

# INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

---

Volume 7 | Issue 3

---

2024

© 2024 *International Journal of Law Management & Humanities*

Follow this and additional works at: <https://www.ijlmh.com/>

Under the aegis of VidhiAagaz – Inking Your Brain (<https://www.vidhiaagaz.com/>)

---

This article is brought to you for “free” and “open access” by the International Journal of Law Management & Humanities at VidhiAagaz. It has been accepted for inclusion in the International Journal of Law Management & Humanities after due review.

In case of **any suggestions or complaints**, kindly contact [Gyan@vidhiaagaz.com](mailto:Gyan@vidhiaagaz.com).

---

**To submit your Manuscript** for Publication in the **International Journal of Law Management & Humanities**, kindly email your Manuscript to [submission@ijlmh.com](mailto:submission@ijlmh.com).

---

# Anti-Defection Law in India

---

ANANSHI RANA<sup>1</sup> AND AMBAR SRIVASTAVA<sup>2</sup>

## ABSTRACT

*Established in the year 1985 by mode of the 52nd Amendment to the Constitution of India, Anti-Defection Law of India was outline to reduce the process threat presented by political defections. Adored in the Tenth Schedule, this statute aimed to undertake the democratic secureness and encourage party discipline. This analysis offers a thorough examination of the Anti-Defection Law's political result in India after its progress. This writing paper look over the organization of the law in turn aside defections, confirm the uprightness of political parties, and enhancing accountability among government officers by representation on empirical data, legislative history, and case studies. The Anti-Defection Law's provisions, weaknesses, and methods of enforcement are all examined in this analysis. It assesses the judiciary's function in interpreting and upholding the law as well, stressing significant rulings and their consequences for parliamentary democracy. The Anti-Defection Law's provisions, weaknesses, and methods of enforcement are all examined in this analysis. It assesses the judiciary's function in interpreting and upholding the law as well, stressing significant rulings and their consequences for parliamentary democracy. The essay also explores the socio-political environment that surrounds defections in India, taking into account elements like party dynamics, electoral incentives, and constitutional principles. It evaluates the difficulties and complaints the Anti-Defection Law has encountered, including claims of abuse and its effect on legislative authority. By using a multifaceted approach, this research adds to a more complex understanding of how the Anti-Defection Law affects Indian democracy and provides guidance to practitioners, academics, and politicians who aim to preserve constitutional ideals and build democratic institutions.*

**Keywords:** *Anti defection, Administrations, Democracy , Constitution of India, Legislative Authority.*

## I. INTRODUCTION

In India, anti-defection laws are an essential part of the political and legal system that works to protect the stability of the government and the democratic process. Since their adoption in 1985, these laws—which were intended to prevent opportunistic political defections—have

---

<sup>1</sup> Author is a student at Law College Dehradun, Uttaranchal University, Dehradun, Uttarakhand, India.

<sup>2</sup> Author is an Assistant Professor at Law College Dehradun, Uttaranchal University, Dehradun. Uttarakhand, India.

experienced a substantial amount of change that has shaped Indian politics and government. The Tenth Schedule of the Indian Constitution, which was added by the 52nd Amendment Act in 1985, is where anti-defection laws first appeared. The nation's democratic fabric and the stability of administrations were threatened by the growing phenomenon of lawmakers switching parties for personal benefit, which prompted the passage of this historic amendment. The principal aim was to discourage elected officials from participating in defection by enforcing sanctions, including as removal from office for party discipline violations. The disqualification of lawmakers who vote against party directions on important issues or depart from the ideology of their original party is one of the main features of the anti-defection law. This clause attempts to protect the idea of party loyalty and guarantee that elected officials continue to answer to the people and the party that nominated them. The application and interpretation of anti-defection laws have come under examination and discussion throughout the years, with the shape of these laws being shaped by a number of significant court rulings. In order to maintain party discipline and protect lawmakers' democratic rights, the Supreme Court of India has been instrumental in clarifying the parameters and applications of these statutes. Moreover, policymakers and academics have disagreed about how effective anti-defection laws are in accomplishing their stated goals. While supporters claim that these rules have contributed to stability and reduced political opportunism, detractors worry that they could be abused to suppress dissent and subvert democratic ideals. We examine the development, application, and ramifications of anti-defection legislation in India in this study article. Through an analysis of scholarly discourse, judicial precedents, and legislative changes, our goal is to offer a complete understanding of the complex dynamics surrounding this important component of Indian democracy. We want to clarify the usefulness, difficulties, and potential future effects of anti-defection legislation in influencing the political climate of the biggest democracy in the world by a careful analysis.

