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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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# PARLIMENTARY PRIVILIGES AND ANTI DEFECTION LAW IN INDIAN CONSTITUTION

AUTHORED BY - MITHIL M. BURANDE - LL.M 1st year

## 1.1. ABSTRACT

Elections are an important part of democratic governance and it is natural for politicians with different ideas to emerge. The free and fair competition of politicians for the power to govern the country during the election process shows that the democratic process is important. Political parties crystallize different ideologies and are important for the success of democracy. However, departures from the party are worrying for the party system

The anti-defection law deals with situations of defection in Parliament or state legislatures by: (a) members of a political party, (b) independent members, and (c) nominated members. In limited circumstances, the law allows legislators to change their party without incurring the risk of disqualification. The Anti-Defection Law, enshrined in the Tenth Schedule of the Indian Constitution, aims to prevent defections by prohibiting voluntary resignations and voting against party directives. It safeguards electoral integrity and the stability of governments by imposing penalties for violations.

## 1.2. INTRODUCTION

**The parliament privileges:** The law-making power rests upon the hands of the Indian parliament. The parliament consists of the Lok Shabha and the Rajya Sabha. The Lok Shabha is also called as the lower house or the house of people, its members are elected directly. Whereas, the members of Rajya Sabha or the Upper House are elected indirectly by the members of the state legislative assemblies and the Union territories.

In India, parliamentary privileges are available not only to the members of a House but also to those who, though not members of a House, are under the Constitution entitled to speak and take part in the proceedings of a House or any of its committees. These persons are Ministers and the Attorney General.<sup>1</sup>

The privileges of a House have two aspects (1) external, and (1) internal. They refrain anybody from outside the House to interfere with its working. This means that the freedom of speech and action are restricted to some extent. The privileges also restrain the members of the House from doing something which may amount to an abuse of their position.

Article 105 defines the privileges of the two Houses of Parliament. This constitutional provision does not exhaustively enumerate the privileges of the two Houses. The endeavour of the framers of the Constitution was to confer on each House very broadest privileges, as broad as those enjoyed by the House of Commons which possesses probably the broadest privileges as compared to any other legislature in the world.<sup>2</sup>

<sup>1</sup> [https://lawcorner.in/what-are-various-parliamentary-privileges-in-india/#google\\_vignette](https://lawcorner.in/what-are-various-parliamentary-privileges-in-india/#google_vignette)

<sup>2</sup> The Indian polity by M. Laxmikant (7<sup>th</sup> edition)

**The anti-defection law :** The politics of defection has been the bane of the parliamentary system in India. The vice of defection has been rampant in India for quite some time, especially at the state level. Defection means floor-crossing by a member of one political party to another party.

Defection causes government instability, for a government may be toppled over due to the defection of some of its supporters to the opposition party converting it from a minority into a majority party. Defection is undemocratic as it negates the electoral verdict. A party which fails to get a majority in the House through election may yet be able to manoeuvre a majority in the House and form the government by inducing defections from other parties. Thus, the party which may have won a majority through election, and got the mandate from the people to form the government, may yet fail to do so because a few of its members defect from the party.<sup>3</sup>



<sup>3</sup> The Indian Constitution By M.P.Jain (8<sup>th</sup> edition)

## **2.1 CONCEPT PARLIMENTARY PRIVILIGES:**

Members of the House of Representatives have certain individual and collective rights. These are rights granted to members of parliament by law or by the government. Without these rights, it will be difficult for Parliament members to exercise and fulfil their powers that ensure the effective functioning of the Parliament.

Therefore, in interpreting these rights, attention must be paid to the general principle that laws are given to members for the purpose of enabling them to discharge their duties in Parliament without interference or interference.<sup>4</sup>

## **2.2. MEANING:**

“Parliamentary privileges” refers to a set of special rights and immunities enjoyed by members of the Parliament or Legislative Assembly and which are necessary for the operation of the law. These rights are granted to legislators to enable them to carry out their duties effectively without interference or threat, thereby protecting the freedom and independence of the legislature.

