Paragraph 7, it is not possible to nullify the entirety of the Act Amending the Constitution with the Fifty-Second Amendment in 1985.

#### **5.1.2.4. The Speaker/Chairman's decision**

A pivotal matter in this case, among other considerations, pertained to the legitimacy of Para 6 of the 10<sup>th</sup> Schedule, which confers conclusiveness on decisions of the Presiding officer. In accordance to the Court's statement, provision is deemed valid insofar as it confers conclusiveness to the Speaker's directives. Notwithstanding, as per the provisions enshrined in the Constitution, the Courts are vested with the power to undertake judicial review.

The assertion posits that the ambit of judicial review ought not to extend to any phase antecedent to the Speaker/Chairman's ultimate decision. The provision stated in paragraph 6 pertaining to finality does not entirely exclude the jurisdiction of the courts as per the provisions of Articles 136, 226, and 227 of the Constitution. Nonetheless, this action results in Court's jurisdiction limitations.

#### **5.1.2.5. Giving the Speaker adjudicatory power**

The role of Chairpersons is crucial in the framework of parliamentary governance as they serve as guardians of the House's privileges and rights. Alleging that the implementation of the Tenth Schedule's adjudicating power would compromise a fundamental element of democracy could be perceived as a slight to the venerable customs of the esteemed establishment. Consequently, the Court determined that assigning adjudicatory duties to the Speaker or the Chairman should not compromise the provision based on the premise that political bias is unsound and unacceptable.

### **5.2 Ravi S. Naik v. Union of India & Ors<sup>93</sup>**

#### **5.2.1. Facts**

The Goa Legislative Assembly, consisting of 40 members, was represented by the 'Congress (I), Maharashtrawadi Gomantak Party (MGP)', and Independent members

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<sup>93</sup>C.A. No. 2904 of 1993

who were elected through the electoral process. The government was established by the Congress(I) with the aid of a solitary independent member. In a brief span of time, seven former members of Congress(I) established the Goan People's Party (GPP) after defecting. The GPP and MGP collaborated to create the Progressive Democratic Front (PDF), a coalition government.

The MGP withdrew its backing for the PDF administration on December 4, 1990, leading to the region being placed under President's Rule. After President's Rule was ended in Goa, Ravi S. Naik took over as the state's new Chief Minister. Minister Ravi S. Naik and many others were expelled by the Speaker of the House for voluntarily changing their party affiliation.

On March 4th, 1991, membership was revoked from Surendra v. Sirsat<sup>94</sup>. The Bombay High Court rejected the challenge to the Speaker's ruling on the basis of laches. The Supreme Court reversed the Bombay High Court's decision to reject the writ petition.

The Court's decision in the case of Dr. Kashinath G. Jalmi v. Speaker<sup>95</sup> allowed for both appeals to be considered. As a result, Chopdekar, Bandekar, and Naik's writ petition was granted, and directed to be reopened and adjudicated on its merits by the High Court.

## **5.2.2. Issues**

### **5.2.2.1. Voluntary withdrawal from membership and resignation**

A pivotal matter in this case pertained to whether the act of resigning alone constituted a voluntary relinquishment of political party membership. The Supreme Court ruled that "voluntarily given up his membership" and "resignation" are not equivalent and that "resignation" has a broader meaning than "voluntarily given up his membership."

It is possible for a party member to withdraw from their membership on a voluntary basis, without the need for a formal resignation. A member's actions, even in the

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<sup>94</sup>AIR 1996 Bom 10, 1996 (2) BomCR 362, (1995) 97 BOMLR 621

<sup>95</sup>AIR 1993 SC 1873

absence of an official resignation, may indicate that they have voluntarily left the political party to which they previously belonged.

#### **5.2.2.2. If the Speaker follows Court orders**

The case also posed the question of whether the Speaker of the House must adhere to a court's decision. Because his order could not be challenged in court, the Supreme Court ruled that the Speaker could not disregard the stay order issued by the High Court. This was due to the fact that the Speaker's decision was definitive and could not be challenged in court. It is well-established that a court order, particularly one of an interim nature, is binding until and unless it is overturned by a court with superior authority.

#### **5.2.2.3. Judicial Review extends to Tenth Schedule Rules**

The Supreme Court in the current case delved into an additional inquiry regarding the applicability of review by the judiciary by courts to regulations acknowledged under the 10<sup>th</sup> Schedule of the Constitution. The Supreme Court disregarded the petitioner's contention that violation of the Disqualification Rules violates constitutional obligations.

The court instead contended that the Disqualification Rules were set up to govern the process that the Speaker must adhere to while exercising the power granted to them as per sub-paragraph (1) of the Constitution's 10<sup>th</sup> Schedule's paragraph 6. The rules pertaining to disqualification are legal in its very nature, and any breach of these regulations would be deemed an administrative variation.

It was also mentioned that the court's interpretation of paragraph 6(1) in the Kihoto Hollohan case limits judicial review of the Speaker's instructions to cases where there has been a violation of constitutional requirements, mala fides, a failure to conform with Natural Justice standards, or perversity. The court ruled that the Disqualification Rules are subservient to the Constitution and cannot be compared with its provisions since they were created by the Speaker in exercise of the power conferred under paragraph 8 of the Tenth Schedule. Therefore, they cannot be enforced in the same way as constitutional requirements, and a violation of the Disqualification Rules cannot be used to challenge the Speaker's decision in court. Any violation of the



Disqualification Rules set out in Paragraph 8 of the Tenth Schedule would be a defect in process that is shielded from judicial inquiry by Paragraph 6 sub-paragraph (2).<sup>96</sup>

#### **5.2.2.4. Violation of the natural justice principle**

It is important to note that the tenets of natural justice are not immutable, but rather adaptable, and as such do not conform to a rigid framework which can be confined by laws. The determination if the conditions for natural justice were actually satisfied necessitates an evaluation of the tailored case's details and situations.

### **5.3 G. Viswanathan v. The Hon'ble Speaker of the Tamil Nadu Legislative Assembly.<sup>97</sup>**

#### **5.3.1. Facts**

The present case pertains to the plaintiffs who were legislators of the Assembly in Tamil Nadu, belonging to the AIADMK party and were subjected to expulsion on January 8, 1994 on account of their alleged involvement in activities that were against their party. The Speaker had designated the legislators as "unattached" and issued them with notification pursuant to the Tenth Schedule for their affiliation with a newly-formed faction known as MDMK.

The petitioners expressed discontent with the letter and subsequently submitted writ petitions to the Madras High Court. However, legal proceedings have been swept out. On the 20th of April in 1995, the Speaker disqualified the aforementioned individuals on the grounds of desertion as per the Tenth Schedule. The appellants submitted a writ petition contesting the Speaker's order, along with a CMP requesting an injunction on an interim basis. Although an injunction was initially issued, it was subsequently rescinded and the civil monetary penalties (CMPs) were overturned.

The parties appealing lodged Writ Appeals subsequent to expressing dissatisfaction in the rulings that revoked the interim injunction. On September 29, 1995, a Division Bench of the High Court simultaneously considered and rejected both the writ petitions and the writ appeals. The petitioners have sought special permission from

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<sup>96</sup>1994 Supp. (2) SCC 641: AIR 1994 SC 1558

<sup>97</sup>1996 AIR 1060, 1996 SCC (2) 353

the Supreme Court to file an appeal in opposition to the collective decision of the High Court.

### **5.3.2. Issue**

#### **5.3.2.1. ‘Expelled’ or ‘Unattached’ status<sup>98</sup>**

The Tenth Schedule does not provide any explicit guidance or provisions regarding this matter. The intended meaning of the statement is not readily discernible. Following the act of expulsion, a former member remained bound by the group’s whipping motion, and any failure to adhere to said whip would lead to removal from the House. The perception that one has of being ‘unattached’ is something of flexibility that is not considered within the framework of the Tenth Schedule. This perception does not affect the presumption that must be made according to the explanation to clause 1 of Paragraph 2. The aforementioned setup and labels would provide limited legal assistance in mitigating the disqualification of said individual, as it lacks recognition within the statutory framework that forms the basis of the legal system.

