
THE ANTI-DEFECTION REGIME IN INDIA: BALANCING STABILITY AND DISSENT

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ABSTRACT

India's anti-defection regime emerged to address several issues stemming from politically motivated opportunistic floor-crossing, executive 'horse-trading', and the collapse of parliamentary majorities. The Tenth Schedule of the Constitution (Fifty-second Amendment) Act, 1985, and further modifications by the Ninety-first Amendment of that year sought to constitutionalise party loyalty and facilitate the disqualification of legislators for voluntarily resigning their party positions or for acting counter to their party's position. The focus of this paper is to ascertain whether the Indian model strikes an appropriate equilibrium between the stability of the government and dissent in a democracy. By employing a doctrinal, comparative and institutional approach, it attempts to assess the constitutional text, the Supreme Court's position, legislative practice and the comparative literature on party disloyalty which has been published in peer-reviewed journals. It is the author's contention that while some forms of individual floor crossing may have been substantially curtailed by the Indian regime, three costs to democracy have been created: the excessive centralization of power in party leadership, the erosion of parliamentary democracy through the loss of 'deliberative' representation and the adoption of strategic forms of manipulation through the resignation of members, the merging of parties and the delaying of decisions. The comparative literature indicates that anti-defection legislation is not necessarily anti-democratic. Such legislation may be seen as democratically legitimate when the legislation is limited to narrow and clearly defined circumstances, there is independent adjudication, the procedures are transparent and there is a safeguarding of the right to express legislative dissent. It is the author's view that India is justified in maintaining a stability protection rule in respect of confidence, no-confidence and money bills, but should abolish the disqualification of members for the breach of other votes. Such changes would retain the overarching constitutional goal of ensuring the government functions while also preventing the loss of representatives.

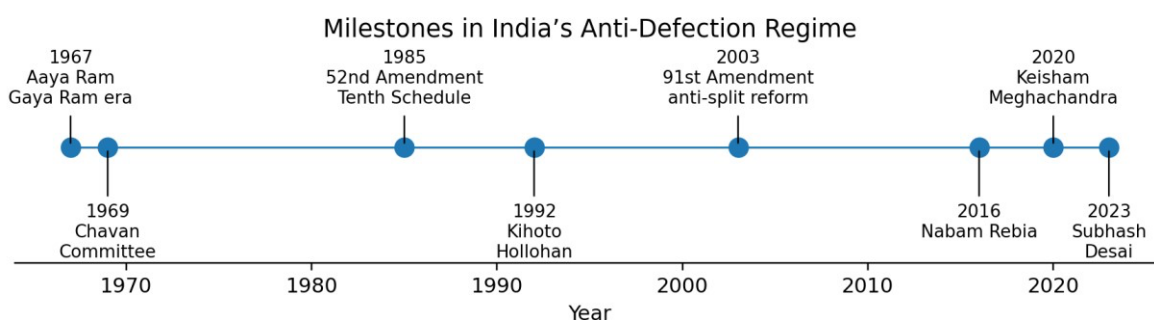
Keywords: party discipline, anti-defection laws, legislative dissent, parliamentary democracy, constitutional law, India

