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THE ANTI-DEFECTION LAW IN INDIA: A CRITICAL ANALYSIS OF ITS CONSTITUTIONAL PURPOSE AND EFFECTS ON REPRESENTATIVE DEMOCRACY

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Abstract

The Anti-Defection Law was incorporated in the Tenth Schedule of the Constitution of India in the year 1985 through the 52nd Amendment. The main objective was to prevent the defection of members of the legislature from the political party on which they won the election to another political party, and to ensure the stability of governments.

At the same time, it led to tensions within the notion of representative democracy as it limited the freedom of elected representatives to vote, dissent, or act according to their conscience or in the interest of their constituency.

This paper critically examines the constitutional purpose of the Anti-Defection Law and evaluates its impact on representative democracy in India. It analyses the grounds of disqualification under Paragraph 2 of the Tenth Schedule, the merger exception under Paragraph 4, and the adjudicatory authority vested in the Speaker or Chairman under Paragraph 6. The paper further examines a few judicial interpretations with respect to the Tenth Schedule and one recent Judgement passed by the Telangana High Court in respect of disqualification of an MLA.

This Paper argues that although the Anti-Defection Law has curbed unprincipled defections and horse-trading, it has strengthened centralised party control at the cost of reducing legislative deliberation and individual autonomy.

Keywords: Anti-Defection Law, Constitution of India, Tenth Schedule, Judicial Review, Party Discipline

Introduction

The notion of democracy is not confined to just conducting elections to elect the representatives of the people. The spirit of democracy is determined by how effectively the political systems function post-election by ensuring integrity and stability.

In 1967, an elected MLA, Gaya Lal, changed his political party three times in a span of nine hours, which led to the infamous phrase “Aya Ram Gaya Ram”, which translates to “Ram come, and Ram has gone now”. During the late 1960s, until the Anti-Defection Law was enacted, the elected representatives in the Parliament and the State Assemblies used to change from the party they got elected to another party. This led to the enactment of the Anti-Defection Law, which was incorporated in the Tenth Schedule of the Constitution of India. The term defection is derived from the Latin word ‘Defectio’, which means conscious abandonment of duty or alliance.

Defection is when an elected representative of the Parliament or State Assembly quits the Political party he/she won to another political party.¹

The Anti-Defection Law is intended to prevent elected representatives from quitting the political party to which they were elected, which would impact the stability of the Government. A Government can run when it has a majority in the Legislature. If members from the ruling party change, then it can lead to a situation where the Government entirely collapses, which is against the will of the people because they chose the political party to govern them.

While the Anti-Defection Law is intended to preserve political stability and protect the mandate of the electorate, it led to concerns about excessive control of the party over elected representatives. The Law is being criticised for taking away the independent decision-making of elected representatives, weakening parliamentary deliberations and allowing the party leadership of the political parties and the Speaker and Chairmen of the Legislature to exercise broader influence in disqualification proceedings. This paper therefore examines whether the Anti-Defection Law has successfully balanced political stability, accountability to the electorate, freedom of speech in the Legislature and independent decision-making of the elected representatives.

¹ PRS Legislative Research, ‘The Anti-Defection Law Explained’ (PRS India, 1 June 2026) <https://prsindia.org/theprsblog/the-anti-defection-law-explained?page=160&per-page=1>.

This paper traces the historical background that led to the enactment of the Tenth Schedule, then analyses the provisions mentioned in the Tenth Schedule along with other relevant provisions in the Constitution of India. This paper further examines Judicial interpretation with respect to the Anti-Defection Law, particularly the role of the Speaker and the Scope of Judicial Review. The paper finally concludes the impact of the Anti-Defection Law in the representative democracy in India.

Historical background and evolution of Anti-Defection Law

The 1967 General Election produced fragmented results, with many parties competing to form a government. Many Legislators defected from the political party they won to another party for ministerial posts and other benefits. As a result of this, elected governments lost confidence on the floor of the Legislature. One of the examples is Haryana in 1967 where elections were held to the State Legislature. The Indian National Congress, or INC in short, won 48 of 81 seats in the Haryana Legislative Assembly. But 12 INC members voted against the candidate set up by the INC for the post of Speaker of the Legislative Assembly. The opposition and 12 INC members formed a coalition, which led to the INC government collapsing in less than a month. Similar defections were happening in other States in India.

