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## Avinash Kumar



*Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship. He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi. Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi. He has qualified UGC – NET examination and has been awarded ICSSR – Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research methodology and teaching and learning.*

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# **THE IMPACT OF ANTI-DEFECTION LAWS ON THE POLITICAL LANDSCAPE OF INDIA**

AUTHORED BY - VIPIN KUMAR,  
RESEARCH SCHOLAR, NETAJI SUBHAS UNIVERSITY.

CO-AUTHOR - DR. ACHARYA RISHI RANJAN,  
SUPERVISOR, PRO- VICE CHANCELLOR

## **Abstract**

The Anti-Defection Law in India is crucial for maintaining democratic principles and ensuring political stability in the country's governance system. This legislation acts as a key safeguard against opportunistic defections that could undermine the electoral mandate's sanctity and the integrity of legislative bodies. By discouraging actions motivated by self-interest, the Anti-Defection Law significantly contributes to preserving democratic values and preventing government destabilization. The law's enforcement mechanisms, such as disqualification for defying party whips on important votes, highlight the importance of party discipline and legislative stability in Indian politics. Additionally, the law acknowledges the delicate balance between individual conscience and party loyalty, stressing the need to maintain this balance to uphold political stability effectively. The provision for exemptions in cases of party mergers and public interest shows the law's adaptability to changing political scenarios, further enhancing its role in preserving party integrity and ensuring democratic stability. Overall, the Anti-Defection Law is a fundamental pillar in strengthening Indian democracy by curbing political defections and promoting accountability and stability within the political sphere.

**Keywords:** Anti- defection, 10<sup>th</sup> schedule, 52<sup>nd</sup> amendment, 91<sup>th</sup> amendment.

## **Introduction**

Since the inception of elections in India, both at the parliamentary and state legislature levels, political contests have centred around parties, their ideologies, and manifestos. However, from the mid-1960s onward, Indian democracy witnessed a regrettable trend where elected

representatives frequently defected from their original parties to join opposing ones. This opportunistic floor-crossing amounted to a betrayal of the electorate's trust, eroding the very foundations of democracy. Rather than driven by genuine ideological differences or principled dissent, such actions were primarily motivated by the pursuit of power, influence, and financial gain. Prior to the implementation of the Anti-Defection Law, Indian politics was plagued by frequent defections, particularly during the 1960s and 1970s. The phrase "**Aaya Ram, Gaya Ram**" became emblematic of the era's widespread party switching. A striking example occurred in 1967 when Haryana MLA Gaya Lal changed parties three times in a single day, showcasing the depth of political opportunism. These actions destabilized elected governments and highlighted the need for a legislative remedy. According to the Cambridge dictionary meaning of word "defection" is "the act of leaving a country, political party"<sup>1</sup> It derived from Latin word "defection" which can be understood by giving up or left the present group with the motive to join other one. In the late 1970s, India experienced rampant floor crossing by legislators, which blatantly ignored the democratic will of the voters who had elected them. This issue drew significant attention from all political parties in Parliament, leading to the adoption of a unanimous resolution to form a committee tasked with studying and reporting on the problem of defection.

### **Evolution and Constitutional Provisions of Anti- Defection Law**

Based on the Committee's recommendations, the 32nd Constitution Amendment Bill was introduced to disqualify defected legislators from holding ministerial positions. However, this Amendment Bill lapsed when the Lok Sabha was dissolved. Subsequently, the 48<sup>th</sup> Constitution Amendment Bill, which had the same intent and provisions as the lapsed bill, was introduced. Finally, in 1985, after Rajiv Gandhi became Prime Minister with a significant majority, the Tenth Schedule, including the anti-defection law, was incorporated into the Constitution.

#### **Features of 10th Schedule:-**

##### **Voluntarily Giving Up Member-ship: -**

A Member of Parliament or a State Legislature can be disqualified if they voluntarily give up the membership of their political party.

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<sup>1</sup> <https://dictionary.cambridge.org/dictionary/english/defection>

**Voting Contrary to Party Whip: -**

A member can also be disqualified if they vote or abstain from voting contrary to the directions issued by their party (party whip) without obtaining prior permission.

**Independent Members: -**

Independent members who join a political party after the election are subject to disqualification.

**Nominated Members: -**

Nominated members who join a political party after the expiry of six months from the date they take their seat can also be disqualified.

**Exceptions:**

**Merger:** A member shall not be disqualified if their original political party merges with another party, provided that at least two-thirds of the members of the legislature party concerned have agreed to the merger.

