



ANTI-DEFECTION LAW IN INDIA- A BOON OR A BANE

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ABSTRACT

The 52nd Amendment to the Constitution added the Tenth Schedule which is the 'Anti-Defection law' with an aim to combat political defections. The Law has succeeded in some ways in fulfilling its aim to bring party stability and curb defections but due to some of its erroneous provisions, it is unable to achieve the best it can. This article seeks to provide a brief analysis of when and how the law was introduced, further highlighting the provisions of the Tenth Schedule mainly dealing with the definitions, what would not amount to defection and the powers of the Speaker. The article also summarises the salient features of a landmark case, post the insertion of Schedule X i.e. *Kihota Holohan v. Zachillu & Ors.* Apart from discussing the issues brought by numerable cases, the article uses various political scenarios and fiascos which led to the law being enforced in the first place. Furthermore, it discusses the merits of the law along with its demerits to understand the reasons for its implementation and execution. Through this article, we have tried to objectively analyse the loopholes in the law which has allowed defectors to suit the law to their personal needs and thereby take undue advantage of it. Apart from incorporating recommendations that were given by different bodies set up to make changes in the law the article, lastly, also suggests a few proposals which seeks to assist the law

in achieving its aim of discontinuing undemocratic political defection by members of the legislature.

INTRODUCTION

In the Indian Constitution various grounds have been provided on the basis of which both Members of Parliament (MPs) and Members of Legislative Assemblies (MLAs) may be disqualified from the Legislature and one such ground is 'defection'. The term defection signifies an act of a legislator wherein he transfers from the party on whose platform he was elected to that of another political party.¹ In India, the issue of defection and the immense need to take a step to eradicate this problem was addressed in 1967. Defections which truly was a seminal moment in India's electoral history. It was in 1962 when a large number of defections was witnessed where approximately 142 MPs and 1900 MLAs committed defection and this was the event which also led to the formation of the very popular phrase 'Aaya Ram Gaya Ram' in reference to a Haryana MLA Gaya Lal who changed his party thrice within the same day in 1967.² Therefore it was in 1967 when the Government took the decision to take a step towards this menace and went on to pass a resolution. A committee was formed by the Union Government under the chairmanship of the then Union Home Minister Shri Y.B. Chavan and consisted of eminent people such as M.C. Setalvad, Jayaprakash

¹Anviti Chaturvedi, *Debating Anti-Defection Law*, COMMON CAUSE, (July 2016), http://www.commoncause.in/publication_details.php?id=494.

²Vibhor Relhan, *The Anti-Defection Law Explained*, THE PRS BLOG, (Dec. 6, 2017), <http://www.prsindia.org/theprsblog/?p=3928>.



Narayan, H.N. Kunzru, M. Kumaramangalam and MadhuLimaye among others.³ Their suggestions was inclusive of ones like political parties must have a code of conduct among themselves, if the defection was for ideological reasons then the defector shall be disqualified to continue as a legislator but could stand again and in cases where the defection took place for pecuniary reasons then the defector shall not only be disqualified from office but also be prevented from standing for a specified period.⁴ These recommendations by the Chavan Committee was sought to be implemented by means of The Constitution (Thirty Second Amendment) Bill but due to the dissolution of the House before the bill could be passed, it remained an unsuccessful attempt. Further, after another failed attempt to check defection by way of the Constitution (Forty Eighth Amendment) Bill, it was finally in 1985 that the eradication of this travesty of the democratic process was put to action.

The much awaited anti-defection law was passed by the parliament in 1985. The 52nd amendment to the Constitution added the Tenth Schedule and amended various Articles like 101, 102, 190 and 191 and its purpose was the incorporation of the process by which legislators could be disqualified in case of defection committed by them.⁵ Prevention of the frequent change of

parties by members was essential since it was hampering the stability of the political system. This was a very important step taken by the Rajiv Gandhi Government and as stated in the reasons for the amendment “*The evil of political defections has been a matter of national concern. If it is not combated, it is likely to undermine the very foundation of our democracy and the principles which sustain it.*”⁶ Therefore this Article aims to analyse that the anti-defection law which was introduced to discontinue undemocratic political defection by members of the legislature is in reality a bane or a boon, in other words how successful has it been and if not fully successful, what are its drawbacks and lastly few suggestions to overcome those drawbacks.

