

# JUDICIAL INTERVENTION IN THE ANTI-DEFECTION LAW: IMPACT, IMPLICATIONS AND QUEST FOR CONSTITUTIONAL EQUILIBRIUM IN INDIA

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## Abstract

*The Anti-Defection Law in India was implemented with the aim of mitigating political opportunism and defections among elected officials. Since its introduction, this law has experienced substantial involvement of judiciary. This research paper examines the various dimensions of the influence and consequences of judicial intervention in the Anti-Defection Law, and its pursuit of constitutional equilibrium within the political framework of India. The Tenth Schedule of the Indian Constitution, more commonly known as the Anti-Defection Law, was drafted with the primary goal of maintaining party discipline and protecting India's fledgling democracy. Nevertheless, throughout the course of time, it has sparked controversial legal and political discussions. The Indian judiciary has been instrumental in the interpretation and establishment of the parameters of this legislation, effectively managing the tension between discouraging political defections and upholding the democratic entitlements of elected officials. This research paper explores significant judicial decisions and their implications for the Anti-Defection Law, analysing the extent to which judicial intervention has shaped the operations of legislative bodies, party politics, and the democratic principles in India.*

**Keywords:** Anti defection, Judiciary, Judicial Intervention, India

## INTRODUCTION

In the complex realm of politics, the term "defection" has a rich historical background with its origins rooted in the Latin word "defectio," signifying an act of desertion of one's allegiance, duty, or principles. It represents a profound shift in loyalty, often characterized by the abandonment of one's political party or cause, and the wilful attachment to another. At its core, defection involves the act of leaving one political party to join another, which is a phenomenon observed across the globe. However, it goes by various names in different parts of the world, such as "floor crossing," "carpet-crossing," "party-hopping," "dispute," and even "waka-jumping." (Kalra et.al. 2022). This shift in political allegiance, particularly within the context of parliamentary politics, holds great significance and has far-reaching implications for the functioning of democratic systems.

## TENTH SCHEDULE AND JUDICIAL REVIEW OF CONSTITUTIONALITY

The disqualification criteria for members of Parliament and State legislatures are delineated in Articles 102(2) and 191(2) of the Indian Constitution, in conjunction with the Anti-Defection Law.<sup>1</sup> The disqualifications can be categorised as follows:

### (1) The act of voluntarily relinquishing one's membership in a political party.

Individuals who are elected or nominated from political parties and willingly renounce their affiliation with said party.<sup>2</sup> Members who choose to vote or refrain from voting in opposition to the party's direction or whip, unless explicitly approved by the party within a period of 15 days following the voting or abstention (Paragraph 2(1)(b)).<sup>3</sup>

### (2) Engaging in political party affiliation after an election

<sup>1</sup> Indian Constitution, Article 102 & Article 191

<sup>2</sup> The Constitution (Ninety-First Amendment) Act, 2003, available at: [https://www.india.gov.in/sites/upload\\_files/npi/files/amend91.pdf](https://www.india.gov.in/sites/upload_files/npi/files/amend91.pdf)

<sup>3</sup> "The Constitution of India, 1950, Tenth Schedule, Para 2(1)(b)



According to paragraph 2(2), elected officials who do not have any affiliation with a political party are permitted to join a political party subsequent to their election.<sup>4</sup>

According to paragraph 2(3), nominated members are permitted to affiliate with a political party only after a period of six months has elapsed from the day they assume their position in the House.<sup>5</sup> Nevertheless, it is important to note that there exist certain exceptions to these disqualifications-

- **Division inside a Political Party**

Members are not subject to disqualification in the event of their departure from a political party owing to a division, as long as the resulting faction comprises at least one-third of the overall party membership in the legislative body.

The aforementioned provision was subsequently revoked by the Constitution (Ninety-first Amendment) Act of 2003,<sup>6</sup> with the aim of curbing widespread instances of political desertion, particularly within minor political factions.<sup>7</sup>

### **RAMESHWAR PRASAD CASE**

“*Rameshwar Prasad v. Union of India*”<sup>8</sup> case, the Supreme Court issued a significant observation pertaining to the 91st Amendment Act, noting that this provision rendered defection more challenging. The removal of the section that did not contemplate mass loyalty transfers by one-third members defection was emphasized. The amendment sought to establish the prohibition of defection and exclusively allowed for the merging of political parties as outlined in the Anti-Defection Law. This particular case and the constitutional amendment highlight the dynamic and progressive nature of anti-defection provisions in India.

