

BEYOND LOYALTY: REVISITING THE ANTI-DEFECTION LAW FOR DEMOCRATIC INTEGRITY

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ABSTRACT

The Anti-Defection Law, incorporated in the constitution to curb the political defections in India. The 52nd Amendment Act of 1985 added tenth schedule to the constitution and later amended by the 91st Amendment Act of 2003, it is a legal safeguard to deter political defections and uphold democratic stability. The primary aim of the law is to prevent legislators from switching parties at their will and disrespecting the electoral mandates, which ultimately ensures political accountability to voters and preserve party discipline in multi-party system of India. However, recent instances of political defections across the Indian states have called for the urgent need to reform this law. Defections have increasingly disrupted governments, weakened electoral mandates, administrative challenges and fueled public dissatisfaction with opportunistic political behavior. The loopholes in the law such as procedural delays and ambiguities in certain provisions and role of constitutional institutions often allow defectors to exploit legal gaps for personal or political gain. This law is frequently misused by politicians and criticized for restriction on lawmakers' freedom of expression and dissent, forcing them to align with party positions even when these conflict with their convictions or constituents' interests. Also the adjudication of defection cases by Presiding Officers has also raised concerns about impartiality, as these decisions are often influenced by political affiliations as presiding officer is usually elected from ruling party or alliance. This undermines the credibility of the process and calls for reforms. Also Election Commission's concurrent power to recognize the splits in political parties makes this problem more complex. This research paper employs both qualitative and analytical methods. It proposes actionable solutions to strengthen the law, such as prescribing a definite timeframe within which defection matters must be decided; amending the Election Symbols (Reservation and Allotment) Order, 1968, to resolve political party splits; prohibiting nominated members from joining political parties, similar to the restriction on independent members; addressing the temporary inability of the

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Speaker to adjudicate defection cases; and mandating the disclosure of leaders' previous political affiliations and ideologies to voters and through the RTI.]

Key Words: Anti-Defection Law, Tenth Schedule, Legislative Stability, Democratic Principles, Judicial Interpretations.

INTRODUCTION

The word "defection" originated from the Latin word 'defectio', which means the act of leaving loyalty or responsibility.¹ In a political context, defection refers to a representative abandoning their initial political party to join a different one. This act of changing or switching the political allegiance occur worldwide and is referred to by different names in various regions. In Canada and the United Kingdom, it is often called "floor crossing." In Southeast Asian countries such as Malaysia and the Philippines, it is referred to as "party hopping."² The term "carpet crossing" is common in certain African nations, especially South Africa³. In New Zealand, the informal phrase "waka-jumping" is used to describe this activity.⁴ In parliamentary systems, defection carries significant political consequences and varies in interpretation depending on the governance model and political culture of each nation.⁵

Anti-Defection Law is important to preserve the sanctity of democratic system to ensure that the mandate given by voters is respected. In political context, defection often occurs for personal gain. The Primary objective of this law is to prevent or deter elected MP's and MLA's from abandoning their political affiliation, ideology, and the promise they made to their voters. It also deter them from voting against their party's wish. This law applies to both Parliament and state assemblies. Violations of this law result in the loss of their membership in the respective House. Before the enactment of the Anti-Defection Law, political instability was rampant due to frequent party-switching by legislators. And this was the reason Indian parliament passed a law to curb this menace.⁶

Tracing the Anti-Defection Framework in India

Defection has been a persistent challenge in Indian politics. Various reasons are there behind this defection politics, including ideological shifts of elected members, the lure of ministerial positions, financial incentives as seen in incidents like the 1993 JMM bribery scandal⁷, and

¹ Rakesh Kumar & Vandana Singh, *Anti-Defection Law in India: Emerging Issues and Challenges*, 236 ILI L. Rev. (2021).

² *Anti-Party Hopping Law of Malaysia*, Act No. A1642 of 2022, Malaysia. *Omnibus Election Code of the Philippines*, Batas Pambansa Blg. 881, Philippines.

³ *South African Constitutional Amendment Act*, Act No. 17 of 2002, South Africa.

⁴ *Electoral (Integrity) Amendment Act 2018*, Act No. 56 of 2018, New Zealand.

⁵ M.P. Jain, *Indian Constitutional Law* 98 (Kamal Law House, Calcutta, 5th edn., 1998).

