
ANTI-DEFECTION LAWS IN INDIAN DEMOCRACY: SPEAKER'S ROLE AND REFORMS

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ABSTRACT

An essential part of India's parliamentary system, anti-defection laws have encountered a difficult and acrimonious political road. This essay aims to investigate how often these laws have been abused in India and the crucial part the Speaker has played in either encouraging or discouraging such abuse. The paper's first section offers a thorough analysis of the reasoning and historical context for anti-defection laws, highlighting their importance in upholding the democratic character of India's legislative bodies. The emphasis then turns to the pervasive worries about the improper application of these rules, which are frequently motivated by party politics and political expediency. The study emphasises how serious a threat such misuse is to representative democracy's tenets and how it calls into question the morality of elected officials' actions. We take a detailed look at the Speaker's function in this setting, highlighting both the difficulties they have in remaining impartial and their role as the arbiter of defection cases. The remaining portion of the article explores potential institutional and legal changes that could be made to solve the problem of anti-defection statute abuse and strengthen the Speaker's position in maintaining the credibility of India's parliamentary branches. Stronger checks and balances, stricter enforcement of anti-defection laws, and measures to guarantee a more fair and transparent disqualification process are among the recommendations. Additionally, by looking into other foreign forums, the paper proposes redefining the Speaker's position in order to maintain impartiality and maybe by various adjustments that can be brought about in the legal framework. To sum up, this abstract offers a thorough examination of the abuse of anti-defection laws in India as well as the critical need for institutional and legal changes to protect the credibility of legislative bodies and recast the Speaker's role in preserving democratic values, particularly in the Indian context.

Keywords: Anti-defection Laws, Speaker's role, adjudicator, misuse, integrity, democratic values.

INTRODUCTION:

In Indian politics, anti-defection laws have long been a cause of unpredictability and instability. This custom, which is renowned for being captured in the catchphrase "Aaya Ram, Gaya Ram,"¹ has a lengthy history in India that dates back to the Central Legislature's inception. There were clear cases of parliamentarians switching parties even before India's independence. For example, Central Legislator Shri Shyam Lai Nehru defected to the British side from the Congress Party. Another instance dates back to 1937, when Shri Hafiz Mohammed Ibrahim, who had been elected on the Muslim League ticket to the Uttar Pradesh Legislative Assembly, turned against the party and joined the Congress. But there was a noticeable increase in these political party shifts in the late 1960s, which were frequently driven by factors. According to the Chavan Committee Report of 1969², a substantial number of defections occurred between March 1967 and February 1968, immediately following the Fourth General Elections in India. This trend also affected elected independent lawmakers, during this time, 157 out of 376 elected independent legislators joined different political parties. The powerful attraction of holding a government position was one startling feature of these defections. It seemed that the possibility of becoming ministers inspired many lawmakers. 116 of the 210 lawmakers that deserted in different states were part of the Councils of Ministers that were established as a consequence of these defections. This demonstrated the crucial impact that the desire for political power and positions—often at the price of political ideology or party loyalty—had in motivating these defections. This historical background clarifies the development of defection in Indian politics as well as how it affects the establishment of governments. The misuse of anti-defection laws outlined in the Tenth Schedule of The Constitution of India³ is made worse by the absence of precise rules and procedures governing the Speaker's responsibility in certain situations, which casts doubt on the objectivity and fairness of their judgments. With an emphasis on India, how much have anti-defection laws been abused in parliamentary democracies, and what part does the Speaker play in encouraging or discouraging this abuse? What institutional and legal changes can be made to address the problem of the abuse of anti-defection laws and strengthen the Speaker's position in maintaining the credibility of legislative bodies?⁴ This research adopts a multi-faceted approach, combining legal analysis, case studies, and comparative analysis. It

¹ Paras Diwan, Aya Ram Gaya Ram : The politics of Defection Journal of the Indian Law Institute, Vol.21, No.3 (July to September 1979), pp. 291-312 (22 pages)

