
REFORMING ANTI-DEFECTION LAWS: A NEED FOR CHANGE?

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ABSTRACT

The citizens' primary expectation when electing a representative in a democratic system is that the representative would remain loyal to the political party under whose flag they contested. What happens if they do not? Anti-defection laws try to control the political pandemonium which occurs when elected representatives tend to switch allegiance and can bring changes to Governments.

When India was undergoing these changes, there were glaring consequences. While these policies attempt to prevent chaos in governance, they also raised sobering problems: are we curtailing the representatives' expression? If they are required to follow the party's line all of the time, can they truly represent the will of their electorate?

The center of gravity of democracy rests on the dual pillar of durability and liberty. The two are definitely possible. These pages outline changes which would permit legislators to vote according to their actual belief framework on fundamental questions and not be labeled as opportunistic, party-switching politicians. The system needs to be designed in such a manner that the elected is able to represent the electorate but at the same time, there is sufficient control for governance to ensure political stability.

In the end, it is more constructive to reframe anti-defection policies than to outright abolish them. Fostering these changes is vital in upholding democratic values.

Introduction

A candidate comes to your area, gives you a handshake, and guarantees that your issues will be addressed. You cast your ballot based on their party affiliation. After about 6 months, they change their party for a ministerial role or some other benefits. Your vote? In short, stolen.

This situation led many democracies to introduce anti-defection laws. India did it in 1985 with the 52nd Constitutional Amendment, but countries like Bangladesh, Kenya, and South Africa have similar laws. These rules seek to minimize the number of times political factions can ‘dance’ across a stage in such a way that can bring down governments overnight.

In our attempts to remove disorder, did we instead restrict the freedom of our representatives from the voters to party bosses? When legislators know they will lose their seat if they deviate from party lines, they become simple delegates.

In India, the Supreme Court observed this in the Kihoto Hollohan case when it deemed it a ‘political’ parliament versus ‘deliberative’ one. Moral authority is effectively banished. Any legislator who happens to disagree with their party out of moral conviction or because they think it may bring harm to their voters is obliged to follow the orders at the risk of losing their position. The Speaker’s role fosters conflicts of interest. In most systems, one of the powers reserved for the Speaker is defining “defection.” This has created politically convenient delays as well as advantageous hasty decisions.

On the other hand, it concentrates power within party leadership. Party leaders have the power to discipline dissenting members by threatening them with expulsion. This essentially allows the use of the anti-defection law with impunity and violence against internal democracy.

What we require is not the complete removal of these laws, but rather their constructive re-engineering. England or Australia takes a middling approach where defection is not permitted, yet a representative is allowed to vote his/her conscience once in a while.

The issue is not stability—yes, it matters. But when stability comes at the cost of the representation of democracy, it makes one question: who are the so-called representatives meant to serve? Why are there no systems engineered to halt both stability and conscience?

This article focuses on that precarious balance with a framework for potential reforms ossified

by the voters.

Historical Context and Evolution of Anti-Defection Laws

The Anti-Defection Law was originally adopted in India in 1985 as the Constitution's 52nd Amendment. In order to prevent political instability and a lack of responsibility, it was intended to counteract the growing practice of political defections, in which elected officials would change political parties in order to further their own agendas. The rule forbade elected officials from switching parties while they were in office in an effort to maintain the stability of the administration.

It is against the Anti-Defection Law for legislators to change their party affiliation. This came to light in 1967 when Haryana politician Gay Lal switched allegiance to three separate political parties on the same day. As a result of political party members frequently switching allegiances, the phrase "Aaya Ram Gaya Ram" became well-known.¹ It was unanimously decided to form a high-level committee composed of political party representatives and constitutional experts in response to a resolution passed on December 8, 1967, which stated that the government needed to address the issues of legislator defections and frequent floor crossings right away. The Anti-Defection Law has undergone multiple revisions to make its provisions stronger and more understandable over time. The 91st Amendment was proposed in 2003 and included a clause that permitted members to be disqualified if they willingly left the party whose ticket they were elected on. The fact that divisions within a political party would not be regarded as mergers or splits was also made clear by this amendment.

