

**Research Article**

## **Anti-Defection Laws in India: (A) Political Game?**

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**Abstract:** Anti-defection laws have long been perceived as an important tool for ensuring that the Parliament has a semblance of stability. By preventing elected officials from defecting to the opposition or abstaining from voting, these laws aim to ensure that the ruling government can continue to govern without being constantly challenged or undermined. These laws are especially important to a democracy as they exhibit the will of the people, who have vested the power in the ruling government. Thus, democratic principles would require that this will is respected and not abused by the Parliamentarians. Yet, recent events in democracies where anti-defection laws exist have evidenced a concerning trend wherein these laws are used as a tool to destabilise governments and curb constructive dissent within parties. These events have compelled a reconsideration of the purpose of anti-defection laws in democratic societies and have ignited a wrangle amongst policymakers with arguments in support and in dissent of anti-defection laws.

Rooted in this context, this paper studies the historical and legal context of anti-defection laws in India. It explores their evolution over time and the impact they have had on Indian democracy. One key issue that the paper will explore is the tension between party discipline and the democratic right of elected officials to vote according to their conscience. By examining the Indian experience, this paper will shed light on the strengths and weaknesses of anti-defection laws and the challenges they pose to democratic values such as elected officials' freedom of expression and internal party democracy. Lastly, the paper attempts to trace the moment when anti-defection laws took the wrong turn to assist the cause it was birthed to fight. Through this inquiry, this paper will establish that in practice, this law is used as an instrument to effect defections and topple governments and hence, at times, runs counter to its purpose. Notwithstanding the foregoing, the fault lies not in the substance of the Tenth Schedule, but in the fact that a legal solution by itself will never solve a problem that is political in nature.

### **INTRODUCTION**

Freedom of Speech and Expression is the pillar on which the edifice of democracy stands. India, the largest democracy in the world, granting constitutional legitimacy to a law that curbs the ability of legislators to exercise their conscience freely<sup>1</sup> is an awkward juxtaposition. This is especially so when most democracies across the globe do not have an anti-defection law.<sup>2</sup>

<sup>1</sup> The Constitution of India, 1950 sch 10.

<sup>2</sup> Csaba Nikolenyi, 'Government Termination and Anti-Defection Laws in Parliamentary Democracies' (2021) 45(3) West European Politics 2.

Scholars have noted that such a practice is predominant in nascent democracies.<sup>3</sup> However, India, Israel, New Zealand, and Portugal are exceptions to the list in terms of democratic maturity.<sup>4</sup> This trend begs the question as to what compels a nation like India to enact an anti-defection law and further, as to whether the law has helped achieve the objectives it sought to achieve or whether it merely shackled dissent. This paper seeks to answer these questions.

The paper begins with an analysis of the political history of the Tenth Schedule and argues that its intention was never to stop defections or dissent, rather to stop them from having the ability to collapse a government. Though there is a very fine distinction between the two, it is this distinction that allows a political party to have healthy internal democracy where all constructive criticism is welcomed, and in case of serious ideological shifts, members are allowed to defect. This paper then deciphers the limitations in the Indian anti-defection regime in preventing floor-crossing. At the supposition of this inquiry, this paper finds that the Tenth Schedule is a legal solution to a political problem, which has failed to achieve its purpose because it has been whittled down by political Machiavellianism. In substantiating these findings, this paper highlights the influence politics has had to defeat the spirit of the Tenth Schedule. This paper additionally discusses one particular victim of the political influence, the Speaker, to illustrate how its bipartisan reputation has slowly eroded. This paper concludes by exposing the corrosive effect the Tenth Schedule has on the party's internal democracy and, concomitantly, India's political democracy as a whole.

## **THE GENESIS OF ANTI-DEFECTION LAWS**

### *A. Ideological shifts and the Congress Party's crisis of conscience*

Following India's independence, the country underwent a significant ideological transformation when the Indian National Congress (INC) grappled with a crisis of moral and ethical principles. The membership of the INC, then India's single largest political party, comprised of members from a variety of political leanings.<sup>5</sup> Till independence, the INC stood united by the primary ideology of securing Independence for the motherland. However, once that had been achieved, the organisation lost its primary ideology and therefore, suffered an ideological crisis.<sup>6</sup> This, coupled with opaque inner party mechanisms catalysed discontent within the party ranks. After the first general elections, several legislators left INC and formed breakaway parties.<sup>7</sup> Nevertheless, the INC's stronghold helped the party secure comfortable majorities in the first, second and third general elections, albeit with a dwindling margin.<sup>8</sup> The rising defections within the INC paired with a rise in independent candidates had set tumultuous times in motion for Indian Politics.

