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ANTI-DEFECTION LAW OF INDIA: AN ENFORCEMENT DEFICIT

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ABSTRACT

The Anti-Defection Law of India is amenable to misuse, and a new trend of defection has emerged. Elected representatives are chosen by voters on the basis of their idea, manifesto, and the political party symbol they represent, yet after election they frequently cross over to another party in power under a different idea, manifesto, and symbol. The exception clause enshrined in paragraph 4 of the Tenth Schedule of the Constitution permits the merger of an original political party with another where two-thirds of that party's legislative members agree to it. Under the guise of merger, splitters break the original party organisation, defy the whip, and claim themselves the party's central commanding authority, thereby escaping the application of the anti-defection law under paragraph 2 of the Tenth Schedule. Consequently, the original party leader loses central command authority, becomes trapped in prolonged legal battle, and most likely loses, as occurred in Maharashtra. This paper undertakes a comparative analysis of the jurisprudential aspects of defection law in other jurisdictions and a critical examination of the efficacy and challenges of the anti-defection law under the Indian Constitution in light of current political developments and judicial trends, and proposes concrete legislative and judicial reforms to address the situation that has newly emerged.

KEYWORDS*: Tenth Schedule; Merger Exception; Electoral Mandate; Governance Instability; Legislative Morality.*

1. INTRODUCTION

Political parties are fundamental to the functioning of the modern democratic state, organising themselves around democratic goal, a package of idea and manifesto through which they promise to fulfil commitment to voter after winning election. They identify representative to be chosen by voter and to perform the legislative function on their behalf, and the predetermined democratic goal of a political party functions as information conveyed to voter, persuading them so that the party's identified representative can secure election in a free and fair process. Each political party carries a party symbol as its identity for voter, and when a representative is elected to office, the decision-making function on public policy is delegated to them by voter, who repose their trust in the representative accordingly.

Representatives assume power after being elected to represent the voter's legitimate and democratic voice within the legislative house. A multi-party system provides voter a choice of alternative arrangement to accommodate every voice within the democratic state, formed through the internal division of

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opinion and its overlap among group,[1] and in a democratic setup, every voice or opinion carries intrinsic value and must be accommodated and respected to its full extent.[2]

Amid recent opportunistic shift in the democratic history of the Indian political system, the principle of representative democracy stands under threat from individual and wholesale defection among elected representative. Chosen representative of a political party treat the electorate's mandate as private property and a negotiable instrument to assume power by any means where their party fails to secure a winning mandate to form government. Defection also occurs from greed for a more lucrative and powerful portfolio, and in such case elected representative bring down their own ruling party and cross over to the party in power; it also appears to occur where representative face legal trouble or investigation, and the party in power frequently facilitates such defection for its own vested interest. This erode voter confidence and trust, cause chaos in voter expectation, defeat the principle of representative democracy, enhance governance instability, and lead to a decline in legislative morality.

This paper accordingly aims to analyse the anti-defection law of India, its efficacy, and the challenge it presently faces from an Indian perspective. It further analyses the jurisprudential aspect of anti-defection law comparatively with other jurisdiction and draws a contrast to understand the nature of the Indian democratic political system, before proposing reform through legislative and judicial means capable of preserving the principle of representative democracy in India.

2. OVERVIEW OF THE ANTI-DEFECTION LAW OF INDIA

Etymologically, the word defection derives from the Latin *deficere*, the prefix *de* meaning down or away and the root *facere* meaning to do.[3] The word's meaning evolved to denote the action of falling away from allegiance or adherence to a leader, party, or cause,[4] a meaning embedded in the phrase crossing the floor,[5] which originates in the layout of the House of Commons and its political incident between the seventeenth and nineteenth century.[6]

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1 Carol Mershon & William T. Heller, Political Parties and Legislative Party Switching (2009).