These Defections led Parliament to form a committee to consider a remedy for defections. In 1967, a committee on Defections was constituted under the chairmanship of Y.B. Chavan to study the causes, consequences and remedies for political defections. The committee, in its report, stated that political defections are a threat to democratic governance because legislators change their political allegiance for Ministerial positions or personal benefits. The committee recommended a very stringent law for preventing political defections. The Parliament, by virtue of the Fifty-Second Constitutional Amendment, inserted the Anti-Defection law in the Tenth Schedule. The objective of the Tenth Schedule was to prevent political defections. Originally, as per the Tenth Schedule, a Legislator could be disqualified in two situations. The first is when a member voluntarily resigns from the political party for which he or she was elected. The Second is when a Legislator votes or abstains from voting contrary to the direction issued by the Political Party.

However, there was an exception in the Tenth Schedule where a Legislator will not be disqualified if one-third of the Legislators of the Political Party split from the original party and formed a new party or shifted to another party. This exception was criticised as it acted as a Passport to evade Defection.

The Ninety-First Constitutional Amendment stated that if two-thirds of the Legislators split from the original party, then they would not be disqualified. So this amendment made it difficult for a smaller group of legislators to evade defection, claiming that the split had occurred within the party.

The historical evolution shows that the Anti-Defection Law was enacted as a response to political instability. Though the Anti-Defection Law intended to prevent defections and horse-trading, it also led to the problem of legislators being prevented from expressing disagreement with the political party on which they were elected on the floor of the Legislature.²

Constitutional Framework of the Tenth Schedule

The Tenth Schedule provides the constitutional framework for disqualification of Legislators on the ground of defection. The Tenth Schedule applies to Members of Parliament and Members of the State Legislatures. The Schedule regulates the relationship between the Legislator and the Political Party on whose ticket the Legislator won the election³. The cornerstone purpose of the Tenth Schedule is to prevent a Legislator from changing from the Political Party on whose ticket the Legislator won the election in a manner that undermines the electoral mandate. The provisions of the Tenth Schedule are mentioned below

Paragraph two of the Tenth Schedule lays down the grounds of disqualification of a Legislator. A Legislator belonging to a Political Party may be disqualified if he/she voluntarily gives up membership of the political party. In the case of *Ravi Naik v. Union of India (1994)*, the Supreme Court stated that voluntarily giving up membership does not need to be in the form of a formal resignation letter if the conduct or actions are such a way that may be deemed fit for a formal resignation letter. By this Judgment, voluntary giving up of membership has been given a wider interpretation⁴.

A Legislator may be disqualified if he/she acts against the directions given by the political party with respect to voting or abstains from voting.

² Charith Reddy and Shagun Bhargava, 'For Laws may come and Laws may go, But Defections go on Forever: A Critical Analysis of the role of the Speaker in Indian Anti-Defection Laws', 10 (1) NLIU Law Review.

³ The Constitution of India 1950, Sch.10.

⁴ *Ravi Naik v. Union of India*, 1994 Supp (2) SCC 641.

One exception for Legislators to evade disqualification is if two-thirds of the Legislators belonging to the same political party split from their original political party, then they won't be disqualified.

Paragraph 6 states that the power to decide questions of disqualification is vested in the Speaker of the House or, in the case of the Legislative Council in the State or the Council of States, in the Chairman. So the adjudicating authority of Disqualification cases of Legislators is the Speaker or the Chairman. The reason why the Speaker or the Chairman is the adjudicating authority is to preserve the autonomy of the Legislature.

Paragraph 7 stated that the Courts do not have any Jurisdiction with respect to adjudicating the Anti-Defection Law. The Supreme Court in the case of *Kihoto Hollohan v. Zachillhu* (1992) held Paragraph 7 as unconstitutional because it violates Judicial Review, which is enshrined in Article 136 of the Supreme Court⁵ and Article 226 of the High Court⁶. But the Supreme Court held the rest of the provisions of the Tenth Schedule valid and stated that the Speaker or Chairman acts as a Tribunal when adjudicating Defection Petitions⁷.

