
CHANGING PARTIES, CHANGING IDEOLOGIES. DOES INDIA REQUIRE AN AMENDMENT TO THE ANTI-DEFECTION LAW?

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ABSTRACT

The instances of party defections are not a new phenomenon for this country. While the Anti Defection Law was introduced in the year 1985 and was amended in 2003 intending to curb the avenues of opportunistic exploitation, it failed to produce the intended outcome. Therefore, defections continued. While such acts of defection have been beneficial for individual level gains, they create a sense of un-accountability and public dis-interest in the voting system. Since the country has different political groups associating themselves to different ideologies, defections indicate that an elected legislator who was thus far associated with a particular ideology is now erratically aligned with a different ideology. As a result, the state witnesses a volatile political environment where the government commanding the parliamentary majority collapses and a new majority is formed. The actual aim of advancement of the constituency is overlooked, and electoral victory becomes the dominant objective. Though the current Anti Defection Law intends to prevent such practices but similar to every other legal framework, it exhibits structural loopholes. This paper examines such regulatory gaps of the Anti-Defection law with conclusive evidences of exploitation, and strategies to combat such practices.

Introduction:

Since the establishment of country's electoral system, the election results are determined not merely based on candidate profiles, but also the political party they affiliate to.¹ One of the mantras that serve as an evidence to the above claim is 'aayegi toh BJP hi' – 'It will be the BJP that comes back to power'. This signifies a strong voter sentiment and faith towards the political party. Such unquestionable belief leads them to conclude that their preferred political party will certainly choose the most ideal candidate for the constituency. Subsequently, whichever candidate is chosen receives the highest voting majority. But when such ideal candidate is witnessed defecting the party, the voter sentiment is directly impacted. This leads the voters to develop skepticism, both for the party and for the candidate.

Historical records reveal a significant amount of occurrence of such instances. One of the earliest cases recorded from British Era is where Shyam Lal Nehru defected the Congress and joined the British alliance in 1923.² While more such acts were witnessed during the pre-constitutional period, no law restricting it was implemented even till the subsequent 38 years of independence, which lead to further escalation of such instances over the period of time. The initial four general elections from 1951-1967 witnessed a total of 542 defections, which made other legislators aware of such ease of switching parties. As a result, the next 15 years till 1983 recorded a total of 2700 defections.³ One of most widely condemned instances occurred in 1967 where a legislator Gaya Lal from Haryana changed his political affiliations, thrice in a single day and was later titled as the famous 'Aaya Ram Gaya Ram'.⁴ The political environment was becoming increasingly volatile when finally in 1985, the parliament introduced the anti-defection law which was put in the 10th schedule of the constitution.

The aim to introduce this law was to restrict defections and ensure political stability. But eventually, new loopholes were discovered and the law failed to address the concerns comprehensively. Initially, the paragraph 4 of the law legalized defections if undertaken by 1/3rd legislator, which was swiftly possible by the legislators. To add a further layer of

¹ M S Gill, *The Electoral System in India* (Election Commission of India).

² Krishna Kumar, Anupama Pandit Saxena and Kusumanjali Sharma, 'Anti-defection laws in India: A critical analysis' (2025) 5(2) *International Journal of Civil Law and Legal Research* 207.

³ Rakesh Kumar and Vandana Singh, 'Anti Defection Law in India: Emerging Issues and Challenges' (2021) *ILI Law Review* 234

⁴ Charith Reddy and Shagun Bhargava, 'For Laws May Come & Laws May Go, But Defections Go On Forever: A Critical Analysis of the Role of the Speaker in Indian Anti-Defection Laws' (2021) 10(1) *NLIU Law Review* 328.

restriction, this threshold was increased to 2/3rd of legislators through the 91st amendment, but was again proven ineffective.⁵ A significant development that took place was the judgement of *Kihoto Hollohan v. Zachillhu* (1992), where the Paragraph 7 of the law was nullified as it shielded the speaker/chairman's decisions from judicial intervention.⁶ While developments were witnessed, the law remained largely ineffective due to inherent loopholes. Although the current statute restricts a wide range of unfair opportunistic pathways, the prevailing situation necessitate a need of amendment to the current anti defection law for enhanced political accountability and democratic governance.

