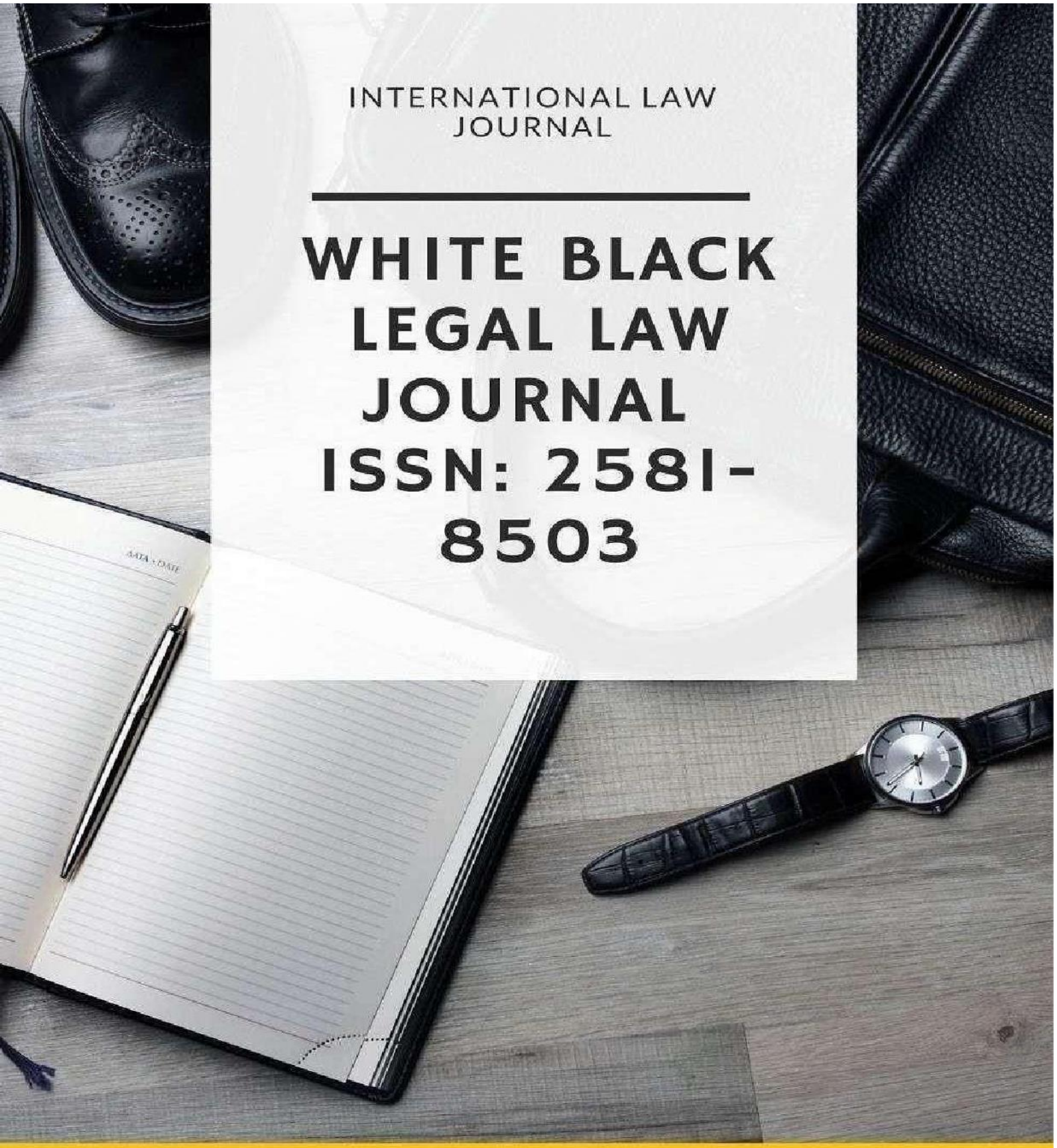

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POLITICAL DEFECTIONS AND LEGISLATIVE ACCOUNTABILITY: A CRITICAL STUDY OF INDIA'S ANTI-DEFECTION FRAMEWORK