#### **5.3.2.2. Resigning voluntarily and joining another political party**

Among the primary issues under consideration in this particular case pertained to the potential disqualification of a member who belongs to a political party. Specifically, the question at hand was when the act of voluntarily resigning from one political party, immediately following eviction from a prior political party, would result in disqualification.

According to the court’s ruling, an individual who has been evicted is deemed to be a “unattached” member within the household. Nevertheless, with the provisions outlined in the 10<sup>th</sup> Schedule, he continues to retain his membership within the former political party. Therefore, in the event that an individual who was appointed to the House as a representative of a party of choice decides to join a different political party due to being expelled from their original party, they have willingly relinquished their membership to the former party and are subsequently disqualified.<sup>99</sup> Moreover, the

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<sup>98</sup> Ibid. para 14

<sup>99</sup> Id.

categorization of individuals within the 10<sup>th</sup> Schedule is solely determined by the way in which they gained entry into the legislative body.

1. One who a political party nominated and then elected someone to serve;
2. A person who won election as a representative despite not being endorsed by a major political party (sometimes called a “independent” candidate); and
3. A person nominated

The aforementioned classes do not cover every possible scenario. The Bench has ruled that it is illegal to introduce a new category or provision that is not already covered by the Constitution’s Tenth Schedule. A member of the House is no longer eligible to serve if he or she switches allegiances from the political party that nominated them. Outside of the Tenth Schedule, the designation of “unattached” is purely arbitrary and has no bearing on the provisions of paragraph 2(1). According to the Tenth Schedule, such classification and labelling are meaningless. The damage, namely the violation of the electorate’s confidence, would not be mitigated if the petitioner's viewpoint is adopted, and this is precisely why the Tenth Schedule was enacted. The court held that the presumption that fictional elements should be upheld was necessary to prevent expelled individuals from skirting the law, which was enacted to mitigate the damage done by defectors who had compromised the system’s security.

And the court said, “paragraph 1(b) cannot be construed alone. It needs to be understood in light of paragraphs 2 and 4.” Paragraph 1(b) defines “members of that House for the time being belonging to that political party in accordance with the said provisions, which are paragraphs 2, 3, and 4, as applicable, in reference to a member of that House belonging to any political party. When taken together, paragraph 2 (1) and its explanation make it abundantly clear that, barring disqualification or resignation, an elected member must remain a member of the political party for which he was elected.

In light of the factual circumstances surrounding the case, the Supreme Court affirmed the Speaker’s order and abstained from intervening, dismissing all of the respondent’s arguments, and went on to hold that – If he voluntarily switches political

parties, as the appellants here did, he would be considered to have abandoned the political party to which he belonged or was assumed to have belonged, within the explanation to para 2 (1).<sup>100</sup>

### **5.3.2.3. Whether the whip applies to expelled members.**

Without giving complete effect to explanation (a) of paragraph 2(1) of Schedule 10, the expelled member will not be subject to the severe law intended to deter defections.

In order to effectively address the issue of defections, it is crucial to fully implement the rationale of (a) outlined in paragraph 2(1). Failure to do so would result in the exempting of the disqualified member compared to the proposed legal measures designed to mitigate the negative consequences of defectors.

## **5.4. Amar Singh v. Union of India<sup>101</sup>**

### **5.4.1. Facts**

Presently, the petitioners are Shri Amar Singh and Smti Jaya Prada, who were recently elected to the Rajya Sabha and the Lok Sabha as members of the Samajwadi Party. They were expelled from the Samajwadi Party as a consequence. Two signatories of the petition intended to vote in favour of the Women's Reservation Bill, but the Samajwadi Party prevented them from doing so. The present writ petition was lodged with the Supreme Court of India pursuant to Article 32 of the Indian Constitution by a writ petitioner who feared losing their seat in parliament. Due to the recent Supreme Court judgment in G. Viswanathan case, they are understandably concerned about maintaining their membership in the organization.

### **5.4.2. Issues**

#### **5.4.2.1. Disqualification for disobeying the party whip.**

The crucial matter for the Supreme Court to deliberate upon in this particular case pertained to the implications of paragraph 2(1)(a) and its interpretation on individuals who have been expelled from political parties and have not willingly renounced their

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<sup>100</sup> (1994) Supp. (2) SCC 64, p. 649

<sup>101</sup> AIR 1996 SC 1060

membership in said political party. The matter in question was previously resolved in the G. Viswanathan case, wherein it was established that an expelled member of a political party remained obligated to adhere to the party's whip, and failure to comply would result in disqualification. The Supreme Court of India made a reference to a larger bench and, in its decision, determined that the judgement in the case of G. Viswanathan should not be applied until the reference is resolved.<sup>102</sup>

The significance of the Supreme Court's decision stems from the court's belief that disqualification rules in the Tenth Schedule of the Constitution were originally intended to apply to previously expelled members. However, this intention was subsequently abandoned following a parliamentary debate that highlighted the potential adverse consequences of such inclusion. If it was not the intent of the legislature, expelled members of a political party should not be grouped with those who voluntarily resign from their parties, this classification could not have been incorporated into the Tenth Schedule through the G. Viswanathan case's ruling.

Consequently, the crucial inquiries raised in the legal case of Amar Singh, remained unattended, thereby allowing the ruling in the G. Viswanathan case to remain in force. Nevertheless, the approach taken by the Supreme Court resulted in a portion of the 10th Schedule being left with ambiguity and lack of definition. In light of the present circumstances, it is imperative to examine the concerns brought to attention in the case of Amar Singh.

## **5.5. Balchandra L. Jarkiholi v. B.S. Yeddyurappa.<sup>103</sup>**

### **5.5.1. Fact**

Thirteen Bharatiya Janata Party MLAs from the Karnataka Legislative Assembly sent identical letters to the Governor. These letters expressed discontent with the condition of affairs under the administration of Chief Minister Sri B.S. Yeddyurappa. In addition, the MLAs have formally withdrawn their support for the current administration and have requested the Governor's intervention.

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<sup>102</sup> Ibid.

<sup>103</sup><https://indiankanoon.org/doc/287457/>

The Governor requested that Sri B.S. Yeddyurappa exhibit his legislative majority. Following their participation in the revolt against Chief Minister Yeddyurappa, the Speaker disqualified eleven B.J.P. MLAs for “voluntary relinquishment” of party membership.

The High Court then considered an appeal of the Speaker’s decision. The judgement of the Speaker was upheld following review by a third justice and the High Court. The appellant was dissatisfied with the High Court’s ruling, so he submitted an appeal with the Supreme Court. The Supreme Court reversed the High Court of Karnataka’s disqualification ruling after hearing the appeal.

## **5.5.2. Issues**

### **5.5.2.1. Scope of judicial by Speaker**

According to paragraph 2 (1)(a) of the Tenth Schedule, the Speaker assumes a quasi-judicial function, rendering any order issued by the Speaker subject to judicial review. Consequently, the Speaker has the authority to act in a quasi-judicial capacity when determining whether or not a House member should be disqualified under section 2 (1)(a) of the Tenth Schedule.

### **5.5.2.2. Voluntary resignation from membership**

The appellants expressed their displeasure with the functioning of the government lead by Shri B.S. Yeddyurappa to the Governor through a written correspondence, expressing their intention to discontinue their financial backing for the administration. Consequently, lack of faith in the parliamentary party leader by the appellant does not comprise a deliberate act of betrayal. It is not necessary to renounce party membership to express discontent with the dominant party under the leadership of a particular individual. Dissociating from a political leader or governmental authority should not be conflated with disaffiliating from a political party. The appellant’s decision to no longer support the government headed by Shri Yeddyurappa should not be confused with a decision to abandon the Bharatiya Janata Party (BJP), as the leadership of a political party and a government should not be equated.