- **Merger of political parties**

When merger takes place, at least 2/3<sup>rd</sup> of the parliamentary parties concerned must consent.

The provisions regarding merger in the Tenth Schedule acknowledge the potential In the context of political dynamics, a notable transformation in political beliefs or the realignment of minor political parties is of considerable importance. This shift could contribute to the much-needed stability of the government at a given time. It was held in the case of *Baljit Singh Bhullar v. Speaker Punjab Vidhan Sabha*<sup>9</sup> that with the combined reading of Para 2(1) along with Para 4, it becomes evident that the Parliament intended to treat the legislative party as a distinct entity from the political party when determining whether a merger has occurred.

### **DILEMMAS FACED BY THE SPEAKER IN CONTESTED CLAIMS: VOLUNTARY MEMBERSHIP RELINQUISHMENT VS. MERGER WITH ANOTHER POLITICAL PARTY**

The interpretation of the Anti-Defection Law has given rise to notable constitutional dilemmas concerning the exercise of authority by the speaker of the House. These dilemmas become particularly prominent when there are simultaneous counterclaims - one asserting the voluntary abandonment of political party membership and the other claiming a merger under Para 4 of the “Anti-Defection Law”. These situations pose complex questions regarding the Presiding Officer’s role and responsibilities in reconciling such contested claims. (Saumya & Majumdar, 2018)

### **RAJENDRA SINGH RANA VS. SWAMI PRASAD MAURYA<sup>10</sup>**

In this particular instance, a significant legal situation transpired when 13 individuals, out of a total of 109 members belonging to the Bahujan Samaj Party (BSP), pursued the Governor’s request for the Samajwadi Party (SP) to assume power and establish the Government subsequent to the dissolution of the legislature led by the BSP. The Bahujan Samaj organization (BSP) lodged a formal request, known as a petition, with the aim of disqualifying thirteen individuals based on their alleged violation

<sup>4</sup> *Ibid*, Para 2(2)

<sup>5</sup> *Ibid*, Para 2 (3)

<sup>6</sup> 91<sup>st</sup> Constitutional (Amendment) Act, 2003

<sup>7</sup> *Supra* note 2

<sup>8</sup> (2006) 2 SCC 1 at 87

<sup>9</sup> 1997 SCC Online P&H 788

<sup>10</sup> (2007) 4 SCC 270 at 292



of Para 2(1)(a) of the “Anti-Defection Law” of the Constitution. The BSP contended that these individuals had willingly renounced their initial political organization. Following this, a group of 37 individuals, including the aforementioned thirteen, asserted a division within the BSP, accounting for approximately one-third of the overall BSP legislative party.

The primary matter under consideration by the court pertained to the Speaker's authority to retain the petitions for disqualification pursuant to Paragraph 2, while simultaneously addressing the allegations outlined in Paragraphs 3 or 4, both of which originated from the same political circumstances. Significantly, the Speaker issued an exceptional determination by acknowledging the claim outlined in Paragraph 3, while simultaneously deferring the consideration of the petitions mentioned in Paragraph 2.<sup>11</sup> The petitioners argued that the Tenth Schedule did not anticipate a distinct adjudication process for claims made under Paragraph 2 and Paragraph 3 or 4.<sup>12</sup> They further asserted that the divided claim resembled a defence in the context of disqualification petitions based on Paragraph 2. On the contrary, the respondents contended that the Speaker's actions were appropriate in dealing with the petitions individually according to Paragraph 2. They maintained that the “Anti-Defection Law” did not impose any restrictions on the Speaker's capacity to autonomously assess claims related to splits and mergers.