PROVISIONS OF SCHEDULE X

The tenth schedule was inserted in the Indian Constitution by the 52nd amendment and it was for the purpose of curbing unethical political defections. Further giving a brief overview about the schedule before analysing it, it wholly contains of 8 paragraphs out of which the first paragraph deals with various definitions important to understand the law. The second paragraph incorporates the disqualifications on ground of defection. The third paragraph which was deleted vide the 2003 amendment dealt with splits within the party and the fourth paragraph is about disqualifications not applying in case of mergers. The fifth paragraph throws light on the various

³K.N. Singh, *Anti-Defection Law and Judicial Review*, 38 JPI 31 (1992) 32.

⁴Gulab Gupta, *Anti-Defection Law – An Introspection*, 1966 (IX) CILQ 127 at 130.

⁵M R Madhavan, *In Parliament*, PRS LEGISLATIVE RESEARCH, (Dec., 2009), <http://www.prsindia.org/media/articles-by-prs-team/in-parliament-part-1-961/>.

⁶Jenna Narayan, *Defect-Shun, Understanding Schedule X to the Constitution of India*, INDIA LAW JOURNAL, (2007), http://www.indialawjournal.org/archives/volume3/issue_1/article_by_jenna.html.



exemptions, the sixth and seventh paragraphs deal with who decides with questions related to defection and jurisdiction of courts. Lastly, the eight paragraph gives power to the Speaker or a Chairman to make rules for a House in order to enable smooth working of the provisions of Schedule X.⁷

Thereafter throwing light specifically on paragraph 2 which literally forms the crux of the schedule mentions that for disqualification on the ground of defection the member must have voluntarily given up his membership to the party or he must have voted or abstained from voting, disregarding a directive of the party. The above conditions were pertaining to members of a political party. Further it specifies that if an independent candidate joins a political party after the election then also he can be disqualified on the ground of defection and lastly if a nominated member of a house joins any political party after the expiry of six months from the date when he becomes a member of the legislature.⁸ Thereafter there are certain exceptions to the conditions mentioned above for disqualification of a member on the ground of defection. Firstly, there would be no disqualification if a person is elected as speaker or chairman and then he has chosen to resign from his party, in that scenario he can re-join the party if he resigned from that post. Secondly, there is an exception with respect to one party merging with another and that would not be considered as defection. Earlier if one third of the elected members of a political party

defected, it was considered to be a merger but with the introduction of the 91st Constitutional Amendment Act, 2003, this was changed to the requirement of at least two thirds of the members of a party to be in favour of a merger, further for all switching political parties, now they have to seek re-election first if they defect. Further, the Tenth Schedule lays down that the power is with the Chairman or the Speaker of the House to disqualify a member and even if the complaint is about the Chairman/Speaker then a member who shall be elected by the House shall take the decision. Lastly, dealing with the jurisdiction, it was earlier when the rule persisted that no court would have any jurisdiction and that all proceedings related to disqualification would be of the Parliament or in the Legislature of a state but this was struck down by the Supreme Court and currently the anti-defection laws comes under the judicial review of courts.

ADVANTAGES OF THE LAW

Ever since the law had come into existence in 1985, it had largely curbed the problem at hand. Foremost, providing stability in the government elected by the people. The representatives of the people who were elected for a seat in the assembly could not change their affiliation to the party they contested for the seat from. This provided for the prevention of unsteadiness in the government as there were no more party shifts.

Prior to the amendment made in 2003, a defection under the tenth schedule was permitted if one-third of the elected members from that party would 'split' away and join or form another political party. The

⁷MPJAIN, INDIAN CONSTITUTIONAL LAW, (LexisNexis, 8th ed. 2018)

⁸¶6, Schedule 10, Constitution of India.



amendment which eventually came into force in January, 2004 did not recognise for the split anymore in this schedule. It recognised, or rather, included a 'merger' between two political parties or a formation of a new one when two-thirds of its members joined another political party or formed a new one.

Apart from stability, which is the core of the anti-defection law, it aims to check the accountability of the representatives of the people.

Citizens vote for candidates based on numerous factors which could include the individual's traits and promises or the party's beliefs. Its agenda, manifesto and ideologies constitute several other factors which the people consider before the casting a vote. Hence, if there lies any chance for the person to defect to another political party where there lies its own nature would defeat the very purpose of the voting system.

