



Defection and the Indian Political System: Legal Gaps, Speaker's Power, and the Road to Subversion

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ABSTRACT: The debate about political defection continues to be intense in Indian legislative institutions. Indian legislators have failed to control political defection despite their efforts to implement provisions such as Schedule X of the Constitution. The Supreme Court Speaker retains wide authority to handle matters of defection but lacks specific time limits in resolving these cases, which produces prolonged uncertainty. The decision-making power of Speakers regarding defection cases creates a scenario where defendants lack any way to seek legal protection because the judiciary chooses not to intervene. The legal precedents, particularly the landmark judgment in *P.V. Narasimha Rao v State* (1998). The situation became more complicated when the court issued its decision through *P.V. Narasimha Rao v. State* (1998), which validated Article 105(2) provisions yet allowed more political corruption to occur. This paper provides an in-depth study of defection obstacles while evaluating legislative and judicial handling methods as well as system subversion protocols to deliver a thorough evaluation of the problem's impact on democratic stability and constitutional integrity.

KEYWORDS: Anti-defection law, Schedule X, Constitution, P.V. Narasimha Rao, Article 105(2)

I. INTRODUCTION

The path to Indian independence was built through the principle of "*Unity in Diversity*" until the country finally won its freedom. The country found its way to a democratic system of government after the initial period through the development of political parties that adopted shared ideologies. The departure of Members of Parliament (MPs) from their parties started appearing as members following individual incentives and different understandings of party principles.¹ These deserting MPs strayed from their political parties, which damaged both party unity and loyalty between MPs and their voters who backed their party declarations. The routing of democracy occurs through this situation, which violates democratic principles. India has not established a watertight solution for handling political party member defection as of present times. The Latin word deficit served as the origin for "*defection*" since both terms mean to leave behind a current alignment or cause for another orientation. Since the British House of Commons, MPs initiated the practice of floor crossing that shifted their political party loyalties. The practice of physically crossing the floor has evolved into a standard terminology that politicians use today.²

Defection has become a major problem throughout the years in India. Schedule X's establishment in the Indian Constitution in 1985 brought an end to a history of 142 parliamentary defections between 1967 and 1971, as well as 1969 state assembly defections. Rajiv Gandhi appointed Y.B. Chavan as the head of a special committee to develop a solution because of increasing defections among MPs. Schedule X was included in the Constitution through the 52nd Amendment Act of 1985, thus establishing legal provisions to prevent defections during parliamentary sessions. Manish Tewari proposes through his private bill that the application of anti-defection laws should only extend to both votes of confidence and money bills. Through this method, legislative

¹ Chapter 3 Why Do We Need a Parliament? CEO DELHI,

<https://ceodelhi.gov.in/eLearningv2/admin/EnglishPDF/Chapter%203%20Why%20Do%20We%20Need%20a%20Parliament.pdf>.

² *Politics of defection*, PRS INDIA, <https://prsindia.org/theprsblog/politics-of-defection>.

representatives keep their democratic right to vote according to their beliefs so democratic processes can maintain their integrity and protect MPs from improper political influence.³

II. THE CONUNDRUM OF MEMBERS SHIFTING PARTIES, PARLIAMENTARY PRIVILEGES AND WHIP

Schedule X has produced some benefits for reducing political defections in India, yet it cannot provide complete protection to parliamentary democracy. According to Abraham Lincoln, democracy represents the “*Government of the people, by the people, for the people,*” yet India would gain through adopting C. Rajagopalacharya’s concept of “Government by discussion” for democracy. A profound discussion about important matters should guide political decision-making processes according to this method. A three-step process for distributing party whips represents a possible solution to strengthen this idea.⁴ Parties should issue their whips concerning financial and administrative decisions based on organizational directives. When issuing whips, the party leadership must rely on the opinions which have received majority support. Whips should not be used for Constitutional amendments or other sensitive issues since MPs need the freedom to base their decisions on individual judgments. According to Latin origin, privilege signifies a special law made to defend personal rights.⁵ Members of Parliament (MPs) depend on privileges as needed tools to carry out their responsibilities more efficiently. These privileges operate specifically during assigned times of holding office duties. Parliamentary work would become highly challenging for Members of Parliament if their privileges were revoked from their duties. All MPs and the unified House use these privileges to sustain legislative functions properly.⁶

