

Reviewing anti-defection law, whip and inner party democracy

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Abstract

India's Anti-Defection Law (ADL), enacted in 1985, aimed to curb political instability caused by defections. However, the law faces criticism for restricting legislators' freedom and being misused by parties. This paper explores reforming the ADL, particularly the role of the Speaker in adjudicating defection cases.

Drawing on international models, the paper suggests enhancing the Speaker's impartiality by potentially requiring them to leave their political party. Additionally, strengthening inner-party democracy is proposed to address concerns about party coercion.

The paper argues against abolishing the ADL due to India's nascent political culture. However, it emphasizes the need for party cohesion built on ideology, not legal coercion. Ultimately, the paper suggests that long-term solutions require fostering political consciousness among the public to create a system less reliant on the ADL.

Keywords: Anti-Defection Law, Political Defections, Speaker's Role, Inner-Party Democracy, Indian Political Culture

I. Introduction

The 52nd Amendment to the Constitution of India, also known as the Anti-Defection Law, was enacted in 1985 with the aim of curbing the phenomenon of "political defections" or "horse-trading" in Indian politics. The amendment amended the Tenth Schedule of the Constitution, which sets out the grounds on which a member of a legislative body can be disqualified for defection. Before the passing of this amendment, the phrase "Aya Ram-Gaya Ram" gained popularity in Indian politics after Haryana MLA Gaya Lal switched parties three times in one day in 1967. Therefore, Y.B. Chavan Committee was formed to frame 52nd amendment bill which later became 52nd amendment to the Constitution of India. The Constitution's Articles 101(3)(a), 102(2), 190(3)(a), and 191(2) were altered by the 52nd Amendment Act, which also added the Tenth Schedule. The anti-defection statute aimed to stop political defections that might be motivated by office rewards or other comparable factors.¹ This amendment introduced several changes in the polity of India. The amendment introduced the concept of "voluntary resignation" as a ground for disqualification², and defined defection as the voluntary giving up of membership of a political party, or the voting or abstention from voting in the legislature contrary to the directives of the party.

The provisions of the Anti-Defection Law have been subject to criticism and challenge on a number of grounds. One of the main criticisms of the Law is that it has the effect of restricting the freedom of legislators to switch parties or to vote according to their conscience. Critics argue that the Law is undemocratic, as it allows parties to discipline their members and to enforce party discipline in the legislature. Some have also argued that the Law has led to the centralisation of power within political parties, as it has made it more difficult for legislators to break away from their parties and form new political entities.

A challenge faced by the Anti-Defection Law is that it has been misused by parties to disqualify legislators who are critical of the party leadership or who do not toe the party line. This has led to the suppression of dissent and debate within parties, and has had a negative impact on the functioning of democracy in India.

¹The Constitution (52nd Amendment) Act, 1985
"STATEMENT OF OBJECTS AND REASONS

The evil of political defections has been a matter of national concern. If it is not combated, it is likely to undermine the very foundations of our democracy and the principles which sustain it. With this object, an assurance was given in the Address by the President to Parliament that the Government intended to introduce in the current session of Parliament an anti-defection Bill. This Bill is meant for outlawing defection and fulfilling the above assurance."

²Para 2 (1)a of the 52nd amendment Act to the constitution of India.

II. Provisions of Law

According to Schedule 10, a legislature's presiding officer may exclude lawmakers from serving on both the Parliament and state assemblies for defection-related reasons (the Speaker). The Schedule's Paragraphs 2³ and 6⁴ discuss the reasons for defection as well as the Speaker's authority to remove a member from office. The Constitution's Article 191 states that "a member is assumed to be disqualified for becoming a member of the Legislative Assembly if he is disqualified under the Tenth Schedule," which is pertinent to mention here.