There would be no accountability from the government to the people despite the candidate being bound by the promises made by them during their campaign⁹.

Political Leaders, earlier, after elections used to tend to see politics only in terms of short term interests and, therefore be unbound by party ideology and beliefs which created a new political outset. However, this had all changed courtesy to a decision made by the Union Cabinet to amend the provisions related to Anti-Defection Law in the Constitution. It removed the clause that permitted the

political defection if it constituted a split, i.e. amounts to one-third of the strength in the party and included the provisions stating that a merger between two political parties or a formation of a new one when two-thirds of its members joined another political party or formed a new one would not constitute to be defection.

In *Jagjit Singh v. State of Haryana*¹⁰, the Supreme Court *inter alia* affirmed that the test of an independent participant joining a party is to establish whether the individual in question has given up his independent personality on the basis of which he was elected as the representative of the people from that constituency. A mere appearance of outside support would not suggest joining a party. Each case has to be definite on the basis of material on record.

Anti-Defection law was introduced to increase the cohesive quotient in the parliament within and among political parties. The invention was necessary to curb with fallacious instances of horse trading arrangements and alarmingly high rates of corruption and fraud. A sense of party-spirit politics is one of the most important highlight in the insertion of the schedule, meaning it instilled the sense of loyalty of members towards their own party. It is pertinent to note that Parliament and state legislatures are institutions where there ought to prevail a culture of healthy debate and discussion. These institutions ought to serve as a platform for free exchange of ideas and this is also protected by certain privileges conferred on members of the Parliament and members of state legislature

⁹Radha Krishna Mishra v. Tara Chand Maheshwar, 12 E.L.R. 276.

¹⁰Jagjit Singh v. State of Haryana, AIR 2007 SC 590.



under Article 105 and Article 194 of the Constitution. The Laws inserted vide Schedule X also aims to uphold this platform of productive discussion for the benefit of the people at large.

CRITICISM FACED BY THE LAW

The anti-defection law was brought about to enable political parties to not lose their members over unfair practices of leaving the party from which they were originally elected and it was also with the aim to bring stability to the government. The law has been successful in its attempts however it has also resulted into some outcomes that were not intended and therefore it is criticised on certain levels. Since this paper aims to discuss the anti-defection law both as a boon and a bane, it is essential to be familiar on the grounds on which this law is criticised.

- i. The first and foremost criticism faced by this law is that it curtails right to freedom of speech and expression.¹¹ This point can be further elaborated by throwing light on the fact that right to vote for or against the party lines is a genuine exercise of freedom of speech and therefore the anti-defection has been criticised on curtailing an individual's freedom of free speech and expression under Article 19 (1) (a)¹² and also results in placing restrictions on the freedom of free speech guaranteed under Article 105 and 194 to members of the Parliament by curbing dissent against party policies.¹³

- ii. The second ground on which the anti-defection law is criticised is regarding its policy on splits and mergers. Under paragraph 2, one exemption from disqualification is that if the requisite number defect, they are not hit by the disqualification i.e. two thirds members. The law's drawback on this particular point is evident on its unreasonableness by differentiating between individual defection and mass split. There is no rationale behind this idea since ideally if defection by an individual member is not permitted then the same should stand for a group of larger number of people.¹⁴ Therefore this criticism pertains to exception being based on the number of members rather than the reason behind the defection and this apparent dichotomy has been severely criticised as being prejudicial to the individual member as opposed to a faction.
- iii. Thirdly, with respect to the provisions of Schedule X, wide power has been given to the Speaker which is heavily criticized. As per the provision the Chairman or the Speaker of the House is given wide and absolute power in deciding the cases pertaining to disqualification of members on the ground of defection. The question arises whether the Speaker shall be absolutely impartial while making such a decision since at the time of making the decision he is still the member of the party which nominated him for the said post therefore there are high chances that he might be lured into making a partial

¹¹INDIA CONST. art 14.

¹²INDIA CONST. art 19.

¹³AnirudhBurman, *The Anti- Defection Law – Intent and Impact*, PRS LEGISLATIVE RESEARCH, (Nov 23, 2009),

<http://www.prsindia.org/uploads/media/Note%20on%20Anti-Defection.pdf>.

