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GUARDING DEMOCRATIC MANDATES: A CONSTITUTIONAL ANALYSIS OF THE ANTI- DEFECTION LAW IN INDIA

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Abstract

The Anti-Defection Law, incorporated through the Tenth Schedule of the Constitution of India by the 52nd Amendment Act, 1985, seeks to curb political defections by disqualifying legislators who defect from their parties. While aimed at ensuring political stability and deterring opportunistic shifts in allegiance, its operation has raised significant constitutional, democratic, and judicial concerns. Over the years, the law has been revisited by constitutional amendments, notably the 91st Amendment Act, 2003, and subjected to judicial scrutiny in landmark cases such as *Kihoto Hollohan v. Zachillhu* (1992), *Rajendra Singh Rana v. Swami Prasad Maurya* (2007), and recent rulings in the context of Maharashtra and Manipur political crises. Despite its intention to strengthen parliamentary democracy, critics argue that the law undermines intra-party democracy, increases the power of party leadership, and limits legislators' freedom of conscience. The article examines the evolution, judicial interpretation, and contemporary relevance of the Anti-Defection Law in India, highlighting the urgent need for reforms to strike a balance between party discipline and democratic values.

Keywords: Anti-Defection Law, Tenth Schedule of the Constitution of India, Party Discipline, Judicial Interpretation, Parliamentary Democracy.

Introduction

The stability of a parliamentary democracy largely depends upon the loyalty and accountability of its legislators. However, in India, the phenomenon of political defection—where elected representatives switch parties for personal or political gain—has long posed a serious threat to democratic governance. To address this challenge, the Anti-Defection Law was introduced through the 52nd Constitutional Amendment Act, 1985, which inserted the

Tenth Schedule into the Constitution. This law sought to deter legislators from defecting by prescribing disqualification in cases of voluntary giving up of party membership or voting against the directives of their party.

While the law was enacted with the objective of ensuring political stability and preserving the sanctity of electoral mandates, its implementation has raised complex questions. Over time, it has been criticized for strengthening the control of party leadership at the cost of legislators' freedom of speech and conscience. Judicial pronouncements, such as *Kihoto Hollohan v. Zachillhu* (1992) and recent Supreme Court interventions in the political crises of Maharashtra and Arunachal Pradesh, have shaped the contours of this law. Despite amendments particularly the 91st Constitutional Amendment Act, 2003, the Anti-Defection Law continues to face challenges in balancing the twin goals of preventing opportunistic defections and safeguarding democratic values.

This article critically examines the evolution, global scenario, objectives, judicial interpretation, and contemporary relevance of the Anti-Defection Law in India, with a focus on its impact on the democratic process and the pressing need for reforms.

MEANING

The Anti-Defection Law, in essence, aims to prevent elected representatives from switching political parties after being elected. It is designed to promote stability in governments by discouraging legislators from changing parties for personal or political gain. The anti-defection law is to ensure political stability by discouraging lawmakers from switching parties or voting against their party's directives, thus preventing unstable governments that fall due to rampant "horse-trading" or shifts in allegiances.

PURPOSE OF THE LAW

Political Stability: The law seeks to provide stable governments by reducing the frequency with which elected officials can change parties, which historically led to the collapse of governments.

Curbing Horse-trading: It aims to stop politicians from being motivated to switch parties for personal gain or "extraneous considerations," rather than genuine ideological differences.

Preserving Party Discipline: The law enforces party loyalty, penalizing legislators who

voluntarily leave their party or vote contrary to the party's official position.

Maintaining Democratic Principles: By preventing arbitrary shifts in allegiance, the law helps maintain the integrity of the electoral process and uphold the principles of democracy by ensuring that elected representatives remain accountable to their voters and their party.