### *B. Fourth General Elections of 1967: The beginning of the defection problem*

The Fourth General Elections of 1967 marked a turning point in Indian Political history. While the INC secured a majority at the Centre with 283 seats out of 520, it struggled in the states. They secured small majorities in only half of the states while falling short of a majority in others.<sup>9</sup> This led to the phenomenon of 'horse trading' introduced by the INC, wherein they formed a coalition government with smaller political parties and other independent legislators

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<sup>3</sup> *ibid.*

<sup>4</sup> *ibid.*

<sup>5</sup> O P Goyal and Paul Wallace, 'The Congress Party - A Conceptual Study' (1964) 20(2) *India Quarterly* 180.

<sup>6</sup> *ibid.*

<sup>7</sup> Paras Diwan, 'Aya Ram Gaya Ram: The Politics of Defection' (1979) 21(3) *JILI* 291.

<sup>8</sup> *ibid.*

<sup>9</sup> *ibid.*

in exchange for ministerial positions. The democratically elected seat thus became a tradable good that elected members could barter away.<sup>10</sup>

This was most evident in Bihar, where more than 500 defections took place post the fourth general elections.<sup>11</sup> Independent legislators kept flip-flopping between the various coalitions that were sought to be formed and each coalition that formed, swiftly collapsed, as horse trading ran rampant in the state. Independent legislators and individuals who switched political affiliations held the key to the government formation process. Defection was incentivized, leading to a rise in unprincipled party-switching. These defections carried on until the next general elections when finally, a majority government was formed by the INC. Having formed the majority, and witnessed first-hand the tumultuous problems of defection,<sup>12</sup> it was clear that it needed to be solved expeditiously. The Jaya Prakash Narayan Committee was formed to report on this issue and propose some measures to bring reform to the system.<sup>13</sup>

### *C. Looking for solutions*

In 1969, the Jaya Prakash Narayan Committee proposed a comprehensive four-fold solution to the issue of defection by suggesting ethical, political, constitutional, and legislative remedies to the issue. The ethical and legislative remedies entailed compulsory registration of political parties and mandatorily imposing the responsibility of drawing up a code of conduct upon the parties. The political remedy was imposing responsibility on the party to field candidates of high integrity and trusted loyalty. A constitutional inclusion of provisions to the effect that defectors would be barred from holding office in the Council of Ministers was proposed.<sup>14</sup> These proposals were brought before a conference of the Rajya Sabha in 1970, where anti-defection reforms were pulled up for being in violation of Article 19(1)(c) of the Constitution. Palkhiwala and Limaye, among others, were staunch in their dissent of any such proposed reforms as they would amount to a curb on legislators' freedom and as such would be a violation of the Basic Structure of the Constitution.<sup>15</sup> Subhash C. Kashyap argues that the high rate of defection was merely an effect of India's nascent political system and the problem of defections would be solved as the polity evolved.<sup>16</sup> When Indira Gandhi called a conference of Opposition Party members to tackle the menace of defection, there was no agreement to the proposal of the committee, and neither were any alternative suggestions tabled for discussion.<sup>17</sup> As a result, both the 32<sup>nd</sup> Constitutional Amendment Bill and the 48<sup>th</sup> Constitutional Amendment Bill, purporting to bring Anti-Defection Reforms were not passed by the Houses as the INC did not have enough support in the House.<sup>18</sup>

### *D. The enactment of the anti-defection law: Legislators' interests*

It is worth noting that defection was a ubiquitous phenomenon that plagued India from the very beginning. However, the law was enacted only when these defections had finally

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<sup>10</sup> Hiranmay Karlekar, 'The Rout of the Congress Party Why It Happened and What It Means For India' (*The Harvard Crimson*, 11 March 1967) <<https://www.thecrimson.com/article/1967/3/11/the-rout-of-the-congress-party/>> accessed 3 July 2024.

<sup>11</sup> Paras Diwan, 'Aya Ram Gaya Ram: The Politics of Defection' (1979) 21(3) JILI 291.

