JUDICIAL DECISIONS SHAPING THE ANTI- DEFECTION LAW IN INDIA

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ABSTRACT

"The evil of political defection has been matter of national concern, if it is not combated it will undermine the very foundation of our democracy and the principals which sustain it" stated Rajiv Gandhi, then prime minister of India while introducing anti-defection law in 1985.This article examine the historical background ,legislative intent behind the anti-defection law , misuse by political opportunists and judicial responses accordingly . Tenth schedule enacted in 1985 to curb defection and to ensure political stability across India. In present times in Maharashtra, Telangana, Manipur cases it has raise multiple questions as to role of speaker, role of election commission, reasonable time for adjudication matter related to defection and loophole and lacune in current framework. This critical analysis examines its idealism, loopholes, and judicial responses, assessing whether it ensures political stability, party discipline, and democratic integrity. Introducing fixed timelines, narrowing the merger clause, and transferring adjudicatory powers to an independent tribunal are essential.

Keywords: Anti-defection law, Tenth Schedule, merger clause, Speaker's decision, Election Commission, Telangana defections, Manipur case, judicial review

INTRODUCTION

India there follows parliamentary form of democracy as election is integral part of democracy and specifically in India, election regarded as the foundation of democracy, political defections have long posted a serious challenge. The phrase 'Aya Ram Gaya Ram' coined in year of 1967 after elected member of legislative assembly of Haryana Gaya Lal switched parties' multiple times in single day. In that relevant time many legislator defected lead to government collapses and political instability. To curb such 52nd a constitution amendment act was introduced the Tenth schedule known as Anti-defection law to promote political stability and thereby strengthening democracy. Judicial intervention has played an important role in shaping anti-defection law. In Kihoto Hollohan v. Zachillhu (1992)[1], the Supreme Court upheld its constitutionality but allowed limited judicial review of the Speaker's decisions, recognizing the risk of political bias.

More recent cases from Maharashtra (2022–23), Telangana (2019), and Manipur (2020) highlight how delays and partisan conduct by Speakers have undermined the effectiveness of the law. Thus, while the Anti-Defection Law was introduced with the ideal of safeguarding democracy, its practical application has exposed serious weaknesses. This article critically examines its idealism, loopholes, and judicial responses.

HISTORICAL BACKGROUND

Anti-defection law in India has evolved over times. following general election of 1967, a large number of defections were witnessed by legislators across state. In year of 1967 member of legislative assembly of Haryana (MLA) named Gaya Lal switched parties' multiple times in single day and such incident is famously/infamously coined as "**Aya Ram Gaya Ram**". To deal with this issue high level committee formed under the leadership of then home minister Yashwantrao Chavan but the report submitted by the committee did not bring about any substantial changes regarding the issue of political defections. Then after in 52nd constitutional amendment act, 1985 was introduced 10th schedule as specific law related anti-defection. In 2003, 91st constitutional amendment act was enacted to strengthen the anti- defection law One of its significant provisions was the deletion of the exemption previously available under Paragraph 3 of the Tenth Schedule, which protected legislators from disqualification when a

[1] Kihoto Hollohan v. Zachillhu, (1992) Supp (2) SCC 651

split occurred in their political party, provided that at least one-third of the members of the legislature party constituted the split. Following this amendment, a split in a political party no longer provides protection against disqualification[2]. There after several key judgements from year 1992 Kihoto Hollohan v. Zachillhu (1992)[3], *to 2026 Danam Nagender v. Alleti Maheshwar Reddy[4] - Supreme Court, 2026 c*ourt have interpreted and delivered landmark judgement on anti-defection law.

CONSTITUTIONAL LEGAL FRAMEWORK

Indian constitution is world's largest written constitution it includes articles and schedules, in year of 1985, 52nd constitutional amendment act introduced 10 schedules as an anti-defection law. primary purpose behind such legislation was to curb the political defection which stabilized the government. 10th schedule includes grounds for disqualification of member of parliament and member of legislative assembly to ensure party discipline and balancing the autonomy of elected representative.

In Paragraph 2 of the Tenth Schedule lays down the principal grounds for disqualification.

a. Voluntarily giving up party membership: A legislator may be disqualified if they voluntarily give up membership of the political party. Formal resignation is not essential; conduct may establish that membership has been voluntarily relinquished.

b. Voting or abstaining against the party direction: A legislator may be disqualified for voting or abstaining contrary to an authorised party direction (whip), without prior permission, where the party does not condone the action within 15 days.

c. Independent members: An elected independent member may be disqualified for joining a political party after election.

d. Nominated members: A nominated member may be disqualified for joining a political party after the expiry of six months from taking their seat

[2] Nalini Sharma, Explained: The Anti-Defection Law and Why It Still Remains a Toothless Tiger, India Today (June 21, 2022),
[3] Kihoto Hollohan v. Zachillhu, (1992) Supp (2) SCC 651
[4] Danam Nagender v. Alleti Maheshwar Reddy, SLP (C) Nos. 33735-33736 of 2026 (Supreme Court of India 2026).