The Impact of Anti-Defection Laws on Political Freedom

The Anti-Defection Law, implemented in 1985, forbids members of Parliament (MPs) and Legislative Assemblies (MLAs) from defecting from their party. It is against the law for elected officials to support a vote of no confidence in the government or switch parties without first obtaining consent from the party. The rule was enacted to stop lawmakers from increasingly switching parties to better serve their personal interests rather than the interests of the people they were elected to represent. The Anti-Defection Law has had a major effect on how India's parliamentary system operates. Aside from the fact that elected officials are less likely to switch

¹ <https://prsindia.org/theprsblog/the-anti-defection-law-explained> (last visited on Apr. 15, 2022).

parties, which lowers the likelihood of governments collapsing, the rule has served to preserve stability in the government.

However, because they are obligated to toe the party line, MPs and MLAs have become less influential as independent voices as a result of the statute. The Anti-Defection Law is contained in the Tenth Schedule of the Indian Constitution. As per the legislation, a member of the house loses their eligibility to serve if they willingly abandon their affiliation with a political party or do not vote in favor of the party whip during a vote of confidence or a motion of no confidence. A political party member is legally disqualified from serving in the House if he or she joins another political party. The law additionally stipulates that the presiding officer of the house must determine whether to remove a member only after giving them an opportunity to present their case.

The Anti-Defection Law has faced numerous challenges before the Indian Supreme Court. Among the most significant cases was the Kihoto Hollohan case from 1992. The Supreme Court ruled in this case that the disqualification judgment made by the presiding officer may be subject to judicial review while maintaining the legality of the Anti-Defection Law. The court went on to say that before a decision is taken to keep a member from participating, they should be given the opportunity to be heard. In a different decision, the Supreme Court decided in the 1996 G. Vishwanathan case that the Anti-Defection Law did not apply to independents and only covered party members.² Moreover, the court determined that since abstentions were not the same as voting against the party whip, they were not covered by the Act.

So though reigning in rogue politicians is a laudable goal, anti-defection laws weaken democracy by stifling the voices of the people's representatives. There needs to be a happy medium between party loyalty and being able to do what is right based on what constituents need and their conscience. Our political system is changing, and it's time to revisit these laws so they actually benefit not just the political system, but the people it serves as well. Because democracy should not be repeating party lines but listening and amplifying those who, after all, are everywhere.

The anti-defection law reduces the accountability of the government and legislators -

The key problem with a law that penalises legislators for acting independently is that it goes

² G. Viswanathan vs The Hon'ble Speaker Tamil, 1996 AIR 1060

against the idea of a parliamentary democracy. In a parliamentary democracy, the government is accountable to citizens through a two-step process. Elected representatives (MPs and MLAs) hold the government accountable for its actions. In turn, they are accountable to citizens, as they need to renew their mandate every election.

The anti-defection law breaks both links in this chain. Elected representatives are expected to take decisions on proposed legislation and policies by exercising their independent judgement, and factoring in the interests of citizens. They are also expected to hold the government accountable by asking questions and raising matters of importance. In addition, they are to represent their constituents. However, the disqualification provisions of the Anti-Defection Law bind legislators to the official position taken by their party on any issue. Any diversion from that position can make them liable to be disqualified from their membership of the House. This adversely impacts their ability to exercise their independent judgement when evaluating proposals that are brought before the House.

This point was elucidated by Dr. B.R. Ambedkar in the Constituent Assembly. He explained that the key difference between the presidential and parliamentary systems was the balance sought between the stability of government and its accountability to the people. A presidential system provides greater stability as the president can be removed only through impeachment for a serious crime. This feature automatically reduces the accountability until the next election. In contrast, in the parliamentary system, the government is accountable to parliament on a daily basis through questions, debates and motions. Parliament can even remove the government through a no-confidence motion. The framers of the Indian Constitution chose the parliamentary system as they gave greater importance to an accountable government than its stability. The anti-defection law negates this purpose as the freedom of legislators to question the government and vote on various motions is constrained by the party whip. Indeed, if a party has a majority, it is almost certain to win every motion.