<sup>12</sup> *ibid.*

<sup>13</sup> 'Report of the Committee Appointed by Sri Jayaprakash Narayan on Behalf of Citizens for Democracy for Electoral Reforms' (1991) 37(3) *Indian Journal of Public Administration* 588.

<sup>14</sup> *ibid.*

<sup>15</sup> Paras Diwan, 'Aya Ram Gaya Ram: The Politics of Defection' (1979) 21(3) JILI 291.

<sup>16</sup> Subhash C Kashyap, *The Politics of Power: Defections and State Politics in India* (National Publishing House 1974).

<sup>17</sup> Paras Diwan, 'Aya Ram Gaya Ram: The Politics of Defection' (1979) 21(3) JILI 291.

<sup>18</sup> *ibid.*

harnessed the strength to topple democratically established governments.<sup>19</sup> In 1984, when Rajiv Gandhi became the Prime Minister, the INC won 401 seats of the 508-seat Parliament. Having finally achieved stability, the INC attempted to put an end to tumultuous nature of parliamentary majorities and amended the Constitution for the 52<sup>nd</sup> time by bringing in the Anti-Defection law. The only other time an amendment was made to the anti-defection laws was in 2003 by the Bharatiya Janata Party (BJP), which too faced a power crisis and, as a result, amended the law. Per a comparative study conducted by Csaba Nikolenyi, this trend is true for similarly placed jurisdictions where defections were threatening the majority in their respective parliaments.<sup>20</sup> Even the Supreme Court (SC) in *Kihoto Hollohan v. Zachillu* expressed its angst over the grave implications defections have for the stability of the government.<sup>21</sup> Thus, it is not an entirely perverse cause, as the government that came into power was elected by the people, however, the government that comes into power vide defections lacks the legitimacy of the will of the people.

While this explanation helps one understand a party's interest in enacting anti-defection laws, what remains unanswered is the reasoning behind an individual legislator's vote for a law that binds them to a party whip. Prima facie, one may think it irrational for legislators to vote for such a law. However, a deeper analysis of politics sheds light on the fact that a party's survival as the majority is in the best interest of individual legislators, without which, they will lose their cabinet seats. When ministers defect in the hopes of greater political power and bring down a government, the defectors are rewarded for disloyalty, while the loyalists are taxed by loss of office for being loyal.<sup>22</sup> Thus, from the legislator's perspective, a rule that stops defections from bringing down the government is in the greater interest of the individual as well as the collective interests of ministers.

## **POLITICS IS ABOUT POWER, NOT THE LAW**

### *A. A legal solution to a political problem*

Despite strong political motives and the intent of the legislators as seen previously, the Anti-Defection law has veritably failed to achieve its intent. On an average, the country has witnessed more defections per year after the introduction of anti-defection laws.<sup>23</sup> From 1989 to 2004, two governments (the governments led by Prime Minister V.P Singh in 1990 and by Prime Minister A. B. Vajpayee in 1999) fell due to defection, and one government (the government led by Prime Minister Chandra Shekhar in 1990) was able to retain its power due to defections. Hence, three Commissions were tasked with the mandate of finding a solution to the problem of defections.<sup>24</sup> The National Commission to Review the Working of the Constitution (NCRWC) published a consultation paper in 2002, which highlighted the increasing trend of

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<sup>19</sup> Csaba Nikolenyi, 'Government Termination and Anti-Defection Laws in Parliamentary Democracies' (2021) 45(3) *West European Politics* 2.

<sup>20</sup> *ibid.*

<sup>21</sup> *Kihoto Hollohan v Zachillu* (1992) 1 SCR 686.

<sup>22</sup> Csaba Nikolenyi, 'Government Termination and Anti-Defection Laws in Parliamentary Democracies' (2021) 45(3) *West European Politics* 2.

<sup>23</sup> National Commission to Review the Working of the Constitution, *Review of Election Law, Process and Reform Options* (NCRWC Consultation Paper, August 2000).