ANTI DEFECTION LAW GLOBAL SCENARIO: Defection, the practice of legislators switching political allegiances, has long challenged democratic systems worldwide. It undermines party cohesion, destabilizes governments, and erodes public trust in elected representatives. Different countries have responded in diverse ways, depending on their constitutional frameworks and political cultures. While some nations have enacted strict anti-defection laws, others rely on political norms, party discipline, or institutional mechanisms to maintain stability.

Liberal Democracies Without Anti-Defection Laws

In several Western democracies, defections are treated as a political issue rather than a legal one.

United Kingdom: Parliament has no anti-defection law. Legislators may freely “cross the floor” or vote against their party. Discipline is maintained through the whip system, under which parties can suspend or expel rebels, though MPs retain their seats. This reflects the UK’s emphasis on parliamentary sovereignty and individual freedom.

United States: Party-switching is allowed, and legislators often vote independently. Since the U.S. follows a presidential system, defections rarely threaten government stability. The main consequences are political—loss of party support or renomination—rather than legal.

France: In the semi-presidential system of the Fifth Republic, deputies may defect or vote independently. Government stability is protected by the two-round electoral system and the President’s authority, making defections less disruptive.

Canada: Similar to the UK, MPs may cross the floor without losing their seats. While the party whip enforces strong discipline, defections are legal and accepted. Critics, however, argue that excessive party control weakens MPs’ independence.

Russia: No specific anti-defection law exists. Since many deputies are elected through party lists under proportional representation, parties already exercise significant control over candidates. Loyalty is ensured more by political centralization than by law.

China: China follows a one-party system under the leadership of the Communist Party of China (CPC). Since the political system does not allow multi-party competition in the Western sense, the concept of defection does not exist in the same manner as in parliamentary democracies.

Members of the National People's Congress (NPC) are either Communist Party members or belong to smaller allied parties that function under the CPC-led "united front." Legislators are bound by party discipline, and any deviation is handled through internal party mechanisms rather than constitutional or legal anti-defection provisions. Defectors or dissenters risk losing their party membership, political privileges, and positions, but not through an anti-defection law—rather through the highly centralized and hierarchical control of the CPC. Thus, in China, stability is ensured not by legal anti-defection rules, but by the absence of multi-party competition and the dominance of a single party.

Countries With Moderate Safeguards

Some nations rely on institutional designs rather than disqualification laws to maintain stability.

Germany: The Basic Law declares legislators as representatives of the people, not bound by party instructions. However, the constructive vote of no-confidence prevents government collapse by requiring a replacement Chancellor to be elected before the incumbent can be removed. This reduces the impact of defections on executive stability.

Strict Anti-Defection Regimes

In many South Asian and African states, defections have destabilized fragile democracies, prompting strict legal measures.

Bangladesh: Under Article 70 of the Constitution, MPs automatically lose their seats if they vote against their party, even on issues unrelated to confidence motions. This ensures stability but has been criticized for silencing independent legislative voices.

Pakistan: Article 63A of the Constitution disqualifies MPs who vote against party directions on crucial issues such as electing the Prime Minister, budgetary matters, or constitutional amendments. Disqualification is confirmed by the Election Commission.

Nepal: The Constitution disqualifies legislators who defect from their party or vote against the whip, reflecting the country's need for stability amid frequent coalition governments.

South Africa: Initially permitted "floor-crossing" during certain periods, but this led to instability. In 2009, constitutional amendments abolished floor-crossing, aligning South Africa with stricter anti-defection models.

Globally, anti-defection measures vary from strict disqualification systems in South Asia and parts of Africa to flexible, convention-based approaches in Western democracies. India's Anti-Defection Law (1985, strengthened in 2003) falls within the stricter model,

designed to curb political opportunism but criticized for limiting legislators' autonomy.