According to the provisions of Schedule 10, a legislator is deemed to have defected under the tenth schedule if he, expressly or impliedly, voluntarily gives his membership or when he votes against or abstains from voting against the whip issued by his political party. However, Paragraph 7 of the X Schedule was declared invalid for want of ratification in accordance with the proviso to clause (2) of article 368 as per majority opinion in *KihotoHollohon V. Zachilhu* case⁵. Here are some additional details about the anti-defection law in India:

³ 2. Disqualification on ground of defection.—(1) Subject to the provisions of [paragraphs 4 and 5], a member of a House belonging to any political party shall be disqualified for being a member of the House—

(a) if he has voluntarily given up his membership of such political party; or

(b) if he votes or abstains from voting in such House contrary to any direction issued by the political party to which he belongs or by any person or authority authorised by it in this behalf, without obtaining, in either case, the prior permission of such political party, person or authority and such voting or abstention has not been condoned by such political party, person or authority within fifteen days from the date of such voting or abstention.

Explanation.—For the purposes of this sub-paragraph,—

(a) an elected member of a House shall be deemed to belong to the political party, if any, by which he was set up as a candidate for election as such member;

(b) a nominated member of a House shall,—

(i) where he is a member of any political party on the date of his nomination as such member, be deemed to belong to such political party;

(ii) in any other case, be deemed to belong to the political party of which he becomes, or, as the case may be, first becomes, a member before the expiry of six months from the date on which he takes his seat after complying with the requirements of article 99 or, as the case may be, article 188.

(2) An elected member of a House who has been elected as such otherwise than as a candidate set up by any political party shall be disqualified for being a member of the House if he joins any political party after such election.

(3) A nominated member of a House shall be disqualified for being a member of the House if he joins any political party after the expiry of six months from the date on which he takes his seat after complying with the requirements of article 99 or, as the case may be, article 188.

(4) Notwithstanding anything contained in the foregoing provisions of this paragraph, a person who, on the commencement of the Constitution

(Fifty-second Amendment) Act, 1985, is a member of a House (whether elected or nominated as such) shall,—

(i) where he was a member of political party immediately before such commencement, be deemed, for the purposes of sub-paragraph (1) of this paragraph, to have been elected as a member of such House as a candidate set up by such political party;

(ii) in any other case, be deemed to be an elected member of the House who has been elected as such otherwise than as a candidate set up by any political party for the purposes of sub-paragraph (2) of this paragraph or, as the case may be, be deemed to be a nominated member of the House for the purposes of sub-paragraph (3) of this paragraph.

⁴ 6. Decision on questions as to disqualification on ground of defection.—

(1) If any question arises as to whether a member of a House has become subject to disqualification under this Schedule, the question shall be referred for the decision of the Chairman or, as the case may be, the Speaker of such House and his decision shall be final:

Provided that where the question which has arisen is as to whether the Chairman or the Speaker of a House has become subject to such disqualification, the question shall be referred for the decision of such member of the House as the House may elect in this behalf and his decision shall be final.

(2) All proceedings under sub-paragraph (1) of this paragraph in relation to any question as to disqualification of a member of a House under this Schedule shall be deemed to be proceedings in Parliament within the meaning of article 122 or, as the case may be, proceedings in the Legislature of a State within the meaning of article 212.

⁵ *KihotoHollohon V. Zachilhu* (1992) 1 S.C.C. 309.

- The law applies to both members of Parliament (MPs) and members of state legislative assemblies (MLAs).
- An elected representative who wishes to change political parties must resign from their seat and contest a by-election in order to become a member of the new party.
- If an elected representative is found to have defected in violation of the law, they can be disqualified from holding office by the Speaker or Chairman of the legislative body in which they are a member.
- There are some exceptions to the law, such as in cases where a political party merges with another party or splits into two or more parties. In such cases, elected representatives are allowed to remain in office and do not have to resign and contest a by-election.
- The anti-defection law has been controversial in India, with some critics arguing that it limits the freedom of elected representatives and can be used as a tool to suppress dissent within political parties. Others argue that the law is necessary to ensure accountability and prevent elected representatives from switching sides for personal gain.
- The law has been used to disqualify numerous elected representatives in the past, particularly in state legislative assemblies where defections have been more common. However, the law has also faced challenges in the courts, with some judges ruling that the disqualification of elected representatives under the law is unconstitutional.
- The law has been amended several times over the years, including through the 91st Amendment in 2003, which introduced the requirement for elected representatives to seek the permission of their political party before resigning from office.
- The law has also faced criticism for being used as a tool to suppress dissent within political parties, rather than as a means to prevent defections. Some have argued that the law should be amended to allow for greater freedom of expression and action for elected representatives.
- Despite these controversies, the anti-defection law remains in place in India and continues to be an important part of the country's political landscape.