Parliamentary privileges which British MPs received became the foundation for the privileges granted to MPs in India. The concept of democratic assurance came via the British House of Commons, while the Indian Constitution protects such privileges through Articles 105 and 194. These provisions equalize Indian parliamentary authorities with those of British parliamentarians at the Constitutional start date. During the 18th century, Edmund Burke implemented the first usage of “Whip” in British parliamentary history.⁷ In parliamentary governance, a whip represents one of the Members of Parliament whom the party leadership selects to deliver messages to caucus colleagues. As part of their duties, whip staff members communicate party activities to MPs before providing instructions on voting decisions and maintaining adequate presence during important sessions. The Indian Whip system is responsible for maintaining sufficient MP attendance at voting sessions and supporting party positions during parliamentary votes. The Chief Whip of the ruling party in both Lok Sabha and Rajya Sabha exists as the Parliamentary Affairs Minister who maintains duty to House leaders. The Whip is responsible for party unity together with the task of sustaining discipline by ensuring MPs comply with party instructions on vital votes.

III. INTERNATIONAL PERSPECTIVE OF ANTI-DEFECTION LAW

Political defectors exist worldwide, yet numerous nations abstain from passing laws that would ban this habit. Political parties across numerous countries decide to leave defection unregulated since they view it as a matter belonging to internal party management. The UK does not establish specific laws to regulate defection politics. The issue remains within party connections and receives no particular legal treatment. Edmund Burke, a British thinker and political figure, perfectly explained parliamentary representation with these words: “[y]our representative owes you, not his industry only, but his judgment; and he betrays you instead of serving you if he sacrifices it to your opinion.” The statement indicates that parliamentary representatives must use their judgment to determine how they will represent their constituency, even if it means taking positions against their political party.⁸ Members of Parliament in the UK maintain the freedom to break party positions on individual pieces of legislation because their assessment becomes more important than their party loyalty. The population in India chooses their party first and secondarily supports individual Members of Parliament. Party unity takes

³ M R Madhavan, *The Anti-Defection Law needs a relook*, PRS INDIA <https://www.prsindia.org/media/articles-by-prs-team/the-anti-defection-law-needs-a-relook-2777>.

⁴ Justice K.T.Thomas, *Anti-Defection Law*, NUALS L.J. 3 (2009).

⁵ Kartik Khanna and Dhvani Shah, *Anti-defection law: a death knell for parliamentary dissent?* NUJSL. REV. 103 (2012).

⁶ B. Venkatesh Kumar, *Anti-Defection Law: Welcome Reforms*, 38 ECONOMIC AND POLITICAL WEEKLY 1837 (2003).

⁷ Walekar Dasharath, *Changing Equation Between Indian Parliament & Judiciary*, 71 THE INDIAN JOURNAL OF POLITICAL SCIENCE 163 (2010).

⁸ Pardeep Sachdeva, *Combating Political Corruption: A Critique of Anti-Defection Legislation*, 50 THE INDIAN JOURNAL OF POLITICAL SCIENCE 157 (1989).

precedence over individual discretion in Indian politics since MPs experience more restrictions when they try to oppose party guidelines. Effective governance requires an appreciation for an MP's judgment power, which creates an equilibrium between the individual member and their party to keep the democratic system functioning properly.⁹

Under the presidential system of the United States, there exist no laws which restrain politicians from defecting from their parties. American members of the legislature maintain full freedom to base their parliamentary votes on personal beliefs because formal disqualification is absent from their political system.¹⁰ The United States prevents party disunity without legal restrictions on legislative members leaving their political parties.¹¹ Common for U.S. party leaders, as for Indian ones, they maintain group unity among members when critical policies come up for voting. The punishment for defectors includes leaders taking away key positions from dissenters as well as denying them influential posts within the party. These sanctions frequently appear before the Supreme Court of the United States (SCOTUS), where First Amendment rights regarding free speech are used for legal arguments.¹²

Politically, the United Kingdom implements a more adaptable stance when it comes to defection practices. The Australian law makes no restrictions around party member defection but gives parties full control to handle such events within their ranks. The legal system of the UK does not require MPs to respect party directions during voting and permits them to make judgments even if those choices differ from their party stance.¹³ Such representation practice aligns with the view that parliamentary representatives should provide service not only to their political group but also to what their constituency wants and judges. In the words of British political thinker Edmund Burke, MPs must offer their voters more than their work since they should provide their independent assessments of matters.¹⁴ The legal principle protects MPs so they can vote differently from their party positions without any consequences. British political parties continue to uphold strong party discipline since they demand MPs vote as a unified group during essential policy decisions. Party whips commonly come out as formal strategic guidelines for parliamentary members to determine their voting approach on particular issues.¹⁵ Since British MPs enjoy dissent freedom, their refusal to follow the party line may trigger informal discipline through position removal and denied party backing for forthcoming elections. The UK allows its MPs greater freedom of choice when compared to India because their approach differs in defining how MPs connect with their parties.¹⁶