ORIGIN OF ANTI DEFECTION LAW IN INDIA:

Indian politics has been no exception to this phenomenon of defections. Indian politics had seen defections right from the pre-independence era. It can be traced back to the days of Rama. Even in Ramayana we find the identical defection, Vibhishana, brother of Ravana, defected from him and joined Rama. During Montford Reforms Shyam Lal Nehru, a member of the Central Legislature, who was elected on the Congress ticket but he crossed the floor and joined the British side. At that time Pandit Moti Lal Nehru who was leader of the Assembly condemned him and expelled him from the party. In 1937, Shri Hafiz Mohammed Ibrahim, who was elected to the Uttar Pradesh Legislative Assembly on the Muslim League ticket, defected to join the Congress, However, in March, 1945 the first ever toppling game in Bengal was played when the Muslim League Ministry, led by Khwaja Nazimuddin was voted out of office when the Nawab Bahadur of Dacca along with 15 friends defected. Independent India, the story of defections dates back to 1948, and there was no legislation to curtail the menace of defection. The first step was taken after the fourth general elections in 1967 when the defections took an alarming turn, as many legislators changed their sides for the want of office and further unexpectedly switched back when the promises were not fulfilled. Between 1967 and 1972 more than 50% of the legislators switched sides at least once.

The 1967 General Elections, defections became a widespread phenomenon in Indian politics. Within just four years (1967–1971), over 1,500 MLAs and about one-fourth of MPs changed their party affiliations. This political instability weakened governments, leading to frequent breakdowns in administration and instability at both central and state levels.

Famous Case: “Aaya Ram, Gaya Ram”

- In 1967, Haryana MLA Gaya Lal defected three times in a single day, switching parties back and forth.
- This incident became symbolic of the **opportunistic defection culture** in Indian politics.

Parliamentary Committees & Reports

- **1967–1969:** Widespread concern led to parliamentary debates on controlling defections.

- **Y.B. Chavan Committee (1967):** Set up by the Parliament to examine defections.
 - Recommended disqualification of defectors unless the defection was due to a genuine split.
 - Suggested that the power to decide cases should rest with the presiding officers (Speakers/Chairmen).
- **Early 1970s:** Continued political instability with coalition governments falling due to mass defections.

Constitutional and Legislative Efforts

- Several **private members' bills** were introduced in Parliament through the 1970s to curb defections, but none were passed.
- **1977–79 (Janata Party era):** Defections and counter-defections destabilized governments again, proving the urgent need for a law.
- **1980s:** The issue gained momentum as political instability grew in many states.

Towards the 52nd Amendment (1985)

- Recognizing the seriousness of the issue, Prime Minister Rajiv Gandhi's government brought the 52nd Constitutional Amendment Bill.
- In 1985, the Tenth Schedule was inserted, formally enacting the Anti-Defection Law to discourage political opportunism and ensure stability.
- The Anti-Defection Law was enacted through the 52nd Constitutional Amendment Act, 1985, during the Rajiv Gandhi government, to curb the menace of frequent defections by legislators that destabilized governments. Tenth Schedule: The amendment inserted the Tenth Schedule into the Constitution, popularly known as the "Anti-Defection Law."
- **Key Provisions:** The 1985 Anti-Defection Rules
- The 52nd Constitutional Amendment Act, 1985 introduced the Tenth Schedule (Anti-Defection Law) to curb political defections. Along with the amendment, certain rules and procedures were framed to implement the law.

Grounds for Disqualification

- A legislator is disqualified if:
 - They voluntarily give up membership of their political party.
 - They vote/abstain contrary to the party's whip without permission.

- An independent member joins a political party after election.
- A nominated member joins a party after 6 months of nomination.

Exceptions Provided

- Split Provision: If one-third of members of a legislature party split, they were exempted from disqualification.
- Merger Provision: If two-thirds of members merged with another party, they were exempted.

Decision-Making Authority

- The Speaker/Chairman of the House was given the final authority to decide on disqualification petitions.
- Binding Nature
- Legislators were bound by the party whip, especially in important votes like confidence motions, money bills, and budget matters.
- No Judicial Review (Initially)
- The law barred courts from interfering in Speaker's decisions.
- However, in *Kihoto Hollohan v. Zachillhu* (1992), the Supreme Court allowed judicial review of such decisions.