A Constitution Bench of the Supreme Court, presided over by Justice P. K. Bala Subramanyan, sided with the petitioners. It underscored that the true intent behind the Tenth Schedule could not be interpreted independently from Article 102 and 191 of the Constitution<sup>13</sup>, which pertain to member disqualification. The quasi-judicial Speaker has qualified immunity under Para 6(1) and decides whether a member is disqualified. The defected member can claim Para 3 or 4 saves them, making Para 2(1) inapplicable. Accepting the respondents' representations would render petitions for disqualifications pointless when Para 3 or 4 claims are accepted, undermining the concept of pending adjudication.<sup>14</sup>

In light of the constitutional scheme presented by Articles 102 and 191 alongside the Tenth Schedule, the entire process is initiated as part of disqualification proceedings. The evaluation of a claim involving a split or merger cannot be separated from the request for disqualification under Paragraph 2(1)(a). There is a contention that the presiding officer, in their capacity as a tribunal, does not possess autonomous authority to adjudicate on split or merger claims in isolation from the disqualification request as stipulated in Paragraph 2(1)(a). The aforementioned method may potentially subvert the fundamental objectives of “anti-defection statutes and the Tenth Schedule of the Constitution”. Hence, it is argued that Paragraph 2, [3], and 4 should be construed collectively, with Paragraph 2 serving as the primary impetus and Paragraphs [3] and 4 serving as safeguards throughout the procedure.<sup>15</sup>

#### SHRI KIHOTO HOLLOHAN V. SHRI ZACHILLHU<sup>16</sup>

The constitutional legitimacy of the Constitution (Fifty-second Amendment) Act, 1985, which established the “Anti-Defection Law”, was brought into doubt in the case of “*Shri Kihoto Hollohan v. Shri Zachillhu*”. The legitimacy of the Tenth Schedule was affirmed by a bench of five-judge the Supreme Court, with a majority of three judges in favour and two judges dissenting. However, it was determined that Para 7 was invalid due to deficiencies in both substance and procedure. The aforementioned action was in substantial contrast with the fundamental framework of the Constitution, and in terms of procedure, it did not comply with the obligatory ratification process outlined in Article 368(2) of the Indian Constitution<sup>17</sup>.

<sup>11</sup> *Id* at 293

<sup>12</sup> Tenth Schedule, Para 2, 3 &4

<sup>13</sup> Tenth Schedule, Article 102 & 192

<sup>14</sup> (2007) 4 SCC 270 at 292

<sup>15</sup> Para 3 of 10th Schedule was repealed by the Constitution (Ninety-First) Amendment Act, 2003

<sup>16</sup> 1992 Supp (2) SCC 651”

<sup>17</sup> The constitution of India, Article 368



Justice M.N. Venkatachaliah, speaking on behalf of the Court (including K.J. Reddy and S.C. Agrawal, JJ.), provided the following rationale:

(i) "Para 7 of the Tenth Schedule, which includes a 'non-obstante clause,' is a provision distinct from and separable from the main provisions of the Tenth Schedule. Its purpose is to offer a remedy for the problem of dishonest and unethical political defection. The remaining sections are self-contained."<sup>18</sup>

(ii) "Para 2 of the Tenth Schedule does not violate the democratic rights of elected members, including freedom of speech, freedom of vote, the right to dissent, and the conscience of members of Parliament and State legislatures. These provisions serve the noble purpose of fortifying the framework of Indian parliamentary democracy by curbing unprincipled and unethical political defection."<sup>19</sup>

#### **Voluntary Relinquishment of Political Party Membership**

In the case of "*Ravi Naik v. Union of India*",<sup>20</sup> a Division Bench of the Supreme Court ruled that An individual may be considered to have resigned from a political party without a formal resignation. The court held that this inference could be drawn from the member's conduct, indicating a clear and unambiguous intent to discontinue their association with the political party. Such relinquishment of party membership could be either explicitly expressed or implied.<sup>21</sup>

In the case of "*Dr. Mahachandra Prasad Singh v. Chairman, Bihar Legislative Council*",<sup>22</sup> The Supreme Court rejected the petition, reasoning that his conduct, which included running as an independent candidate after being elected on the Indian National Congress ticket, implied a voluntary relinquishment of his membership with the party. As a result, he fell under the disqualification clause of Article 191(2) read with Para 2(1)(a) of the Constitution of India. Furthermore, the Court held that there was no breach of the principles of natural justice since the petitioner was provided with a personal hearing after receiving a show-cause notice.