These include rights such as freedom of speech and expression in the legislature, immunity from arrest in public places during meetings, executive power and self-management of the process without interference from external authorities. Parliament's rule of law is essential to upholding democratic standards, enabling debate and effective scrutiny, and preserving the dignity and authority of the legislature.<sup>5</sup>

## **ARTICLE 105 OF THE INDIAN CONSTITUTION:**

### **Powers, privileges, etc., of the Houses of Parliament and of the members and committees thereof**

- (1) Subject to the provisions of this Constitution and the rules and standing orders regulating the procedure of Parliament, there shall be freedom of speech in Parliament.
- (2) No member of Parliament shall be liable to any proceedings in any court in respect of anything said or any vote given by him in Parliament or any committee thereof, and no person shall be so liable in respect of the publication by or under the authority of either House of Parliament of any report, paper, votes or proceedings.

<sup>4</sup> [https://lawcorner.in/what-are-various-parliamentary-privileges-in-india/#google\\_vignette](https://lawcorner.in/what-are-various-parliamentary-privileges-in-india/#google_vignette)

<sup>5</sup> <https://cms.rajyasabha.nic.in/UploadedFiles/Procedure/RajyaSabhaAtWork/English/244-310/CHAPTER8.pdf>

(3) In other respects, the powers, privileges and immunities of each House of Parliament, and of the members and the committees of each House, shall be such as may from time to time be defined by Parliament by law, and, until so defined, shall be those of that House and of its members and committees immediately before the coming into force of section 15 of the Constitution (Forty-fourth Amendment) Act 1978.

(4) The provisions of clauses (1), (2) and (3) shall apply in relation to persons who by virtue of this Constitution have the right to speak in, and otherwise to take part in the proceedings of, a House of Parliament or any committee thereof as they apply in relation to members of Parliament.<sup>6</sup>

### 2.3 CLASSIFICATION OF PRIVILEGES:

Parliamentary privileges can be classified into two broad categories:

1. those that are enjoyed by each House of Parliament collectively, and
2. those that are enjoyed by the members individually.

**Collective Privileges** The privileges belonging to each House of Parliament collectively are:

1. It has the right to publish its reports, debates and proceedings and also the right to prohibit others from publishing the same. The 44th Amendment Act of 1978 restored the freedom of the press to publish true reports of parliamentary proceedings without prior permission of the House. But this is not applicable in the case of a secret sitting of the House.
2. It can exclude strangers from its proceedings and hold secret sittings to discuss some important matters.
3. It can make rules to regulate its own procedure and the conduct of its business and to adjudicate upon such matters.
4. It can punish Members as well as outsiders for breach of its privileges or its contempt by reprimand, admonition or imprisonment (also suspension or expulsion, in case of members).<sup>7</sup>
5. It has the right to receive immediate information of the arrest, detention, conviction, imprisonment and release of a member.
6. It can institute inquiries and order the attendance of witnesses and send for relevant papers and records.
7. The courts are prohibited to inquire into the proceedings of a House or its committees.
8. No person (either a member or outsider) can be arrested, and no legal process (civil or criminal) can be served within the precincts of the House without the permission of the presiding officer.

<sup>6</sup> The Indian Constitution Bare Act, 2023

<sup>7</sup> The Indian polity by M. Laxmikant (7th edition)

**Individual Privileges** The privileges belonging to the members individually are

1. They cannot be arrested during the session of Parliament and 40 days before the beginning and 40 days after the end of a session. This privilege is available only in civil cases and not in criminal cases or preventive detention cases.
2. They have freedom of speech in Parliament No member is liable to any proceedings in any court for anything said or any vote given by him in Parliament or its committees. This freedom is subject to the provisions of the Constitution and to the rules and standing orders regulating the procedure of Parliament.
3. They are exempted from jury service. They can refuse to give evidence and appear as a witness in a case pending in a court when Parliament is in session.<sup>8</sup>

#### 2.4 RELATION WITH FREEDOM OF SPEECH:

There has been some confusion on the question whether the Fundamental Rights control in any way the privileges which the Houses enjoy under Article 105(3). Which is to prevail in case of a conflict between such a privilege and a Fundamental Right?

This question arose for the first time in *Gunupati*. In one of its issues, the *Blitz* published a news item casting derogatory aspersions on the Speaker of the UP Legislative Assembly. The Speaker referred the matter to the Committee of Privileges of the House for investigations and report. The committee summoned D.H. Mistry, editor of the *Blitz*, to appear before it to clarify the position. Mistry neither appeared before the committee nor did he send any reply. Thereafter, the Assembly adopted a resolution authorising the Speaker to issue an arrest warrant against Mistry with a view to enforcing his presence before the House to answer the charge of breach of privilege. Accordingly, the Speaker issued the warrant and, consequently, Mistry was arrested in Bombay on the charge of committing contempt of the UP Legislative Assembly.<sup>9</sup>

He was brought to Lucknow and was lodged in a hotel for a week without anything further being done in the matter. In the meantime, a petition for a writ of habeas corpus was moved in the Supreme Court on his behalf on the ground that Mistry's Fundamental Right under Article 22(2) had been violated. Article 22(2) envisages that a person arrested must be produced before a magistrate within 24 hours of his arrest. The Supreme Court accepted the contention that as Mistry had not been produced before a magistrate, his Fundamental Right under Article 22(2) was infringed and, accordingly, the Court ordered his release.