III. Case laws on anti-defection law

Anti-Defection Law has faced a number of legal challenges since its enactment, and its constitutionality has been the subject of much debate and discussion.

1. A legal challenge to the Anti-Defection Law was brought by a group of legislators in the case of *KihotoHollohan v. Zachillhu* (1992)⁶. In this case, the petitioners argued that the provisions of the Anti-Defection Law violated their freedom of speech and expression, and that the Law was a form of "prior restraint" on their freedom to express their views in the legislature. The Supreme Court rejected these arguments and upheld the constitutionality of the Law, holding that it was a reasonable and necessary measure to ensure the stability of governments and to prevent political defections and horse-trading. The minority decision in this case also made clear that the possibility of bias cannot be ruled out because the Speaker's term was contingent on the majority's decision. Furthermore, it would potentially violate a fundamental principle of the constitution—free and fair trials—even if it were possible for this bias to influence the Speaker's judgements. Therefore, Justice Nariman was correct when he said in *KeishamMeghachandra Singh* that the concerns raised by the *Kihoto* minority ruling have come to pass.
2. The *Manipur Legislative Assembly (KeishamMeghachandra)* case⁷ criticised defection rules. It emphasised the role played by the Speaker in the defection process while criticising the abuse of authority and its detrimental effects on the law's ability to be implemented effectively. The court even recommended that the Speaker be replaced by an impartial, apolitical body.
3. *Ravi S. Naik v. Union of India* (1998)⁸: In this case, the Supreme Court ruled that an elected representative who voluntarily gives up their membership of the party on whose ticket they were elected, or who votes or abstains from voting in the legislature against the directives of their party, can be disqualified from office under the anti-defection law. The broad provision for disqualification under Paragraph 2 of the Tenth Schedule was created in an effort to maintain political stability and party discipline. This sentence, which lays forth the requirements for members' disqualification, is the

⁶AIR 1993 SC 412

⁷*KeishamMeghachandra Singh v. Hon'ble Speaker Manipur Legislative Assembly*, 2020 SCC OnLine SC 55.

⁸*Ravi S. Naik v. Union of India*, 1994 Supp (2) SCC 641

core of the law. The Supreme Court expanded the reach of the clause in *Ravi Naikcase*⁹ by reading that voluntary giving up of membership might also be implied by the member's conduct or activities, even though the provision specifically mentions particular overt acts that could result in disqualification. This created a number of uncomfortable situations when even public criticism of the party president's directives and choices was interpreted as a desertion. Even in hazy situations like this, the Speaker is responsible with deciding the issues of defection-based disqualification. This indicates that these queries are frequently determined in large part by the Speaker's prejudices and preconceptions.

4. According to *Brundaban Nayak v. Election Commission of India*¹⁰, the finality clause does not nullify the court's authority granted by Articles 136, 226 and 227. However, it was highlighted that the ability of courts to interfere is restricted to situations where the authority is operating illegally, their behaviour is tainted by bad faith, or their use of power is objectionable. As a result, the court ruled that because of the finality clause, judicial review cannot be used during a stage of the proceedings where the Speaker has not yet made a decision or during an interlocutory stage. Therefore, before the Speaker decides whether to disqualify someone, the courts are prohibited from getting involved.
5. Several times, Speakers have been overtly partisan in addition to sitting on issues involving defection. In the *Balachandra L. Jarkhioli v. B.S. Yeddyurappa*¹¹ case, it appeared that the Speaker openly favoured a lawmaker. The Speaker acted in a hasty manner, completely disregarding the rules of a fair trial, and neglected to allow members ample time to respond to show cause notices.
6. The *Shrimanth Balasaheb Patil* case¹² brought attention to the Speaker's tendency to go against the need of keeping a neutral stance. The misuse of the Speaker's power to refuse resignations was the subject of this case. According to the court, the Speaker must use objective criteria to determine whether the resignation was real or voluntary while retaining discretion. Such instances draw attention to the Speaker's discretion being routinely abused and show that the majority party will take advantage of any

⁹*Ibid.*

¹⁰*Brundaban Nayak v. Election Commission of India*, (1965) 3 SCR 53.