Under a presidential system, the United States implements its distinct system regarding defection. US legislators may vote independently without consequences since the country lacks legal protections against defection between parties. Individual autonomy stands as a priority feature in the United States political system, so the country chooses not to implement anti-defection laws. The democratic principle of individual liberty allows members in both the Senate and the House of Representatives to make independent votes that do not follow party lines. Although the political system lacks formal regulation concerning party loyalty, members must follow party official directions through unofficial means. The accountability of members to party leaders depends on voting according to party positions through the enforcement of sanctions that might lead to the loss of leadership positions and important committee access. The party-imposed penalties exist within the internal framework of the organization instead of holding any legal authority. When members receive disciplinary actions for opposing party votes, they can use their First Amendment rights to challenge these actions mainly through the protection of their freedom of speech. The United States provides strong constitutional protection to individual rights through its legal system, while India maintains more stringent laws that limit party dissension.¹⁷

The matter of politician defection gets attention from numerous democracies around the globe, including India, Australia, and the United States. Australian political campaigns do not explicitly ban defection, but MPs within

⁹ C. P. Barthwal, *Coalition Governments in India*, 73 THE INDIAN JOURNAL OF POLITICAL SCIENCE 9 (2012).

¹⁰ DR.K.S. CHAUHAND, *PARLIAMENT, POWER, FUNCTION AND PRIVILEGES* (2013) 359.

¹¹ Nishtar, *Enter the Jan Morcha*, 22 ECONOMIC AND POLITICAL WEEKLY 1785 (1987).

¹² Papiya Deb & P K Sengupta, *Coalition Politics and the Changing Perspectives of India's Federal Governance*, 70 THE INDIAN JOURNAL OF POLITICAL SCIENCE 387 (2009).

¹³ *Your representative owes you, not his industry only, but his judgement; and he betrays you instead of serving you if he sacrifices it to your opinion.* --Edmund Burke, *Speech to the Electors of Bristol, November 3, 1774*, SMITHSONIAN AMERICAN ART MUSEUM, <https://americanart.si.edu/artwork/your-representative-owes-you-not-his-industry-only-his-judgement-and-he-betrays-you-instead>.

¹⁴ S.S. Tiwana, *Crisis in Indian Parliamentary Democracy*, 55 THE INDIAN JOURNAL OF POLITICAL SCIENCE 55 (1994).

¹⁵ E. Burke Rochford, *Factionalism, Group Defection, and Schism in the Hare Krishna Movement*, 28 JOURNAL FOR THE SCIENTIFIC STUDY OF RELIGION 162 (1989).

¹⁶ Ramit Mehta and Tejas Bhandari, *Legislative coups & intricacies of anti-defection law*. THE DAILY GUARDIAN (Jan. 6, 2021), <https://theguardian.com/legislative-coups-intricacies-of-anti-defection-law/>.

¹⁷ Singh, Dalip. "Parliamentary privileges in India." *The Indian Journal of Political Science* 26.1 (1965): 75-85.

the country must follow party rules to support official party positions on crucial votes.¹⁸ Australian democratic leadership follows a path similar to the United Kingdom by depending on party disciplinary protocols instead of implementing formal legal limitations. German laws allow party discipline in its constitution, yet it neither requires penalties nor bans defection in political parties. Holding strong coalitions in the political system requires MPs to demonstrate party loyalty, which maintains government stability. Defections by MPs in Israeli politics threaten governmental stability because their departure destabilizes coalition governments despite there being no legal restriction on defection. Defection remains an illegal sanction in France, but party loyalty holds essential importance to sustain political stability, similar to the United Kingdom. In French politics, MPs are expected to vote alongside their party, yet individual lawmakers who break from party positions do not encounter legal penalties but may receive internal political penalties from their party group.¹⁹ The legal consequences of political party defections vary between these nations, while party discipline strength also differs from one state to another. Indian law serves as a direct instrument to tackle party loyalty, whereas the US and UK enforce party discipline through unofficial methods, and individual MPs retain judgment independence. These democratic systems must find a balance between maintaining stability and protecting individual liberties since each system represents unique political values about representative democracy.²⁰