## **II. ANTI DEFECTION LAW IN INDIA**

There have been defections in India in the past during the British occupation. Central Legislator Shri Sham Lai Nehru switched political parties and sided with the British instead of the Congress.<sup>3</sup> Similar to this, after winning the Uttar Pradesh election in 1937 on the Muslim League Ticket, Shri Hafiz Moham-med Ibrahim changed parties and joined the Congress. The Chavan Committee Report (1969) states that during the one-year period between March 1967 and February 1968, Indian politics underwent such radical transformations that lawmakers frequently switched parties. Further, between the First and Fourth General elections, the average rate of defections in a period of 12 months was 438 defections. Due to this, there was a need for

change in the Indian political scenario and laws were to be made for defections so that one could not leak secrets of one party to the other. Thus, started the evolution of the Anti-Defection Law. As a result, there was a need for reform in the Indian political situation, and regulations for defections LAW BEGAN had to be enacted so that one could not leak secrets of one party to the other. The Anti-Defection law began.

### **III. EVOLUTION OF ANTI DEFECTION LAW IN INDIA**

India first enacted the Anti-Defection Law in 1985 as the 52nd Amendment to the Constitution. It was meant to counter the growing practice of political defections, in which elected officials would switch political parties in order to further their own agendas, in order to prevent political instability and a lack of responsibility. In an effort to preserve the stability of the administration, the rule prohibited elected officials from changing parties while they were in office. Legislators cannot switch their party affiliations in accordance with the Anti-Defection Law. This was revealed in 1967 when politician Gay Lal of Haryana shifted his allegiance to three different political parties on the same day. The saying "Aaya Ram Gaya Ram" gained popularity as a result of political party members periodically switching allegiances.<sup>5</sup> A resolution passed on December 8, 1967, demanding that the government address the problems of legislator defections and frequent floor crossings immediately led to a unanimous decision to establish a high-level committee made up of political party representatives and constitutional experts. In order to strengthen and improve its understanding over time, the Anti-Defection Law has undergone numerous revisions. A provision that allowed members to be disqualified for leaving the party whose ticket they were elected on was included in the 2003 proposal for the 91st Amendment. Another clarification provided by this amendment was that splits or mergers would not apply to divisions within political parties.

The Indian Supreme Court found that the Anti-Defection Law was lawful and did not violate lawmakers' rights to free speech and expression in the 2006 case of *Kihoto Hollohan v. Zachillhu*<sup>3</sup>.<sup>6</sup> Many changes were made to the Anti-Defection Law following Parliament's ratification of the 52nd Amendment to the Constitution in 2018. A disqualification petition has a six-month window within which the Speaker of the House must decide, according to the amended statute. It was also recommended that an unbiased panel be established to make decisions regarding disqualification pleas rather than the Speaker of the House acting alone. From the beginning of the Anti-Defection Law's creation, efforts have been made to balance protecting elected officials' rights with maintaining the government's stability and

---

<sup>3</sup> 1992 SCR(1) 686

accountability.

#### **IV. CONSTITUTIONAL VALIDITY**

The Tenth Schedule of the Indian Constitution contains the Anti-Defection Law, which was enacted to stop legislators from defecting from politics. It seeks to deter opportunistic political behavior and encourage stability. The constitutionality of the bill has come under scrutiny, especially in light of its effects on lawmakers' freedom of speech and expression. The Indian Supreme Court has maintained its legitimacy, but it has also imposed some restrictions to stop abuse. Overall, despite constant discussion and judicial interpretation, the law continues to be a crucial component of India's parliamentary democracy. The law is mostly criticized for restricting elected officials' freedom of speech and expression. However, the Supreme Court decided that the law does not violate this fundamental right because it simply prohibits legislators from rejecting the party whip on significant topics. Without breaking the law, representatives are allowed to express their thoughts and criticize the party's policy. The legislation has been criticized for violating the federal character of the Constitution, partly due to the Center's authority to nullify elected members. However, the Supreme Court decided that the act does not violate the federal structure of the Constitution because it only addresses the disqualification of elected officials for defecting and does not interfere with the authority of State legislators.