<sup>24</sup> Committee on Electoral Reforms, *Report of the Committee on Electoral Reforms* (Government of India Ministry of Law and Justice Legislative Department, May 1990); Law Commission of India, *Reform of the Electoral Laws* (Law Com No 170, 1999); National Commission to Review the Working of the Constitution, *Review of Election Law, Process and Reform Options* (NCRWC Consultation Paper, August 2000).

defections after the implementation of the Tenth schedule of the Indian Constitution.<sup>25</sup> The Parliament then adopted a few recommendations, and the anti-defection laws were made more stringent in 2003. However, this too proved to be insufficient to save the governments in Karnataka, Madhya Pradesh, Manipur, Goa, Maharashtra, etc. from toppling due to defections. Anti-Defection laws are merely legal solutions to a political problem, i.e., a power struggle between political parties to maintain a majority. Such legal solutions can never entirely solve political problems as the roles, obligations, and incentives of players within the realm of “politics” and the “law” are quite different.<sup>26</sup> The law presumes all parties to be impartial actors who perform their roles with the sole objective of furthering justice. However, within politics, individuals with individualistic interests unite with players who share similar interests and together, in furtherance of their collective individual interest, form a party. Therefore, when the Tenth Schedule provides for gatekeepers such as the Speaker, who is to adjudicate over disqualification petitions for legislators who defect (as will be shown below), the Speaker, who is also a member of a political party, will have no incentive to act impartially to further the cause of justice.

Similarly, other safeguards provided under the Tenth Schedule do not let the law have an overbearing effect on the autonomy of legislators and allow for legitimate dissents, such as granting an exception to disqualification in case two-thirds of the members defect from a party. The underlying rationale of the exception is rooted in democratic principles. If the majority members of a party find it necessary to defect from the party, such defections must be allowed. The premise is that it is reasonable to presume that such a huge number would defect only for legitimate reasons. However, such provisions have also been whittled down by political chicanery, and this exception to the rule has been used as a weapon in Legislatures such as Goa<sup>27</sup> to cause large- scale or ‘retail’ defections to topple down governments which in effect, defeats the purpose of the very law.

## **UNVEILING THE REALITIES**

### *A. The perils of an (apparently) unbiased speaker*

One of the long-standing criticisms of anti-defection laws has been the conferment of the adjudicatory authority in the hands of the Speaker of the House. Paragraph 6 of the Tenth Schedule vests in the Speaker the sole authority to deal with questions of defection.<sup>28</sup> In the event of any floor crossings or contravention of the whip, the legislators will continue to remain as members of the House, until the Speaker takes a decision of this floor crossing.<sup>29</sup> The Tenth Schedule does not place a cut-off period for when a faction is said to have defected for the purposes of attracting disqualification under the Tenth Schedule, or evading disqualification under the exceptions carved out by paragraph 4. A Speaker may simply choose to delay the initiation of disqualification proceedings while the faction of defectors swells to reach the two-thirds number. Given that the Speaker is an elected member of the House, they tend to have a partisan approach, favouring their own party thus choosing not to adjudicate on

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<sup>25</sup> National Commission to Review the Working of the Constitution, *Review of Election Law, Process and Reform Options* (NCRWC Consultation Paper, August 2000).

<sup>26</sup> David Kairys, ‘Law and Politics’ (1984) 52 *George Washington Law Review* 243.

<sup>27</sup> ‘Curse of Goa: On Congress MLAs defection to BJP’ *The Hindu* (16 September 2022) <<https://www.thehindu.com/opinion/editorial/curse-of-go-the-hindu-editorial-on-congress-mlas-defection-to-bjp/article65895115.ece>> accessed 31 July 2024.

<sup>28</sup> The Constitution of India, 1950 sch 10 (6).

<sup>29</sup> Prashant Bhushan, ‘Are Amendments required in the Anti-Defection Act?’ (1997) 32(47) *Economic & Political Weekly* <<https://www.jstor.org/stable/4406085>> accessed 1 August 2024.

matters concerning defections to their parties, while on the other hand, coming down heavily on defections to the opposition.<sup>30</sup> For instance, in *Kesham Meghachandra Singh v. Hon'ble Speaker Manipur*, the Speaker sat on a motion for disqualifying a member for defecting from INC to BJP for three years. The SC, appalled by the behaviour of the Speaker in failing to act as a neutral arbiter mandated speakers to adjudicate over disqualification petitions within three months.<sup>31</sup> The Court even expressed its concerns over the fact that the Speaker being a member of a political party may very well act in a partisan manner and remarked that under the law it is not enough for justice to be done, but it must be ostensibly evident that it was done. In Telangana, a Member of the Legislative Assembly (MLA) belonging to the opposition defected from his party and continued to hold a ministerial berth. It was found that in spite of defecting, the MLA continued to be registered as a member of his original party, and the Speaker had not taken any action to begin an adjudication over disqualification from the House.<sup>32</sup> Previously, the provision for splits had been used by several legislators to indulge in unprincipled floor crossings. Thus, the authors assert that the sole adjudicatory authority must not be vested with the Speaker.