There could be instances when a legislator may have an opinion different from the one taken by his or her party. For instance, in the United Kingdom, MPs in the House of Commons thrice rejected the withdrawal plan which was negotiated by the government for leaving the European Union.⁵ Similarly, in India, when political parties took official position on Bills such as the farm laws, there could be MPs who may disagree with the party line.

There could even be instances when a Bill may go against the interests of an MP's constituency

but his party has decided to support it. Given the provisions of the Anti-Defection Law in India, legislators cannot vote their conscience or for their constituency interests if such vote is contrary to the stand taken by their party. In other words, MPs can neither exercise their judgment nor go according to the wishes of their electorate. The wishes of the party trump all other considerations. There have been proposals to limit the Anti-Defection Law to votes which test the stability of the government such as no-confidence motions and money bills. Note that the Anti-Defection Law currently applies to every vote, and even in Rajya Sabha and Legislative Councils of states, where the government's stability is not at stake.

The Dinesh Goswami Committee on Electoral Reforms (1990) had recommended that disqualification on grounds of defection should be limited to: (i) an elected member voluntarily giving up membership of his political party, and (ii) voting contrary to the party whip only in respect of vote of confidence/no-confidence, money bill, or motion of vote of thanks to the President's address. However, this formulation too misses the core point of the parliamentary system – the onus is on the government to retain the support of a majority of MPs, including those from the same party. Only then can the government be held accountable for its actions.

Scope of Speaker's Power vested under the Tenth Schedule

The Anti-Defection Laws - the issue of defections came to the force after the anti-defection law, also called the 10th Schedule came into the Constitution, which was added vide the 52nd Amendment Act, 1985. An appreciable fact of the Schedule is the power vested in the Speaker (or Chairman) of the legislative body to adjudicate on disqualification matters.

Constitutional Provision –

The Speaker or the Chairman of the House is the sole authority under Paragraph 6(1) of the Tenth Schedule to resolve the disqualification on ground of defection.

Scope and Nature of Speaker's Power –

1) Quasi-Judicial Role: Since the Speaker is a political person, the disposal of defection cases may not be impartial. *Kihoto Hollohan v. Zachillhu* (1992) In the historic judgment in *Kihoto Hollohan v. Zachillhu* (1992) the Supreme Court upheld the power of the Speaker under the Tenth Schedule of the Indian Constitution but permitted for judicial review under Articles 32 and 226.

2) No Specified Time Limit – Schedule X does not have a specified time limit for the Speaker to act on disqualification petitions and had resulted in inordinate delays.

3) Judicial Intervention and the Shifting Standard: In *Keisham Meghachandra Singh v. Speaker, Manipur Legislative Assembly* (2020), the Supreme Court admonished that the disqualification decisions ought to be rendered in three months, setting an outer limit of such decision-making.

Restricted Powers and Judicial Scrutiny of the Speaker

Powers of the Speaker which are limited and can be judicially scrutinized The Tenth Schedule is coming to be viewed as one of checks and balances rather than untrammelled discretion of the Speaker. Several cases have highlighted the restrictions on this power:

Shrimath Balasaheb Patil v. Speaker, Karnataka Legislative Assembly (2019)

It was in this backdrop that 17 M.L.A's of the Karnataka Assembly represented by the present appellants filed a writ petition before the Karnataka High Court challenging their disqualification made by the Speaker of the Karnataka Assembly under the Tenth Schedule in the Indian Constitution. The Speaker had suspended them for the end of their legislative term, and hence they were ineligible to fight elections.

