
WHEN THE SPEAKER BECOMES THE SHIELD: ANTI-DEFECTION LAW AND CONSTITUTIONAL INTEGRITY

SANKALP KHARE | 1ST YEAR (MA) DEPARTMENT OF POLITICAL SCIENCE, UOD

Email Id - Sankalp.work004@gmail.com

"The Speaker is the servant of the House, not the master of its conscience" - Parliamentary convention, British constitutional tradition

One of the quiet assumptions of democracy is that the referee does not play for either team. This principle is foundational to parliamentary systems around the world: the Speaker of a legislature, upon being elected to the chair, divests themselves of party allegiance and becomes a neutral guardian of rules and procedures. For example, in Britain, from where India has derived so much of its parliamentary system, a Speaker is expected to resign from their party and not contest future elections under a party banner. Traditionally, that is regarded as the foundation of the Speaker's institutional neutrality.

India, however, has not made this choice, and for a long time, it was of little consequence. When, in 1985, Parliament incorporated the Anti-Defection Law into the Constitution through the Tenth Schedule, it did so for a legitimate constitutional purpose: to prevent the naked opportunism of legislators who crossed the aisle for personal gain, and to give elections a more durable meaning. That purpose was sound. The structural error, however, lay not in the law's objective but in its architecture, specifically in the choice of adjudicator. By vesting the power to decide disqualification in the Speaker of the House, Parliament entrusted a fundamentally partisan

actor with a quasi-judicial function requiring complete impartiality. It is this specific design choice, and not the anti-defection principle itself, that remains the single most significant institutional vulnerability in Indian parliamentary democracy.

THE POLITICAL CRISIS THAT GAVE BIRTH TO THE LAW

In 1985, India's Parliament, in answer to a political crisis of conscience, adopted the Tenth Schedule to the Constitution, the Anti-Defection Law, which witnessed defection in a compelling political context. Legislators crossed the aisle overnight, influenced by monetary gain or ministerial chairs, making a farce of a governing mandate. The political response to the defection crisis rested on a simplistic legal positivism: political disqualification. Linked to the defector's former party, legislators would be shackled to their political sponsor. Order, political stability, and democratic virtue would be restored, or so the theory went. A political remedy appears to have become a political disease.

The Anti-Defection Law's story is an instituti-

-onal capture account. Lawmakers acted to protect legislators from a self-interested defector. Politically self-interested Speakers have captured the law to protect themselves from accountability - a self-defeating political capture of the Constitution.

DECODING THE TENTH SCHEDULE: THE CONSTITUTIONAL FRAMEWORK AGAINST DEFECTION

As per the Tenth Schedule, any voluntary withdrawal from a party by a member of the legislature, or voting or abstaining against the directives of their party, leads to disqualification from the legislature. One of the original features to focus on was the adjudicating body: the Speaker of the House, or the Chair of the House of Lords. This option, however sensible it may have looked in 1985, has turned out to be the greatest weakness of the law in question.

Because the Speaker is chosen by and from the legislature, they almost always come from the majority party in the House. They are in their position at the will of a majority, an overwhelming majority whose political agenda they are meant to fulfill. To expect such a person to make an objective ruling on cases of defection by members who may endanger that majority is, frankly, to ask the fox to supervise the chicken coop. This flaw is structural, not incidental.



THE SPEAKER'S DILEMMA: NEUTRAL ARBITER OR POLITICAL ACTOR?

The most destructive form of this flaw is inaction. Speakers across party lines have perfected the art of doing nothing about defection petitions - neither deciding on them, nor dismissing them - as the political situation dictates. This, however, allows the legislator who defected to keep voting, in support of governments and against no-confidence motions, while their disqualification hangs in the legal void. The situation is as documented as it is predictable. It happened in Manipur, Goa, and Arunachal Pradesh, where Speakers, while the governments they were defending were consolidating power, delayed hearings for months or even years.

The same thing happened, in a different configuration, in Telangana and Madhya Pradesh. The Supreme Court, in *Keisham Meghachandra Singh vs. Speaker* (2020), expressed frustration over this state of affairs and advocated that Speakers should determine disqualification petitions on a first-come, first-served basis and within a reasonable time - less than three months would be ideal. However, this decision, as with most others, was not prescriptive, which is the problem. Any form of enforcement is left to the discretion of the lower courts, or the speakers, or whoever the decision rests on.

Another corrosive pathology is the rush to disqualify. When the anger of the legislators is directed to a government that a Speaker wants to defend, the petition is dealt with remarkably quickly. This was vividly demonstrated during the Shiv Sena crisis of 2022, where rival factions hurried to disqualify each other, while the Speaker remained neutral, to the point of being an open political contest. The Supreme Court had to intervene to address the extent of the unlawful exercise of discretion that the Speaker had, and to refer the issue to a larger

bench, illustrating the extent to which the system had deviated from the Constitution.

THE CASE FOR THE STATUS QUO: ARGUMENTS CONSIDERED

It would be intellectually incomplete to advance this critique without engaging seriously with the arguments made in defence of the existing framework. Two positions deserve consideration.

The first is the argument from institutional design: that the Speaker, as an integral member of the legislature, is better placed than any external body to appreciate the political and procedural context of a defection dispute. An outside adjudicator, a retired judge or a quasi-judicial panel might lack the institutional literacy to distinguish genuine political dissent from opportunistic betrayal. This argument has force in the abstract, but it collapses in practice. Institutional literacy does not require partisan loyalty. The very familiarity with legislative dynamics that is claimed as the Speaker's advantage is also the source of their conflict of interest. Proximity to the problem cannot simultaneously be the justification for the role and the explanation for its abuse. The second is the argument from stability: that the anti-defection law, including the Speaker's central role in it has prevented the worst excesses of floor-crossing and provided a measure of governmental continuity in a fragmented polity. This is partially true. The Tenth Schedule has raised the cost of casual defection. But the abuse documented in Manipur, Goa, Arunachal Pradesh, and the Shiv Sena crisis of 2022 demonstrates that the law has not prevented managed defection; it has merely moved it to the adjudicatory stage. Stability that depends on a partisan gatekeeper is not constitutional stability; it is political convenience dressed in legal language.