IV. DEDUCED ANALOGY ON DEFECTION LAWS OF DIFFERENT COUNTRIES

Constitutional authorities in countries provide anti-defection regulations to control party migration by legislators. Political stability serves as the fundamental purpose of these laws, which restrict Members of Parliament from abandoning their parties through voluntary defections for individual or partisan gains.²¹ Malhotra examined defection laws by surveying thirty-three governments across nations under the Commonwealth with his research, while IDEA surveyed sixty-four nations about "floor-crossing," which describes political representatives leaving their initial party to join another group or becoming independent. According to Malhotra, different nations adopt various perspectives about political party defections.²² Defection stands as a threat to democratic stability according to certain nations, which have introduced harsh laws to prevent it, but other nations treat it as either insignificant or belonging to the party domain. According to Janda, countries fall into different groups based on their democratic development, which leads to extensive differences in anti-defection legislation. Once democracies attain stability, they accept crossing party lines as normal democratic conduct, whereas newer emerging democracies adopt such laws to avoid instability in party organization and governance.²³

When democracy faces defection, it generates multiple effects on democratic operations. Political parties hold significant importance because Members of Parliament choose defection only when they recognize substantial advantages from the move. The process of defection offers MPs fresh political opportunities, which include better parliamentary offices as well as elevated party authority.²⁴ Political parties function as essential bridges between voters and elected MPs, so defects in party membership break the direct link established between these political actors. The Indian system for defector protection stands exclusive because the Constitution establishes mechanisms to secure the interests of governing parties together with those of opposition forces. Forms of internal party regulation for defections do not exist similarly as in many other countries. The 52nd Amendment Act of 1985, which added the 10th Schedule to the Indian Constitution, permits the disqualification of defecting MPs from their political positions. Several critics argue that the rigid approach of mandatory exit provisions limits members of parliament from expressing themselves and joining new parties unless MPs judge the laws to be unreasonably harsh. The party of an MP sometimes resorts to expulsion after defection, yet the banned member can remain committed to party switching.

¹⁸ Sinha, N. K. P. "THE NATURE OF PARLIAMENTARY PRIVILEGES IN THE INDIAN CONSTITUTION." *The Indian Journal of Political Science* 26.3 (1965): 58-66.

¹⁹ Burke, Edmund. *Speech of Edmund Burke, esq. on American taxation, April 14, 1774.* 1775.

²⁰ "GOVERNMENT OF INDIA MINISTRY OF PARLIAMENTARY AFFAIRS PRESS RELEASE Organizing the All India Whips Conference is one of the func." *Ministry of Parliamentary Affairs*, <https://www.mpa.gov.in/sites/default/files/Agenda1.pdf>. Accessed 28 November 2022.

²¹ PUNEET BHARGAVA, ANTI-DEFECTION LAW IN INDIA AND THE COMMONWEALTH *Parliament Digital Library* (2005).

²² G.C. MALHOTRA, ANTI-DEFECTION LAW IN INDIA AND THE COMMONWEALTH (2005).

²³ International Institute for Democracy and Electoral Assistance (IDEA), INTERNATIONAL IDEA, https://www.idea.int/sites/default/files/reference_docs/Annual-Report-2005-PDF.pdf.

²⁴ Kenneth Janda, *Laws Against Party Switching, Defecting, or Floor-Crossing in National Parliaments*, <http://www.partylaw.leidenuniv.nl/uploads/wp0209.pdf> accessed on 28 May, 2020.

Various types of democracies frequently examine the significance of anti-defection laws when evaluated for their essential function. Anti-defection laws hold great importance for new democratic regimes that want to develop sustainable, competitive party politics. These provisions serve to secure political unity and stop parties from becoming divided.²⁵ These laws gain negative regard within old democracies since they counter basic democratic principles that protect political freedom and association between individuals. Anti-party defection laws could undermine the freedom of political self-governance that MPs ought to exercise through their judgment-making abilities in democratic systems where individuals must base their decisions independently. The suitability of anti-defection laws depends on three factors: the political environment, party system, and societal nature of each country.²⁶

V. ROLE OF JUDICIARY BEFORE ANTI-DEFECTION LAW

Throughout the years, the judiciary has effectively shaped the defection laws so they were no longer perceived as weak legal frameworks.²⁷ The judicial matter *Mian Bashir Ahmed v. State of Jammu and Kashmir* is a noteworthy example in the history of defection laws.²⁸ The Supreme Court already examined defection cases before the official passage of anti-defection regulations. A defection incident occurred when the National Conference Party gained a majority in Jammu and Kashmir's general elections of July 1977 and established a government. The National Conference Party leader informed the Speaker in June 1980 that Mian Bashir Ahmed voluntarily resigned from the party to join the Congress Party. The J&K Representation of People Act section 24G triggered the Speaker, Mr Malik Mohi-ud-din, to disqualify Mian Bashir Ahmed through the defection application he received.²⁹ Mian Bashir Ahmed questioned the constitutional standing of Section 24G when the speaker disqualified him. The subsequent political developments led to the Speaker, Mr. Malik Mohi-ud-din, moving from the National Conference to the Congress Party after members of his party chose him through a no-confidence vote. His political defection brought upon him identical legal consequences despite his previous law-breaking. Section 24G faced another constitutional challenge from him because he believed it breached the rights established in Article 19(1)(a) (freedom of speech) as well as Article 19(1)(c) (freedom of association) and Article 14 (right to equality) and breached the basic structure doctrine underlying the Constitution.