2 Maurice Duverger, Political Parties: Their Organization and Activity in the Modern State (1954).

3 Walter W. Skeat, An Etymological Dictionary of the English Language 168 (1888).

4 James A.H. Murray, A New English Dictionary on Historical Principles 129 (1888).

5 Crossing the Floor, Collins English Dictionary (last visited Sept. 2026).

6 John Morley, The Life of William Ewart Gladstone (1903).

In India, the Constitution came into effect on 26 January 1950 without any provision addressing anti-defection in its original framework. The anti-defection law was enacted for the first time by the Fifty-Second Constitutional Amendment Act, 1985 on the recommendation of the Chavan Committee, 1969, and was later amended by the Ninety-First Constitutional Amendment Act, 2003 on the recommendation of the Committee on Electoral Reform, 1990,[7] the 170th Report of the Law Commission of India, 1999,[8] and the National Commission to Review the Working of the Constitution.[9]

The Fifty-Second Amendment amended Articles 101, 102, 190 and 191 and inserted the Tenth Schedule into the Constitution.[10] Articles 102(2) and 191(2) enshrine the provision for disqualification of a member of either House of Parliament or a State legislature on the ground of defection, subject to the Tenth Schedule; the ground for disqualification appear under sub-paragraph (1) of paragraph 2, providing that a member who voluntarily gives up membership of their political party, or who votes or abstains from voting contrary to any direction issued by the party or an authorised person, becomes liable to disqualification. That disqualification is removed where the member acted with the prior permission of the original party or authorised authority,[11] or where the original party condones the contrary action within fifteen days,[12] and an independent elected member is likewise disqualified upon joining any political party after election.[13]

Paragraphs 3 and 4 of the Tenth Schedule supply exception to this general rule. Paragraph 3, as it stood before the Ninety-First Amendment, provided that where a member claimed a faction of not less than one-third of a legislative party's membership had split from the original party, the disqualification provision of sub-paragraph (1) of paragraph 2 would not apply, the splinter faction being deemed the original party for that purpose. Under paragraph 4, the merger of a political party with another is permitted where two-thirds of its legislative members agree to the merger, deemed in such case to be a merger of the original party itself, with members freely permitted to become members of the resulting party; the remaining one-third may instead constitute themselves a separate party, and the party arising from merger is itself deemed the original party for purpose of paragraph 2.

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7 Ministry of Law and Justice, Gov't of India, Report of the Committee on Electoral Reforms (1990).

8 Law Commission of India, 170th Report on Reform of the Electoral Laws (1999).

9 Ministry of Law, Justice and Co. Affairs, Report of the National Commission to Review the Working of the Constitution, Vol. 1 (2002); The Constitution (Ninety-First Amendment) Act, 2003.

10 Constitution (Fifty-Second Amendment) Act, 1985.

11 India Const. sched. X, para. 2, sub-para. (1)(a).

12 Id.

13 India Const. sched. X, para. 2, sub-para. (3).

Paragraph 5 exempts the Speaker and Deputy Speaker of the Lok Sabha, the Deputy Chairman of the Rajya Sabha, and the Speaker, Deputy Speaker, Chairman and Deputy Chairman of State legislative body from disqualification, provided they voluntarily give up membership of their prior party immediately before assuming office or rejoin it after ceasing to hold that office. The Speaker or Chairman of the House decides any disqualification petition, subject to review by the Supreme Court and High Court only on ground of mala fide intention and violation of natural justice,[14] and where a question of disqualification arises against the Speaker or Chairman personally, an elected member chosen by the House decides that specific question instead.[15]

The Ninety-First Amendment further amended Articles 75 and 164, fixing the size of the Council of Ministers at no more than fifteen per cent of total House membership, and provided that a member disqualified under the Tenth Schedule remains ineligible for appointment as Minister until the expiry of their term or re-election, whichever occurs first. It inserted a new Article 361B prohibiting the appointment of any such disqualified member to any remunerative political post.

3. JURISPRUDENCE OF ANTI-DEFECTION LAW

The evolution of Indian jurisprudence on anti-defection law unfolded amid the historical trajectory of political change, with both judiciary and Parliament contributing significantly within their own domain to its shaping between 1985 and 2026. Switching allegiance and crossing the floor in India occurs substantially on account of a close relationship between money and criminal influence, together with a desire for power and the reward of office, a pattern elected representative are frequently found to exhibit.[16] The anti-defection law is intended to curb this menace and strengthen parliamentary democracy without unduly affecting the enlightened conscience and freedom of legislative members,[17] balancing governance stability with freedom of speech and conscience, and encouraging members of the legislature to treat the electoral mandate with humility and responsibility while maintaining the sanctity of the parliamentary system.

