



ANTI- DEFECTION LAW- HITHERTO SHIFTS AND CHALLENGES IT POSES

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Abstract

Anti – defection law was first introduced in the Indian scenario in 1985 finally, after multiple bills were rejected through the years. The need for such law was felt post dealing with multiple defections, and when slogans like aaya ram Gaya ram gained prominence. Defection in the Indian politics had gained momentum as politicians want greater power and they readily switch to the party that offers them money or ministries .Even after the addition of the 10th schedule in the Constitution through the 52nd amendment the practice of changing political parties by the legislators continue unabated. The law has been amended through the years but yet has various drawbacks. It gives unlimited power to the speaker to decide in the cases of defection when there is a clear possibility the speaker might intend to make his decisions in favor of the party he belonged to. At the same time it bars the jurisdiction of courts to decide on the matter negating judicial review for the same which could lead to arbitrariness. On a different front this also stops an individual to give his free opinion that might not be in the party's interest thus curbing the legislator's freedom to oppose the wrong acts of the party, bad policies, leaders and bills. This paper focuses on the problems faced by Indian politics due to defection through the years, the drawbacks of this enacted law, the shifts and the challenges posed by it. It also proceeds to find measures to ensure a healthy, honest, and competitive political system.

Keywords: Anti- defection, disqualification, Tenth Schedule, Judicial Review, Voluntarily, membership

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Introduction

An MLA from Haryana named Gaya Lal switched parties three times in a single day in 1967, and his catchphrase “Aaya Ram, Gaya Ram” became well-known. Defection is defined as “conscious abandonment of allegiance or duty.”³ One of the earliest cases of defection can be noted as the one where Mohammed Ali Jinnah had left and later on confronted congress in 1920’s. He later went onto leading the Muslim league and making Pakistan a political reality.⁴ 542 lawmakers and members of legislative parties changed political parties in the nation between 1957 and 1967. As many as 142 defections were reported in Parliament over the four years between 1967 and 1971, and 1,969 MLAs switched parties in state assembly all around the nation.⁵ Following this, the necessity for an anti-defection provision was felt, and in 1985, the 52nd Amendment added the tenth schedule to the Indian Constitution. It is also referred to as the Anti-Defection Law. It became effective on March 1st, 1985. The justification for preventing such defections was that they threatened the values and foundations of Indian democracy.⁶

Even after the Tenth Schedule was added to the Constitution in 1985, parliamentarians in Indian legislatures are still prohibited from switching political parties while serving in office. Commonly referred to as the “Anti-Defection Law,” it was created to stop lawmakers from switching their political allegiances while they were still in office.

A key factor in the downfall of popular administrations around the world has been defections. The fluctuating allegiances of the legislators caused political instability in several nations. For instance, governments in Sri Lanka fell as a result of defections twice, once in 1964 and again in 2001. India has around 1866 registered political parties in our country out of which around 56 are recognized as national or state parties⁷

Etymology of the term ‘defection’

Defection refers to a person or a group's revolt, disagreement, or rebellion. Defection typically refers to resigning from one association to join another. When a member of a political party joins forces with other parties, it occurs in a political scenario. The term "floor crossing" has

³Merriam-webster, [https://www.merriam-webster.com/dictionary/defection#:~:text=noun,cause%2C%20or%20doctrine\)%20%3A%20desertion](https://www.merriam-webster.com/dictionary/defection#:~:text=noun,cause%2C%20or%20doctrine)%20%3A%20desertion)

⁴ Ayub Dawood, Here Are 10 Political Defections That Left A Lasting Impact on India, The Scoop, (Dec 29, 2015 at 07:58 PM), <https://www.scoopwhoop.com/news/political-defections-india-jinnah-bose-jp/> .

