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## **ANALYSING THE ANTI-DEFECTION LAW IN INDIA: CHALLENGES AND WAY FORWARD**

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### **ABSTRACT**

Democracy, as one of the key limbs of the Basic Structure Doctrine, functions through Political Parties and their inter-party democracy. Indian electoral politics has long been known for its defection practices, like floor crossing by elected legislators. To restrict and discourage this practice by elected representatives, the tenth schedule was introduced in 1985 through the 52<sup>nd</sup> Constitutional Amendment to the Constitution of India. Though the tenth schedule clears its constitutionality test in the *Kihoto Hollohan* (1991)<sup>1</sup> Judgement, its purpose and effectiveness are still an issue. Exception of merger facilitate legislators from political parties with lesser number of representatives to cross the floor. Earlier difficulties like Excessive power of the Presiding Officer of the House (i.e. the Speaker or the Chairman), Blanket ban on Judicial Review and one-third exception called the split have been rectified through subsequent Amendments and Supreme Court judgments.

Internationally, a few Asian and African countries enacted the Anti-Defection Laws, whereas countries in Europe, like the UK, follow widely accepted conventional norms to deal with defections. This Article attempts to study the problems surrounding the tenth schedule and provide possible solutions and policy analysis through a comparative study.

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<sup>1</sup> AIR 1993 SC 412

## **INTRODUCTION:**

“Defection” means disagreement or rebellion by a person or group of persons. In a political context, it refers to switching parties by an elected representative. In an indirect democracy like India, representatives are elected either through a political party’s ticket or elected as an independent candidate. It is presumed that people are casting their votes considering several factors, like Policy, Manifesto, ideology, and familiarity with a political party or an individual. Crossing the floor in the House defeats the purpose of the people’s mandate. Defections in the Indian Political arena became a huge threat to democracy, especially during the 1970-1980 period. Mr Gaya Lal, an MLA from Haryana, switched parties thrice in a single day in 1967, and his catchphrase “Aaya Ram, Gaya Ram” became popular. Between 1967 and 1971, about 142 defections were reported in the parliament. Even the Election Commission had opined in its Report on the Mid-Term General Election in India,<sup>2</sup> in 1968-1969<sup>2</sup>, that “The unethical practice of defection adversely affected the stability of the government”

To combat such difficulties, the Committee on Defection was established in 1967, headed by then Union Minister Y.B. Chavan. Based on the recommendations of this committee, two unsuccessful attempts were made through the 32<sup>nd</sup> and 48<sup>th</sup> constitutional amendment bills in 1973 and 1979, respectively. The 10<sup>th</sup> Schedule was brought into the Constitution through the 52<sup>nd</sup> Amendment to the Constitution of India in 1985. However, it was not free from fallacies- Complete exclusion of Judicial Review, exceptions like split and merger. On the other hand, Matured Democracies are often free from specific anti-defection laws as defections influenced positive outcomes. For example, Former Prime Ministers of the UK Winston Churchill, Joseph Chamberlain and Ramsay MacDonald switched their parties. This article attempts to study why we need such a law and a comprehensive framework by understanding challenges around it.

## **GROUNDS FOR DISQUALIFICATION AND CONSTITUTIONALITY OF TENTH SCHEDULE**

Disqualification of Members of Parliament and Members of the Legislative Assembly for defection is primarily dealt with under Articles 102(2) and 191(2) of the Constitution,

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<sup>2</sup> Election Commission of India, “Report on general mid-term elections” (1968-69), available at: <https://eci.gov.in/files/file/7450-mid-term-general-elections-in-india-vol-i-1968-69/> (last visited on 15<sup>th</sup> June, 2026)

respectively, read with the 10th Schedule.

Grounds for Disqualification under the 10<sup>th</sup> schedule are as follows:

- (1) Voluntarily giving up membership of the political party the member belongs to: or
- (2) Voting or Abstaining from voting in such House contrary to any direction issued by the political party to which he belongs or by any person or authority authorised by it in this behalf (Party Whip), without obtaining, in either case, the prior permission of such political party, person or authority and such voting or abstention has not been condoned by such political party, person or authority within fifteen days from the date of such voting or abstention.
- (3) An elected member of a House who has been elected as such otherwise than as a candidate set up by any political party shall be disqualified for being a member of the House if he joins any political party after such election. Para 2 (2)
- (4) A nominated member of a House shall be disqualified for being a member of the House if he joins any political party after the expiry of six months from the date on which he takes his seat after complying with the requirements of article 99 or, as the case may be, article 188. Para 2(3).