The party system supplies an essential precondition for functional representative democracy, producing a sovereign governing political body representing the voice, will and interest of citizen. That governing body arises from a social contract among individuals pursuing collective good and moral

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14 Kihoto Hollohan v. Zachillhu, 1992 Supp. (2) S.C.C. 651 (India).
15 Nabam Rebia v. Deputy Speaker, A.I.R. 2016 S.C. 3209 (India).
16 Association for Democratic Reforms, Analysis of Re-contesting Legislators and Defection Trends (2023).
17 Kihoto Hollohan v. Zachillhu, 1992 Supp. (2) S.C.C. 651 (India).

wellbeing. John Locke argued that a governing political body constitutes a fiduciary trust, its elected representative acting as trustee hired to manage it on behalf of the citizen who, as beneficiary, place political power in trust, each trustee bearing a duty to act in the best interest of the citizen and to protect and promote their welfare.[18]

Edmund Burke articulated a comparable conception of representative duty, insisting that a representative must maintain the closest possible correspondence with their constituent and must consistently prefer the constituent's interest to their own.[19] When a legislator secures election on the ticket, symbol and manifesto of a political party, they enter into a contract with voter, legally and morally obliged to fulfil that contract's term by all validly available means.[20] A legislator who switches allegiance or crosses the floor opportunistically, purely for personal gain or to topple a validly formed government, accordingly betrays the electoral mandate on two distinct ground: first, by violating the term of the social contract between representative and voter; second, by acting to fulfil their own selfish desire rather than to serve the voter.[21] Where a legislator votes against their party's declared policy opportunistically, this further damages the party's public image, and such betrayal of the electoral mandate adversely affects the core principle of representative democracy and legislative morality alike.[22]

The Speaker or Chairman of the House occupies a pivotal position in parliamentary democracy, functioning as guardian of the right and privilege of legislative members and expected accordingly to act as a visionary guardian preserving the fabric of parliamentary democracy in deciding question under the anti-defection law.[23] The overall aim of the anti-defection law is accordingly to secure loyalty to the political party, maintain the integrity of parliamentary institution, and ensure internal party discipline together with governance stability.

4. CRITICAL ANALYSIS OF THE ANTI-DEFECTION LAW

The original framework of the Indian Constitution contained no provision regarding anti-defection when it came into effect on 26 January 1950, producing a complete constitutional and legal vacuum between 1950 and the

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18 John Locke, Two Treatises of Government 214 (Peter Laslett ed., Cambridge Univ. Press 1988) (1689).

19 Edmund Burke, Speech to the Electors of Bristol (Nov. 3, 1774), in Selected Writings and Speeches 156 (Peter J. Stanlis ed., 1963).

20 Locke, supra note 26.

21 Ministry of Home Affairs, Gov't of India, Report of the Committee on Defections 1-8 (1969).

22 Locke, supra note 26, at 246-66.

23 Kihoto Hollohan v. Zachillhu, 1992 Supp. (2) S.C.C. 651 (India).

enactment of the Fifty-Second Amendment in 1985, a vacuum elected representative fully exploited for opportunistic personal gain during that period.[24] In 1948, shortly after independence, the first political defection occurred when the Congress Socialist Party seceded from the Indian National Congress on ground of ideological conflict over several issue,[25] with departing legislators establishing a high moral standard by resigning from the legislature and seeking re-election,[26] a convention subsequent instances of defection would largely neglect.

The game of political trickery reached a new height in the well-known Aya Ram, Gaya Ram episode of 1967, in which an MLA elected as an independent member in the Haryana State election defected three times within a single day.[27] Political estimate place the total number of defection between the first and fourth general election at five hundred and forty-two, of which four hundred and thirty-eight occurred between 1967 and 1968 alone, motivated substantially by the lure of public office.[28] Constitutional scholar Subhash Kashyap has recorded that forty-five State government were toppled within the six years spanning 1967 to 1973 as a direct consequence of this pattern.[29]

The Fifty-Second Amendment declared individual defection illegal but opened the door to bulk defection through the exception provisions of paragraphs 3 and 4 of the Tenth Schedule. It failed to bar defecting legislators from appointment as Minister in exchange for defection, and, absent any upper ceiling on the Council of Ministers' size, left that door open to defectors motivated by a ministerial or other lucrative post; nor did it impose any reasonable time limit on the Speaker or Chairman to decide a disqualification petition, an omission frequently producing arbitrary delay that supplied a haven within which members could defect effortlessly and enjoy the portfolio they had sought.[30]

The provision of the Tenth Schedule have accordingly remained contentious since 1985: intended to minimise defection and secure stable governance, they instead produced numerous mass defection and the toppling of government.[31]

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24 Ministry of Home Affairs, supra note 29.

