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WE TRUSTED YOU!

~ *Abhishek Garg*

Abstract

A warm welcome and greetings to the reader, through this paper, we intend to study what defection is, how it affects a democracy and how nations try to tackle it. In a democracy, people elect their leaders. This is one of the basic features of democracy. India is a significant subject of examination because it is one of the best examples of a democracy. But the question this paper addresses is: what if the people we elect start exploiting their power? What shall be done if the people's representatives switch sides and betray their own party and the nation for personal benefits? Such acts by a corrupt representative make the government collapse the people's trust are shattered. That's where the Anti-Defection Law comes into play. In India, the 10th schedule, added by the 52nd amendment, defines our anti-defection laws and provisions. This wasn't something to be done overnight. It was a major development and took a long, tough journey to be finally enforced. Here we attempt to shed light on the journey of the development of the law, all rises and falls in the due process starting from the. Who took advantage of the broken system, who suffered due to the absence of the law, until when, how, and who brought the law into enforcement? To get a more holistic view, we compare our system with those of our neighbors, discuss the pros and cons of their system and assess what we did right and what we need to improve.

Introduction

Democracy comes from Greek words Demos, meaning people, and Kratos, meaning power (*Held, 2006*). Hence the word Democracy literally means "People's Government", which is kept through the representatives we elect into the parliament. But the sad reality is that the representatives that we elect often forget their promises and duty and responsibility towards the people and the nation, start exploiting their power for personal gain, at the cost of people's trust and national stability. They change party, vote against the party, neglect their duties, and

exploit their power (*Jain, 2019*). People elect a representative based on their promises, vision and the trust they vest in him, when representatives change party, exploit their power, don't fulfil their promises, it's a major damage to the people's trust, national stability, and the very spirit of democracy (*Government of India, 1969*).

An alternate viewpoint: if the representatives switch parties, the government is most likely to fall. Then there will be re-elections, which won't have been there, if the representatives were fair, honest and faithful to the people and valued their duty and people's trust. The money spent in such re-elections is that of the tax payers. (*Election Commission of India, 1968*)

And it's a huge expenditure which was otherwise avoidable and the funds could be used in national welfare. The elections put a hold to many crucial national and government activities. Hence, there was a need for a proper, broad Anti-defection law that covers all possible scenarios and safeguards people's trust, prevents defection and such wastage of funds. Here we will first look at the Indian development of the law and then compare it with our neighbors to see which is better in which aspect, where we went wrong, where one prevails over the other and what can we improve and adopt.

What is Anti-Defection Law?

According to the 10th schedule of the constitution, the term defection refers to the act of representatives switching parties after elections (*Choudhry, 1997; Kihoto Hollohan v. Zachillhu & Ors., 1992*). Anti-defection law, as the name suggests, aims to prevent such act of defection and re-establish stability, people's trust and democracy in the nation (*Reddy, 1989; The Constitution (Fifty-Second Amendment) Act, 1985*).

Why is it a Problem?

- **Political Instability:** when a representative switches parties, it causes the government to fall (*Gupta, 1995*). This practice can lead to lack of stable governance, legislature and administration, leading to more scope of unrest in people and criminal activities in the shadow of lack of executive and administrative oversight (*Government of India, 1969*).
- **Election Expenditure:** Election is not a minor event. It's huge. It takes huge funds (*Kashyap, 2003*). And those funds are taxpayers' money. And that money isn't to be thrown off at anything. It's for national development and contingency management. If it will be spent on

repeated re-elections, the national development and crisis resilience will suffer greatly (*Election Commission of India, 1968*).

- **People's Trust:** The people elect a candidate to the government, vesting trust in him that he will take the society and nation towards growth, development and prosperity. When such incidents of defection occur, it deeply shakes this trust and makes people doubt the very spirit of democracy and the value of their trust lives, and vote in the nation and the government (*Jain, 2019; Austin, 1999*)
- **Disrupting Stability and policies:** Election halts any political activity, going on or being initiated at the time. This includes policymaking which strongly influences the functioning of the nation on ground level. If the elected government was in the process of making and implementing a much needed policy that could have highly contributed to make the life of people better, and making the system more streamlined and fair, defection and re-election hampers the implementation of such policies. The new government may or may not make similar policies, and any new policies would take further longer time in the process of implementation.
- **Increase in Corruption:** Multiple frequent re-elections create a void, in which the nation didn't make any necessary policies, was too busy to look for and curtail any illegal activities. This could make a loophole for illegal activities to flourish in the nation and disturb the peace and stability of the nation (*Seervai, 2013*).