Impact of the 1985 Rules

- Reduced individual defections, but the split clause was misused for mass defections.
- Speaker's delayed or biased decisions weakened the law.
- Ultimately, this led to the 91st Constitutional Amendment (2003), which removed the "split" provision and made the law stricter.

91st Constitutional Amendment Act, 2003

- Changes it did:
 - Deleted the split provision (one-third exemption), as it was heavily misused.
 - Strengthened merger rule: now only if two-thirds members agree.
 - Barred defectors from becoming ministers or holding remunerative posts.
- Need: Despite the 1985 law, mass defections continued by exploiting the "split" loophole. Frequent instability and corruption in politics demanded stricter provisions.

Cases are actually processed (the 1985 “Defection Rules”)

- Each House framed procedural rules under Para 8 of the Tenth Schedule:
- can file: any member may file a disqualification petition against another member.
- Form & proof: petitions must meet format requirements, include an affidavit and evidence; the Speaker can summarily reject defective petitions or call for counter-statements and evidence; the Speaker may conduct an inquiry and then decide.
- Whip breach: where a legislator votes/abstains against the whip without prior permission and is not condoned within 15 days, a petition may lie.
- Parallel Rules exist for Lok Sabha and Rajya Sabha (and state houses model theirs similarly).

LOOPHOLES OF THE LEGISLATION**1. Curtailment of legislative freedom.**

- The law enforces strict party discipline, reducing MLAs/MPs to mere numbers.
- Suppresses dissent, debate, and independence of legislators, weakening parliamentary democracy.

2. Excessive Power of the Speaker

- Speaker/Chairman — often belonging to the ruling party — acts as the judge in defection cases.
- Raises questions of bias and impartiality.
- Judicial delays in reviewing Speaker’s decisions aggravate the issue.

3. Delay in Decision-Making

- No fixed time limit for deciding defection cases.
- Speakers often delay decisions strategically to protect ruling governments (seen in Karnataka, Manipur, Maharashtra).

4. Misuse of Exceptions

- 1985 split clause (one-third) was massively misused to justify mass defections. (Later removed in 2003).
- Even today, the two-thirds merger provision is exploited to engineer large-scale defections.

5. Encourages Mass Resignations

- Legislators often resign instead of formally defecting → causes by-elections, after which they contest from a new party.
- This circumvents the law entirely.

6. Weak Enforcement

- Defection petitions are often decided years later, by which time the political situation changes.
- Delays defeat the very purpose of ensuring stability.

7. Overuse of Whip

- Whip is issued on almost every vote, not just on crucial bills (like confidence/money bills).
- This stifles healthy debate and conscience voting.

8. Judicial Burden

- Frequent court interventions due to partisan Speaker decisions overload judiciary and delay resolution.

JUDICIARY ROLE IN PROTECTION OF ANTI DEFECTION LAW:

Kihoto Hollohan v. Zachillhu (1992):

- Upheld the Tenth Schedule's constitutionality.
- Speaker's decisions are subject to judicial review (at least on jurisdiction, mala fides, perversity).

Ravi S. Naik v. Union of India (1994):

- "Voluntarily giving up" is broader than formal resignation; conduct can prove it. (E.g., publicly acting for another party.)

G. Vishwanathan v. Speaker, TN (1996):

- If a member is expelled by the party and joins another, that amounts to voluntarily giving up the old party—triggering disqualification.
- *Rajendra Singh Rana v. Swami Prasad Maurya (2007):*
- Courts can step in where the Speaker delays/errs; the SC even set aside a speaker's order for not following the Tenth Schedule.

Keisham Meghachandra (2020) & subsequent cases:

- Stressed time-bound decisions; prolonged delays subvert the law's purpose.

