

## **CRITICAL ANALYSIS OF ANTI- DEFECTION LAW AND ITS JUDICIAL INTERPRETATION**

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### **Abstract**

The Anti-Defection Law, introduced through the Constitution (Fifty-Second Amendment) Act, 1985, inserted the Tenth Schedule into the Constitution of India to curb political defections and ensure governmental stability. It disqualifies legislators who voluntarily give up party membership or vote contrary to the party whip. This research critically examines the constitutional provisions, judicial interpretation, and practical challenges of the Anti-Defection Law. It analyses key judgments, which clarified the meaning of “voluntarily giving up membership” and the scope of the Speaker’s powers. The study further identifies major lacunae, including ambiguity in defining “political party,” misuse of merger provisions, delays in adjudication, and allegations of Speaker bias. It concludes that although the law has reduced individual defections, it requires structural reforms to balance party discipline with democratic principles and constitutional morality.

**List of keywords:** Constitution, Defection, Judicial Review, Disqualification.

### **1. INTRODUCTION**

The Tenth Schedule to the Constitution of India, inserted by the Constitution (52nd Amendment) Act, 1985, popularly known as the Anti-Defection Law, was enacted to curb political defections and ensure governmental stability. Although the term “defection” is not expressly defined, Paragraph 2(1)(a) and (b) provide for disqualification where a legislator voluntarily gives up party membership or votes contrary to the party whip. In political terms, defection refers to the abandonment of party allegiance for personal or political gain.<sup>2</sup>Prof. Madhu Dandavate defines the term defection as follows: “*An elected legislator chosen on a*

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<sup>1</sup> LCRA, Delhi State Legal Service Authority

<sup>2</sup>G C Malhotra, *Anti-Defection Law in India and the Commonwealth* (Metropolitan Book Co Pvt Ltd 2005) 3.

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*political party's symbol is said to have defected if, after election, he voluntarily gives up his allegiance or association with that party, unless such action is taken in accordance with a decision of the party itself.*<sup>3</sup>

Political defections undermine the electoral mandate and often lead to instability of governments by enabling shifting majorities. The Statement of Objects and Reasons of the 52nd Amendment emphasized that unchecked defections threaten the very foundations of democracy. While the law has reduced individual defections, it has not completely eradicated the problem, as several state governments have continued to collapse due to defections even after its enactment.<sup>4</sup>

### *1.1 Rationale behind the enactment of the Anti-Defection Law in India.*

Defection, though not unique to India, undermines political stability and distorts the electoral mandate when legislators switch parties after being elected on a party platform. In India, unprincipled defections—often driven by power or personal gain rather than ideology—have repeatedly led to government instability and political crises. In a parliamentary democracy, voters support candidates largely on the basis of party ideology and manifesto. Therefore, elected representatives are expected to remain loyal to their party and uphold its discipline. Frequent defections and counter-defections, motivated by political opportunism, led to the introduction of the Tenth Schedule to curb this practice and prevent the toppling of elected governments.

### *1.2 Recent cases of Defection in India*

#### *a) Karnataka, 2019*

In the 2018 Assembly elections, BJP emerged as the single largest party but lacked a majority. A coalition government was formed by Congress and Janata Dal Secular (JDS) under H D Kumaraswamy. In July 2019, 17 Congress and JDS MLAs resigned, leading to the fall of the coalition government. B S Yediyurappa returned as Chief Minister. The defecting MLAs were disqualified under the Anti-Defection Law but later re-elected on BJP tickets, giving BJP a stable majority.

#### *b) Madhya Pradesh, 2020.*

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<sup>3</sup>Allen Hicken, *Party System Institutionalization in Asia: Democracies, Autocracies and the Shadow of the Past* (Cambridge University Press 2015) vol I, 205 (Lok Sabha Debates, 30 January 1985).

<sup>4</sup>Government of India, *Statement of Objects and Reasons, Constitution (Fifty-Second Amendment) Act 1985*<<https://www.india.gov.in/my-government/constitution-india/amendments/constitution-india-fifty-second-amendment-act-1985>> accessed 12 February 2026.

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In 2020, 22 Congress MLAs resigned following the exit of senior leader Jyotiraditya Scindia from the Congress. This led to the fall of the Kamal Nath government. Subsequently, Shivraj Singh Chouhan of BJP returned as Chief Minister.

*c) Maharashtra (2022) – Fall of Uddhav Thackeray Government.*

In June 2022, the government led by Uddhav Thackeray collapsed due to a major rebellion within the Shiv Sena. Senior leader Eknath Shinde led a group of over 40 Shiv Sena MLAs who withdrew support from the ruling coalition (Maha Vikas Aghadi), which included the Indian National Congress and the Nationalist Congress Party.

Following the rebellion and a direction from the Governor to prove majority, Uddhav Thackeray resigned before the floor test. Subsequently, Eknath Shinde formed the government with support from the Bharatiya Janata Party, and Devendra Fadnavis became Deputy Chief Minister.

### *1.3 Review of Literature*

A review of existing literature reveals significant lacunae in the Anti-Defection Law, particularly the absence of a clear definition of “political party,” which creates ambiguity and affects its consistent application. Scholars have also questioned whether the law restricts freedom of speech and expression under Article 19. The phenomenon of defection must be understood within India’s political evolution, especially in the context of a fragmented multiparty system after 1969. An examination of judicial decisions, Lok Sabha Debates, and committee reports, such as the Chavan Committee Report, is essential to assess the current legal position and identify necessary reforms. During the current study, the researcher has gone through existing literature on the subject, which includes books, Dictionaries, encyclopaedias, cases, etc. Some of them are as follows:

a) *G.C Malhotra, Anti-Defection Law in India and the Commonwealth*<sup>5</sup> provides an exhaustive overview of the Anti-Defection Law.

b) *Constituent Assembly Debates*<sup>6</sup> by the Government of India, Lok Sabha is a set of 8 books in 12 volumes consisting of 10824 pages, which provides an ocean of data in relation to the formulation of the Indian Constitution, thereby getting in hand detail of various provisions of the present Indian Constitution.

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<sup>5</sup>Lok Sabha Secretariat, *Tenth Schedule to the Constitution of India* (Lok Sabha Secretariat, Reprint edn 2014).

<sup>6</sup>*The Constitution of India* (Metropolitan Book Co Pvt Ltd 2005).

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- c) *P.M Bakshi, The Constitution of India*<sup>7</sup>, provides a detailed study of the Constitution of India. It is in the form of a guide in which the provisions relating to Anti Defection Law have been interpreted in a simple and specific way.
- d) *Ian Loveland, Constitutional Law, Administrative Law, and Human Rights - a Critical Introduction*<sup>8</sup>, provides exhaustive coverage of the core fundamentals of constitutional and administrative law alongside substantial human rights coverage.
- e) *D.D Basu, Introduction to the Constitution of India*<sup>9</sup>, comprises a detailed historical background of the Indian Constitution.
- f) *J.N Pandey, The Constitutional Law of India*<sup>10</sup>, helped the researcher to critically examine the various Articles and Amendments of the Constitution.
- g) *V.N. Shukla, Constitution of India*<sup>11</sup> provides a well-exhaustive matter relating to emergency provisions in a well-expressive language, which is well-guiding and helpful in understanding the required concept as per the individual's needs.
- h) *Pranav Gosain and Shreya Gosain, Anti-Defection Law in India: Intricacies concerning it*<sup>12</sup> helped the researcher to understand the scope of the 52nd Constitutional Amendment Act.
- i) *Paras Diwan, Aya Ram Gaya Ram: The Politics of Defection*<sup>13</sup>, is a masterwork of study relating to the Historical Development of Anti-Defection in Law in India.
- j) *Arvind P. Datar, Commentary on the Constitution of India by*<sup>14</sup>, provides a detailed analysis of the Constitution of India.