¹⁴V.J. Rao, *Anti-Defection Laws – Constitutional Validity*, AIR 1988 (J) 129 at 130.



- decision.¹⁵ Therefore the anti-defection law is criticized for giving the speaker a chance to manipulate the given situation and use it to favour his political party.
- iv. The fourth criticism that the law faced was in terms of demolishing the idea of parliamentary democracy. The Constitution and principles of democracy mandates accountability to the electorate but the anti-defection law has made legislators accountable only to the party leadership since they do not possess the calibre to disobey the party leadership in order to represent the voice of the electorate. The ruling party can easily compel a member to vote in a particular irrespective of his own choice on the basis of tenth schedule since members need to save themselves from disqualification.¹⁶ To uphold the true spirit of democracy, a member should be free to vote as he wishes to especially on important public matters and not be compelled to follow the directions given by the party.
- v. Yet another anomaly in the law was that as per Paragraph 7, the court would have no jurisdiction in respect of any matter connected with disqualification of a member of a House thereby restricting the power of judiciary provided under the Constitution. Judicial review is a basic feature of the Constitution and no amendment to the Constitution can violate the basic structure.¹⁷ This particular rule barring jurisdiction of Courts has been challenged multiple times and in cases like *Ravi S Naik v. Union of India*¹⁸, it was held that the rules relating to anti-defection laws are merely procedural in nature and any violation of these, being a procedural irregularity, was immune from judicial scrutiny. This law of providing that the court would have no jurisdiction and that the Speaker would be the final judge in the matter was heavily criticised for violating the basic feature of judicial review but in 1991 Finally Supreme Court declared paragraph 7 unconstitutional and also stated that the speaker's decision would be subject to judicial review.
- vi. Lastly another flaw in the anti-defection law pertains to the phrase 'voluntarily giving up'. As per Rule 2(1)(a) of the Tenth Schedule a member of the House is disqualified from the party if he voluntarily gives up his membership of the political party but the term voluntarily gives up his membership seems vague to infer a particular meaning and the Schedule has not clarified the same. To further come to a solution for this, two judgments by the Supreme Court can be relied upon, namely, *Ravi Naik v. Union of India* and *G. Vishwanathan v. Hon'ble Speaker, Tamil Nadu Legislative Assembly*¹⁹ where it was held that in order to constitute 'voluntary giving up of membership', no formal resignation was necessary and that an implied or express giving up as inferred from the conduct of

¹⁵B. Venkatesh Kumar, *Anti-Defection Law: Welcome Reforms*, ECONOMIC AND POLITICAL WEEKLY, (June 7, 2018), <http://www.jstor.org/stable/4413541>.

¹⁶Pardeep Sachdeva, *Combating Political Corruption: A Critique of Anti-Defection Legislation*, INDIAN POLITICAL SCIENCE ASSOCIATION, (June 6, 2018), <http://www.jstor.org/stable/41855903>.

¹⁷*Keshavananda Bharati and others v. State of Kerala and Anr.*, AIR (1973) 4 SCC 225.

¹⁸*Ravi Naik v. Union of India*, AIR 1994 SC 1558.

¹⁹*G. Vishwanathan v. Hon'ble Speaker, Tamil Nadu Legislative Assembly*, 1996 2 SCC 353.



the member will suffice thereby giving the phrase a wider connotation. In another case²⁰, it was held that a letter by an elected party member to the Governor requesting him to call upon the leader of the opposite party to form a Government would by itself amount to an act of voluntarily giving up membership of the party of which he is an elected member. These cases brought some reduction in the Speaker's power to disqualify members indulging in activities contrary to the party's interest yet there are instances where the Speaker has misused the power and has interpreted the phrase 'voluntarily given up membership' in such a way as to curb even mild forms of dissent and a very evident example of this would be the disqualification of eleven members of Legislative Assembly of Karnataka in 2010 by the Speaker.