The Jammu and Kashmir High Court used a reference from the *State of West Bengal v. Anwar Ali Sarkar* when delivering its judgment.³⁰ The court issued its verdict that specific legislative provisions satisfied constitutional boundaries through its decision in *State of West Bengal v. Anwar Ali Sarkar*. The J&K Representation of People Act's Section 24G received judicial approval from the High Court because it ensured constitutional validity. According to the court ruling, Section 24G of the J&K Representation of People Act does not limit freedom of speech rights nor free association rights of legislators, even though it requires legislators to be disqualified for party platform defecting. The court determined to maintain the disqualification regulations because they exist within democratic frameworks but only when they do not break constitutional standards or appear excessive. The court evaluation shed light on the problem with defection laws while demonstrating their ability to impact the political system stability of developing democracies. These laws have as their essential function to safeguard electoral integrity by preventing legislators from constantly changing parties for personal or political reasons. The court ruling demonstrated that stable laws form the foundation of democratic institutions, which require members to demonstrate loyalty toward their political parties.

The 1988 government coalition between the Janta Party and the Lok Dal Party resulted in *S.R. Bommai* taking leadership as their Prime Minister. A majority of the governing coalition led by K.R. Molakery wrote to Governor P. Venkatasubbaiah in 1989, describing how nineteen MLAs were unhappy with the government and sought federal administration implementation through Article 356(a).³¹ The Governor addressed correspondence to the President about the loss of the majority and recommended a presidential administrative takeover. The Bommai administration never received the chance to perform a floor test before the presidential rule levied and terminated their government operations. This situation emphasizes both political continuity and constitutional mechanisms that prevent non-functioning governments while maintaining public support for the government.

²⁵ Ambrose Pinto, *Karnataka Politics: Ideology, Parties and Power*, 74 THE INDIAN JOURNAL OF POLITICAL SCIENCE 369 (2013).

²⁶ Samuel J. Eldersveld, *The 1967 Indian Election: Patterns of Party Regularity and Defection*, 10 ASIAN SURVEY 1015 (1970).

²⁷ *The purpose of political parties | Democracy*, GOVERNMENT OF THE NETHERLANDS, <https://www.government.nl/topics/democracy/the-purpose-of-political-parties>.

²⁸ *Mian Bashir Ahmad And Etc. v. State Of J. & K. And Ors.*, C. M. P. No. 509 of 1980

²⁹ Parmanand Singh, *Review of ANTI-DEFECTION LAW AND PARLIAMENTARY PRIVILEGES*, 36 JOURNAL OF THE INDIAN LAW INSTITUTE 531 (1994).

³⁰ *West Bengal v. Anwar Ali Sarkar*, 1952 AIR 75.

³¹ *S. R. Bommai v. Union of India*, 1994 AIR 1918.

The government used Article 356 to initiate presidential rule to manage emerging political instability that might have worsened due to political defections. Article 356, in addition to anti-defection laws, shows how both provisions ensure the preservation of governance integrity in India.³²

Bommai first presented his case to the Karnataka High Court against the rejected plea yet encountered a denial of his petition. The Supreme Court received his case after he filed it following his petition being denied at the High Court of Karnataka, thus delivering its historic Article 356 of the Constitution of India ruling in March 1994. The judicial determination defined how much power the Central government possessed when activating Article presidential rule.³³ The Supreme Court ruled that presidential authorities to suspend state governments through imposition of rule cannot proceed without parliamentary approval from both legislative chambers. The President needs Parliament's approval to issue presidential rule after deciding on the state government's administration. The failure of Parliament to verify the presidential proclamation through approval procedures for two months will lead to the termination of the legislative assembly suspension.³⁴ The Supreme Court confirmed that executive proclamations are subject to judicial checks, which limit the presidential power in this regard.³⁵

