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## **REVISITING THE ANTI- DEFECTION LAW: CHALLENGES AND WAY FORWARD**

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### ***ABSTRACT***

The 52<sup>nd</sup> Amendment to the Constitution, enacted in 1985, introduced Anti –Defection legislation emphasizing the grounds for defection, merger in the defection law, speaker as the deciding authority as to disqualification and exemptions. This paper analyzes the effectiveness and shortcomings of the amendment. Initially the amendment aimed at bringing government stability, parliamentary democracy by stopping political defection. This paper analyzes the loopholes of this amendment by recent political happenings. This paper also analyzes the need for reforms in the area of adjudicatory authority's power (i.e.) speaker power, the time limit for speaker decision, the whip provided by the political organization which is curtailing the legislator's prerogative to express themselves without censorship. This paper also analyzes the landmark judicial pronouncements. The study also adopts a comparative perspective by briefly examining anti-defection frameworks in selected democracies and analyzes recent political developments in Tamil Nadu, particularly the emergence of Tamilaga Vettri Kazhagam (TVK), to assess whether the existing legal framework remains effective in addressing contemporary political realignments. Ultimately, the study advocates for more balanced and accountable framework that upholds both party discipline and the democratic freedom of individual legislators.

**Keywords:** 1. Anti – Defection law; 2. Parliamentary democracy; 3. Political defection; 4. Speaker discretion; 5. Tenth schedule.

### **INTRODUCTION:**

The Anti-Defection provision was incorporated into Indian Constitution by the 52<sup>nd</sup> Amendment Act of 1985, which introduced the 10<sup>th</sup> Schedule. In March 1<sup>st</sup> of that year it became formally operative. It was brought in to tackle the increasing number of instances

where elected MPs and MLAs were switching parties after being elected—often going against the very parties that gave them their ticket. Such defections, especially during important votes in the legislature, were causing serious political instability.

Until then, India didn't have any legal framework to deal with this issue. One of the most striking examples came in 1967, when Gaya Lal, a legislator from Haryana, switched political organization multiple times within just one day. This resulted in the now-famous phrase —Aaya Ram, Gaya Ram, ॥ which came to symbolize the rampant and opportunistic party-switching common.

The law aimed to stop this trend by introducing disqualification for elected representatives who defected from their parties. The goal was to ensure more stable governments and to reinforce the idea that voters elect both the candidate and the party they represent. However, even decades later, the effectiveness of the law is under debate. This article takes a closer look at the flaws and loopholes in the law, examines its real-world impact, and considers whether reforms are needed to make it more effective.

### **HISTORY:**

Political defection has a long history in India dating back to the time of British colonial rule. Earliest instances occurred when Shri Shyam Lal Nehru, central legislative assembly member, shifted his allegiance from INC to support the British authorities. A few years later, in 1937, Hafiz Ibrahim, elected to the Uttar Pradesh Legislative Assembly, left the Muslim League and joined the Congress. These early examples, though isolated, hinted at a trend that would later pose serious challenges to Indian democracy.

The real surge in defections, however, came after the 1967 general elections. That year marked a turning point in Indian politics, as several non-Congress governments came to power in various states for the first time since Independence. This shift led to an increase in political horse-trading and party-hopping, creating instability and weakening the credibility of elected governments. Concerned by this growing crisis, the Lok Sabha established a high-level committee on December 8, 1967, to study the problem and suggest solutions. The former Union Home Minister, Y.B. Chavan, headed the committee and was tasked with finding an approach to reduce the growing threat of political defections.

Y.B. Chavan Committee made several key recommendations. It was proposed that political organization ought to engage in inter-party consultations to frame a code of conduct. It also recommended that Chief Minister and Ministers should be selected solely from representatives chosen to serve in the popularly elected legislative chamber. Additionally, it proposed that defective members should be barred from voting for one year or until reappointment. While these recommendations highlighted the seriousness of the problem, they were seen as inadequate in effectively tackling defections. However, there was widespread agreement among political parties that defections were damaging to democracy and needed to be addressed.

Parliament made attempts to pass anti-defection laws through the 32nd Constitutional Amendment Bill in 1973 and the 48th Amendment Bill in 1978. However, neither was enacted — the 32nd Amendment, expired upon the termination of lower house tenure and the 48th was withdrawn before being introduced. It was only in 1985 that Parliament successfully passed a law to address the issue, introducing the 10<sup>th</sup> Schedule to the Constitution. This became referred to as the Anti-Defection Law and represented a major step forward in controlling political defections in the country.