⁵ Mayabhushan Nagvenkar, Goa's Early Trysts With Defection, The Outlook, (Sept. 14, 2022 6:37 PM), <https://www.outlookindia.com/national/goa-s-early-trysts-with-defection-news-208789>

⁶ The Constitution (Fifty-Second) Amendment Bill, 1985, Lok Sabha, (January 24, 1985), http://164.100.47.4/BillsTexts/LSBillTexts/Asintroduced/22_1985_LS_En.pdf.

⁷ Political Parties: EC, *The Times of India* (10th Dec), <https://timesofindia.indiatimes.com>.

been used to describe this phenomena since the British House of Commons, where a lawmaker's allegiance would change when he crossed the floor from the Government to the Opposition side, or vice versa.

History

This defections phenomenon has also occurred in Indian politics. Defection has historically been a fertile ground for political instability and uncertainty in India, frequently tending to shift the emphasis from “governance” to “governments.” The infamous “Aaya Ram, Gaya Ram” slogan was created in the 1960s in response to the constant defections of parliamentarians.

In truth, defections in India have a history that dates back to the Central Legislative Assembly, when Shri Shyam Lai Nehru switched sides from the Congress Party to the British side. Another example is Shri Hafiz Mohammed Ibrahim, who in 1937 switched from the Muslim League to the Congress after being elected to the Uttar Pradesh Legislative Assembly. The tendency of changing political parties for reasons other than ideological ones swept the Indian polity in the late 1960s.

However, this tendency of switching political parties first appeared in the 1960s. This widespread political defection occurred around the time of the 1967 election. The legislators in numerous states had a significant change in political parties during the 1967–1968 period leading up to the fourth general election. 438 of the 542 occurrences of desertion between the first and fourth general elections took place in the year from 1967 to 1968.

The Chavan Committee Report (1969) notes that numerous instances of legislators in several states switching parties during the brief time between March 1967 and February 1968, following the Fourth General Elections, characterized the Indian political scene. In the two decades between the First and Fourth General Elections, there were approximately 542 incidents, and at least 438 defections happened in only these 12 months. Out of the 376 elected Independents, 157 joined different parties during this time. The fact that 116 of the 210 defecting legislators from different States were included in the Councils of Ministers they assisted is evidence that the lure of office played a significant role in legislators' decisions to leave their respective parties.

Evolution of Anti-Defection Law In India

A private member's resolution introduced in the Fourth Lok Sabha on August 11, 1967 by Shri P. Venkatasubbaiah served as the impetus for the development of laws to address the defection crisis in India. The Lok Sabha debated his resolution on November 24 and December 8, 1967.

The Lok Sabha unanimously approved the resolution in its final form on December 8, 1967. A Committee on Defections was established by the government in accordance with the viewpoints indicated in the resolution, and it was led by the then-Union Home Minister, Shri Y.B. Chavan, and it submitted its report on February 18, 1969. The Lok Sabha's table was covered with the committee report.

A 1973 law known as The Constitution (Thirty-second Amendment) Bill the Constitution (Thirty-second Amendment) Bill, 1973 was introduced in the Lok Sabha on May 16, 1973, to constitutionally provide for disqualification on defections because the Y.B. Chavan Committee's recommendations were unable to adequately address the issue of defections. The Lok Sabha and Rajya Sabha both approved a proposal to refer the measure to a joint committee of the houses of parliament on December 13 and 17, 1973, respectively. The Joint Committee was abolished on January 18, 1977, when the Fifth Lok Sabha was dissolved.

The 1978 Constitution (48th Amendment) Bill Another attempt was made on August 28, 1978, when the Constitution (Forty-Eighth Amendment) Bill, 1978, was introduced in Lok Sabha. At the introduction stage itself, a number of lawmakers from the ruling party and the opposition parties rejected the Bill. The members raised major concerns about the alleged manipulation of facts in the Statement of Objects and Reasons of the Bill, which claimed that “the problem cuts across all parties” despite the fact that the members were not consulted over its provisions. It has been looked at after consulting with political party leaders. The Minister withdrew the motion for permission to present the Bill due to strong opposition.

