

Defection Politics in India: A Critical Study of the Constitutional Validity of the Tenth Schedule

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ABSTRACT

This article analyses the Anti-defection law in India which was enacted by 52nd constitutional amendment in 1985 and amended by 91st constitutional amendment act in 2003. The main objective of this Law is to prevent elected legislators of Parliament and State Legislatures from switching to other political parties so that political stability in the government can be maintained. The article reflects the loopholes within the Law and the need for reforms.

Keywords: Anti-defection, Tenth Schedule, Disqualification, Merger, Legislators, Switch

INTRODUCTION

Anti-defection law disqualifies party-switchers and stabilize government. It curbs political opportunism. In a Parliamentary Democracy, elections to the Parliament and State Legislatures have been fought purely on party basis. The fate of the government depends upon the majority support in the Popular House of the Legislature. A strong party discipline and party loyalty are required for a ruling party to remain in power. But when the erosion of party discipline is highlighted, a disturbing feature of democracy develops in that particular party resulting the phenomenon of defection⁽¹⁾.

Causes of Defection in India

There are several causes for defection in Indian politics. The most important cause is allurements of high offices. Many legislators defect when they are offered or promised for lucrative high posts. Another cause is generally attached to a post of minister. When a minister post is promised to a legislator, that member does not hesitate to change the party. In some cases when legislators think that they are ignored by party leaders, they decide to join another party for giving a lesson to

that party. Sometime, the ruling party at the center, tempted the legislators of another political party ruled in a state for defection and split. It does such kind of things for getting more power and prestige. Many legislators, for their own personal interests, betrayed their parties and join opposite political parties⁽²⁾. Some elected members even changed their parties as many as four or five times within a year causing defection, re-defection and counter defection. Undoubtedly, the self-interest is the most powerful incentive that tend the legislators for committing the political sin of defection. Many actions like campaigning for another political party, joining a delegation of elected representatives from another political party, appearing in political rallies or fighting an election on the symbol of a political party have been held to constitute defection. It includes cases where the legislators have changed their parties and joined the opponent party to constitute a new govt. The motives are primarily of some sort of personal gain, may be for getting name and fame, for acquiring any office of profit. In some cases, it may be of inner satisfaction of throwing out of office being opposed by other party members. An act of defection becomes completed when those particular elected members dis-respect party's principles

as well as the leadership of party leaders. The defection includes voting or abstaining in the House against the party's directive without prior permission, and the party failing to take the action within 15 days. If the elected member votes or abstains from voting in the House, contrary to any direction issued by his political party or if the member votes in the House contrary to the wishes of the party, that member may come under defection.

Recent case of 07 out of 10 Aam Aadmi Party Rajya Sabha MPs quitting the party

On April 24, 2026, seven out of ten Rajya Sabha Aam Aadmi Party MPs quit the party and joined the Bharatiya Janata Party (BJP) that again awakened the Anti-defection law's loopholes. It became a major crisis for the party as the defecting group claiming a 2/3rd merger and the merger was approved by the Rajya Sabha Chairman as valid on April 27, 2026. Now the seven members naming Raghav Chadha, Sandeep Pathak, Ashok Mittal, Harbhajan Singh, Rajinder Gupta, Swati Maliwal, and Vikramjit Singh Sahney became the valid members of Bharatiya Janata Party; boosting to BJP's strength to 113 and Aam Aadmi Party is reduced to 03 members in the Rajya Sabha.

Defection Politics in Indian States after 1967

Prior to 1967, there was no problem of political defection. From the First General Election and then after, all political parties in India were strictly adhered to their party ideologies and programs in and outside of the Parliament and State Legislatures till Fourth General Election. In mid-1960, mainly after Fourth General Election, India's Democracy had faced a lot of unpleasant situations including the phenomenon of Defection. The most significant development in the post -1967 period was the formation of a large number of coalition governments in many states of India. In the period between 1967 to 1968, more than 500 MLAs of different states of India had changed their political affiliations and were responsible for the fall of no less than sixteen state governments in India. During that period, the elected legislators of different State Legislative Assemblies continuously changed their parties for their own personal benefits. It was after the Fourth General Election that the problem of defection, a disturbing feature of democracy became acute. From the period 1967 to 1973, about 2700 elected members of many Indian States had left their parties on whose tickets they were being elected.