DECISION IN THE KIHOTA HOLLOHON JUDGEMENT

Many of the criticisms mentioned above have been discussed in a very important landmark judgement related to anti-defection law in India i.e. *KihotaHollohon v. Zachillu*²¹ where the constitutional validity of the Tenth Schedule was challenged. Most of the provisions though were upheld by the Supreme Court and the major holding of the Court included:

- i. The validity of Paragraph 2 of the Tenth Schedule which recognizes abstaining from voting or voting against any direction issued by the political party without prior permission as a ground for disqualification

was upheld by the Supreme Court. Contrary to the contentions it was held that Paragraph 2 does not suffer from vice of subverting democratic rights of members of Parliament and members of Legislative Assemblies and moreover anti-defection laws were necessary to uphold the most basic of fundamental features of the Constitution like Democracy and hence restrictions could be placed on fundamental freedoms of speech and expression in this regard. The Court however made it clear that it was only in matters pertaining to confidence or no confidence motion and matters integral to party policy that a legislator is bound to follow the direction issued by the party.

ii. Second important decision in this case was with respect to the provisions of Paragraph 7 of the Tenth Schedule which had provided that the court would have no jurisdiction in the matter and that the Speaker would be the final judge. The Court held that the paragraph seeks to change the operation and effect of Articles 136, 226 and 227 of the Constitution which gives the High Courts and Supreme Court jurisdiction in such cases. Further any such provision is required to be ratified by state legislatures as per Article 368(2) and since this paragraph had not been ratified, it was held to be invalid.

- iii. Thirdly the question arose as to whether paragraph 6 of the Tenth Schedule granting finality to the decision of the Speaker/ Chairman is valid. The Supreme Court held that to the extent that the provisions grant finality to the orders of the Speaker, the provision is valid. However, the High Courts and the Supreme Court can exercise judicial review under the Constitution but judicial

²⁰Rajendra Singh Rana v. Swami Prasad Maurya and Others, 2007 (4) SCC 270.

²¹*KihotaHollohon v. Zachillu*, AIR 1993 SC 412.



review should not cover any stage prior to the making of a decision by the Speaker. The majority in the present case held that the Speaker or Chairman under Paragraph 6(1) of the Tenth Schedule is a Tribunal and that the finality clause does not oust the jurisdiction of the courts under Arts. 136, 226 and 227 but only limits it. Therefore the majority judgement, headed by Justice Venkatachaliah propounded that the very nature of the Speaker's office should make it inappropriate to question the impartiality of the Speaker.

Therefore the constitutionality of the Anti-Defection Law has been upheld by the Hon'ble Supreme Court in a 3:2 decision in the landmark *Kihota Hollohon*²² judgment. Even though various issues related to the law were discussed in this case, there are still issues that remain unresolved which will be dealt with in the subsequent paragraphs.

CRITICAL ANALYSIS

The Anti-Defection law was introduced in India with the motive to check the practice of parliamentarians abandoning their original parties from which they were elected and also using it as a weapon for the toppling and creation of governments. Ironically, the law that was brought to reaffirm India's democratic ideals itself turned out to be the one creating profound anti-democratic ramifications in the Indian polity.²³

Beginning with Paragraph 2 (1) (a) where one of the grounds of defection mentioned is

'voluntary giving up membership of such political party', it was held that the term 'voluntarily given up membership' is not synonymous with the tendering of formal resignation by the member. It is a wider term and inference can be drawn by conduct and actions of the members.²⁴ A critical analysis of this provision clearly demonstrates how the anti-defection law is being misused even though that is not the objective of the legislation. Many a times this term is interpreted in such a way as to curb even mild forms of dissent. Moreover there is lack of clarity about the status of a legislator who has been expelled by the political party he belongs to since there is no explicit mention about this in the Tenth Schedule. The Supreme Court in its judgement in the case of *G. Vishwanathan v. Honourable Speaker, Tamil Nadu Legislative Assembly*²⁵ held that after expulsion from a party if a legislator joins another party, that shall amount to voluntary giving up of membership and that again created an issue. For example the Speaker expels a member and declares him as an unattached member, then onwards the party does not recognise him as a member but still the legislator cannot join another party since for the purposes of the Tenth Schedule he is still a member and if he joins another party, he shall be disqualified thereby diminishing his individual identity. Further coming to the provision stated in Paragraph 2 (1) (b) of the law, it clearly mandates a parliamentarian must vote in the manner that has been directed by the political party thereby curtailing their power to even have a contrary opinion even if they see merit in it.

²²*Supra*, note 19.

²³Subhash C. Kashyap, *The Anti-Defection Law – Premises, Provisions and Problems*, 35 JPI (1989) 9.