### **5.5.2.3. Was the Speaker's disqualification decision hasty**

The Speaker was not under any obligation to expeditiously adjudicate the “Disqualification Application presented by Shri Yeddurappa”, particularly by granting the Appellant a mere three-day period for responding to the notice. The Speaker's actions indicated his efforts to align with the Governor's objectives for the Assembly's trial of strength, aiming to ensure the disqualification of the members who filed the appeals and the other MLAs who are independent before the scheduled Floor Test. The Speaker's actions indicate an effort to meet the Governor's imposed time constraint for the Assembly's strength trial, while also ensuring the disqualification of the petitioners and the others who appealed and the others before the scheduled floor test. The vote of confidence, originally planned for November 10, 2010, resulted in Yeddyruppa's loss of majority in the House due to the disqualification of certain members who were consequently unable to participate.

## **5.6. Nabam Rebia v. Deputy Speaker of Arunachal Pradesh<sup>104</sup>**

### **5.6.1. Facts**

In the 60-member Arunachal Pradesh State Legislative Assembly, the Indian National Congress held 47 seats, the Bharatiya Janata Party held 11 seats, and two seats were held by independents. Shri Nabam Tuki's conduct as chief minister of the state was viewed differently by INC legislators. The dissident legislators demanded that Nabam Tuki's position as chief minister be terminated.

On November 16, 2015, sixteen INC MLAs filed a notice to dismiss Deputy Speaker Tenzing Norbu Thongdok. The Deputy Speaker of the House was elected on an INC ticket. On November 19, 13 MLAs lodged a similar notice. The INC's Deputy Speaker and thirteen other dissident MLAs were named in a petition lodged by the Congress Legislature Party's Chief Whip on December 7, 2015 under the Tenth Schedule, alleging ‘anti-party conduct.’

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<sup>104</sup>(2017) 13 SCC 332

In order to expedite the review process of the petition requesting the dismissal of the Speaker, the Governor issued a directive to reschedule the Assembly Session, originally planned for January 14, 2016, to December 16, 2015, on December 9, 2015. Once more, the Governor issued instructions that the composition of the House's political parties should remain unchanged until the resolution of the motion pertaining to the aforementioned notice.

Speaker Nabam Rebia, in contempt of the Governor's order, invoked the Tenth Schedule to remove from office the 14 Indian National Congress (INC) members who opposed him. On December 15, 2015, the Deputy Speaker overturned the disqualification judgement against the 14 INC MLAs. 14 disqualified MLAs avidly pursued a vote to remove Speaker Nabam Rebia from his position on December 16, 2015. The vote to remove Speaker Nabam Rebia from office was approved by a unanimous vote.

Speaker Nabam Rebia filed the writ with the Gauhati High Court, contesting several points. The Deputy Speaker's rulings on the expulsion of 14 INC MLAs on 15.12.2015 and the motion to remove the Speaker on 16.12.2015 were both contested.

## **5.6.2. Issues**

### **5.6.2.1. Whether, under the Tenth Schedule, the Deputy-Speaker can override the Speakers order**

The appeals centre on whether or not the Deputy Speaker of the Assembly, who is also the Deputy Speaker, has the authority to reverse the Speaker's decision to remove 14 dissident MLAs from the INC, as required by the Tenth Schedule of the Constitution.

In this case, the Supreme Court's decision in Kihoto Hollohan case, established the Speaker's status as a Tribunal under the Tenth Schedule of the Constitution, as the Court has said. Consequently, any decision made by the Speaker can only be subject to scrutiny in a court that exercises constitutional jurisdiction. The decision in the case was established that the Speaker lacks the authority to reevaluate or review their own judgement in accordance with the Tenth Schedule of the Constitution. The current circumstances require the Deputy Speaker to reverse the order issued by the Speaker.



### **5.6.2.2. Can the Governor interfere with the Speaker's authority under the Tenth Schedule?**

In a communication dated December 9, 2015, the Governor informed the Speaker that there would be no alterations to the overall composition of the House prior to the conclusion of the sixth session of the Assembly. The Tenth Schedule of the Constitution clearly poses the question of whether or not the Governor can usurp the authority of the Speaker.

According to the Tenth Schedule, only the Speaker has the ability to rule on defections, whereas the Governor has no say in whether or not a lawmaker is expelled from the Assembly. According to the Indian Constitution, both 'the Governor' and 'the Speaker' have separate constitutional responsibilities.

According to the Apex Court, it was determined that the Governor lacks the authority to enforce the Speaker's performance of his duties in a manner that aligns with his own interpretation of constitutional appropriateness. The direct or indirect involvement of the Governor is prohibited when a petition is filed under the Tenth Schedule to disqualify one or more MLAs. The involvement of the Governor in such affairs would exceed the boundaries set by constitutional authorization. The assertion of authority by the Governor in relation to ongoing cases against MLAs is evidently beyond the scope of his constitutional authority.

### **5.6.2.3. Can the Speaker utilize his authority under the Tenth Schedule while his position as Speaker is being challenged?**

The Supreme Court has ruled that a Speaker cannot preside over a petition for disqualification under the Tenth Schedule while a notice of resolution against his own dismissal from the position of Speaker is pending. 13 legislators introduced a notice of resolution to impeach the Speaker on November 19, 2015. On December 7, 2015, the Chief Whip of the Congress Legislature Party filed a Tenth Schedule petition to expel 14 INC MLAs for anti-party conduct. In spite of this, on December 14, 2015, the Speaker terminated the membership of the 14 MLAs, concluding that they had violated the Assembly's regulations.

#### 5.6.2.4. Maharashtra crisis

While a notice for the Speaker's removal is pending, the Constitution Bench of the Supreme Court has questioned the constitutionality of the rule set in Nabam Rebia case, which states that the Speaker may not initiate disqualification procedures. This transpired in the *Subhash Desai v. Principal Secretary to the Governor of Maharashtra* case, which dealt with the schism within the Shiv Sena.<sup>105</sup>

The petitioner's Senior Counsel contended that the judgement in *Kihoto Hollohan v. Zachillhu*<sup>106</sup> and Nabam Rebia are in disagreement. Another Constitution Bench ruled in *Kihoto Hollohan* that the Court cannot ordinarily intervene in disqualification hearings at the interlocutory stage. According to Nabam Rebia case, the act of issuing a notice to bring forward a motion for the ousting of the Speaker would be considered interference with the disqualification procedure during the initial phase. According to the petitioners, the Nabam Rebia judgement might be abused by defecting MLAs to avoid disqualification by preventing the Speaker from advancing with the disqualification process.

However, in such a case, the Speaker would be helpless. It was contended that the Nabam Rebia ruling causes a suspension in the functioning of the provisions. Furthermore, it was claimed that the decision in Nabam Rebia implies that while a notice to present a motion for the Speaker's removal is issued, the makeup and strength of the House cannot be changed, which is contrary to Articles 179, 181 and Constitutional Assembly Debates. Further, the petitioners reasoned, MLAs would be disqualified from office as of the day they committed the prohibited activity under the 10<sup>th</sup> Schedule. As a result, the disqualified MLAs would be unable to issue the Speaker's removal notice.

Senior Counsels contended that if a representative has been unfairly barred and the court has overruled the disqualifications procedure, they will be denied a chance to vote on a motion to remove the Speaker, whereas when the House Speaker is unfairly ousted from his seat, they will retain their membership in the House and will be able

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<sup>105</sup>2023 LiveLaw (SC) 422

<sup>106</sup>SCC Supl. (2) 651

to participate in proceedings. The ruling in *Kihoto Hollohan* was claimed to be an anomaly rather than the rule. According to the respondents, the Speaker's inability to decide disqualification petitions following the notice to remove them does not constitute interference.

#### **5.6.2.5. The Supreme Court's analysis**

Article 179 stipulates that a majority of members of Assembly must vote in favour of a resolution in order to dismiss the speaker from office. In his decision in the case of *Nabam Rebia*, Justice Khehar elaborated on the phrase “all the then-members of the Assembly.” Mohd Tahir proposed altering the phrase in the Constituent Assembly to “the members of the Assembly who are present and voting” but his proposal was rejected.