Furthermore, while Paragraph 7 of the Act places an explicit bar on the judicial review of a Speaker's authority, this provision was struck down and held to be in violation of the basic structure of the Constitution and the power of judicial review that is vested with the judiciary.<sup>33</sup> Moreover, the power of judicial review may only be used at a post- decisional stage. In the case of the Telangana MLA, the High Court refused to invoke their appellate jurisdiction at the pre-adjudication stage, citing a lack of precedent.<sup>34</sup> The courts' hands are thus tied in instances where the Speaker has not adjudicated on a matter.

Given these issues, critics of Paragraph 6 have advocated for conferring decisional authority in the hands of an unbiased third party. The Dinesh Goswami Committee, in its Report on Electoral Reforms in the Country, recommended the handing over of decision-making power to the President or the Governor, who shall act on the advice of the Election Commission.<sup>35</sup> While this recommendation confers power on a separate arm of the government, the President and Governors remain affiliated with political parties, and therefore, conferring such power on them may not solve the problems of partisan adjudication. The Law Commission of India, vide its 255<sup>th</sup> Report provides for a far more appropriate suggestion recommending the complete conferral of the power of disqualification of an MLA from the House of Parliament upon the President or Governor, as applicable, who shall act in accordance with the advice of the Election Commission.<sup>36</sup> While the Election Committee is theoretically a non-partisan body, it may still be subject to external influence. With an aim to allay concerns regarding the partisan influence on the Election Commissions adjudicatory authority, the Law Commission Report goes on to further recommend measures to ensure the neutrality and independence of the

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<sup>30</sup> *ibid.*

<sup>31</sup> *Kesham Meghachandra Singh v Hon'ble Speaker Manipur* MANU/SC/0062/2020.

<sup>32</sup> K V B Reddy, 'Sabotage of anti-Defection Law in 'Telangana' (2015) 50 Economic & Political Weekly <<https://www.jstor.org/stable/44002955>> accessed 1 July 2024.

<sup>33</sup> *Kihoto Hollohan v Zachillu* (1992) 1 SCR 686.

<sup>34</sup> The Hans India, 'HC rejects pleas to dismiss turncoat MLAs' (*The Hans India*, 28 September 2015) <<https://www.thehansindia.com/posts/index/Telangana/2015-09-28/HC-rejects-pleas-to-dismiss-turncoat-MLAs/178110>> accessed 1 July 2024.

<sup>35</sup> Committee on Electoral Reforms, *Report of the Committee on Electoral Reforms* (Government of India Ministry of Law and Justice Legislative Department, May 1990).

<sup>36</sup> Law Commission of India, *Electoral Reforms* (255, 2015).

Election Commission, including reforms to the appointment process of the office of the Election Commissioner.<sup>37</sup>

### *B. Worsening the problem*

Paragraph 3 of the Act allowed for defections in the event that one-third or more of the party members left the party on whose ticket they had contested the elections; or if they abstained from voting or voted in contravention to the whip issued by the hierarchy of the political party.<sup>38</sup> While Paragraph 3 dealt with splits within the party ranks usually arising in the form of defiance of the party whip, Paragraphs 4 & 5 provided for a higher threshold in the event that members wished to join another party, with members escaping defection if two-thirds of the members become members of another political party. As discussed previously, the anti-defection laws had been brought in to bring stability to the Indian Polity, however, while it successfully curbed individual defections, mass defections began taking place to circumvent the law. As a consequence, mass unprincipled defections were permitted, while on the other hand, individual defectors were punished even in the event of principled defections, which are based on sound ideology and principles.<sup>39</sup> By way of the 91<sup>st</sup> Amendment Act in 2003, however, the exemption in event of splits was removed and this change was welcomed.