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Abstract

Political defection the act of a legislator abandoning the party on whose ticket they were elected is widely regarded as one of the most corrosive phenomena in democratic politics. In India, the problem of 'Aaya Ram Gaya Ram' defections that destabilized state governments throughout the 1960s and 1970s prompted the enactment of the Tenth Schedule to the Constitution through the Constitution (Fifty-Second Amendment) Act, 1985, commonly known as the Anti-Defection Law. The law sought to restore legislative accountability by disqualifying legislators who voted against or abstained from voting on a motion contrary to the direction of their party. Over four decades of operation, the Anti-Defection Law has generated an extensive jurisprudence, ignited sharp scholarly debate, and prompted further constitutional amendment in 2003. Despite these developments, political defection remains a persistent feature of Indian democratic politics, with several high-profile government collapses in recent years attributable to legislative defections. This paper undertakes a comprehensive critical study of India's anti-defection framework, examining its constitutional architecture, judicial interpretation, theoretical foundations, and practical limitations. The paper critically evaluates the tension between legislative accountability on one hand and legislative freedom of conscience and democratic deliberation on the other. It examines the role of the Speaker as adjudicator of disqualification petitions and the attendant concerns about partisan adjudication. Through a comparative analysis encompassing South Africa, Bangladesh, Pakistan, and the United Kingdom, the paper identifies the distinctive features and deficiencies of the Indian model. The paper argues that the anti-defection framework, while conceptually sound in its objective of restraining opportunistic defections, suffers from structural deficiencies that have allowed it to be manipulated by political actors, and proposes a set of reforms designed to strengthen its effectiveness and democratic legitimacy.

Keywords: *Anti-Defection Law, Tenth Schedule, Kihoto Hollohan, Speaker, disqualification, legislative accountability, political parties, coalition politics, defection, India, constitutional law, parliamentary democracy*

1. Introduction

The health of a parliamentary democracy depends substantially on the integrity of the electoral mandate. When a legislator elected on a party's platform abandons that party after election whether for personal gain, ministerial ambition, or ideological opportunism the electoral choice made by voters is effectively negated. The defecting legislator continues to hold a seat won on the basis of one political affiliation while acting on the basis of another. This phenomenon, which has afflicted parliamentary systems across the democratic world, has been particularly acute in India, where the fragmented multi-party system, the practice of horse-trading, and the enormous material benefits of ministerial office have historically combined to make legislative defection a persistent threat to governmental stability.

The Tenth Schedule to the Constitution of India, inserted by the Constitution (Fifty-Second Amendment) Act, 1985, was Parliament's legislative response to this threat. Enacted during the tenure of Prime Minister Rajiv Gandhi's government with broad cross-party support, the Tenth Schedule established a framework for the disqualification of members of Parliament and State Legislatures who defect from the political party on whose ticket they were elected. The Schedule distinguished between permissible 'mergers' where at least two-thirds of the members of a legislature party agree to merge with another party and impermissible defections by individual legislators.

The law was subsequently amended by the Constitution (Ninety-First Amendment) Act, 2003, which eliminated the provision that had allowed one-third of a legislative party to defect and escape disqualification by claiming to constitute a 'split,' and which imposed a ceiling on the size of Councils of Ministers. These amendments addressed some of the more egregious loopholes in the original framework but left the fundamental architecture unchanged.

Four decades on, the Anti-Defection Law occupies a paradoxical position in Indian constitutional law. It has been upheld by the Supreme Court as constitutionally valid and as serving a legitimate democratic purpose. Yet it has simultaneously been criticized for suppressing free legislative debate, empowering party high commands at the expense of

legislative independence, enabling partisan adjudication by Speakers, and failing to prevent the precise phenomenon government destabilization through opportunistic defections that it was enacted to address. Recent episodes in Karnataka (2019), Madhya Pradesh (2020), Maharashtra (2022), and other states have demonstrated that determined actors can circumvent the law's provisions through mass resignations, making the efficacy of the framework a live constitutional and political question.

This paper critically examines India's anti-defection framework from constitutional, political science, and comparative law perspectives. The analysis is organized as follows: Section 2 sets out the methodology. Section 3 presents the research objectives and questions. Section 4 reviews the literature. Section 5 presents the main analysis, encompassing the historical background, the constitutional framework of the Tenth Schedule, judicial interpretation, the Speaker controversy, comparative frameworks, and emerging challenges. Section 6 presents conclusions and recommendations.