##### **(A) Amendment to the Anti Defection Law:**

After the introduction of the Anti-Defection law in the Indian Constitution several other undergone amendments have been provided to address a number of problems, challenges and weaknesses. As we know that the power related to the amendment of the constitution has been vested to the Indian parliament under Article 368. Some of the amendments related to the anti-defection laws in India are as follows:

**THE 52<sup>ND</sup> AMENDMENT ACT 1985:** India's 52nd Amendment Act established the country's anti-defection law. The statute modifying the constitution introduced the Tenth Schedule, which outlines the procedures for disqualifying elected officials for defection.

**THE 61<sup>ST</sup> AMENDMENT ACT 1968:** The 61st Amendment Act allowed political parties to unite without losing their eligibility by changing the Tenth Schedule. This amendment was made to prevent political parties from misusing the legislation to remove elected people from office who wish to join another party.

**THE 65<sup>TH</sup> AMENDMENT ACT 1991:** The 65th Amendment Act's tenth schedule revisions

made it feasible for political parties to split up without being automatically disqualified. This amendment was put out to prevent political parties from misusing the law to remove representatives from office who expressed a desire to leave their party.

**THE 91<sup>ST</sup> AMENDMENT ACT 2003:** The 91st Amendment Act amended Article 191 of the Constitution to state that elected officials will be removed from office if they defect or violate party policies. This amendment aims to prevent elected officials from defecting from their party in order to evade the anti-defection statute's disqualification.

## **V. IMPLICATION OF ANTI-DEFECTION LAW**

The Tenth Schedule of the Indian Constitution contains the Anti-Defection Law, which has a big impact on the political climate of the nation. Designed to prevent political defections, it was implemented in 1985 with the intention of preventing shady party switching and maintaining political stability. The law requires disqualification for elected officials who break its requirements and forbids them from joining another political party. Though the law's goal is to promote democracy, it has also generated discussions and disagreements over its usefulness influence on political accountability, and potential for abuse. The Anti-Defection Law affects India's political landscape in a number of ways. First of all, it encourages party discipline by discouraging legislators from defecting for political or personal advantage. By preventing frequent changes brought about by defections and guaranteeing continuity in policymaking, this promotes government stability. Moreover, it promotes ideological coherence inside political parties by preventing defections and encouraging elected officials to stick to the party's platform and doctrine. Secondly, by maintaining the mandate that voters have granted to a specific political party, the law seeks to maintain the idea of representative democracy. Defections frequently cause voter disenchantment and a decline in faith in democratic institutions by undermining the will of the electorate and undermining the electoral process. In an effort to solve this problem, the Anti-Defection Law forbids defections and holds public officials responsible for upholding the party platform. In addition, the law is essential to preserving the separation of powers between the legislative and executive arms of government. Defections can topple governments and cause political instability in parliamentary systems like the one in India, where the stability of the government is based on its majority in the legislature. Through impeding large defections, the law helps maintain the integrity of the parliamentary system and guarantees that governments may continue to operate efficiently without perpetual risk of implosion. The Anti-Defection Law's susceptibility to abuse and manipulation by influential political parties is a further point of contention. There have been accusations of authoritarianism

and top-down control because the statute gives party leaders considerable authority to impose discipline and penalise dissension among their ranks. Furthermore, the disqualification clauses in the statute are sometimes open to interpretation and judicial challenges, which causes delays and uncertainty in their implementation.

## **VI. IMPACT OF ANTI-DEFECTION LAW ON THE FUNCTIONING OF PARLIAMENTARY DEMOCRACY IN INDIA**

The Anti-Defection Law, which was put into effect in 1985, prohibits legislators and members of parliament (MLAs) from leaving their party. Supporting a vote of no confidence in the government or switching parties without first getting permission from the party is illegal for elected officials. The provision was enacted to prevent legislators from repeatedly moving parties in an effort to further their own interests at the expense of the interests of the people they were elected to represent.