Justice Khehar had remarked that no discussions on this proposed amendment were recorded in the Constituent Assembly Debates. As a result, the Judge deduced that the term was employed to show definiteness, and according to Article 179(c), there should be no alteration in the composition. Given the facts, the Constitution Bench stated that the *Nabam Rebia* decision did not apply to the current case.<sup>107</sup> However, the Court stated that it had earlier concluded that the position of the ruling established in *Nabam Rebia* was founded on inconsistent reasons that necessitated gap filling in order to protect constitutional morality.

In light of the petitioner's arguments in favour of the referral, the Constitution Bench has decided to refer the *Nabam Rebia* case to a higher Bench, as a significant legal issue has not yet been resolved.

### **5.7. Pema Khandu v. Arunachal Pradesh Legislative Assembly Speaker<sup>108</sup>**

#### **5.7.1. Facts**

This case is almost identical to *Nabam Rebia v. Deputy Speaker of Arunachal Pradesh*.<sup>109</sup> In this case, however, “the petitioners were 14 disqualified Arunachal Pradesh Legislative Assembly Congress MLAs,” so there is an important distinction.

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<sup>107</sup>2023 LiveLaw (SC) 422

<sup>108</sup><https://indiankanoon.org/doc/113756905/>

<sup>109</sup>(2017) 13 SCC 332

The petitioners argued that the ex-party disqualification order issued against them by the Speaker on 14.12.2015 violated the Tenth Schedule of the Indian Constitution.

### **5.7.2. Issue**

#### **5.7.2.1. The Speaker's violation of natural justice standards**

The main issue in this case is whether the challenged order of disqualification was issued without providing the disqualified MLAs with a meaningful opportunity to be heard. There is no specific proof that the 14 disqualified MLAs were served with notice. It is an example of failure to provide notification. Any entity with judicial or quasi-judicial powers is expected to adhere to the principles of due process when evaluating cases. An ultra vires decree is one that violates the principles of natural justice. Due to this new evidence, the Honourable Gauhati High Court reversed its disqualification ruling from December 15, 2015 and remanded the case to the Speaker for further consideration. The Honourable Gauhati High Court has requested an investigation into the disqualification complaint, and the Speaker will render a decision based on the Committee's findings.

### **5.8. Gyanendra Kumar Singh v. The Legislative Assembly of Bihar<sup>110</sup>**

#### **5.8.1. Facts**

The ongoing legal matter pertains to the electoral process of the Rajya Sabha. The individuals who filed the petition in this particular case were affiliated with the Janata Dal. The Janata Dal (United) party formally acknowledged three candidates in the Rajya Sabha election: 'Shri Sharad Yadav, Shri Ghulam Rasool, and Shri Pawan Kumar Verma'. Nevertheless, it should be noted that the designations of two out of the three contenders, namely Shri Pawan Kumar Verma and Shri Ghulam Rasool, were not officially endorsed by the party, the governing body vested with the power to determine such matters. The Petitioners expressed their support for Shri Sharad Yadav's candidature in the Rajya Sabha election, while simultaneously expressing opposition towards the remaining two candidates. Since all of the Petitioners voluntarily offered their resignations from the Janata Dal (United) party, the Speaker

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<sup>110</sup>(SC) 808

deemed them ineligible for this action under paragraph 2(1)(a) of the Tenth Schedule to the Indian Constitution.

## **5.8.2. Issue**

### **5.8.2.1. Voluntary resignation of membership**

In this case, the primary issue before the Honorable High Court of Patna was whether the petitioners could be disqualified based solely on their conduct during the Rajya Sabha election, which would equate to a voluntary renunciation of their membership in the JDU. Petitioners sought to overturn the election of ‘Shri Ghulam Rasool and Shri Pawan Kumar Verma’, the two officially endorsed JDU candidates. These two candidates' identities were not released by the party's Parliamentary Board, which is responsible for such selections. However, at the same election, petitioners loyal to the Janata Dal (United) party backed Shri Sharad Yadav's candidacy. The petitioner's two initiatives are diametrically opposed to one another. For the simple reason that the petitioners are dedicated party members who voted for Shri Sharad Yadav and against the other two.

The question now is whether the petitioner's actions and behaviour amounted to willingly giving up their party membership. In this context, the Patna High Court ruled that a person's loyalty to his party is not something for which he can be held responsible. Member's actions are should be evaluated as a whole, not in isolation. These petitioners voted for Shri Sharad Yadav and continue to identify with his political party, but their opposition to the other two candidates has been deemed an unwritten forfeiture of their membership. Since petitioner's acts during the same election cannot be dealt with differently and candidate by candidate, this scenario is paradoxical. The mere fabrication of a cloud is enough to exonerate the complainants from the supposed allegation of defection where there is no other substantial material evidence to substantiate the claim.

Legislator behavior must be evaluated as a whole, not in pieces. Petitioner's dissension, as evidenced by their backing of an independent candidate in the Rajya Sabha election while also endorsing one of the three party candidates, is not enough to disqualify them as members of the party without further evidence of their abandonment of loyalty to the organization.

### **5.8.2.2. Defection v. Dissent**

In this particular case, the subsequent pivotal consideration pertained to when actions and behavior of the petitioners can be categorized as ‘defection’ or merely ‘dissent’. Defection can be defined as the act of abandoning one’s political party, thereby demonstrating disloyalty or a change in party affiliation. The expression of sincere ‘dissent’ plays a crucial role in fostering a robust democratic system and should not be equated with ‘defection.’ Two of the three candidates proposed by the JDU have not been approved by the organization’s Parliamentary Board. Petitioner’s complaints were legitimate and focused on these two candidates. The behavior exhibited by these individuals did not constitute defection; however, it unequivocally constituted an expression of dissent. The High Court made an observation regarding the nuanced distinction between ‘defection’ and ‘dissent’.

While it is true that all instances of defection involve acts of dissent driven by ambitions for power or other non-ethical factors, it is not always the case that all instances of dissent can be categorized as defection.

The researcher, while expressing gratitude for the decision rendered by the High Court, humbly recognizes that it represents a genuine instance of sincere disagreement instead of an act of disloyalty. In this particular instance, those who filed the petition exhibited their loyalty to the party by endorsing the candidature of ‘Shri Sharad Yadav’ and expressing opposition towards the candidature of the remaining two candidates who did not receive acceptance from ‘the Parliamentary Board of the Janata Dal (United) Party.’

Petitioners argued that “Shri Ghulam Rasool and Shri Pawan Kumar Verma, official candidates of the Janata Dal (United),” were ineligible to run because their names were not approved by the party's parliamentary council. The petitioners “Janata Dal (United) party members Shri Anil Kumar Sharma and Shri Shabir Ali” are currently both candidates and election observers. Such forthright criticism is beneficial for a democratic government.

## **5.9. Kunwar Pranav Singh Champion v. Speaker of the Uttarakhand Legislative Assembly<sup>111</sup>**

### **5.9.1. Facts**

As part of this case, ‘all petitioners/MLAs from the Indian National Congress (INC)’ submitted a joint memorandum to the Governor of Uttarakhand, expressing their dissatisfaction with the Congress Government and Chief Minister Harish Rawat. It was endorsed by twenty-six members of the BJP and nine members of the Indian National Congress. The memo expressed concern regarding the status of Appropriations Bill 2016, stating that the Speaker had ignored the requests of 35 legislators for a vote by division. The petitioners were disqualified from membership in the House of Representatives by an order issued by the Speaker on March 27, 2016, citing their “voluntary resignation” as the basis for disqualification under Article 2(1)(a) of the Tenth Schedule of the Constitution.