Introduction

The Anti-Defection Law impacts the Constitution of India because it reconfigures a party's internal issue into a concern of legislative disqualification within a constitution. In most parliamentary systems, a member's breach of conduct and party discipline is controlled by a committee's decision to sanction a member by the denial of a ticket to future elections, a demotion from a committee or a loss of a party role, or by a public scorn. India transcends to a larger extent and goes further than most systems. In India, a member of the legislature can lose their legislative seat if the member is adjudged to have surrendered their membership of the party and/or breached the party's directive in the legislature. This law therefore falls at the crossroad of party governance, the citizens' right to have their elected representatives deliberate on public issues, and the stability of a constitution. While there is strong reason to support this law, it however has very serious effects. The reasons why this law was instituted can be traced to the history of this country. The time after the general elections of 1967 was characterized by a large number of instances of changing of allegiance in the state legislatures and gave rise to the well-known saying of "Aaya Ram, Gaya Ram." Defections were said to be acts that caused alterations of the state's power relationships, caused an erosion of confidence in the operation of legislative governance and fostered ministerial "bargaining" (Kashyap, 1970). The same concerns manifested in the 1980's, when defections were viewed as acts of "engineered" governance by the executives, creating situations in which that executive would be able to consolidate power, which further caused an erosion of confidence in the operation of legislative governance (Kamath, 1985). The constitutional changes sought to stabilize governments founded on the mandates of the various parties and were reflected in the inclusion of the Tenth Schedule in 1985. The subsequent Ninety-first Amendment further tightened laws by removing the one-third split. The main challenge is that the same mechanism that protects states from opportunistic switches can, at the same time, muzzle dissenting viewpoints. Legislators may express publicly dissenting views to the party leadership on a variety of issues, policy-related or otherwise. Even more, if whipped votes are interpreted as grounds for disqualification, the space for legislative judgment evaporates. Bhatia (2020) explains the consideration of strict party discipline as an imposition of deliberation costs because a legislator's reasoning is replaced with a command of the party. Bhatia (2021) further explains that antidefection legislation places a constitutional challenge to the nature of political parties. Are political parties private associations, electoral mechanisms, or are they institutions of a constitution that have the right to control legislative membership? This paper views the anti-defection law as a

balancing act instead of the choice between stability and freedom. It is a requirement of the parliamentary system to have some form of reasonably stable governance. Rapid shifts in government would undermine the executive’s accountability and the continuity of the policies. Simultaneously, a system of government that is founded on a constitution would require, at a minimum, dissent from and within the legislature, as well as deliberation and accountability. Hence, the anti-defection law can only be justified if it prevents the specific vice of destabilizing betrayal, while still allowing for dissent. This paper seeks to answer if the design and implementation of the law in India has maintained such a balance. It holds that the Indian law is overly broad in its conceptualization of dissent in voting, and is strikingly under-institutionalized in its adjudicatory component, and has only limited success in controlling strategic defections.

Figure 1: Timeline of Constitutional and Judicial Milestones in India’s Anti-Defection Regime



Explanation: The figure situates the anti-defection regime along a constitutional timeline. It illustrates that the regime began as a response to instability, with later alterations resulting from judicial review, the removal of the split exception, and issues associated with the lack of impartial adjudication. In particular, it highlights the regime’s concerns regarding mass defection.

Analysis: Historical Purpose and Constitutional Design

The anti-defection law was implemented to deal with the issue of governance. In a parliamentary democracy, the government only remains in power as long as it has the confidence of the legislature. If members of the legislature who are elected on the basis of a party manifesto are persuaded to ‘cross the floor’ and join another party or receive rewards, the

electoral outcome may be perverted and the government may be rendered unworkable. The Tenth Schedule, in this case, treats defection as a constitutional offense when the party basis on which the voters elected the representatives is threatened. This is most applicable to a defection that directly and immediately endangers the government’s continuance, a confidence motion, a no-confidence motion, and a money bill.

Beyond narrow stability reasoning, Indian implementation goes. Paragraph 2 of the Tenth Schedule contains provisions for the voluntary surrender of membership and for voting or abstaining from voting in Parliament contrary to the party’s direction. The latter provision means that a legislator may be disqualified not only for changing parties but also for voting against the party whip on any issue for which a party may issue a direction. This opens the door to abuse. The Tenth Schedule and its provisions allow the government to be stable and operational, but not beyond controversy. The constitutional sanction is applied to dissent, even when the dissent does not threaten the ministry.