Scope of Anti-Defection law

- **Individual Representatives:** If a Representative switches parties after being elected to the assembly, he individually will be disqualified from his seat.
- **Groups of Representatives:** It allows groups of Representatives to join another party collectively
- **Political Parties:** Parties from which, Representatives have defected or party, which they have joined, won't be punished. It's the liability and responsibility of the Representatives, not the parties.
- **Jurisdiction:** The Anti-defection law is only applicable on central and state government, not local/district government such as municipal corporations or panchayats.

- **Core Purpose:** The anti-defection law was passed in response to MLAs toppling multiple state governments after the general elections of 1967, with the purpose to stabilise governments by discouraging Representatives from changing parties.

Scenarios where Anti-Defection Law Applies

1. If Representatives voluntarily gives up the membership of their party, once they are elected, they will be disqualified from their seat in the assembly (*Ravi S. Naik v. Union of India, 1994; Constitution of India, Tenth Schedule*).
2. If Representatives of the elected party vote or abstain from voting against the interest of the party, as directed by the whip, a motion can be passed by petition to the presiding officer of the house (*Kihoto Hollohan v. Zachillhu & Ors., 1992*).
3. Acting against the stance of the party (attending rallies, giving speech, spreading Anti-party propaganda)
4. When, due to any other reason than mentioned above, a person is expelled from the party, he retains his MLA or MP position. But if he joins another party after being expelled from the party, he shall lose his MLA or MP position.
5. If an independent candidate, after being elected, joins another party, he shall be disqualified from his MLA or MP position (*Kashyap, 2003; Constitution of India, Tenth Schedule*).
6. A person nominated in Rajya Sabha can join a party within six months from being nominated. If they join a party after these six months, they may lose their Rajya Sabha seat. (*Kashyap, 2003*).

Basic rule: Public vests their trust in a particular candidate from a particular political party, or independent, based on their vision and potential. If a candidate elected, from a particular party, or independent, which the people didn't trust enough to elect in the first place, joins another party after being elected, he may lose his MLA or MP position.

Exception to Anti- Defection Law

If two third or more of elected MLAs or MPs from a party leave the party collectively, to join another party, they are not disqualified (*The Constitution (91st Amendment) Act, 2003*).

The remaining elected MLAs or MPs have option: they can remain in the party or join another party.

In any case, the final authority to decide whether the anti-defection law is applicable or not, rests in the hand of the presiding officer of the house (*Kihoto Hollohan v. Zachillhu & Ors, 1992*).

By recent judgment of the Supreme Court under the case of *Keisham Meghachandra Singh v. The Hon'ble Speaker, Manipur Legislative Assembly & Ors., (2020)*, has set a three month time limit for the presiding officer to decide whether anti-defection applies or not (*Keisham Meghachandra Singh v. The Hon'ble Speaker, Manipur Legislative Assembly & Ors., 2020*).

Historical Development

- **Before 1962:** The Indian National Congress used to rule at both central and state level almost all over India (*Gupta, 1995*).
- **In 1960s:** For the first time since the independence, the nation saw several other competent candidates. People's faith divided, and the Indian National Congress felt difficulty to dominate alone and had to work in coalition with other parties. This started the initial stage of defection in India. Under the cover of the coalition government, Representatives started switching the parties. This was the first time the nation saw a government fall due to defection of representatives.
- **In 1967:** These defections had reached an alarming stage (*Election Commission of India, 1968*). The severity of the situation can be understood by a simple statistic: In the state election of 1967, approximately 550 of the total 3500 MLAs defected (*Reddy, 1989*). Some even crossed the floor more than once (*Government of India, 1969*).

Incident: Gaya Lal was an MLA of Haryana, from the Indian National Congress. In 1967, he switched parties 3 times within 9 hours (*Government of India, 1969*). From Indian National Congress to United Front, then back to Indian National Congress, the back to United Front. This bizarre incident was the base of a famous saying in Indian politics "Aaya Ram, Gaya Ram" (*Kohli, 1990*). This was another incident to highlight the alarming necessity for a proper, codified, wide and broad Anti-Defection Law.