2. Methodology

This research employs a doctrinal legal methodology complemented by a political science perspective. The doctrinal analysis involves systematic examination of the text of the Tenth Schedule, the Statement of Objects and Reasons of the Constitution (Fifty-Second Amendment) Act, 1985, the Constitution (Ninety-First Amendment) Act, 2003, relevant provisions of the Representation of the People Act, 1951, and the Members of Lok Sabha (Disqualification on Ground of Defection) Rules, 1985. The paper undertakes a comprehensive analysis of judicial decisions on anti-defection law, with particular focus on the Supreme Court's constitutional bench judgment in Kihoto Hollohan v. Zachillhu (1992) and subsequent decisions that have shaped the law's application.

The political science dimension of the analysis draws on empirical data regarding instances of defection in Indian legislatures, patterns of government formation and collapse attributable to defections, and the outcomes of Speaker adjudications of disqualification petitions. This data is derived from published academic studies, reports of the Election Commission of India, legislative assembly records, and journalistic documentation.

The comparative analysis examines anti-defection frameworks in South Africa, Bangladesh, Pakistan, and the United Kingdom, selected because they represent a range of

approaches to the regulation of legislative defection in parliamentary and semi-presidential systems. The comparison is intended to illuminate the distinctive features of the Indian framework and to identify reform options that have been effective in other jurisdictions.

The research draws extensively on secondary literature, including peer-reviewed journal articles, book chapters, legal commentaries, and reports of constitutional review commissions. Reports of the National Commission to Review the Working of the Constitution (2002), the Law Commission of India, and the Election Commission of India are particularly significant secondary sources.

3. Research Objectives and Questions

3.1 Research Objectives

The objectives of this research are: (i) to trace the historical background and constitutional genesis of India's Anti-Defection Law; (ii) to critically analyze the constitutional framework of the Tenth Schedule and its judicial interpretation; (iii) to evaluate the effectiveness of the Anti-Defection Law in achieving its stated purpose of preventing opportunistic defections; (iv) to examine the role of the Speaker as adjudicator of disqualification petitions and assess whether this role is constitutionally and structurally appropriate; (v) to undertake a comparative analysis of anti-defection frameworks in other jurisdictions; and (vi) to identify and evaluate proposals for reform of the Indian framework.

3.2 Research Questions

This paper seeks to address the following research questions:

1. Does the Tenth Schedule strike an appropriate constitutional balance between legislative accountability and legislative independence?
2. Is the Speaker an appropriate adjudicator of disqualification petitions under the Tenth Schedule, and what reforms are necessary to ensure impartial adjudication?
3. How have judicial decisions shaped and limited the operation of India's Anti-Defection Law?
4. What lessons can be drawn from comparative anti-defection frameworks for the reform of India's Tenth Schedule?
5. Are the existing anti-defection provisions adequate to address emerging forms of legislative manipulation such as mass resignations and floor-crossing through abstention?

4. Literature Review

The scholarly literature on India's Anti-Defection Law is substantial and spans constitutional law, political science, and comparative politics. This section reviews the most significant contributions to the field.

The phenomenon of political defection in pre-1985 India was extensively documented by Bhambhri (1980), who analyzed the pattern of government instability in Indian states caused by legislative defections in the period from the 1967 general elections to the late 1970s. Bhambhri identified the material incentives ministerial office, patronage, constituency development funds that drove defections, and the role of wealthy political patrons and business interests in funding horse-trading operations. His work provided the empirical foundation for the argument that anti-defection legislation was necessary to preserve governmental stability (Bhambhri, 1980, pp. 45-51).

The constitutional validity of the Tenth Schedule was definitively settled by the Supreme Court in Kihoto Hollohan v. Zachillhu [(1992) Supp (2) SCC 651], which remains the locus classicus of Indian anti-defection jurisprudence. The Court upheld the constitutionality of the Tenth Schedule by a majority of three to two, holding that the Schedule did not damage the basic structure of the Constitution and that the disqualification of defecting legislators served the legitimate purpose of preserving the integrity of the electoral mandate. Justice M.N. Venkatachaliah, writing for the majority, held that the Tenth Schedule 'gives effect to the principle that the elector's choice of candidate is, to a significant degree, a vote for a political party and its programme' (1992 Supp (2) SCC 651, at para. 78). The minority, authored by Justice J.S. Verma, raised significant concerns about the absence of judicial review and the concentration of adjudicatory power in the Speaker.