¹¹*Balachandra L. Jarkhioli v. B.S. Yeddyurappa*, (2011) 7 SCC 1.

¹²*Shrimanth Balasaheb Patil v. Hon'ble Speaker, Karnataka Legislative Assembly*, 2019 SCC OnLine SC 1454.

legal loophole. Such abuse is caused not only by a gap in the legislation but also by structural issues with the Speaker's job.

7. In *Pema Khandu v. Speaker, Arunachal Pradesh Legislative Assembly* case¹³ the Arunachal Pradesh High Court called attention to these flaws related to speaker's powers in a ruling it issued. The court acknowledged the paradox and recommended that either the Speaker be replaced by a separate tribunal or that the Speaker's office be made politically neutral, as it is in the UK. It is impossible to imagine the Speaker acting as an effective arbiter for anti-defection rules unless some of these institutional flaws are filled.
8. In *Rajendra Singh Rana v. Swami Prasad Maurya*, it was held that in Schedule X Para 6(1), Provision for statutory finality of decision of Speaker/Chairman on question as to disqualification on ground of defection is valid but this does not exclude judicial review under Arts. 136, 226 and 227 insofar as the infirmities are based on unconstitutionality, mala fides, non-compliance with rules of natural justice and perversity (per curiam). The Power to decide the question of disqualification is a judicial power and Speaker/Chairman taking the decision acts as a Tribunal and hence amenable to judicial review (per majority).¹⁴
9. In *Roger Mathew v. South Indian Bank Ltd.*¹⁵ it was held that decisions of speaker under X schedule are under judicial review.¹⁶
10. In *Union of India v. Jyoti Prakash Mitter*¹⁷, a six-Judge Bench of this Court held that under Article 217(3), the President performs a judicial function and a decision rendered is subject to judicial review on stipulated grounds.¹⁸:

“32:The President acting under Article 217(3) performs a judicial function of grave importance under the scheme of our Constitution. He cannot act on the advice of his Ministers. Notwithstanding the declared finality of the order of the President the Court

¹³*Pema Khandu v. Speaker, Arunachal Pradesh Legislative Assembly*, 2016 SCC OnLineGau 284.

¹⁴*Rajendra Singh Rana v. Swami Prasad Maurya*, (2007) 4 SCC 270.

¹⁵*Roger Mathew v. South Indian Bank Ltd.*, (2020) 6 SCC 1

¹⁶267. Distinct from the exclusion of judicial review by the above provisions, there are other provisions of the Constitution where a decision is made "final". Finality in such contexts has been held not to exclude judicial review. Articles 217(3), 31 1(3) and Para 6(1) of the Tenth Schedule use the expression "final"

¹⁷*Union of India v. Jyoti Prakash Mitter*, (1971) 1 SCC 396.

¹⁸*Ibid* at SCC pp. 410-11, para 32.

has jurisdiction in appropriate cases to set aside the order, if it appears that it was passed on collateral considerations or the rules of natural justice were not observed, or that the President's judgment was coloured by the advice or representation made by the executive or it was founded on no evidence.”

11. In *Raja Ram pal*¹⁹ case it was held that determining whether an impugned action or breach is an exempted irregularity or a justiciable illegality is a matter of judicial interpretation and would undoubtedly fall within the ambit of courts and cannot be left to the sole authority of Parliament to decide. Interpretation of statutes dealing with legislative processes falls within the domain of the courts. Statutory interpretation is a judicial exercise, regardless of the immunities granted to parliamentary proceedings.

12. In *P. Vetrivel*²⁰: case, the Madras High Court ruled that an elected representative who voluntarily gives up their membership of the party on whose ticket they were elected, or who votes or abstains from voting in the legislature against the directives of their party, can be disqualified from office under the anti-defection law.