⁶ P. Ishwara Bhat, *Free Legislative Choice and Anti-Defection Law*, 84 All LJ (1994).

⁷ *P.V. Narasimha Rao v. State*, (1998) 4 SCC 626.

personal disagreements among party members. Illiteracy and a lack of awareness among the electorate further exacerbate the problem, as many fail to comprehend the unethical nature of defections. Caste-based politics and the limited educational qualifications of lawmakers create a favorable conditions for corruption and opportunism, threatening the pillars of Indian democracy. Defections in Indian Politics is evident from the british era, where figures like Shyam Lal Nehru and Hafeez Ibrahim shifting allegiances due to situational reasons such as disagreement on congress party's policy towards British government of that time.⁸

After the independence, defections evolved through three distinct phases. The first phase between 1950 and 1967, defections were relatively rare and ideologically motivated rather than personal gains. In early period Leaders such as Acharya J.B. Kripalani and Ashok Mehta left the Congress Party over ideological conflicts with the congress and prioritized political and ethical morality over personal gain.⁹ The second phase, from 1967 to 1985, saw a sharp rise in defections due to monetary rewards and promises of ministerial positions in the cabinet, naturally this era was marked by mass defections, with entire groups of legislators switching allegiances overnight. The "*Aaya Ram, Gaya Ram*" phrase in Indian politics originated in Haryana in 1967, when MLA Gaya Lal switched parties three times within a single day. This act of frequent switching political allegiance eventually led to the coining of the term.¹⁰ Between 1967 and 1972 alone, there were over 2,000 cases of defections and counter-defections among legislators, leading to frequent changes in governments.¹¹ Recognizing the severity of the problem, the Y.B. Chauhan Committee in 1967 described defection as a "national malady" and recommended various political and legislative reforms. However, no significant legislative action was taken until the 1980s, despite several failed attempts, such as the 32nd and 48th Amendment Bills. The third phase, beginning in 1985, marked the introduction of the Anti-Defection Law to the Constitution. This legislation aimed to curb the growing menace of defections by disqualifying legislators who switched parties, except in cases of genuine dissent or party splits. While the law initially appeared to address the issue, loopholes soon emerged, leading to "wholesale defections" and strategic mergers designed to

⁸ Sumit Vashishtha & Dr. Bhoomanna Reddy, "*A Critical Analysis of Anti-Defection Laws in India*", International Journal of Law and Social Sciences, Vol. 9, Issue 1, 2023, Alliance University, India

⁹ Congress Socialist Party (CSP), *At a Glance and Short Profiles Works of Its Leaders*, available at <https://lohiatoday.com/wp-content/uploads/2018/09/cspataglance.pdf> (last visited Jan. 16, 2025).

¹⁰ K.C. Sunny, *Defection and Parliamentary Democracy in India*, 45 JILI 112 (2003).

¹¹ Subhash C. Kashyap, *Anti-Defection Law and Parliamentary Privileges 2* (Universal Law Publishing Co. Pvt. Ltd., New Delhi, 2nd ed., 2003).

bypass restrictions.¹² In smaller states with limited assembly members, defections continued to destabilize politics. Over time, defections in India shifted from being ideologically motivated to largely opportunistic, reflecting a broader challenge to the integrity of democratic governance.

LEGAL FRAMEWORK DEFINING DISQUALIFICATION CRITERIA FOR LEGISLATORS

The legal framework for disqualification of elected officials in India is governed by various legal orders, legislative acts, and constitutional provisions collectively govern the disqualification process, delineating the grounds and procedures.

Representation of people Act 1951¹³: This act, particularly under Sections 8¹⁴, 8A¹⁵, 9¹⁶, 9A, 10¹⁷, 10A, and 11, provides for provisions which gives grounds to disqualify the disqualification of MPs and MLAs. It only addresses pre-election and post-election disqualifications based on grounds such as corruption, criminal convictions, and election malpractices. However, the Act does not specifically deal with the issue of defections.

The Election Symbols (Reservation and Allotment) Order, 1968¹⁸: The Paragraph 15 grants the Election Commission of India (ECI) the power to intervene in cases where political parties face internal divisions or competing factions arise. If several factions assert they are the rightful successors of an original party, the ECI has the authority to settle the conflict by thoroughly reviewing all pertinent evidence, such as historical documents, internal party records, and applicable legal standards.¹⁹ The procedure includes listening to arguments from each side, making sure that the conclusion is grounded in a fair and open assessment of the facts. This authority is crucial because it upholds the integrity of the electoral process by guaranteeing that party symbols, which are essential identifiers for voters, are reserved exclusively for the faction

¹² D.D. Basu, *Commentary on the Constitution of India* 145–147 (LexisNexis Butterworths, 9th ed., 2015).