25 Narendra Kumar Singh & Anand Prakash Singh, Congress's Socialist Legacy and the Politics of Secession, 34 Indian J. Pol. Sci. 211 (1973).

26 Subhash C. Kashyap, The Politics of Power: Defection and State Politics in India 22-25 (1974).

27 Ajay Sura, Aya Ram Gaya Ram: How Gaya Lal Set the Tone for Political Defections, Times of India (2019); Rajendra Sharma, Haryana's Legacy of Aya Ram, Gaya Ram, The Tribune (2017).

28 Ministry of Home Affairs, supra note 29.

29 Savita Kashyap, Preface to Subhash C. Kashyap, The Politics of Power (1974).

30 Law Commission of India, supra note 13, at 45.

31 Id.

The problem of bulk defection was not resolved by the Ninety-First Amendment's omission of paragraph 3; rather, the problem shifted from a one-third split coupled with a separate merger requirement to a direct two-thirds split and merger, a newly discovered loophole exploiting paragraph 4 for enhanced mass defection. The two-thirds engineered bulk defection witnessed in Maharashtra (2022), Delhi (2026) and West Bengal (2026) supply recent illustration of this specific limitation in India's anti-defection law. Paragraph 4 was originally intended to permit genuine merger in the interest of parliamentary democracy, but it has proved equally capable of accommodating unethical and unprincipled defection, and the adjudicatory role of the Speaker or Chairman of the concerned legislature is itself frequently compromised by partisan conduct.

5. POLITICAL DEFECTION IN INDIA: A STUDY

5.1 Arunachal Pradesh

The two-thirds loophole was first exploited on a major scale in 2016 in Arunachal Pradesh.[32] Following the 2014 State election, in which the Indian National Congress secured forty-two of sixty seats against eleven for the Bharatiya Janata Party, five for the People's Party of Arunachal Pradesh, and two for independent candidate, Nabam Tuki was sworn in as Chief Minister.[33] In 2015, twenty-one Congress MLAs rebelled against Tuki, and the government collapsed following a no-confidence motion supported by the rebel MLAs and the opposition; fourteen rebel MLAs were disqualified by Speaker Nabam Rebia while a resolution for his own removal remained pending before the House, an action the Guwahati High Court nullified and the Supreme Court subsequently confirmed. Internal Congress conflict thereafter led to the imposition of President's Rule on ground of constitutional breakdown, placing the Assembly in suspended animation.

Upon revocation of President's Rule, Kalikho Pul of the Congress became Chief Minister with the support of twenty-nine Congress MLAs, eleven from the Bharatiya Janata Party and two independent; Pul and his twenty-nine supporting MLAs subsequently joined the People's Party of Arunachal Pradesh. In July 2016, the Supreme Court restored the Nabam Tuki government, holding every prior action of the Governor, including the collapse of Tuki's government and the formation of the Pul government, unconstitutional.[34] Tuki nonetheless resigned for want of majority, and Pema Khandu assumed office; during his tenure, mass defection occurred twice, first when forty-three of forty-four

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32 Prabir Kumar Talukdar, High Drama Again, Frontline (Sept. 2016).

33 Election Commission of India, Statistical Report on General Election to the Legislative Assembly of Arunachal Pradesh, 2014.

34 Nabam Rebia v. Deputy Speaker, A.I.R. 2016 S.C. 3209 (India).

Congress MLAs joined the People's Party, and second when thirty-three People's Party MLAs defected to form a Bharatiya Janata Party-led government, an engineered sequence designed precisely to evade the Tenth Schedule.[35]

5.2 Maharashtra

In 2022, a novel and unprecedented constitutional crisis arose in Maharashtra. Following the 2019 State election, in which no party secured a clear majority, a coalition of the Indian National Congress, forty-four seats, the Nationalist Congress Party, fifty-four seats, and the Shiv Sena, fifty-six seats, formed the government with Uddhav Thackeray as Chief Minister.[36] In 2022, Eknath Shinde was removed as leader of the legislative party on ground of rebellion and suspected cross-voting in the Maharashtra Legislative Council election, but a rebel camp of forty MLAs declared him leader of the Shiv Sena legislative party; the Deputy Speaker served disqualification notice on sixteen rebel MLAs, but the Speaker delayed proceeding for a week.