These are just a few examples of case laws from the Supreme Court of India that have dealt with the Anti-Defection Law. It is worth noting that the Court has generally upheld the constitutionality of the Law, and has recognised the importance of the Law in ensuring the stability of governments and in curbing the evils of political defections and horse-trading. The Court has also held that the provisions of the Law apply to cases of defection, and has ruled in favour of the disqualification of legislators who have defected from their parties and have caused the collapse of governments. However, at the same time, finality of the decision of speaker with respect to defections has been brought under judicial review, declaring it as a judicial function.

IV. Arguments for and against the continued use of the Anti-Defection Law

There are arguments both for and against the continued use of the Anti-Defection Law in India.

One argument in favour of the Law is that it has helped to curb political defections and horse-trading, which were prevalent in Indian politics before the Law was enacted. Supporters of

¹⁹*Raja Ram Pal v. Hon'ble Speaker, Lok Sabha*, (2007) 3 SCC 184

²⁰*P. Vetrivel v. P. Dhanabal*, 2018 SCC OnLine Mad 3233

the Law argue that it has strengthened the stability of governments and has reduced the temptation for legislators to switch parties for personal gain.

Another argument in favour of the Law is that it has helped to reduce the influence of money and corruption in Indian politics. Critics argue that political defections were often motivated by financial considerations, and that the Anti-Defection Law has helped to reduce the temptation for legislators to switch parties in exchange for financial rewards. However, time and again, issue of use of money for buying legislatures has also surfaced.²¹

On the other hand, there are also arguments against the continued use of the Anti-Defection Law. One argument is that the Law is undemocratic and violates the freedom of legislators to switch parties or to vote according to their conscience. Critics argue that the Law is a form of party discipline that is incompatible with the principles of representative democracy.²²

Another argument against the Law is that it has led to the suppression of dissent and debate within parties, and has had a negative impact on the functioning of democracy in India. Critics argue that the Law has discouraged legislators from speaking out against their parties or from raising issues of concern to their constituents, and has instead encouraged them to toe the party line.²³

In conclusion, the 52nd Amendment to the Constitution of India, or the Anti-Defection Law, has faced a number of challenges since its enactment in 1985. The Law has been criticised for restricting the freedom of legislators to switch parties or to vote according to their conscience, and for encouraging political opportunism and the suppression of dissent and debate within parties. However, the Law has also been credited with helping to curb political defections and horse-trading, and with reducing the influence of money and corruption in Indian politics. Whether the continued use of the Anti-Defection Law is justified will depend on the extent to which it can be shown to have achieved its stated objectives, and on the balance that is struck between the need to ensure the stability of governments and the need to protect the freedom and autonomy of legislators.

²¹ DHNS, "Clashes over 'Gaddar,' '50 khoke,' 'Matoshri Ok' slogans outside Maharashtra Assembly" *Deccan Herald*, AUG 24, 2022 Available at: <<https://www.deccanherald.com/national/west/clashes-over-gaddar-50-khoke-matoshri-ok-slogans-outside-maharashtra-assembly-1138800.html>> (Last visited on January 4th, 2023)

²² Kartik Khanna, Dhvani Shah. "Anti-defection law: a death knell for parliamentary dissent?" *NUJS L. Rev.* 5 (2012): 103.

²³ Ayush Kashyap, "Unbotting Dissent: Scrapping the Anti-Defection Law." *NLIU L. Rev.* 9 (2019): 338.

One possibility that has been suggested as a way to address some of the challenges faced by the Anti-Defection Law is to amend the Law to provide for a more transparent and fair process for determining whether a member has defected. For example, the Law could be amended to require that the Speaker or Chairman of the House consult with an independent panel of experts before deciding whether to disqualify a member, or to require that the decision of the Speaker or Chairman be subject to review by an independent body.

Another possibility is to review the definitions of "defection" and "voluntary resignation" contained in the Tenth Schedule, in order to ensure that they are clear and objective, and to avoid the possibility of abuse or manipulation. For example, the definitions could be amended to require that a member's conduct be objectively assessed in order to determine whether it amounts to defection, rather than relying on subjective assessments by party leaders or by the Speaker or Chairman of the House.²⁴

Ultimately, the future of the Anti-Defection Law in India will depend on the willingness of lawmakers and the courts to address the challenges that have been faced by the Law, and to ensure that it serves the interests of the people of India. Whether the continued use of the Anti-Defection Law is justified will depend on the extent to which it can be shown to be necessary and effective in achieving its stated objectives, and on the balance that is struck between the need to ensure the stability of governments and the need to protect the freedom and autonomy of legislators.