¹³ *The Representation of the People Act, 1951*, Act No. 43 of 1951, India.

¹⁴ *The Representation of the People Act, 1951* s. 8 - Disqualification on conviction for certain offences

¹⁵ *The Representation of the People Act, 1951* s. 8A- Disqualification on ground of corrupt practices.

¹⁶ *The Representation of the People Act, 1951* s. 9 - Disqualification for dismissal for corruption or disloyalty.

¹⁷ *The Representation of the People Act, 1951* s. 10- Disqualification for office under Government company

¹⁸ *The Election Symbols (Reservation and Allotment) Order, 1968*, Paragraph 15, Election Commission of India, India.

¹⁹ Subhash C. Kashyap, *Politics of Power: Defections and State Politics in India* 41 (1974).

deemed the legitimate representative of the original party. In this way, the ECI not only avoids political opportunism and the exploitation of reserved symbols but also maintains the democratic concept of equitable representation.

The Jammu and Kashmir Act of 1979²⁰: This Act is significant as the first state legislation in India to address political defection. It was enacted to prevent defections that destabilized political processes by amending the Jammu and Kashmir Representation of the People Act.²¹ This Act disqualified legislative members who left their party, without exceptions for party splits, unlike the 1985 law. This law was challenged in the Jammu and Kashmir High Court²², the law was upheld, highlighting the ongoing debate on balancing political stability and democratic freedoms. The Act set a precedent for future anti-defection laws, including the Tenth Schedule.

The Constitution of India: The Constitution (Fifty-Second Amendment) Act, 1985²³ amended Articles 101²⁴, 102²⁵, 190²⁶, and 191²⁷ to introduce provisions related to disqualification due to defection under the Tenth Schedule. Articles 101 and 190 address the vacation of seats in Parliament and State Legislatures, respectively, for dual membership, resignation, or prolonged absence. Articles 102(2) and 191(2) disqualify MPs and MLAs on grounds of defection. Previously, Articles 102 and 191 listed disqualifications like holding an office of profit, insolvency, unsound mind, or foreign citizenship. The amendment linked these provisions to the Tenth Schedule, making defection a ground for disqualification and ensuring uniformity in parliamentary and state legislatures regarding defections, strengthening anti-defection measures²⁸.

The Paragraph 1²⁹ defines key terms such as "House," "legislature party," and "original political party." Paragraph 2 lays down the primary grounds for disqualification, including voluntarily

²⁰ *The Jammu and Kashmir Act of 1979*, Jammu and Kashmir Government, India.

²¹ *The Jammu and Kashmir Representation of the People Act, 1957*, Act No. IV of 1957, Jammu and Kashmir Government, India.

²² *G.M. Shah v. State of Jammu & Kashmir*, AIR 1980 SC 494.

²³ *The Constitution (Fifty-Second Amendment) Act, 1985*, India.

²⁴ *The Constitution (Fifty-Second Amendment) Act, 1985*, art. 101, India.

²⁵ *The Constitution (Fifty-Second Amendment) Act, 1985*, art. 102, India.

²⁶ *The Constitution (Fifty-Second Amendment) Act, 1985*, art. 190, India.

²⁷ *The Constitution (Fifty-Second Amendment) Act, 1985*, art. 191, India.

²⁸ Kartik Khanna & Dhvani Shah, Anti-Defection Law: A Death Knell for Parliamentary Dissent? 5 *NUJS L. Rev.* 105 (2012).