#### 1.4 Research Methodology

The research will be exploratory and evaluative, relying on an extensive collection of relevant information from both primary and secondary sources. Primary sources include statutes, judicial decisions, official files, reports, decisions of Speakers/Chairmen in defection cases, Lok Sabha and Rajya Sabha Debates, and related discussions. Secondary sources comprise books, journals, articles, newspapers, magazines, internet resources, and reports of seminars and conferences of Presiding Officers. All relevant statutory provisions will be critically examined to identify existing lacunae and suggest measures to address and rectify them.

<sup>7</sup>*The Constitution of India* (Universal Law Publishing Co 13th edn, 2015).

<sup>8</sup>*The Constitution of India* (Oxford University Press 7th edn, 2015).

<sup>9</sup>*The Constitution of India* (LexisNexis Butterworths 22nd edn, 2015)..

<sup>10</sup>*The Constitution of India* (Central Law Agency 53rd edn, 2016).

<sup>11</sup>*The Constitution of India* (Eastern Book Company 12th edn, 2016).

<sup>12</sup>'Anti-Defection Law in India' (1979) 21 Journal of the Indian Law Institute (JILI)3.

<sup>13</sup>'Anti-Defection Law in India' (1979) 21 Journal of the Indian Law Institute 3.

<sup>14</sup>Pranav Gosain and Shreya Gosain, 'Anti-Defection Law in India: Intricacies Concerning It' (2018) 7 International Journal of Current Advanced Research. "Anti-Defection Law in India: Intricacies Concerning it"

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The research methodology used for this research work is doctrinal legal research methodology, also called "black letter" methodology, which focuses on the letter of the law rather than the law in action. Using this method, a researcher composes a descriptive and detailed analysis of legal rules found in primary sources (cases, statutes, or regulations). The purpose of this method is to gather, organize, and describe the law; provide commentary on the sources used; then identify and describe the underlying theme or system and how each source of law is connected.

### *1.5 Objectives*

- To examine if an aggrieved citizen has the right to initiate a petition for disqualification against his own representative.
- To analyze if there is biasness of speaker or not with regard to the disqualification of a member.
- To study judicial stand and interpretation on the subject of anti - defection law.

### *1.6 Research Questions*

For many years, the Indian polity has been haunted by the problem of defection i.e. switching loyalty from one political party to another. The politics of what is called, "AAYA RAM GAYA RAM" has been stooped down to such level that frequent defections, splits and the consequent government instability has vitiated the democratic thread of our polity.

Contributing to the problem of government instability at the centre and in many states, the law has exposed the most immoral and unethical character of our politicians making a mockery of our democracy. The main issues/ questions of research as identified at this juncture are:

- What is the authority of speaker or chairman in deciding the question of defection?
- Is there any provision of speedy adjudication of question of defection?
- What are the consequences of Violation of the party's whip/direction?
- The expression, 'voluntarily giving up the membership of the political party, 'political party', and 'defection' has not been defined in the Tenth Schedule, though these terms have been repeatedly used in the Tenth Schedule.

In the present research, an attempt will be made to find the answers to the above-mentioned issues; thereby, the research will be directed to fill the gap that remains through these unanswered questions.

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### 1.7 Hypothesis

- The present law is silent on the status of expelled/nominated members, and it makes no provisions to cope with the situation of expulsion of members.
- The right to petition under the Tenth Schedule is confined only to members of the respective House. A citizen has no right to initiate a petition for disqualification on ground of defection against his own representative in the House.
- Biasness of Speaker in disqualifying a member on the grounds of Defection.

## 2. CONSTITUTIONAL PROVISIONS RELATING TO ANTI-DEFECTION LAW

The Tenth Schedule, commonly known as the Anti-Defection Law, was inserted by the Constitution (Fifty-second Amendment) Act, 1985, to curb the “evil of political defections.” It provides for the disqualification of Members of Parliament and State Legislatures who defect from one political party to another. The Amendment modified Articles 101, 102, 190, and 191 concerning vacancy and disqualification of seats, and added the Tenth Schedule laying down provisions for disqualification on grounds of defection. Later, the Constitution (Ninety-first Amendment) Act, 2003, strengthened the law by removing the exception relating to “split” in a political party as a ground to escape disqualification. Constitutional provisions relating to Anti-defection law are given below:

### 2.1 Article 102(2) and 191(2) of the Constitution of India

Article 102(2) of the Constitution provides that a person shall be disqualified from being a Member of Parliament if he is disqualified under the Tenth Schedule (Anti-Defection Law). Before the 52nd Constitutional Amendment, Article 102 included disqualifications such as holding an office of profit, unsoundness of mind, insolvency, loss of citizenship, or disqualification under any law (like the Representation of the People Act, 1951, for electoral offences). Similarly, Article 191(2) provides that a person shall be disqualified from being a member of a State Legislature if he is disqualified under the Tenth Schedule of the constitution of India.

### 2.2 Objective behind the enactment of the Tenth Schedule

The Statement of Objects and Reasons of the Constitution (Fifty-Second Amendment) Act, 1985, makes it clear that the Tenth Schedule was introduced to combat the “evil of political defections,” which threatened the foundations of Indian democracy. The government assured

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Parliament that an Anti-Defection Bill would be introduced to outlaw such practices. The primary objective of incorporating the Tenth Schedule was to ensure stability of duly elected governments, prevent political immorality and corruption, and strengthen the effectiveness of parliamentary democracy.

In the landmark case of *KihotoHollohon v. Zachillhu*<sup>15</sup>, The Supreme Court held that the primary objective of the Tenth Schedule is to curb political defections motivated by lure of office or similar considerations that threaten the foundations of democracy. The Court observed that disqualification for voting or abstaining contrary to party directions is justified particularly where such conduct affects government stability or relates to major party policies on which the party contested elections.

Similarly, in *Yitachu v. Union of India*<sup>16</sup>, it was emphasized that the Tenth Schedule aims to ensure the loyalty of legislators to the political party that sponsored their candidature.

### 2.3 Scope of the Tenth Schedule

In the landmark case of *KihotoHollohonvs.. Zachilhu*.<sup>17</sup> It was observed that the provisions of the Tenth Schedule are salutary in nature and are designed to reinforce the foundations of Indian parliamentary democracy by preventing unprincipled and unethical political defections. The Anti-Defection Law acknowledges the practical necessity of upholding standards of political and personal integrity, especially in light of the increasing erosion of ethical conduct in public life, which has often resulted in political opportunism and moral decline. The Tenth Schedule to the Constitution applies to the transaction of business inside the House of the Legislature. The anti-defection activity outside the House is not penalized in any manner by the Tenth Schedule.<sup>18</sup>

### 2.4 Provision as to disqualification on the ground of defection under the Tenth Schedule<sup>19</sup>:

#### *Paragraph 1: Interpretation clause*<sup>20</sup>

The Tenth Schedule provides for the disqualification of Members of Parliament and State Legislatures on the ground of defection and begins with an interpretation clause. It defines terms such as “House,” “Legislature Party,” and “Original Political Party.” However, a

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<sup>15</sup> AIR 1993 SC 412.