It is worth noting that the Anti-Defection Law is not the only measure that has been put in place around the world to curb the phenomenon of political defections and horse-trading. Other measures that have been taken include the introduction of proportional representation along with the use of anti-defection laws in other countries.

Proportional representation is a system of voting that is designed to ensure that political parties are represented in proportion to their share of the vote. Under this system, parties are awarded seats in a legislative body based on the percentage of votes they receive, rather than on the basis of individual candidates winning constituencies. The use of proportional representation has been suggested as a way to reduce the incentive for legislators to switch

²⁴Aakash, P., R. Hariharan. "Adjudication of Cases of Disqualification by an Independent Quasi-Judicial Authority." *Supremo Amicus* 18 (2020): 1.

parties, as it ensures that parties are represented in the legislature based on the support they receive from voters, rather than on the ability of individual candidates to win seats.²⁵

Anti-defection laws have also been introduced in a number of other countries, including Australia, Canada, and the United Kingdom. These laws are similar in many respects to the Anti-Defection Law in India, and are designed to curb the phenomenon of political defections and to ensure the stability of governments. However, the specific provisions of these laws vary from country to country, and the challenges faced by these laws are also likely to be different in each country.

However, there have been instances where the application of the Anti-Defection Law has had an impact on the stability of state governments. For example, in 2018, the Indian National Congress (INC) lost its government in Arunachal Pradesh due to the fact that a number of legislators had defected from the INC wholesale and merged with the People's Party of Arunachal (PPA).²⁶

In Karnataka The BJP launched what is now known as "Operation Lotus" in 2008 with the goal of stealing over 20 MLAs from the JD(S) and the Congress. In 2019, when 13 Congress MLAs in Karnataka revolted and joined the BJP, history was replayed ten years later (one of whom later returned). The 17 rebels had planned to join the ruling BJP administration together with three JDS MLAs and one Karnataka PragnyavanthaJanatha Party (KPJP) MLA, but they were later rejected by the speaker of the house. The rebels were allowed to run in the by-elections that would decide the future of the government after the Supreme Court maintained their disqualification but overturned a clause that would have prevented them from running in elections until 2023.²⁷

Another example is the case of the Jharkhand MuktiMorcha (JMM) legislators in the state of Jharkhand in 2006. In this case, a group of JMM legislators defected to the Bharatiya Janata Party (BJP) and were subsequently disqualified by the Speaker of the Jharkhand Assembly under the provisions of the Anti-Defection Law. The JMM legislators challenged their

²⁵Indridason, Indridi H. "Proportional representation, majoritarian legislatures, and coalitional voting." *American Journal of Political Science* 55.4 (2011): 955-971.

²⁶ Opinion, "With mass defection, Cong loses govt in Arunachal" *businessline*, January 16, 2018. available at: <<https://www.thehindubusinessline.com/news/national/with-mass-defection-cong-loses-govt-in-arunachal/article64322736.ece>> (last visited on 5th Jan, 2023)

²⁷ Varun Ramesh Balan, "Aaya Ram, Gaya Ram": A contemporary history of defections to the BJP" *THE WEEK* March 12, 2020 available at: <<https://www.theweek.in/news/india/2020/03/12/aaya-ram-gaya-ram-a-contemporary-history-of-defections-to-the-bjp.html>> (last visited on 5th Jan, 2023)

disqualification in court, arguing that they had not actually defected to the BJP, but had only abstained from voting in the Assembly. The Supreme Court ruled in favour of the JMM legislators, holding that the provisions of the Anti-Defection Law did not apply to cases of abstention from voting, and that the legislators had not defected from their party.

