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Anti-Defection Law in India: A Critical Analysis of the Tenth Schedule

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ABSTRACT

The Anti-Defection Law was introduced through the Constitution (Fifty-second Amendment) Act, 1985 to address the growing problem of political defections in India. Before its enactment, frequent defections by legislators destabilized elected governments and undermined democratic values. The law, incorporated in the Tenth Schedule of the Constitution, aims to promote political stability and party discipline by disqualifying legislators who voluntarily give up their party membership or vote against the party whip without permission. While the legislation has reduced opportunistic defections, it has also attracted criticism for restricting the freedom of speech and conscience of legislators and for granting wide powers to the Speaker. The paper examines the constitutional framework, landmark judicial decisions, strengths, shortcomings, and reforms necessary to ensure that the Anti-Defection Law effectively balances political stability with democratic principles.

Keywords: *Anti-Defection Law, Tenth Schedule, defection, Speaker, political stability, Indian Constitution*

I. INTRODUCTION

Defection has long been a challenge to India's parliamentary democracy. The phrase "Aaya Ram, Gaya Ram" became synonymous with political instability after repeated instances of legislators switching parties for personal gain. Such defections often resulted in the collapse of elected governments and weakened public confidence in democratic institutions.

To curb this practice, Parliament enacted the Constitution (Fifty-second Amendment) Act, 1985, which introduced the Tenth Schedule into the Constitution.¹ The law seeks to discourage political opportunism and to ensure stable governance by disqualifying legislators who defect from their political parties. Over the years, however, it has generated significant debate regarding its impact on legislative independence, the role of the Speaker, and the scope of judicial review.

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¹ The Constitution (Fifty-second Amendment) Act, 1985 (India), which came into force on 1 March 1985, amended Articles 101, 102, 190 and 191 and inserted the Tenth Schedule. See INDIA CONST. sched. 10 (referable to Articles 102(2) and 191(2)).

This paper critically analyzes the Anti-Defection Law, its constitutional basis, its judicial interpretation, the challenges it has produced, and the reforms it may require.

II. RESEARCH PROBLEM

Although the Anti-Defection Law has reduced the frequency of defections, it has raised concerns regarding legislative independence, the misuse of the Speaker's powers, and delay in the decision of disqualification petitions.

III. RESEARCH OBJECTIVES

1. To examine the constitutional framework governing the Anti-Defection Law.
2. To analyze the important judicial decisions relating to defection.
3. To identify the strengths and the limitations of the existing law.
4. To suggest reforms for improving its effectiveness.

IV. RESEARCH METHODOLOGY

This study is doctrinal. It relies on primary sources such as the Constitution of India, judicial decisions and statutes, together with secondary sources including books, journal articles, government reports and scholarly commentaries.

V. CONSTITUTIONAL FRAMEWORK

The Anti-Defection Law is contained in the Tenth Schedule of the Constitution, inserted by the Constitution (Fifty-second Amendment) Act, 1985. The Constitution (Ninety-first Amendment) Act, 2003 strengthened the law by omitting paragraph 3, which had allowed a group amounting to one-third of a legislature party to escape disqualification by claiming a split in the original political party.²

Under paragraph 2 of the Tenth Schedule, a legislator is disqualified in the following circumstances.³

1. The member voluntarily gives up membership of the political party to which the member belongs.⁴

² The Constitution (Ninety-first Amendment) Act, 2003, s. 5(c) (India), omitted paragraph 3 of the Tenth Schedule with effect from 1 January 2004. Paragraph 3 had exempted from disqualification a group comprising not less than one-third of the members of a legislature party which claimed to have arisen from a split in the original political party. The defence of a split is accordingly no longer available.

³ INDIA CONST. sched. 10, para. 2(1)(a)-(b), 2(2), 2(3).

⁴ *Ravi S. Naik v. Union of India*, 1994 Supp (2) SCC 641 (India), holding that the expression "voluntarily given up his membership" is wider than resignation and may be inferred from the conduct of a member.

2. The member votes, or abstains from voting, contrary to a direction issued by that political party without obtaining prior permission, and the voting or abstention is not condoned by the party within fifteen days.
3. A member elected as an independent candidate joins a political party after the election.
4. A nominated member joins a political party after the expiry of six months from the date on which the member takes a seat in the House.