Table 2: Core Provisions of the Tenth Schedule and Democratic Concerns

Legal trigger	Main subject	Constitutional function	Democratic concern
Voluntarily giving up party membership	Elected member of a political party	Loss of membership may be inferred from conduct, not only formal resignation.	Necessary for disguised defections, but can be uncertain without clear evidentiary standards.
Voting or abstaining contrary to party direction	Party members in the legislature	Member may avoid disqualification if prior permission or later condonation is granted.	Overbroad when applied beyond confidence, noconfidence, and money-bill situations.
Independent members joining a party	Independent legislators	Independent member is disqualified if joining a political party after election.	Protects the electoral basis of independent candidature.

Nominated members joining after permitted period	Nominated legislators	Nominated member may join a party within the constitutionally allowed period.	Balances nomination with later party affiliation limits.
Merger exception	Party legislators	Disqualification may not apply where the statutory merger threshold is satisfied.	Can protect genuine party reorganization but may also facilitate engineered bloc movement.
Decision by Speaker or Chairman	All covered legislators	Presiding officer decides disqualification petitions.	Raises concerns about delay and institutional impartiality because the Speaker may be a party actor.

Explanation: The table shows that the Tenth Schedule contains both stability-protecting provisions and provisions that can suppress dissent. The voting-whip ground and the Speakercentered adjudication model are the two most contested design features.

The Problem of the Whip and Legislative Dissent

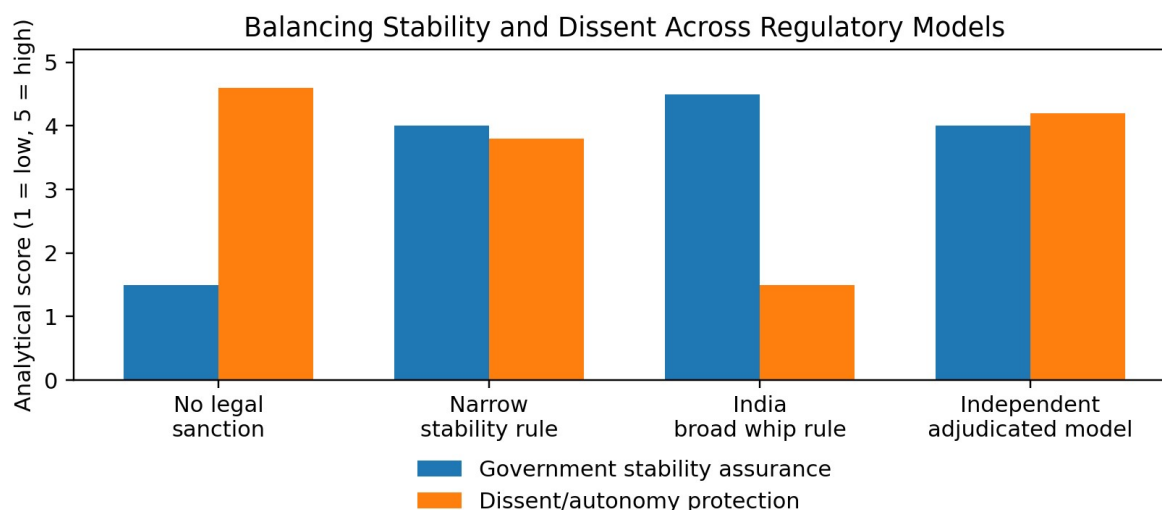
The party whip's function shows the most serious democratic cost of the anti-defection legislation. In parliamentary democracies, whips perform necessary functions by informing members about the party's position, organizing other functions of parliament, and helping the government carry out its program. However, the whip becomes a constitutional issue when the loss of a member's seat is the result of the member's violation of the whip on everyday parliamentary functions. In such a case, parliamentary discipline changes from political pressure to constitutional obligation.

It is important to differentiate between political discipline and constitutional disqualification. Political discipline, on the one hand, enables a party to maintain its cohesion while allowing space for dissenters, who lose nothing more than the ordinary political price of that dissent. On the other hand, the member of parliament is removed from the legislature as a result of

constitutional disqualification. Consequently, the member of parliament is punished; so too are the voters who elected the member to parliament. If dissent from a member of parliament is on a vote that does not endanger the government, then the penalty is also arbitrary. Furthermore, it is likely that the penalty will inhibit the voting member of parliament, because they will realize that dissent from a vote in public on their party’s position will result in that member of parliament losing their position.