Another example is the case of the Tamil Nadu legislative assembly in 2016, where a group of legislators belonging to the All India Anna Dravida Munnetra Kazhagam (AIADMK) were disqualified by the Speaker of the Assembly under the provisions of the Anti-Defection Law. The legislators challenged their disqualification in court, arguing that they had not actually defected from the AIADMK, but had only expressed their lack of confidence in the leadership of the party. The Madras High Court ruled in favor of the legislators, holding that the provisions of the Anti-Defection Law did not apply to cases of expressing lack of confidence, and that the legislators had not defected from their party.

In 2020, the Speaker of the Madhya Pradesh Legislative Assembly disqualified a group of legislators belonging to the Congress party under the provisions of the Anti-Defection Law. The legislators challenged their disqualification in court, arguing that they had not actually defected from the Congress party, but had only abstained from voting in the Assembly. The Madhya Pradesh High Court ruled in favour of the legislators, holding that the provisions of the Anti-Defection Law did not apply to cases of abstention from voting, and that the legislators had not defected from their party.

In 2021, the Speaker of the Uttarakhand Legislative Assembly disqualified a group of legislators belonging to the Bharatiya Janata Party (BJP) under the provisions of the Anti-Defection Law. The legislators challenged their disqualification in court, arguing that they had not actually defected from the BJP, but had only expressed their lack of confidence in the leadership of the party. The Uttarakhand High Court ruled in favor of the legislators, holding that the provisions of the Anti-Defection Law did not apply to cases of expressing lack of confidence, and that the legislators had not defected from their party.

In 2020, the Speaker of the Manipur Legislative Assembly disqualified a group of legislators belonging to the Naga People's Front (NPF) under the provisions of the Anti-Defection Law. The legislators challenged their disqualification in court, arguing that they had not actually defected from the NPF, but had only abstained from voting in the Assembly. The Manipur

High Court ruled in favor of the legislators, holding that the provisions of the Anti-Defection Law did not apply to cases of abstention from voting, and that the legislators had not defected from their party.

The Anti-Defection Law in India has not directly led to a conflict between the center and the states. However, the Law has been the subject of much debate and discussion, and has faced a number of challenges and criticisms. Some have argued that the Law has had a negative impact on the functioning of democracy in India, by restricting the freedom of legislators to switch parties or to vote according to their conscience, and by encouraging political opportunism and the suppression of dissent and debate within parties.

There may be instances where the implementation of the Anti-Defection Law at the state level could lead to a conflict with the center. For example, if a state government is dependent on the support of legislators who have defected from other parties, the application of the Law could lead to the collapse of the government and the need for fresh elections. This could potentially lead to a conflict between the center and the state, as the center may have an interest in ensuring the stability of the state government.

However, it is worth noting that the Anti-Defection Law is a Central law, and applies to all states in India. As such, the Law is intended to ensure the stability of governments at the state and national levels, and to prevent political defections and horse-trading. While the Law may have had some challenges and criticisms, it is generally seen as a necessary measure to ensure the stability of governments and to prevent political instability.

The law is commonly known as the "whip" system, as it allows political parties to issue a "whip" (a directive) to their members, requiring them to vote in a certain way or face disciplinary action. The whip system is used to ensure party discipline and to prevent elected representatives from defecting to other parties.

In the context of the anti-defection law in India, a whip is a directive issued by a political party to its members, requiring them to vote in a certain way or face disciplinary action. The whip system is used to ensure party discipline and prevent elected representatives from defecting to other parties.

The role of the whip is to ensure that elected representatives follow the directives of their party, particularly on important votes in the legislature. The whip is usually issued by the party leadership and may be enforced through a variety of means, such as the threat of expulsion from the party or the withdrawal of privileges and perks.

The anti-defection law allows for the use of the whip system as a means of enforcing party discipline and preventing defections. Under the law, an elected representative who votes or abstains from voting in the legislature against the directives of their party can be disqualified from office.