Drawbacks of the existing Anti Defection Law.

The 2/3rd majority bypasses

The first and the most commonly exploited loophole lies in paragraph 4 of the law, which permits defections where at least two-thirds of the members of the legislative party are involved.⁷ The reason of including such exception was to deal with a scenario of some organizational deficiency in the party that may motivate 66% of the legislators to defect. The defectors rarely expressed any views on any internal discords. Rather, they were appointed at higher political positions or nominated for candidature in elections, which indicates a clear intention was of personal gain. Once defected, a legislator opposing a particular policy becomes the one suddenly proposing it. While the intent of adding this exception was different, its nature makes it illegitimate for a single person, but legitimate for 66% of the legislators acting the same. Though the amendment of 2003 tried to act as a barrier to defections, but merely made defections more expensive.⁸ Moreover, since now legislators have to gather a significant support for legalizing it, the amount of political instability increases. As H.M. Seervai rightly pointed out, "Normally, governments aren't toppled by a small number of defections, but by an outsized number of members of a celebration leaving it and/or going over to the party to which they have been opposed."⁹ This increase to 2/3rd has resulted in an opposite outcome of what was expected, and the most severe defections took place. The Maharashtra Shiv Sena case of

⁵ Drishti Judiciary, '91st Constitutional Amendment Act, 2003' (9 September 2024).

⁶ *Kihoto Hollohan v Zachillhu* (1992) Supp (2) SCC 651.

⁷ Constitution of India 1950, sch 10, para 4

⁸ Shashi Tharoor, 'Toothless anti-defection law' (9 July 2022).

⁹ Aditya Mehrotra, 'Case Analysis of Kihota Hollohon v Zachillhu and Others with Close Reference to Anti-Defection Law' (Manupatra Articles, 2023).

2022, the Goa Congress MLA case of 2022, The Meghalaya Congress case of 2021 and the most recent and notable Raghav Chadha case of 2026, are some classic examples.¹⁰

If a new provision adding another layer of restriction is introduced, it seems uncertain as to what extent will the new approach be effective. Given the current circumstances, new loopholes may soon arise. Therefore, it requires an absolute elimination, for which a robust approach must be introduced. The defectors must be immediately disqualified on defections regardless of the number of legislators involved, and party constitutions to be strictly adhered to. The restriction in changing parties will facilitate a rational choosing of political affluence, and will effectively prevent the chances of defections. Moreover, the development and adherence of a party constitution will outline the expected and non-expected conducts of the legislators and other members making it binding for all. Therefore, the possibility of a legislator facing undue pressure due to party disputes will be minimized and the exceptional cases where the legislators switch parties due to justifiable concerns, will be solved. The western countries follow a similar approach of having a party constitution but no restriction on party switching, as they consider it a restriction of right to expression.¹¹ However, India follows a different 'party central' approach for elections and recognize defections as illegitimate. As for the right to speech and expression, the Indian Supreme Court through its judgement of *Kihoto Hollohan v. Zachillhu* (1992) has asserted that, restricting switching parties is not a violation of fundamental right of speech and expression or of the broader democratic principles but a way to eliminate unprincipled and unethical practices.¹²

Tyranny of Party Whip.

Another concerning point lies in Paragraph 2 Clause 1(b) of the law, which binds the legislator to act in accordance to the party whip. In case of contrary, the legislator will be subject to disqualification provided that the party does not condone legislator's action within next 15 days.¹³ While the voters may have faith in the decisions of the party, it is the legislator who will be cognizant about the affairs of a constituency, rather than an entire political party. However, this particular clause grants power to a non-elected political group whether belonging

¹⁰ R Sai Spandana and Joyston D'Souza, 'Understanding the Shiv Sena Conflict' (Supreme Court Observer, 31 March 2023); Goa Congress Party Registration BJP Indian Congress' *Frontline*; D Banjop Mukhim, 'Congress loses main opposition status, TMC gains big in Meghalaya in 2021' (ThePrint, 27 December 2021); Rajya Sabha MPs Raghav Chadha, Sandeep Pathak and Ashok Mittal Quit Aam Aadmi Party' (News On AIR, 24 April 2026)

¹¹ Richard Kelly and Oonagh Gay, 'Crossing the floor' (House of Commons Library, 23 April 2014).