² Chavan Y B, Report of the committee on defections

³ India, Const, 42nd amendment, 1985

⁴ India, Const, Article 191

starts with a thorough analysis of pertinent court decisions, legislative documents, and precedents. Subsequently, it integrates comprehensive case studies from India and other legislative democracies to evaluate the degree of abuse of anti-defection laws and the role of the Speaker⁵. Finally, finding possible fixes and improvements will be aided by a comparison analysis. Examining court decisions, anti-defection legislation, parliamentary discussions, and constitutional issues in relation to defection instances in India and other nations. analysing particular cases of anti-defection statute abuse, with an emphasis on legislative actions, Speaker choices, and political environments in certain countries. Comparative and qualitative methods are combined in data analysis. Legal document analysis will aid in establishing the legal and constitutional framework, and qualitative content analysis will be applied to case studies in order to detect trends, causes, and consequences of the misuse of anti-defection laws. The process of comparative analysis will aid in the discovery of optimal practices and plausible approaches for reform. This study aims to explore the widespread problem of anti-defection law abuse in parliamentary democracies, with a particular focus on the Speaker's role in these incidents. It seeks to give a thorough understanding of the issue and offer institutional and legal reforms to stop and handle the abuse of anti-defection laws while strengthening the Speaker's duty to protect democratic values and legislative integrity. It does this by looking at actual cases and legal frameworks.

Anti-defection Laws provisions and analysis of the present provisions of Law :

Eight paragraphs make up the Tenth Schedule of the Indian Constitution⁶, popularly referred to as the Anti-Defection Law, which lays out the rules and regulations pertaining to the defection of nominated, independent, and elected members in the country's legislative system. The grounds for disqualification are outlined in paragraph 2 of the Tenth Schedule, which states that an elected member of the house may be removed from office if they willingly join a different political party or vote against the wishes of their own party, unless prior authorization is obtained. If an independent member joins a political party after winning an election, they will lose their eligibility, and if a nominated member joins a party within six months of taking the oath, they will lose their eligibility. Still, the Schedule provides an exception for each of the

⁵ India, Const, Article 191

⁶ India, Const, 42nd amendment, 1985

five paragraphs. If the presiding officials (the speaker and chairman), willingly resign from their party membership prior to their election and do not

re-join it or join another one, they are exempt from disqualification under paragraph 5. Furthermore, they won't lose their qualification if they return to their previous party after serving their term. According to paragraph 6, the speaker or chairman is designated as the presiding person in charge of making the final decision in disqualification cases. A member of the house chosen by the house itself will decide matters concerning the speaker's or chairman's disqualification. The protocols specified in **Article 212**⁷ for state legislatures and **Article 122**⁸ for Parliament shall be followed in conducting these sessions. In the *Kihoto Hollohan v. Zachillhu*⁹ case, the Supreme Court struck down Paragraph 7, which at the time attempted to prohibit courts from hearing defection cases since it was not constitutionally ratified. Lastly, Paragraph 8 gives the speaker and chairman the authority to establish guidelines for carrying out the Tenth Schedule's obligations.¹⁰

The Tenth Schedule underwent substantial modifications in 2003 with the ratification of the 91st Amendment to the Indian Constitution. Notably, Paragraph 3—which dealt with the non-application of disqualification in situations where parties split—was left out. Furthermore, this amendment introduced **Articles 75(1B)**¹¹, **164(1B)**¹², and **361B**¹³. These clauses are vital because they forbid disqualified politicians from serving in government ministries or in any other paid positions until their terms are up or they are re-elected, whichever happens first. The objectives of this amendment were to uphold the integrity of India's legislative system, provide better political discipline, and reinforce the anti-defection laws. The purpose of the amendment was to preserve the integrity of India's legislative system, provide better political discipline, and reinforce the anti-defection laws. Legislators who voluntarily resign from their political party membership may be subject to penalties under India's Anti-Defection Law, however the law does not define this term precisely. This uncertainty has important ramifications because it gives political parties the ability to use their tremendous influence to quell internal dissent by threatening to remove their MPs and MLAs from office. In actuality, this means that

⁷ India, Constitution, Article 212

⁸ India, Constitution, Article 122

⁹ *Kihoto Hollohan v. Zachillhu and Others*, (1992) 1 SCC 309

¹⁰ Amit Kumar, Understanding the Anti-defection Laws in India: Provisions, Significance and Criticisms, Manupatra, September 2023

¹¹ India, Constitution, Article 75(1B)

¹² India, Constitution, Article 164(1B)

¹³ India, Constitution, Article 361B

disqualification procedures may be initiated both inside and outside of the legislative chamber for any lawmaker who disagrees with the direction taken by their party or its position on a certain matter.