### **DEFINITIONS OF DEFECTION IN INDIAN POLITICS:**

Defection in politics refers to the act of a politician or political figure abandoning their party, group, or political allegiance to join another, often opposing, party or movement. This is usually done due to ideological disagreements, personal ambition, dissatisfaction with leadership, or strategic advantage. There may be serious repercussions, such as shifting the balance of power within a legislature, influencing public opinion, or triggering elections in parliamentary systems. Defection refers to the act of law maker switching their party affiliation from the one of which they were elected, often in pursuit of personal gain, ministerial office, or ideological convenience<sup>1</sup>. Defection refers to when a legislator switches allegiance the political party they were originally elected to a different party, leading to instability in governance and undermining democratic mandates<sup>2</sup>.

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<sup>1</sup> Singh, M.P. and Rekha Saxena, Indian Politics: Contemporary Issues and Concerns. (PHI Learning, 2008).

<sup>2</sup> Subhash C. Kashyap, Our Constitution: An Introduction to India's Constitution and Constitutional Law (National Book Trust, 2008).

## GROUND OF DEFECTION:

The circumstances in which MPs or MLA may be disqualified for defecting are a member voluntarily resigns from the party, they may be disqualified<sup>3</sup>. This need not involve a formal resignation; even actions suggesting disloyalty, such as public criticism of the party or supporting opposition, may attract disqualification.

As per Paragraph 2(1)(b)<sup>4</sup>, a member is also disqualified if they vote or abstain against the party's whip without prior permission or if the party does not condone the action within 15 days. This ensures party discipline during critical votes.

Paragraph 2(2)<sup>5</sup> applies to independent members, after the election if joined a political party are disqualified, safeguarding the non-partisan mandate they received from voters.

For nominated members, Paragraph 2(3)<sup>6</sup> after being nominated, they have 6 months to become a member of a political party. They will be disqualified if they join after this time.

According to paragraph 6, the speaker or Chairman makes the decisions on disqualification, however these decision are subject to scrutiny by courts. Overall, the Law aims to prevent political instability and uphold electoral integrity, However, there are still worries regarding its impact on internal party dissent.

## EXEMPTIONS UNDER THE ANTI-DEFECTION LAW:

The Anti-Defection Law provides exemptions in specific cases. A parts lawmakers are not disqualified if two thirds of them consent to join another party<sup>7</sup>. This allows legitimate mergers and party reorganizations. Earlier, defection by one-third of members was treated as a valid split, but this was removed by the 91st Amendment Act, 2003 to curb misuse. Another exemption under Paragraph 5<sup>8</sup> applies to Presiding Officers like the Speaker or Chairman. After being elected to these positions, they are free to leave their party without losing their eligibility. However, if they rejoin a party after stepping down, they may be disqualified.

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<sup>3</sup> The constitution of India, tenth schedule, para 2(1)(a).

<sup>4</sup> Tenth schedule, constitution of India.

<sup>5</sup> Tenth schedule, constitution of India.

<sup>6</sup> Tenth schedule, constitution of India.

<sup>7</sup> The constitution of India, tenth schedule, para 4

<sup>8</sup> Tenth schedule, constitution of India.

## CHALLENGES:

Despite its intent to promote political stability, the Law faces several challenges. The Speaker's role is one important concern, who decides on disqualification petitions. Given that the speaker is often a member of a political party, questions of bias and impartiality often arise. In numerous instances, delays in decision-making, which allows defectors to continue in office and sometimes influence crucial votes. Although the law originally allowed exemptions for party splits, this led to frequent misuse and political instability. Even after its removal by the 91st Amendment, merger provisions continue to be used tactically, often blurring the line between genuine realignments and opportunistic defections. Another major concern is that the law, in trying to ensure party discipline, suppresses legitimate dissent. Legislators are often forced to toe the party line, even on issues of conscience or public interest, undermining the spirit of parliamentary democracy.

## JUDICIAL PRONOUNCEMENTS:

In *Kihoto Hollohan v. Zachillhu & Ors*<sup>9</sup>, the Court scrutinized the legal soundness of the 10th Schedule. The petitioners challenged the Schedule, arguing it infringed upon fundamental rights and violated the basic principles of the Constitution. The Court affirmed the Schedule's constitutionality. It noted that while the law imposes certain restrictions on legislators, these are reasonable and serve a larger public interest. However, the Court struck down Para 7 of the 10th Schedule, which sought to make decisions regarding disqualification non-justiciable, as it lacked the necessary ratification by state legislatures, rendering it unconstitutional. The judgment reinforced the principle that while the Speaker has the authority to decide on disqualification matters, such decisions are subject to judicial review.