The petitioner also contended that the proceedings before the Committee of Privileges threatened his Fundamental Right under Article 21 as well. According to Article 21, no person can be deprived of his personal liberty otherwise than in accordance with the procedure established by law. The editor's contention was that the proceedings before the Committee of Privileges violated Article 21.

<sup>8</sup> The Indian polity by M. Laxmikant (7th edition)

<sup>9</sup> The Indian Constitution by M.P. Jain 8<sup>th</sup> edition

The Court also rejected this contention. The Court argued that the House can make rules under Article 118 in case of a House of Parliament, or Article 208 in case of a House of the State. Therefore, the rules made by the House regulating the procedure for enforcing its Legislature powers, privileges and immunities would fulfil the requirement of Article 21.

## 2.5. OTHER PRIVILIGES :

### FREEDOM FROM ARREST

A member cannot be arrested on a civil proceeding within a period of 40 days before and 40 days after a session of the House. The object of this privilege is to secure the safe arrival and regular attendance of members on the scene of their parliamentary duties. The privilege extends only to civil arrest and not to arrest on a criminal charge, or for contempt of court, or to preventive detention. The reason to exempt preventive detention from the scope of parliamentary privilege is that privileges of Parliament are granted for the service of the country and not to endanger its security.

A detainee has no right to attend meetings of Parliament. A House of Parliament, however, has a right to receive immediate information about the arrest of any of its members, or about the offence and conviction, if any, of the member after trial. According to the Lok Sabha Rules, when a member is arrested on a criminal charge or sentenced to imprisonment by a court, or detained by an executive order, the committing judge, magistrate or executive authority should immediately intimate to the Speaker the fact of arrest, conviction or detention, its reasons, and the place of detention or imprisonment.<sup>10</sup>

The fact of release of the arrested member after conviction on bail pending an appeal or otherwise, is also to be notified to the Speaker. The Speaker reads out in the House the communications received by him under these rules. Failure to intimate to the House the detention of one of its members amounts to a breach of the privilege of the House.

A member of the Legislature arrested or detained has a right to correspond with the Legislature, to make representations to the Speaker and the Chairman of the Committee of Privileges, and executive authority has no right to withhold such correspondence. The House may also obtain information about the condition of the member under detention, the treatment meted out to him and other facilities afforded to him by putting questions to the government.

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<https://loksabhadocs.nic.in/LSSCOMMITTEE/Privileges/Introduction/Introduction%20Committee%20of%20Privileges%2017%20LS.pdf>

## **INQUIRIES**

A House has power to institute inquiries and order attendance of witnesses, and in case of disobedience to bring witnesses in custody to the bar of the House. A person charged with contempt and breach of privilege, can be ordered to amend and if there is a wilful disobedience of the order, the House has power to take the person into custody and the House alone is the proper judge when these powers are to be exercised.

## **FREEDOM FROM JURY SERVICE**

Members of Parliament are exempted from jury service. Members may decline to give evidence and appear as a witness in a court of law when Parliament is in session. These privileges are founded on the paramount right of the House to the attendance and service of its members.

## **PRIVACY OF DEBATES**

A House of Parliament has a right to exclude strangers from its proceedings and hold its sittings in camera. This power may be used by the House to go into secret session for reasons of national security. The Speaker/Chairman may, whenever he thinks fit, order the withdrawal of strangers from any part of the House.

## **PUBLICATION OF PROCEEDINGS**

There was a time when the House of Commons used to prohibit publication of its proceedings by passing resolutions. Even as late as 1762, the House of Commons characterised in a resolution the publication of its proceedings as "a high indignity to and a notorious breach of the privilege of this House." The reason for this attitude was that there was no adequate protection against arbitrary kings, and members of the House could come to grief for doing plain speaking in the House.