### **5.9.2. Issues**

#### **5.9.2.1. Whether the petitioner willingly resigned from the party**

The primary matter under consideration by the esteemed Uttaranchal High Court in this particular case pertains to the question concerning if the parties seeking relief have willingly relinquished their party membership. This was done through the submission of a collective memorandum to the Governor, utilizing the official correspondence of the head of the opposition. The memorandum explicitly states that the petitioners had cast their votes in opposition to the Appropriation Bill, thereby highlighting the administration's minority status as the reason for its failure to pass.

The petitioner argued in the writ petition that “the act of submitting a joint memorandum to the Governor” ought not to be deemed as a voluntary renunciation of party membership, as expressing criticism of the Chief Minister’s style of leadership or the Speaker’s political actions does not qualify as a resignation of office.

“The Uttaranchal High Court, in disagreement with the petitioner’s stance, determined that the petitioner, through their actions, voluntarily relinquished their entitlement to

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<sup>111</sup><https://indiankanoon.org/doc/100181920/>

pursue legal action and their affiliation with the Congress.” The petitioner’s behavior can be inferred from their actions, which involved submitting a joint memorandum to the Governor.

Several constitutional legal debates have been sparked by the Tenth Schedule. The constitutionality of the Tenth Schedule has been contested on multiple occasions, as have the meaning of the phrase “voluntarily giving up membership,” the scope of judicial review exercised by the Courts, the scope of the Speaker’s authority and power to review cases, and a variety of other issues. The provisions set out in “Paragraph 2 of the Tenth Schedule” gave rise to the vast bulk of the disputes.

The legitimacy of the 10th schedule was upheld by the Supreme Court in the landmark case *Kihota Hollohon v. Mr. Zachillhu & Others*.<sup>112</sup> The Supreme Court ruled that the 10th schedule did not violate any constitutionally protected rights or freedoms of expression, association, or religion. The provisions of this bill do not have any fatal flaws that would jeopardize the constitutional protections enjoyed by members of the House of Representatives.

Based on the preceding discourse, it’s clear that the Indian Supreme Court has widened the scope of the Tenth Schedule’s provisions. There existed a gap in the Constitution’s Tenth Schedule, which the Supreme Court filled up through a number of separate decisions. With each occurrence, the Tenth Schedule has given rise to fresh challenges, prompting the Apex Court to expand the scope of its review jurisdiction. This expansion aims to curb the corrupt practices of defection by Members of Parliament (MPs) and Members of Legislative Assemblies (MLAs). Simultaneously, Members of Parliament and Legislative Assemblies have had significant protections for their right to free speech provided by the Supreme Court.

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<sup>112</sup>1992 SCR (1) 686, 1992 SCC Supl. (2) 651



## CHAPTER VI

### CONCLUSION AND SUGGESTIONS

#### 6.1. Conclusion

1985 saw the passing of the Anti-Defection Act by the Indian Parliament. After nearly thirty-two years, despite being in place, the law has not been effective in preventing political defections to the anticipated amount due to several embedded loopholes in the statute. This legislation was primarily intended to combat “the evil of political defections.” Under the Tenth Schedule, members of Parliament and state legislatures can be expelled for changing political parties. In the case of *Kihoto Hollohon v. Zachilhu*<sup>113</sup>, the extent and object of the constitutional validity of the Tenth Schedule were thoroughly scrutinized. The goal is to protect the Legislature’s democratic framework and the legislators' political morals.

The present schedule is comprised of eight distinct paragraphs, each serving a specific purpose. The introductory paragraph serves to outline the terms and conditions at hand. Following this, in the second paragraph, we see the possible causes for exclusion. The 2003 omission of the third paragraph, pertains to internal divisions within the party. Subsequently, the fourth paragraph delineates an exemption, explicitly stating that disqualification shall not be applicable in cases of mergers. The fifth paragraph delineates the precise conditions in which the Presiding authorities of a House are entitled to tender their resignations from their esteemed positions. Moving forward, the sixth paragraph aptly identifies the individuals who possess the authority to effectively address and resolve any matters outlined within the Schedule. The seventh paragraph firmly establishes the prohibition of courts from exercising jurisdiction over any purported. Lastly, Paragraph 8 of the aforementioned document confers upon the esteemed Speaker the authority to promulgate regulations governing the functioning of the House, thereby facilitating the effective implementation of the stipulations enshrined within the 10<sup>th</sup> Schedule.

The meaning of the Tenth Schedule’s clauses has been presented before the esteemed Supreme Court and various High Courts on multiple occasions. In the exercise of their

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<sup>113</sup> Ibid.

power of judicial review, both the High Courts and the Supreme Court have extensively deliberated and provided expansive interpretations of the various provisions contained within the Tenth Schedule of the Constitution.

## **6.2. Findings**

The Anti-defection legislation became law with the aim of curbing the prevalent issue of abrupt political defections. Nevertheless, the Anti-defection law has faced substantial criticism since its establishment, with the identification of several loopholes. Based on the preceding chapter's discussions, the subsequent concerns were identified:

### **6.2.1. The ambiguities within the Law that hinders in the functioning of the Anti-Defection Law in India:**

#### **6.2.1.1. Giving up membership voluntarily**

Members who choose to resign from their political party of their own accord may face disqualification in accordance with paragraph 2(1) (a). Nevertheless, the lack of a clear definition for the phrase “voluntarily giving up his membership” in accordance with the constitutional provisions poses significant challenges in effectively implementing the Act.

The Tenth Schedule does not prescribe any specific manner, whether formal or informal, in which the act of voluntarily relinquishing party membership needs to be expressed or executed. There are several methods by which a member can choose to voluntarily terminate their affiliation with the organization. The individual has the option to submit a written resignation to their political party in a formal manner, or they may choose to behave in a manner that allows for the reasonable deduction of their intention to resign.

The Court Opinion states that “voluntarily giving up membership”<sup>114</sup> has a broader meaning than “resigning from office” and is not the same thing. Even if they have not formally resigned, a person can decide to quit a political party if they so choose. The conduct of a political party member, can suggest that he has voluntarily resigned from

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<sup>114</sup><https://www.casemine.com/judgement/in/5609aef2e4b01497114153ec#50>.

it, even if there hasn't been an official withdrawal from participation. The Speaker was even given permission by the Court to make this assumption based on pictures that were released by media and declarations delivered by the parliamentarians.

In *Kunwar Pranav Singh Champion & Ors v. The Speaker, Legislative Assembly & Ors*,<sup>115</sup> the Speaker, after receiving a joint memorandum by the petitioners from which it can be inferred that the petitioner renounced their Congress party membership on their own accord. A simple statement of dissatisfaction by certain party members with the candidates running in the Upper House election cannot be considered to be voluntarily surrendering of party participation. These members were opposed to the party's two out of three candidates since their names had not been accepted by the party's Board. These members of the House have never departed the party, and their actions in no way indicate a "surrender of their membership", thus they do not constitute "voluntarily giving up membership in the party."<sup>116</sup>

The initiative to write a letter requesting a meeting with the Governor with the leader from the opposing party for the purpose of government formation would result in the relinquishment of party membership by the elected individuals who were originally affiliated with the aforementioned party. Nevertheless, asking the Governor to appoint a new Chief Minister does not constitute leaving one's political party voluntarily.

The disqualification of certain government members by the Speaker of the House, on the basis of freely relinquishing their status as members, occurred subsequent to their expression of dissatisfaction alongside the Chief Minister's effectiveness and subsequent protest in opposition to him. In the event that members of a legislative body remove its backing and cast votes disregarding the ruling party over a confidence vote, they would be subject to disqualification as outlined in paragraph 2(1)(b) of the 10th Schedule.<sup>117</sup> Therefore, it clearly violates the freedom of expression of members of the House, as there would be constant fear of disqualification from membership among the representatives of the Parliament and State Legislatures, if they were to voice their opinion.

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<sup>115</sup>AIR 1994 SC 1558

<sup>116</sup> Ibid.