On 27 June 2022, Shinde challenged his disqualification before the Supreme Court, and on 30 June the Governor called Thackeray for a floor test; Thackeray resigned that same day before the test could occur, and Shinde was sworn in as Chief Minister with the support of thirty-nine defecting MLAs and the Bharatiya Janata Party. Each faction appointed its own leader of the legislative party and chief whip, each claiming legality, and the Election Commission of India, having examined the documentation each faction submitted, allotted the party's original bow-and-arrow symbol to the Shinde faction as the party it considered to be the genuine Shiv Sena.[37]

The Supreme Court, in *Subhash Desai v. Principal Secretary*, held the Governor's action in calling Thackeray for a floor test illegal, though the Thackeray government could not be reinstated since it had already resigned; the Court further held the disqualification petition must be decided by the Speaker, within whose jurisdiction it fell under paragraph 6 of the Tenth Schedule. The Speaker ultimately dismissed the disqualification petition, holding the Shinde faction to be the genuine Shiv Sena.[38]

A comparable split occurred in 2023 within the Nationalist Congress Party, where forty of fifty-three MLAs sided with Ajit Pawar and joined the Bharatiya Janata Party-led coalition, a faction the Election Commission likewise

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35 Indrajit Kundu, BJP Forms Government in Arunachal Pradesh After Mass Defection, India Today (2016).

36 Election Commission of India, State Election 2019 to the Legislative Assembly of Maharashtra.

37 Subhash Desai v. Principal Secretary, Governor of Maharashtra, 2023 S.C.C. OnLine S.C. 607 (India).

38 Abhinay Deshpande, Shinde Faction Is Real Shiv Sena, Declares Speaker, The Hindu (2023).

recognised as the genuine party. In 2026, two further engineered instances of split and merger occurred in close succession under cover of paragraph 4: first, seven of the ten Aam Aadmi Party members in the Rajya Sabha split from the party and merged with the Bharatiya Janata Party, a merger the Rajya Sabha Chairman formally approved on 24 April 2026;[39] second, twenty of twenty-eight Lok Sabha members of the Trinamool Congress from West Bengal split from that party and sought merger with the Nationalist Citizens Party of India, formally notifying the Lok Sabha Speaker of this decision on 14 June 2026.[40]

6. COMPARATIVE ASSESSMENT: INDIA, THE UNITED STATES, THE UNITED KINGDOM AND AUSTRALIA

The frequency of mass defection through switching allegiance and floor-crossing suggests either that representative do not genuinely understand the meaning and nature of representation and the theory of social contract, or that they intentionally demean the electoral mandate for personal purpose.[41] The study of the nature and frequency of political defection in India indicates that most instance are opportunistic, self-interested, and not driven by genuine cause: representative defect to assume power, a lucrative portfolio, or a remunerative political post, toppling their own party's government where required and switching allegiance accordingly.[42] This lust for power and money has a considerable impact on political and governance stability, impeding the smooth functioning of parliamentary democracy.[43]

Funding for political parties in India remains highly skewed: the combined income of thirty-six of sixty-seven recognised political parties declined by fifty-one per cent in financial year 2024-25 compared with the preceding year.[44] Political parties generally lack internal democracy and transparency, and their opaque operation reduces financial and electoral accountability, promotes corrupt practice, and undermines the country's overall democratic functioning, a gap the absence of any express provision institutionalising, democratising or regulating internal party functioning in India leaves unaddressed.[45]

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39 Rajya Sabha Chairman Approves Merger of Seven AAP MPs with BJP, News on Air (Apr. 24, 2026).

40 Rebel TMC MPs Announce Merger with Nationalist Citizens Party, The Tribune (June 14, 2026).

41 Ministry of Home Affairs, supra note 29.

42 Rohit, Politics of Defection, PRS Legislative Research (2023).

43 Richard H. Pildes, Democracies in the Age of Fragmentation, 110 Nw. U. L. Rev. 1015 (2016).

44 Association for Democratic Reforms, ADR Report Summary: Regional Party Finances (2025).

45 Law Commission of India, 255th Report on Electoral Reforms (2015).

The jurisprudence of India's anti-defection law is accordingly inclined toward anti-cross-voting and stability first rather than freedom of speech, conscience and intellectual liberty for elected representative, seeking to balance governance stability against freedom of conscience within its constitutional mandate. The law of defection under the Tenth Schedule lays down strict statutory provision for disqualification on ground of defection under paragraph 2 while simultaneously allowing a measure of freedom of conscience to the representative; it remains a separate matter that paragraph 4 of the same Schedule poses a genuinely novel challenge to India's representative political democracy.