The case of *Kihota Hollohan v. Zachilhu*,³⁶ During the evaluation of defection laws, emerges as a crucial case. On December 12th, 1990, Kihota Hollohan, who served as an MLA at the Nagaland Legislative Assembly, submitted five petitions against MLAs who left the Congress Party of their own accord to split the party.³⁷ Five members of the Naga Assembly led by Zachilhu had resigned their political membership, which the Speaker accepted. The defected group consisted of Samvashi Konngam Khusatho T.Miachieo L.Mekiye Serna and Zachilhu. These members received disqualification from the Speaker following his actions under the Tenth Schedule of the Indian Constitution. Disqualified members sought legal clarification in the High Court of Guwahati regarding the validity of both the Anti-Defection Law and the Speaker's termination decision. Multiple petitions concerning the new anti-defection law received varied interpretations from different High Courts in India before they were delivered to the Supreme Court. The Supreme Court verified the constitutional legitimacy of both the 52nd Amendment Act and the 10th Schedule of the Constitution, apart from Paragraph 7. The Supreme Court declared Paragraph 7 of the Tenth Schedule unconstitutional because it violated the powers granted by the Constitution. As a result, the Court removed it. The Supreme Court specified that Speakers and Chairpersons execute their Tenth Schedule duties as adjudicatory tribunals, which enables judicial review.³⁸

In 2020, the BJP gained Jyotiraditya Scindia when the senior Congress leader from Madhya Pradesh left his party. The resultant defection of 22 Congress Members of the Legislative Assembly forced the collapse of Congress's governance, which ended up in a minority situation. The Congress government under Kamal Nath stepped down from power on March 20, 2020, before the assembly majority test, thus enabling Shivraj Singh Chouhan to take leadership of the BJP government. N.P. Prajapati, as Speaker of the Assembly, accepted the resignations of the 22 Congress MLAs, which resulted in Congress losing sixty-two seats in the assembly. The successive series of political events demonstrate the current significance along with intricate aspects of India's anti-defection laws, which affect national political stability. The judiciary maintains its vital position in determining the boundaries of legislative defection laws while safeguarding personal autonomy along with monitoring both parliamentary activities and Speakers' decisions regarding defection.³⁹

The Supreme Court seized control of the Madhya Pradesh political turmoil on March 19, 2020, through decisions based on earlier landmark court cases, *S.R. Bommai v. Union of India* (23) and *Nabam Rebia v. Deputy Speaker, Arunachal Pradesh* (24). *Union of India v. Deputy Speaker*. The Supreme Court instructed the Speaker to perform a floor test to determine whether the government in power was genuine. The Court ordered public authorities to provide proper security to the 16 rebel Congress MLAs whenever they wanted to participate in the Legislative Assembly session. The floor test of 24th March 2020 led Mr. Shivraj Singh Chouhan to gain confidence from the Legislature, which secured his position as the Chief Minister of Madhya Pradesh. The Course of Action in Karnataka mirrored the events that took place after the 2018 state election. The state election returned to the legislative assembly only produced divided results since no party achieved enough seats

³² K Vijaya Bhaskara Reddy, *Sabotage of Anti-Defection Law in Telangana*, 50 ECONOMIC AND POLITICAL WEEKLY 24 (2015).

³³ Anupam Saraph, *An Agenda for Reform of the Election System in India*, 46 ECONOMIC AND POLITICAL WEEKLY 19 (2011).

³⁴ Reddy, *supra* note 32.

³⁵ Subhash C. Kashyap, *The Politics of Defection: The Changing Contours of the Political Power Structure in State Politics in India*, 10 ASIAN SURVEY 195 (1970).

³⁶ *Kihoto Hollohan v. ZACHILLHU And Others*, 1992 SCR (1) 686.

³⁷ *Kihoto Hollohan v. Zachillhu*, 1992 Supp (2) SCC 651.

³⁸ *Nabam Rebia v. Deputy Speaker*, Civil Appeal Nos. 6203-6204 of 2016.

³⁹ Nishtar, *supra* note 11.

for political control. Following victories in 104 out of 224 contested seats, the BJP emerged as the leading political party but failed to establish a government because of lacking parliamentary support. The collaboration of Congress and JD(S) created a coalition government that selected H.D. Kumaraswamy to lead as chief minister after political alliances were formed after the elections.⁴⁰

The MLAs from Congress and JD(S) resigned in total numbers of 14 and 3, respectively, during July 2019 due to reported political pressure from the BJP. The disqualification of rebel MLAs occurred when combined with a legal rejection of their ability to participate in upcoming elections during the current assembly term. On the 23rd of July 2019, the government collapsed after rebel MLAs did not attend the trust vote. The departure of rebel MLAs and 3 JD(S) MLAs from the existing government allowed the BJP to establish a new administration comprising Yediyurappa as its leader. The disqualified Members of the Legislative Assembly filed a case about the Speaker's decision at the Supreme Court, in the case of *Shrimanth Balasaheb Patil v. Hon'ble Speaker of Karnataka Legislative Assembly and others*.⁴¹ The Supreme Court upheld the disqualification of 17 rebel MLAs through the ruling delivered by the Supreme Court accepted the disqualification of the rebel MLAs while also overturning the speaker's election ban because Section 36 of the Representation of the People Act, 1951 does not endorse this kind of disqualification.⁴²