A law against desertion, The Constitution (Fifty-second Amendment) Bill, 1985 The Constitution (Fifty-second Amendment) Bill, which the government introduced in the Lok Sabha on January 24 and which resulted in the addition of the Tenth Schedule and changes to Articles 101, 102, 190, and 191 of the Constitution, was the result. It lays out guidelines for Shri Venkatasubbaiah's Lok Sabha resolution, which reads as follows: "This House is of the opinion that a high-level Committee consisting of representatives of political parties and constitutional experts be set up immediately by Government to consider the problem of legislators switching their allegiance from one party to another and their frequent floor crossings in all its aspects and make recommendations in this regard. Main suggestions made by the Y. B. Chavan Committee-

- There should be a committee made up of party representatives in the legislature and state assemblies. It was established with the purpose of developing a code of conduct for political parties, specifically with regard to the issue of defections, and overseeing

its implementation. No person shall be appointed as a Minister or Chief Minister if they are not a member of the lower House.

- The Committee recommended making this change to the Constitution without impacting the current officeholders.

On May 5, 2003, the Government presented the Lok Sabha with the Constitution (Ninety-seventh) Amendment Bill, 2003. The Bill was passed by the Lok Sabha and Rajya Sabha on December 16 and December 18, respectively, after the Standing Committee on Home Affairs, to which the Bill was referred, delivered its report. The Constitution (Ninety-first Amendment Act, 2003) was enacted on January 1, 2004, and on January 2, 2004, it was published in the Indian Gazette. The President gave his assent to the legislation on that day.

The Tenth Schedule to the Constitution's rule on splits was not included in the Act. It stated that a member who is disqualified under paragraph 2 of the Tenth Schedule shall also be disqualified from being appointed a Minister or holding a lucrative political position for the duration of the period starting from the date of disqualification until the date on which the term of his office as such member would expire, or, in the event that he contests an election to either the House of Parliament or the Legislature of a State, before the expiration of such period, until the date on which the election results are announced.

What are the Grounds for Defection?

- Voluntary Give Up:

If a political party membership is voluntarily renounced by an elected official.

- Violation of Instructions:
 - If he casts a vote or doesn't cast a vote in that House against the wishes of his political party or anyone else with that authority, without first getting consent.
 - His refusal to cast a ballot must not have been approved by his party or the designated person within 15 days of the incident in order for him to be disqualified.
- Elected Member:

If any independently elected member joins any political party.

- Nominated Member:

If any nominee joins political parties after the initial six months have passed.

Certain Incidents of Defection

One of the incidents where congress appeared as the single largest party after the elections in 2017, however BJP formed the government as 12 legislators defected to join the BJP

government. The HC had not held the legislators not disqualified stating that it is particularly mentioned in the sec 4(2) that when more than 2/3rd members of a party chose to merge with other would not be regarded as defections as mentioned in 10th schedule. While the opposition lays allegations that this judgment provokes and encourages the use of malpractices in elections where the party with greater income resources can easily defect the legislators in their favor.⁸ In 2015, Yogendra Yadav, one of the Aam Aadmi Party's founding members and a former close aide of Arvind Kejriwal, and Prashant Bhushan began to have issues with Kejriwal's autocratic behavior and his new inner circle. The dissent that emerged shortly after the party's stunning victory in the Delhi elections embarrassed everyone as the leader took to the streets to criticize Kejriwal. In March 2015, Yadav was expelled from the AAP after being voted out of the political affairs committee for engaging in "anti-party activities." Yadav and Bhushan founded the Swaraj Abhiyan, a new group, following what would turn out to be the first of many upheavals for Arvind Kejriwal.