²⁹ *Tenth Schedule of the Constitution of India*, Paragraph 1, India; *The Constitution of India*, Tenth Schedule, India.

giving up party membership and voting against party directions without prior permission. Exceptions are provided for mergers and exemptions under specific circumstances. Paragraph 3, which earlier allowed exemptions for splits within parties, was omitted by the 91st Amendment Act, 2003 to curb defections. Paragraph 4 provides that disqualification does not apply in case of a merger if at least two-thirds of the legislature party members agree to it. Paragraph 5 exempts the Speaker, Deputy Speaker, Chairman, and Deputy Chairman from disqualification if they resign from their party upon assuming office and do not join another party while holding the post. Paragraph 6 grants the Speaker or Chairman the power to decide on disqualification matters, with their decision being final. Paragraph 7, which sought to bar judicial review of disqualification decisions, was declared unconstitutional in *Kihoto Hollohan v. Zachillhu*. Paragraph 8 allows the Speaker or Chairman to frame rules for implementing the provisions of the Schedule, subject to approval by the House.³⁰

JUDICIAL SCRUTINY OF THE TENTH SCHEDULE: EVOLVING JURISPRUDENCE AFTER KIHOTO HOLLOHAN CASE

India's Anti-Defection Law has undergone rigorous judicial scrutiny over the years, with several landmark cases shaping its implementation. The landmark judgement of *Kihoto Hollohan v. Zachillhu and Others*³¹ is the important interpretation of the Tenth Schedule. The primary issue in this case was whether this law is constitutional or not. The Court held that, in a 3:2 majority, this law to be constitutionally valid, except for Paragraph 7, which excluded judicial review of decisions of speaker regarding disqualification which violated the basic feature of the constitution and also the that Paragraph 7 violated constitutional principles, as it was not ratified by the required number of states as per the procedure prescribed under Article 368.

The Court also examined whether this law restricts the *freedom of speech and expression*, of a elected representative, and held that this law did not infringe upon the rights of elected representatives under Articles 105 and 194 of the Constitution. It emphasized that the provisions of this law were not absolute restrictions on the freedom of conscience or expression, but were necessary to protect the integrity of the political process, political mandate

³⁰ M.P. Jain, *Indian Constitutional Law* 62 (LexisNexis, Gurugram, 6th edn., 2010).

³¹ *Kihoto Hollohan v. Zachillhu and Others*, 1992 Supp (2) SCC 651; (1992) 1 SCR 686, India.

essential feature of representative democracy through party discipline. This observation by the Court clarified the legal stance on maintaining the sanctity of parliamentary democracy while safeguarding individual freedoms.³² Court while dealing with provision of the Speaker's role, the Court upheld the provision that granted finality to the Speaker's decision on disqualification, and allowed the limited judicial review only after the decision was made by the speaker and only on certain grounds. It recognized the Speaker's adjudicatory power under the law. This provision was seen as essential to preserve the Speaker's role as the guardian of parliamentary discipline, though the Court also recognized that there must be some degree of judicial oversight in the process.

Defection or Dissent? Judicial Perspectives on Voluntary Party Abandonment

Paragraph 2 outlines grounds for disqualification if a legislator voluntarily resigns from their party or acts against its directives without prior approval. Courts have interpreted "voluntarily relinquishing membership" broadly, extending it to actions that imply leaving the party, even without formal resignation.³³ In *Sanjay Bandekar v. Goa Legislative Assembly*³⁴, legislators were disqualified for behavior suggesting defection, such as aligning with opposition leaders. Cases like *Kuldip Nayar v. Union of India*³⁵ and *Kunwar Pranav Singh v. Speaker* distinguished dissent from defection, permitting dissent only if it does not indicate abandoning the party. These rulings emphasize that actions undermining the party or forming new entities demonstrate intent to sever ties and may lead to disqualification.

Voluntarily giving up membership: explicit or implicit

A member may willingly relinquish their political party affiliation through explicit actions like resignation or through implied behaviour such as supporting another party. The Supreme Court has determined that voluntary abandonment does not necessitate an official resignation. In another similar case *Ravi S. Naik v. Union of India*³⁶, the Court highlighted that a member's conduct may indicate defection. In *Kunwar Pranav Singh Champion v. Speaker*³⁷ activities

³² S.H. Belavadi, *Theory and Practice of Parliamentary Procedure in India* 174 (N.M. Tripathi, Bombay, 1988)

³³ *Tenth Schedule of the Constitution of India*, Paragraph 2, India; *The Constitution of India*, Tenth Schedule, India.

³⁴ *Sanjay Bandekar v. Goa Legislative Assembly*, AIR 1994 SC 1558.

³⁵ *Kuldip Nayar v. Union of India*, Writ Petition (C) Nos. 262, 266 & 305 of 2004 (decided).

³⁶ *Ravi S. Naik v. Union of India*, AIR 1994 SC 1558; (1994) 1 SCR 754, India.