Although the Tenth Schedule was intended to prevent defections, it led to issues like preventing Legislators from displaying dissent against their own political party, they must vote or abstain from voting based on the direction given by the party.

Judicial Interpretation of the Tenth Schedule

The Supreme Court has given a wide range of judgments with respect to the Tenth Schedule. A few of the important judgments are given below.

Kihoto Hollohan v. Zachillhu, 1992 Supp (2) SCC 651

The Supreme Court clubbed matters about the Constitutional validity of the Tenth Schedule and gave a Judgement in the following way

- The Supreme Court held the validity of all the provisions in the Tenth Schedule except the 7th Paragraph. The Court held the 7th Paragraph unconstitutional because Parliament did not get the ratification of half of the states as required under Article 368(2). Article

⁵ The Constitution of India 1950, Art.136.

⁶ The Constitution of India 1950, Art.226.

⁷ *Kihoto Hollohan v. Zachillhu*, 1992 Supp (2) SCC 651.

368 lays down the procedure for amending the Constitution. Article 368(2) states that if any amendment is made that affects the federal structure or the authority of the Supreme Court or the High Courts, then half of the states need to ratify the same. Also, the 7th Paragraph barred the power of Judicial review of the Supreme Court and High Courts as enshrined under Articles 136, 226 and 227 of the Constitution respectively.

- The Supreme Court held that the Speaker or Chairman acts as a tribunal while adjudicating the matters related to the disqualification of the Legislators⁸.

Nabam Rebia v. Deputy Speaker, Arunachal Pradesh Legislative Assembly, (2016) 8 SCC 1

The facts of the case are as follows:

- In November, 2015, 21 INC MLAs rebelled against the Chief Minister, Nabam Tulki. On 19th November, 2015, 13 MLAs of the Arunachal Pradesh Legislative Assembly sent a letter to the Governor to communicate their displeasure with the Speaker of the Assembly and the Chief Minister. Furthermore, the 21 MLAs refused to attend the meeting convened by the Chief Minister, citing mismanagement by the Chief Minister.
- The Governor, not acting on the advice of the Council of Ministers, advanced the assembly sessions from 14th January, 2016 to December 16th, 2015 and listed the removal of the Speaker on the Agenda.
- On 15th December, 2015, Nabam Rebia, the Speaker of the Legislative Assembly, disqualified the rebel MLAs of the Congress party.
- On 16th December, 2015, the Motion to remove the Speaker was adopted and he was removed as Speaker.
- Speaker Rebia challenged his removal in the Gauhati High Court. The High Court dismissed his Petition. He filed an appeal in the Supreme Court
- At the same time, the disqualified MLAs challenged their removal by Speaker Rebia before the same High Court. The High Court gave a stay against the disqualification proceedings.

The Supreme Court gave the following Judgement.

⁸ Ibid.

- The Supreme Court stated that the Speaker cannot adjudicate the disqualification petitions of the Legislators when his/her motion of removal is pending in the Legislative Assembly.
- The Supreme Court also stated that the Governor is bound to act based on the advice given by the Council of Ministers under Article 163 with respect to convening Assembly sessions⁹.

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

- In this case, the Supreme Court held that voluntary resignation is not just confined to formal resignation; it also includes the conduct of the legislator, which can be used to infer defection.
- In this case, the conduct of the legislator must be assessed to determine whether the person should be disqualified or not as per the Tenth Schedule¹⁰.