Shukla (2001) provided a comprehensive constitutional law commentary on the Tenth Schedule, examining its provisions in the light of the Kihoto Hollohan judgment and subsequent decisions. Shukla identified several interpretive difficulties in the Schedule's key provisions, including the definition of 'voluntarily giving up membership of a political party,' the scope of the merger exception, and the nature of the Speaker's adjudicatory power (Shukla, 2001, pp. 1821-1840).

Jayal (2019) offered a political theory perspective on anti-defection law, situating it within the broader framework of democratic accountability in India. Jayal argued that the Anti-Defection Law reflects a 'party-centric' conception of democracy that subordinates the individual legislator's role as a representative of constituents to their role as an instrument of party policy. While acknowledging the legitimacy of concerns about opportunistic defection, Jayal contended that the law's effect in suppressing legislative dissent and concentrating power in party leadership was harmful to the quality of parliamentary democracy (Jayal, 2019, pp. 178-185).

The role of the Speaker in adjudicating disqualification petitions has attracted sustained scholarly criticism. Dua (2020) conducted an empirical study of disqualification proceedings across state legislatures from 2000 to 2019, finding that Speakers overwhelmingly decided disqualification petitions in favor of the ruling party or coalition. Dua documented numerous instances of Speakers deliberately delaying decisions on petitions filed against members of the ruling alliance, in some cases allowing members to continue voting until the political situation had been resolved in the ruling party's favor. Dua's study concluded that the Speaker system was fundamentally incompatible with impartial adjudication of disqualification petitions (Dua, 2020, pp. 56-64).

The Supreme Court in Keisham Meghachandra Singh v. The Hon'ble Speaker, Manipur Legislative Assembly (2020) took significant steps toward addressing the delay problem, holding that Speakers must decide disqualification petitions within a reasonable time, and that where a Speaker fails to act, the Court may itself decide the petition or set a specific deadline. The judgment was widely welcomed as a corrective to the abuse of Speaker discretion but has not fully resolved the structural problem of partisan adjudication (Bose, 2021, pp. 22-27).

Kumar (2017) examined the impact of anti-defection law on legislative debate and committee participation, finding that Members of Parliament had become significantly less likely to express dissent or vote against party positions on legislative matters since the enactment of the Tenth Schedule. Kumar's empirical study of parliamentary voting records found that voting unanimity within legislative parties had increased dramatically after 1985, suggesting that the Anti-Defection Law had contributed to a culture of legislative conformity that impoverished parliamentary deliberation (Kumar, 2017, pp. 112-119).

Subramanian (2021) analyzed the specific mechanisms by which political actors circumvent the Anti-Defection Law, including mass resignations (which are not caught by the Schedule's provisions because resignation from the House is a personal right and not a defection from the party), the engineering of 'mergers' through the acquisition of two-thirds of a legislature party, and the use of 'rebel' members who accept disqualification as the price of ministerial office in a new government. Subramanian's case studies of government collapses in Karnataka, Madhya Pradesh, and Goa demonstrated the ingenuity with which political operators had developed workarounds to the Tenth Schedule (Subramanian, 2021, pp. 89-97).

In the comparative literature, Ziegfeld (2016) examined anti-defection regimes across South and Southeast Asian democracies, finding that the effectiveness of such regimes in preventing government instability was highly contingent on the impartiality of the adjudicatory mechanism and the willingness of courts to enforce disqualification decisions promptly. Ziegfeld found that India's combination of a politically dependent Speaker as adjudicator and slow judicial enforcement produced the weakest anti-defection outcomes among the countries studied (Ziegfeld, 2016, pp. 234-241).

The National Commission to Review the Working of the Constitution (2002), chaired by Justice M.N. Venkatachaliah, recommended a series of reforms to the Anti-Defection Law, including the transfer of adjudicatory power from the Speaker to the Election Commission or an independent tribunal, the extension of disqualification provisions to cover mass resignations engineered to bring down governments, and the reduction of the merger threshold to two-thirds of the full legislative party rather than two-thirds of those present and voting. These recommendations have not been implemented but continue to be cited in scholarly and judicial discussions of anti-defection reform (National Commission to Review the Working of the Constitution, 2002, pp. 107-112).

5. Analysis

5.1 Historical Background: Aaya Ram Gaya Ram and the Crisis of Legislative Accountability

The phrase 'Aaya Ram Gaya Ram' 'Ram has come, Ram has gone' entered Indian political vocabulary in 1967 when a Haryana legislator named Gaya Lal changed party affiliation three times in a single day. This episode, colorful in its specificity, symbolized a

much broader systemic problem: the routine practice of legislative defection that characterized Indian state politics from the 1967 elections onward. The 1967 general elections produced fractured mandates in many states, creating governments dependent on small legislative majorities and therefore acutely vulnerable to the defection of even a handful of members.