**Adjudicating Authority:** The Speaker of the House (or the Chairman in the case of the Rajya Sabha and Legislative Councils) is the authority to decide on disqualification cases. However, this decision is subject to judicial review.

Article 102 says that Article 102 of the Indian Constitution outlines the disqualifications for being chosen as, and for being, a member of either House of Parliament. These disqualifications are detailed in two clauses: -

Clause (1) states that a person is disqualified if:

They hold any office of profit under the Government of India or any state government, except for offices declared by Parliament not to disqualify their holders.

- a) They are of unsound mind and so declared by a competent court.
- b) They are an undischarged insolvent.
- c) They are not a citizen of India, or have voluntarily acquired the citizenship of a foreign state, or acknowledge allegiance to a foreign state.
- d) They are disqualified by or under any law made by Parliament.

An explanation provided in this clause clarifies that being a Minister either for the Union or for a state does not count as holding an office of profit.

Clause (2) states that a person is also disqualified if they are disqualified under the Tenth

Schedule, which deals with disqualification on the grounds of defection.

These provisions ensure that the members of Parliament maintain certain ethical and legal standards to hold their positions.

Article 103 outlines the procedure for addressing questions regarding the disqualification of Members of Parliament. According to Article 103(1), if any doubt arises about whether a member has incurred any disqualification as specified in Article 102(1), the issue must be referred to the President for a final decision. Clause (2) stipulates that the President must seek the opinion of the Election Commission before making any decision. The President is required to act in accordance with this opinion, and the Election Commission may conduct any inquiry it deems necessary before providing its opinion.

The 91st Amendment Act was introduced to address certain weaknesses in the anti-defection laws and bolster their effectiveness. To prevent the misuse of ministerial appointments as incentives for legislators, the amendment capped the number of ministers at both the central and state levels to 15% of the total members of the Lok Sabha or the respective state legislative assembly. This measure aimed to discourage the practice of offering ministerial positions as a reward for defection. The amendment mandated that any member disqualified under the Tenth Schedule would be barred from holding any remunerative political post or ministerial position until the end of their term, or until they are re-elected. This provision serves as a strong deterrent against defection, ensuring that defectors do not immediately gain from their actions. The amendment eliminated the provision that allowed a split in a political party with one-third of its members. Now, only mergers involving at least two-thirds of the members of a legislative party are protected under the law. This change significantly reduced the ease with which legislators could orchestrate defections by claiming a party split.

### **Judicial Pronouncement on Anti- defection Law**

*Kihoto Hollohan vs Zachillhu and Others*<sup>2</sup>

In the Kihoto Hollohan case, the Tenth Schedule of the Constitution was contested before the Supreme Court. The primary argument against the Tenth Schedule centred on the claim that it violated the free speech rights of legislators, as guaranteed under Articles 105 and 194

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<sup>2</sup> 1992 SCR (1) 686

of the Constitution. The Constitution Bench, by a majority judgment, held that unprincipled and unscrupulous political defections are to be contained and the legislators freedom of speech can be reasonably curtailed for the larger interest of the nation. The legislators, who fought and won elections on the basis of the programmes and policies of the political party, are not supposed to do floor crossing midway through the term of the government. The political instability contributed by large scale political defection was in fact a threat to democracy which many a time reduced the concept of democracy to a mockery.

What is more relevant in the present-day context is the minority judgment rendered by Justices LM Sharma and JS Verma, who in their separate verdicts, declared that the anti-defection law is unconstitutional. The minority judgment raises concerns over the power of the Speaker to decide the question of disqualification; the learned judges found likelihood of bias in the decision-making process.

*Ravi S. Naik vs Union of India*<sup>3</sup>

If resignation is the sole act that qualifies as "voluntarily giving up" membership in a political party, the Supreme Court has clarified that the term holds a broader interpretation. It includes inferences drawn from a member's behaviour and actions as well.

*G. Viswanathan vs The Hon'ble Speaker Tamil*<sup>4</sup>

"If a member is expelled from their original party and subsequently joins a different party, this action is regarded as voluntarily relinquishing their membership of the original party. According to a Supreme Court judgment, an expelled member is considered an unattached member in the house, but under the Tenth Schedule, they remain a member of the original party. However, by joining a new party after expulsion, it is deemed that they have voluntarily given up their membership of the original party.