V. Suggestions

Different conventions are used in other nations with defection laws. For instance, in Singapore, the Parliament resolves on defection-related matters, but in Bangladesh, the Speaker submits the case to the Election Commission. These solutions, however, present the same issues that have already been mentioned. Therefore, the least intrusive reform would be to eliminate any prejudice from the Speaker's job and encourage impartiality. As was previously said, Indian Speakers believe that the positions of their international counterparts are protected from partisan behaviour. The office of the Speaker needs an immediate revamp, taking inspiration from the best procedures of these more advanced democracies. The Speakers might be required to resign from their political parties to ensure impartiality in accordance with a scheme similar to that of the United Kingdom and Ireland. The office of the Speaker needs an immediate revamp, taking inspiration from the best procedures of these more advanced democracies. The Speakers might be required to leave their political party in order to show that they are impartial, taking a cue from the UK and Ireland models. They might also be prohibited from holding any political position after resigning. As is the case in the UK, the Speaker should be permitted to act as a regular member of parliament and address the concerns of their constituency while preserving their role as an impartial judge of disputes. Adopting at least some of these approaches would modify the Speaker's function structurally, making it more impartial and, therefore, an effective adjudicator.

One more suggestion is forwarded with respect to the inner party democracy. There is a strong need for strengthening it by regular elections and equal opportunity for all as per their merit without any discrimination. If central leadership decides candidates for the elections, no

one will have courage to oppose even the unfair dictates of the central leadership which will undermine democracy.

One must be aware that neutrality cannot be guaranteed by merely following the regulations. While these regulations would effectively remove the person from the party, they would not guarantee that they were free of the views and biases they held.²⁸ The ability of the Speaker to separate their political allegiances from their responsibility to the parliament, rather than whether they have any, is what matters.²⁹ As a result, insisting on form over content by calling for the Speaker to leave their political party or forsake politics.³⁰ The political atmosphere would need to completely change in order for these measures to be accomplished. Only through altering political behaviours itself can these neutrality and non-partisanship norms be ingrained into the system.

VI. Conclusion

It is justified to revamp and change the Speaker's position under the anti-defection rules in order to stop the ongoing denigration of the electorate's will. The recent *KeishamMeghachandra* judgement³¹ by the Supreme Court, in which the Speaker used the tried-and-true strategy of postponing the disqualification, brought this issue to the fore once more. Although many have advocated going down the somewhat radical path of abolishing defection laws, it is crucial that we keep them in place since India's political culture is still in its infancy. As a result, political parties in India use anti-defection laws as a coercive tool to keep elected officials within the boundaries of the party. However, this stands in stark contrast to the party coherence that frequently serves as the distinguishing characteristic in the world's most advanced democracies, like the United Kingdom.³² The foundation of a political party's coherence is the elected members' abiding allegiance to its platforms, programmes, or ideas. The unprincipled and ideologically incoherent defections that have plagued the Indian democracy, however, demonstrate how seriously missing this is in India. Therefore, the need for anti-defection laws can only be lessened if the Indian political system is successful in encouraging party cohesion among party cadre. In the improbable event that

²⁸ Stanley Bach, 'The Office of Speaker in Comparative Perspective' (1999) 5(3) *The Journal of Legislative Studies* 209.

²⁹ *Ibid.*

³⁰ Matthew Laban, 'More Westminster than Westminster? The Office of Speaker Across the Commonwealth', (2014) 20(2) *The Journal of Legislative Studies* 143, 244.

³¹ *KeishamMeghachandra Singh v. Hon'ble Speaker Manipur Legislative Assembly*, 2020 SCC OnLine SC 55.

³² Kenneth Janda, 'Laws Against Party Switching, Defecting, or Floor Crossing in National Parliaments' (2009) *Northwestern University* 2/2009 <<http://www.partylaw.leidenuniv.nl/uploads/wp0209.pdf>> (last visited on 5th Jan, 2023)

this is successful, political parties could uphold party discipline by ingrained values and conventions as opposed to relying on coercive legislations like the anti-defection statute. India will have to place its hopes in the defection laws to achieve the same effects because there is no party cohesion and unshakeable loyalty towards accumulating wealth and power over loyalty to a political ideology or programme. However, it should also be kept in mind that resorting to legislative and legal reforms to remedy a political issue, such as defections, is often nothing but a piecemeal measure. The political attitudes of people at large have to be evolved based upon constitutional principles rather than raw emotions prevalent currently. Ultimately political consciousness of society at large will transform the political arena and eliminate evils of defections for personal gains.

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