The Manipur assembly elections from 2017 produced no clear winner since parties failed to reach majority standing. The Congress Party-led minority government with 28 seats failed to establish its rule after Shyamkumar joined the BJP, which had 21 seats. The departure of Shyamkumar enabled the BJP to take control of the government, and he obtained ministerial positions. After Shyamkumar defected from the assembly, thirteen petitioners submitted requests to the Speaker to disqualify him from legislative service. The legislator justified his non-eligibility for anti-defection law because he switched parties before taking an oath as an MLA. The Speaker chose not to investigate the matter at first. Consequently, the case *Keisham Meghachandra Singh v. The Hon'ble Speaker from Manipur Legislative Assembly* received a referral from the Supreme Court.⁴³ The Court issued instructions to the Speaker for rapid mitigation of this issue on 21st January. The Supreme Court issued a formal order on the 18th of March to prevent Shyamkumar's legislative entry because the Speaker failed to meet the court's demand. Shyamkumar received disqualification from Mr. Y. Kemchand, who served as Speaker on March 28th, 2020, because he left his initial party. These judicial decisions demonstrate how the judiciary uses its power to protect the objectives of the Anti-Defection Law so democratic institutions maintain party loyalty stability. Tenth Schedule decisions are open to judicial review by the court, which allows the cancellation of legislative actions that break constitutional principles.⁴⁴ The judiciary has implemented interventions to establish democratic compliance of legal operations alongside legislative individual rights protection.

VI. LOOPHOLES AND SUGGESTION

The Indian defection law and its Tenth Schedule provisions within the Constitution face various essential shortcomings that evolved into the main points noted below. The Speaker maintains complete authority to handle defection decisions based on Paragraph 6 of the Tenth Schedule, which creates a major issue for the law. Under the Tenth Schedule of the Constitution, the Speaker maintains absolute power to decide if MPs or MLAs must face disqualification for defection. Because of this extensive power the Speaker possesses, there exists a chance for biased decisions to occur. Since the Speaker lacks constitutional expertise, it is uncertain whether they should hold exclusive power to decide matters of defection. During 1991 and 1993, Mr. Rabi Ray and Mr. Shiv Raj Patil raised historical concerns about the need to evaluate how much power the Speaker should possess regarding defection cases. To uphold impartiality, it is recommended that the power given to the Speaker should receive normalizing adjustments.

The exclusion of court intervention in defection cases can occur through Paragraph 7 of the Tenth Schedule only when matters reach either the Supreme Court or High Court under Articles 136, 226, or 227 of the Indian Constitution. Judicial authority faces challenges because of the actions taken to limit it in numerous court cases.

⁴⁰ Malte Pehl, *The Debate on the Constructive Vote of No Confidence in India – Trading in Accountability for Stability?*, 49 VERFASSUNG UND RECHT IN ÜBERSEE / LAW AND POLITICS IN AFRICA, ASIA AND LATIN AMERICA 16 (2016).

⁴¹ *Shrimanth Balasaheb Patil v. Hon'ble Speaker of Karnataka Legislative Assembly and others*, 2019 SCC OnLine SC 1454.

⁴² P. M. Kamath, *Politics of Defection in India in the 1980s*, 25 ASIAN SURVEY 1039 (1985).

⁴³ *Keisham Meghachandra Singh v. The Hon'ble Speaker, Manipur Legislative Assembly*, CIVIL APPEAL NO. 547 OF 2020.

⁴⁴ C. P. Barthwal, *Coalition Governments in India*, 73 THE INDIAN JOURNAL OF POLITICAL SCIENCE 9 (2012).

The Supreme Court recognized Kihota Hollohan's law as valid while invalidating Paragraph 7 through his decision. The Court insisted that the law needs to establish a mechanism for judicial review because it plays a vital role in maintaining law fairness and balance. Prompt attention is needed to resolve this important constitutional matter because the case will lose its relevance after the House dissolves. To protect democratic values, the court should possess independent power to take action without legal petitions. Under the Tenth Schedule, there is a crucial problem regarding MPs' absence of independent decision-making power. The requirement under paragraph 2 makes Members of Parliament bound to follow party commands while trimming down their ability to operate independently. Democracy supports individualistic judgments and dissent therefore, this legal provision disregards how independent actions should not automatically lead to candidate disqualification. The law classifies two situations as defiance and defection yet fails to explain the differentiation enough, which results in unflattering practices forcing MPs to match party positions even when their political thoughts differ.