A more limited regime would draw a distinction between votes that choose the government and votes that deal with the government's policy judgment. In the first case, parliamentary party discipline may be constitutionally required because the electorate votes for parties with expectations about the formation of the government. In the second case, dissent should not normally lead to disqualification. A member may be politically answerable to the party and electorate, but the constitution should only punish acts that frustrate the mandate. This method preserves the main goal of anti-defection law and ensures the margin of representative autonomy.

Figure 2: Balancing Stability and Dissent Across Regulatory Models



Explanation: The figure uses an analytical coding scale to compare regulatory models. India’s broad whip-based model scores high on formal stability assurance but low on dissent protection. A narrower, independently adjudicated model retains stability while improving legislative autonomy.

Judicial Doctrine and Institutional Ambivalence

There are several ways in which judicial doctrine has both built and limited the anti-defection framework. The Supreme Court in *Kihoto Hollohan v. Zachillhu* acknowledged the constitutionality of the 10th Schedule and the Supreme Court’s power of judicial review concerning the Speaker. The seriousness of defections were subject to recognition in this decision, although the Speaker was not granted absolute immunity from the constitution. Subsequent decisions clarified the voluntary components of resigning membership, as well as the conditions where defection would be considered to occur in the absence formal voluntary resignation. It was thus accepted by the courts that the anti-defection legislation is constitutionally valid, but the courts were also reluctant to exclude from the realm of natural justice the validity of administrative action, the rule of law, and constitutional review.

The Supreme Court’s later interest in time-framed adjudication also encompasses the same elements of concern. The principle that disqualification petitions must be adjudicated timeously is crucial, since in the context of anti-defection petitions, the relevance of the adjudication may be time-barred. The constitutional value of an adjudication may be lost if the decision is handed down after the relevant government has either come to power or gone out of office. The timemanagement of the Tribunal is beyond the judiciary, unless there are changes to the constitutional framework. This explains why there are so many proposed reforms to transfer the adjudicating power from the Speaker to either the President or the Governor, on the recommendation of the Election Commission, or to some other independent tribunal.

Table 3: Landmark Judicial Developments in the Anti-Defection Regime

Case	Year	Key contribution	Relevance to stability-dissent balance
Kihoto Hollohan v. Zachillhu	1992	Upheld the Tenth Schedule but preserved judicial review after the Speaker’s decision.	Established constitutional validity while rejecting complete insulation from courts.

Ravi S. Naik v. Union of India	1994	Clarified that voluntarily giving up membership can be inferred from conduct.	Expanded the evidentiary reach of defection beyond formal resignation.
Rajendra Singh Rana v. Swami Prasad Maurya	2007	Addressed claims of split/defection and legislative conduct under the Schedule.	Showed how group movement could be scrutinized despite political framing.
Nabam Rebia v. Deputy Speaker	2016	Examined the Speaker's role when removal proceedings against the Speaker are pending.	Highlighted institutional impartiality concerns in politically charged situations.
Keisham Meghachandra Singh v. Speaker, Manipur Legislative Assembly	2020	Emphasized that disqualification petitions should be decided within a reasonable time, generally three months in ordinary cases.	Strengthened the case for time-bound adjudication.
Subhash Desai v. Principal Secretary, Governor of Maharashtra	2023	Considered party identity, legislative party action, and constitutional consequences of factional conflict.	Reinforced the complexity of applying the Tenth Schedule to party splits, whips, and claims of legitimate leadership.