1967-69: Seeing the drastically depreciating condition of the Indian politics and the nation, the Y.B. Chavan Committee was made, with the intent to study the extent, cause, effect, etc. of defection and suggest legal, administrative safeguards and remedies to curb defection (*Government of India, 1969; Chavan Committee Report, 1969*). Though it was fruitful to the

major extent of its purpose, it failed to lay down legal groundwork to curb corruption. Still, its findings played an important role when the anti-defection law was later passed.

- **1977-79:** After the end of congress government in 1977, Morarji Desai, from Janta Party presides the first ever non-Congress government as the prime minister. Though his government doesn't last long. In 1979, 76 MPs defected from his party, causing it to lose majority (*Rao, 1980*).
- **1984-85:** On 31st October, Indian National Congress, led by Prime Minister Rajiv Gandhi, came into power and in 1985, Rajiv Gandhi proposes the Anti-Defection Bill.

Then finally, by Fifty-Second Amendment, adding the 10th schedule to the Constitution of India, the long awaited Anti-Defection Law was passed, providing for disqualification of Representatives on ground of defection from party (*The Constitution (Fifty-Second Amendment) Act, 1985*).

In 2003, via 91st amendment to the constitution of India, it was added that if two third or more of the total elected members, collectively defect from the party, to join another party, in this case, the disqualification of such Representatives won't be done. The remaining Representatives had a choice, whether to remain in initial party, join the other party (*The Constitution (91st Amendment) Act, 2003*).

Comparative Analysis

Bangladesh: A bitter success.

The Anti-defection law is embedded in the Article 70 of the constitution itself not as a separate schedule or statute but as a core constitutional command. This placement itself signals that party discipline is considered structural, not merely regulatory.

Article 70 provides that a Member of Parliament **shall vacate his seat** if:

- He resigns from the political party which nominated him, **or**
- He votes in Parliament against that party, **or**
- He abstains from voting contrary to party direction.

Disqualification is **automatic** and **non-discretionary**.

The regime operates on a **strict liability model**:

- **Intent is irrelevant**
- **Justification is irrelevant**
- **Public interest dissent is irrelevant**

Once the factual condition is met, the constitutional consequence follows immediately.

There is:

- No inquiry mechanism
- No Speaker's adjudicatory role
- No internal party process required
- No scope for condonation or explanation

This makes Article 70 one of the **most rigid constitutional provisions governing legislative behaviour anywhere in the world.**

Strengths

- Absolute government stability
- No possibility of horse-trading
- No surprise collapses of governments
- Predictable legislative outcomes

Structural costs

- Parliament ceases to function as a check on the executive
- Party leadership dominates governance
- Opposition influence is marginalised
- MPs function as **vote-carriers, not lawmakers**

Article 70 thus prioritises regime continuity over representative democracy, which makes it extraordinary for stability but executive-intensive (*Constitution of the People's Republic of Bangladesh, 1972, Art. 70*).

Pakistan: a failed attempt.

The anti-defection law was added via 14th amendment under the article 63A of the constitution. The law aimed at preventing destabilisation while **preserving legislative debate**. A member

may be declared to have defected **only if** he votes or abstains contrary to party direction in the following four situations:

1. Election of the Prime Minister or Chief Minister
2. Vote of confidence or no-confidence
3. Money Bill
4. Constitutional Amendment Bill

Outside these categories, **no constitutional consequence follows**, even if the member openly opposes the party.

Defection under Article 63A involves **multiple stages**, ensuring institutional checks:

1. Party head issues a declaration of defection
2. Member is given an opportunity to explain
3. Declaration is forwarded to the Speaker/Chairman
4. Reference is sent to the Election Commission of Pakistan
5. Final decision rests with the Election Commission

This makes the process:

- Procedural
- Reviewable
- Institutionally mediated

Strengths

- Protects governments from opportunistic overthrow
- Retains deliberative character of Parliament
- Allows MPs to represent constituency interests
- Reduces executive dominance over legislature

Weaknesses

- Some room for strategic defection
- Political bargaining still possible
- Enforcement depends heavily on party leadership integrity.