¹² *Kihoto Hollohan v Zachillhu* 1992 Supp (2) SCC 651.

¹³ Constitution of India 1950, sch 10, para 2(1)(b).

the majority or the minority in the legislative house, to decide for the interests of a constituency. Such decisions of party whip, may or may not necessarily align with the interests of the voters but they have to mandatorily align with the interests of a political party. While an elected representative is expected to be accountable to their voters, this clause encourages greater loyalty to the party. Secondly, the clause silences the basic criticising view that may be expressed by any legislator, thereby suppressing the fundamental elements of freedom of speech and expression.¹⁴ A possible ambiguity that may rise here is that, what if the candidate is deliberately acting against party directives, signifying a passive withdrawal from the party? As said in the landmark case of *Ravi Naik v Union of India* (1994), that in the absence of a formal resignation by the member, the giving up of membership can be inferred by his conduct.¹⁵ Such situation may create a interpretational difficulty.

To ascertain whether if such conduct constitutes passive withdrawal, a systematic evaluation of the actions of the legislator is suggested to be undertaken. If the actions reasonably prove to be serving interests of the common citizen, it does not signify a passive withdrawal. However, if they are clearly against the party expectations with no favours to citizens, the actions may be understood as a passive withdrawal. If such evaluations are taken by the speaker of any members of the parliament, it may cause significant delays to the parliamentary proceedings and a probability of biased decisions. Therefore, this process can be initiated by an external committee of election commission that may ensure neutrality and the affairs of the constituency must be highly prioritized. Furthermore, the law does not discuss about the instances of expulsion of a legislator from the party. Although as held in the judgement of *G Vishwanathan v. Speaker of Tamil Nadu* (1996), where the court concluded that the expelled individuals must follow the party whip, the question that arises here is an ‘unattached and expelled member’ is obliged to vote in accordance to the party which has already removed them.¹⁶ This expected conduct of an expelled legislator that needs to be well defined and clarified through the law.

Who is the party whip along with the 2/3rd rule of Defection.

The next issue is linked to the previous one itself. While Paragraph 2 mandates the legislator to act in accordance to the party whip, it is nowhere defined that is the legislator bound to

¹⁴ Constitution of India 1950, art 19

¹⁵ *Ravi S Naik v Union of India* 1994 Supp (2) SCC 641.

¹⁶ *G Vishwanathan v Hon'ble Speaker, Tamil Nadu Legislative Assembly* (1996) 2 SCC 353.

follow the whip of the entire political party or just the legislative members.¹⁷ This lack of clarity arises as the definition of ‘original political party in paragraph 1 is vague and incomplete.¹⁸ It defines ‘the party to which the legislator belongs to’, but is silent about if the non-legislative members are the official members of the party and if they have the power of party whip. The politicians’ conduct is self-contradictory to the extent that, while campaigning for elections, they often boast about the number of official memberships their party holds, but in matters concerning defection merely the 2/3rd of the legislators are shifted to the other party and not the entire 2/3rd membership of the party, yet the defection stands legalized. The Hon’ble Supreme Court bench headed by former Chief Justice DY Chandrachud rightly asserted in the Shiv Sena Intraparty rift case of 2023, that ‘the 10th schedule becomes unworkable if the term political party, is read as ‘legislative party’.¹⁹ Therefore, to prevent defections the term ‘original political party’ must be interpreted as the umbrella of all party members. Moreover, if the entire party has to be taken in consideration while defecting, majority of the defections till this date will stand invalid. Given that the past events cannot be altered, the law can be applied prospectively.

Unchecked Powers of the Speaker.