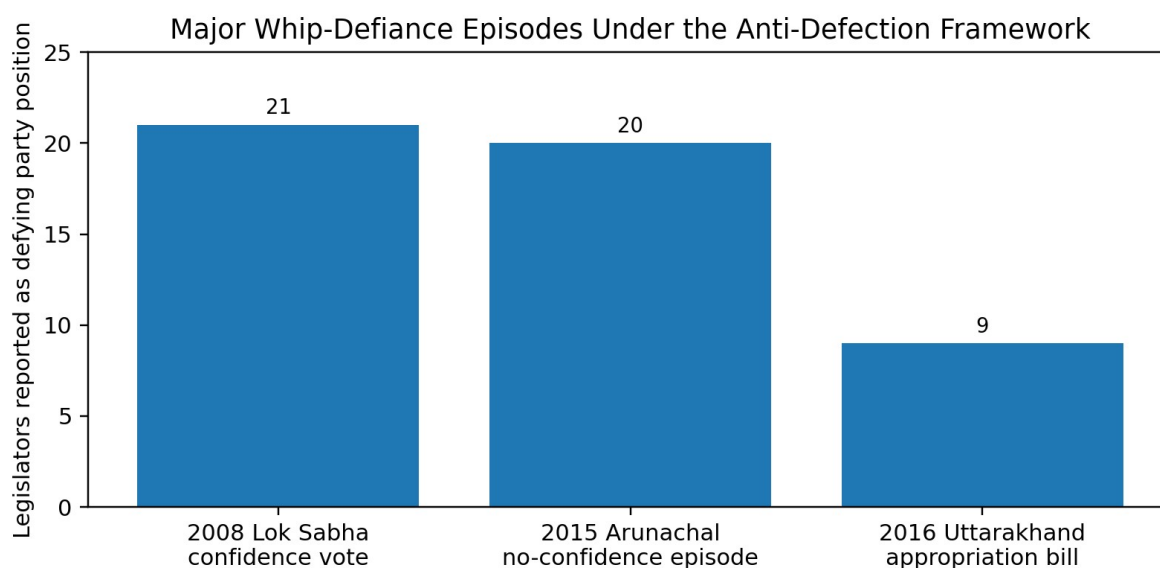
Explanation: The table shows that judicial doctrine has not rejected the anti-defection regime. Instead, it has tried to discipline its operation through review, evidentiary standards, and timebound expectations. The continuing problem is institutional design rather than judicial awareness alone.

Operation in Practice: Defiance, Delay, and Office Incentives

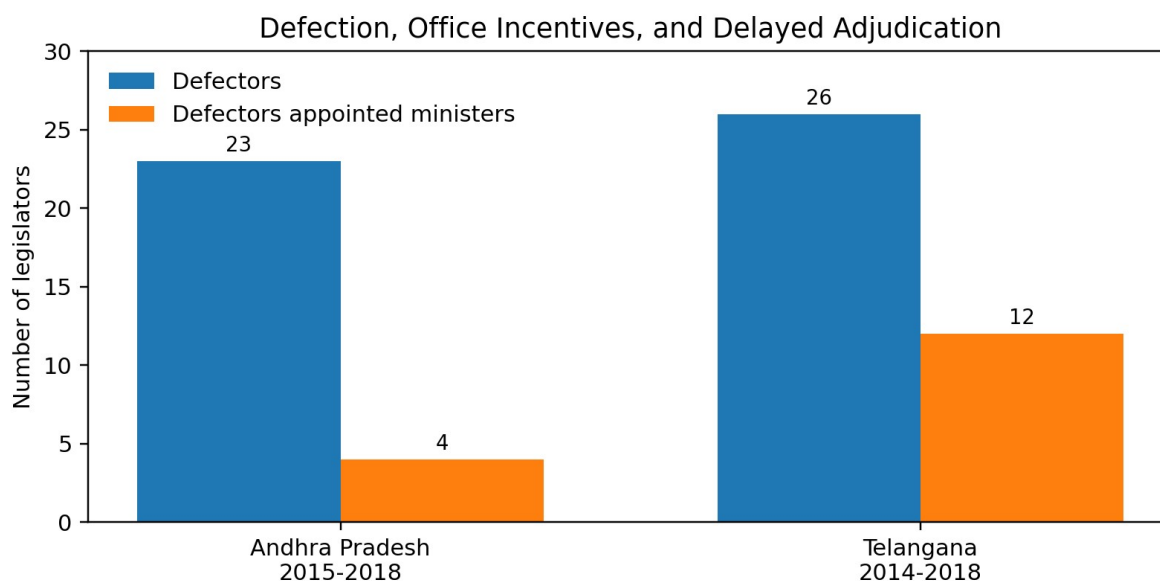
The answer to the effectiveness of the regime is whether the regime prevents the mischief it was meant to prevent. Evidence coming from a number of high profile cases shows mixed results. The law discourages some individual cases of floor crossing, but the coordinated defiance, the delayed adjudication, and post-defection office incentive do not almost entirely