In *G. Viswanathan v. Hon'ble Speaker, TNLA*<sup>10</sup>, the appellants, elected as AIADMK MLAs, were dismissed from the organization in 1994. The Speaker later declared them "unattached members." When they joined the MDMK, the Speaker disqualified them under Paragraph 2(1) (a) of the 10<sup>th</sup> Schedule for defection. According to them after expulsion, they no longer belonged to the AIADMK and consequently they were not disqualified. The court held that even when a legislator, elected as a party candidate, is expelled, they are still deemed to belong to that party through out their term. The Court also clarified that —unattached memberl has no

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<sup>9</sup> AIR 1993 SC 412

<sup>10</sup> (1996) 2 SCC 353

constitutional validity. It upheld the Speaker's decision, affirming that switching to a different political organization post-expulsion amounts to voluntary relinquishment and attracts disqualification.

In *Ravi S. Naik vs. Union of India*<sup>11</sup>, the Court affirmed the disqualification of Goa MLAs in the 10<sup>th</sup> Schedule, holding that—voluntarily giving up party membership can be inferred from conduct, not just formal resignation. It was decided that burden of proving a valid divide in the group lies on the members, and procedural lapses, like not meeting the one-third threshold, render such claims invalid.

In *Rajendra Singh Rana & Ors. Vs. Swami Prasad Maurya & Ors*<sup>12</sup>. The Court considered a disqualification petition under Article 191(2) and Para 2 of the 10<sup>th</sup> Schedule, as to 13 MLAs of the BSP whom on 27 August 2003 asked the governor to invite the Samajwadi Party to form UP government. Delivering a letter to the governor requesting that he summon the opposition leader to form the government is equivalent to—voluntarily giving up membership of the founding party under Para 2(1)(a) of the 10<sup>th</sup> Schedule. Therefore, the 13 MLAs disqualified.

In *Shri Yengkhom Surchandra Singh vs. The Hon'ble Speaker, Manipur Legislative Assembly*<sup>13</sup>, the petitioner, elected in 2017 on an INC ticket, faced disqualification under Article 191(2) and Para 2(1)(a) of the 10<sup>th</sup> Schedule for allegedly—voluntarily giving up party membership by supporting the BJP. Evidence included his presence at BJP events, wearing BJP apparel, media reports of his association, and a BJP membership form dated 2017. The Speaker, noting the petitioner did not contest these materials, disqualified him effective 18 June 2020. However, the court decided that he had been denied natural justice and overturned the disqualification. The court determined that he had not received adequate notice or a fair opportunity to be heard; the cause list was advanced to an unusual time and not properly served. Thus, despite the evidence, the process violated constitutional safeguards of fair hearing.

In *Padi Kaushik Reddy & Ors. v. State of Telangana & Ors*<sup>14</sup>. the apex court directed the Telangana Legislative Assembly speaker to decide within three months on the petition for disqualification filed against ten BRS MLAs who defected to the Congress after the 2023 state

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<sup>11</sup> AIR 1994 SC 1558

<sup>12</sup> (2007) 4 SCC 270

<sup>13</sup> AIR ONLINE 2021 MPR 54

<sup>14</sup> 2025 LiveLaw (SC) 755

elections. The Court held Speaker, acting as a quasi-judicial authority under the 10<sup>th</sup> Schedule of the Constitution, does not enjoy constitutional immunity and must adjudicate such matters expeditiously. The Court criticized the seven-month delay in issuing notices to the MLAs, stating that such inaction undermines the very purpose of the anti-defection law. It also warned that any attempts by the MLAs to protract the proceedings would lead to adverse inferences against them. The ruling reinforces the judiciary's role in ensuring timely and impartial decisions in matters of disqualification.

In *Ajit Vishnu ranade vs. union of India*<sup>15</sup> bench comprising the then chief justice Mr. Chandrachud, Mr. Justice J.B. Pardiwala Hon'ble Mr. Justice Manoj Misra On September 20, 2024 the apex court dismissed a petition challenging the constitutionality of the 10th Schedule, known as the anti-defection law. Introduced in 1985 to address frequent defections by elected representatives, the law disqualifies MPs and MLAs who switch parties or disobey party directives without permission, except in cases of mergers involving two-thirds of party members. The Court affirmed the law's validity, stating it necessary to uphold the democratic mandate. It held that the 10th Schedule not affect freedom of speech, as legislators can still express opinions within their parties but must not undermine party positions after elections.

### **COMPARATIVE APPROACHES TO POLITICAL DEFECTION:**

Different democratic countries have adopted diverse approaches to political defection based on their constitutional traditions and political systems. While several countries have enacted statutory or constitutional provisions to regulate party switching, others rely primarily on political conventions and electoral accountability. Countries such as Bangladesh, Pakistan, Singapore, Kenya and New Zealand have incorporated anti-defection mechanisms that disqualify legislators who voluntarily leave their political parties or act contrary to party directives on specified legislative matters. These measures seek to ensure governmental stability and maintain party discipline. Conversely, democracies such as the United Kingdom, the United States, Canada, Australia and Germany do not impose legal disqualification for party switching. Instead, legislators are generally permitted to change political affiliation without forfeiting their seats, leaving the consequences of such decisions to political conventions and the judgment of the electorate in subsequent elections. The comparative experience demonstrates that there is no universally accepted model for addressing political defection.