There are several examples even where the prominent leaders have been defected. MLA Lalduhoma was removed from the Mizoram legislature in 2018 assembly elections for defecting to the Zoram People's Movement (ZPM) as he had first contested the election under no party names. He had earned the dubious distinction of being the first Lok Sabha MP to be disqualified under the anti-defection statute in 1988.⁹

In Maharashtra, the Shiv Sena, Nationalist Congress Party, and Indian National Congress formed a coalition government, however 40 of the party's 55 MLAs left. The MLAs who left the alliance afterwards formed the state's administration by forming a partnership with the main opposition Bharatiya Janata Party. Although more than two-thirds of the Shiv Sena's MLAs left the previous coalition, they did not afterwards join any other political party. Both parties' divisions now assert that they are the original Shiv Sena. The Election Commission prohibited both party sections from using just the name Shiv Sena and the election emblem of the original party in a temporary ruling.¹⁰

⁸ Gerard de Souza, *Goa defections: Congress says HC order will encourage mandate reversal*, (Feb 25, 2022 10:54 AM) <https://www.hindustantimes.com/india-news/goa-defections-congress-says-hc-order-will-encourage-mandate-reversal-101645766699698.html>.

⁹ *Mizoram MLA Lalduhoma Disqualified from Assembly For Defecting*, NDTV, (November 27, 2020 8:40 PM), <https://www.ndtv.com/india-news/mizoram-mla-lalduhoma-the-first-lok-sabha-mp-to-be-disqualified-axed-again-for-defection-2331229>.

¹⁰ Commission's Interim Order dated 08.10.2022 in case of Dispute No. 1 of 2022 in regard with Shivsena, Election Commission of India, October 8, 2022, <https://eci.gov.in/files/file/14449-commissions-interim-order-dated-08102022-in-case-of-dispute-no-1-of-2022-in-regard-with-shivsena/>.

The state's government was overthrown in March 2020 in Madhya Pradesh as a result of the resignation of 22 Indian National Congress MLAs from the legislative assembly. Later, a number of these MLAs ran in and won by-elections on Bharatiya Janata Party platforms.¹¹

17 members of the Indian National Congress and Janata Dal (Secular), the state's ruling alliance, resigned from the Karnataka Legislative Assembly¹². The Speaker, however, refused to accept their resignations. In the interim, a motion of confidence was required by the government to demonstrate its majority in the parliament. The administration was overthrown because the MLAs abstained from the vote. The Speaker then denied the MLAs' resignation and declared them unable to serve until the end of the assembly's current session. The Supreme Court overturned the order on the duration of the MLAs' disqualification but affirmed the Speaker's decision to remove them from office. A few of the MLAs who were disqualified joined the Bharatiya Janata Party and ran in the by elections.

Lacunae and Shortcomings

Defecting flouts the same mandate on which a member was elected, according to the National Commission to Review the Working of the Constitution, which observed this in 2002. Candidates are elected based on the party that handed them the ticket. The Anti-Defection Law was added to the Constitution for this reason, among others, according to the Statement of Objects and Reasons of the Bill.

Problem with merger- While Rule 4 of the Tenth Schedule appears to give some relief from members' eligibility in circumstances involving mergers, there appears to be a legal gap. Subject to the need that at least two-thirds of the members of the legislature party in question have approved such merger, the law tends to protect the members of a political party when the original political party merges with another party. The fault appears to be that the exception is determined by the quantity of members rather than the cause of the defection. Individual members' availability of lucrative office or ministerial positions with the opposing party appears to be the most typical motivation for their desertion. It is entirely reasonable to assume that the same reason might apply to the 2-3rd members who have agreed to the merger.

Expulsions- Due to the Anti-Defection Law's silence about the issue of members of political parties being expelled, there have been several challenges in the law's enforcement. The Anti-

¹¹ MLAs resigning their membership in the 15 th legislative assembly, Madhya Pradesh Vidhan Sabha, https://mpvidhansabha.nic.in/15thvs_bielection.pdf.