disappear. In some instances, legislators have voted or acted against the dictates of their parties even in the presence of a possible disqualification. In many other instances, petitions have remained pending in the courts even as the politics of the case in question have completely played out. This is due to the powerful incentive structures that still exist around the formation of governments. If the defector gets a ministerial office, moves to a higher position in the party, or gets to remain politically relevant, the risk of a delayed or uncertain disqualification is unlikely to deter the defector from acting as such. This is even more likely if the adjudicator of the case is seen as being politically supportive of, or deferring to, the beneficiary of the defection. As a result, the regime is more likely to effectively punish isolated acts of dissent than to punish organized acts of government-changing defiance. The result of this is a loss of the moral authority of the law.

Figure 3: Major Whip-Defiance Episodes Under the Anti-Defection Framework



Explanation: The chart uses publicly reported parliamentary research data to show that significant whip-defiance episodes have occurred despite the Tenth Schedule. The existence of such episodes indicates that formal disqualification risk does not always eliminate politically motivated voting behaviour.

Figure 4: Defection, Office Incentives, and Delayed Adjudication

Explanation: The chart illustrates reported defection episodes in Andhra Pradesh and Telangana and the number of defectors who were later appointed as ministers. It suggests that office incentives and delayed adjudication can weaken the deterrent effect of anti-defection law.