<sup>117</sup>Rajendra Singh Rana v Swami Prasad Maurya and Others

### **6.2.1.2. Merger**

The fourth paragraph provides an analysis of a specific exemption that allows for the avoidance of disqualification, specifically in cases involving mergers.<sup>118</sup> According to the provision, members of the original political party are not disqualified as outlined in subparagraph (1) of paragraph (2) if they claim that they and other original party members are part of the newly formed political party or if they reject the merger and choose to continue operating as a separate group. The assent of at least two-thirds of the members of the merging political parties is required for the merger to be recognized as genuine.

In recent times, lawmakers, in conjunction with the speaker, have been employing the merger provision to advance their personal interests. The interpretation of the provision has been deemed inaccurate, as it suggests that the candidate's original political party, on whose ticket got them elected, has provided an unrestricted privilege for their Member of the Legislative Assembly to align with another political party.

Therefore, it's imperative to exercise caution when presuming that a political party has merged with some other political faction based solely on the agreement of their respective Members of Legislative Assembly on similar matters. The act of engaging in such reading material is not only deemed irrational, but also in violation of legal statutes, as it serves to diminish the public perception and standing of the political party, thereby eroding public confidence in it. The conundrum surrounding the merger clause pertains to the intricacies inherent and is a hinder in the functioning of the Anti-Defection Law in India.

### **6.2.1.3. Role of Presiding Officer**

The presiding officer, specifically the Speaker or the Chairperson of the House, holds a pivotal role in making determinations regarding disqualification matters. Frequently, it is observed that in instances where the party feeling wronged requests disqualification, Speakers opt to refrain from taking action, thereby solidifying the

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<sup>118</sup>'Provisions as to Disqualification on Ground of Defection' (Constitution of India) <<https://www.constitutionofindia.net/schedules/provisions-as-to-disqualification-on-ground-of-defection/>> accessed 20 June 2023.

gesture of defection in a manner that is formal. However, this causes a sense of ambiguity regarding the role of the Speaker in Parliamentary proceedings.<sup>119</sup>

## **6.2.2. To what extent does the Anti-Defection Law impose limitations on the internal democratic process of political parties, specifically with regards to the freedom of expression and the right to dissent?**

### **6.2.2.1. Whip**

The term ‘whip’ has taken on new importance within the context of our parliamentary democratic system as a result of the 10th Schedule's addition to the Indian Constitution by the 52nd Constitutional Amendment Act of 1985. Paragraph 2(1)(b)'s new ‘any direction’ clause gives party leaders additional dictatorial authority, which is at odds with the democratic parliamentary system that is preserved in our society.

If the phrase ‘any direction’ is interpreted in the traditional sense, it would result in politicians who stand for the public, becoming agents of their respective parties, thereby diminishing their position to the status of simply rubber stamps under the control of said parties.

The potential consequences for such a reinterpretation could pose a threat to the integrity of democracy in the parliament, a fundamental element enshrined within the constitutional framework. Political parties are cautioned against issuing orders to their members that “if violated, may lead to disqualification under paragraph 2(1)(b),” and instead suggest that such orders be issued only in cases where “the motion pertains to any monetary or finance bill” (i.e., when a vote of confidence or no confidence in the Government is at stake).

Paragraph 2 (1) (b)'s use of the words “any direction” gives the party leader broad discretionary power. In the context of a democratic framework, such as that of India, every legislator possesses the autonomy to exercise their individual voting privileges. Directing voters to support a certain candidate or program is not just an indication of an attempt to influence the exercise of voting rights but also a kind of corrupt activity on the part of the party leader or other authority figure involved. It curtails the capacity of legislators to dissent against programs that are incongruous with the

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<sup>119</sup>DrKashinath G Jalmi and Another v The Speaker And Others (1993) 2 SCC 703

interests of their constituents. Additionally, as advocated by the self-proclaimed “High Command” in an arbitrary and unlawful manner, it prevents an individual from voicing disagreement against inefficient leaders and legislation that is harmful to the welfare of the public.

Legislators' ability to speak freely is curtailed by the Anti-defection law. According to legal regulations, it is mandatory for all members to cast their votes strictly in accordance with their party's stance and demonstrate unwavering obedience to party leadership. This restricts a legislator's freedom to vote in accordance with their personal beliefs and values. In addition to its other provisions, the law also restricts him from publicly expressing opposition to the positions and policies of his political party, unless done within the context of intra-party discourse.<sup>120</sup>

In the context of a legislative body, when the ruling party provides a whip, it effectively restricts the ability of its members who hold the upper hand to express any form of dissent or their disapproval. The potential consequences of this could result in a detrimental effect on the level of political transparency.

An additional crucial inquiry to contemplate pertains to the efficacy of the law in mitigating political defections within the Indian context. At both the Central and State levels, there have been instances of members disobeying whips in cases where they are issued for crucial votes and matters that impact the stability of the government.

In neither the 2017 Goa nor Manipur Assembly elections did any competing political party receive a majority mandate to establish a new government. Despite possessing the majority in both states, the Congress encountered difficulties in the formation stage. In Goa, two Members of Parliament affiliated with the Indian National Congress, namely ‘Viswajit Rane and Savio Rodrigues’ exhibited non-compliance with the party's directive by casting their votes against the confidence motion. Consequently, they tendered their resignations from the legislative body.<sup>121</sup>

Thounaojam Shyam Kumar, a political representative affiliated with the Indian National Congress in the state of Manipur, underwent a political transition by

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<sup>120</sup>KihotoHollohan vs Zachillhu and Others on 18 February, 1992

<sup>121</sup>AbhilashMallick, ‘After Rane, Goa Congress Leader Savio Rodrigues Leaves Party’ (TheQuint17 March 2017) <<https://www.thequint.com/elections/goa-election/after-rane-another-congress-mla-savio-rodrigues-leaves-party>> accessed 23 June 2023.

defecting to the Bharatiya Janata Party.<sup>122</sup> Furthermore, in the year 2020, Madhya Pradesh encountered a situation akin to that of Karnataka, wherein the stability of the government was compromised due to the resignations of MLAs. The legislators expressed their dissent towards the governance of Chief Minister Kamal Nath. The entry of Jyotiraditya M. Scindia into the Bharatiya Janata Party (BJP) resulted in a division within the guidance of congress, ultimately resulting in Chief Minister's resignation. Therefore, there are clear infringements in the rights of a member's freedom of speech and expression, in a parliamentary democracy like India.

### **6.2.2.2. Expelled members**

The provisions of the anti-defection statute do not explicitly address the position and legal status of individual party members who undergo deposition or expulsion which causes a lot of challenges in utilizing the legislation. The individual who has been expelled while choosing to stay within the premises of the legislative body, yet occupies a distinct position separate from the designated seats assigned to their affiliated political party.

One pertinent inquiry pertains to the potential disqualification from house membership that may result from removal from a political party. With respect to this matter, the Supreme Court ruled in the case of *G. Viswanathan v. Speaker T.N. Legislative Assembly*<sup>123</sup> that a removed member remains obligated to adhere to the party whip even subsequent to their expulsion. The Supreme Court raised a significant inquiry regarding the applicability of anti-defection legislation solely to members who defect or resist party discipline while still being part of the party, or if it extends to members who have been expelled from the party.

This matter arose in the context of "Amar Singh and Jaya Prada's<sup>124</sup> removal from the Samajwadi Party." The higher bench of the Supreme Court refused to reevaluate the legal principles established in the *G. Viswanathan* case, thus affirming the continued validity of its decision, even though the lower court had ruled that the decision would not apply to their particular case. The provision was implemented utilizing the

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<sup>122</sup>Supreme Court Invokes Special Powers, Removes Manipur Minister' (The Indian Express 19 March 2020) <<https://indianexpress.com/article/india/supreme-court-invokes-special-powers-removes-manipur-minister-thounaojam-shyamkumar-singh-6320920/>> accessed 22 January 2023.

<sup>123</sup>A.I.R. 1996 SC 1060

<sup>124</sup><https://indiankanoon.org/doc/1758676/>

methodology employed by the highest court in the jurisdiction. Therefore, it is imperative to address the inquiries that have been brought forth in the Amar Singh case.