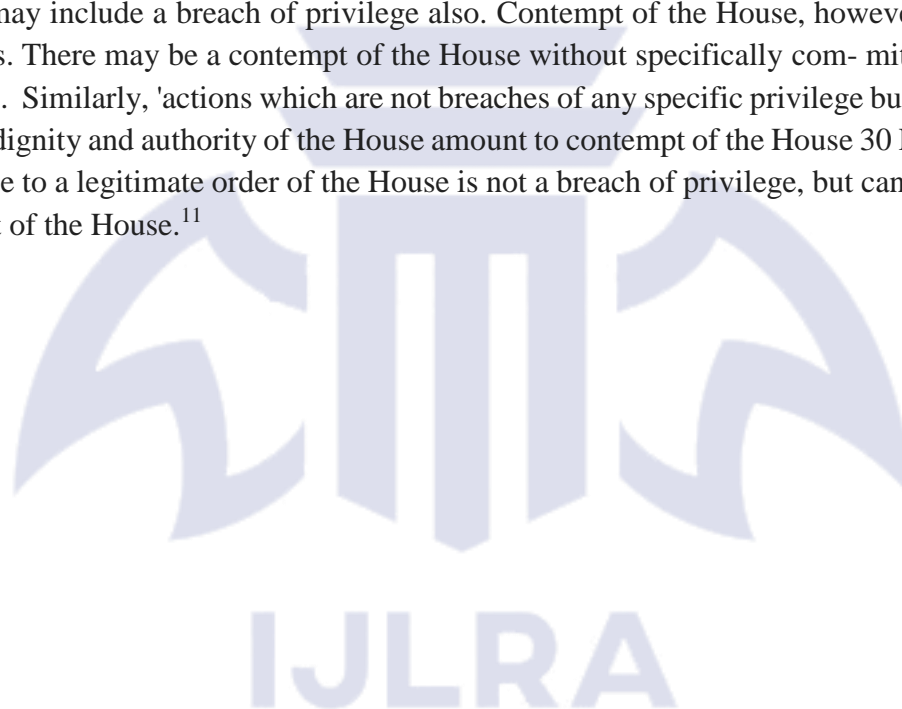
In such a situation, secrecy of parliamentary debate was considered necessary not only for the due discharge of the responsibilities of the members but also for their personal safety. This object could be achieved by prohibiting publication of any report of the debates and proceedings of the House and also by excluding strangers from the House and holding debates behind closed doors.

## 2.6. BREACH OF THE PRIVILIGES AND CONTEMPT OF THE HOUSE:

"When any individual or authority disregards or attacks any of the privileges, rights and immunities, either of the member individually or of the House in its collective capacity, the offence is termed as breach of privilege and is punishable by the House. "

Any act or omission which obstructs a House of Parliament, its member or its officer in the performance of their functions or which has a tendency, directly or indirectly to produce results against the dignity, authority and honour of the House is treated as a contempt of the House, Though the two phrases, 'breach of privilege' and 'contempt of the House' are used interchangeably, they have different implications.

Normally, a breach of privilege may amount to contempt of the House. Likewise, contempt of the House may include a breach of privilege also. Contempt of the House, however, has wider implications. There may be a contempt of the House without specifically committing a breach of privilege'. Similarly, 'actions which are not breaches of any specific privilege but are offences against the dignity and authority of the House amount to contempt of the House<sup>30</sup> For example, disobedience to a legitimate order of the House is not a breach of privilege, but can be punished as contempt of the House.<sup>11</sup>



<sup>11</sup> <https://cms.rajyasabha.nic.in/UploadedFiles/Procedure/RajyaSabhaAtWork/English/244-310/CHAPTER8.pdf>

### 3.1. CONCEPT OF ANTIDEFECTION LAW:

In recent times, Defection Laws have been a fundamental issue due to complete violation of the defection rules in the country by the leaders. Since independence, the practice of defection has been a debatable issue in India. The politics of defection has been the bane of the parliamentary system in India. The vice of defection has been rampant in India for quite some time, especially at the state level. Defection means Floor-crossing by a member of one political party to another party.

The 52nd Amendment Act of 1985 provided for the disqualification of the members of Parliament and the state legislatures on the ground of defection from one political party to another. For this purpose, it made changes in four Articles of the Constitution and added a new Schedule (the Tenth Schedule) to the Constitution. This act is often referred to as the 'anti-defection law'.