Another loophole that has been exploited is that of resignation from the House. Resignation from the House does not incur disqualification under the Act. This means that the MLAs will be able to recontest their seats under the name of a different political party post-resignation without being disqualified from the House. A faction of the MLAs may submit their resignations to the Speaker of the House. These resignations might cause the ruling party to lose their majority. Subsequently, the Chief Minister will be called upon to prove their majority and if the majority is lost, the government collapses and a new government is formed. The defecting members may then recontest the elections on the ticket of the new political party and be given ministerial booths to reward their defection.<sup>40</sup> Defection is thus seen as a mere detour to joining the highest bidder's party.

However, the Speaker does have some power to prevent circumvention of the law in these situations. The SC, in *Shrimant Balasaheb Patil v. Hon'ble Speaker, Karnataka Legislative Assembly*,<sup>41</sup> affirmed the position that the Speaker may exercise discretion in deciding whether to accept the resignation of the rebel MLAs. In Karnataka, when 17 rebel MLAs filed their resignations, the Speaker refused to accept the resignation and proceeded to disqualify the concerned members from the House. However, here too, a partisan influence may be exerted to favour the Speaker's party. Therefore, a thorough reworking of the Act is needed to achieve the goals with which it was passed.

### **THE NETWORK EFFECT**

The previous section highlighted the limitations of the anti-defection law in achieving its objectives. This section will delve into the unintended consequences the law has had. While the

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<sup>37</sup> *ibid.*

<sup>38</sup> The Constitution of India, 1950 sch 10 (6).

<sup>39</sup> B Venkatesh Kumar, 'Anti-Defection Law: Welcome Reforms' (2003) 38(19) *Economic & Political Weekly* <<https://www.jstor.org/stable/4413541>> accessed 1 July 2024.

<sup>40</sup> Gaurav Vivek Bhatnagar, 'Resignation Is a New Loophole for Bypassing Anti-Defection Law': Rajeev Dhawan' *The Wire* (New Delhi, 23 March 2020) <<https://thewire.in/law/resignation-anti-defection-floor-test>> accessed 1 August 2024.

<sup>41</sup> *Shrimanth Balasaheb Patil v. Hon'ble Speaker, Karnataka Legislative Assembly* (2019) SCC OnLine SC 1454.

previous section dealt with the limitations and challenges of the law, this section will delve deeper into the unexpected outcomes that have arisen due to the application of the anti-defection law. Part one of this section will establish that, by failing to define the term 'voluntarily resigning' in Paragraph 2(1)(a) of the Tenth Schedule, the SC has broadened its scope so much that it has an overbearing effect on legislator's liberty to criticise their party. The foregoing submission will then be used to highlight the deleterious effects this has on the Indian democracy.

*A. A wide definition is always a double-edged sword*

One of the principal problems of the Tenth Schedule is that it fails to define 'anti-defection'. Paragraph 2(1)(a) states that a legislator voluntarily giving up his membership shall be disqualified. However, what actions can be construed as voluntarily giving up one's membership is undefined. The SC in *Ravi Nayak v. Union of India*, while answering this issue, cast upon the phrase the widest purport and held that the phrase is not restricted to formally resigning from a party, rather even actions that signify a legislator's intent to no longer be a member of that party can amount to voluntary resignation.<sup>42</sup> This ruling was further upheld in *Rajendra Singh Rana v. Swami Prasad Maurya and Ors.*<sup>43</sup> By allowing an inquiry into the legislator's intent based on their actions, the SC allowed parties to exercise dictatorial control over their members by erasing the distinction between dissent and defection, which in turn disproportionately stymies the internal democracy of the party. In *Ram Chandra Prasad Singh v Sharad Yadav*, the SC upheld the disqualification of a member merely because he spoke against the party leadership on live television.<sup>44</sup> At this juncture, it is imperative to question whether criticizing one's party constitutes resignation or betrayal. Paragraph 2(1)(a) has a chilling effect on legislators' freedom to criticize their party, as they risk vilification and disqualification.<sup>45</sup>