Article 63A is thus more procedural and democratic as it gives room for the representative to present his part and justify his act. Thus this is less absolute and arbitrary and rigid and more democratic while giving more room for strategic defection than Bangladesh (Constitution of the Islamic Republic of Pakistan, 1973, Art. 63A).

Compared to India

India has anti-defection law in the 10th schedule of its constitution, added via the Fifty-Second Amendment. It aimed to sabotage post-election floor-crossing of Representatives, to reinforce the role and value of public trust and representation in the government, and to re-establish stability in the government. While we have had a detailed discussion on its development and current status, here is a short corner of comparison of India's anti-defection law with those of its neighbors.

- **Degree of party control** ○ Bangladesh imposes *absolute* party control; any vote or abstention against the party leads to automatic disqualification.
 - Pakistan imposes *limited* control; disqualification applies only in four constitutionally specified situations.
 - India lies in between; discipline operates through whips, but not constitutionally for every vote.
- **Government stability** ○ Bangladesh ensures near-total stability by eliminating floor-crossing altogether. ○ Pakistan protects stability only at regime-critical moments.
 - India remains more vulnerable due to Speaker delays and procedural manipulation.
- **Decision-making authority** ○ Bangladesh removes adjudication by making disqualification automatic. ○ Pakistan vests final authority in the Election Commission.
 - India relies on the Speaker, creating a structural conflict of interest.
- **Scope for legislative dissent** ○ Bangladesh allows no dissent whatsoever.
 - Pakistan permits dissent on ordinary legislation.
 - India theoretically allows dissent, but frequent whipping has narrowed this space.
- **Representative democracy** ○ Bangladesh subordinates constituency representation entirely to party leadership. ○ Pakistan recognises legislators as constituency representatives except in limited cases.
 - India attempts a balance but often fails in practice.

- **Judicial oversight** ○ Bangladesh has minimal judicial intervention. ○ Pakistan's courts actively interpret and enforce anti-defection norms. ○ India allows judicial review but avoids decisive structural reform.
- **Democratic cost** ○ Bangladesh turns Parliament into a rubber stamp. ○ Pakistan accepts limited instability to preserve debate.
 - India suffers from uncertainty, politicisation, and inconsistent enforcement.
- **Overall assessment** ○ Bangladesh is more stable but too executive-oriented. ○ Pakistan is more democratic and institutionally cleaner than India.
 - India is normatively superior to Bangladesh but institutionally weaker than Pakistan.
- **What India should adopt** ○ From Pakistan: issue-specific defection rules and independent adjudication.
 - From Bangladesh: nothing beyond the lesson that excessive rigidity harms democracy.

Hence, though no nation can be absolute perfect, we still have got two very prominent examples to learn from, to tell us what we are fortunate to have and what we lack, or need to improve or adopt. A system that accepts its flaws and keeps improving and thriving for excellence is the one which sustains, survives and flourishes longer than those which get stagnant.

Cases

Uddhav Thackeray vs. Eknath Shinde (Shiv Sena symbol case)

Uddhav Thackeray became CM in **November 2019**, representing the Shiv Sena but heading a coalition called the **Maha Vikas Aghadi (MVA)** with Congress and NCP.

- Many Shiv Sena MLAs were unhappy with Thackeray's partnership with Congress/NCP, feeling it betrayed the party's traditional alignment with the BJP.
- In **June 2022**, **Eknath Shinde** led a large group of MLAs out of Thackeray's camp, claiming majority support within Shiv Sena.
- Thackeray's faction tried to use the **anti-defection law** to disqualify the rebels. But because they were a majority faction, the Speaker and courts did not immediately act, leaving them free to vote.
- With the rebels gone, Thackeray no longer had the numbers in the Assembly.

- Unable to Face the floor test ordered by the Governor, Thackeray resigned on **29 June 2022** rather than be defeated on the Assembly floor.
- The Governor invited **Eknath Shinde**, backed by the BJP, to form the new government. Shinde became CM, with BJP's Devendra Fadnavis as Deputy CM.
- **Courts judgment: The Supreme Court** in the case of Subhash Desai v. Principal Secretary, Governor of Maharashtra & Others., 11th May, 2023 held that the **Governor's order directing Uddhav Thackeray to face a floor test was unconstitutional**, since internal party disputes are not grounds for such intervention.