Later, the 91st Amendment Act of 2003 made one change in the provisions of the Tenth Schedule. It omitted an exception provision i.e., disqualification on ground of defection not to apply in case of split.<sup>12</sup>

### 3.2. WHAT IS DEFECTION ?

The Oxford dictionary has described Defection as the act of leaving your own country or political party and joining an opposite one.

According to the report of committee on defection in 1967, Defector was defined as a person "who is an elected member of the legislature and had been allotted the reserve symbol of any political party. He can be said to have defected it, if after being elected as a member of either house of Parliament or at legislature council or legislative assembly of state or union territory and he voluntarily renounces allegiance or association with such political party provided that his action is not in consequence of the decision of the party concerned"<sup>13</sup>

### 3.3 WHAT IS LAW OF ANTI-DEFECTION?

Anti Defection Laws basically provide for the grounds under which a Member Legislative Assembly or a Member Parliament can lose his privileges as an Elected Representative of a party and hence can be disqualified from the party. These Grounds have been provided under the Tenth Schedule of the Constitution. The Indian Judiciary has time and again intervened through various judicial pronouncements and has tried to lay down several guidelines through precedents in order to promote better politics and healthy competition among the parties.<sup>14</sup>

<sup>12</sup> INDIAN CONSTITUTION BY ,M.P.JAIN 8<sup>TH</sup> EDITION

<sup>13</sup> <https://blog.ipleaders.in/explained-anti-defection-laws/>

<sup>14</sup> INDIAN POLITY BY M LAXMIKANT 7<sup>TH</sup> EDITION

### 3.3 HISTORY AND NEED OF ANTIDEFECTION LAW :

There is a well-known phrase of “Aaya Ram Gaya Ram” which relates back to 1967, when Gaya Lal, who was a congress leader fortnight went from congress to Janata Party and then back to congress and then again to Janata Party.

In the journal titled “Aya Ram Gaya Ram- The politics of defection” by the Indian Law Institute in 1979, it was stated that between the period of 1967 to 1969 more than 1500 party defections and 313 independent candidate defections had taken place in the 12 states of the country. It is estimated that till 1971, more than 50% of the legislature had switched from one party to another.<sup>15</sup>

### KIHOTA HOLLOHON CASE 1993

Explaining the rationale underlying Schedule X, the Supreme Court has stated that the provisions of Schedule X give recognition to the role of the political parties in the political process. A political party goes before the electorate with a particular programme; it sets up candidates at the election on the basis of such programme; a candidate is therefore elected on the basis of the party programme.

The underlying premise of Schedule X is that political propriety and morality demand that if a member of a legislature, after the election, changes his political affiliation and leaves the political party which had set him up as a candidate at the election, then he should give up his seat in the legislature and contest election again under the banner of the new party adopted by him.<sup>16</sup>

### 3.4 DISQUALIFICATION ON BASIS OF

**Members of Political Parties:** A member of a House belonging to any political party becomes disqualified for being a member of the House,

- (a) if he voluntarily gives up his membership of such political party contrary to any direction issued by his Party; or
- (b) if he votes or abstains from voting in any political party without obtaining prior permission of that party and such act has not been condoned by the party within 15 days.

**Independent Members:** An independent member of a House (elected without being set up as a candidate by any political party) becomes disqualified to remain a member of the House if he joins any political party after such election.

**Nominated Members:** A nominated member of a House becomes disqualified for being a member of the House if he joins any political party after the expiry of six months from the date on which he takes his seat in the House. This means that he may join any political party within six months of taking his seat in the House without inviting this disqualification.<sup>17</sup>

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<sup>15</sup> [https://blog.ipleaders.in/explained-anti-defection-laws/#Grounds\\_for\\_review\\_of\\_the\\_decision\\_of\\_speaker](https://blog.ipleaders.in/explained-anti-defection-laws/#Grounds_for_review_of_the_decision_of_speaker)

<sup>16</sup> Kihoto hollohon v. Zachilhu 1993

<sup>17</sup> INDIAN POLITY BY M LAXMIKANT

### **3.5 EXCEPTION OF THE LAW:**

The above disqualification on the ground of defection does not apply in the following two cases:

- (a) If a member goes out of his party as a result of a merger of the party with another party. A merger takes place when two-thirds of the members of the party have agreed to such Berger.
- (b) If a member, after being elected as the presiding officer of the House, voluntarily gives up the membership of his party or rejoins it after he ceases to hold that office. This exemption has been provided in view of the dignity and impartiality of this office.