Sixteen state governments were thrown out of power immediately during that period due to shifting from their own parties. From the month of March to the month of December 1967, about 9 per cent of elected legislators from the States of India had changed their parties. Out of total membership of 3,447 elected members in State Legislatures in India, 314 members had changed during in this short period. Except in Kerala, Madras, Maharashtra and Nagaland and negligible defections in Mysore, Orissa and Jammu and Kashmir, in other States and Union Territories, lots of defections were seen in India. The consequences after fourth general election, 1967 were formation, de-formation and re-formation of governments in several states of the Indian Union. The defection by the elected legislators had led political instability in India. The enactment of the Law became essential when there was political instability after the fourth General Election held in 1967. This was the time when the state govts in Haryana, Uttar Pradesh, Rajasthan, Bihar were toppled after MLAs of the ruling parties changed their parties to other opponent parties. In 1967 Mr. Gaya Ram, MLA Hasanpur, Haryana had changed parties 03 times in a single day. The infamous 'Aaya Ram, Gaya Ram' slogan was coined against the background of continuous defections by the legislators in Haryana. The defection led to instability in the government and in administration also. As many as sixteen state governments reduced to minority and collapsed for the reason of defection. To avoid this situation and to bring stability to the government the law was enacted in 1985. The Anti-Defection Law deters MPs and MLAs from changing their political parties from which they are being elect. Anti-Defection Law is intended to promote political stability and to uphold the integrity of Democracy in India. The penalty for shifting political loyalties is the loss of parliamentary membership and a bar on becoming a minister. The statement of objects and reasons of the Anti-Defection Law, 1985 stated: "The evil of political defections has been a matter of national concern. If it is not combated, it is likely to undermine the very foundations of our democracy and the principles which sustain it". At last, the 52nd constitutional Amendment Act was enacted to control the elected representatives in legislatures.

The Anti-defection Law, 1985; 52nd Constitutional Amendment and the Tenth Schedule

The Anti-Defection Law was enacted in 1985

through 52nd amendment adding the Tenth Schedule in the constitution⁽³⁾. This Act provided for the disqualification of the members of Parliament or State Legislatures on the ground of defection from one political party to another. The objective of the Law is to curb and control political defection. This law is a legal framework that seeks to curb the practice of political defection.

The amendment made changes in four Articles of the constitution for making this Landmark Law. Articles 101, 102, 190 and 191 of the Indian constitution which are relate to the vacation of seats and disqualification from the membership of Parliament or State Legislatures and added the Tenth Schedule. This new Schedule was added to the constitution for bringing stability and integrity in Indian political system while dealing with anti-defection.

The 52nd Constitutional Amendment Act introduced the Anti-Defection Law through the 10th Schedule and came into effect on March 1, 1985. The Law deals with situations of defection in Parliament and in all State Legislatures in India⁽⁴⁾. The Law deals with the disqualification of members on the ground of defection: (a) Elected members of political parties (b) Independent elected members and (c) Nominated members to the legislatures. The Chavan Committee on Defection says: 'An elected member of a legislature who has been allotted the reserved symbol of any political party can be said to have defected, if, after being elected as a member of either House of the Parliament or of Legislative Council or Legislative Assembly of a State or Union Territory, he voluntarily renounces allegiance to, or association with such a political party provided that his action is not in consequence of a decision of the party concerned'.

The Law prescribes the Grounds for Disqualification for elected, independent and nominated members. The law specifies the circumstances under which changing of political parties by legislators invite action under the law. The law covers 3 types of scenarios with respect to an elected representative switching his or her party.

- (i) When an elected member of the Parliament or State Legislatures who gives up his membership of a political party voluntarily shall come under defection. The ground of disqualification arises when an elected member elected on the ticket of a political party "voluntarily gives up" membership of such party and joins another

party. Any elected legislator when disobeyed the directives of the party on a vote or when s/he does not vote or abstains from voting as per party whip.