<sup>16</sup> AIR 2008 Gau 103.

<sup>17</sup> *Supra Note 14*.

<sup>18</sup> *S.R.Bomma vs. Union of India, AIR 1994 SC 1918*.

<sup>19</sup> Government of India, *Tenth Schedule to the Constitution of India* <<https://www.mea.gov.in/Images/pdf1/S10.pdf>> accessed 9 March 2026.

<sup>20</sup> Constitution of India, Tenth Schedule, para 1 (Interpretation).

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significant lacuna exists as the term “Political Party” itself is not defined in the Schedule. Although the Election Commission recognizes political parties, such recognition is primarily for the purpose of allotment of election symbols, leaving ambiguity within the constitutional framework. The expression “Legislature Party”, as defined in paragraph 1(b), includes the group, consisting of all members of the House for the time being belonging to that political party formed in accordance with paragraph 3, and applies, inter alia, to the faction formed as envisaged in paragraph 3.<sup>21</sup>

‘Political party’ in clause (b) of sub-paragraph (1) of paragraph 2 is none other than “Original political party” mentioned in paragraph 3<sup>22</sup>. The argument that the context in paragraph 2(1) (b) requires equating ‘political party’ with ‘legislature party’ even though the definition clause in paragraph 1 reads differently is not acceptable. The reading of subparagraph (b) and the Explanation in paragraph 2(1) places the matter beyond doubt that the ‘political party’ in sub-paragraph (1) (b) refers to the ‘original political party’ only and not to the Legislature Party.<sup>23</sup>

#### *Political Party – Meaning:*

The Tenth Schedule to the Constitution of India is heavily criticized on this point, as it fails to define the term “political party,” although it is used in paragraph 2 of the Schedule. In the case of *W.K. Singh vs. Speaker, Manipur Legislative Assembly*<sup>24</sup> It was observed by the Hon’ble Court that a political party is an unincorporated voluntary association of a number of persons, more or less numerous, sponsoring ideas of government or maintaining certain political principles or ideologies or beliefs in public policies of the government, having a political organization.

#### *Paragraph 2- Disqualification on ground of defection<sup>25</sup>:*

In the case of *G. Viswanathan vs. The Hon’ble Speaker, T.N. Legislative Assembly*.<sup>26</sup> It was observed by the Hon’ble Court that the deeming fiction in explanation (a) in paragraph 2(1) of the Tenth Schedule must be given full effect, or, otherwise the expelled member would escape the rigor of law which was intended to curb the evil of defections.

The conditions are sine qua non for avoiding the disqualification when any member of the House voluntarily gives up membership of his original political party. First is that the

<sup>21</sup>*Mayawati vs. Markandeya Chand AIR 1998 SC 3340.*

<sup>22</sup>*Ibid.*

<sup>23</sup> *Ibid.*

<sup>24</sup> 19862 Gau. LR 91.

<sup>25</sup> Constitution of India, Tenth Schedule, para 2.

<sup>26</sup> 1996 AIR 1060.

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member concerned should have made a claim that the split in the original political party has arisen, resulting in the constitution of a group in its Legislature Party representing a faction thereof. Second is that such a group should consist of not less than one-third of the members of such Legislature Party.<sup>27</sup>

The Tenth Schedule itself does not prohibit any member of a Legislature from violating the direction/ whip issued by a political party to belong to that political party. All that paragraph 2 (1) (b) of the Tenth Schedule prescribes is that when such a direction/whip issued by that political party is violated by a legislator either without the prior permission of the political party or without such violation having not been condoned subsequently by the political party, the legislator incurs disqualification for continuing as a member of the House.<sup>28</sup>

#### *Constitutional validity of Paragraph 2*

Punjab and Haryana H.C has observed it in the case of *Parkash Singh Badal vs. Union of India*<sup>29</sup> That so far as the right of a member under Art. 105 is concerned, it is not an absolute one and has been made subject to the provisions of the Constitution and the rules and Standing Orders regulating the procedure of Parliament. The right of freedom of speech conferred on a member of the Parliament can be regulated or curtailed by making any constitutional provision, such as the Fifty-second Amendment Act. Therefore, the provision of paragraph 2(1)(b) cannot be termed as violative of the provisions of Art.105 of the Constitution.

#### *No clarity on the status and position of an 'expelled' or 'unattached' member.*

The anti-defection law is criticized for not clearly defining the status of a member expelled from his political party. Even after expulsion, such a member continues to remain a member of the House and is seated separately from his original party. Expulsion from a political party and disqualification from the House are distinct. A member may be expelled for anti-party activities or violation of party discipline. However, under the Tenth Schedule, disqualification arises only in two situations:

1. When a member voluntarily gives up membership of the political party, or
2. When he votes or abstains from voting contrary to the party whip without permission.

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<sup>27</sup>*Ibid.*

<sup>28</sup>*Yitachu vs. Union of India &ors2008(2)GLT284.*

<sup>29</sup>*AIR1987P&H263.*

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In *G. Vishwanathan vs. Speaker T.N. Legislative Assembly*<sup>30</sup> The Hon'ble Supreme Court held that an expelled member was bound by the party's whip even after expulsion, and failure to adhere to such whip would result in the disqualification of the expelled member from the House. The same question also arose in the case of *Amar Singh vs. Union of India*<sup>31</sup> where the matter was referred to a larger Bench, which held that, the decision of the Viswanathan case shall not be applied to the two writ petitioners Amar Singh and Jaya Prada who were expelled from the Samajwadi Party.

However, finally, the larger Bench of the Apex Court of India in *Amar Singh vs. Union of India*<sup>32</sup> disposed of both the writ petitions without answering the questions, observing that both the writ petitioners have completed their term. Therefore, it would be more appropriate not to answer the questions. Thus, the important questions raised in *Amar Singh vs. Union of India*<sup>33</sup> remained unanswered, and the decision of *G. Vishwanathan case*<sup>34</sup> remains prevailed. However, this approach of the Apex Court left the area of the Tenth Schedule vague and dark, and the status of an unattached or an expelled member remains unclear.

*Voluntarily giving up membership of a Political Party under clause (a) of paragraph (1)*

If an individual member voluntarily gives up the membership of his political party, he is subject to disqualification under paragraph 2(1)(a). On the other hand, where a group of members belonging to a political party, but whose strength is less than one-third of the members of the Legislature Party concerned, voluntarily give up the membership of their political party, they are not entitled to protection under paragraph 3, and they are subject to disqualification under paragraph 2(1)(a). This is the logical interpretation of paragraph 2(1)(a) and 3 of the X-th Schedule.<sup>35</sup>

In the case of *Zachilhu Khusantho vs. State of Nagaland*,<sup>36</sup> it was observed that a member can voluntarily give up his membership in a variety of ways. He may formally tender his resignation in writing to his political party, or he may so conduct himself that the necessary inference from the conduct is that he has voluntarily given up his membership of the party to which he belonged. Even in the absence of a formal resignation from membership, an

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<sup>30</sup>(1996) 2 SCC 35.

<sup>31</sup>WPC (C) No. 240/2017

<sup>32</sup>*ibid.*

<sup>33</sup>*ibid.*

<sup>34</sup>(2011) 7 SCC 69.

<sup>35</sup>*Banjak Phom vs. Thenucho*(1992) 1 Gau LR 356 (372).

<sup>36</sup>(1993) Supp. (1) Gau.LR 359.