Since the act was introduced, the speaker/chairman has been conferred special powers of rendering the final decision. The articles 93 and 178 of the Indian constitution along with Rules of Procedure and Conduct of business in legislature of different states mandates appointment of a speaker from the house itself.²⁰ The appointment process requires a simple majority voting, which makes it self-explanatory that the ruling party can easily appoint one of its own members, or someone who aligns with their interests, as the speaker. The legal justification for appointing one of the members of the house is that, an un-elected or independent body must not be presiding over the elected members. Nevertheless, at various instances these appointed speakers disproportionately favoured majority parties. The Telangana Defection issue, where the speaker delayed the hearing for disqualification infinitely, the Shiv Sena Rift in Maharashtra in 2022 and the Rajendra Singh Rana case of 2007, are some concrete examples where a mala fide conduct has been observed.²¹ The judiciary has had an active involvement

¹⁷ Constitution of India 1950, sch 10, para 2

¹⁸ Constitution of India 1950, sch 10, para 1

¹⁹ GoJuris, ‘Political party, legislature party not the same, former appoints whip: Supreme Court’ (12 May 2023).

²⁰ Constitution of India 1950, arts 93 and 178.

²¹ R Sai Spandana, ‘Anti-defection law and the Telangana Speaker’ (Supreme Court Observer, 22 August 2025); Gauri Kashyap, ‘Shiv Sena Rift and the SC’s Constitution Bench Judgement’ (Supreme Court Observer, 20 May

in this regard, and The Supreme Court in the case of *Keisham Meghachandra Singh v. Speaker, Manipur Legislative Assembly* (2020) suggested an imposition of a 3 month time period for deciding cases of disqualification.²² While speakers are immune under paragraph 5 of the law to resignation without facing disqualification, but they have not been seen submitting any resignations and therefore, their associations to a political party is influences their conduct. Over the course of 18 general elections till 2024, a single instance where the speaker resigned has been observed. To ensure impartiality and political neutrality, Neelam Sanjiva Reddy who resigned from the Indian National Congress, following the 1967 Elections. Within this broader problem, it is also necessary to examine a narrowed down issue of no time limit for deciding disqualification cases. Since the speaker is not bound by any time limit for deciding the cases of disqualifications, they have the opportunity of misusing this power and holding such decisions for an infinite period that may stretch to the forthcoming elections.

To curtail such pathways of exploitation, an approach can be mandating the resignation of a speaker along with restriction in personal interactions with the old party colleagues. The same approach has been proved successful in other countries including the United Kingdom.²³ But while the resignation will ensure impartiality to an extent, the decisions of disqualifications may still be biased. The speaker may aspire to hold another political offices in the later career through the party they were elected. Therefore, a possible solution is taking away the powers of disqualification from the speaker and handing it over to an independent judicial tribunal which will then decide such cases within a stipulated time.

The Route of Resignation to bypass disqualification.

Another concern that remains unaddressed by the current Anti-defection law is the usage of mechanism of resignation. While the law disqualifies the individuals for party hopping, this can be circumvented by resigning from the post and subsequently re-contesting the elections. This creates political effects similar to that in 2/3rd majority defection. Since the legislators will be elected from a different party, they will be supporting a different of policies that align with the new party's whip. Although, proven beneficial for personal political gains, this entire process poses a financial and procedural burden on the administration. Once again, the

2023); PMF IAS, 'Anti-Defection Law: Features, Significance & Drawbacks' (PMF IAS)

²² *Keisham Meghachandra Singh v The Hon'ble Speaker, Manipur Legislative Assembly* 2020 SCC Online SC 55.

²³ <https://www.parliament.uk/globalassets/documents/commons-information-office/m02.pdf>

objective becomes winning the elections rather than development of a constituency. In cases where the majority is formed with a small margin of legislators, resignation may also result in breakdown of the existing majority. This implies that although the voters initially favoured a particular party to form the majority, the conduct of legislators may cause it to lose the majority, thus a new chief minister is appointed and a new government is formed. Thus, while the voters remain committed to the same position, the actions of legislators cause a political turmoil in pursuit of their personal gains. Few instances of such conduct include the Collapse of Madhya Pradesh government led by Kamalnath in 2020 and the collapse of Karnataka government led by Kumaraswamy's collapse in 2019. In either scenario mentioned above, a group of legislators bypassed disqualification by resigning, and forming a majority by re-contesting elections from a new party.²⁴

To prevent such instances, as recommended by the NCRWC/ Venkatchalliah Committee, 2002 an imposition of ban from contesting elections is suggested for the remaining term.²⁵ Moreover, a financial penalty must be imposed as the re-elections will cause a significant financial burden and the taxpayers money will be utilized for the same. This will ensure a rational party choosing by the legislator and will effectively curtails such bypasses. If the legislator are bound to resign due to personal or professional reasons that may include undue pressure by the party officials, this again can be solved if a party constitution is strictly adhered to and outlines the expected conduct of the members.