Paragraph 2(1)(a) includes the problematic expression "voluntarily giving up" one's membership, which leads to differences in interpretation among various cases. There lacks a clear definition in the law regarding what constitutes "voluntary member abandonment thus, courts must interpret this term subjectively. The interpretation of members giving up their membership extends beyond resignation to include both party expulsions and efforts to join another political party. G. Vishwanathan case demonstrated that the Supreme Court accepted expelled MPs still have party affiliation according to the Tenth Schedule. The Court decided in Rajendra Singh Rana that an MP who extends an invitation to their competition to organize a government might be considered to have terminated their party association. Extensive interpretations of voluntary membership resignation challenge the intention behind the legislation to address defection matters. In addition to other problems, this law faces a major obstacle with its merger provision.⁴⁵ Under Article 10 of the Tenth Schedule, a merger of two parties will not rise to defection status provided the members with a two-thirds agreement elect to join forces.⁴⁶ The provision exists to shield party members from disqualification through mergers, yet political parties use it as a mechanism to escape assessment for defection laws. Within practical scenarios, this legislative provision enables parties to create formal political partnerships that might disobey the voting preferences of the electors, thus creating an exemption that defeats defection legislation. Many problems exist in India's Anti-Defection Law because it contains various important inconsistencies that need improvement. The current application of the law has resulted in democratic system concerns about fairness and transparency because it seeks to provide stability while preventing party defections. The law needs ongoing reform because the current state requires decisive reforms to accomplish its objective while preserving democracy.

VII. CONCLUSION

Political parties under the Indian Constitution gain legal recognition from the Tenth Schedule, while parliamentary representatives act on behalf of party affiliation during electoral campaigns and voter sentiment formation. Under the Schedule, leaders of political parties, along with elected members, possess the authority to direct defection concerns to House Presiding Officers. Under Paragraph 2(1) of the Tenth Schedule, the political party leader has the authority to take necessary disciplinary steps that may lead to member disqualification. Under Paragraph 6 of the Tenth Schedule, the Speaker or Chairman of the House has exclusive power to resolve defection cases. The judiciary possesses the power to examine the Speaker's decisions but cannot step in when the Speaker delays or neglects to take action. Only the review of administrative steps can occur according to the present legal structure due to its limitations. The Supreme Court keeps the resolution of this matter pending through its decision in *Keisham Meghchandra Singh v. Hon'ble Speaker Manipur Legislative Assembly*. The complex constitutional questions at Hon'ble Speaker, Manipur Legislative Assembly await further examination by a higher bench that will determine appropriate answers. Under existing imperfect circumstances, the judiciary holds protective powers against parliamentary erosion since no other legislative system exists to maintain democratic standards.

The Parliament's inability to establish time limits in defection matters has produced an abnormal amount of power within the Speaker's authority. This situation transforms the Speaker so that they operate like an arbiter of constitutional matters instead of remaining apolitical within the Assembly structure. The democratic principles of the nation suffer when the Speaker extends his or her decision-making process because timely resolutions are

⁴⁵ *G. Viswanathan v. The Hon'ble Speaker Tamil Nadu*, 1996 AIR 1060.

⁴⁶ *Rajendra Singh Rana and Ors v. Swami Prasad Maurya and Ors, Appeal*, (civil) 765 of 2007.

vital for the system to function. Political party dissidents must not be deemed rebellious when their feedback deals with leadership methods or voter sentiments. Party members deserve distinction based on their adherence to party principles from those who confront authorities about leadership management and political governance decisions. The Tenth Schedule requires updates to resolve the present issues. A revised defection adjudication system should use one of three potential options, starting with a President-Governor member committee and ending with the Election Commission of India taking on this role as done in Bangladesh. A tribunal composed of three retired judges where one former Supreme Court judge and two High Court Chief Justices analyze such cases should be established as the parties would select their adjudicators. A head tribunal member should be chosen by either the President or the Governor. A 15-day decision time limit should become part of Paragraph 6, which requires the Speaker to act promptly when handling defection complaints. The High Court will exercise jurisdiction over disqualification petitions under Article 226 of the Constitution when the speaker fails to fulfill the set deadline. The Tenth Schedule Supersedes political parties, but dissent aimed at governance concerns should not result in rebellion charges. A political disagreement should not receive disciplinary action through the Schedule's provisions. The authority given to party whips needs specific limitations to cover only government confidence votes and money bills with additional restrictions to essential parliamentary measures affecting administration survivability. Such measures will protect the vital nature of Indian democracy both in reality and constitutionally.