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inference can be drawn from the conduct of a member that he has voluntarily given up his membership of the political party to which he belongs.<sup>37</sup>

*Scope of Paragraph 2(1)(b):*

In *KihotoHollohan v. Zachillhu*<sup>38</sup>, the Supreme Court held that voting or abstaining contrary to party directions reflects disloyalty and attracts disqualification under Paragraph 2(1)(b) of the Tenth Schedule. The provision gives effect to party discipline by penalising members who defy the whip. A whip may be one-line (informational), two-line (attendance required), or three-line (mandatory voting as directed). Violation of a binding whip, particularly a three-line whip, can lead to disqualification. Given the serious consequences of losing membership, any direction attracting disqualification should clearly specify that non-compliance would invite action under Paragraph 2(1)(b), ensuring members are aware of the legal implications.<sup>39</sup>

*Paragraph 3*<sup>40</sup>

*Paragraph 4*<sup>41</sup> - *Disqualification on ground of defection not to apply in case of merger*

*Scope of Merger:*

Though the term “merger” is not expressly defined in the Tenth Schedule, Paragraph 4 lays down conditions under which a merger can be recognized. It provides that if two-thirds of the members of a legislative party agree to merge with another political party, they may avoid disqualification.

However, several ambiguities arise. It is unclear whether:

- Two-thirds of members of both political parties must agree;
- A merger is valid if only the legislature party agrees, but the original political party outside the House does not formally consent; or
- A legislative party can merge even when the parent political party denies making a decision to merge.

The use of terms like “original political party” and “another political party” adds further confusion. A harmonious reading of Paragraph 4(2), especially the phrase “having agreed to such merger,” suggests that the merger must first occur at the political party level, and

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<sup>37</sup>*Ravi S. Naik vs. Union of India* AIR 1994 SC 1558.

<sup>38</sup>*Supra Note 14*

<sup>39</sup>*Supra Note 64.*

<sup>40</sup>Constitution (Ninety-first Amendment) Act 2003, s 5.

<sup>41</sup>Constitution of India, Tenth Schedule, para 4(2).

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thereafter two-thirds of the legislature party must agree for it to be effective. Otherwise, the merger cannot be deemed valid under the Schedule.<sup>42</sup>

Although Tenth Schedule prohibits individual defection but at the same time it allows group defections in the name of merger. The game of merger is easily played in smaller states like Meghalaya, Manipur, Nagaland, Goa, and Mizoram which have time and again witnessed the bizarre drama of defections involving a minimum of two-third or more of the party members defecting to the opposition in order to topple the popular Government for self- serving ends. Therefore, the present situation demands that paragraph 4 should be deleted from the Tenth Schedule.

*Paragraph 5<sup>43</sup> – Exemption*

The Speaker, Deputy Speaker, Chairman, or Deputy Chairman is exempted from being disqualified if, because of their election to that office, they voluntarily give up membership of their original political party or they rejoin a political party after they cease to hold that office. This protection continues to be there as long as that person does not rejoin their original political party or any other political party within the duration of their office.

*Paragraph 6 - Decision on questions as to disqualification on the ground of defection.<sup>44</sup>*

A decision under paragraph 6(1) is not a decision of the House, nor is it subject to the approval by the House. Therefore, a proceeding under paragraph 6(1) before the Speaker or the Chairperson cannot be construed as a proceeding in the Parliament or the Legislature of a State. The power to resolve disputes relating to the question of disqualifications is vested in the Speaker or Chairman under the Tenth Schedule and is a quasi-judicial power. The Speakers and Chairpersons, while exercising powers and discharging functions under the Tenth Schedule, act as a Tribunal adjudicating rights and obligations under the Tenth Schedule.

*Paragraph 7<sup>45</sup> - Bar of jurisdiction of courts.*

Paragraph 7 of the Tenth Schedule bars the jurisdiction of the courts in any matter connected with disqualification of a member of a House. It states that it is outside the jurisdiction of all courts, including the Supreme Court under Article 136 and the High Courts under Articles 226 and 227 of the Constitution, to review the decisions made by the Speaker in this regard.

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<sup>42</sup>W.K.Singh Vs.. Speaker, Manipur Legislative Assembly, 1986) 2 Gau. LR 91.

<sup>43</sup>Constitution of India, Tenth Schedule, paras 5–7.

<sup>44</sup>Constitution of India, Tenth Schedule, para 6(1).

<sup>45</sup>Constitution of India, Tenth Schedule, para 7.

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The rule barring the jurisdiction of Courts has been challenged in the landmark case of *KihotoHollohon vs. Zachilhu and Others*<sup>46</sup> wherein the Hon'ble Court held that the law is valid in all respects except on the matter related to the judicial review, which was held as unconstitutional. Any law affecting Articles 136, 226, and 227 of the Constitution is required to be ratified by the States under Article 368(2) of the Constitution. As the required number of State assemblies had not ratified the provision, the Supreme Court declared the rule to be unconstitutional. The Court also held that the Speaker, while deciding cases pertaining to defection of party members, acts as a tribunal and nothing more than that, and that his/ her decisions are subject to the judicial review from the High Courts and the Supreme Court. Mentioning a rule of caution, the Supreme Court warned against the exercise of power of judicial review prior to making of any decision by the Speaker.

*Paragraph 8- Rules*<sup>47</sup>

Paragraph 8 of the Tenth Schedule empowers the Speaker/Chairman to frame rules to implement its provisions, subject to approval or modification by the House. The Members of Lok Sabha (Disqualification on Ground of Defection) Rules, 1985 came into force in March 1986, and similar rules have been adopted by the Rajya Sabha and State Legislatures.

In *Mayawati v. Markandeya Chand*<sup>48</sup> The Supreme Court held that these Rules must be read harmoniously with the Tenth Schedule, not in isolation. The Court also emphasized the need for a fixed time frame, suggesting that disqualification proceedings should ideally be decided within three weeks from the date of filing of the petition.

*2.5 Various Committees and Commissions' recommendations for removal of loopholes in the Anti-defection law.*

The Constitution (Fifty-second Amendment) Act, 1985, introduced the anti-defection law through the Tenth Schedule. Although it significantly curbed political defections, it did not eliminate them. Since its enactment, the law has remained controversial and has faced criticism for various loopholes, leading to continuous judicial and legislative scrutiny. Therefore, to remove these loopholes and shortcomings of the law, various committees/commissions were constituted, and their recommendations are discussed below:

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<sup>46</sup>*Supra Note 14.*

<sup>47</sup>Constitution of India, Tenth Schedule, para 8(1)–(3).

<sup>48</sup>AIR 1998 Supreme Court 3340.

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*I. Dinesh Goswami Committee on Electoral Reforms (1990)*<sup>49</sup>

- a) Disqualification should be restricted to cases where a member voluntarily gives up membership of their political party.
- b) The power to decide disqualification should vest in the President/Governor on the advice of the Election Commission, instead of the Speaker/Chairman.
- c) Nominated members should be disqualified if they join any political party at any time.

*II. Law Commission recommendation on Anti-Defection Law (170th report)*

Considering the working of the Anti-defection Laws, the Law Commission of India in its 170th Report on “Reform of Electoral Laws” submitted in May 1999, made the following suggestions for amendments to the Anti-defection laws.<sup>50</sup>

- a) Provisions on split and merger (Paras 3 & 4) that provide exemptions from disqualification must be omitted.
- b) The power to decide disqualification must vest in the President (for Parliament) and the Governor (for State Legislatures), acting on the advice of the Election Commission, instead of the Speaker.
- c) Restrict the whip to votes affecting the survival of the Government, ensuring a balance between party discipline and freedom of expression.
- d) Recognize pre-poll alliances/fronts as political parties for the anti-defection law.
- e) The term “Original Political Party” should be deleted and a clear definition of “Political Party” should be introduced.
- f) Define “Political Party” as the party on whose ticket a member was elected, including any formally declared pre-poll coalition or front notified to the Election Commission before the election.