The functioning of India's legislative system has been significantly impacted by the Anti-Defection Law. The regulation has maintained stability in the government, aside from the fact that elected officials are less likely to change parties, which reduces the risk of governments collapsing. Nevertheless, as a result of the statute, MPs and MLAs have lost some of their influence as independent voices as they are required to follow party lines.

The Indian Supreme Court has heard several challenges to the Anti-Defection Law. The 1992 *Kihoto Hollohan* case was one of the most significant cases. In this case, the Supreme Court decided that the Anti-Defection Law remained lawful while permitting judicial review of the presiding officer's disqualification decision. The court continued by saying that a member should be given the chance to be heard before a decision is made to prevent them from participating. In the *G. Vishwanathan* case<sup>4</sup> of 1996, the Supreme Court held in a different ruling that the Anti-Defection Law only applied to cover party members and did not apply to independents.<sup>14</sup> The court further found that abstentions were not protected by the Act because they differed from voting against the party whip. The Anti-Defection Law has had a substantial effect on how well India's parliamentary system functions. Although it has contributed to the administration's stabilisation, it has lessened the significance of MPs and MLAs as independent voices. After the Act was challenged in court multiple times, the Supreme Court declared it to be lawful and issued guidelines for its implementation. Considering all of this, the Anti-Defection Law is still an essential tool for upholding party discipline and deterring.

---

<sup>4</sup> 1996 AIR 1060

(A) Challenges and criticisms of the Anti Defection Laws in India:-

*The 52nd Amendment to the Indian Constitution was ratified in 1985 in response to the problem of defection in the country's political system, and it introduced anti-defection laws. To prevent public personnel from abruptly changing political parties or allegiances, the rule was implemented. But over time, the Act has run into a lot of problems and criticisms. The Indian Constitution's Article 19(1)(a) protects the right to freedom of speech and expression, which the anti-defection legislation is said to have infringed. MPs and MLAs' freedom of expression and conscience are restricted by the legislation, which mandates them to vote in accordance with the party whips issued by their respective parties.*

Freedom of speech and expression is being violated: The Indian Constitution's Article 19(1)(a) protects the fundamental right to freedom of speech and expression, which the anti-defection legislation is said to have infringed.

Absence of accountability and transparency: The anti-defection measure has drawn criticism for lacking accountability and transparency. The presiding officer of the House, a member of the ruling party, has the authority to legally dismiss an MP or MLA. This may result in biased and unjust decisions that damage the legitimacy of the legal system.

Abuse of the Law: Political parties have abused the anti-defection law to manipulate MPs' and MLAs' defections in order to further their own agendas. By promising them ministerial positions, cash, and other benefits, the clause has been utilised to entice MPs and MLAs to defect from other parties.

Ambiguity in the law: The anti-defection law is allegedly ambiguous and open to many interpretations. Because the law is unclear regarding what makes a good reason to change one's political allegiance, it leaves room for abuse and exploitation.

(B) Proposed substitute for the Anti Defection Legislation:

Secret voting procedure: some experts have recommended that secret ballots be used for voting in State and Parliament legislatures. This would free MPs and MLAs to vote as their consciences dictate, without any fear of reprisal or punishment from their political parties. Guidelines for behaviour an alternative to the anti-defection legislation is the adoption of a code of conduct for MLAs and MPs. This would allow for the establishment of moral standards for public servants and ensure that their decisions prioritise the needs of their constituents over those of their political parties. Law reform many experts believe that changes to the anti-defection statute are necessary to solve the problems and grievances that it has received. It may be necessary to amend the law to increase accountability and transparency in the decision-making process and



to clarify the conditions that constitute a valid reason for a person to change their political affiliation.

## **VII. LANDMARK JUDGMENTS RELATED TO THE ANTI DEFECTION LAW**

*Ravi s Naik v. Union of India*<sup>5</sup> 1994: The Goa Chief Minister, Ravi S. Naik, was the subject of the litigation about his defection. According to a Supreme Court ruling, a state governor cannot dismiss a chief minister without good reason if the minister has defected, and the decision can be appealed in court.

*G. Vishwanathan V. Speaker, Tamil Nadu Legislative Assembly* (1996)<sup>6</sup>: The Supreme Court decided that in this instance, one could challenge the decision to remove an MP or MLA from office in accordance with the anti-defection law by filing a writ petition to the High Court.