- (ii) When an independent elected member joins any political party after the election, disqualification proceedings is to be initiated against such member. So, any member who is independently elected joins any political party comes under defection.
- (iii) If a nominated member joins a party after six months of his or her nomination. When any nominated member joins any political party after the end of 6 months, the defection law is applicable to that candidate. The law specifies that within six months of being nominated to the House, they can choose to join any political party. The time is given so that if a nominated MP is not a member of a political party, they can decide to join one if they want. But if they don't join a political party during the first six months of their tenure, and join a party thereafter, then they lose their seats in the Parliament.

Exceptions

The above disqualification on the ground of defection does not apply to these two cases-

- (a) If a member goes out of his/her party as a result of a merger of the party with another party. A merger takes place when 2/3rds of the party have agreed to such merger.
- (b) If a member being elected as the Presiding officer of the House, voluntarily gives up the membership from his/her party.

Power to Disqualify

The authority to decide on the matter of disqualification related to defection rests with the Presiding officer of the House. The decision on disqualification questions on the ground of defection is to be referred to the concerned Presiding officer of the House⁽³⁾. Originally the Act provided that in the matter of disqualification, the Speaker or Chairman shall take the final decision and the decision cannot be questioned in any Court of Law⁽⁴⁾. However, in Kihoto Hollohan case (1992) the Supreme Court declared that this provision as unconstitutional on the ground that it seeks

to take away the jurisdiction of the supreme Court and High Courts. It held that the presiding officer, while deciding on defection, function as a tribunal. Hence the decisions like other tribunal, is subject to judicial Review on the grounds of mala fides, perversity etc. Under the Act, there is no time limit for the presiding officer. In case of a complaint against the Speaker or the Chairman of the House, the House selects an elected member of the House to deal with the defection.

The 91st Amendment of the Indian Constitution, 2003

The Law was further amended by 91st Amendment Act in 2003 as demanded from time to time for strengthening the Law. The Tenth Schedule was criticized on the ground that it allows bulk defections and declaring individual defection as illegal. The Amendment was made in 2003 and made significant changes to the original Anti-Defection Law passed in 1985. The amendment addressed the gaps in the original law and included the following provisions-

- (i) The 91st Amendment Bill does not recognize split within a party. Previously, a split within a party involving one-third of its members was permitted. Now, the law outlawed the previous law and allows only 2/3rd defection in the party. It says that a merger of faction must involve at least two-thirds of a party's members to be valid. It says that the defectors have no more protection on grounds of splits.
- (ii) In the situation where two-thirds of the legislators of a political party decide to merge into another party, neither the members who decide to join nor the ones who stay with the original party will face disqualification.
- (iii) Members who are disqualified due to defection are not allowed to hold ministerial or remunerative positions.
- (iv) A member of the Parliament or of the State Legislature disqualified on the ground of defection shall also be disqualified to hold any remunerative political post.
- (v) Any person elected as chairman or speaker can resign from his party and rejoin the party if he demits that post.

So, the provision of the Tenth Schedule pertaining to disqualification in case of split by one-third party members of the legislature has been deleted by the 91st Amendment Act of 2003.

Constitutional validity of the 10th Schedule and the Need for strengthening Anti-Defection Law:

Any question regarding disqualification arising out of defection is to be decided by the presiding officer of the House⁽⁵⁾. Originally the Act provided that the presiding officer's decision was final and could not be questioned in any court of Law. However, the validity of the 10th Schedule and Anti-defection law was challenged for several times⁽⁶⁾.