²⁴*Supra*, note 16.

²⁵*Supra*, note 17.



As per this law, a parliamentarian is not permitted to express his dissent in the House which is very evidently against the country's democratic ideals. If a parliamentarian is already ordered to vote in a particular manner, how is he ever going to have the incentive to start a debate about the position contrary to the one decided by the party.²⁶ The Parliament is the embodiment of the consciousness of the nation and therefore it is essential that everything is conducted fairly inside, not by directing people to vote in a certain manner. Such a practice as per the law is clearly curtailing the aim of democracy by ignoring the fact that members belonging to the same political party may obviously have different opinions on a matter therefore allowing them to express their dissent is needed. A party can endorse its principles but not by unfairly taking away the freedom of dissent and voting among members by subjecting them to the anti-defection law. While the *Kihoto Hollohon*²⁷ judgment did impose restrictions on powers of the party to issue Whips, there are certain ambiguities. While the Supreme Court has held that whips can be issued only pertaining to matters which are an integral part of the party's policies, there is no definition or explanation as to what matters are integral. This provision clearly affects the culture of healthy debate and discussion that ideally should exist in a parliament. In such a situation, light needs to be thrown on the model adopted by U.S.A. and U.K. as per which dissent and defection are viewed as an internal matter of the party

and not a matter that should warrant legal intervention by the State.²⁸ Therefore, it can be concluded that as far as Paragraph 2 of the Anti-Defection law prevailing in our country is concerned it is very evidently diminishing the individuality of the legislators and promoting the idea of leadership in political parties where the terms shall be dictated and the legislator is bound to follow it.

Next aspect of the law the needs thorough analysis is with respect to the office of the Speaker in the context of the Tenth Schedule. Major issue of the anti-defection law is whether the Speaker acts arbitrarily. The Speaker or the Chairman decides whether a member of a house is subject to disqualification on the grounds of defection. In our opinion, since the presiding officers are drawn from political parties, such an authority should be vested in the Chief Election Commissioner or some other independent authority constituted for the same. It is disconcerting to have a law that gives leverage to the Speaker or the Chairman of the respective house to act in a partisan manner or without any proper appreciation.²⁹ It is rational to conclude that due to the Speaker's loyalty to the ruling party by virtue of his appointment and

²⁶C.V. Madhukar, *House this for debate*, THE INDIAN EXPRESS, (Jan 3, 2007), <http://archive.indianexpress.com/news/housethis-for-debate/19938/0>.

²⁷*Supra*, note 19.

²⁸Rahul Machaiah, *Critical Analysis of Anti-Defection Law in India with regard to Parliament Dissent*, THE WORLD JOURNAL ON JURISTIC POLITY, (May, 2017), file:///C:/Users/HP/Desktop/Research%20Article/Other%20papers/Rahul-Machaiah.pdf.

²⁹Javed M. Ansari, *Anti-Defection Law: The Great Divide*, INDIA TODAY, (June 20, 2013), <https://www.indiatoday.in/magazine/special-report/story/19920215-controversy-over-anti-defection-law-interpretation-puts-judiciary-and-executive-on-collision-course-765815-2013-06-20>.



continuance in office based on its support, it would be unrealistic to expect the Speaker to not have certain party considerations in mind while taking a decision in matters of defections and disqualifications. Moreover another aspect of this is maybe in certain cases, the Speaker lacks the legal knowledge and expertise to adjudicate upon such essential matters. Another issue is the lack of uniformity in the decisions of the Speakers in the different States which has led to great confusion in the political set-up as similar situations have been treated differently by different speakers. This has led to a great deal of uncertainty prevailing about what the law actually provides.

Further, critically analysing the anti-defection law it needs to be mentioned that the phrase ‘voluntarily giving up’ is not explained in the Schedule. The Tenth Schedule does not clarify what really ‘voluntarily giving up’ means for example, does it only cover resignation of the member from the party or does it have a wider meaning than that. The issue arose in various cases before the Supreme Court and ultimately conclusions can be drawn from them which are that the phrase has a wider connotation and can also be inferred from the conduct of the members³⁰ and that on being expelled from the party, the member, though considered ‘unattached’, still remains the member of the old party for the purpose of the Tenth Schedule. However, if the expelled member joins another political party after expulsion, he is considered to have voluntarily given up the membership of his old political party.³¹ Though on the part

of the Tenth Schedule the words ‘voluntarily giving up membership of a political party’ is somewhat vague which can be misused by the Speaker and therefore requires comprehensive revision.