*III. Election Commission Report on Proposed Electoral Reforms (2004)*<sup>51</sup>

In its 2004 Report, the Election Commission of India (ECI) observed that decisions of Speakers under the Tenth Schedule had often led to controversies and prolonged litigation.

Key Recommendations:

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<sup>49</sup>Dinesh Goswami Committee, *Report on Electoral Reforms* (1990) <<https://adrindia.org/sites/default/files/Dinesh%20Goswami%20Report%20on%20Electoral%20Reforms.pdf>> accessed 16 February 2026.

<sup>50</sup>Law Commission of India, *170th Report on Reform of the Electoral Laws* (1999) <<http://www.lawcommissionofindia.nic.in/lc170.htm>> accessed 20 February 2026.

<sup>51</sup>Election Commission of India, *Electoral Reforms* D.O. No 3/ER/2004 (2004) <<https://eci.gov.in/files/file/3106-electoral-reforms/>> accessed 6 February 2026.

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- a) The power to decide disqualification on the ground of defection should be vested in the President (for MPs) and Governor (for MLAs/MLCs), similar to post-election disqualifications under Articles 103 and 192 of the Constitution.
- b) The President/Governor should act on the opinion of the Election Commission.
- c) The Election Commission should give its opinion only after providing a full opportunity of hearing to the concerned parties.

The Commission reasoned that such a mechanism would ensure greater neutrality, credibility, and public confidence in decisions relating to defection.

#### *IV. Parliamentary Standing Committee 61st Report on Anti-defection Law- (2013)<sup>52</sup>*

The Department-Related Parliamentary Standing Committee (2013) made the following key recommendations:

- a) Merger exemption under the Tenth Schedule should be removed; political party mergers should not automatically protect members from disqualification.
- b) Nominated members who join a political party within six months should also face disqualification, similar to independent members.
- c) The Committee found the different treatment of independent and nominated members unjustified. It recommended revising the law to allow independent members the same opportunity as nominated members to join a political party.
- d) The Committee emphasized that the Judiciary should respect the doctrine of separation of powers and avoid interfering with the adjudicatory authority of the Presiding Officer under the Tenth Schedule, as such matters fall within the internal domain of the Legislature.

### **3. ROLE OF SPEAKER UNDER THE TENTH SCHEDULE**

The Speaker holds a high and authoritative position as the presiding officer of the Lok Sabha or a State Legislature. As the custodian of the House's rules, powers, and privileges, the Speaker regulates proceedings and represents the House in its collective capacity. The office demands fairness, neutrality, and detachment. The Speaker and the Deputy Speaker are chosen by the House amongst its members. A few Constitutional provisions ensure the independence and impartiality of the Speaker and the Deputy Speaker. Their salaries and

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<sup>52</sup>PRS Legislative Research, *61st Report: Electoral Reforms – Code of Conduct for Political Parties and Anti-Defection Law* <<https://www.prsindia.org/uploads/media/Electoral%20Reforms/Electoral%20Reforms%20Code%20of%20Conduct.pdf>> accessed 7 February 2026.

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allowances are fixed by parliament as per law, and their salaries are charged from the Consolidated Fund of India and the Consolidated Fund of the concerned States. The Speaker and the Deputy Speaker cannot be removed from office until and unless a resolution has passed by the House itself for their removal.<sup>53</sup>

### 3.1 Position of the Office of the Speaker

In *KihotaHollohon vs. Zachilhu*<sup>54</sup>The Supreme Court of India, speaking about the office of Speaker, observed that:

*“The Office of the Speaker is held in the highest esteem and respect in Parliamentary traditions. The evolution of the institution of Parliament has its pivot in the institution of the Speaker. The Speaker holds a high, important, and ceremonial office. The Speaker is said to be the very embodiment of propriety and impartiality.”*

The Indian concept of the Speaker is derived from the British tradition, dating back to 1377 with Sir Thomas Hungerford. In theory, the Indian system upholds the Speaker’s impartiality and treats the office as one of high dignity and authority, representing the collective will of the House. Under the Constitution, the Speaker has a dual role: first, as a neutral presiding officer of the House, and second, as a member of a political party. Under the Tenth Schedule, the Speaker acts as an adjudicatory authority in defection cases while also being subject to its provisions. However, Paragraph 5 of the Tenth Schedule grants limited immunity to the Speaker/Chairman from disqualification in certain specified circumstances.

### 3.2 Exemption to the Presiding Officer

Paragraph 5 of the Tenth Schedule provides a special exemption for Presiding Officers. It states that a member elected as Speaker, Deputy Speaker, Chairman, or Deputy Chairman of a House shall not be disqualified if, upon election to such office, he/she voluntarily gives up membership of the political party to which he/she belonged.

So long as the Presiding Officer does not join another political party while holding office, no disqualification will arise. Further, rejoining the original party after demitting office will also not attract disqualification. This provision recognizes the unique position of Presiding

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<sup>53</sup>*Nabam Rebia and Bamang Felix v Deputy Speaker and Others* (Civil Appeal Nos 6203–6204 of 2016).

<sup>54</sup>*Supra Note 14.*

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Officers and enables them to function in a non-partisan and impartial manner without facing the risk of disqualification under the anti-defection law.<sup>55</sup>

### *3.3 Defection by the Speaker*

Under the Tenth Schedule, questions of disqualification of a member are decided by the Speaker/Chairman, whose decision is treated as final (subject to judicial review). However, if the allegation concerns the Speaker himself, the House elects an ad hoc member to decide the issue. Notably, Dr. Luis Proto Barbosa, former Speaker of the Goa Legislative Assembly, is the only Presiding Officer to have faced such proceedings.

A similar controversy arose when former Lok Sabha Speaker Somnath Chatterjee refused to resign despite his party's direction and was subsequently expelled. The incident raised doubts about whether such conduct amounts to "voluntarily giving up membership" under Paragraph 2(1)(a), particularly in the context of the Speaker's unique constitutional position.

### *3.4 Speaker's role as a judge under the Tenth Schedule*

Under the Tenth Schedule, the Speaker/Chairman is the sole authority to decide disqualification on the ground of defection, and their decision was originally intended to be final. However, this role has been questioned due to concerns about impartiality, as the Speaker remains a political figure. At the same time, the office of the Speaker holds a high constitutional status and is regarded as the guardian of the House's rights and privileges, and vesting such authority in the Speaker does not, by itself, undermine parliamentary democracy.<sup>56</sup>

Constitutional Validity of Paragraph 6 was challenged in the *Kihoto Hollohon* case, wherein it was held by the court that paragraph 6(1) of the Tenth Schedule, to the extent it seeks to impart finality to the decision of the Speakers/Chairmen, is valid. The finality clause in paragraph 6 does not completely exclude the jurisdiction of the courts under Articles 136, 226, and 227 of the Constitution. But it does have the effect of limiting the scope of jurisdiction.