- In *Kihoto Hollohan vs. Mr. Zachillhu And Others* Case (18 February, 1992). The Supreme Court of India upheld the validity of the Law by giving the landmark judgement. In the famous *Hollohan's* judgement, Justice Verma said that the tenure of the speaker is dependent on the continuous support of the majority in the House and therefore, the Speaker does not satisfy the requirement of such independent adjudicatory authority. In this landmark 3:2 majority judgement, the Supreme Court ruled that the Speaker's decision was subject to judicial review on grounds of mala fides intention, violation of constitutional mandate, non-compliance with principles of natural justice etc. They opined that unprincipled defection is a political and social evil and the evil of political defections has been a matter of national concern if not combated. In this case, the court observed that the Chairman or the Speaker hold a pivotal position in the scheme of Parliamentary democracy Both are guardians of the rights and privileges of the House⁽⁷⁾. They have every right to take the right decisions in the functioning of Parliamentary democracy. This landmark judgement upheld the Tenth Schedule but made Speaker decisions judicially reviewable, applying to whip violations in no-confidence votes to ensure fairness. It affirmed disqualification for defying party directives on such motions.
- In *Mayawati vs. Markandaya Chand* (1998), the Supreme Court was divided on a split in the Bahujan Samajwadi Party could be reviewed. This issue led to the removal of the split in 91st Constitutional Amendment Act, 2003. In *Rajendra Singh Rana vs. Swami Prasad Maurya* (2007), the Supreme Court declared the speaker's decision as unconstitutional and decided the disqualification by itself. In this case

the court interpreted the term ‘voluntarily giving up from the original political party even though he or she has not tendered resignation from membership of his party. In *Keisham Meghachandra Singh vs. the Speaker of Manipur* (2020), the court held that the Speaker cannot employ delaying tactics and has to decide the disqualification petition within a reasonable period.

- Maharashtra Political Crisis and the Law-On 21 June 2022, the Udhav Thackeray-led Maha Vikas Agadi coalition government was toppled. A faction of the Shiv Sena party led by Eknath Sinde replaced Thackeray government by throwing the coalition in crisis. The leader of the breakaway Sena faction, Eknath Shinde establishing Shiv Sena- BJP alliance, became the new Chief Minister of Maharashtra. Shiv Sena party split into two parties. The Balasahebanchi Shiv Sena led by Shinde got recognition as the main Shiv Sena by the Election Commission of India on 17th February 2023. Thereafter, petitions were filed by the Thackeray group challenging the then Maharashtra Governor’s decision to call for a trust vote before his resignation. A Supreme Judgement on 11 May 2023 stated that the then Governor Bhagat Singh Koshiyari as well as the Assembly speaker Rahul Narwekar did not act as per Law. But the Thackeray government cannot be restored due to his resignation that led to cancellation of floor test. In later period, the Supreme Court has rebuked the Speaker of the Maharashtra Assembly for prolonging Anti-Defection proceedings against the chief Minister and other MLAs. The court expressed dissatisfaction with the lack of progress in the disqualification proceedings and urged the Speaker to make a decision within two months. Previously, the court had directed the Speaker to prepare a timeline for completing the disqualification proceedings under the Tenth Schedule of the Constitution. A five-judge Bench of the Supreme Court of India raises certain fundamental issues during hearing of a set of cases on Maharashtra political controversy about the working of Anti-defection law in India. Recently the Supreme Court has rebuked the Speaker of the Maharashtra Assembly for

prolonging Anti-Defection proceedings against the chief Minister and other MLAs. The court expressed dissatisfaction with the lack of progress in the disqualification proceedings and urged the Speaker to make a decision within two months.

- In *Girish Chodankar vs the Speaker of Goa Legislative Assembly* (2019), when 10 Congress MLAs and two MGP MLAs, defected to the BJP in 2019 are exempted from disqualification, the Supreme Court A merger of this group of Congress MLAs is ‘deemed to be a merger’ of the original political party with the BJP.
- *Rajendra Singh Rana V Swami Prasad Maurya* (2007) interpreted the term ‘voluntarily giving up from the original political party even though he or she has not tendered resignation from membership of his party.
- After the Congress victory in the 2023 Telangana Assembly polls, at least 10 MLAs of the then ruling Bharat Rashtra Samiti shifted allegiance to the Congress in early 2024.
- The long-running Maharashtra Shiv Sena split (2022 crisis and similar disputes in Jharkhand and Telangana show how merger and factional splits were treated in 2024-25.