The disqualification was upheld by the Court, but the Speaker's decision to disqualify the MLAs from contesting elections was set aside, the Court categorically stated that the Speaker has no powers, under the Constitution and the Representation of People Act, 1951 to impose further disqualifications.

This case has strengthened the judiciary constraining the Speaker's discretionary power.

This provision clarified that the Speaker is not allowed to exceed the scope of the statutory and constitutional framework when pronouncing sanctions.

Indicated that the courts would look very harshly at the abuse of defection proceedings for political purposes

Though the Tenth Schedule confers a central role to the Speaker in maintaining the anti-defection law, the emerging jurisprudence has grown in favour of donating greater scrutiny and

accountability to the Speaker's decisions. Cases such as Kihoto Hollohan and Shrimath Balasaheb Patil and Keisham Meghachandra Singh clearly demonstrate that the powers of the Speaker are checked by the courts. Many experts have proposed that, in the future, an independent authority, not the Speaker of the House — should deal with such cases, to prevent bias, and delay. This would be a measure to safeguard democracy and to prevent misuse of anti-defection laws.

Reasonable time in deciding disqualification of petition –

One of the biggest concerns regarding the Tenth Schedule—and the anti-defection mechanism it propagates—is the lack of a defined time frame for the Speaker to act on disqualification petitions. This has resulted in strategic delays, undermining the intent of the law, and creating a situation where corrupt MLAs who have defected can continue to hold office for long periods.

Judicial Interpretation: Reasonable Time –

In the case of *Keisham Meghachandra Singh v. The Hon'ble Speaker, Manipur Legislative Assembly* (2020), the Supreme Court ruled that disqualification petitions are to be decided by the Speaker of the Lok Sabha and State Assemblies within a “reasonable period” and preferably within three months, unless there are exceptional reasons for the same. This ruling followed the action of the Speaker in not deciding for well over a year a disqualification petition against a Manipur MLA who had crossed over to the ruling party after winning on a ticket from the opposition party.

The Court emphasized that:

Disqualifying them after a delay neglects the very purpose of the anti-defection law. Where everything breaks down the Governor must intervene to ensure constitutional government, especially when the majority of a government is in doubt. The Speaker is subject to judicial review and cannot act randomly.

Manipur MLA Disqualification Case –

Keisham Meghachandra Singh v. The Hon'ble Speaker, Manipur Legislative Assembly (2020) –

Background of the case-

Congress MLA Keisham Meghachandra Singh filed a disqualification petition under the Tenth Schedule against Shyamkumar Singh, yet another Congress MLA who joined the BJP soon after the 2017 Manipur Assembly polls.

But, for more than 3 years, the Speaker never took a decision on the defection and Shyamkumar was made a Minister in the BJP-led government.

The failure forced Meghachandra Singh to knock the doors of the Supreme Court, seeking a direction to the Speaker to take a call on the petition.

Legal Issues:

How long can the Speaker of the House procrastinate disqualification?

Can the decision of the Speaker be reviewed by a court?

Or does the Governor have to act on his own if the Speaker doesn't?

Judgment Highlights (2020):

1. Reasonable Time Limit:

The SC held that a disqualification petition ought to be decided "within a reasonable period, but preferably within 3 months."

There are no limitations provided in the Constitution about time lapse, but unreasonably delayed renders the Tenth Schedule's objectives nugatory.

2. Refusal of the speaker to act is justiciable:

The Court reiterated the Kihoto Hollohan judgment to the effect that Speaker's role under the Tenth Schedule is quasi-judicial. Therefore, if there is malafide delay or inaction, court can interfere.

3. Governor's Role:

The Court held that in 'rare and extraordinary' circumstances, when a 'majority of the House is in a state of uncertainty and hesitates or refuses to act,' the Governor can autonomously

determine under Article 164 that the constitutional machinery of government is malfunctioning.