#### *Nature of Speaker's Power*

The power to resolve any dispute relating to disqualification, as vested in the Speaker or Chairman under the Tenth Schedule, is a judicial power. The Speakers and Chairpersons, while exercising powers and discharging functions under the Tenth Schedule, act as Tribunal

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<sup>55</sup>Government of India, *Tenth Schedule to the Constitution of India* <<https://www.mea.gov.in/Images/pdf1/S10.pdf>> accessed 9 February 2026.

<sup>56</sup>*Supra Note 14.*

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adjudicating rights and obligations under the Tenth Schedule, and their decisions in that capacity are subject to judicial review by the High Court and the Supreme Court.<sup>57</sup>

### *3.5 Time limit for decision by the Presiding Officers:*

In the Tenth Schedule to the Constitution of India, there is no provision with regard to the time frame for adjudicating the questions of disqualification on ground of defection by the Speaker, despite the intent of Parliament to vest the Presiding Officers the power of adjudication of questions under the law was to have speedier decisions. Both Houses of Parliament failed to apply their minds to the question of incorporating a time frame for decision-making by the Chairmen and Speakers of legislative bodies. Some Speakers have allowed questions of disqualification on ground of defection raised by members to lapse with the dissolution of the lower Houses.

The Supreme Court recently expressed strong disapproval of the Telangana Assembly Speaker for failing to take timely decisions on disqualification petitions filed under the Tenth Schedule concerning MLAs who shifted allegiance from the Bharat Rashtra Samiti to the Indian National Congress. The Court clarified that when Speakers act as adjudicatory authorities under the anti-defection law, they do not enjoy absolute constitutional immunity and are obligated to dispose of such petitions within a reasonable time. Accordingly, the Court directed the Speaker to decide the pending disqualification matters within a period of three months. It also observed that, in light of recurring delays in several States, Parliament may need to reconsider whether the authority to adjudicate defection cases should continue to vest in the Speaker or not.<sup>58</sup>

## **4. JUDICIAL RESPONSE ON ANTI DEFECTION LAWS**

The **Constitution (52nd Amendment) Act, 1985**, which introduced the Tenth Schedule (Anti-Defection Law), was enacted to curb political defections motivated by lure of office and to ensure stability of elected governments. However, since its inception, the law has faced significant criticism.

Several lacunae became evident over time. Certain situations were not foreseen by the framers, and vague provisions led to conflicting interpretations by different Speakers. For instance, in similar circumstances, the Speakers of Mizoram and Nagaland delivered opposite decisions, leading to uncertainty and controversy. The law has also been challenged on

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<sup>57</sup>*Supra Note 14.*

<sup>58</sup>*Padi Kaushik Reddy vs The State of Telangana and Ors, 2025 Live Law (SC) 755*

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constitutional grounds. Critics argue that it restricts legislators' freedom of speech and expression, may violate the basic structure of the Constitution, exceed Parliament's competence, and prioritize political expediency over democratic principles. Doubts were expressed even before its enactment regarding both its constitutionality and effectiveness in curbing defections.

Due to these ambiguities and inconsistencies, courts have frequently been called upon to interpret the Tenth Schedule, especially Paragraph 2, which lays down the grounds for disqualification.

#### *4.1 KihotaHollohon vs. Mr. Zachillhu & Others*<sup>59</sup>

##### *i. Facts of the case:*

On 12 December 1990, Shri Kihota Hollohon, MLA of Nagaland, filed five petitions under the Tenth Schedule against certain Congress (I) MLAs for voluntarily giving up party membership. Since they did not constitute one-third of the Congress (I) Legislature Party (strength: 24), the Speaker disqualified all five members.

The Speaker's decision was challenged before the Gauhati High Court, where the constitutional validity of the Constitution (52nd Amendment) Act, 1985, was also questioned. Around the same time, several similar petitions were filed in different High Courts due to conflicting interpretations of the Tenth Schedule by various Speakers.

Considering the importance of the constitutional issues involved, all such cases were transferred to the Supreme Court. Paragraph 7 of the Tenth Schedule, which barred judicial review, was declared ultra vires by the Punjab and Haryana High Court, and the matter was appealed. The Supreme Court constituted a five-judge Constitution Bench to decide these cases.

##### *(ii) Issue involved in the case:*

###### *a. Constitutionality of the Tenth Schedule*

Under this case the constitutional validity of the Tenth Schedule of the Constitution introduced by the Constitution (Fifty-Second Amendment) Act, 1985, was challenged. The Hon'ble Supreme Court with a majority of 3:2 upheld the constitutional validity of the (Fifty-Second Amendment) Act and of the provisions of the Tenth Schedule, except for Paragraph 7 which was declared invalid by the Hon'ble Court, and by applying the Doctrine of Severability, only the said paragraph was declared invalid.

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<sup>59</sup>*Supra Note 14.*

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*b. Freedom of speech and expression*

The Act was also challenged on the ground that it is violative of the basic structure of the Constitution as it is against the fundamental principles of parliamentary democracy, freedom of speech, right to dissent and freedom of conscience, as the Act disqualifies elected representatives for the exercise of these rights and freedoms, which are essential to the sustenance of the system of parliamentary democracy.

The Hon'ble SC held that the provisions of the Tenth Schedule do not infringe any rights or freedom of elected members of Parliament or State Legislatures under Art. 105 or Art.194 of the Constitution of India, and is thus constitutionally valid. It also held that the said law does not violate their freedom of speech, freedom of vote, and conscience as contended. The freedom of speech of a member is not absolute, and the provisions of the Tenth Schedule do not purport to make a member of a House liable in any Court for anything said or any vote given by him in parliament.

*c. Finality of the decision of the Speaker/Chairman*

In this case, another important issue was whether Paragraph 6 of the Tenth Schedule, granting finality to the decision of the Speaker/ Chairman, is valid. The Hon'ble Court observed that "To the extent that the provisions grant finality to the orders of the Speaker, the provision is valid. However, the High Courts and the Supreme Court can exercise judicial review under the Constitution. Judicial review should not cover any stage prior to the making of a decision by the Speaker/Chairman."

Therefore, Paragraph 6(1) the Tenth Schedule which seeks to impart finality to the decision of the Speakers/Chairmen, is valid. The finality clause in paragraph 6 does not in toto exclude the jurisdiction of the courts under Articles. 136, 226 and 227 of the Constitution. But it does have the effect of limiting the scope of jurisdiction of the High Courts and the Supreme Court.

*4.2 Ravi S. Naik vs. Union of India & Others.*<sup>60</sup>

Issues involved in the case:

*a. Voluntarily giving up membership and Resignation*

In this case one of the important issues involved was that whether resignation constitutes voluntarily giving up membership of a political party. The Apex Court held that, the words "voluntarily given up his membership" are not synonymous with "resignation" and have a

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<sup>60</sup>AIR 1995 SC 1558.

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wider connotation. A person may voluntarily give up his membership of a political party even though he has not tendered his resignation from the membership of that party. Even in the absence of a formal resignation from membership an inference can be drawn from the conduct of a member that he has voluntarily given up his membership of the political party to which he belongs.

*b. Whether the Speaker is bound by the Court's direction.*

In this case, another important issue was whether the Speaker of a House is bound by the direction of a Court. The Apex Court in this case observed that in the absence of an authoritative pronouncement by this Court, the stay order passed by the High Court could not be ignored by the Speaker on the view that his order could not be a subject-matter of court proceedings and his decision was final.

It is settled law that an order, even though interim in nature, is binding till it is set aside by a competent court, and it cannot be ignored on the ground that the Court which passed the order had no jurisdiction to pass the same.