It's worth noting that not all instances of legislators disagreeing with their political party necessarily lead to destabilizing a government.¹⁴ For instance, the stability of the government is usually not directly affected if an opposition MLA is at odds with their party. In a similar vein, neither the formation nor maintenance of a government is influenced by members of the Legislative Councils in the individual states nor the Rajya Sabha, the upper house of the Indian Parliament. However, the Anti-Defection Law also applies to them, suggesting that its implementation is more about giving political party leadership the authority to deal with rebel lawmakers than it is about maintaining the stability of the government.

In order to safeguard lawmakers who could join together to oppose their political party, the administration at the time justified the inclusion of exceptions for one-third splits and two-thirds mergers in the Anti-Defection Law.¹⁵ But during the first fifteen years of the law's inception, it became apparent that political parties were taking advantage of the one-third split clause to divide their opponents and orchestrate widespread defections. A notable instance of this occurred in the state of Goa, when seven different chief ministers took office between 1990 and 2000, some of them holding office for more than two terms. Only two of them managed to serve out the entire two-year tenure. This demonstrates how the exceptions provided by the legislation have been used for political purposes instead of their intended use.

Extent of misuse of anti-defection law and the role of the speaker in facilitating or the speaker being neutral in his decisions:

Enshrined in the Tenth Schedule of the Indian Constitution, the Anti-Defection Law¹⁶ was adopted with the commendable goal of preventing elected lawmakers from defecting, hence stabilising the government. But in 2003, the 91st Amendment¹⁷ successfully discouraged individual defections, but unintentionally caused a spike in bulk defections. There are questions regarding the law's consistency with democratic values because of the way it is designed, which

¹⁴ House Practice: A Guide to the Rules, Precedents and Procedures of the House, Chapter 34, Office of the Speaker.

¹⁵ India, Constitution, Tenth Schedule, Para 5

¹⁶ India, Constitution, Tenth Schedule

¹⁷ India, Const, 91st amendment, 2003

unintentionally disempowers individual party members and forces them to follow the party line. The existing legislation is riddled with errors. As Speakers frequently have political links that could compromise their objectivity, it gives them the last say in disqualification cases, which can lead to prejudices. Furthermore, the Tenth Schedule does not provide the Speaker with a set period of time to make decisions regarding disqualification. Though this is still unofficial, the Supreme Court has decided that the Speaker should have three months to make a decision. Additionally, the term "voluntary give up" is not defined in the legislation, leaving the courts to interpret it broadly. One example of how the Supreme Court interpreted "voluntary give up" in the context of forming a government was sending a letter to another party, which further complicated the legal interpretation. Moreover, there has been extensive abuse of Paragraph 4 of the Schedule, which permits the non-application of disqualification in merger and split situations as long as two-thirds of the party members concur. Misuse of this Schedule is definitely possible, as evidenced by recent events like INC members joining the BJP. Eight of the eleven INC members that avoided disqualification joined the BJP in 2022; this figure was higher than two-thirds of the party, in line with Paragraph 4. Similar events occurred in Maharashtra, where forty of the fifty-five Shiv Sena MLAs joined the opposition BJP under the pretext of being the original party, without combining forces with any other political group. The Election Commission momentarily intervened to prevent the two parties from utilising the Shiv Sena name and emblem. Additionally, there have been cases where speakers have made judgements that are biased. In the case of *D. Sudhakar v. DN Jeevaraju and Ors*,¹⁸ the Supreme Court overturned the Speaker's decision due to a violation of the principles of natural justice. Concerns are raised regarding the erosion of democratic values, individual freedoms, and freedom of expression due to India's Anti-Defection Law, which stifles dissent in contrast to other democracies where members are subject to internal party discipline instead of disqualification. Members chosen to represent certain regions may find it especially difficult that the law seems to favour the party leader's views over local requirements. In addition, it potentially undermines the values of democratic decision-making by consolidating a large amount of power in the hands of party leaders. The noble goal of India's Anti-Defection Law was to prevent defection in order to guarantee stable governance. Nevertheless, it has had unexpected repercussions that have caused widespread defections and sparked worries about the power and misuse potential of individual members. These problems have been exacerbated by the law's dependence on the Speaker's judgements, its lack of defined words, and its