The case of the Manipur MLA was an Indian constitutional landmark. It demonstrated how bringing petty politics and procedural delays to bear on parties and personalities can destroy the soul of anti-defection law. Not only has the intervention of the Supreme Court ensured that accountability is established but has also paved the way for much-delayed reforms to restore the sanctity of the legislature.

Landmark Judgments related to the Anti-defection law

Kihoto Hollohan v. Zachillhu and Others (1992): In this case, the Indian anti-defection statute faced its first major legal challenge. The Supreme Court, which upheld the legality of the statute, stated that judicial review was available for the decision to remove an MP or MLA from office in accordance with the statute.

Ravi S. Naik v. Union of India (1994): The lawsuit pertained to the matter of Ravi S. Naik, the Chief Minister of Goa, defecting. The Supreme Court ruled that a state's governor could not fire a chief minister without cause on the grounds that the minister had defected and that the decision may be challenged in court.

G. Vishwanathan v. Speaker, Tamil Nadu Legislative Assembly (1996): In this case, the Supreme Court ruled that a writ petition to the High Court may be used to contest the decision to remove an MP or MLA from office in line with the anti-defection law.

Shri Yengkhom Surchandra Singh vs The Hon'ble Speaker (2020): The Speaker's decision to disqualify nine MLAs in line with the anti-defection law was upheld by the Supreme Court of India in a landmark decision in the Manipur Legislative Assembly Case in July 2020. The Speaker may evaluate disqualification petitions and make the decision to disqualify is subject to judicial review, the court made clear.

Conclusion

The Tenth Schedule of the Constitution has provided a distinct constitutional identity to the Political Party. The elected members of the House belong to party, which has set him up as candidates for that election and party policy and program weigh in minds of the electorate sentiments before exercising his/her franchise. Under the existing scheme of the Tenth

schedule, the leader of that political party or even any elected member of the House have right to draw the attention of the Presiding officers of the House regarding the alleged incidents of the defection and leader of the Political Party has full liberty to take appropriate disciplinary action, including recommending disqualification under Para 2(1) of the Tenth Schedule. The position of the Speaker/Chairman as an adjudicator under Para 6 of the Schedule has been sufficiently crystallized as the sole adjudicator under the law, but the Courts can exercise powers of judicial review over the decision of the Speaker. The problem with the existing framework is that the High Courts are only allowed a review of the decision rendered by the Speaker, which is not possible in cases where the Speaker acts with unreasonable delays or, for that matter do not work. In different words, judicial review is available over the actions of the Speaker and not the inaction. As the issues in the Supreme Court judgment in *Keisham Meghchandra Singh v. Hon'ble Speaker, Manipur Legislative Assembly*, are still open for consideration by the larger bench, it implies that even the judiciary has found it perplexing and sensitive to conclusively determine these questions occupying immense constitutional importance. Even assuming without admitting that the Supreme Court in the said judgment has established the law, it would anyway be difficult to say that the prevailing method of setting out timelines for the Speaker to decide the petitions is immune to any practical ramifications.

In addition, application of the legislations also tends to raise issues of fairness and impartiality. The Speakers' and judiciary's determination of whether or not there has been a defection can provide the foundation for charges of partiality and political maneuvering. Unless the process is publicized, it tends to create impressions of injustice that erode public trust in the political process. The citizens might feel that decisions are made in secret, disenfranchising them even more from the political process.

In light of these issues, the need for some changes to anti-defection law is clear, because we need to strike a fair balance between stability in the political system and respecting the autonomy of those elected. The ideal situation with any impending reform must also carefully balance stability with democratically elected officials. One way to change anti-defection laws, to make the reform more inclusive, fairer, and more manageable, is to have as its ethos, representative democracy that ensures a simple accountability and responsible political parties. By being more sophisticated in thinking about the reform of anti-defection laws, we might reach an ideal situation where the anti-defection laws do what they must, but we continue to

respect the independence and the liberties of an elected official and the basics of healthy, democratic enthusiasm and philosophical democratic feeling.

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