Anti-defection Law and Rajya Sabha

India’s anti-defection law, enshrined in the Tenth Schedule is equally applies to members of Rajya Sabha like Lok Sabha aiming to curb political defection.

- A Rajya Sabha member can be disqualified if they voluntarily give up membership of their political party or vote against the party whip or abstain from voting without permission of the party⁽⁸⁾.
- Independent members are disqualified if they join a political party after election.
- Nominated members of the Rajya Sabha can join a political party within six months of nomination and after the period of six months if they join any party, they are liable for disqualification. This is a unique feature of Rajya Sabha.

The Tenth Schedule disqualifies legislators who voluntarily give up party membership or vote against party instructions. However, it does not apply to Rajya Sabha elections. Before 1998, Rajya Sabha elections witnessed minimal contention but the trend shifted after

this year when cross voting incidents began. So, the Open Ballot system was introduced in 2003 to curb cross voting and promote transparency in the elections.

Decision-making Authority in the Rajya Sabha

The Chairman of the Rajya Sabha is the sole authority who is empowered to decide defection cases involving Rajya Sabha members. However, such decisions are subject to judicial review. But there is no fixed timeline, leading to past delays. Exceptions include party mergers requiring two-third support and the deputy Chairman leaving the party.

In the past there was minimal contention in Rajya Sabha elections. Rajya Sabha elections were traditionally uncontested until 1998. But in 1998, the trend shifted when cross voting incidents began. A change was required in political strategies towards maintaining dissent in voting behavior. The introduction of an open ballot system in 2003 was intended to curb cross-voting. It promotes transparency in the electoral process of the Upper House of the Parliament. In *Kuldeep Nayar versus Union of India* (2006), the Supreme Court upheld the open ballot system. It clarified that voting against party candidates in Rajya Sabha elections does not invoke disqualification under the Tenth Schedule⁽⁹⁾. The court has confirmed the validity of the open ballot system. It ruled that a member's vote against party dictates resulted in cross voting in Rajya Sabha poll does not warrant disqualification under Tenth Schedule. The elections of Rajya Sabha or State Legislative Council are not coming within the purview of Tenth Schedule of the Constitution. The election of Rajya Sabha member by elected MLAs of different State Legislative Assemblies is an open ballot system where the vote cast by member can be seen by respective polling agents of different parties. 'Whip' of party does not apply in Rajya Sabha elections. Usually, MLAs follow the party direction. But many a times many members defy party dictates. They vote according to their personal preferences.

As Anti-defection law is applied only on elected members of parliament and state legislatures but not applicable to election for Rajya Sabha, there are chances of cross voting⁽¹⁰⁾.

- That is what was happened in Dasgupta's case. After his nomination to Rajya Sabha in 2016, he did not join a political party within the mandatory period of six months, and his membership was openly challenged under the

anti-defection law. On 17th March 2021, the nominated MP to Rajya Sabha Swapan Dasgupta resigned from the membership of Rajya Sabha, a year before completion of his term. Trinamool Congress MP Mahua Moitra had raised the issue of his disqualification from Rajya Sabha under Anti-defection Law, after the BJP has fielded Mr Dasgupta as its candidate for Tarakeswar Constituency in West Bengal Assembly election.