Paragraph 4 provides an exception in the case of a valid merger, where not less than two-thirds of the members of the legislature party concerned agree to the merger of their original political party with another party.⁵

The Speaker or the Chairman of the House decides questions relating to disqualification, and that decision is subject to judicial review.⁶

VI. LANDMARK JUDICIAL DECISIONS

A. *Kihoto Hollohan v. Zachillhu*

This judgment upheld the constitutional validity of the Tenth Schedule, but struck down paragraph 7, which had purported to oust the jurisdiction of the courts altogether, for want of ratification by the State legislatures under the proviso to Article 368(2).⁷ The Court held that the Speaker or the Chairman deciding a question of disqualification under paragraph 6(1) acts as a tribunal, so that the decision is amenable to judicial review, although that review is confined to jurisdictional errors such as violation of a constitutional mandate, *mala fides*, non-compliance with the rules of natural justice, and perversity; no *quia timet* action lies at an interlocutory stage before the Speaker has decided.⁸ The office is therefore not beyond judicial scrutiny, but the scrutiny available is narrow.

B. *Rajendra Singh Rana v. Swami Prasad Maurya*

The Supreme Court held that a Speaker who fails to decide a disqualification petition within a reasonable time is not exercising the jurisdiction conferred by the Tenth Schedule at all, and

⁵ INDIA CONST. sched. 10, para. 4. Paragraph 4(2) deems a merger to have taken place only where not less than two-thirds of the members of the legislature party concerned have agreed to it.

⁶ INDIA CONST. sched. 10, para. 6(1); *Kihoto Hollohan v. Zachillhu*, 1992 Supp (2) SCC 651 (India). See also J.N. PANDEY, CONSTITUTIONAL LAW OF INDIA (61st ed. 2024).

⁷ *Kihoto Hollohan* (n 6). Paragraph 7 barred the jurisdiction of all courts in respect of any matter connected with disqualification under the Tenth Schedule; because it worked a change in Articles 136, 226 and 227, it required ratification by the State legislatures under the proviso to Article 368(2), which had not been obtained.

⁸ *Id.* Judicial review of an order under paragraph 6(1) is confined to jurisdictional errors, namely violation of a constitutional mandate, *mala fides*, non-compliance with the rules of natural justice, and perversity.

that such a failure is itself open to correction by the Court.⁹ The Court also held that a letter addressed to the Governor by members elected on one party's ticket, asking him to invite the leader of a rival party to form the government, amounts by itself to voluntarily giving up membership of that party.¹⁰ Constitutional authorities must accordingly exercise their powers fairly and within a reasonable time.

C. *Nabam Rebia v. Deputy Speaker*

The Court ruled that a Speaker should not decide disqualification petitions while a notice of a resolution for the Speaker's own removal is pending, the object being to prevent bias in decision-making.¹¹ That holding no longer rests on settled ground. In *Subhash Desai v. Principal Secretary, Governor of Maharashtra*, a Constitution Bench referred the correctness of *Nabam Rebia* to a bench of seven judges, noting the argument that the rule permits legislators facing disqualification to disable the Speaker merely by giving notice of a removal motion.¹² The proposition must therefore be treated as unsettled.

D. *Keisham Meghachandra Singh v. Speaker, Manipur Legislative Assembly*

The Supreme Court held that disqualification petitions should ordinarily be decided within a reasonable period of three months, absent exceptional circumstances, and that a direction to a Speaker to decide within a fixed time does not offend the bar on premature intervention recognized in *Kihoto Hollohan*.¹³ The Court further recommended that Parliament consider replacing the Speaker as the adjudicating authority with a permanent tribunal headed by a retired judge.¹⁴

VII. ADVANTAGES OF THE ANTI-DEFECTION LAW

The law has contributed significantly to political stability in India. It discourages legislators from switching political parties merely for personal benefit or for ministerial office. It strengthens party discipline and allows elected governments to function without the constant threat of collapse through defection.

The law also protects the mandate given by voters. Citizens elect candidates on the basis of party ideology and election promises, and frequent defections distort the electoral verdict and weaken democratic accountability.

⁹ *Rajendra Singh Rana v. Swami Prasad Maurya*, (2007) 4 SCC 270 (India).

¹⁰ *Id.*

¹¹ *Nabam Rebia v. Deputy Speaker, Arunachal Pradesh Legislative Assembly*, (2016) 8 SCC 1 (India).

¹² *Subhash Desai v. Principal Secretary, Governor of Maharashtra*, 2023 SCC OnLine SC 607 (India), referring the correctness of *Nabam Rebia* to a bench of seven judges.

¹³ *Keisham Meghachandra Singh v. Speaker, Manipur Legislative Assembly*, (2021) 16 SCC 503 (India).

¹⁴ *Id.*

A further benefit is the reduction of the corruption that arises from political horse-trading. Legislators are less likely to change party affiliation for financial or political inducement because of the risk of disqualification.

VIII. CRITICISMS OF THE ANTI-DEFECTION LAW

Despite its objectives, the Anti-Defection Law has several weaknesses.¹⁵

First, it limits the freedom of legislators. Members are often compelled to follow the party whip even on ordinary legislative business, which reduces meaningful debate and independent decision-making within the legislature.

Second, the Speaker's role has been criticized because the Speaker ordinarily belongs to a political party. Allegations of bias and of partisan decision-making have frequently been made, particularly in politically sensitive cases.