³⁷ *Kunwar Pranav Singh v. Speaker*, AIR 2016 (NOC) 517 (Uttarakhand).

such as meeting with opposition leaders or presenting joint memorandums were considered adequate to determine that the members had willingly relinquished their party affiliation.

Disqualification of Independent Members

Independent members, who are elected without the backing of a political party, face disqualification if they join a political party after their election. The substance of the law is key; joining a political party, regardless of whether formal membership procedures like filling out a form or paying fees are followed, is sufficient to trigger disqualification. Court cases such as *Jagjit Singh v. State of Haryana*³⁸ and *Mahachandra Prasad Singh v. Chairman, Bihar Legislative Council*³⁹ reinforce this principle, where independent members who joined political parties were disqualified based on the law. The courts upheld the disqualifications.

Controversial 'Split' Provision in India's Anti-Defection Law

Paragraph 3⁴⁰ of this schedule provided an exemption from disqualification in cases of party splits, stipulating that if at least one-third of a party's legislators defected, they would not face disqualification. However, this provision faced criticism for condoning collective defections while penalizing individual ones. Consequently, the 91st Amendment Act of 2003 removed Paragraph 3, eliminating the exemption for splits and aiming to strengthen the anti-defection framework. Now, any defection, whether by an individual or a group, can lead to disqualification under the law.

Exemption from Disqualification in Cases of Political Party Mergers

Paragraph 4⁴¹ offers the immunity from disqualification for legislators in cases of political party mergers. If a political party combines with another political party and at least two-thirds of the legislature party members consent to such merger, then they cannot be disqualified for defection as per the para 4. This provision seeks to allow genuine and valid political realignments. The merger procedure which requires at least two-thirds of the legislature party members consent, ensures that mergers are neither trivial nor opportunistic but this provision

³⁸ *Jagjit Singh v. State of Haryana*, AIR 2007 SCW 158.

³⁹ *Mahachandra Prasad Singh v. Chairman, Bihar Legislative Council*, AIR 2004 SCW 6278.

⁴⁰ *Tenth Schedule of the Constitution of India*, Paragraph 3, India; *The Constitution of India*, Tenth Schedule, India.

⁴¹ *Tenth Schedule of the Constitution of India*, Paragraph 4, India; *The Constitution of India*, Tenth Schedule, India.

is being widely misused for achieving political ambitions, and this can compromise the political stability and legislative process.

Exemption for Presiding Officers

Paragraph 5⁴² provides an exemption for Presiding Officers from disqualification, such as the Speaker or Chairman, which enables them to resign from their political party membership after election to the said post and allows them to continue in that office without facing disqualification. Once term ends, they may rejoin political party without consequences. This provision is important to enable them to perform their duties impartially. In *Dr. Luis Proto Barbosa v. Union of India*⁴³ the SC held that this exemption for speaker applicable only when speaker resign from their party to maintain neutrality upon assuming office. If a Speaker defects during their term, they cannot claim immunity from disqualification, which ensures the provision's intent to uphold the non-partisan nature of the position but in practice it still remains a contentious issue.

Authority on Disqualification Matters: Judicial Perspectives

The Supreme Court in *Mayawati v. Markandeya Chand & Ors*⁴⁴ stressed upon the Speaker's role as a quasi-judicial authority in adjudication of disqualification for defection. Judicial review of the Speaker's decisions is restricted to jurisdictional errors, such as breaches of constitutional mandates or principles of natural justice, while factual findings are only revisited if deemed perverse. This ruling almost settled the dust around the speaker's authority to adjudicate the defection issues in legislature. The Court clarified that the Speaker to assess evidence thoroughly before deciding such matters. In *P.V. Narasimha Rao v. State*⁴⁵, the SC observed that the Speaker's authority to decide disqualification does not extend to removing a member from the House also in *Dr. Kashinath Jhalmi v. Speaker*⁴⁶, the Court ruled that the Speaker cannot review their own decisions under the Tenth Schedule, speaker has no authority to review his own decisions and such decisions are subject to judicial review. This principle

⁴² Tenth Schedule of the Constitution of India, Paragraph 5, India; *The Constitution of India*, Tenth Schedule, India.

⁴³ *Dr. Luis Proto Barbosa v. Union of India*, AIR 1992 SC 1812; 1992 Supp (2) SCC 644, India.