However, because Thackeray **resigned before the test**, the Court said his government could not be restored. It clarified that under the *anti-defection law*, only **mergers of parties are protected**, not splits, meaning Eknath Shinde's faction could not claim immunity simply by being the majority. The Court also stressed that **disqualification of MLAs must be decided by the Speaker**, criticized delays in that process, and affirmed the **Election Commission's authority to decide which faction is the "real" party for symbol allocation**.

In short, the ruling faulted the Governor, limited the rebels' legal shield, but left Thackeray powerless because of his resignation. (*Subhash Desai v. Principal Secretary, Governor of Maharashtra & Ors., 2023*).

Key Takeaway: This case shows the safeguard to mass defection. When more than two third of the MLAs or MPs defect, no anti defection can be enforced.

Sharad Yadav & Ali Anwar Ansari Disqualification Case (Rajya Sabha, 2017)

- In **July 2017**, Bihar Chief Minister **Nitish Kumar**, while remaining a member and leader of **Janata Dal (United)**, withdrew the party from the **Mahagathbandhan** with RJD and Congress. He resigned **only from the office of Chief Minister**, not as an MLA, and soon thereafter formed a **new government with the BJP**, thereby realigning JD(U)'s official political position from an anti-BJP stance to an NDA alliance.
- This realignment did **not attract disqualification under the Anti-Defection Law**, as Nitish Kumar did not leave his party but instead carried the organisational majority of JD(U) with him. Since the **party itself changed its official position**, the law treated the new JD(U)–BJP alliance as the binding party line.
- Following this shift, **JD(U) Rajya Sabha MPs Sharad Yadav and Ali Anwar Ansari** openly opposed the alliance with the BJP. They publicly criticised the decision, participated in

opposition rallies, and aligned themselves with rival political platforms even after the party's official stance had changed.

- On a petition filed by JD(U), the **Chairman of the Rajya Sabha** initiated disqualification proceedings under **Paragraph 2(1)(a) of the Tenth Schedule**. Applying the principle laid down in **Ravi Naik v. Union of India**, that voluntary giving up of party membership may be inferred from conduct, the Chairman held that their sustained public dissent amounted to voluntary relinquishment of party membership.
- Accordingly, on **4 December 2017**, both **Sharad Yadav and Ali Anwar Ansari were disqualified from the Rajya Sabha**, highlighting how the Anti-Defection Law legally protects leadership-driven party realignments while penalising individual dissent against an altered party line (*Rajya Sabha Secretariat, 2017; Ravi S. Naik v. Union of India, 1994*).

Key Takeaway: This case is a clear example of timely enactment of the Anti-Defection Law and what could amount to its enactment.

Keisham Meghachandra Singh v. The Hon'ble Speaker, Manipur Legislative Assembly & Ors.

(2020)

- The **2017 Manipur Legislative Assembly elections turned out to be a hung assembly**, since The **Indian National Congress emerged as the single largest party**, but it failed to immediately stake a claim to form the government before the Governor.
- This was because The **Bharatiya Janata Party (BJP)**, though not the single largest party, managed to form the government by securing support from **regional parties, independents, and defecting MLAs**.
- In addition to the existing political strength of the party, it also got the support from one **Congress MLA, Thokchom Shyamkumar Singh**, who had been elected on a Congress ticket, **extended support to the BJPl government** and was later **appointed as a Minister** in the BJP Government.
- This act of supporting a rival party and accepting an office of profit, as a minister, was alleged to amount to **“voluntarily giving up membership of the Congress party”** under **Paragraph 2(1)(a) of the Tenth Schedule** of the Constitution.