- In 2017, against two members of Janata Dal (United) Mr. Anwar and Mr. Yadav of the Rajya Sabha the defection was filed in the Rajya Sabha. The party accused that these two members were indulged in antiparty activities, even attending rallies of other parties. The party filed a petition seeking expulsion from the Rajya Sabha. But it was justified that the members voluntarily gave up the membership from the party before attending political rallies organized by other political party. These two JDU MPs were disqualified by the Rajya Sabha Chairman for voluntarily giving up membership of their party from which they were selected.
- Members of Rajya Sabha of Odisha naming Muzibulla Khan, Niranjana Bishi, Subashis Khuntia and Mamata Mohanta who had won from Biju Janta Dal tickets had left the party before the end of their terms in 03 April 2020, 07 June 2022, 04 April 2024 and 28 August 2024 respectively to join Bharatiya Janata Party.
- The Rajya Sabha elections in the state of Uttar Pradesh, Himachal Pradesh and Karnataka witnessed cross-voting by MLAs belonging to different political parties. In order to rein in the MLAs from such cross voting, an amendment to the Representation of People Act, 1951 was carried out in 2003.
- In a high episode linked to a Rajya Sabha election in Himachal Pradesh, six Congress MLAs cross-voted against their party line, backing the NBJP candidate in early 2024.
- On December 4, 2025, the Rajya Sabha Chairman disqualified two JD(U) MPs for defection reinforcing the principle that the anti-defection law applies equally to both Houses of the Parliament.
- In 2026 Rajya Sabha election in Odisha, Biju Janta Dal, suspended its six MLAs for defying

party's whip⁽¹¹⁾ in the election held on March 16.

Section 59 of the Act was amended to provide that the voting in elections to Rajya Sabha shall be through an open ballot. The MLAs of political parties are required to show their ballot paper to the authorized agent of the party. Not showing the ballot paper to the authorized agent or showing to anyone else will disqualify the vote. Independent MLAs are barred from showing their ballots to anyone. The Tenth Schedule provides that a member of the House of the Parliament or State Legislature who voluntarily gives up the membership of their political party or votes against the instructions of their party in a House is liable to disqualification from such House. This instruction with respect to voting is issued by the 'Whip' of a party. However, the elections to Rajya Sabha are not treated as a proceeding within the Legislative Assembly. The Election Commission, drawing reference to the Supreme Court judgement, had issued a clarification in July 2017. It specified that the provisions of the Tenth Schedule, with respect to voting against the instruction of the party, will not be applicable for a Rajya Sabha election. Furthermore, political parties cannot issue any 'whip' to their members for Rajya Sabha elections, because this voting is not inside the House but is conducted by the Election Commission. The Supreme Court in *Kuldip Nayar v. Union of India* (2006), upheld the system of open ballots for Rajya Sabha elections. It held that an elected MLA of a political party would not face disqualification under the Tenth Schedule for voting against their party candidates. He/she may at the most attract disciplinary action from their political party.

The Supreme Court has also held in *Ravi S. Naik and Sanjay Bandekar vs. Union of India* (1994), that voluntarily giving up membership under the Tenth Schedule is not synonymous with only formally resigning from the party to which the member belongs. The conduct of a member both inside and outside the house can be looked into to infer if it qualifies as voluntarily giving up membership. The six Congress MLAs, who cross-voted in Himachal Pradesh, have been disqualified under the Tenth Schedule for defying the party whip and being absent during the passage of Budget in the Assembly. A party cannot act against any MLA under the 10th Schedule as a whip cannot be issued for voting in the Rajya Sabha election. It is to uphold the higher principle of free and fair elections and its purity that the court upheld the

system of open ballot to Rajya Sabha elections.

However, the instances of cross-voting in the last decade have defeated the intent behind this procedure. Cross voting in Rajya Sabha elections raises legal and ethical questions regarding legislative intent and fidelity. It would be wishful thinking to expect any further amendments to strengthen the Constitution or laws against such voting practices since ruling party benefit from such unprincipled tactics. Cross-voting in Rajya Sabha election is a serious threat to Democracy. The act of cross voting could disrupt the fabric of trust and responsibility embedded within the electoral mandates. When instances of cross voting challenge the intended transparency, the judiciary may step either suo moto or through appeals to revisit and reinforce electoral propriety. The court may therefore initiate a suo moto Public Interest Litigation in this matter or take it up when the order by the Himachal Pradesh Speaker disqualifying the six MLAs eventually comes up before it on appeal. It may, in that process, review its own order in the *Kuldip Nayar* case in light of its judgement in the *Ravi Naik* case. Voting by an MLA against his/her political party in a Rajya Sabha election may well be construed as a strong reason to infer that the member had voluntarily given up membership of such party. If the court decides so, it would be a valid ground for disqualification under the Tenth Schedule. It would hopefully act as a deterrent against such cross-voting in the future. Establishing well defined deterrent measures may dissuade legislators to defy of party instructions within the realm of Rajya Sabha elections. Strengthening the legal provisions could mend the loopholes that help towards cross-voting. Establishing a culture of accountability might act as a neutral deterrent, reinforcing legislative commitment and integrity in political process. Current challenges before Rajya Sabha are cross voting. There are many instances of cross voting those undermine the democratic process and erode electoral integrity. Cross voting raises question about the effectiveness of existing mechanisms.