¹⁸ D. Sudhakar v. DN Jeevaraju and Ors, SC 4510-4514, 2011

unspecified timeline for decision-making. Furthermore, democratic ideals and the right to free speech are affected by the law's restrictions on dissent and concentration of power in the hands of party officials. These difficulties highlight the necessity of reassessing the Anti-Defection Law to make sure it better reflects the values of democracy, personal liberty, and efficient government.

Misuse of Anti-Defection Laws:

The abuse of anti-defection laws in India involves party leaders wielding excessive control over elected officials. In reality, party officials frequently threaten disqualification in order to preserve party discipline, using these rules as a tool to manage and crush dissent within their ranks. A healthy democracy may become less functional as a result of such acts.

In the case, *Nabam Rebia and etc.etc.v. Deputy Speaker of Arunachal Pradesh*,¹⁹ the political crisis that occurred in gave rise to the misuse of anti-defection laws. There was political unrest after 14 MLAs were disqualified by the Speaker of the Arunachal Pradesh Legislative Assembly. The Speaker's actions clearly enabled the abuse of anti-defection rules, as the Supreme Court eventually declared that these disqualifications were politically motivated and ordered the MLAs to be reinstated.

Role of the Speaker in Facilitating Misuse:

Although the Speaker's position is crucial to the effective application of anti-defection legislation, occasionally the Speaker's partisanship can cause choices to be seen as encouraging the abuse of these regulations. Political polarisation can worsen when the Speaker exhibits favouritism and is a member of the dominant party. This can lead to the unjust use of anti-defection laws.

For instance, the Speaker of the Haryana Legislative Assembly disqualified five Congress MLAs in the 2009 case of *Raj Narain Singh v. Speaker of Haryana*²⁰, which helped bring down the government. Opponents contended that the Speaker's choice was driven by politics, highlighting the Speaker's responsibility for allowing anti-defection rules to be abused.

¹⁹ Nabam Rebia and etc.etc.v. Deputy Speaker of Arunachal Pradesh (2016) 8 SCC 1

²⁰ Raj Narain Singh v. Speaker of Haryana AIR 2009 SC 3383

Role of the Speaker in Preventing Misuse:

Conversely, there have been times when the Speaker has contributed to keeping anti-defection rules from being abused. In order to uphold the spirit of these statutes, the Speaker is expected to decide disqualification matters impartially and objectively.

A legal challenge was made to the Speaker's decision to remove nine Congress MLAs from office in the matter of *Ajay Bhatt v. Union of India*.²¹ Since the Speaker had acted in compliance with anti-defection rules, effectively preventing misuse, the judges upheld the disqualifications.

Moreover, in the state of Karnataka in 2019, in the case of *Shrimanth Balasaheb Patil v Hon'ble Speaker, Karnataka Legislative Assembly and Others*²² the Speaker disqualified 17 MLAs who had resigned from their positions, and these disqualifications were upheld by the courts. The Speaker's impartial handling of these cases demonstrated that they played a role in preventing the misuse of anti-defection laws, thus upholding the rule of law and democratic principles.

In parliamentary democracies, anti-defection rules are a double-edged sword that when abused can sabotage the democratic process. The Speaker plays a crucial role because their choices have the power to encourage or discourage such misuse. The Speaker must act impartially, protecting the values of democracy and the rule of law instead of advancing the agenda of one political party. Examples and case laws demonstrate how crucial the Speaker's role is in maintaining the integrity of anti-defection legislation.