⁴⁴ *Mayawati v. Markandeya Chand & Ors.*, (1998) 7 SCC 517.

⁴⁵ *P.V. Narasimha Rao v. State*, (1998) 4 SCC 626.

⁴⁶ *Dr. Kashinath Jhalmi v. Speaker*, AIR 1993 SC 1873.

was reaffirmed in *Balchandra L. Jarkiholi v. B.S. Yeddyurappa*⁴⁷, where judicial review of Speaker's rulings was upheld under Articles 32, 226, and 136 of the Constitution.

In *Nabam rebia, and bamang felix vs. Deputy speaker and others*⁴⁸ The court clarified that when a motion to expel the Speaker is in progress, they can no longer disqualify any House members. This emphasizes that the Speaker must demonstrate majority backing before making decisions on defection issues. The Tenth Schedule provides the power to settle disputes, yet it underscores that the Speaker must uphold the House's "constitutional confidence," meaning their authority relies on the trust of the majority. The ruling by the court establishes a major gap: defectors are able to file a motion to oust the Speaker, halting them from issuing disqualification rulings. Political parties and leaders often exploit this loophole to change their allegiances without experiencing the repercussions of defection. By postponing the disqualification process, the defectors evade consequences. *G. Vishwanathan v. Speaker, Tamil Nadu Legislative Assembly*⁴⁹ in this case expanded the scope of judicial intervention in anti-defection matters. The Supreme Court ruled that decisions by the Speaker regarding disqualification under the Tenth Schedule could be challenged through writ petitions in High Courts. By subjecting the Speaker's rulings to judicial oversight, the Court aimed to prevent potential misuse of the law by presiding officers aligned with ruling parties, ensuring that decisions are both impartial and legally sound.

In case of *Shrimanth Balasaheb Patil vs Honble Speaker Karnataka Legislative*⁵⁰, the speaker disqualified the MLAs and barred them from contesting elections for the remainder of the term. The Supreme Court upheld the disqualification but overturned the Speaker's order preventing the MLAs from seeking office. This nuanced ruling highlighted the judiciary's role in ensuring that the law is not used excessively to infringe upon the rights of legislators while maintaining its core objective of preventing opportunistic defections.

⁴⁷ *Balchandra L. Jarkiholi v. B.S. Yeddyurappa*, SLP (C) Nos. 33123-33155 of 2010.

⁴⁸ *Nabam Rebia and Bamang Felix v. Deputy Speaker and Others*, AIR 2016 SC 3209.

⁴⁹ *G. Vishwanathan v. Speaker, Tamil Nadu Legislative Assembly*, AIR 1996 SC 1060; (1996) 2 SCC 353, India.

⁵⁰ *Shrimanth Balasaheb Patil vs Honble Speaker Karnataka Legislative Assembly*, AIR 2019 SC 1448, 2020 (2) SCC 595, (2019) 15 SCALE 533, (2020) 1 KANT LJ 1, 2020 (1) KCCR SN 16 (SC), (2020) 1 MAD LJ 335 (India)

CRITICAL ISSUES IN ANTI-DEFECTION JURISPRUDENCE WITH REFERENCE TO SHIV-SENA SPLIT CASE: A CASE STUDY

Important loopholes and lacunae came to the fore in the Shiv Sena split case⁵¹, highlighting challenges within the defection legal framework. These issues need to be addressed to strengthen the anti-defection legal framework. Key things discussed in this case.

Disputes over Party Leadership and Speaker's Role in Factional Recognition

The Supreme Court highlighted disputes within the Shiv Sena, where Thackeray initially designated Shinde as the leader of the Shiv Sena Legislature Party and Sunil Prabhu as the chief whip. Later, Thackeray faction ousted Shinde, appointing Ajay Choudhari as his successor, a decision supported by the Deputy Speaker. However, the Shinde faction claimed legitimacy, naming Gogawale as the whip. The new Speaker, Rahul Narwekar, recognized the Shinde faction's resolution. The Court ruled this recognition illegal, emphasizing that the Speaker must independently verify the party's valid decision rather than endorsing factional resolutions. The Speaker is required to acknowledge the whip chosen by the entire party, not by internal factions.