Prima facie, one may think that this interpretation helps prevent defection by keeping legislators under greater control; however, it has the very opposite effect from what it seeks to achieve. Many legislators who have a strong voter base are less dependent on their party to come into power and hence have a greater tendency to leave the party in case of conflicts.<sup>46</sup> This phenomenon was evident in the recent high-profile defections in Madhya Pradesh, Maharashtra, and Goa. One such high-profile defection was that of Jyotiraditya Scindia and his supporters in Madhya Pradesh. Scindia was a prominent leader of the Congress party and was once seen as a potential Chief Ministerial candidate. However, in March 2020, he defected to the BJP along with his loyalists, which led to the fall of the Congress government in the State. Scindia cited the reason for his defection as being side-lined by the Congress leadership and not being given the promised positions.<sup>47</sup> Another similar incident took place in Rajasthan when Sachin Pilot and his supporters threatened to defect from the Congress party. Sachin Pilot was the Deputy Chief Minister of Rajasthan and had been at loggerheads with Chief Minister Ashok Gehlot. Pilot alleged that he was being side-lined by the party leadership and not being given the promised positions. However, after intense negotiations, the party was able

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<sup>42</sup> *Ravi Nayak v Union of India* (1994) 2 Supp SCC 641.

<sup>43</sup> *Rajendra Singh Rana v Swami Prasad Maurya and Ors.* (2007) 4 SCC 270.

<sup>44</sup> *Ram Chandra Prasad Singh v Sharad Yadav* AIR 2020 SC 2847.

<sup>45</sup> Margit Tavits, 'The Making of Mavericks: Local Loyalties and Party Defection' (2009) 42(6) *Comp Polit Stud* 793.

<sup>46</sup> *ibid.*

<sup>47</sup> Aman Sharma, 'Why Jyotiraditya Scindia quit Congress: Inside story' *Economic Times* (13 March 2020) <<https://economictimes.indiatimes.com/news/politics-and-nation/why-jyotiraditya-scindia-quit-congress-inside-story/articleshow/74604782.cms?from=mdr>> (accessed 1 July 2024).



to keep Pilot and his loyalists from defecting.<sup>48</sup> In Maharashtra, Eknath Shinde, a prominent leader of the Shiv Sena, defected from the Maha Vikas Aghadi (MVA) government and joined the BJP. Shinde cited the reason for his defection as being ignored by the MVA leadership when he raised concerns about the development of his constituency.<sup>49</sup> In Goa, 8 out of the 11 Congress members of the State Legislature defected to the BJP citing similar reasons of being ignored by the party leadership.<sup>50</sup>

### *B. The Problem that pokes through*

The chilling effects of the Tenth Schedule on legislators' autonomy is not just restricted to the legislators, but also affect society at large. The reduction in parliamentary debates during the passage of Bills clearly supports this proposition. In 2009, close to 27% of Bills were passed with a meagre five minutes of debate in the Lower House.<sup>51</sup> Around 50% of the Bills were passed with less than an hour of debate. In 2007, the Lower House and the Upper House spent 9% and 12% of their respective time holding discussions over Bills.<sup>52</sup> Justice Ramana even remarked that the lack of discussion over Bills in the Parliament has led to the passing of laws that are confusing and enacted without proper deliberation.<sup>53</sup> Out of fear of being disqualified, legislators may not critique the policies formulated by their party thereby reducing themselves to rubber stamps, who will vote in favour of anything their party formulates.<sup>54</sup> The presence of a party whip alleviates the need for consensus building within a party and allows a few men in power to do as they please.<sup>55</sup> In a country as diverse as India, where our culture, music, and food palate differ across states, this is a serious problem. If policies are simply formulated by party leaders and individual legislators are not allowed to give their opinion on the same, a few people representing a small fraction of India may enact laws for the entire country. The problem that arises here is that such laws could be enacted even without giving the representatives of their constituency a chance to put forth their constituency's unique concerns that the party leaders may either not be aware of, or may not fully relate with.<sup>56</sup> To appreciate the gravity of this problem, one must consider that only 9 parties in the Lok Sabha have more than 10 seats. Hence, it would take only 9 party leaders to create a law, issue a whip to vote in favour of it and create a law for 1.7 billion individuals, which would be skewed in

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<sup>48</sup> Shruti Jain, 'Explained: As Sachin Pilot Moves HC Against Disqualification, Anti-Defection Law Holds Key' *The Wire* (Jaipur, 16 July 2020) <<https://thewire.in/law/explained-anti-defection-law>> accessed 2 July 2024.