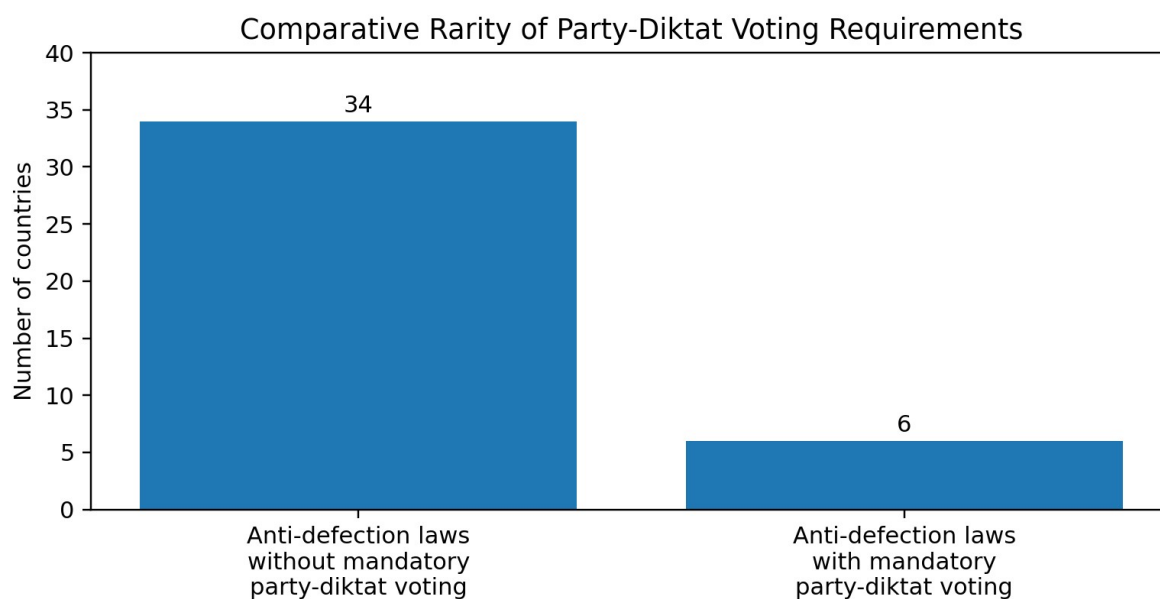
Comparative Perspective

Comparative experience provides insight into the many ways the anti-defection law need not be a monolithic construct. Some jurisdictions provide for the regulated party switching without the enforcement of all party directions. Others put in place procedural disadvantages for defectors instead of an immediate loss of the seat. Nikolenyi (2018, 2019) offers an analysis of the Israeli experience, and he provides evidence that anti-defection law can alter both the timing and the collective nature of switching. The Italian experience, as discussed by Pinto (2025), offers an analysis of the anti-defection law and suggests that where political incentives are strong, antidefection laws keep party switching. These kinds of analyses that have to do with the anti-defection laws are of value to the case of India as they provide evidence that the most broad-based legal constraint is not the only way to ensure the anti-defection laws remain in place.

India has a broad legal whip-based ground, and when compared with those countries that have

an anti-defection law, only a few need their legislators to vote according to party diktat. With respect to the coalition history and the big parliamentary democracy, India may indeed have a stricter whip, but that warrants a substantial justification. A constitutionally imposed requirement that a representative be removed from office must be precisely what the constitution seeks to avoid.

Figure 5: Comparative Rarity of Party-Diktat Voting Requirements



Explanation: The chart presents comparative information reported in parliamentary research literature: anti-defection laws exist in a larger group of countries, but mandatory party-diktat voting is found in only a small subset. This supports the argument that India’s model is unusually broad.

Findings

The first finding supports a partial constitutional justification for the anti-defection regime. The strongest case for the anti-defection regime is preventing members of parliament from causing the collapse of a government after they are elected to the parliament on a political party ticket. This rationale is valid in a parliamentary framework. However, the current regime does not serve this rationale alone. By coupling disqualification to voting against party instructions on routine matters, the regime equates dissent to defection, even when the survival of the government is not endangered.

The second finding is that the regime concentrates authority in the hands of political party leaders. The broad whip rule places the party leaders in a position to transform parliamentary disagreement into a constitutional issue. This alters the internal hierarchy among the parties and the parliament.

It enhances the position of the party as a unit of collective electoral organization, while it diminishes the position of the member as the representative of the electorate and as an active participant in the parliamentary debate. The consequence of this is a party-centric framework of representation, with parliamentary autonomy being the exception and party-centric representation being the norm.

The third finding is that the Speaker-centrism in the domain of adjudication generates unnecessary instability to the polity. The concern is not that certain Speakers will act irrationally. The concern is the design generates hypothetical scenarios that can lead to the erosion of confidence. Defections occur in circumstances in which the survival of the government is endangered; at that time, the decision-maker may Chair the parliamentary party which is the beneficiary of the situation. Constructing more autonomous adjudicatory structures would reduce real and perceived conflicts of interest.

The fourth finding shows that law's deterrent impact is patchy. The law has potential to discourage individual dissenters, but organized defection plans, mass resignations, merger claims, and delayed proceedings have largely occurred unaffected. With some other democracies' legal frameworks, it can be argued that legal restrictions will reform switching behavior, not eliminate it. The law's effectiveness must therefore be determined by the correct, timely, and impartial response to offenses.

The fifth finding tells us that a measured reform is better than a complete repeal of the statute and the current broad statute. A complete repeal of the broad statute would be an adverse response (or ignoring) to India's predictable and strategic floor crossing (and the significance of the Long-Term Stable government), law should be left as is, and a more relaxed law would be better focused on the elements of confidence, no-confidence and money-bill votes, along with independent and timebound adjudication. This would better balance competing demands of the Constitution.