It must be noted here that the provision of the Tenth Schedule pertaining to exemption from disqualification in case of split by one-third members of legislature party has been deleted by the 91 Amendment Act of 2003. It means that the defectors have no more protection on grounds of splits.<sup>18</sup>

### **WHETHER THE RIGHT TO FREEDOM OF SPEECH AND EXPRESSIONS OF THE PARLIAMENTARIANS AND LEGISLATORS IS VIOLATED BY THE TENTH SCHEDULE:**

The Constitution has avowedly guaranteed the right to freedom of speech and expression under Article 19 of the Constitution of India; however, it is subject to the reasonable restrictions mentioned therein.

This right is guaranteed to every citizen including the legislators and the parliamentarians; thus, this was made a ground to question the legitimacy of the Para 2 of the schedule (Grounds for disqualification). It was held by the Supreme Court in Kihoto Hollohon case, that the Tenth Schedule does not subvert the rights of elected members of parliament and the legislature and thus, it did not violate Article 105 and 195 of the constitution while holding this it was expressed by the Supreme Court that the provisions of the Tenth schedule are salutary and were intended to strengthen the fabric of Indian parliament democracy while curbing unprincipled and unethical political defections.<sup>19</sup>

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<sup>18</sup> 91 th amendment in the Indian constitution 2003

<sup>19</sup> [https://blog.ipleaders.in/explained-anti-defection-laws/#Grounds\\_for\\_review\\_of\\_the\\_decision\\_of\\_speaker](https://blog.ipleaders.in/explained-anti-defection-laws/#Grounds_for_review_of_the_decision_of_speaker)

**Lacunae in defection law:**

The competition among the individuals in a party can emerge due to numerous reasons; it can be due to the inward disagree against the conclusions of senior pioneers or the battle for control and since of these reasons the chosen individuals alongside other chosen individuals take off these parties to connect the restriction. This may annihilate the equitable soul of our country since a steady government is inborn for a popular government. The visit government emergency can lead to doubt among the individuals and can cause a menace.

The Hostile to Absconding laws were included into the Structure of India as a set of rules for the reasonable play among the chosen individuals for distant better. When a individual gets assigned as a part by the party and contests election beneath the image of a party, he ought to owe his steadfastness to that party but within the current situation, numerous pioneers take off their parties and connect the restriction which in turn can lead to break down of the government in that specific state which causes political precariousness. Hence, it is vital for the lawmakers to act in adherence to the whip and the convictions of the party.

**ADVANTAGES AND DISADVANTAGES:****ADVANTAGES:**

1. It provides for greater stability in the body pol ne by checking the propensity of legislators to change parties.
2. It facilitates democratic realignment of parties in the legislature by way of merger of parties as non-developmental expenditure incurred on irregular elections.
3. It gives, for the first time, a clear-cut constitutional recognition to the existence of political parties.

**DISADVANTAGES:**

1. It does not make a differentiation between dis sent and defection. It curbs the legislator's right to dissent and freedom of conscience Thus, 'it clearly puts party bossism on a pedestal and sanctions tyranny of the party in the name of the party discipline.
2. Its distinction between individual defection and group defection is irrational. In other words it banned only retail defections and legalised wholesale defections'.
3. It does not provide for the expulsion of a legislator from his party for his activities outside the legislature.
4. Its discrimination between an independent member and a nominated member is illogical. If the former joins a party, he is disqualified while the latter is allowed to do the same.<sup>20</sup>

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<sup>20</sup> The Indian constitution by D D Basu

#### **4.1 CONCLUSION:**

Parliamentary privileges are fundamental rights and allowed to individuals of parliament to guarantee the successful working of legislative bodies. These privileges include freedom of speech and debate, freedom from arrest during sessions of parliament, and the right to regulate their own internal affairs. These privileges are essential for legislators to carry out their duties without fear of intimidation or interference, fostering open discourse and accountability within the democratic process.

On the other hand, anti-defection laws are authoritative measures pointed at protecting party teach and political solidness by anticipating lawmakers from exchanging parties self-assertively. These laws regularly force punishments on individuals who imperfection from their party, such as preclusion from holding office or removal from the council. Whereas anti-defection laws offer assistance keep up the coherence of political parties and avoid debt surrenders that might weaken the law-based handle, they too raise questions approximately the adjust between party devotion and person soul in agent majority rule government.