Alleti Maheshwar Reddy v. The Hon'ble Speaker-cum-Tribunal under the Tenth Schedule to the Constitution of India, Telangana Legislative Assembly, Hyderabad & Anr., W.P. No. 8409 of 2026 (Telangana High Court)

- In the 2023 Telangana Legislative Assembly Elections, Danam Nagender was elected as an MLA from 60-Khairthbad Constituency as a candidate of the Bharat Rashtra Samithi (BRS).
- Subsequently, for the 2024 Lok Sabha election, he filed his nomination as a candidate for the INC from the 08-Secunderabad Constituency, Telangana. He contested against the BRS candidate. He ultimately lost the election.
- Alleti Maheshwar Reddy, an MLA from the Bharatiya Janata Party (BJP), filed a disqualification petition before the Telangana Legislative Assembly to disqualify Danam Nagender as MLA on the ground that he contested the 2024 Lok Sabha election from the INC.
- On 11th March, 2026, the Hon'ble Speaker gave a decision dismissing the petition on the ground that Danam Nagender did not formally resign from BRS and, most importantly, the Hon'ble Speaker stated he could decide on disqualification only if the

⁹ Nabam Rebia v. Deputy Speaker, Arunachal Pradesh Legislative Assembly, (2016) 8 SCC 1.

¹⁰ Ravi Naik v. Union of India, 1994 Supp (2) SCC 641.

conduct was inside the Assembly and not outside, which means that the conduct outside the Assembly is not within the purview of the Hon'ble Speaker with respect to disqualification.

- On 17th March, 2026, the Hon'ble Speaker's decision was challenged before the Hon'ble High Court of Telangana.
- On 18th March, 2026, the Telangana High Court held that the respondent is disqualified from the moment he filed his nomination for the 2024 Lok Sabha election from the INC, thus reversing the decision of the Hon'ble Speaker.
- The High Court also held that as per the Judgment in *Ravi Naik v. Union of India*, voluntary resignation is not confined to issuing a formal resignation letter to the party; the conduct of the member is sufficient to determine whether the member has quit the party or not/
- The Respondent filed a Special Leave Petition (SLP) before the Hon'ble Supreme Court for reversing the Judgment given by the Hon'ble High Court of Telangana.
- The SLP was dismissed on 24th September, 2026, holding the High Court's Judgement valid¹¹.

Subhash Desai v. Principal Secretary to the Governor of Maharashtra & Ors, (2024) 2 SCC 719

The facts of this case are as follows

- In 2019, the Maha Vikas Aghadi(MVA) coalition formed the Government in Maharashtra.
- The MVA consisted of the Shiv Sena, the Nationalist Congress Party (NCP), and the INC.
- Uddhav Thackeray, the President of the Shiv Sena, became the Chief Minister of Maharashtra.
- On 21st June, 2022, Eknath Shinde rebelled against Uddhav Thackeray
- The Uddhav Thackeray faction passed a resolution removing Shinde as the Shiv Sena Legislature Party leader and Bharat Gog Awale as the Chief Whip.

¹¹ Alleti Maheshwar Reddy v The Hon'ble Speaker-cum-Tribunal under the Tenth Schedule to the Constitution of India, Telangana Legislative Assembly, Hyderabad and another (WP No 8409 of 2026, Telangana High Court)

- The Deputy Speaker, who was acting as Speaker, recognised the Thackeray faction and issued a disqualification notice to Shinde and the other 15 rebel MLAs.
- In response to the notice, the Shinde faction issued a notice to remove the Deputy Speaker because, as per the Nabam Rebia case, the Speaker or Deputy Speaker cannot decide disqualification cases when their removal is pending.
- They simultaneously approached the Supreme Court for granting interim stay against their disqualification. They argued that the Speaker or Deputy Speaker cannot decide cases of disqualification when the removal of the Speaker or Deputy Speaker is pending, as decided in the Nabam Rebia case. The Supreme Court granted an interim stay.
- The Shine faction and opposition MLAs wrote a Letter to the Governor, claiming the MVA Government had lost its majority.
- On June 28, 2022, the Governor ordered a floor test to be held within 48 hours to prove the majority.
- On June 29, 2022, before the floor test was conducted, Udhav Thackeray resigned as Chief Minister.
- The very next day, Eknath Shinde became the Chief Minister with the support of the Bharatiya Janata Party (BJP)

Based on the above facts, the Supreme Court decided on the following issues

1. Who has the Authority to appoint the Whip and the Legislature Party Leader?
2. Can the Speaker decide disqualification cases when their own removal is pending
3. Was the Governor Justified in calling for a floor test?
4. Can the Supreme Court reinstate a Chief Minister who has resigned?
5. What is the relationship between the Speaker and the Election Commission of India?