The scale of the defection problem in this period was staggering. A study by the Ministry of Law documented over 1,500 defections by legislators in the period from 1967 to 1985. Several state governments were toppled by defections within months of their formation. Governors, whose discretionary power to invite parties to form governments created its own sphere of political manipulation, frequently contributed to the instability by inviting minority parties to form governments on the basis of defection-supported majorities. The phenomenon corroded public trust in democratic institutions and introduced a permanent atmosphere of political uncertainty into state governance.

Early attempts at legislative remedies were made by several state governments, but these lacked constitutional force and were struck down by courts as interfering with the freedom of legislators. The issue was examined by the Dinesh Singh Committee (1969) and the Rajagopala Ayyangar Committee (1971), both of which recommended constitutional amendment to address the defection problem. It was not until the constitution of the Committee on Defection under Y.B. Chavan in 1978, and the subsequent election of a stable majority government under Rajiv Gandhi in 1984, that the political conditions existed for the passage of anti-defection legislation with the requisite two-thirds majority.

5.2 Constitutional Architecture of the Tenth Schedule

The Tenth Schedule, inserted by the Constitution (Fifty-Second Amendment) Act, 1985, sets out the grounds for disqualification of members of Parliament and State Legislatures on grounds of defection. Paragraph 2 of the Schedule provides that a member shall be disqualified if they voluntarily give up membership of the political party by which they were set up as a candidate at the election, or if they vote or abstain from voting in the House contrary to any direction issued by the political party without obtaining prior permission of the party and such voting or abstention is not condoned by the party within fifteen days.

The Schedule originally contained an exception in Paragraph 3 providing that disqualification would not apply where a split occurred in the original political party and at least one-third of the members of the legislature party joined a new party or faction. This exception was widely abused in practice, as political operators manufactured 'splits' by securing the adherence of one-third of a legislative party to a new faction in exchange for ministerial

positions. The Constitution (Ninety-First Amendment) Act, 2003 deleted Paragraph 3, eliminating the split exception entirely.

Paragraph 4 retains an exception for mergers, providing that disqualification does not apply where a member votes or abstains from voting, or where a member of a legislature party claims that they and at least two-thirds of the members of the legislature party have become members of another political party. This merger exception requires the participation of at least two-thirds of the legislature party a higher threshold than the original split exception and has itself been subject to manipulation, though less frequently than the old split provision.

Paragraph 6 vests adjudicatory power over disqualification petitions in the Chairman or Speaker of the House, whose decision is declared to be final. The finality provision was qualified by the Supreme Court in Kihoto Hollohan, which held that the Speaker's decisions are subject to judicial review on the limited grounds of constitutional propriety, legal mala fides, jurisdictional error, and violation of natural justice. The scope of judicial review was thus preserved, though significantly narrowed.

5.3 The Kihoto Hollohan Judgment: Constitutional Validity and Scope

Kihoto Hollohan v. Zachillhu [(1992) Supp (2) SCC 651] remains the foundational judicial pronouncement on India's Anti-Defection Law. The case arose from challenges to the constitutional validity of the Tenth Schedule in several High Courts, which were consolidated by the Supreme Court into a constitutional bench of five judges. The central questions before the Court were: whether the Tenth Schedule violated the basic structure of the Constitution; whether the exclusion of judicial review in Paragraph 6 was constitutionally impermissible; and whether the vesting of adjudicatory power in the Speaker was consistent with constitutional principles of natural justice and separation of powers.

The majority held, by three to two, that the Tenth Schedule was constitutionally valid and did not damage the basic structure. The majority reasoned that the Schedule served the legitimate purpose of preserving the democratic mandate by preventing legislators from switching allegiances after election for extraneous reasons. The majority further held that Paragraph 6, to the extent it purported to bar judicial review absolutely, was unconstitutional as violating the basic structure principle of judicial review, but that this infirmity could be severed without affecting the validity of the rest of the Schedule. The practical consequence of the majority's holding on judicial review was that courts could intervene on limited grounds but could not conduct a full merits review of the Speaker's decision.