### **6.2.2.3. Dispute resolution**

Under the constitutional provisions, the Speaker or the Chairman is entrusted with adjudicatory functions of determining matters arising under the aforementioned Act. However, considering the speaker's recent participation in state assemblies, it is unclear if the speaker is a sufficient authority and fits the key criteria of being impartial and unprejudiced to operate as a tribunal under the act, given the speaker's prominent role in the nation and recent events, a number of questions are being made about his objectiveness and neutral position in his capacity to function as the Chairman in accordance with the constitution's provisions such as in cases of Goa, Manipur, Karnataka, and Maharashtra.

In the Indian context, the speaker is a delegate of the political party who is not required to renounce their party ties after becoming the speaker. Speakers who are political figures or candidates for political parties do not fit the criteria for an unbiased arbiter to operate as a tribunal. The minority decision in the Kihoto Hollohan case has sufficient force to hold that vesting adjudicatory powers in the speaker violates the Principle of Natural Justice, and the speakers, as political figures, cannot be expected to carry out the responsibilities and duties of the quasi-judicial tribunal.

Somnath Chatterjee, the 14th Speaker of the Lok Sabha, stated that "the need to decide the issues arising under the tenth schedule need not continue to be exercised by the presiding officer and the power ought to be presented on some other authority like an autonomous tribunal containing members knowledgeable in law or authority like the election commission."<sup>125</sup> When we analyze the genuine foundation of the Law, we notice that, while the 52nd Amendment Act of 1985 provided the Speaker of the House, the dynamic force on the problem of defection. The previous bills had given the election commission this authority. Thus, the moment has come for parliament to consider an alternative adjudicatory venue to resolve the disqualification problem.

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<sup>125</sup> 'A Speaker for the People' (The Indian Express 16 August 2018)  
<<https://indianexpress.com/article/opinion/columns/a-speaker-for-the-people-somnath-chatterjee-5308898/>> accessed 23 June 2023.



#### 6.2.2.4. Adjudication of disputes

The adjudication of disputes is governed by the 10<sup>th</sup> Schedule. According to this schedule, the responsibility of resolving questions that arise under the aforementioned Act is entrusted to The Speaker or The Chairman. Nevertheless, there remains uncertainty regarding the Speaker's suitability as a figure of power and their ability to fulfil the necessary requirements of impartiality and lack of prejudicial views in serving as a Tribunal according to the Act, particularly in light of their recent involvement in State Assemblies.

It is reasonable to question the Speaker's impartiality and candor in his or her "role as a Tribunal under the legislation"<sup>126</sup> in light of the high regard in which the Speaker is held and an analysis of previous occurrences. The persons in issuing decisions, constantly demonstrate a firm and unyielding attitude in their roles as judges, as has been seen in several different jurisdictions, including Karnataka, Goa, Maharashtra, and Manipur. A political party's representative in India's legislative body, the speaker does not have to renounce his or her party membership while taking the job of speaker. Speakers do not meet the criteria of an impartial arbitrator capable of serving as a tribunal, especially when they have links to political parties or are running for office themselves. The minority opinion in *Kihoto Hollohan* argues that it is against "the Principle of Natural Justice" to give the speaker decision-making authority. It claims that speakers can't be held to the same standards as "a quasi-judicial tribunal" because of their inherent political bias.

In a statement made by former Lok Sabha speaker Somnath Chatterjee, it was suggested that the responsibility of resolving matters coming from the 10th Schedule should not solely rest with the person in charge of the proceedings. Instead, it was proposed that this power should be delegated to an independent tribunal comprising individuals with expertise in law or a body such as the "election commission."<sup>127</sup>

Upon examining the origins of the Law, it is revealed that the 52nd Amendment Act of 1985 bestowed the authority to address defection upon The Speaker or The Chairman of The House. The previous bills had conferred the aforementioned

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<sup>126</sup> *ibid.*

<sup>127</sup> *Id.*

authority upon the election commission. According to the researcher, it is now necessary for parliament to consider an alternative adjudicatory platform for determining the issue of disqualification based on defection as outlined in the tenth schedule.

#### **6.2.2.5. Dissent and defection**

‘Dissent’ is a feature of a healthy democracy and is not synonymous with ‘defection’. The distinction between a gesture of ‘defection’ and an act of ‘dissent’ is extremely thin. While all instances of defection would include actions of dissent by either being supported by the lure for a lucrative position in office or for different contemplations that may not be moral, the contrary doesn't seem true for every instance and all cases of ‘dissent’ don't really fall in line with the definition of the term ‘defection.’ Under the existing anti-defection statute, an official can only practice his dissent in two circumstances: if the member obtains clearance from his party, or if it's being consented within 15 days of the occurrence since the date of voting by the party. In such instances, he will not be considered a traitor. Otherwise, even reasonable ‘dissent’ is labelled as ‘defection’, and might be barred against participating in the relevant House.<sup>128</sup>

This law, which was implemented to prevent desertion, has drastically decreased the scope and importance of deliberations and discussions in the house, especially when a single party has a greater number of members. Because abstaining or voting against their own faction will be defection, a bill can be easily carried in the house despite the individual views of ruling party members or the interests of their constituencies. This also has a negative impact on participation in the house and encourages interruptions and walkouts.

Within a parliamentary framework, the primary objective of representatives is to effectively advocate for the best interests of their constituents through skillful deliberation and negotiation. In this context, the presence of internal party disagreement and adherence to democratic principles assume paramount importance. However, it is worth noting that these factors have contributed to a concerning erosion of inter-party cohesion and stability of the government.

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<sup>128</sup>1992 SCR (1) 686, 1992 SCC Supl. (2) 651

### **6.2.3. What impact does the legislation have on the structure and functioning of government and the legislative process?**

#### **6.2.3.1. Government instability**

The anti-defection statute transfers the focus of democracy away from the people and toward the party's elite officials. Thus, it is essentially a yellow flag for democracy and has failed to curb the problem of defections in our country.

In the absence of decision-making autonomy regarding policy and legislative proposals, what motivation would exist for Members of Parliament to invest effort in comprehending the various policy alternatives and their corresponding consequences? The primary function of a Member of Parliament (MP) i.e. to scrutinize and make determinations regarding policies, legislation, and financial allocations is marginalized. However, the Member of Parliament (MP) is reduced to a mere statistic that is recorded by the political party for every vote it endorses or opposes.

The drafters of our Constitution did not have the intention of producing this particular result. Dr. B.R. Ambedkar elucidated the distinctions between “the presidential and parliamentary systems of government”. According to his statement, the presidential system, as exemplified by the United States, exhibits greater stability but diminished accountability due to the President's four-year term and limited grounds for removal, which require substantiated evidence of misconduct. In the parliamentary system, the government is subject to regular accountability through the means of questions and motions, and can be ousted whenever it no longer retains the backing of Lower House members. The drafting committee held the belief that it was imperative for India to establish a government that prioritized accountability, even if it meant compromising stability. Thus, the anti-defection law causes instability in governments and weakens the administrative functioning of the country.

Furthermore, it fails to offer any semblance of stability. The system of government has devised strategies to overthrow governing bodies. The Constitution was altered in order to establish a provision that prohibits individuals who have been disqualified for defecting from assuming ministerial positions, unless they are re-elected. A common strategy employed to circumvent this restriction has been for individuals to voluntarily resign from their positions instead of voting against their party.

In certain circumstances, the Speaker, typically representing the governing party, has exhibited a tendency to defer the process of making a decision regarding disqualification. This phenomenon has resulted in peculiar circumstances, wherein individuals who maintain their membership in the primary Opposition party assume ministerial positions (as observed in Andhra Pradesh during the previous Assembly term). The Supreme Court has attempted to address this issue by establishing a ruling that mandates the Speaker to render a decision within a three-month timeframe. However, the potential consequences of a Speaker failing to comply with this ruling remain uncertain. The assertion that the anti-defection law is necessary for penalizing legislators who betray the mandate bestowed upon them by the electorate appears to possess inherent flaws.