Third, there is no statutory timeline for deciding disqualification petitions. Delay often allows a defecting legislator to continue in office and even to influence the formation of a government.

Fourth, the law is directed more at party discipline than at democratic deliberation. Legislators are discouraged from expressing dissent even where they believe that a policy may not serve the public interest.

Finally, the merger provision has at times been used as a means of facilitating large-scale defection rather than genuine political realignment.¹⁶

IX. NEED FOR REFORMS

Several reforms have been proposed by constitutional scholars and by successive committees and commissions.¹⁷

1. An independent tribunal, or the Election Commission, may be entrusted with deciding disqualification petitions in place of the Speaker. This would improve neutrality and public confidence.¹⁸

¹⁵ V.N. SHUKLA, CONSTITUTION OF INDIA (Mahendra P. Singh rev., 13th ed. 2017).

¹⁶ D.D. BASU, INTRODUCTION TO THE CONSTITUTION OF INDIA (26th ed. 2022); LAW COMMISSION OF INDIA, *Reform of the Electoral Laws*, Report No. 170 (1999), recommending that the exceptions for split and merger be deleted from the Tenth Schedule.

¹⁷ COMMITTEE ON ELECTORAL REFORMS, *Report* (1990) (India) (the Dinesh Goswami Committee); NATIONAL COMMISSION TO REVIEW THE WORKING OF THE CONSTITUTION, *Report* (2002) (India); LAW COMMISSION OF INDIA, *supra* note 16.

¹⁸ NATIONAL COMMISSION TO REVIEW THE WORKING OF THE CONSTITUTION, *supra* note 17, recommending that the power to decide questions of disqualification on the ground of defection vest in the Election Commission rather than in the Speaker or the Chairman; *Keisham Meghachandra Singh* (n 13), suggesting that Parliament consider a permanent tribunal headed by a retired judge.

2. A mandatory time limit should be prescribed for the decision of disqualification cases so as to prevent unnecessary delay.
3. The application of the party whip should be restricted to crucial votes such as motions of confidence and no-confidence, money bills, and constitutional amendments affecting the stability of the government. Legislators should otherwise enjoy greater freedom to express their opinions.¹⁹
4. The merger provision should be tightened further to prevent its misuse as a device for mass defection.
5. Greater transparency in the proceedings, and the publication of reasoned decisions, would improve accountability.

X. CRITICAL ANALYSIS

The Anti-Defection Law has undoubtedly reduced individual defections and has contributed to stable governments. Democracy, however, requires not only stability but also free and informed debate. Excessive party control weakens legislative independence and reduces legislators to followers of the party leadership.²⁰

The Supreme Court has repeatedly intervened to secure fairness, judicial review and the timely disposal of disqualification petitions. Judicial intervention alone, however, cannot cure the structural weaknesses of the law.

The better approach is to preserve the objective of preventing unethical defection while protecting the constitutional role of legislators as representatives of the people rather than as agents of political parties.

XI. FINDINGS

The study indicates that the Anti-Defection Law has substantially reduced political defections when compared with the position before 1985.

Concerns nevertheless remain regarding the impartiality of the Speaker, delayed decisions, and restrictions on the freedom of expression of legislators.

Judicial decisions have strengthened the constitutional safeguards, but legislative reform remains necessary in order to enhance transparency, neutrality and democratic accountability.

¹⁹ COMMITTEE ON ELECTORAL REFORMS, *supra* note 17, recommending that disqualification for voting or abstaining contrary to a party direction be confined to a motion of confidence.

²⁰ M.P. JAIN, *INDIAN CONSTITUTIONAL LAW* (8th ed. 2018).

XII. SUGGESTIONS

1. Transfer the power to decide disqualification petitions from the Speaker to an independent constitutional authority.
2. Introduce a mandatory time limit for the decision of defection cases.
3. Restrict the party whip to votes that directly affect the survival of the government.
4. Increase transparency by publishing detailed and reasoned decisions.
5. Prevent misuse of the merger provision through stricter legal safeguards.
6. Encourage ethical political conduct through stronger internal party democracy.

XIII. CONCLUSION

The Anti-Defection Law remains one of the most significant constitutional mechanisms for preserving political stability in India. It has addressed many of the problems associated with political defection and opportunistic party switching. Its implementation has nonetheless revealed important constitutional and democratic concerns, particularly in relation to legislative independence and the impartiality of the Speaker.

A balanced approach is necessary to ensure that the law prevents corruption and political instability without suppressing genuine debate and democratic dissent. Reform directed at neutrality, transparency and timely adjudication would strengthen both parliamentary democracy and public confidence in constitutional governance. The future of India's democracy depends not only on preventing defection but also on preserving the independence and the accountability of elected representatives.