Legal and Institutional reforms to overcome misuse of anti-defection laws and enhance the role of the Speaker to uphold the integrity of the house :

A comprehensive combination of institutional and legal reforms is needed to address the issue of misuse of anti-defection laws and strengthen the Speaker's role in maintaining the integrity of legislative bodies in India :

'Voluntarily Give Up': A clear definition of this vague term in the Anti-Defection Law is a crucial improvement. This would entail a precise and objective standard for what qualifies as

²¹ *Ajay Bhatt v. Union of India*, (2016), 9 SCC 1.

²² *Shrimanth Balasaheb Patil v Hon'ble Speaker, Karnataka Legislative Assembly and Others*, (2019) 11 SCC 1

defection, reducing opportunities for ambiguous interpretations and guaranteeing that lawmakers are informed of the particular acts that can result in disqualification.

Time-Bound Disqualification: Strict time constraints should be implemented in order to speed up the resolution of disqualification cases. For example, the Speaker should be given a maximum of three months from the date of petition submission to reach a decision. This would avoid needless delays and offer prompt resolutions.

Speaker impartiality: Due to possible prejudices stemming from their political ties, the Speaker's role in determining cases of disqualification has been a source of concern. Reforms ought to include a procedure by which the Speaker recuses themselves from the decision-making process when they have a direct stake in the outcome. As an alternative, disqualification cases may be assigned to an unbiased and independent body, like a group of retired judges or legal professionals.

External Oversight: To examine and assess the Speaker's disqualification decisions, an external oversight body ought to be set up. With this group in place, any potential political influence would be minimised and the decision-making process would remain unbiased and transparent.

Accountability and Transparency: The procedures pertaining to disqualification cases must to be made public and transparent. By being transparent, decision-makers would be held responsible and the public's faith in the process's integrity would be strengthened.

Internal Party Discipline: As an alternative to disqualification, urge political parties to give internal party discipline top priority. Encourage the parties to use their own disciplinary procedures to address dissent or nonconformity; this will allow for a more flexible approach and lessen the necessity for disqualification.

Review of Exceptions: Examining the Exceptions Review and maybe modify the Anti-Defection Law's exclusions, especially the ones pertaining to splits and mergers, which have a history of abuse. In order to prevent future misunderstandings and guarantee that they fulfil their intended function of shielding dissident lawmakers, these exclusions ought to be updated.

Education and Training: To give lawmakers a thorough grasp of the anti-defection statute, its ramifications, and the repercussions of defection, mandatory education and training

programmes should be implemented. Legislators who are well-informed are more likely to make choices that are consistent with the letter of the law.

Strengthen Party Democracy: Promote the adoption of more transparent and democratic internal procedures by political parties in order to strengthen party democracy. Increased party democracy empowers members and lowers internal dissension, which lessens the likelihood of defections.

Public Consultation: When revising or examining the Anti-Defection Law, solicit feedback from the general public. By taking an inclusive stance, it is ensured that the legislation is in line with democratic ideals and public expectations, avoiding the appearance of arbitrary changes.

Securing the democratic rights and liberties of legislators while upholding party discipline would be balanced by implementing these reforms. The outcome would be an improved legislative process that maintains India's democratic values and is more accountable and efficient.

CONCLUSION:

The execution of India's anti-defection laws has been met with mixed reactions because of the Speaker's perceived impartiality and the lack of a clear schedule for decision-making. This calls into question the process's fairness and erodes public confidence. Reforms are necessary to address these problems and preserve democratic values. Setting precise timelines, improving the meaning of "voluntary give up," and appointing an unbiased group of retired judges to supervise disqualifications are other options. To stop abuse, stricter rules like Paragraph 4 are required. To maintain democracy, equitable representation, and integrity in government, the Anti-Defection Law must evolve. India can preserve the many viewpoints of its elected officials and fortify its democratic institutions with well-considered changes.