With respect to the first issue, the Supreme Court clearly stated that the Political Party appoints the Whip and Legislature Party Leader, the relevant portion of the Judgment is quoted below

"213.4. The political party and not the legislature party appoints the Whip and the Leader of the party in the House. Further, the direction to vote in a particular manner or to abstain from voting is issued by the political party and

not the legislature party. The decision of the Speaker as communicated by the Deputy Secretary to the Maharashtra Legislative Assembly dated 3-7-2022 is contrary to law. The Speaker shall recognise the Whip and the Leader who are duly authorised by the Shiv Sena political party with reference to the provisions of the party constitution, after conducting an enquiry in this regard and in keeping with the principles discussed in this judgment;"

With respect to the second issue, the Supreme Court decided to refer the issue of Nabam Rebia to a seven-judge bench.

With respect to the third issue and fourth issue, the Supreme Court held the following

"213.8. *The Governor was not justified in calling upon Mr Thackeray to prove his majority on the floor of the House because he did not have reasons based on objective material before him, to reach the conclusion that Mr Thackeray had lost the confidence of the House. However, the status quo ante cannot be restored because Mr Thackeray did not face the floor test and tendered his resignation; and*

213.9. *The Governor was justified in inviting Mr Shinde to form the Government".*

With respect to the fifth issue , the Supreme Court held that the Speaker and the Election Commission of India have the authority to adjudicate the petitions related to the Tenth Schedule and Para 15 of the Election Symbols. The relevant portion of the Judgment is given below.

"213.5. *The Speaker and the ECI are empowered to concurrently adjudicate on the petitions before them under the Tenth Schedule*

and under Para 15 of the Symbols Order respectively;”

“213.6. While adjudicating petitions under Para 15 of the Symbols Order, the ECI may apply a test that is best suited to the facts and circumstances of the case before it;¹²”

The Impact of the Anti-Defection Law on Representative Democracy

The Anti-Defection Law had both positive and negative impacts on representative democracy. The Anti-Defection Law intended to prevent Legislators from changing parties to get ministerial posts, financial benefits, etc. In this respect, the Tenth Schedule seeks to protect the electoral mandate. The voters often elect the candidates based on the ticket given by the political party; if the Legislators change the political party, it is nothing but going against the mandate given by the voters. The Law also ensures the stability of the government by preventing individual Legislators from defecting from one party to another.

However, the Anti-Defection Law led to negative impacts. A Legislator not just a representative of a political party but also a representative of his/her constituency. Every constituency will have different issues and aspirations. The political party's stand may be different from that of the Legislator, but the Legislator is supposed to act in the interest of the political party. One example of this can be inferred from Paragraph two of the Anti-Defection Law, which states that a Legislator can be disqualified if he/she acts against the direction given by the political party with respect to voting or abstains from voting against the direction of the political party. The direction is issued by the Whip of the Political party.

For example, the Whip issues a direction to all the Legislators of the Political Party to vote in favour of the XYZ bill. If any of the Legislators of the political party vote against or abstain from voting, then that Legislator will be disqualified.

The Anti-Defection Law led to centralised control by the party on the Legislators. Although the directions are issued by the Whip, in practice the political party orders the Whip to issue directions. Ultimately, it is the political party that issues the directions.

¹² Subhash Desai v. Principal Secretary to the Governor of Maharashtra & Ors, (2024) 2 SCC 719

If the Legislators cannot question party decisions, then the debates in the Legislature become a formal exercise rather than a forum for deliberation.