Paragraph 4 provides disqualification does not apply where the original political party merges with another political party and the statutory conditions are satisfied. The merger exception requires at least two-thirds of the members of the legislature party concerned to agree to the merger.

Paragraph 5 provides special protection is available to members who are elected Speaker, Deputy Speaker, Chairman or Deputy Chairman, in the circumstances specified in the Schedule.

Paragraph 6 provides that questions of disqualification under the Tenth Schedule are decided by the Speaker of the Legislative Assembly or the Chairman of the Legislative Council, as applicable. In Parliament, the corresponding authority is the Speaker of the Lok Sabha or the Chairman of the Rajya Sabha.[5]

In 2003, 91st constitutional amendment act was enacted to strengthen the anti- defection law One of its significant provisions was the deletion of the exemption previously available under Paragraph 3 of the Tenth Schedule, which protected legislators from disqualification when a split occurred in their political party, provided that at least one-third of the members of the legislature party constituted the split[6]

IMPORTANT JUDICIAL DECISIONS

There are several judicial decisions has delivered by the supreme court of India which have played important role in interpretation of schedule 10 of constitution of India

1. **Kihoto Hollohan v. Zachillhu (1992)**

The Supreme Court upheld the constitutional validity of the Tenth Schedule, which governs the Anti-Defection Law in India. The Court held that the Speaker or Chairman acts as a tribunal while deciding disqualification matters under the Schedule, and that such decisions are subject to judicial review on limited grounds, including constitutional violations, mala fides, breaches of natural justice, and perversity. The judgment established that the presiding officer's decision-

[5] INDIA CONST. sched. X

[6] Nalini Sharma, Explained: The Anti-Defection Law and Why It Still Remains a Toothless Tiger, India Today (June 21, 2022

making authority is not immune from judicial scrutiny.[7]

2. **Ravi S. Naik v. Union of India (1994)**

In this case, the Supreme Court clarified the meaning of "voluntarily giving up membership" under Paragraph 2(1)(a) of the Tenth Schedule. The Court held that the expression is broader than formal resignation and that a legislator's conduct may establish that they have voluntarily abandoned membership of their political party. This interpretation clarified that disqualification may arise even in the absence of a formal resignation, provided the member's conduct supports such an inference.[8]

3. **Keisham Meghachandra Singh v. Speaker, Manipur Legislative Assembly (2020)**

The Supreme Court emphasised the need for timely adjudication of disqualification petitions under the Tenth Schedule. It held that, in the absence of exceptional circumstances supported by good reasons, a period of three months from the filing of a petition should ordinarily be treated as the outer limit for its disposal. The Court observed that undue delay in deciding such petitions may undermine the purpose of the Anti-Defection Law by allowing legislators facing disqualification to continue participating in legislative and governmental affairs.[9]

4. **Subhash Desai v. Principal Secretary, Governor of Maharashtra (2023)**

In this case, the Supreme Court examined important constitutional questions arising from the Maharashtra political crisis, particularly the interpretation of the Tenth Schedule and the powers of the Speaker and Governor. The Court held that the political party's leadership, rather than merely the numerical strength of a group within the legislature, is relevant in determining the authorised party whip. It further clarified that the Speaker must recognise the party whip appointed by the political party in accordance with the applicable constitutional framework. The judgment highlighted the importance of constitutional accountability and proper application of the Anti-Defection Law in resolving disputes involving competing political factions.[10]

[7] Kihoto Hollohan v. Zachillhu, (1992) Supp (2) SCC 651
[8] Ravi S. Naik v. Union of India, 1994 Supp. (2) SCC 641, 649 (India).
[9] Keisham Meghachandra Singh v. Speaker, Manipur Legislative Assembly, (2021) 16 SCC 503
[10] Subhash Desai v. Principal Secretary, Governor of Maharashtra, 2023 INSC 516 (India)

LOOPHOLES AND CHALLENGES

Anti defection law came into existence after 52nd constitutional law amendment to curb the political opportunism but till today the legislation is not competent enough to deal with people who take disadvantage of that for their political gain.