- As a result, **petitions for the disqualification of Thokchom Shyamkumar Singh** were filed before the **Speaker of the Manipur Legislative Assembly** by the Congress, who is the constitutional authority, empowered to decide questions of defection under the Tenth Schedule.
- These petitions were filed **as early as 2017**, soon after the formation of the BJP-led government, owing to the fact that the **defection had a direct impact on the numerical strength of the House**.
- The **Speaker deliberately delayed disqualification petitions for an extraordinarily long period of 3 whole years**, even though the matter was politically sensitive and constitutionally significant.
- Due to this prolonged delay in the inaction of the petition, **Thokchom Shyamkumar Singh continued to sit and vote in the Assembly and continued to hold ministerial office**, thereby **strengthening the BJP government**.
- This **delay was not merely procedural or reasonable**, but had **real unanswerable democratic consequences**, because the BJP government was surviving on a **fragile majority**, to which, every single MLA, even **Thokchom Shyamkumar Singh**, owed.
- Had **Thokchom Shyamkumar Singh** been **disqualified in time**, he would have **ceased to be a member of the Assembly**, reducing the effective strength of the House and potentially **altering the balance of power in the assembly**.
- Timely action to the matter could have resulted in a **loss of majority for the ruling government**, a **floor test**, or the exploration of **alternative government formation**, including the possibility of Congress staking claim — though not automatically.
- Aggrieved by the Speaker's prolonged inaction, **Keisham Meghachandra Singh approached the Supreme Court** seeking judicial intervention.
- The central constitutional question before the Court was “whether the **Speaker can indefinitely delay decisions on disqualification petitions**, or whether such decisions must be taken within a **reasonable time**.”
- The Court noted that although the **Tenth Schedule does not prescribe a specific time limit**, the Speaker is a **constitutional authority** and cannot frustrate constitutional objectives through deliberately delayed inaction.
- The Supreme Court held that **undue delay defeats the very purpose of the anti-defection law**, which is to prevent political defections motivated by power and office.

- The Court reaffirmed that while the Speaker acts as a tribunal under the Tenth Schedule, **his decisions — and even his failure to decide — are subject to judicial review.**
- The Court observed that **inaction itself can be unconstitutional** if it allows an illegality to continue and alters democratic outcomes.
- The Supreme Court laid down that **disqualification petitions must be decided within a “reasonable period”**, and stated that **three months should ordinarily be the outer limit**, except in exceptional circumstances.
- On the facts of this case, the Court found the Speaker’s delay **wholly unjustified**, as petitions had remained pending for **nearly three years.**
- Consequently, the Supreme Court **directed the Speaker to decide the pending disqualification petitions within four weeks** from the date of communication of the judgment.
- Importantly, the Court also made a **strong constitutional observation** that Speakers, being active members of political parties, often face **institutional bias** in defection matters.
- The Court therefore **recommended** that Parliament consider **amending the Constitution** to vest disqualification powers in an **independent tribunal**, such as one headed by a retired judge, instead of the Speaker.
- The judgment became a **landmark ruling** because it exposed how **strategic delay by Speakers can subvert democracy without formally violating the Constitution.**
- The case reinforced the principle that **constitutional silence on time limits does not permit abuse of power**, and that **constitutional morality requires timely action.**
- Ultimately, *Keisham Meghachandra Singh (2020)* stands as a warning that **procedural delay can be as dangerous as outright illegality**, especially in matters affecting the stability of elected governments (*Keisham Meghachandra Singh v. The Hon’ble Speaker, Manipur Legislative Assembly & Ors., 2020*).

Key Takeaway: This case upholds the threat anticipated in the Kihoto Hollohan v. Zachillhu & Others (1992) case and the courts reassurance in the case and places limitation to Speaker’s seemingly absolute discretionary power in the matter, upholding the principle that every power carries corresponding responsibilities.

Kihoto Hollohan v. Zachillhu & Others (1992)

- The case arose from challenges to the constitutional validity of the Tenth Schedule, introduced by the FiftySecond Amendment Act, 1985, which contained the anti-defection law.

- Petitioners argued that vesting adjudicatory powers in the Speaker or Chairman violated the principle of separation of powers and judicial independence.
- They contended that the Speaker, being a political figure, could act with bias and that his decisions should not be final or beyond judicial review.
- The case was heard by a five-judge bench of the Supreme Court, including Justices M.N. Venkatachaliah, L.M. Sharma, J.S. Verma, K. Jayachandra Reddy, and S.C. Agrawal.
- The Court upheld the constitutional validity of the Tenth Schedule, ruling that the anti-defection law was necessary to curb political defections and maintain stability in governments.
- The Court emphasized that the law did not violate democratic principles or freedom of speech of legislators.
- It held that the Speaker's role as adjudicator under the Tenth Schedule was valid, but his decisions were not immune from judicial review.
- Judicial review was permitted in cases where the Speaker's decision was mala fide, unconstitutional, or beyond jurisdiction.
- The Court struck a balance between preserving the intent of the anti-defection law and ensuring checks against arbitrary misuse of power.
- The judgment became a cornerstone of India's anti-defection jurisprudence, clarifying that constitutional amendments curbing defections are valid but must remain subject to judicial oversight.
- The case continues to influence how defections, party discipline, and legislative stability are handled in Indian politics. (*Kihoto Hollohan v. Zachillhu & Ors.*, 1992).