The passing of the Anti-Defection law was a tremendous effort made to curb political defections and thereby bringing the focus onto government stability. It has definitely achieved some of its planned results but due to various criticisms and loopholes it is unable to succeed in the best way that it should. The defects in the law assist corrupt politicians and other such persons to take advantage of it and use it for their own personal benefit thereby not letting the problem of government instability evade fully. To achieve the fundamental of democracy in its truest sense, certain amendments must be made to the law for it to be in consonance with current facts and circumstances.

RECOMMENDATIONS BY DIFFERENT BODIES

Various committees were formed and many criticisms have been addressed to amend or/and remove lacunae in the law and therefore the paper shall further discuss the recommendations by various bodies on reforming the Anti-Defection law.³²

Dinesh Goswami Committee

The Dinesh Goswami Committee on Electoral Reforms, appointed by the V.P. Singh Government in 1990 recommended

³⁰*Supra*, note 16.

³¹*Supra*, note 17.

³²AnirudhBurman, *The Anti-Defection Law – Intent and Impact*, PRS LEGISLATIVE RESEARCH, (Nov 23, 2009), <http://www.prsindia.org/uploads/media/Note%20n%20Anti-Defection.pdf>.



that the disqualification provisions should be limited to cases where

- A member voluntarily gives up the membership of his political party.
- A member abstains from voting, or votes contrary to the party whip in a motion of vote of confidence or motion of no-confidence.

Further the Committee suggested that the issue of disqualification should be decided by the President/Governor on the advice of the Election Commission.

Halim Committee

At the Conference of Presiding Officers held in 1998, there were detailed deliberations on the need to review the Tenth Schedule to the Constitution and thereafter a Committee of Presiding Officers was constituted under the Chairmanship of Shri Hashim Abdul Halim, Hon'ble Speaker of the West Bengal Legislative Assembly.³³ This Committee explored the possibility wherein the Speaker/Chairman shall not be involved and the power shall be given to a judicial body to decided cases. Various suggestions by the Committee were namely:

- The words 'voluntary giving up membership of a political party' be comprehensively defined.
- Restrictions like prohibition on joining another party or holding offices in the government be imposed on expelled members.

³³ Address at the Symposium on 'Anti-Defection Law – Need for Review', during the Conference of Presiding Officers of Legislative Bodies in India, Chandigarh, 23 September 2008.

- The term political party should be defined clearly.

Law Commission (170th Report, 1999)

The Law Commission of India in its 170th report on 'Reform of Electoral Laws' (1999) had given various suggestions and recommendations for the amendment of the Anti-Defection Law which were:

- Provisions which exempt splits and mergers from disqualification to be deleted.
- Pre-poll electoral fronts should be treated as political parties under anti-defection law.

Political parties should limit issuance of whips to instances only when the government is in danger.

Constitution Review Commission (2002)

The National Commission to Review the Working of the Constitution headed by Justice Venkatachalaiah among other things suggested in its report of 2002 that: Provisions to be made in the tenth schedule that any person who defects must resign and seek fresh mandate.

- Vote cast by a defector to overthrow the government would amount to be invalid.
- Defectors should be debarred from holding any office of profit during the ongoing term.
- Power to decide question regarding the disqualification of membership should vest with the Election Commission instead of the Speaker or the Chairman.

Lastly the **Election Commission** provided with the suggestion that Decisions under the Tenth Schedule should be made by the President/ Governor on the binding advice of the Election Commission.



These were the recommendations and suggestions given by various bodies to improve the Anti-Defection Law by removing the flaws that the bodies felt needed to be removed. Further, the paper seeks to include various proposals which is detailed further below. These suggestive measures can be implemented after being subject to scrutiny as it is aimed to eradicate the loopholes that exist in the law currently.

PROPOSALS

The introduction of the Tenth Schedule in the Indian Constitution was aimed at curbing political defections therefore it is about time that the law is reformed and hence we put forth a few proposals to rid the law of its anomalies.