This case underscores the significance of a member's conduct in interpreting the term "voluntarily give up" under Para 2(1)(a) of the "Tenth Schedule of the Constitution of India", particularly when members from a political party participate in elections as independent candidates.<sup>23</sup>

#### **ARTICLE 226 AND THE SPEAKER'S POWER UNDER TENTH SCHEDULE: A CONSTITUTIONAL DILEMMA**

The interplay between Article 226 of the Constitution<sup>24</sup> and the authority vested in the Speaker under Para 6 raises a fundamental question: What is the extent of the High Court's powers under Article 226 when the Speaker fails to expeditiously fulfill their constitutional duty regarding disqualification petitions? (**Kashyap, 2019**)

This question holds immense constitutional significance, potentially compromising the very purpose of the Tenth Schedule. Additionally, it has practical implications for ruling political parties, who often have the advantage of appointing a speaker of their choice due to their majority in the House, whether alone or with coalition partners. This situation can jeopardize the independence of the presiding officer and, consequently, constitutional principles.

While Para 7 was invalidated by the Supreme Court (1992), the Speaker retains substantial authority under the Tenth Schedule. Although one could argue that the Speaker's decisions are subject to judicial review under Articles 226 and 136 for constitutional breaches, malfeasance, non-compliance with natural justice, and perversity, it is essential to recognize that the law allows for "judicial review," not outright adjudication in the absence of a speaker's decision. (**Shree, 2021**)

<sup>18</sup> 1992 Supp (2) SCC 699

<sup>19</sup> *Id* at 688

<sup>20</sup> 1994 Supp. (2) SCC 641

<sup>21</sup> *Id* at 649

<sup>22</sup> (2004) 8 SCC 747

<sup>23</sup> *Id* at 759

<sup>24</sup> The constitution of India, Article 226



## EMERGING CHALLENGES TO ANTI-DEFECTION LAW: JUDICIAL INTERVENTION THROUGH HIGH COURTS

The recent challenges to the anti-defection law in states like Goa, Manipur, Karnataka, Madhya Pradesh, and Rajasthan have raised serious concerns about the law's effectiveness and the functioning of parliamentary democracy in India. These challenges stem from the resignation of a significant number of legislators, resulting in a reduced house strength, which, in turn, allowed a new political party to assume power in disregard of the constitutional objectives of the anti-defection law and the electorate's sentiments.

In "*Srimanth Balasaheb Patil v. Speaker, Karnataka Legislative Assembly*",<sup>25</sup> the Supreme Court clarified that the Speaker has the power to disqualify members under Para 2(1) of the Tenth Schedule but does not have the authority to bar them from contesting elections for the current term of the house. The individuals who are part of the legislative body possess an absolute entitlement to voluntarily resign, whereas the authority of the Speaker is confined to verifying the authenticity and voluntariness of such resignations. Any decision made by the Speaker in this regard is subject to scrutiny by the judiciary.

The term 'reasonable time' must not be interpreted to encompass any period prior to the conclusion of the House or Assembly's term. This perspective finds support primarily in the ruling of the Manipur High Court, although it's important to note that the Supreme Court has partially overturned this viewpoint in the more recent case of *Keisham Meghchandra Singh v. Hon'ble Speaker, Manipur Legislative Assembly*.<sup>26</sup>

### CONCLUSION

The Anti-Defection Law has provided a distinct constitutional identity to political parties, highlighting their role in shaping the nation's democratic landscape. The current scheme allows for the Speaker or Chairman of the House to act as the sole adjudicator under the law, with the potential for judicial review over their decisions. However, the existing framework faces challenges, particularly concerning the timelines for the Speaker to decide on defection petitions.

Recent judgments and ongoing legal debates have emphasized the need to balance the rights of dissenting members with party discipline, and this delicate equilibrium remains a key concern in the context of anti-defection laws.

In essence, the quest for a constitutional equilibrium in India's anti-defection laws involves finding a balance between party loyalty and individual conscience, ensuring that the democratic ideals enshrined in the Constitution are upheld in practice. These proposed amendments aim to protect the rights of elected representatives and enhance the "efficacy of the anti-defection law", ultimately strengthening India's democratic foundations.

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- [6] *Tenth Schedule, Constitution of India*
- [7] *Fifty Second (Amendment) Act, 1985*

<sup>25</sup> (2020) 2 SCC 595

<sup>26</sup> 2020 SCC Online SC 55



[8] *Ninety first constitutional (Amendment) Act, 2003*