Criticism levelled against the Anti-Defection Law

1. Suppression of individual conscience

This law mandates that members shall be only adhered to their own party directives. This restriction affects the ability of the legislators to vote according to their conscience making the elected representatives like rubber stamp. They cannot express their views properly stifling the

debates in the Parliament.

2. **Ambiguity in Defection Grounds**

The Law's ambiguous provision includes 'voluntary giving up membership' allowing party leadership to disqualify members who deviate from the party's views. This liberal interpretation curtails the freedom of expression of the legislators.

3. **Undermines the impartiality of the legislative process**

The Speaker of the Lok Sabha or the Chairman of the Rajya Sabha who is often from the ruling party is responsible to decide defection cases. But these people are often associated with their own parties raising doubts about their impartiality. There is the chance of biased decision during adjudication. It probably undermines the impartiality of the legislative process.

4. **No original time limit in Tenth Schedule**

The Law does not specify a timeframe for the resolve of the defection cases⁽⁷⁾. There is lack of clear timelines to decide disqualification petitions. There is the process of delay in taking decisions. This delay in the process leads to prolonged periods where disqualified members continue to hold offices. The Act has allowed Speakers or Chairman to delay decisions for months or years letting the defectors to enjoy the office. This holding of office undermines law's deterrent effect that eventually shows political instability.

5. **Loopholes are being exploited by Political Parties**

The Law permits group defections if two-thirds of the members agree. This provision has been exploited to facilitate mass defection challenging the intent of the law and promotes instability in that party. There is always misuse of the Paragraph-4 of the merger clause. Legislators often claim that if two-third of a legislative party join another party, it counts as a 'valid' merger, even when the original political party has not formally merged⁽⁸⁾.

6. **Erode democratic principle**

The law compels legislators to align strictly with party lines. This compulsion lessens their

accountability towards the interests of their voters.

7. **Fragmentation of Political Parties**

For finding a way around in a surreptitious way, political figures form new small parties. To circumvent the law's restrictions, they do fragmentation within the party they belong. This fragmentation leads to unstable coalitions. Merger or split provisions have impact on intra-party democracy.

Issues and Challenges:

The anti-defection law primarily aims to maintain stable governments by preventing legislators from switching parties. The law was formulated with a well intention to combat the evil of political defections. But the question arises that how far it has been successful in it in combating evils of defections. There are several challenges as its implementation has been facing many controversies.

- ***Subversion of Electoral mandates:*** By legislators who got elected on the ticket of one party but then find it convenient to shift to another party. For getting financial gains or due to the lure of ministerial berths members are interested to leave their parties.
- ***Affects the debate and discussion:*** The Law has created a democracy of parties rather than a democracy of debate and discussion. In this way, it does not make a differentiation between dissent and defection and weaken the parliamentary deliberations on any law.
- ***Undermining Representation and Parliamentary Democracy:*** After the enactment the MPs and MLAs have to follow the party's direction blindly and has no freedom to vote in their judgement. Due to this law, the chain of accountability has been broken by making legislators accountable primarily to their own political party. It restricts legislators' conscience-based voting, shifting accountability from voters to parties.
- ***No Specific timeframe;*** The law does not provide a specific timeframe for deciding defection cases by respective speakers. Many instances are there where a speaker has misused the power by not determining the case until the end of the term of the current legislature.