*Keisham Meghachandra Singh vs The Honble Speaker Manipur Legislative*<sup>5</sup>

"The decision regarding anti-defection by the Speaker operates independently and doesn't require approval from the House. However, the immunity granted is only from parliamentary procedures. The Speaker's decision on anti-defection can undergo judicial review, albeit limited

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<sup>3</sup> 1994 AIR 1558

<sup>4</sup> 1996 AIR 1060

<sup>5</sup> AIR ONLINE 2020 SC 54

to the procedural aspects. Judicial review isn't available prior to the Speaker's decision-making process.

Grounds for judicial review include violations of constitutional mandates, mala fides, non-compliance with the rules of natural justice, and perversity. Acting under the Tenth Schedule, the Speaker or Chairman functions as a quasi-judicial authority akin to a tribunal and is obliged to make decisions within a reasonable timeframe. This power vested in the Speaker or Chairman is considered a judicial power.

Quoting the case of *Kihoto Hollohan*, the Supreme Court emphasized that the Speaker must resolve anti-defection cases promptly, ideally within three months, to avoid undue delays.

*Rajendra Singh Rana and Ors vs Swami Prasad Maurya and Ors*<sup>6</sup>

In this case, the Supreme Court clarified that a member's disqualification under the anti-defection law can be contested only after the Speaker or Chairman has made a decision on the disqualification petition.

*Shri Yengkhom Surchandra Singh vs The Hon'ble Speaker*<sup>7</sup>

“In a landmark decision regarding the Manipur Legislative Assembly Case in July 2020, the Supreme Court of India upheld the Speaker's decision to disqualify nine MLAs under the anti-defection law. The court emphasized that while the Speaker has the authority to evaluate disqualification petitions and decide on disqualifications, these decisions are subject to judicial review.

*Md. Fajur Rahim v. Hon'ble Speaker, Manipur Legislative Assembly*<sup>8</sup>

“The Court, somewhat surprisingly, referenced a verdict from a Constitutional Bench, which determined that when the Speaker neglects their Constitutional duties through deliberate inaction, and members are prima facie disqualified under the Schedule, the Court must intervene to uphold the lawmakers' intent and protect the law's ultimate purpose. This particular judgment prompted the legal community to reflect on issues concerning both its merits and constitutional appropriateness.

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<sup>6</sup> 2007 (4) SCC 270

<sup>7</sup> AIRONLINE 2021 MPR 54

<sup>8</sup> (2007) 4 SCC 270.

*Speaker, Haryana Vidhan Sabha v. Kuldeep Bishnoi*<sup>9</sup>

The Court was called upon to address the excessive delay by the Speaker in deciding the disqualification petitions against five Members of the Legislative Assembly. These members were neither crucial for the government's survival nor were state assembly elections imminent.

However, the Court observed that the Speaker appeared to act in bad faith, prioritizing his faction's interests over his constitutional responsibilities .

After reviewing all relevant authorities, the Court concluded that the Kihoto Hollohan case establishes a singular exception where grounds of mala fide, perversity, lack of adherence to natural justice, or constitutional violations can be considered only after the Speaker has made a final decision. Thus, regardless of how unusual the facts may be, if the Speaker has not yet issued an order on the petitions, the Court has no grounds to exercise judicial review. It is pertinent to note that the two-judge bench acknowledged the minor role of these five MLAs in the government's formation and the remaining time until the next state elections, but they refrained from creating another exception for cases with differing circumstances.

### **The Anti-Defection Law significantly influences the workings of parliamentary democracy in India**

“The Anti-Defection Law, implemented in 1985, for bids members of Parliament (MPs) and Legislative Assemblies (MLAs) from defecting from their party. It is against the law for elected officials to support a vote of no confidence in the government or switch parties without first obtaining consent from the party. The rule was enacted to stop lawmakers from increasingly switching parties to better serve their personal interests rather than the interests of the people they were elected to represent”.

“The Anti-Defection Law has significantly impacted the functioning of India's parliamentary system. One major effect is the reduced likelihood of elected officials switching parties, which in turn decreases the chances of government collapses and helps maintain governmental stability. However, this law also means that Members of Parliament (MPs) and Members of the Legislative Assembly (MLAs) must adhere strictly to their party's directives, diminishing their role as independent voices.

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<sup>9</sup> 2019 SCC Mani 127 at 137 (para 17)

The Anti-Defection Law is outlined in the Tenth Schedule of the Indian Constitution. According to this law, a member of the house forfeits their eligibility to serve if they voluntarily leave their political party or fail to vote according to the party whip during a confidence or no-confidence motion. "A member also faces disqualification if they switch to another political party. The law mandates that the presiding officer of the house must decide on the disqualification only after the member has been given a chance to present their case.