Criminally Charged legislators.

The last issue that remains to be examined is related to the criminal activities of a legislator. Instances of candidates contesting and winning elections while in a custody, have been commonly observed. Although the Section 8 of People Representation Act of 1951 bans convicted individuals from contesting elections, the undertrials are free to do the same.²⁶ The rationale behind allowing undertrials to contest elections is that they have not been yet convicted and will be presumed innocent until proven guilty. Moreover, if undertrials are banned from contesting elections, the provision will be misused to the extent that any candidate from a particular constituency will initiate legal suits against their strong opponents. However,

²⁴ Madhya Pradesh: Dislodging the Congress Government—A BJP Pyrrhic Victory' *Economic & Political Weekly* ; Rohini Swamy, 'Kumaraswamy loses trust vote, Congress-JD(S) govt falls in Karnataka' (ThePrint, 23 July 2019)

²⁵ PMF IAS, 'Anti-Defection Law: Significance & Drawbacks' (PMF IAS).

²⁶ Representation of the People Act 1951, s 8

this presents a separate concern if viewed from an alternative perspective. The law permits individuals accused of a criminal activity to attend the parliamentary or legislative sessions alongside the Prime Minister and the Chief Ministers. Ironically, an innocent individual may be denied to engage in a direct discussion with such public office holders due to various security protocols. While they are innocent till this point, but they carry a reasonable doubt of being indulged in a criminal activity. Some of the examples of candidates winning elections while in custody include, Amritpal Singh in 2024 general elections, Abdul Rashid in 2024 in general elections and Akhil Gogoi in 2021 Assam assembly elections.²⁷

A potential solution to this, drawing partly from the 244th law commission's report of 2014 could be disqualification of a candidate after the court has framed charges against them for an offence with imprisonment of more than 5 years.²⁸ Provided that the charges were framed at least 1 year preceding the elections. Since the contestants for the upcoming elections are generally determined no more than 6 months before the elections, such restriction would minimize the possibility of politically motivated false cases against any competent candidate. However, this may encourage politicians to indulge in criminal activities after the 'one year threshold' is over. To address this particular concern, a complete disqualification is suggested within this 1 year period, if the charges include offences punishable with life imprisonment or more than 10 years, provided that the bail is denied or the bail conditions have been violated. Such approach will ensure that no individual carrying a reasonable doubt of being involved in a heinous offence, is permitted to hold a position in legislature. Additionally, this will signify that disqualification is based not merely on criminal charges but also gravity of the offence along with judicial assessment of the entire situation.

Conclusion:

As India is a country with evolving political opinions, following an approach of removing the Anti Defection law similar to what is practiced in the western countries, is not be a viable option. But the current anti defection law exhibits multiple loopholes that have been regularly exploited by the legislators. These loopholes have a direct influence over the democratic values of the Country. Although the judiciary has suggested and made certain changes to the extent it

²⁷ Press Trust of India, '2 Candidates Win Polls From Prison. What Rules Say On Jailed MPs' (NDTV, 5 June); Assam Assembly Elections: Akhil Gogoi Wins Sibsagar from Jail' (*The Hindu*, 2 May 2021).

²⁸ PRS Legislative Research, 'Law Commission Report Summary on Electoral Disqualifications' (PRS Legislative Research, 2014)

could, a formal amendment is need of an hour. Since its last amendment of 2003, there has not been much dialogue or discussion as to amend the law. Moreover, such exploitative practices have become normalized given the frequency with which it has taken place. While the legislators will be reluctant to make such amendments as it would restricts the ability to exploit political mechanism, the reluctance does not make it politically impossible. As Austrian Scholar Joseph Schumpeter rightly said, 'Democracy means only that the people have the opportunity of accepting or refusing the men who are to rule them'. Though the legislators will have little incentive to amend this law, the voter demand of accountability can place the issue of amending the Anti-defection as a part of their political agendas. The reform of this law is no longer a choice but a democratic necessity.