- **Promote Horse Trading:** clearly go against the mandate of a democratic setup. Parties often use unlawful pressure upon the legislators to change their allegiance towards them. Defection politics in Rajasthan (2020), Maharashtra (2019), Karnataka (2019 & 2018), Tamil Nadu (2017).
- **Shifting of independent judgement:** The whip applies even on an ordinary legislation. The legislators risk disqualification for voting by conscience. It weakens deliberation and reduces them only as numbers. As a result, healthy constructive debates on policy issues are not usually witnessed.
- **Controversial Role of Speaker:** Concerns have been arising towards Speaker's impartiality while deciding defection cases. There is no clarity in the law about the timeframe for the action of Speaker or Chairman. Some cases take six months and some even 3 years. There are cases that are disposed of after term is over. So, delays in deciding cases have reduced the effectiveness of the law.

Recommendations

By ensuring that anti-defection laws have clear and unambiguous provisions, leaving no room for interpretation or manipulation.

- Establishing a specific time frame within which the presiding officer of the legislature should make a decision on disqualification cases. Delayed decisions can undermine the effectiveness of the law. The Supreme Court has suggested that ideally speakers should take a decision on defections within three months.
- Speaker's inaction to decide disqualification pleas within reasonable period will be subject to judicial review.
- Imposition of stricter penalties on legislators who violate anti-defection laws may evade unnecessary activities that lead to disqualification.
- Increasing transparency by making the process of disqualification hearings easily accessible to the public.
- Several issues in the law lack clarity. Issues like defiance of whip, expulsion from party need clarification.
- The law should be valid only for those votes

that determine the stability of the government. Example: passage of the annual budget or no-confidence motions. Reforms required for limiting whips to no-confidence and money bills to balance discipline with independence.

National Commission to review the working of the constitution (NCRWC) has recommended that rather than the presiding officer, the decision to disqualify a member should be made by the President (in case of MPs) or the Governor (in case of MLAs) on the advice of the Election Commission. Suggestions have been made to vest the decision power on defection in an independent body like the Election Commission.

Judicial Oversight and Recent Developments

In July 2025, the Supreme Court emphasized that Speakers and Chairpersons of the houses act as tribunals under the Tenth Schedule and must decide disqualification cases impartially and promptly. The court suggested that Parliament should revisit the structure.

Conclusion

Defections continue through planned mergers, mass resignations and delayed adjudication. The consequences of defection lead to political instability and make the government an unstable one. It also weakens intra-party democracy and legislative debate. There is the chance of formation of a coalition government making the government a minority government. After being a minority government, in the government there is the possibility of devaluation of the office of the Chief Minister, increasing power of the bureaucracy and also increasing strength of the state cabinet. As coalition government is established, if fragmentation of political parties develops, the government shall collapse immediately. In case of defection, there is also chances of political corruption and above all there should be devaluation of moral values. In Maharashtra political crisis Supreme court called for strengthening Anti Defection Law becomes relevant again and said it is high time to consider reform of Anti-Defection Law. Several India's neighbors viz., Bangladesh, Pakistan, Nepal and Sri Lanka and the African country South Africa have stricter Anti-defection Law as compared to India. Their law is harder as they have followed 'Zero -tolerance' in case of defection. A well-crafted regulatory framework not only serves as a bulwark against corruption but also merges the attention of parliamentarians and legislators

towards the pursuit of better governance. In present times, where the integrity of democratic institutions is of paramount importance, the prudent regulation of Tenth Schedule and other laws pertaining to disqualification of legislator may pave the way for a more accountable, efficient and effective democratic system. The third scenario relates to nominated MPs. In this case, the law specifies that within six months of being nominated to the House, they can choose to join any political party. The time is given so that if a nominated MP is not a member of a political party, they can decide to join one if they want. But if they don't join a political party during the first six months of their tenure, and join a party thereafter, then they lose their seats in the Parliament. The anti-defection law ensures that its members uphold party discipline and ethical political conduct. While it prevents political instability and corruption, critics highlight that it may restrict legislators; freedom of expression and parliamentary independence. The recent disqualifications in 2025 reaffirm the law's continued importance in maintaining accountability within the parliamentary framework.

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