¹² Shrimanth Balasaheb Patil v. Hon'ble Speaker, Karnataka Legislative Assembly and Others, Writ Petition (Civil) No. 992 of 2019, Supreme Court of India, November 13, 2019

defection Law's fundamental flaw is that it has no provisions for handling the scenario that results from a member's expulsion from his political party. The lack of a provision in the Tenth Schedule regarding such members creates an anomalous situation in that the expelled member continues to be subject to the discipline and whips, etc., of the party but may no longer enjoy the benefits of membership, even though political parties continue to have the authority to expel their members from the party under the provisions of their party constitution.

Voluntarily giving up of membership of a party- Rule 2(1) (a) of the Tenth Schedule—mentions that a member of the House is disqualified from the party if he voluntarily gives up his membership of the political party. However, it is not very clear from this paragraph whether indulging in acts like working against the interests of the party, supporting a candidate of other party in elections, etc., which, technically speaking do not amount to giving up the membership of the party may be considered as the member having voluntarily given up the membership of the party.

Giving up political party membership voluntarily is one of the grounds listed in the Tenth Schedule for being disqualified as a defector. However, the Schedule doesn't specify what exactly counts as voluntarily giving up party membership. According to the Supreme Court, voluntarily terminating membership has a much broader meaning than merely resigning from the party¹³.

Even without leaving the party, a person can voluntarily renounce their membership. Even without tendering a resignation, a member's actions may be taken to infer whether he has freely renounced his party membership. This may imply that a legislative action taken both inside and outside of the House can be looked into to qualify as voluntarily giving up the party membership.

In a different instance, the Supreme Court ruled that even if a political party member is expelled after being elected, he may nevertheless continue to be a member of the party as an unattached member.¹⁴ Such a member will be regarded as having freely renounced his membership in the first party if, after being ejected from the first party, he joins another political organization.

Wide power to the Speaker- the Chairman or Speaker of the House has broad and unrestricted authority to decide instances involving the disqualification of members on the basis of defection under Rule 6 of the Tenth Schedule. It should be noted, nevertheless, that the Speaker continues to be a member of the party that nominated him or her for the position of Speaker. It

¹³ Ravi S. Naik v. Union of India, 1994 Supp (2) SCC 641

¹⁴ G. Viswanathan V. The Hon'ble Speaker Tamil Nadu Legislative Assembly, 1996 AIR 1060, Supreme Court of India, January 24, 1996

is difficult to anticipate that the Speaker will act impartially in issues involving his or her political party in such a situation. The Speaker's decision is definitive under the law, but he is not given a set amount of time to make it. A party may file a court motion, but only after the Speaker has made his choice public. The Dinesh Goswami Committee on Electoral Reforms and the Election Commission advocated giving the President or the Governor of the State the authority to decide on the matter of disqualification under the Tenth Schedule, who shall act on the advice of the Election Commission. However, the Act has not been changed to implement these proposals.

Scope of judicial review- Rule 7 forbids judicial review of any matter related to a member of a House being disqualified, so all courts, including the Supreme Court under Article 136 and High Courts under Articles 226 and 227 of the Constitution, lack the authority to examine the Speaker's decisions in this regard. The Supreme Court has ruled in a number of decisions that the law is lawful in all other respects but that the issue of judicial review is unconstitutional. However, despite numerous judicial rulings supporting the Courts' ability to conduct judicial reviews, the Tenth Schedule has not been altered in this way.

No individual stand on part of members- Rule 2 of the anti-defection law confines legislators' ability to challenge the wrongdoings of the party, harmful policies, leaders, and laws by placing party members in a category of loyalty to the party whip and policies. In this sense, the political party governs its members, who aren't allowed to express their disagreement. In a manner, this goes against the idea of representative democracy, because members are compelled to follow orders rather than the wishes of the populace.