Discussion

The constitutional issue is not about the value or importance of political parties; they are important and the modern parliamentary democracy is built on the existence of parties which aggregate interests, structure electoral conflicts, and maintain governments. The real issue is, does the significance of political parties merit the imposition of constitutional overrides on every parliamentary vote? The answer to that is unequivocally no. The strength of political party discipline will not erode if every disagreement is not treated as a violation of the constitution. In fact, a political party system that embraces democracy will benefit more from a state of internal disagreement that is public and rational, and for which the party can be held accountable at the polls.

The Indian experience shows that stability and dissent are not mutually exclusive. A noconfidence vote is qualitatively different from an ordinary policy vote. In a no-confidence vote, defection changes the identity or survival of the government and may defeat the electoral mandate on which the party entered the legislature. In an ordinary policy vote, dissent may represent local interests, constitutional conscience, or disagreement with party leadership. Treating these two categories alike is the central design flaw of the present regime. A stability-protection rule should be triggered only when the act of dissent directly threatens the government’s ability to remain in office or pass essential financial legislation.

Table 4: Reform Matrix for Balancing Stability and Dissent

Reform proposal	Democratic advantage	Implementation challenge
Limit disqualification to confidence, no-confidence, and money-bill votes	Preserves government stability while allowing ordinary policy dissent.	Reduces misuse of whip; requires clear classification of votes.
Transfer adjudication from Speaker to independent authority	Reduces conflict of interest and improves public trust.	Requires constitutional or statutory restructuring.
Create a fixed decision period with limited extensions	Prevents delay from determining political outcomes.	Must balance speed with natural justice.

Clarify “voluntarily giving up membership”	Protects legitimate criticism and dissent while catching disguised defections.	Requires careful drafting to avoid loopholes.
Adopt graded sanctions	Matches penalty to harm: office-seeking, government destabilization, or ordinary dissent.	More complex than a single disqualification rule.
Strengthen intra-party democratic procedures	Makes whips more legitimate and less arbitrary.	Depends on political will and party-law reform.

Explanation: The table summarizes a calibrated reform approach. The proposals do not abolish anti-defection law; they narrow it to its constitutional purpose, improve adjudication, and protect democratic dissent.

Conclusion

The Indian anti-defection regime was a response to a particular challenge of floor crossing and legislative instability. It responded to historical challenges, and therefore serves a purpose, too. In a parliamentary democracy, the functioning of such a system becomes impossible when majorities are won or changed through inducements or through ‘horse-trading’ or betrayals of mandate. Having a constitutional provision to counter such challenges is important. In India, however, the anti-defection regime covers more ground than the challenges it was meant to address. By expanding the scope of disqualification to forbidding a Member of Parliament from voting against the party line beyond the situations for the survival of the government, the Tenth Schedule has curtailed dissent and legislative power and strengthened the internal party structure. Thus, a reformed anti-defection regime should be limited, balanced, and proportionate. Ordinarily, disqualification should be limited to a few votes, namely, votes of confidence, votes of no confidence, and votes of a critical fiscal nature. In the absence of any of the aforementioned votes, the adjudication should be the jurisdiction of an independent constitutional authority or tribunal. Such a body should be bound by reasonable time limits and its decisions should be reasoned and subject to judicial review. The issues around the voluntary surrender of membership should be clarified to aid discernment of genuine defection and challenge masquerading as defection and legit criticism. The whips should be coupled with internal democratic safeguard mechanisms. The changes, couched within the anti-defection

regime, would achieve its intent, while reinstating the legislature as a robust challenge and representative institution.

In the end, balance between dissent and stability is also a balance between a party democracy and a system of constitutional democracy. While parties are integral to a functioning system, they must not operate in a way that they control representatives. While stability is important, it must not curtail the legislative process. India's anti-defection regime is likely to be more constitutionally valid when it punishes betrayal of the government's survival and does not punish principled dissent.

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