Subhash Desai v. Principal Secretary (2023) - the Maharashtra/Shiv Sena case:

- The whip must be recognised by the political party, not merely a rival faction of the

legislature party; Speaker's recognition of a factional whip was illegal. This has big implications during intra-party splits.

The most current judicial stance (2025)

- The Supreme Court has been tightening timelines and questioning whether Speakers should continue to adjudicate defection cases due to perceived partisanship:
- Jul 31, 2025: SC asked Parliament to review the Speaker's role.
- Aug 2025 analyses emphasise that *Kihoto* never prevented courts from nudging Speakers toward prompt decisions.
- Aug 2025 (reporting on a 2025 order): SC directed the Telangana Speaker to decide within 3 months on BRS MLAs' disqualification—continuing the time-bound push.

Padi Kaushik Reddy v. State of Telangana

By Supreme Court of India (2025) several MLAs elected on the Bharat Rashtra Samithi (BRS) ticket allegedly defected to the Congress party after the 2023 Telangana elections. Disqualification petitions were filed under the Anti-Defection Law. The Telangana Assembly Speaker delayed deciding the disqualification petitions. The Supreme Court directed the Speaker to decide the disqualification petitions within three months. The Court criticized delays and stated that such inaction weakens the purpose of the anti-defection law. The Court suggested reconsidering the Speaker's role in deciding defection cases. It revived debate on transferring the power to an independent body such as the Election Commission.

Suwendu Adhikari v. Mukul Roy

By Calcutta High Court (2025) Opposition leader Suwendu Adhikari challenged the status of Mukul Roy, who had switched political allegiance. The Calcutta High Court disqualified Mukul Roy as an MLA under the Anti-Defection Law. The Court also criticized the Speaker for delaying action on the disqualification petition....

It is considered a rare instance where a High Court intervened directly in a defection matter due to Speaker inaction.

Telangana BRS–Congress Defection Dispute

Around 10 BRS MLAs allegedly defected to Congress after the 2023 Assembly elections. The Supreme Court strongly remarked against delays and warned that the anti-defection law becomes ineffective if Speakers do not act promptly. Highlighted the structural

weakness of the anti-defection law, especially political bias and delay by Speakers.

Arunachal Pradesh Defection Issue (2025)

Four MLAs from the National People's Party (NPP) defected to the People's Party of Arunachal (PPA).

The case raised questions regarding the application of the Disqualification on Grounds of Defection Rules, 1987.

Key Constitutional Issues Raised in 2025 Cases

- Delay by Speaker in deciding disqualification petitions.
- Need for time limits for anti-defection decisions.
- Debate on shifting adjudication power from Speaker to an independent authority.
- Expanded judicial review by High Courts and Supreme Court when Speakers fail to act.

CONCLUSION:

The Anti-Defection Law of 1985 was a landmark step in strengthening India's parliamentary democracy by addressing the menace of political opportunism and instability. It has succeeded in reducing the blatant "Aaya Ram, Gaya Ram" culture of individual floor-crossing, thereby bringing a measure of stability to governments. However, over the years, loopholes such as the misuse of the split provision, partisan decisions by Speakers, and tactics like mass resignations have weakened its effectiveness. Judicial interventions and the 91st Amendment of 2003 have tried to plug some gaps, but challenges remain in balancing political stability with democratic freedom of expression. For the law to achieve its true purpose, reforms are needed such as transferring adjudicatory powers from Speakers to an independent authority, limiting the whip to confidence motions and money bills, and ensuring time-bound decisions. Ultimately, the Anti-Defection Law must evolve into an instrument that not only prevents corruption and horse-trading but also preserves the core values of debate, dissent, and accountability in a vibrant democracy.

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Key Constitutional Amendments

The Constitution (52nd Amendment) Act, 1985 – Insertion of Tenth Schedule.

The Constitution (91st Amendment) Act, 2003 – Restricting size of the Council of Ministers and strengthening anti-defection provision