The jurisprudence of representative parliamentary democracy in the United States, the United Kingdom and Australia proceeds instead on a conscience first model.[46] These are norm-based country in which statutory provision against floor-crossing or party-switching are unnecessary, mature democracy possessing well-structured, institutionalised political norm and a high standard of ethical accountability.[47] Floor-crossing and switching party allegiance are freely permitted, and such action does not cause loss of House membership; democratic dissent is allowed and protected on the strength of individual enlightened conscience, a stability made possible because the parliamentary democracy in each of these country is already highly stable.[48]

The political party in these jurisdiction are well funded, insulating them from the lure of money and lucrative ministerial or other remunerative post, and remain highly accountable to voter: a representative who betrays the electoral mandate for personal gain will, in the ordinary course, simply not be re-elected.[49] Internal party discipline in these country is considerably stronger than in India, and any indiscipline within the party may lead to expulsion, a reduction in political power and financing, and denial of a party ticket in the following election.[50]

The stability first and conscience first model each seek, in their own way, to make parliamentary democracy function successfully, and a nation may adopt whichever model best suits its own political history and contemporary legal requirement.[51]

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46 David Judge, Representation in Westminster in the 1990s: The Ghost of Edmund Burke, 4 J. Legis. Stud. 1 (1998).

47 Madhav Khosla & Milan Vaishnav, Democracy and Defections, 22 J. Democracy 45 (2011).

48 Staffan I. Lindberg et al., V-Dem Institute, Democracy Report 2024, Univ. of Gothenburg.

49 Tina Roy & PRS Legislative Research, Parliament Logjam and Party Discipline (2022).

50 Khosla & Vaishnav, supra note 58.

51 Oonagh Gay & Richard Kelly, Crossing the Floor, House of Commons Library Briefing Paper (2012).

7. LIMITATIONS OF THE JUDICIARY IN CONTROLLING POLITICAL DEFECTIONS

For thirty-five years, in the absence of any explicit legal or constitutional provision, the Indian judiciary never invoked the principle of constitutional morality Dr B.R. Ambedkar had already discussed in the Constituent Assembly.[52] In 1973, the Supreme Court held that democracy forms part of the basic structure of the Constitution, its principle embedded in the Constitution's soul and spirit since commencement,[53] yet the weakening of democratic feature, the degradation of political morality, and the maligning of the electoral mandate's purity remained unaddressed by the judiciary until Parliament's enactment of the anti-defection law in 1985.

Once the anti-defection law was enacted, the judiciary began rectifying its several loophole on a case-by-case basis. In 1992, the Supreme Court resolved several constitutional question and clarified the legislative intent behind the law, upholding the constitutionality of the Tenth Schedule and holding its provision consistent with the freedom of speech and conscience of legislative members, since its underlying intent is to curb unethical and unprincipled defection specifically. The Court held that the Speaker or Chairman, in deciding a disqualification matter, exercises judicial power and functions as a tribunal adjudicating right and obligation under the Tenth Schedule, such decision accordingly subject to judicial scrutiny only on ground of constitutional violation, breach of natural justice, perversity, or mala fide intention under Articles 136, 226 and 227, and only after the Speaker or Chairman has finally decided the petition.[54]

In 1994, the Supreme Court interpreted the phrase voluntarily given up his membership under sub-paragraph (1)(a) of paragraph 2, holding that formal resignation is unnecessary and that a legislative member's conduct alone suffices to establish the meaning of that phrase,[55] a position the Court reiterated in 1996.[56] In 2007, the Court clarified that where a disqualification petition remains pending before the Speaker or Chairman, they cannot defer it to decide a subsequent claim of party split, and that doing so amounts to jurisdictional illegality, the petition instead requiring determination with reference to the date it was filed.[57]

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52 VII Constituent Assembly Debates (Nov. 4, 1948) (statement of Dr. B.R. Ambedkar).
53 Kesavananda Bharati v. State of Kerala, A.I.R. 1973 S.C. 1461 (India).
54 Kihoto Hollohan v. Zachillhu, 1992 Supp. (2) S.C.C. 651 (India).
55 Ravi S. Naik v. Union of India, A.I.R. 1994 S.C. 1558 (India).
56 G. Viswanathan v. Speaker, Tamil Nadu Legislative Assembly, (1996) 2 S.C.C. 353 (India).
57 Rajendra Singh Rana v. Swami Prasad Maurya, (2007) 4 S.C.C. 270 (India).