*Rajendra singh Rana v. Swami Prasad Maurya* (2007)<sup>7</sup>: In this case, the Supreme Court made it clear that a member's disqualification under the anti-defection law cannot be contested before the Speaker or Chairman has made a determination regarding the disqualification petition.

*Shri Yengkhom surchandra singh v. The Hon'ble speaker* 2020<sup>8</sup>: In a major ruling in the Manipur Legislative Assembly Case in July 2020, the Supreme Court of India confirmed the Speaker's order to dismiss nine MLAs in accordance with the anti-defection law. 17. The court `made clear that the Speaker may consider disqualification petitions and that the decision to disqualify is susceptible to judicial review.

*Meghalaya speaker's Decision* (2019): The Meghalaya Speaker disqualified five MLAs in January 2019 based on the anti-defection law. Despite the MLAs' objections to the decision, the High Court upheld the disqualification. The Supreme Court heard the case in 2019 but decided not to reverse the Speaker's decision.

*Keshvananda Bharti And Others V. State of Kerala And Another*<sup>9</sup>: It was decided that judicial review is one of the fundamental elements of the constitution and that its basic framework cannot be violated by amending the document.

(A) Drawbacks and Defects Of anti defection law:

**Issue Relating To Mergers:** Parties that merge together may be exempt from disqualification under Rule 4 of the Tenth Schedule. This clause, however, is dependent more on the quantity

---

<sup>5</sup> 1994 AIR 1558 1994 SCR (1) 754 1994 SCC SUPL.

<sup>6</sup> 1996 AIR 1060

<sup>7</sup> AIR 2007 SC 1305

<sup>8</sup> AIR ONLINE 2021 MPR 54

<sup>9</sup> 1973 4 SCC 225; AIR 1973 SC 1461

of members who approve the merger than it is on the cause of the defection. This opens a door because members who consent to the merger can also be driven by the prospect of high-paying positions or ministerial positions in the other party.

**Removals:** Regarding the expulsion of members from their political parties, the legislation is silent. Although parties maintain the authority to expel members in accordance with their party constitutions, the Tenth Schedule makes no mention of how expelled members should be treated. This leads to an unusual scenario in which members who have been ejected from the party may still be subject to whips and party discipline while losing all rights guaranteed by the party constitution.

**Scope of Judicial Review:** Rule 7 prevents courts—including the Supreme Court—from having jurisdiction over cases pertaining to a member's disqualification, making it impossible for them to examine the Speaker's decisions. The Supreme Court has ruled in a number of decisions that this limitation on judicial review is unconstitutional. To solve this issue, however, no changes have been made to the Tenth Schedule.

**Limitation on separate stands:** Rule 2 restricts party members' freedom to disagree with positions, policies, leaders, or legislation. Because they are supposed to follow party whips and values, members' freedom to differ is limited. This curtails the principle of representative democracy, which maintains that people should not be forced to follow party directions but rather be free to express their desires. The Anti-defection Law has several weaknesses and flaws that highlight the need for further amendments to uphold democratic values and ensure that the law effectively addresses political defections in India.

## **VIII. CONCLUSION**

The Tenth Schedule to the Indian Constitution was primarily drafted to address the problem of political defections. Even while the law has had some success, there are still certain gaps that keep it from reaching its full potential. Numerous committees have reviewed the statute over time and offered suggestions for improvements. These committees include the Hashim Abdul Halim Committee (1994), the Dinesh Goswami Committee (1990), the Law Commission of India's 170th report (1999), the National Commission to Review the Working of the Constitution of India's (2002) report, the Hashim Abdul Halim Committee (2003) report, and the Law Commission of India's 255th report (2015).

In order to improve the efficacy of the Anti-defection Law, it is recommended that the government thoroughly review these recommendations and contemplate implementing appropriate modifications to the current legislation. The law can be developed and enhanced to

the greatest extent possible by taking these committees' recommendations into consideration. This would make sure that the law better fulfils its goal of reducing political defections in India by addressing the flaws and loopholes found in the existing version. Such laws must be regularly reviewed and updated in order to respond to shifting political environments and issues. The Anti-defection Law can be strengthened and made more successful in maintaining the nation's representative democracy and fostering stable governance by putting the suggested changes into practice.

\*\*\*\*\*