For the first time, the constitutional validity of the tenth schedule was challenged in the Supreme Court in 1991 on the grounds that it is incompatible with freedom of speech, dissent, and conscience and basic values of parliamentary democracy. The Petitioners went to argue that immunity granted to Legislators under Article.105(2) is supreme than fundamental rights. The Court rejected the contention that rights and immunities guaranteed under Article 105 (2) cannot be put on a higher pedestal than fundamental rights. The Court therefore held that there is no inconsistency between the tenth schedule and Article 105. Another important point of contention is that Para 7 of the schedule bars the court's jurisdiction in matters relating to disqualifications under the schedule and provides the Presiding Officer's decision as the final say in this regard. The Court, by applying the doctrine of severability, struck down para 7 of the 10<sup>th</sup> schedule, and the Court also clarified that judicial review cannot be invoked before the decision of the Speaker unless there exists a likelihood of immediate irreversible repercussions.

**KEY CHALLENGES:****A) OFFICE OF THE SPEAKER:**

The most pervasive and structurally intractable challenge in the operation of the Tenth Schedule is the vesting of adjudicatory authority in the Speaker or Chairman, who is invariably a member of the ruling party or coalition. The Speaker's institutional dependence on the political majority that elected them creates a conflict of interest in defection proceedings. The minority view in *Kihoto Hollohan*<sup>3</sup> noted that, since the Speaker is dependent on the continuous support of the majority in the House, he does not satisfy the requirement of an independent adjudicating authority and his choice as the sole arbitrator in the matter violates an essential attribute of the basic feature. The Dinesh Goswami Committee Report recommended that the anti-defection law should be changed insofar as “the power of deciding the legal issue of disqualification should not be left to the Speaker or Chairman of the House, but to the President or the Governor”<sup>4</sup>, and the 170th Report of the Law Commission<sup>5</sup> also recommended that the decision on the question of disqualification on the ground of defection should be entrusted to the President and the Governor, as the case may be, in consultation with the Election Commission. as the case maybe who shall act on the advice of the Election Commission. The Law Commission (2015)<sup>6</sup> rightly noted as follows:

*“The Speaker’s decision was challenged as being perverse because the Speaker unduly delayed the proceedings under the disqualification petition. While the Court refused to set aside the Speaker’s order in this case, legal challenges like these erode confidence in the office of the Speaker”*<sup>7</sup>

There are instances where the speaker delayed his decision with respect to defection for an indefinite period, as there’s no mention of a time frame in which the speaker has to make his decision. Though the Supreme Court laid three months as a reasonable period to decide defection disputes, it is largely not practised. In March 2024, the Speaker of the Telangana Legislative Assembly showed inaction on the defection of ten Bharatiya Rashtra Samithi

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<sup>3</sup> *Supra* Note 1

<sup>4</sup> Report of the Committee on Electoral Reforms (Ministry of Law and Justice, Government of India, 1990) Pg. 60 <https://adrindia.org/sites/default/files/Dinesh%20Goswami%20Report%20on%20Electoral%20Reforms.pdf>

<sup>5</sup> 170th Report of Law Commission of India, 1999 [2022082424.pdf](https://www.lawcommissionofindia.gov.in/reports/170th-report)

<sup>6</sup> “255th Report: Electoral Reforms”, Law Commission of India, March 2015, <http://lawcommissionofindia.nic.in/reports/Report255.pdf>.

<sup>7</sup> *Ibid*, Pg: 94, Para 5.18.3

MLAs who had defected to the Indian National Congress. Every time, the political parties had to approach the judiciary to get their grievance redressed in this regard.

There exists another lacuna in the role of speaker, that is, if any motion is pending to remove the speaker from his office, he can't adjudicate upon the defection disputes. This was decided by the Supreme Court in the Nabam Rebia case<sup>8</sup>. In the infamous Shiv Sena MLAs defection, this lacuna was used as a rationale for not initiating the disqualification proceedings against the Shinde faction MLAs. The Supreme Court also reaffirmed its earlier view in the Nabam Rebia judgment. Before the final verdict of the Supreme Court, the political landscape of Maharashtra was completely changed. The Rebel Faction formed a new government, and a new speaker was appointed. Here, the delay in the exercise of the power of the speaker in the adjudication of defection and judicial intervention before the decision of the speaker creates a circumstance that favours the defectors.

## **B) THE MERGER LOOPHOLE:**

The Rationale behind providing two exceptions (i.e. Split and Merger) in the tenth schedule was to recognise the freedom of speech of lawmakers in certain crucial matters, which might require support beyond party lines. But in due course, the people started misusing the Split exception for their own political benefits. This led to the removal of the split exception from paragraph 3 of the tenth schedule through the 91<sup>st</sup> constitutional amendment in 2003. Recently, defections have been employed using mergers, resulting in the toppling of governments in Maharashtra (2022), Madhya Pradesh (2020), Arunachal Pradesh (2015-2016) and Karnataka (2023).

In recent years, the Parliament of India has witnessed unusual mergers. On April 24, 2026, seven out of ten Aam Aadmi Party (AAP) Rajya Sabha MPs joined the Bhartiya Janata Party. This move impacted the Rajya Sabha strength of the National Democratic Alliance.