Law Commission Reports

We have also recommend the insertion of definition of "political party" in the Tenth Schedule to include a pre-election front or pre-election coalition. In such a situation, defection of a member of such constituent party of the pre-election front or of the constituent party as a whole from the pre-election front would be treated as defection attracting the provisions of the Tenth Schedule to the Constitution.¹⁵

Law Commission of India (1999) chaired by Justice BP Jeevan Reddy on 'Reform of Electoral Laws' recommended scrapping the provisions regarding splits and mergers.¹⁶

¹⁵ One Hundred Seventieth Report On Reform Of The Electoral Laws , (1999), Law commission of India.

¹⁶ Justice BP Jeevan Reddy , (1999) , Law Commission of India , 'Reform of Electoral Laws' . See also Justice MN Venkatachaliah, (2002), The National Commission to Review the Working of the Constitution.

The Law Commission recommends a suitable amendment to the Tenth Schedule of the Constitution, which shall have the effect of vesting the power to decide on questions of disqualification on the ground of defection with the President or the Governor, as the case may be, (instead of the Speaker or the Chairman), who shall act on the advice of the ECI¹⁷

The 4th report of the Second Administrative Reforms Commission (2007) chaired by Veerappa Moily suggested that the matters of disqualification for political defection should rest with the President or the Governor on the advice of the Election Commission of India, as the case may be.¹⁸

Should The Presiding Officer / Speaker Be Deprived Of The Power To Rule On Defection Petitions?

Numerous initiatives have been launched in the last few years to solve this issue, beginning with the Committee on Electoral Reforms led by Dinesh Goswami. The members of the committee suggested, in their report turned in on May 4, 1990 (Committee on Electoral Reforms 1990), that the Presiding Officer not make the decision on disqualification.

The President or the Governor, as appropriate, who will act on the advice of the Election Commission, should have the authority to decide the legal question of disqualification rather than the Speaker or Chairman of the House, to whom the question should be referred for determination as in the case of any other post-election disqualification of a Member.¹⁹

The following suggestions were made in January 1994 by a committee of presiding officers led by Hashim Abdul Halim:

1. The Supreme Court or the High Court, depending on the situation, may hear an appeal about the Presiding Officer's ruling.
2. In the case of the Lok Sabha and jointly in the case of the Rajya Sabha, an appeal against the Presiding Officer's decision may be made to the President.
3. A committee of senior members of the House may decide the case, and the presiding officer may hear an appeal²⁰.

¹⁷ The 255th Law Commission Report On Electoral Reforms, (2015), Law Commission Of India.

¹⁸ Veerappa Moily, (2007) , The 4th report of the Second Administrative Reforms Commission

¹⁹ Dinesh Goswami Committee, (1990), Report of the committee on electoral reforms, Ministry of Law and justice

²⁰ Dr. K. Gireesan, Mr. Chinmay Bendre, published Friday 16 September 2022, Anti-Defection Law: A Review, Mainstream Weekly , VOL 60 No 39-42 last retrieved Wednesday, 22 Feb., 2023.

- In *Babulal Marandi Vs the Speaker, Jharkhand Vidhan Sabha*²¹ Court ruled that the Speaker is required to exercise the power for deciding if the question about disqualification is referred for such decision before him/ her. In other words, the Constitution has not conferred any powers on the Speaker to take suo motu decisions on the matter of disqualification under the Tenth Schedule.
- Applicability of anti-defection law in the absence of rules. In the case, *Madan Mohan Mittal Vs The Speaker, Punjab Vidhan Sabha*²², the Punjab-Haryana High Court has placed on record that “in the absence of rules framed under Para 8 of the 10th Schedule, it is open to the Speaker, to adopt such procedure as s/he deems fit, proper, expedient and just in the circumstances of any particular case. The law remains silent also on the issue of the rendition of a petition by another representative
- In the case of *Ravi Naik*²³ (1991), Simon D’Souza, the acting Speaker of the Goa Legislative Assembly held that the respondent was not allowed sufficient opportunity for his defense and set aside the decision of his predecessor, Surendra Sirsat.
- In *Keisham Meghachandra Singh Vs the Speaker, Manipur Legislative Assembly*²⁴, the Supreme Court recommended that an independent tribunal can be appointed which will substitute the Speaker of the Lok Sabha and Legislative Assemblies to deal with matters of disqualifications under the Tenth Schedule to the Constitution.
- The Supreme Court (2020) has observed that while acting as a tribunal under the Tenth Schedule, the speaker is bound to decide disqualification petitions within a reasonable period. While what time period is reasonable will depend on the facts of each case, the Court held that disqualification petitions must be decided within three months from when they are filed.²⁵