In the event that voters perceive a sense of betrayal from defectors, they possess the agency to exercise their electoral power by voting them out during the subsequent election cycle. Nevertheless, it has been observed that a significant number of defectors in regions like Karnataka and Madhya Pradesh have been successfully re-elected during the by-polls that were conducted subsequent to their disqualification. However, the constitutional provisions, under the Tenth Schedule brings about instability in the government and has eroded legislatures in the country.

During the study of this research, it could be observed that since the inception of the Anti-Defection Law in India, there have been numerous debates and conferences to further better the legislation in its principal aim of curbing the political defections that have been rampant in the country. As we have observed, there have been various challenges and lacuna in the Law which makes the efficacy of the Law to be faced with limitations.

By making it unlawful for legislators to transfer political parties for personal gain, the law has played a crucial role in maintaining government stability. It has helped maintain the legitimacy of political parties and the democratic process by imposing consequences on defectors who put at risk legislative productivity.

However, the efficacy of the law encounters obstacles. The impartiality and promptness of the legislative body's Speaker or Chairperson are crucial to its success in preventing rebellions. Concerns have been expressed regarding this bill's potential

debilitating effect on free speech and the ability of legislators to think independently. Instead of promoting democratic principles and public participation, the law focuses primarily on preserving party discipline and stability.

Additionally, there are ambiguities in the Anti-Defection Law, which can lead to diverse interpretations, and give rise to disputes. 'Voluntarily' giving up party membership; has not been clearly defined and is often subject to interpretation. It is often taken as the same with 'voluntarily resignation' by members.

While members defy their respective party whips on the issuing of electoral votes, the law is not clear with the specifications of the provisions. Whenever there is a genuine opinion of dissent it is considered as going against in protest of the party's direction. The consequences surrounding such a situation have clearly not been mentioned in the Legislation.

In instances of party splits or mergers, the law does not provide explicit guidelines for disqualification. Such scenarios can be interpreted differently, leading to uncertainty and legal disputes. It can be difficult to determine which faction represents the original party or which legislators should be designated defectors.

The Anti-Defection Law gives the Speaker/Chairperson authority over disqualification cases. However, there are concerns regarding the Speaker's impartiality and potential influence, especially when they belong to a specific political party. This ambiguity raises concerns about the law's equitable and impartial application.

The impact on a member's freedom of speech and expression is a result of the expansive nature and provisions of the law. The Anti-Defection Law's requirement to obey the party whip can restrict legislator's ability to communicate dissenting opinions or vote based on their personal beliefs. There is a fear of disqualification and hinders a member's free speech and expression. The potential disqualification of legislators for expressing dissent against the party whip causes them to not voice their opinion in fear of being disciplined. It is clearly against the democratic principles of our country.

one of the issues associated to the provisions of the Anti-Defection Law in India. In addition, the power that party whips have to enforce party discipline and regulate the voting behavior of lawmakers can put a damper on the legislator's ability to make independent decisions and work against the intent of the legislation.

The Anti-Defection Law in India has both positive and negative effects on the government and legislative process. Among the negative effects are Legislators are subject to the whims of party leaders and may be disqualified if they vote against party lines. This restriction may impede independent thought, critical discourse, and dissent among legislators, posing a threat to democracy. Because of this, intra-party democracy may be weakened. Legislators may dread disqualification and adhere to party decisions, even if they disagree, out of fear of expulsion. This can limit legislative participation in decision-making and concentrate power in the party leadership.

It is possible for coalition governments to face legal uncertainty. Consequently, smaller parties and independent MPs may experience greater pressure to compromise with their coalition partners on issues of greater significance, reducing their ability to represent their constituents and advance their party's agenda.

These disadvantages illustrate several problems with the Anti-Defection Law. It is crucial to establish a balance between the need for stable administrations and the principles of free speech, representation, and intra-party democracy in the context of this law.

### **6.3. Suggestions**

Following consideration of the aforesaid study, the researcher would like to make a few suggestions:

#### **6.3.1. Adjudicatory Power under the Tenth Schedule**

The researcher suggests a modification to the Tenth Schedule of the Constitution, which would grant the president or governor (depending on the circumstances) the authority to resolve matters pertaining to disqualification under the Tenth Schedule. This resolution would be made based on the guidance provided by the election

commission. This proposed amendment would additionally function to safeguard the credibility of the speaker's office by granting the president/governor the authority to determine defection cases.

### **6.3.2. Exhaustive utilization of the phrase “voluntarily giving up membership”**

The words “voluntarily giving up membership of a political party” should be clarified in the explanation comprehensively.

### **6.3.3. The limitation of ‘Whip or Direction’**

There is a need to impose limitations on the utilization of the ‘Whip’ or ‘Direction’ within the framework of the Tenth Schedule. The disqualification for defection should be restricted to instances where;

1. A member willingly relinquishes their political party membership.
2. The Member of Parliament exercises their voting rights or refrains from voting in the legislative chamber in a manner that goes against the directives of their political party specifically in relation to Confidence motions, No-confidence motions, Adjournment Motions, Money Bills, or Financial matters, and not in any other circumstances. This measure will result in a reduction of the limitations imposed on the voting rights of parliamentarians.

### **6.3.4. The phrase ‘Political Party’ should be defined precisely**

Though the phrase ‘Political Party’ is used in the Tenth Schedule, it is not defined there. As well as the term “original political party”, and these terms should be defined comprehensively for future misuse of the term.

### **6.3.5. Expelled member's positions**

The elucidation of the position and status of individuals who have undergone expulsion from a political party ought to be addressed within the framework of the Tenth Schedule. Consequently, it is imperative that expelled members be subjected to certain limitations, including but not limited to a prohibition on affiliating with another political party or assuming governmental positions. Upon examining the parliamentary records and deliberations, it can be argued that a member of a

legislative body who is expelled by their political party due to engaging in anti-party activities or is regarded as an unaffiliated member of the legislative body, should be exempted from the provisions outlined in the Tenth Schedule. This exemption is justified on the grounds that dissent within a political party is a crucial element of democratic governance.

#### **6.3.6. The value of the defector's vote during the vote of confidence motion**

A defector's vote to overthrow a government should be considered invalid. The votes cast by members of the House during the vote of confidence motion should be considered invalid. This does not violate Article 14 of the Constitution, and all privileges and rights as a member of the House should be preserved. This will strike a balance between the privileges associated to a House member and expelled members, as well as conflicts between Dissent and Defection under para 2(1)(a) and 2(1)(b).

#### **6.3.7. Paragraph 4 of the Merger-related provision**

The merger provisions that exempt disqualification on the basis of defection should be removed from the Tenth Schedule. The fourth provision makes an exception for members who make up two-thirds of a political party's entire membership to merge their membership with another political party or continue to function as a separate party. This provision attempts to fracture the party and encourages members to defect. Consider a small political party that has gained a few seats in the House in the single digits, say less than ten. In such instances, two-thirds of the members may easily create a separate organization and claim to unite with another political party or form a new one with the additional attraction of office or money. As a result, paragraph 4 should be omitted to discourage such defections.

#### **6.3.8. Voters Right**

The enfranchised individual ought to possess the entitlement to initiate a formal request in accordance with the Tenth Schedule, with the aim of instigating the disqualification of a Member of Parliament or State Legislature due to defection.



### **6.3.9. Political Party Alliance Prior to Elections**

According to the provisions outlined in the Tenth Schedule, the recognition of a pre-poll alliance of political parties should be treated as the recognition of a single political party. Political parties that form pre-election alliances should be held accountable under the anti-defection law. The contention that a representative is elected based on the party's platform can be extrapolated to encompass pre-election coalitions. The recommendation to require alliance partners to notify the Election Commission prior to elections has also been supported by the Law Commission.

### **6.3.10. Decisions must be made within a specific time frame**

The Tenth Schedule ought to be changed, and any disqualification petition under it should at the least be heard and decided within not more than a time period of 3 months.

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