WALKING THE CONSTITUTIONAL TIGHTROPE: THE SUPREME COURT'S ROLE

The judiciary has been conscious of this crisis for years, and its response has been the only real external check on Speaker conduct, but a structurally insufficient one. In *Kihoto Hollohan v. Zachillhu* (1992), the Supreme Court affirmed the constitutionality of the Tenth Schedule while simultaneously subjecting the Speaker's decisions to judicial review on grounds of perversity, mala fides, and breach of natural justice. This was a meaningful constitutional safeguard, and it must be understood as such. However, judicial review is inherently retrospective. A court can strike down a biased decision after the fact, but it cannot force a Speaker to act, cannot restore governments that fell due to delayed proceedings, and cannot reverse the political consequences of months of deliberate inaction. The safeguard addresses the symptom, an illegal decision once made, but leaves the underlying structural cause entirely intact. The problem is not that courts have failed; it is that the remedy the law provides them is a cure that arrives after the patient has already suffered.

The Court has expressly signaled the need for reform. Judges, in what is known as obiter dictum, or in more formal opinions, have suggested that the disqualification decisions be taken out of the hands of the Speaker and given to some other body, possibly a former Supreme Court Judge, or some Election Commission-type body that is politically insulated. These sentiments have been echoed by the Law Commission in its 170th Report as far back as 1999. The absence of response to these proposals in Parliament is, to say the least, indicative. The current beneficiaries of the system have little incentive to change it.

WHEN CONSTITUTIONAL INTEGRITY IS PUT TO THE TEST

We cannot limit the issue here to mere process. The Anti-Defection Law has its origin in the protection of a constitutional value: that elections must mean something. The people's verdict must not be treated with contempt by legislators who vote for personal/pecuniary gain. When laws are bypassed because of a prejudicial type of decision-making, it doesn't just mean the law fails; it means the law loses in a very active sense. Governments with no parliamentary majorities hold power, confidence motions are blocked, and the people's will is frustrated, as though defection were permitted, and that is what is happening now. Here lies the central irony of the situation. The Tenth Schedule was supposed to strengthen the connection between the voter and the representative. However, it has produced the opposite effect, binding representatives to a party's decision and the Speaker as a party chief, and, at the same time, has curbed the possibility of legitimate dissent in a stronger way. A representative who does not vote as the party dictates, especially if this is a response to the electorate's will, is in danger of disqualification. There is a balance that needs to be struck between party cohesion and the ability to dissent in a parliamentary democracy. The present law, where the balance of authority is placed in the hands of someone exposed to corruption, provides for only the first and not the second at all.

CONCLUSION: TOWARDS A CONSTITUTIONAL FIX

The diagnosis in this article is not new. The Law Commission identified the core problem as far back as its 170th Report in 1999, recommending that disqualification decisions be transferred to the President or Governor acting on the advice of the Election Commission, a body with constitutional insul-

-ation from legislative politics. The Supreme Court has echoed this in obiter dictum across multiple judgments, most recently directing three-month timelines in *Keisham Meghachandra Singh* (2020) while openly acknowledging that the Speaker's position creates an irreconcilable conflict of interest. The reform prescription is therefore not contested. What is absent is political will.

The necessary amendment is specific: Parliament must delete the Speaker from the adjudicatory mechanism of the Tenth Schedule and vest that authority in an independent tribunal, constituted along the lines of the Election Commission, staffed by former judges of constitutional courts, and insulated from legislative removal during its tenure. This is not a radical restructuring of the Tenth Schedule; it preserves the anti-defection principle entirely. It corrects only the adjudicatory flaw that has allowed the principle to be consistently subverted.

The objection that such a body would lack the Speaker's legislative familiarity has been addressed above and found wanting. The more honest objection, that no governing majority will willingly constrain the power the current system gives it, is precisely why the reform has not come, and precisely why it must. A constitutional provision that serves only the party currently in power is not a constitutional safeguard; it is a governing instrument with constitutional camouflage. India's parliamentary democracy deserves a more principled institutional architecture, and the blueprint for it has been available for over two decades. The remaining question is not what to do, but whether Parliament will ever choose to do it.

REFERENCES

- Basu, D. D. Introduction to the Constitution of India (2018). Introduction to the Constitution of India (24th ed.). LexisNexis. ^[OB]
- Constitution (Fifty-Second Amendment) Act, 1985. (1985). The Gazette of India. Government of India. ^[OB]
- Kihoto Hollohan v. Zachillhu, 1992 Supp (2) SCC 651 (India). ^[OB]
- Keisham Meghachandra Singh v. Speaker, Manipur Legislative Assembly, (2020) 2 SCC 617 (India). ^[OB]
- Law Commission of India. (1999). 170th Report on Reform of the Electoral Laws. Government of India. ^[OB]
- Austin, Granville. Working a Democratic Constitution (1999). Working a Democratic Constitution: The Indian Experience. Oxford University Press. ^[OB]
- Election Commission of India. (2023). Handbook for Members of Legislative Assemblies and Parliament. Government of India. ^[OB]
- Noorani, A. G. Constitutional Questions in India (2000). Constitutional Questions in India: The President, Parliament and the States. Oxford University Press. ^[OB]