Key Takeaway: The case highlights the importance of judicial review in securing fundamental rights and upholds that no law related to fundamental rights of citizens of India, is an exception to judicial review.

Ravi S. Naik v. Union of India & Ors., (1994)

- Ravi S. Naik was elected as a **Member of the Goa Legislative Assembly** on the ticket of the **Maharashtrawadi Gomantak Party (MGP)**.
- During the course of the Assembly's functioning, Ravi S. Naik and some other MLAs **publicly dissociated themselves from the MGP** and began acting in a manner **contrary to party directions**.
- Though Ravi S. Naik did **not formally resign** from the party, his conduct showed **clear political alignment with rival forces**.

- A **disqualification petition** was filed against him under **Paragraph 2(1)(a) of the Tenth Schedule**, alleging that he had **voluntarily given up the membership of his political party**.
- The matter came before the **Speaker of the Goa Legislative Assembly**, who is the authority under the Tenth Schedule to decide questions of defection.
- The Speaker examined Ravi S. Naik's conduct, public statements, and political behaviour and **held that he had voluntarily given up party membership**, even without submitting a formal resignation letter.
- Based on this finding, the **Speaker disqualified Ravi S. Naik** from the Assembly.
- Ravi S. Naik challenged the disqualification before the courts, arguing that:
- He had **not resigned** from the party, and mere conduct or disagreement could not amount to "voluntarily giving up membership".
- The central legal question before the Supreme Court was whether **"voluntarily giving up membership" requires a formal resignation**, or whether it can be **inferred from conduct**.
- The Supreme Court held that **formal resignation is not necessary** for disqualification under Paragraph 2(1)(a).
- The Court clarified that the phrase **"voluntarily giving up membership" has a wider meaning** than resignation.
- It ruled that **voluntary relinquishment can be inferred from conduct**, including:
 - Public statements against the party,
 - Supporting a rival political formation,
 - Acting contrary to party interests,
 - Behaviour indicating abandonment of party loyalty.
- The Court emphasized that **defection is often political and strategic**, and cannot be allowed to escape constitutional scrutiny merely because it is done without a resignation letter.
- The Supreme Court upheld the **Speaker's power to infer intent from conduct**, provided the inference is reasonable and based on material evidence.
- The Court also reiterated that the **Speaker acts as a quasi-judicial authority** under the Tenth Schedule.
- While judicial review is available, the Court held that **courts will not interfere** unless:
 - The decision is perverse,

- Based on no evidence, or
- Violates constitutional provisions.
- Applying these principles, the Supreme Court **upheld Ravi S. Naik's disqualification.**
- The judgment firmly established that **defection law cannot be defeated by technicalities** such as the absence of a resignation letter.
- The case became a **foundational precedent** for interpreting Paragraph 2(1)(a) of the Tenth Schedule.
- It is frequently cited to justify disqualification in cases where MLAs **switch loyalty in substance while retaining party membership in form.**
- The ruling later became crucial in cases like **Gaya Lal, Keisham Meghachandra Singh (2020)**, and **Shiv Sena (2023)**, where **conduct-based defection** was examined.
- Ultimately, *Ravi S. Naik (1994)* reinforced the idea that **constitutional morality and substance prevail over formal party mechanics.** (*Ravi S. Naik v. Union of India, 1994*).

Key Takeaway: This judgment clearly tells that to be disqualified under the Anti-defection law, voluntary resignation or expressed act isn't required. Strong unmistakable and undeniable suspicion with sufficient evidence is enough to initiate and pass disqualification.

Conclusion: Let's Reconcile

We started our study by briefly understanding defection and how and why it's a significant challenge to democracy.