## **Shortcoming of Anti- defection Laws**

### **Undermining Democratic Values**

One of the primary criticisms of the Anti-Defection Law is that it undermines democratic principles by restricting the freedom of elected representatives. By penalizing legislators for voting against their party's whip, the law limits their ability to act according to their conscience or in the interests of their constituents. This undermines the essence of representative democracy, where elected officials are expected to prioritize the welfare of the people they represent over party loyalty.

### **Concentration of Power in Party Leadership**

The Anti-Defection Law has contributed to the concentration of power in the hands of party leadership. Fear of disqualification leads legislators to toe the party line, often at the expense of independent thought and decision-making. This centralization of power within political parties diminishes the role of individual legislators and reduces the accountability of party leadership to the electorate. Consequently, party leaders wield disproportionate influence over policy decisions and legislative processes, weakening the democratic fabric of the country.

### **Disruption of Political Stability**

While the Anti-Defection Law was intended to promote political stability by preventing frequent defections and floor-crossing, it has also led to unintended consequences. In some cases, legislators facing disqualification have resorted to opportunistic alliances and horse-trading to avoid losing their seats. "This has resulted in the formation of unstable coalitions and compromised governance, as parties prioritize their survival over the public interest. Furthermore, the threat of disqualification has been used as a tool for political manipulation, leading to an erosion of trust in democratic institutions.

## Legal Complexity and Delayed Justice

The implementation of the Anti-Defection Law has been plagued by legal complexity and delayed justice. Determining whether a legislator's actions warrant disqualification often involves lengthy legal proceedings and interpretation of ambiguous provisions. This not only creates uncertainty but also leads to significant delays in resolving disputes, thereby impeding the functioning of legislative bodies. Moreover, the discretionary powers vested in presiding officers to adjudicate defection cases have raised concerns about impartiality and political bias, further eroding public confidence in the judicial process.

**Violation of freedom of speech and expression:** The Anti-Defection Act is purported to infringe upon the fundamental right to freedom of speech and expression enshrined in Article 19(1)(a) of the Indian Constitution.

## Way Forwards

**Secret ballot system:** - Experts have proposed the implementation of a secret ballot system for voting within State and Parliament legislatures. This change aims to eliminate the fear of retaliation or retribution from political parties, thereby allowing MPs and MLAs to vote according to their conscience.

**Code of conduct:** - An additional approach to the anti-defection law is the adoption of a code of conduct for MLAs and MPs. This measure would establish ethical guidelines for elected officials, ensuring that their actions prioritize the interests of their constituents over those of their political parties.

**Reform of the law:** - Many experts believe that reforms are necessary to address the issues and criticisms surrounding the anti-defection law. Modifications could aim to enhance the accountability and transparency of the decision-making process and to more clearly define the legitimate grounds for changing political allegiances.

**Shifting Adjudication Power:** - Transferring the authority to adjudicate defection cases from the Speaker of the House to an independent entity such as the Election Commission could reduce concerns about bias and political influence, thereby promoting greater impartiality.

## Conclusion

The Anti-Defection Law in India stands as a critical tool in preserving the democratic fabric of the country by discouraging political defections and promoting party discipline. While the

law has had a positive impact on Indian politics by reducing defections and strengthening party loyalty, it also faces criticisms and challenges that need to be addressed for more effective implementation. By understanding the historical evolution, impact, and challenges associated with the Anti-Defection Law, policymakers can work towards refining and improving the law to better serve the interests of democracy and governance. The implementation of the Anti-Defection Law has had a significant impact on Indian politics. One of the key outcomes of this law has been the reduction in political defections and party-hopping, thereby promoting stability within the legislative bodies. By enforcing strict consequences for defying party whips, the law has also contributed to strengthening party discipline and loyalty among lawmakers.

However, criticisms of the law have emerged, with some arguing that it stifles freedom of speech and dissent within political parties, leading to debates on the balance between party loyalty and individual conscience. Despite its intended benefits, the Anti-Defection Law faces challenges in its implementation. While the law has been effective in maintaining political stability and integrity by deterring opportunistic defections, there are concerns about loopholes that can be exploited to circumvent its provisions. Enforcement of the law has also posed challenges, with instances of delayed or selective action against violators. To address these issues, there have been calls for further improvements or reforms in the Anti-Defection Law, such as redefining the criteria for disqualification and enhancing transparency in decision-making processes related to defection cases.

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