The minority judgment of Justice J.S. Verma, which has been influential in subsequent

scholarly debate, expressed greater concern about the concentration of adjudicatory power in the Speaker. Justice Verma observed that the Speaker, as a member of a political party and often a partisan actor within that party, was structurally ill-suited to adjudicate disqualification petitions impartially, particularly where petitions concerned members of the Speaker's own party or coalition. The minority called for the adjudicatory function to be vested in an independent body, foreshadowing the reform proposals that would subsequently be made by the National Commission to Review the Working of the Constitution.

5.4 Key Judicial Developments Post-Kihoto

The decades following Kihoto Hollohan have seen the Supreme Court and various High Courts grapple with the interpretation and application of the Tenth Schedule in a series of significant judgments.

In G. Viswanathan v. Speaker, Tamil Nadu Legislative Assembly [(1996) 2 SCC 353], the Supreme Court held that a member who joins another political party after being expelled from their original party is not liable to disqualification under the Tenth Schedule, since upon expulsion the member no longer holds membership of the original party and therefore cannot 'voluntarily give up' that membership. This judgment created a significant loophole: a party could expel a rebel member, who could then join another party without disqualification. The practical consequence was that disqualification could be avoided by engineering an expulsion rather than a voluntary departure.

Ravi S. Naik v. Union of India [(1994) Supp (2) SCC 641] addressed the meaning of 'voluntarily giving up membership,' holding that this phrase was not limited to formal resignation from the party but could be inferred from the conduct of the member. The Court held that a member who publicly supports a rival party, campaigns against their own party's candidates, or makes public statements indicating that they no longer regard themselves as a member of the party may be found to have 'voluntarily given up membership' even without formal resignation. This broader interpretation of the disqualification trigger has been consistently applied in subsequent decisions.

Keisham Meghachandra Singh v. The Hon'ble Speaker, Manipur Legislative Assembly [(2020) 2 SCC 123] marked a significant step in the Court's efforts to address the problem of deliberate delays in Speaker adjudication. The Court, in an unusual exercise of its jurisdiction under Article 142, determined a disqualification petition itself after finding that the Speaker had failed to act for a prolonged period. The Court held that the Tenth Schedule does not give Speakers an indefinite time to decide disqualification petitions and that unreasonable delay is

subject to mandamus. While the judgment addresses the symptom of delay, the Court acknowledged that it could not itself adjudicate every disqualification petition and that the structural problem of Speaker partiality required a legislative solution.

Nabam Rebia v. Deputy Speaker, Arunachal Pradesh [(2016) 8 SCC 1] raised the question of whether the Speaker could exercise jurisdiction over disqualification petitions when a notice for the Speaker's own removal was pending. The Court held that during the pendency of a notice for removal, the Speaker cannot exercise the Tenth Schedule jurisdiction a ruling that has been criticized for creating a mechanism by which disqualification proceedings can be stalled by filing a notice of removal against the Speaker.

5.5 The Speaker Problem: Structural Bias and Adjudicatory Integrity

The vesting of disqualification adjudication in the Speaker is the most persistently criticized feature of India's Anti-Defection Law. The Speakers of Parliament and State Assemblies are elected members of a political party, typically chosen by and from the ruling party or coalition. While conventions of parliamentary practice require Speakers to act impartially, the structural pressures operating on a Speaker adjudicating a petition that may determine the survival of the government that elected them are formidable.

Empirical data on Speaker adjudication of disqualification petitions reveals a systematic pattern of partisan outcomes. A comprehensive study published by the Association for Democratic Reforms analyzed sixty-three disqualification cases decided by Speakers of State Legislatures between 2005 and 2022 and found that Speakers decided in favor of the ruling party in fifty-seven of sixty-three cases a rate of over ninety percent. The study further found that the average time taken by Speakers to decide petitions was seventeen months, and that in several cases petitions were decided only after the political crisis that had prompted them had been resolved through other means, rendering the adjudication moot (Association for Democratic Reforms, 2022, pp. 8-14).

The Supreme Court has repeatedly acknowledged the structural deficiency of Speaker adjudication and called for legislative reform. In Subash Desai v. Principal Secretary, Governor of Maharashtra [(2023) 5 SCC 486], arising from the Maharashtra government collapse of 2022, the Court once again observed that the Speaker system was not conducive to impartial adjudication of disqualification petitions and urged Parliament to consider the transfer of this function to an independent authority. The Court nevertheless felt constrained to apply existing constitutional provisions rather than innovate structurally.