Legal Implications of the Nabam Rebia Case and the Potential Exploitation of Speaker's Temporary Incapacity

The Supreme Court raised concerns about the *Nabam Rebia* (2016) ruling, forwarding it to a larger bench for review. The Court questioned whether MLAs facing disqualification could exploit the Speaker's temporary incapacitation by filing a motion for the Speaker's removal, thereby delaying disqualification proceedings. This loophole could create a "constitutional pause," halting the Tenth Schedule's functioning and enabling defectors to evade accountability. The Court emphasized the need to address these gaps to prevent misuse of the Speaker's temporary incapacity and ensure the anti-defection law's effectiveness.

⁵¹ *Subhash Desai v. Principal Secretary, Governor of Maharashtra*, Writ Petition (C) No. 493 of 2022, Supreme Court of India, India.

Supreme Court Ruling on the Election Commission's Power to Identify the Legitimate Faction of a Party: Sadiq Ali Test

The Supreme Court upheld the Election Commission of India's authority to determine the legitimate faction of a party using the "majority test" from the *Sadiq Ali* case⁵². The ECI recognized the Shinde faction as the legitimate Shiv Sena based on its legislative and organizational majority, allowing it to retain the party's "Bow & Arrow" symbol. The Thackeray faction argued that their organizational majority was overlooked, but the Court found no fault in the ECI's decision. However, the ruling highlighted a gap where defectors could delay disqualification by proposing the Speaker's removal, obstructing timely accountability.

Impact of Disqualification on MLA Participation in House Proceedings: Retroactive Effect of Speaker's Decision

The Supreme Court ruled that MLAs could participate in House proceedings until officially disqualified. The Speaker's decision on disqualification is not retroactive and applies only from the date of the decision. This ensures that disqualification procedures are based on current circumstances rather than past actions, maintaining procedural fairness.

Influence of Deletion of Paragraph 3 on Disqualification Process and Factional Disputes

The deletion of Paragraph 3 from the Tenth Schedule complicates disqualification in cases involving rival factions. When factions appoint different whips, the Speaker must determine the legitimate faction to establish the party's formal position. The Speaker's recognition of factions directly impacts disqualification outcomes, making the process more intricate. The absence of Paragraph 3, which previously addressed party splits, has created challenges in resolving factional disputes and maintaining party discipline.

Supreme Court's Ruling on the Shiv Sena Split Case

The Supreme Court scrutinized the Governor's role during the Shiv Sena crisis, ruling that the Governor's intervention in calling for a floor test was unwarranted and disrupted political

⁵² *Sadiq Ali and Anr. Etc v. Election Commission of India and Others*, AIR 1972 SC 187; 1972 SCR (2) 318; 1972 4 SCC 664, India

neutrality. The Court emphasized that the Speaker should have resolved disqualification petitions before conducting the floor test, identifying this as a procedural lapse. Since Uddhav Thackeray resigned before the floor test, the Court found no grounds to reinstate his government. The Court clarified that disqualification under the Anti-Defection Law requires either voluntary relinquishment of party membership or voting against party directives without a legitimate split. The Speaker was instructed to decide on the rebel MLAs' disqualification based on thorough evidence.⁵³ This case reinforced the boundaries of constitutional roles, clarified the Anti-Defection Law's application, and emphasized adherence to constitutional morality to uphold democratic stability.

TOWARDS A ROBUST ANTI-DEFECTION LAW: REFORM PROPOSALS

Regulating Party Splits and Enhancing Anti-Defection Laws

The Election Commission's authority under the Election Symbols (Reservation and Allotment) Order, 1968, to recognize party splits often leads to disputes and manipulation and legal complexity. The majority test which is used to determine the original faction/ political party can be politically influenced, which could undermine the Tenth Schedule's purpose of preventing defections. To counter this, political parties should adopt transparent practices, including regular elections with dispute resolution mechanisms, because if election commission is equipped with transparent, latest and reliable data about the party cadre and majority then they can decide dispute within reasonable time and it will be no room for manipulation. To have such undisputable data with election commission block-chain technology can be used by the political party for internal elections so everyone will have clear picture and this will eventually lead to inner party democracy and transparency. This will also provide indisputable evidence and it will prevent manipulation.