*c. Whether the judicial Review extends to rules framed under the Tenth Schedule.*

The Court held that the Disqualification Rules, framed by the Speaker under Paragraph 8 of the Tenth Schedule, are procedural in nature and regulate the exercise of powers under Paragraph 6(1). Being subordinate legislation, they do not have the status of constitutional mandates and cannot be equated with constitutional provisions. Consequently, any violation of these Rules amounts merely to a procedural irregularity, which is immune from judicial scrutiny in view of the finality clause contained in Paragraph 6 of the Tenth Schedule, and does not by itself provide a ground for judicial review of the Speaker's decision.

*4.3 G. Viswanathan vs. The Hon'ble Speaker, Tamil Nadu Legislative Assembly.<sup>61</sup>*

*Issues involved in the present case.*

*a. Status and position of 'Expelled' or 'Unattached' member*

The Tenth Schedule does not expressly address the status of an expelled member, and judicial opinion on the issue remains unclear. It has been argued that even after expulsion, a member continues to be bound by the party's whip, and failure to comply may attract disqualification under Paragraph 2(1). Merely treating such a member as "unattached" is an administrative convenience outside the framework of the Tenth Schedule and does not alter the legal position under the Explanation to Paragraph 2(1). Since this classification is not recognized

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<sup>61</sup>*Supra Note 25*

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within the constitutional scheme of the Tenth Schedule, it does not protect the member from disqualification.

*b. Voluntarily giving up membership and joining a new political party*

The key issue before the Court was whether a legislator, elected on a party ticket and later expelled, incurs disqualification by joining another political party. The Court held that although an expelled member may be treated as “unattached” in the House for administrative purposes, under Paragraph 2(1) read with its Explanation to the Tenth Schedule, he is deemed to continue belonging to the original party that set him up as a candidate. Therefore, if such a member voluntarily joins another political party, he is considered to have given up his original membership and is disqualified. The Supreme Court upheld the Speaker’s order, emphasizing that such a conclusion must be supported by clear, reliable, and unequivocal evidence.

*c. Whether the whip applies to the expelled member*

The deeming fiction in explanation (a) in paragraph 2(1) of Schedule 10 must be given full effect, for, otherwise the expelled member would escape the rigour of law which was intended to curb down the vice of political defections. Paragraph 2(1) read with the Explanation clearly states that an elected member shall continue to belong to that political party by which he was set up as a candidate for election as such member. This is so, irrespective of that he was thrown out or expelled from that party. Therefore, an expelled member was bound by the party’s whip even after expulsion and failure to adhere to such whip would result in disqualification of the expelled member from the House.

*4.4 Subhash Desai vs Principal Secretary, Governor of Maharashtra<sup>62</sup>*

a) Facts of the case: In June 2022, the Shiv Sena Legislative Party (SSLP) split into two factions — one led by Uddhav Thackeray and the other by Eknath Shinde, each claiming to be the real party. Shinde’s faction allegedly defied a whip issued by Thackeray’s side, leading to disqualification petitions under the Tenth Schedule. At that time, the Speaker’s post was vacant, so the Deputy Speaker initiated disqualification proceedings. In response, Shinde’s faction moved a notice to remove the Deputy Speaker, relying on the ruling in *Nabam Rebia v. Deputy Speaker, Arunachal Pradesh Legislative Assembly*, which held that a Speaker cannot decide disqualification cases when a removal notice is pending.

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<sup>62</sup>W.P.(C) No. 493/2022

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Meanwhile, the Governor directed Thackeray to prove his majority. Before the floor test, Thackeray resigned. Subsequently, Shinde became Chief Minister with BJP support and a new Speaker was elected. Both factions approached the Supreme Court, leading to a combined hearing on the constitutional issues involved.

Key Issues Involved:

*(i) Whether a notice for removal of a Speaker or Deputy Speaker prevents them from deciding disqualification (for defection) proceedings under the Tenth Schedule of the Constitution.*

The Court held that the correctness of *Nabam Rebia* (which barred the Speaker from deciding disqualification proceedings once a removal notice was pending) has been referred to a seven-judge Bench due to its apparent conflict with *Kihoto Hollohan*. Until the larger Bench decides the issue, the Speaker has the authority to examine whether the removal motion is genuine or merely intended to stall disqualification proceedings. If the motion is genuine, the Speaker may pause the proceedings. If it is mala fide, the Speaker may continue with the disqualification process. Thus, a mere notice of removal does not automatically bar the Speaker from acting.

*(ii) Can the High Courts or the Supreme Court decide a disqualification petition for defection under the Tenth Schedule if the Speaker has not yet taken a decision?*

The Court held that under Paragraph 6 of the Tenth Schedule, the Speaker has exclusive jurisdiction to decide disqualification petitions in the first instance. Except in extraordinary circumstances, constitutional courts should not directly adjudicate such petitions. However, once the Speaker renders a final decision, it is subject to judicial review.

*(iii) What is the status of proceedings in the Legislature during the pendency of disqualification petitions against Members?*

The Court clarified that an MLA has the right to participate in legislative proceedings until formally disqualified. If disqualification is eventually incurred, it operates prospectively from the date of the decision. Therefore, legislative proceedings conducted during the pendency of disqualification petitions remain valid and cannot be invalidated merely because such petitions were pending.

*(iv) What is the role of the Speaker in determining the whip and the leader of a legislative party?*

The Court distinguished between a “political party” and a “legislature party” under the Tenth Schedule. The Speaker must recognise the whip and leader appointed by the political party (and not merely by a faction within the legislature party), since elected members owe

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allegiance to the political party that set them up as candidates. In cases of factional dispute, the Speaker decides disqualification issues. The Election Commission decides which faction is entitled to use the party symbol. Both decisions may proceed concurrently and independently.

*(v) How much discretion does the Governor have to invite a person to form the Government, and can courts review the Governor's decision?*

The Governor may call for a floor test or invite a person to form the government only if there is objective material indicating that the incumbent Chief Minister has lost majority support.

In the Maharashtra case, the Court held that the Governor lacked sufficient objective material and acted improperly. However, since the Chief Minister had voluntarily resigned, the Court could not restore the previous government. The Governor's actions are therefore subject to judicial review, particularly when exercised without an objective constitutional basis.

## 5. CONCLUSION AND SUGGESTIONS

The Anti-Defection Law was enacted in 1985 through the 52nd Constitutional Amendment, inserting the Tenth Schedule into the Constitution of India to curb the evil of political defections. Its primary objective was to preserve the stability of governments, protect the democratic structure of legislatures, and maintain political morality.

The constitutional validity and scope of the Tenth Schedule were upheld by the Supreme Court in *Kihoto Hollohan v. Zachillhu*<sup>63</sup>, which also affirmed that the Speaker's decision is subject to judicial review on limited grounds.

Despite judicial interpretation by the Supreme Court and various High Courts, the law continues to face criticism due to inherent lacunae, including delays in decision-making and allegations of political bias. Consequently, the Anti-Defection Law has not fully achieved its intended objective of eliminating unprincipled political defections. The present Researcher has answered the following issues, questions and hypothesis.

### • *Voluntarily giving up membership*

Paragraph 2(1)(a) of the Tenth Schedule disqualifies a member who "voluntarily gives up" party membership, though the expression is not defined. The Supreme Court has clarified that formal resignation is not necessary; giving up membership may be inferred from conduct.