Incidents of Defection Decision Gone Wrong By the Speaker

When the Speaker of the Mizoram Assembly discovered in 1988 that one of the nine lawmakers who made up the “one-third” defector was abroad, it was assumed without any proof that the other eight were also defectors. This was sufficient for the Governor to fire the Ministry and dissolve the Assembly in order to establish President's control. The gang also stated that they

²¹ 2021 SCC OnLine Jhar 170

²² 1997 SCC OnLine P&H 787 : (1997) 4 RCR (Civil) 597 (2) (FB) : PLR (1997) 117 P&H 374 (FB)

²³ Supra

²⁴ 2020 SCC Online SC 617

²⁵ *Keisham Meghachandra Singh v. The Hon’ble Speaker Manipur Legislative Assembly & Ors.*, Civil Appeal No. 547 of 2020, Supreme Court of India, January 21, 2020

had nine members, but the speaker made no attempt to verify this information. Later, it was discovered that the ninth member had not defected but rather had left the country. Therefore the speaker did not characterize it as a split instead imposed defection upon them.²⁶

For the first time in history, Congress won elections in Nagaland in 1988. In the elections for the assembly, the party easily prevailed. In response, it seated renowned Naga chieftain Hokishe Sema in the chief minister's seat. Unfortunately, the party lost, and K.V. Krishna Rao, the governor general, suggested dissolving the Assembly. In the interim, 13 of the House's 60 members (or 13 out of 40) sent a combined letter of resignation to Speaker Chongsen, expressing their dissatisfaction with the chief minister's leadership. The Naga National Democratic Party (NNDP), which holds 17 assembly seats, was joined by the 13 MLAs, including four important ministers and the deputy speaker. But the biggest blow to the Congress was the speaker's decision to recognise the opposition coalition-the Joint Regional Legislature Party - as a new political party, thereby allowing the dissidents to bypass the Anti-Defection Law, and clearing the decks for a change in government.²⁷

Incidents of Defection Decision Gone Right by the Speaker

No political party was able to win a clear majority in the 2017 elections for the 11th Manipur Legislative Assembly. With the backing of an MLA who was elected on the INC's platform, the Bharatiya Janata Party asserted a claim to form the state's administration. The Manipur BJP-led government even elevated the MLA to the position of minister. The minister was the subject of numerous disqualification petitions for changing parties after being elected to the House, but the speaker of the parliamentary assembly did not rule on any of them. The MLA was expelled from the state government and prohibited from participating in the legislative assembly by the Supreme Court in March 2020. Ten days later, the speaker disqualified the MLA.²⁸

26 MLAs left opposition parties to join the Telangana Rashtra Samithi (TRS) at various stages after the TRS formed the state's government in Telangana in 2014. But until the legislature was

²⁶ J. Zahluna, (2018) Political Defection of Mizoram in 1988, *Senhri Journal of Multidisciplinary Studies* Vol. III No. 1 (January – June, 2018) ISSN 2456-3757 (pp : 96 – 111)

²⁷ 2 Ramesh Menon, President's Rule imposed in Nagaland under the questionable circumstances, *INDIA TODAY* < <https://www.indiatoday.in/magazine/indiascope/story/19880831-presidents-rule-imposed-in-nagaland-under-questionablecircumstances-797609-1988-08-31>> Feb., 21 2023