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<sup>15</sup> Writ Petition(s) (Civil) No.(s). 500/2024

Jurisdictions with anti-defection laws prioritise political stability and the preservation of electoral mandates, whereas countries without such legislation place greater emphasis on legislative independence, freedom of conscience and representative democracy. India's Anti-Defection Law reflects the former approach; however, comparative constitutional practices indicate the need to strike a more balanced equilibrium between ensuring party discipline and safeguarding the democratic autonomy of elected representatives.<sup>16</sup>

## **RECENT POLITICAL DEVELOPMENTS IN TAMIL NADU AND EMERGING CHALLENGES TO THE ANTI-DEFECTION LAW:**

Recent political developments in Tamil Nadu have brought renewed attention to the Anti-Defection Law, particularly in relation to instability within the AIADMK and shifting alignments towards the Tamilaga Vettri Kazhagam (TVK) government. In a significant political episode, a group of AIADMK MLAs reportedly supported the TVK government during a crucial confidence motion, despite the issuance of a party whip directing them otherwise, raising questions about the application of disqualification provisions under the Tenth Schedule of the Constitution. At the same time, several AIADMK legislators resigned from their Assembly seats and later aligned themselves with TVK, which was viewed as a strategic move to avoid formal disqualification proceedings, since resignation before adjudication can effectively remove the scope of anti-defection action. These developments were further complicated by allegations from the AIADMK that the ruling dispensation encouraged defections and weakened opposition unity, while also challenging the Speaker's decisions regarding acceptance of resignations and handling of defection-related complaints. The Speaker's role once again came under constitutional scrutiny as it highlighted the wide discretionary powers involved in determining disqualification matters, especially in politically sensitive situations. Overall, these events demonstrate that political realignments in Tamil Nadu are increasingly testing the effectiveness of the Anti-Defection Law, as defections now occur not only through direct floor-crossing but also through resignation strategies and post-poll party switching, thereby raising serious concerns about party discipline, constitutional accountability, and the stability of elected governments.

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<sup>16</sup> Abhay Kumar, "International Aspect of Anti-Defection Law", *Indian Journal of Law and Legal Research*, available at: [https://3fdef50c-add3-4615-a675-a91741bcb5c0.usrfiles.com/ugd/3fdef5\\_bd6a017ae30c4fe2a2ea9](https://3fdef50c-add3-4615-a675-a91741bcb5c0.usrfiles.com/ugd/3fdef5_bd6a017ae30c4fe2a2ea9), last visited on 29 June 2026.

## WAY FORWARD:

Despite being implemented to maintain political stability and curb opportunistic defection the law requires urgent reform to address several loopholes that weaken its effectiveness. The speaker's tardiness in making decision on disqualification petitions is one of the main issue. Speaker frequently comes from the party in power, bias can influence decisions, compromising the impartiality expected from such a constitutional authority. These delays allow defectors to continue in office and even influence crucial legislative decisions, making the law ineffective in practice. Furthermore, the law limits elected official's freedom of speech and expression by requiring them to vote along party lines even when doing so may go against their conscience or interest of their voters, even as it uses this to ensure party discipline. This issue finds a parallel in Chamala Kiran Kumar Reddy's criticism of the BRS abstaining from the Vice-Presidential election; he implied that standing by constitutional values and supporting a non-partisan candidate like Justice B. Sudarshan Reddy would have been a democratic move—something individual legislators cannot freely do under the whip system. The merger provision also undermines the spirit of the law, as it allows mass defections to be legalized if two-thirds of legislators agree, though the motive is political opportunism or personal gain. This clause has frequently been misused as a shield for corruption, allowing governments to be toppled without legal consequence. To overcome this, the merger clause should be repealed or redefined with stricter checks. Furthermore, institutionalizing inner-party democracy through regular and transparent internal elections would empower legislators to voice dissent within the party structure and reduce the top-down control of party leadership. This would not only uphold the freedom of expression of elected members but also strengthen the democratic ethos within political parties, making the anti-defection law more meaningful and just. To sum up, although the anti-defection law is crucial for ensuring political stability and preventing unprincipled shifts in allegiance, it must evolve into a more balanced and accountable framework. The law should continue to uphold party discipline to protect the mandate of the electorate, but not at the cost of suppressing the democratic freedom and conscience of individual legislators. Reforms must ensure timely and impartial decisions by the Speaker, restrict misuse of provisions like the merger clause, and promote internal democracy within parties. By doing so, the law can truly reflect the spirit of the Constitution—ensuring accountability, encouraging genuine political debate and dissent within a structured party system, and maintaining the authenticity of India's parliamentary democracy.