Where a motion to remove the Speaker or Chairman remains pending before the House, that Speaker or Chairman cannot decide a member's disqualification petition.[58] The Speaker of the Karnataka Legislative Assembly disqualified seventeen members under the Tenth Schedule and barred them from recontesting election until the expiry of the House's term, a bar the Supreme Court struck down, upholding the disqualification itself while holding the Speaker lacked power to impose the additional contesting bar.[59] The Court further fixed an upper time limit, holding that, absent exceptional circumstance, the Speaker or Chairman must decide a Tenth Schedule disqualification petition within three months,[60] a limit the Supreme Court reiterated again in 2025.[61] The right to appoint the chief whip and leader of the legislative party within the House lies exclusively with the political party itself, not the legislative party, and it is likewise the political party, not the legislative party, that is authorised to direct voting or abstention.[62]

Though the Indian judiciary has contributed significantly to the evolution of anti-defection law, its limitation are equally evident in how it has handled defection in practice. The judiciary lacks jurisdiction to adjudicate a Tenth Schedule matter directly, intervening only once the Speaker or Chairman has decided it, and the Speaker or Chairman frequently acts in a partisan manner, belonging as they do to a political party within the House, biased toward that party, and prone to delaying the disqualification petition before them. This delayed intervention supplies ample time to muster the number of legislator required for a two-thirds split, a split that may topple a validly formed government before judicial intervention can occur; by the time the judiciary does intervene, damage has frequently already been done. The scope of judicial review under the anti-defection law remains, as the judiciary itself has interpreted it, correspondingly limited: absent suo motu power, the judiciary cannot intervene of its own accord, further delaying appropriate legal action against the defector, and the Indian judiciary has, on the whole, been unable to address the unethical and unprincipled two-thirds split and merger of a legislature party in any structural sense.

8. CONCLUSION AND SUGGESTIONS

Political defection in India has been prevalent since independence, and it is not, materially, a new phenomenon; only its specific form has changed across time.

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58 Nabam Rebia v. Deputy Speaker, A.I.R. 2016 S.C. 3209 (India).

59 Shrimanth Balasaheb Patil v. Speaker, Karnataka Legislative Assembly, (2020) 2 S.C.C. 595 (India).

60 Keisham Meghachandra Singh v. Speaker, Manipur Legislative Assembly, (2020) 10 S.C.C. 108 (India).

61 Paddi Koushik Reddy v. State of Telangana, 2025 INSC 912 (India).

62 Subhash Desai v. Principal Secretary, Governor of Maharashtra, 2023 S.C.C. OnLine S.C. 607 (India).

The Constitution's framers were perhaps unable to foresee the particular game of political trickery that would arise across India's parliamentary history, and the anti-defection law, enacted in 1985 in a somewhat amateurish manner, has since been strengthened by constitutional amendment in 2003 and by sustained judicial intervention, without either fully achieving its intended object; defection has instead continued to shift its nature. Opportunistic political defection impedes the speed and efficiency of governance, and it further reveals a systemic failure to address unprincipled and unethical conduct within Indian representative democracy, a failure this paper submits requires urgent reform.

On the basis of the analysis this paper has undertaken, the following reforms are proposed.

- A moral code for members of Parliament should be publicly articulated, setting an explicit standard of conduct against which defection can be measured and publicly assessed.
- Elected representative who have defected for personal gain should be barred from contesting fresh election for six year, and should equally be barred from holding any public office during that period.
- The power and jurisdiction presently vested in the Speaker or Chairman to decide a disqualification petition should be abrogated and shifted directly to the concerned High Court and the Supreme Court, removing the partisan incentive this paper's Section 7 has identified as a structural weakness in the existing framework.
- The two-thirds merger exception under paragraph 4 of the Tenth Schedule must be tightened considerably, closing the loophole this paper has traced across Arunachal Pradesh, Maharashtra, and the more recent 2026 episode in the Rajya Sabha and Lok Sabha alike.