1. Merger clause:

The merger exception under Paragraph 4 of the Tenth Schedule to the Constitution of India provides protection against disqualification on the ground of defection where the original political party merges with another political party and at least two-thirds of the members of the concerned legislature party agree to the merger. Although this provision is intended to accommodate genuine political mergers, its application has raised concerns that legislators may use it to change political allegiance without attracting disqualification.[11]

In Telangana Congress MLAs Merger Controversy (2019)

In 2019, 12 out of 18 Congress MLAs in Telangana merged with the ruling TRS, and the Speaker recognised the merger under Paragraph 4 of the Tenth Schedule. The episode raised concerns about the use of the merger exception to avoid disqualification and weaken the opposition[12] This episode have raised serious question related exception under merger clause.

2. Role of speaker

The role of speaker is important in deciding the disputes relates to splits and merger and recognition of original party. However, since speakers are active politician, the decision given by them are often reflect bias. In recent

Manipur case (Keisham Meghachandra Singh v. Speaker, Manipur

Legislative Assembly) [13]supreme court has criticised the role of speaker for delaying the disqualification petition. Similarly in Subhash Desai v. Principal Secretary, Governor of

[11] INDIA CONST. sched. X

[12] CLP Merger Row: High Court Issues Notice to Telangana Speaker, 12 MLAs, The Indian Express (June 12, 2019)

[13] Keisham Meghachandra Singh v. Speaker, Manipur Legislative Assembly, (2021) 16 SCC 503

Maharashtra (2023)[14] raise question over inaction of speaker. thus, the conduct of speaker has undermined the intent of legislation.

3. **Absence of timeline**

Schedule Ten does not provide any fix timeline to deciding disqualification cases it create serious prejudice to concern party. As mention above in Manipur and Maharashtra case supreme court has raise serious concern over role of speaker.

4. **Unclear role of election commission**

There is an overlap between the powers of the Speaker and the Election Commission of India (ECI) in cases of political defection. During the Maharashtra political crisis (2022–23), the Speaker dealt with the disqualification of MLAs, while the ECI decided which faction was entitled to the Shiv Sena name and symbol. These parallel proceedings created confusion and delays, raising concerns about the effective implementation of the Anti-Defection Law.

RECOMMENDATION AND REQUIRED REFORMS

Existing legal frame work dealing with the defection in India is not sufficient and required constructive legal reforms, supreme court in many times has raise concern and suggested appropriate reforms.

1. Independent Tribunal:

At present, the Speaker decides disqualification cases under the Tenth Schedule. However, since the Speaker usually belongs to the ruling party, questions often arise about impartiality, political influence, and delays in decision-making. Therefore, this power should be given to an independent tribunal comprising retired High Court or Supreme Court judges. This would help ensure fair and timely decisions, reduce political interference, and strengthen public trust in the anti-defection law.

2. Time-bound Decisions:

One major problem with the anti-defection law is the lack of a fixed time limit for deciding

[14] Subhash Desai v. Principal Secretary, Governor of Maharashtra, 2023 INSC 516 (India)

disqualification petitions. In many cases, decisions are delayed for months or even years, allowing defectors to continue holding office. Therefore, a strict deadline, such as 90 days, should be introduced for deciding these petitions. This would prevent unnecessary delays, reduce political manipulation, and ensure that the law is implemented effectively.

3. Narrowing the Merger Clause:

The merger provision under the Tenth Schedule requires the support of at least two-thirds of the legislators of a political party. However, this provision may be misused by groups of legislators to avoid disqualification. To prevent such misuse, the law should require a genuine merger of the original political party, rather than allowing only a group of legislators to claim a merger. This would help reduce opportunistic defections and maintain stability within political parties.

4. Clarifying the Role of the Election Commission:

There is often confusion regarding the roles of the Speaker and the Election Commission in matters relating to defection and recognition of political parties. Clearly defining their respective powers and establishing proper coordination between them would help avoid jurisdictional conflicts and unnecessary delays. This would ensure smoother dispute resolution and bring greater clarity and consistency to the implementation of the anti-defection law.

CONCLUSION

The Anti-Defection Law was introduced to prevent political defections and maintain stability in Indian democracy. Although it has helped control party-switching, loopholes, group defections, and delays in the Speaker's decisions continue to weaken its effectiveness. The judiciary has played an important role in interpreting the law and preventing its misuse. However, further reforms are needed to ensure independent decision-making and timely disposal of cases. The law can achieve its true purpose only when political defections are effectively checked and democratic accountability is maintained.

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