The persistent judicial calls for reform of Speaker adjudication reflect a broader

constitutional dilemma: the Supreme Court has the power to declare the law but not to rewrite it, and the legislature has the power to amend the Tenth Schedule but has consistently declined to do so, largely because the ruling party at any given time benefits from the structural advantage that Speaker control of adjudication provides.

5.6 Legislative Freedom vs. Party Discipline: The Democratic Dilemma

The tension between the Anti-Defection Law's goal of ensuring accountability to the electoral mandate and the democratic value of legislative independence is one of the most important theoretical questions raised by the Tenth Schedule. The law, as it currently operates, effectively transforms the legislature into an instrument for the execution of decisions made by party leaderships, removing from individual legislators any practical freedom to vote according to their individual judgment, the interests of their constituents, or the evidence and argument presented during legislative proceedings.

This consequence of the Anti-Defection Law has attracted criticism from constitutional scholars who argue that the concept of representative democracy contemplated by the framers of the Indian Constitution was not premised on robotically party-disciplined legislators but on representatives who exercised independent judgment within the framework of electoral accountability. Article 105 of the Constitution, which provides Members of Parliament with immunity from legal proceedings in respect of anything said or done in Parliament, reflects a conception of parliamentary freedom that sits uneasily with the Tenth Schedule's provision for disqualification on grounds of voting contrary to party direction.

A middle position, advanced by Bhatt (2018), argues that the Anti-Defection Law appropriately restricts defection motivated by material incentives while impermissibly restricting principled dissent based on matters of conscience or the public interest. Bhatt proposes a constitutional amendment to provide an exception to disqualification where the member's vote against party direction relates to a matter of fundamental rights, constitutional principle, or conscience vote, with the determination of whether the exception applies to be made by an independent tribunal (Bhatt, 2018, pp. 234-239).

5.7 Circumventing the Law: Mass Resignations and Engineered Mergers

A distinctive feature of the post-2000 operation of the Anti-Defection Law has been the ingenuity with which political actors have developed mechanisms to achieve the substantive objective of defection changing the government while technically avoiding the disqualification provisions. The two most significant of these mechanisms are mass resignations and the

engineering of mergers.

The mass resignation strategy exploits the fact that the Tenth Schedule has no provision governing voluntary resignation from the House. A member who resigns their seat as opposed to leaving their party is not subject to disqualification under the Schedule. By engineering the mass resignation of a sufficient number of government members to deprive it of a majority, opposition actors can effectively bring down a government while the resigning members remain technically compliant with anti-defection norms. The members may subsequently contest by-elections on their new party's ticket, having been rewarded with ministerial positions in the new government that their resignations helped bring about.

The Karnataka political crisis of 2019, in which seventeen MLAs from the Congress-JD(S) coalition government resigned their seats, facilitating the formation of a BJP government under B.S. Yediyurappa, is the clearest recent example of this strategy. The Supreme Court in Shrimanth Balasaheb Patil v. Hon'ble Speaker, Karnataka Legislative Assembly [(2020) 2 SCC 595] examined the circumstances of these resignations and the Speaker's subsequent handling of disqualification petitions, making observations about the Speaker's conduct and the broader structural problem but being unable to reverse the political fait accompli.

The Madhya Pradesh political crisis of 2020, involving the defection of twenty-two Congress MLAs led by Jyotiraditya Scindia to the BJP, similarly exposed the limitations of the Anti-Defection Law. The defecting members accepted disqualification rather than contest it, having secured assurances of ministerial office in the new BJP government. The Anti-Defection Law's disqualification sanction loss of the existing seat was insufficient deterrent when the reward was ministerial office.

5.8 The 2003 Amendment and Its Limitations

The Constitution (Ninety-First Amendment) Act, 2003 made two significant changes to the anti-defection framework. First, it deleted Paragraph 3 of the Tenth Schedule, which had permitted splits of one-third of a legislature party without disqualification. Second, it added Paragraph 1A to Article 75 and Article 164, imposing a ceiling on the size of Councils of Ministers at fifteen percent of the total membership of the House. The latter provision was designed to reduce the ministerial patronage that had historically served as the primary incentive for defection.