- 1) Firstly, the decision making power which vests in the presiding officers i.e. the Speaker or Chairman should be conferred on some other independent body since it is extremely important to have a body which can take impartial decisions without having its party needs in mind unlike the Speaker. It should not be forgotten that in our country, the Speaker does not resign from the political party after being elected to the post thereby there still can be existence of a certain degree of partisan behaviour which ends up being a big loophole in the law.
- 2) Secondly, as mentioned before in the above paragraphs the distinction that is brought about and exemption given in case of disqualification on the basis of number of defections is not rational and hence should be amended. The law seems to be ignoring the possibility of a situation where two thirds of the party might merge due to the lure of office hence exempting them from disqualification simply because they are more in number is illogical. Therefore the extended proposal is that this provision be amended in such a way to make exceptions on the basis of a valid reason and not just on the number of defectors, that way this particular flaw shall be removed.
- 3) Further in continuation of the above proposal, another thing that could be reformed is the unnecessary distinction between an independent member and a nominated member. No purpose is really being solved by allowing a nominated member to join any party within a month of his nomination whereas an independent member shall stand disqualified if he joins any political after his election.
- 4) Next important issue that needs to be addressed is to reform the law in such a way as to help the members to retain their individual viewpoint on certain issues. The law is in a certain manner imposing unreasonable restriction on dissent, debate and freedom to vote among the members thereby taking away their identity as legislators. Therefore it shall be reasonable to restrict the voting rights related to matters that form a core to the party legislation but on other matters, legislators should be given some leverage to take a stand.
- 5) The phrase 'voluntarily giving up membership' constitutes a major portion of the Tenth Schedule but is extremely vague due to which many a times Speaker can misuse it by wrongly interpreting it. Therefore this term should be comprehensively defined.



Therefore these proposals are just an aim to make these Anti-Defection Laws efficient and serve the purpose – to truly stand for its aim to curb the menace of defection.

CONCLUSION

The Anti-Defection Legislation has been hailed as a momentous step taken towards cleansing the evil of defection among political parties. It was enacted to put a check on the Members of the Parliament and to ensure the maintenance of loyalty among them to their respective party. We, in this article, have attempted to critically analyse the law and conclude whether it really has been fully successful in promoting parliamentary discipline and decorum and also in preventing unethical tactics from being used by politicians. Further we have through analysis of the law examined the scope for some needed improvement. There is no doubt that the step the government has taken in banning defection is indeed bold and commendable but due to several serious lacunae in the law it is unable to deliver its promises of absolutely curbing defection. Summarising what has been explained in detail in the previous paragraphs, the law fails to provide sufficient incentive for an MP or MLA to examine an issue in depth since he shall be disqualified if his vote is contrary to the party's direction which is going against the idea of democracy wherein law-making should be an inclusive process. It is important that this practice of emergence of leadership of political parties as extra constitutional authorities dictating terms to a legislator is eradicated. Further, we have focused on the need to appoint an independent body like the Election Commission to take decisions with respect

to disqualification instead of the Speaker to ensure that the law is not being tampered due to the partisan behaviour of speakers when it comes to interpreting and applying the law. The law should further be refined to make ambiguous and vague phrases like 'voluntarily giving up membership' clearer and also amending unnecessary provisions stating that mergers would not amount to disqualification due to the number of people involved. It is about time that the law is reformed so as to fulfil its intention to curb defections because the truth is that political defections continue to be common even today. For example in 2016 itself, the Arunachal Pradesh CM, PemaKhandu, along with forty three MLAs defected from the Congress Party to join People's Party of Arunachal. The disappointing fact is that similar instances of defections have also occurred in Goa, Utrtrahand, Andhra Pradesh, Manipur, Nagaland and Telangana in recent years.³⁴ Concluding, in our opinion the questions of defections has now haunted the Indian polity for over three decades and hence serious effort must be made to refine the present anti-defection law which actually is a great tool to curb this evil practice but due to some of its loopholes, as mentioned above, it has not been able to achieve the best it can.

³⁴Trina Roy, *Parliament Logjam Part 8:Anti-Defection Law*, FIRST POST, (Jun 21, 2018), <https://www.firstpost.com/india/parliament-logjam-part-8-anti-defection-law-must-be-curbed-to-empower-legislature-promote-deliberative-democracy-4468399.html>.