One more serious issue with the Anti-Defection Law is the impartiality of the Speaker. Though in theory the Speaker must act impartially, in reality the Speaker may not act impartially. With respect to the Tenth Schedule, the Speaker decides on disqualification petitions of the Legislators. If the Legislators belonging to the opposition parties quit and join the ruling party, then the opposition party files a disqualification petition against the Legislator before the Speaker. But the Speaker might delay the disqualification proceedings. This happened in Telangana. The Supreme Court, in the case of *Padi Kaushik Reddy v. State of Telangana*, 2025 SCC Online SC 1576, issued directions to the Speaker to decide the disqualification petition within a certain period of time; the relevant text is given below;

(iii) "We direct the Speaker to conclude the disqualification proceedings pending against the 10 MLAs pertaining to the present appeals/petition as expeditiously as possible and in any case, within a period of three months from the date of this judgment; and

(iv) We further direct that the Speaker would not permit any of the MLAs who are sought to be disqualified to protract the proceedings. In the event, any of such MLAs attempt to protract the proceedings, the Speaker would draw an adverse inference against such of the MLAs¹³".

The Speaker, most often belonging to the ruling party, will delay the disqualification petitions of Legislators who have joined the ruling party, so that the strength of the ruling party will increase in the Legislature.

¹³ Padi Kaushik Reddy v. State of Telangana, 2025 SCC Online SC 1576

The delay in deciding the disqualification cases will directly impact representative democracy. The Anti-Defection law intends to prevent Legislators from changing parties and protect the electoral mandate. Delay in deciding the disqualification cases is nothing but going against the intent of the Tenth Schedule and clearly not respecting the electoral mandate. Therefore, a timeline must be set up for deciding the disqualification cases by the Speaker or Chairman.

Reforms and Suggestions

The Tenth Schedule should have the following changes for a better democracy in India.

1. A Legislator should not be removed for voting or abstaining from voting with respect to policies that have an effect on the constituency of the Legislator.
2. A Tribunal should be set up for deciding disqualification cases. Retired High Court or Supreme Court Judges should decide disqualification cases. The Judges of the Tribunal should be appointed by a committee consisting of the Chief Justice of India, the Prime Minister and the Leader of the Opposition in the Lok Sabha or if there is no Leader of the Opposition in the Lok Sabha, then the leader of the single largest party in the Lok Sabha. Each State in India shall be this Tribunal. An Appeal against the Tribunal shall lie directly in the Supreme Court. By setting up the tribunal, the partiality can be reduced to a great extent.
3. The Tenth Schedule should prescribe a time limit to decide disqualification cases. In the absence of a clear time period, the case may be pending for a long time. Delay in deciding disqualification cases is nothing but disrespecting the electoral mandate.

Conclusion

The Anti-Defection Law was introduced through the 52nd Constitutional Amendment in 1985 and inserted in the Tenth Schedule to address the serious problem of defection among legislators. The Law intend to prevent political defections among the Legislators and also protect the electoral mandate.

Before the Tenth Schedule was enacted, frequent defections used to occur, which affected the Government and, most importantly, were contrary to the electoral mandate.

The Tenth Schedule made it clear that if any Legislator changes to another party, then he/she would be disqualified, with the exception that if two-thirds of the members join another party, then they would not be disqualified.

Judicial decisions such as the *Kihoto v. Zachillhu*, which held that the Courts have the power to review decisions passed under the Tenth Schedule¹⁴. In the case of *Ravi Naik v. Union of India*, the Court gave a wider meaning to voluntary giving up membership¹⁵.

On the other side of the coin, the Tenth Schedule led to an increase in party control of the legislators, which reduced the independence of the Legislators with respect to voting on bills and policy matters. This prevents the Legislators from representing the interests of their constituents.

The power of the Speaker or Chairmen to decide disqualification cases will take time in giving judgments due to the political bias they may have. The delay in deciding the cases defeats the very purpose of the Law.

Certain amendments should be brought in the Tenth Schedule rather than repealing the whole Law. First, the Legislator should be disqualified for voting against the party's direction. The second one is that a limit should be brought in deciding disqualification cases. The final one is that a tribunal, rather than the Speaker or Chairman, should decide disqualification cases to ensure impartiality. These changes can strengthen democracy and, most importantly, respect the electoral mandate given by the people.

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