In *Kunwar Pranav Singh Champion v. Speaker, Uttarakhand Legislative Assembly*<sup>64</sup>, The Court held that while submitting a joint memorandum against the party government may

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<sup>63</sup>*Supra Note 14*

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justify such an inference, mere acts like travelling with opposition leaders or sloganeering do not automatically amount to voluntarily giving up membership.

Similarly, in cases of independent members, the Speaker must carefully assess whether the member has actually joined a political party or merely extended outside support.

Thus, since the determination largely depends on subjective inference from conduct, clearer statutory guidelines are needed to prevent arbitrary or inconsistent application.

• ***Votes or abstain from voting in the House contrary to any direction.***

Paragraph 2(1)(b) of the Tenth Schedule provides for disqualification if a member votes or abstains contrary to the direction of his political party (commonly understood as a “whip”). However, the term *whip* is not defined in the Constitution or the Rules of Procedure, despite its central role after the 52nd Constitutional Amendment, 1985.

The Anti-Defection Law effectively compels members to vote strictly along party lines, restricting dissent and limiting a legislator’s freedom of conscience. Once a whip is issued, especially by the ruling party, members risk disqualification for deviation, which may weaken deliberative democracy and government accountability. Given that a violation may result in loss of membership, the party direction should clearly state that non-compliance would attract disqualification under Paragraph 2(1)(b), ensuring prior notice to members.

To balance party discipline with democratic debate, the issuance of a binding whip attracting disqualification should ideally be confined to crucial matters such as confidence/no-confidence motions and Money or Financial Bills.

• ***Power of Speakers or Chairman as a deciding Authority***

Under the Tenth Schedule, the Speaker/Chairman is vested with exclusive adjudicatory power to decide questions of disqualification on the ground of defection. However, serious concerns persist regarding whether the Speaker satisfies the attributes of an impartial judicial tribunal. Although the Supreme Court in *KihotoHollohan v. Zachillhu*<sup>65</sup> upheld this arrangement based on the “high office principle,” the minority opinion cautioned that the Speaker, being a political authority dependent on the House majority, may not be free from bias.

Allegations of partisan conduct have surfaced in several cases. In *Mayawati v. Markandeya Chand*<sup>66</sup>, delay in deciding disqualification petitions was challenged as perverse, while in *D.*

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<sup>64</sup>AIR 2016 (NOC) 517 (UTR.)

<sup>65</sup>*Supra Note 14.*

<sup>66</sup>*Supra Note 47.*

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*Sudhakar v. D.N. Jeevaraju*<sup>67</sup>, The Speaker's hurried decision was held to be vitiated by mala fides. Such instances, including controversies in Uttarakhand and Karnataka, have raised doubts about neutrality in practice. Given recurring allegations of bias and delay, there is growing justification for reconsidering the present mechanism and exploring an independent adjudicatory authority to decide defection disputes under the Tenth Schedule.

- ***Provision relating to mergers***

The Tenth Schedule curbs individual defection but permits group defections through “merger” (two-thirds members) under Paragraph 4, which has often been misused. States like Manipur, Nagaland, Goa, and Mizoram have frequently witnessed such political shifts. A clearer and stricter constitutional framework is needed to curb all forms of opportunistic defection and protect the democratic mandate.

- ***Expulsion and Status of an unattached member***

The Tenth Schedule does not expressly address the status of expelled members. While expulsion is a party disciplinary matter, disqualification under the Tenth Schedule arises only if a member (i) voluntarily gives up membership or (ii) votes/abstains contrary to the party whip.

In *G. Viswanathan v. Speaker, Tamil Nadu Legislative Assembly*<sup>68</sup> The Supreme Court held that an expelled member continues to be treated as belonging to the original political party for the Tenth Schedule. Therefore, violation of the party whip after expulsion can still attract disqualification. The issue resurfaced in *Amar Singh v. Union of India*<sup>69</sup>, but the Court ultimately declined to reconsider *G. Viswanathan*, allowing its principle to prevail. Despite this, ambiguity persists regarding the precise constitutional status of expelled or “unattached” members, leaving this area of anti-defection law doctrinally unsettled.

- ***Definition of Political Party***

Paragraph 1 of the Tenth Schedule suffers from a serious loophole inasmuch as it defines the term “House”, “Legislature Party”, and “Original Political Party” but fails to define a “Political Party” although the term is used in paragraph 2 of the Schedule. The judicial stand point is that a ‘Political party’ in clause (b) of sub paragraph (1) of paragraph 2 is none other than the “Original political party” mentioned in paragraph 3.

- ***Rights of Electorates***

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<sup>67</sup>2012 AIR SCW 1670.

<sup>68</sup>*Supra Note 25.*

<sup>69</sup>*Supra Note 30.*

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At present, voters have no locus standi under the Tenth Schedule to file a disqualification petition for defection; only the Speaker/Chairman decides such matters. Similarly, the Representation of the People Act, 1951, does not provide a right to recall elected representatives. Given that voters elect representatives based on political ideology and party affiliation, it is arguable that when an MP/MLA defects and alters that mandate, voters should have a statutory right to initiate recall proceedings. Such a reform could strengthen democratic accountability and deter opportunistic defections.

### **Suggestions**

After studying the present research, the researcher begs to submit the following suggestions:

- *Adjudicatory Authority under the Tenth Schedule*

The adjudicatory power under the Tenth Schedule should be taken away from the Speaker or Chairman of the concerned House. The power to decide the alleged question of disqualification on the ground of defection under the Tenth Schedule of the Constitution of India should be vested in the Election Commission of India in case of Parliament and in the Election Commission of the concerned States in case of State Legislature.

- *Issuance of a whip or Direction under the Tenth Schedule should be limited to a defined purpose*

Disqualification on the ground of defection should be limited to the cases where:

- (a) A member voluntarily gives up the membership of his political party.
- (b) If he votes or abstains from voting in the House contrary to any direction of his political party about a Confidence motion, No-confidence motion, Adjournment Motion, Money Bill, or Financial matters, and in no other cases. It will curb down the infringement of the legislator's freedom to vote.

- *The expression 'Political Party' should be specifically defined*

The term "Political Party" has not been defined anywhere in the Schedule, though it is used many times under the said schedule. Therefore, it is suggested that the term "political party" should be clearly defined.

- *Position of expelled members*

The position and status of members who have been expelled by the political party should be clearly spelled out in the Tenth Schedule, and restrictions like a prohibition on joining another party or holding offices in the government are to be imposed on expelled members.

- *Deletion of the provision related to Merger*

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The provisions relating to merger, which exempt disqualification on the ground of defection, should be deleted from the Tenth Schedule, as it promotes group defections.

- *Applicability of the 10th Schedule should be made on the Pre-poll Alliance of political Parties.*

The Pre-poll Alliance of political Parties should be treated as a single political party under the Tenth Schedule. The Anti-defection law should be applied to the political parties that form alliances before the election. The reason behind this is that a representative is elected based on the party's programme, which can be extended to pre-poll alliances. The Law Commission of India had also proposed this change with the condition that partners of such alliances should inform the Election Commission before the elections.

- *Framing of a specific time limit for the decision.*

The Tenth Schedule to the Constitution of India should be amended and a provision should be made that any disqualification petition filed under the Tenth Schedule on the ground of defection should be heard and decided within a period of not more than three months.

- *Voters' right to Petition.*

The voter should be given a right to file petition under the Tenth Schedule for disqualification of a Member of Parliament or State Legislature on the ground of defection.