On the other hand, the scenario in the Lok Sabha is also worrying, as on June 22, 2026, six out of nine Lok Sabha MPs from the Shiv Sena (UBT) merged with the Eknath Shinde-led Shiv Sena. Similarly, post-poll scenes from West Bengal after the 2026 assembly results led to the creation of a new faction among the party's Lok Sabha MPs. 20 out of 28 MPs extended their

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<sup>8</sup> Nabam Rebia, and Bamang Felix v. Deputy Speaker and others - AIR 2016 SC 3209.

support to the National Democratic Alliance.

Crucial Point to note here is that the toppling governments are not only orchestrated by Mergers but also through voluntary resignations of their legislative seats, which in turn reduces the numbers of the ruling government in the house. The Anti-Defection Law is silent in this regard. Currently, Tamil Nadu is witnessing a similar course of action, the AIADMK 5 MLAs resigned their MLA seat and joined the ruling TVK.

### **C. LEGITIMATE DISSENT:**

One of the fundamental issues in the Tenth Schedule is that it does not distinguish between principled dissent in the public interest and purely opportunistic floor-crossing motivated by personal gain. It treats both of them as the same. A legislator who votes against the party's direction to support a measure that benefits their constituency faces the same disqualification as one who defects in exchange for a political benefit.

This creates a chilling effect on a legislator's right to vote. For example, on issues involving fundamental rights, constitutional amendments, and Bills with significant socio-economic impact, the Tenth Schedules compel members to align with the interests of their political party rather than with constitutional interests. It also impacts the accountability of a legislator to his voters. Let us assume a scenario where a ruling party introduces a bill that seeks to bring a new industrial policy, which is detrimental to a legislator's state or constituency. But if he's from the ruling party, he is forced to vote in favour of that bill. This brings us to a position where legislative decisions are not the outcome of discussions in the house, but rather are decided by a few party leaders who may or may not be members of the legislature.

But there are instances where the anti-defection law failed to act with respect to dissent against the direction of whips. In 2008, 21 MPs voted in favour of the United Progressive Alliance in a confidence motion, contrary to the directions issued by their respective whips.

### **WAY FORWARD:**

The Statement of objects and reasons of the 10<sup>th</sup> schedule is intended to bring political stability, but it is used in such a way to defeat the whole purpose of the Anti-defection Law. Experiences with the speaker's decisions emphasise the need for an independent adjudicating body to deal with defection matters. At the time of deciding defection matters, the Speaker is exercising a

judicial function, and he is expected to uphold fairness and neutrality in the adjudication process. But in practice, the speaker's decision in favour of defectors and the arbitrary delay of the process show that the need for an independent body is inevitable. Committee on Electoral Reforms (1990)<sup>9</sup>, Law Commission of India (1999)<sup>10</sup>, National Commission to Review the Working of the Constitution (2002)<sup>11</sup>, Law Commission of India (2015)<sup>12</sup> suggested that the President in case of MPs and the Governor in case of MLAs, who shall act on the advice of the ECI or ECI separately, be the adjudicating authority.

The efficacy of the law is largely affected by the Merger exception. Paragraph 4 of the schedule should be repealed. Paragraph 4 (2) creates a legal fiction of the merger of legislature party and not the political party. The Hon'ble High Court of Punjab and Haryana in *Baljit Singh Bhullar & Anr. v. Hon. Speaker, Punjab Vidhan Sabha* (1997)<sup>13</sup> rightly observed this classification and held that to avail the "SPLIT" exception under paragraph 3, there needed to be a split in the original political party, and one-third members of the legislature party of that political party needed to constitute the group representing the splitting faction. It is only when these conditions were satisfied that the members of the splitting faction could not attract disqualification under Paragraph 2(1)(a) of the Tenth Schedule<sup>14</sup>. But now such observation is given by the judiciary for "MERGER." The very idea of the Anti-Defection law is to preserve the voters' mandate because it presumes a voter cast his vote for a particular candidate owing to his political party's manifestos, ideology, and policy promises. But the elected legislators, by using paragraph 4, outweigh this presumption. So, as recommended by the Law Commission of India (1999),<sup>15</sup> Paragraph 4 needs to be deleted. The Mass Resignations of legislators with the intent to topple the government should also be brought under the ambit of the tenth schedule in order to ensure the stability of the elected governments.

Another area to be reformed is the legislator's freedom to vote and freedom to discharge his duty without compulsion from his political party in certain matters. The Applicability of the Anti-Defection law in relation to voting in the House may be restricted to crucial matters like Money Bills, Constitutional amendments, and floor tests. This will preserve the intent of the

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<sup>9</sup> *Supra* Note 4

<sup>10</sup> *Supra* Note 5 paras 3.4.1-3.4.7

<sup>11</sup> <https://onoe.gov.in/reports/NCRCW.pdf>

<sup>12</sup> *Supra* Note 6

<sup>13</sup> (1997)117PLR367

<sup>14</sup> *Ibid* Para 5

<sup>15</sup> *Supra* Note 5

law as well as the freedom of speech of the legislator. Finally, Defectors should also be restricted from availing any public office and the benefits thereof.