We further understood what anti-defection law is, why it's necessary and how its absence has been misused. Further we saw the points and instances where its absence was truly and overtly felt and expressed. We walked through the rises and falls of its making, and finally tried to share a bit of the taste of the victory of democracy when it was finally implemented, after long struggle. Then we continued to observe what the newly enforced antidefection law included, what it lacked, and what it prohibited, how its amendments and challenges, tested against constitutional validity, forged it to its final form. We further compared the final draft of the Indian anti-defection law with those of our neighbors and observed that, each nation evolves its own unique law based on the core principle orientation, understanding of necessity, and understanding of an ideal democracy and its unique vision of the set of laws that would ideally

prevent as many loopholes for defection and suit that particular democracy. We observed that law is not lifeless; it can't be copied from one democracy to another. It is living, breathing, evolving through amendments and judicial review, adapting to the change in the society.

Law is not a piece of wood that can be moved easily, it's a growing plant, the need is the seed, and the struggle resembles the germination process, and the final law is the old tree with deep roots, the corruption (like defection) and challenges are the woodcutters or termites or parasites, that try to break or weaken the tree, but the inner traits or perfections of a (like an elaborative anti-defection law) law act as the inner essence, or other natural elements that protect the tree. And the laws succeeding a particular law, while having their meaning deeply rooted in it are the plants that grow under the shade of the big tree, seeking nutrition and protection from the big old tree.

The fact is, even when the old tree is long dead (Anti-defection law made in 1985) and decomposed, the plants and trees that replace it, continue to have some essence of the old tree in them, just as the new laws (amendment in 2003), even after the initial laws being long gone and forgotten, somewhere somehow find their essence and meaning in the old law and when disputes arise, the old law acts as an equally useful key to decode or interpret its true meaning and essence.

Ideal perfection is a utopia, and cracks in the current law remain subjective. There's a need to ponder over possible solutions to mitigate those flaws. Because democracy is the government of the people, and when the question is of a law intended to protect it, it's not merely the duty of the State but a collective responsibility of each one of us as Indians. It is "We, the people of India" (*Constitution of India, 1950*).

References

Austin, G. (1999). *Working a democratic constitution: The Indian experience*. New Delhi: Oxford University Press.

Constitution of the Islamic Republic of Pakistan. (1973). Government of Pakistan.

Constitution of the People's Republic of Bangladesh. (1972). Government of Bangladesh.

Constitution of India. (1950). Government of India.

Chavan Committee Report. (1969). *Report of the Committee on Defections*. Government of India.

Choudhry, S. (1997). *Defection and democracy in India*. *Economic and Political Weekly*, 32(14), 781–788.

Election Commission of India. (1968). *Report on the General Elections, 1967*. New Delhi: Government of India Press.

Gupta, R. (1995). *Indian politics since independence*. New Delhi: Orient Blackswan.

Held, D. (2006). *Models of democracy* (3rd ed.). Stanford University Press.

Jain, M. P. (2019). *Indian constitutional law* (8th ed.). LexisNexis.

Kashyap, S. C. (2003). *Politics of defection in India*. New Delhi: National Publishing House.

Keisham Meghachandra Singh v. The Hon'ble Speaker, Manipur Legislative Assembly & Ors. (2020) 2 SCC 399 (India).

Kihoto Hollohan v. Zachillhu & Ors. (1992) Supp (2) SCC 651 (India).

Kohli, A. (1990). *Democracy and discontent: India's growing crisis of governability*. Cambridge University Press.

Rajya Sabha Secretariat. (2017). *Disqualification order of Sharad Yadav and Ali Anwar Ansari*. New Delhi.

Rao, C. (1980). *Coalition politics in India*. New Delhi: Vikas Publishing.

Reddy, B. (1989). Defections and democracy. *Economic and Political Weekly*, 24(12), 678–684.

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

Seervai, H. M. (2013). *Constitutional law of India: A critical commentary* (4th ed.). New Delhi: Universal Law Publishing.

Subhash Desai v. Principal Secretary, Governor of Maharashtra & Ors. (2023) SCC OnLine SC 355 (India).

The Constitution (Fifty-Second Amendment) Act, 1985, Government of India.

The Constitution (91st Amendment) Act, 2003, Government of India.