²⁸ *Keisham Meghachandra Singh versus The Hon'ble Speaker Manipur Legislative Assembly & Ors*, Supreme Court of India, March 18, 2020 .

dissolved prior to elections, the state's speaker of the legislative assembly did not rule on the disqualification petitions.²⁹

In Andhra Pradesh, 23 YSR Congress legislators switched allegiances to the state's ruling Telugu Desam Party. The petitions to remove these MLAs from their positions as members of the House were not addressed by the speaker. In fact, the state government named four of these MLAs as ministers.³⁰

An MLA who was elected on the Bharat Janata Party ticket in the West Bengal legislative assembly elections of 2021 was rumoured to have joined the governing All India Trinamool Congress. He was the subject of a petition to be expelled from the House due to defection that was presented to the speaker. The speaker, however, turned down the request to disqualify the MLA.³¹ The Calcutta High Court ruled that the speaker had disregarded some of the documentation submitted in support of the MLA's disqualification petition. The Court determined that the speaker's commands were perverse and unjustifiable on these reasons. The Court instructed the speaker to reconsider the petition after carefully reviewing all pertinent papers.³²

Conclusion

The anti-defection law in India has been an essential tool to maintain political stability and ensure party discipline. However, it has also posed significant challenges and criticisms that need to be addressed.

One of the major challenges of the anti-defection law is its potential misuse by political parties to suppress dissent and stifle democratic debate. The law's strict provisions, such as disqualification of legislators, have led to instances of party leadership controlling the voting behavior of their members. Additionally, the law has limited the ability of legislators to represent their constituencies and voice their concerns effectively. The law's provisions have forced legislators to toe the party line, even if it goes against their constituents' interests.

²⁹ "Speaker Stays Silent: KCR Formula to Beat Anti-Defection Law Sets Dangerous Example", News 18, , <https://www.news18.com/news/opinion/opinion-speaker-stays-silent-kcr-formula-to-beat-anti-defection-law-sets-dangerous-example-1871363.html> , (April 18th, 2023)

³⁰ "YSR Congress to boycott Assembly over defection row", The Times of India, <https://timesofindia.indiatimes.com/city/vijayawada/andhra-pradesh-ysr-congress-to-boycott-assembly-over-defectionrow/articleshow/65690123.cms>., (April, 18th, 2023)

³¹ *Ambika Roy v. The Hon'ble Speaker, West Bengal Legislative Assembly and Ors.*, WPA(P) 213 of 2021, Calcutta High Court, April 11, 2022,

³² *Bengal Assembly Speaker rejects plea to disqualify Mukul Roy as MLA*", Business Standard, https://www.business-standard.com/article/current-affairs/bengal-assembly-speaker-rejects-plea-to-disqualify-mukul-roy-as-mla122060800884_1.html. , (April ,18th, 2023)

During the Conference of Presiding Officers of Legislative Bodies in India held in 1951 and 1953, where the powers of the Presiding Officer regarding political defection were hotly contested, a resolution was passed calling for the adoption of the British Convention, which prohibits political parties from fielding candidates against the Speaker during general elections. And the Speaker can stay in charge until something changes. By custom, the Speaker also renounces affiliation with his or her political party.

Such conventions might be challenging to adopt in India. However, it can serve as a beacon for our legislators. Therefore, it is wise to make the case that the speaker or presiding officer should not have the authority to decide on defection petitions.

To address these challenges, there is a need to reform the anti-defection law. The law should be made more transparent and clearly defined to avoid confusion and ambiguity. The provisions should be more nuanced to ensure that legislators can represent their constituencies while maintaining party discipline.

Furthermore, there should be provisions to prevent the misuse of the law by political parties. The law should be amended to allow legislators to vote according to their conscience on issues of national importance while maintaining discipline on party-related matters.