<sup>49</sup> Ashish Tripathi, 'Anti-defection law cannot be used as weapon against dissenting members, Shinde, other MLAs tell SC' *Deccan Herald* (3 August 2022) <<https://www.deccanherald.com/national/national-politics/anti-defection-law-cannot-be-used-as-weapon-against-dissenting-members-shinde-other-mlas-tell-sc-1132658.html>> accessed 2 July 2024.

<sup>50</sup> India News Desk, 'Congress chodo, BJP ko jodo': Eight of 11 Congress MLAs join BJP in Goa' *Financial Express* (Goa, 14 September 2022) <<https://www.financialexpress.com/india-news/eight-go-congress-mlas-set-to-join-bjp-today-may-evade-anti-defection-law/2666181/>> accessed 2 July 2024.

<sup>51</sup> PRS Legislative Research, (Vital Stats: Parliament, 2009) <http://www.prsindia.org/administrator/uploads/general/1262663823~~parliament%20in%202009.pdf> (Accessed on July 23, 2024).

<sup>52</sup> *ibid.*

<sup>53</sup> Press Trust of India, 'Sorry state of affairs': CJI N V Ramana on lack of debate in Parliament' *The Economic Times* (15 August 2021) <<https://economictimes.indiatimes.com/news/politics-and-nation/sorry-state-of-affairs-cji-n-v-ramana-on-lack-of-debate-in-parliament/articleshow/85345539.cms?from=mdr>> accessed 31 July 2024.

<sup>54</sup> V N Shukla, *The Constitution of India* (Mahendra Pal Singh, 13th edn, EBC 2008) 1064.

<sup>55</sup> Darsan Guruvayurappan, 'Rethinking Defection: An Analysis of Anti-defection Laws in India' (2021) 76(2) *Parliamentary Affairs* 443.

<sup>56</sup> *ibid.*

favour of the constituencies of the leaders of the party. Thus, voters from other constituencies would have to make do with policies that do not address their concerns.<sup>57</sup>

The SC in *Kihoto Hollohan*, while upholding the constitutionality of anti-defection laws, stressed the crucial role a stable government plays in upholding democracy.<sup>58</sup> However, due to implications that policymakers did not predict, the law inevitably hurt both the internal democracy of parties as well as the Indian political democracy, and a law that was legislated with *good intentions* has become counterproductive.

## **CONCLUSION**

Just as the efficacy of the most dexterous tool is subject to its limitations, even law has its limitations in bringing changes to society. Solving societal problems is like baking a cake. The law provides the basic structure and framework for addressing the problem, like the flour and eggs that form the foundation of the cake. But just as a cake needs additional ingredients to give it flavour and texture, solving societal problems requires a mix of complementary solutions, to create a more nuanced and effective response. Just as a baker must carefully measure and mix their ingredients, policymakers and advocates must carefully craft and implement a range of solutions to address societal problems.

The paper in Chapter 3 begins with an analysis of the political history of the Tenth Schedule and concludes that its intention was never to stop defections or dissent, but rather to stop them from having the ability to collapse a government. Therefore, despite the common charge of “anti-democratic” against anti-defection laws, their principal purpose is to uphold the democratic value by preserving the majority of the democratically elected government. This paper then studied the impact of the anti-defection law in preventing defections and argues that the Tenth Schedule is a legal solution to a political problem. Delivering justice through law requires the application of law in a manner that furthers its purpose. Whereas, when it is used as an instrument to achieve political victories, it would have failed to serve its purpose. In chapters 4 & 5, the paper illustrates a similar trend qua the Tenth Schedule. Although the Tenth Schedule vests upon the speaker the duty to be a neutral arbiter and prevent defections by facilitating smooth implementation of the Tenth Schedule, events as identified in the paper suggest otherwise. By analysing the role of the speaker in recent floor crossing case studies, the authors argue for a change in the adjudicator from the speaker to another authority whose office is not as political as that of the speaker. Further, after undertaking an analysis of the litany of problems with the law as laid down under the Tenth Schedule, the authors assert that the law needs to be fundamentally reworked to find a sustainable solution to the problem of defection. Political problems can never be fully solved by legal solutions alone and need cultural and political changes to act in tandem. Having sent the Tenth Schedule by itself to fight the demon of defections, it became susceptible to political influence, which eventually watered down all its safeguards thereby failing to achieve its purpose.

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<sup>57</sup> *ibid.*

<sup>58</sup> *Kihoto Hollohan v Zachillu* (1992) 1 SCR 686.

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