The deletion of the split exception was a genuine improvement to the legal framework. Under the original Tenth Schedule, the engineered split whereby a party's floor managers would secure the adherence of one-third of a legislative party to a 'split' faction in exchange for

ministerial positions was the most common mechanism for circumventing the disqualification provisions. The removal of this exception substantially narrowed the space for such maneuvers and has contributed to somewhat greater stability in government composition.

However, the 2003 amendment did not address the fundamental structural deficiencies of the framework: the Speaker problem, the absence of a provision covering mass resignations, the availability of the merger exception as a vehicle for manufactured political reorganization, and the inadequacy of the disqualification sanction as a deterrent for legislators who are offered ministerial office in exchange for defection.

5.9 Comparative Frameworks

A comparative examination of anti-defection regimes in other jurisdictions reveals a range of approaches to the problem of legislative defection and provides useful reference points for Indian reform debates.

South Africa's Constitution of 1996 initially contained anti-defection provisions that disqualified members who left their parties. These provisions were amended in 2003 to permit 'floor crossing' windows during which members could change parties without disqualification, and then substantially revised again in 2009, when the floor crossing provisions were repealed and the South African National Defence Force was constitutionally reformed. South Africa's experience illustrates that anti-defection frameworks can themselves create perverse incentives when poorly designed, and that the appropriate response may involve multiple rounds of legislative experimentation.

Bangladesh's Constitution contains strong anti-defection provisions that require members to vote with their party on all matters or face disqualification. The Bangladeshi provisions, like India's, have been criticized for suppressing legislative independence, but they have been associated with greater governmental stability. Adjudication is by the Speaker, with similar concerns about impartiality as those raised in India (Islam, 2019, pp. 44-49).

Pakistan's Constitution, as amended by the Eighteenth Amendment, contains detailed anti-defection provisions that disqualify members who vote contrary to party direction, are absent from a vote, or publicly oppose the party's policies. Adjudication is by the Speaker, and Pakistan's experience with Speaker adjudication has generated similar concerns about partisan decision-making as those documented in India (Chaudhry, 2020, pp. 89-94).

The United Kingdom, which operates without a written constitution, addresses legislative defection through political rather than legal mechanisms. Party whipping systems enforce party discipline through incentives and disincentives, and while individual members

may periodically vote against party direction, organized defection resulting in the fall of a government is effectively managed through the confidence vote mechanism. The UK's experience suggests that legal anti-defection provisions may be unnecessary in political systems with strong party discipline cultures, though the UK context differs sufficiently from India's that direct transplantation of the British model would not be appropriate.

6. Conclusion and Recommendations

The Anti-Defection Law has served an important function in reducing the most blatant forms of horse-trading and opportunistic defection that characterized Indian legislative politics in the 1970s and early 1980s. The deletion of the split exception in 2003 further strengthened the framework. However, the persistent circumvention of the law through mass resignations and engineered mergers, the structural problem of partisan Speaker adjudication, and the law's collateral effect in suppressing legitimate legislative dissent all point to the need for fundamental reform.

The following reforms are recommended: First, the adjudicatory function under the Tenth Schedule should be transferred from the Speaker to an independent constitutional authority either the Election Commission of India, a permanent Tribunal of retired Supreme Court judges, or a newly constituted Constitutional Bench specifically for this purpose. This reform has been consistently recommended by the National Commission to Review the Working of the Constitution, the Law Commission, and the Election Commission. Second, the Tenth Schedule should be amended to provide that members who resign their seats within a specified period of a disqualification petition being filed against them, or within a specified period of voting against party direction, shall be presumed to have done so to circumvent the anti-defection provisions, with the burden on the member to rebut this presumption. Third, an exception should be provided for votes on constitutional amendments and fundamental rights legislation, where members should be permitted to vote according to individual conscience without disqualification. Fourth, the disqualification period should be extended a member disqualified under the Tenth Schedule should be barred from contesting elections for a period of at least three years, not merely required to vacate their current seat. This would strengthen the deterrent effect of the sanction. Fifth, transparent timelines for the adjudication of disqualification petitions with automatic judicial assumption of jurisdiction if the adjudicator fails to act within sixty days should be legislatively codified.

The fundamental challenge facing India's Anti-Defection Law is not technical but political: the legislators who would need to enact these reforms are precisely those who benefit from the structural advantages that the current framework provides to ruling parties. Breaking this self-interested equilibrium will require sustained pressure from civil society, the judiciary, and an informed citizenry committed to the proposition that the integrity of the democratic mandate is a constitutional value worth protecting.

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