Deciding on party splits within reasonable timeframe

The Shiv-Sena split case raised some serious questions about the simultaneous authority of speaker to adjudicate the split and defection issue. The complications arising from

⁵³ *Subhash Desai v. Principal Secretary, Governor of Maharashtra, Writ Petition (C) No. 493 of 2022.*

simultaneous disqualification proceedings and party split disputes leads to misuse of legal framework. To address this, the Election Commission should delay decisions on splits until the Speaker resolves disqualification issues. And amendments to be made to Paragraph 6 of the Tenth Schedule to give speaker timeframe of 3 months within which he has to decide on disqualification of members. In Paragraph 15 there should be proviso added that until speaker decides the disqualification of the member it shall refrain from hearing the petition of party split. Election Symbols Order would prevent misuse by ensuring splits are not recognized until disqualifications are adjudicated.

Resolving the Speaker's Temporary Ineligibility in Defection Adjudication

When a defected member submits a notice under Article 179(c) of the Constitution for the removal of the Speaker, the Speaker becomes ineligible to adjudicate any defection case while the motion for their own removal is pending. This loophole is often exploited by defectors to delay disqualification proceedings. Also, simultaneous proceedings before the Election Commission regarding party splits further shield defectors from disqualification. This circumvents the intent of the 91st Constitutional Amendment, which removed Paragraph 3 from the Tenth Schedule, effectively abolishing the provision for exemption from disqualification on grounds of a split. To address this issue, it is proposed that when a motion for the removal of the Speaker is pending in the House, the Assembly should appoint an alternate authority to adjudicate defection cases. This authority must be elected within three months and decide the matter within a stipulated timeframe. Until such an appointment is made, the Election Commission should be barred from adjudicating the defection matter. These reforms will help close existing loopholes and ensure that defectors are not able to escape disqualification through procedural delays or technicalities.

Addressing the Appointment and Political Affiliation of Nominated Members

Nominated members acts as expert in Parliament on their respective domain, it also allows them to be independent voice in the parliament. Yet Paragraph 2, Sub-paragraph 3, allow them to join political parties, it compromises their independence voice of their field. This provision is frequently misused by political parties to boost their membership tally in the legislature and they only nominate such people who are aligned with their political interest. To ensure their impartiality, it is important that the clause allowing party affiliation be removed they shall not

be allowed to join any political party after being nominated just like independent members of the house.

Ensuring the Impartiality and Timeliness of the Speaker in Disqualification Cases

The Speaker's role in disqualification cases is critical, but delays and lack of impartiality often hinder the process. To address these issues, Paragraph 6 of the Tenth Schedule should include a timeframe for resolving disqualification cases. If the Speaker is himself facing the disqualification or motion for his removal is pending, then the matter should be referred to an independent House member within a set timeframe, with final decisions required within three months. These measures would ensure timely and transparent proceedings and the Speaker's impartiality.

Mandatory Disclosure of Candidates' Political Affiliations and Ideologies

All Candidates who are about to contest the election for any legislature they should disclose their political history, including prior affiliations and ideology, to promote informed decision making transparency and accountability to their voters. Such disclosures enable voters to make informed choices and discourage covert party switching or hidden agendas. *By offering a comprehensive view of candidates' political journeys, this measure would strengthen public trust in the electoral process and enhance democratic practices.*

CONCLUSION

Anti-defection law was brought with the noble intent to promote political stability and safeguard the democratic fabric of India, the law has faced many implementation challenges from the beginning due to complex nature of the defection problem and involvement of various constitutional institutions such as speaker, election commission, High Court, Supreme Court and other organs of the state. Various instances of defection have proved dangerous to democratic fabric and have largely undermined the confidence of the public at large in the political parties and the government itself. The constitutional right of casting a vote to elect the desired candidate so as to represent their aspirations of every stage of governance. The complexities surrounding the definitions of defection, the lack of clarity in enforcement mechanisms, and the controversial role of legislators have contributed to a perception of the law as a "toothless tiger." The law fails to distinguish between dissent and defection, also

certain provisions that allow group defections through mergers this makes it more complex issue to deal with. The judicial interpretations have further complicated its application. And it has clearly not served its intended goal.

To address these issues the proposed changes will act as the guidelines for disqualification procedures, enhancing accountability mechanisms for legislators, and considering the impact of defections on electoral mandates. Recognizing the rights of individual legislators while maintaining party discipline is crucial for restoring faith in this legislative framework. Revisiting India's Anti-Defection Law is imperative not only for enhancing political accountability but also for safeguarding the democratic ethos that underpins Indian governance. By addressing its inherent flaws and adapting to evolving political dynamics, we can ensure that the law serves its intended purpose without compromising the fundamental rights of elected representatives.