

NAVIGATING THE INTRICACIES OF THE DEFECTION CONUNDRUM: AN INSIGHT INTO MAHARASHTRA'S POLITICAL TURMOIL

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ABSTRACT

Defection is one of the biggest roadblock for any democracy and is not a new phenomenon in the world's biggest democracy, India. The country has seen regular defections since 1967 due to the caprice of MP's/MLA's who had switched their allegiances away from the parties they backed during the election, or refused to support their party in risky situations, such as casting votes on a no-confidence motion. This forced the parliament to interpolate the Anti-Defection Law i.e. the Tenth Schedule in the Constitution of the country in 1985. The Anti-Defection law in India failed to keep up the expectations of the electorate and made the en bloc defections more frequent. The Tenth Schedule in its current state is in shambles. The present democracy is the "aye ram gaya ram" democracy where the MLAs are looking for

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ways to escape from the anti-defection law. The current situation in Maharashtra is another example of how the MLAs are finding ways to make the anti-defection law ineffective. The law which was once thought to be impeccable is now easily penetrable. Unless the required amendment is not made, the spirit of democracy could vanish in the upcoming years. The paper focuses on the problem that has arisen in the landscape of Maharashtra's Politics and the ineffectiveness of the Anti-Defection law to deal with the current situation. It also tries to dissect the Supreme Court judgment pertaining to the apparent quagmire of 'Split without Merger' in the Shiv Sena camp.

Keywords: *Defection, Tenth Schedule, Anti-Defection Law, Split without Merger, Lure of Office, Horse Trading, Time-Bound Redressal Mechanism*

I. INTRODUCTION

The structure of Indian politics is a complex area to study. The multi-party system in the nation has benefits and drawbacks of its own. While it provides a voter with additional options to improve democracy by allowing them to choose their representatives from numerous parties, it also leads to corruption, mistrust, horse-trading, etc.¹ One of the

¹Rajendra Kumar Meena, Vinja Ram Solanki and Mamta Meena, 'Horse Trading: An Attack On The Indian Democracy' II (II) Indian Journal of Integrated Research in Law <<https://ijirl.com/wp-content/uploads/2022/04/HORSE-TRADING-AN-ATTACK-ON-THE-INDIAN-DEMOCRACY.pdf>> accessed 13 December 2023.

biggest problems that Indian politics has faced is defection. It is one such phenomenon that has significantly undermined the notion of democracy and insults the mandate of the public. As per the Constitutional expert H.M. Seervai, “*defection in India generally took place because political support is sold for money or promise of ministership or public office*”.² A defector may be defined as “*a person who gives up allegiance to one party in exchange for allegiance to another, changing sides in a way which is considered illegitimate by the first party.*”³ Though it is assumed that defection takes place due to change in the ideology of members from their party, the authors opine that the main motive behind defection is to topple the incumbent government and enjoy material rewards as *quid pro quo* such as money, cabinet positions etc.

To uphold the sanctity of democracy and curb the menace of defection, the Parliament passed the 52nd Amendment Bill, 1985,⁴ which inserted the Tenth Schedule to the Constitution, also known as the Anti-Defection law.⁵ Since defection undermines *the very foundations of our democracy and the principles which sustain it*, the need was felt for an anti-defection law.⁶ While the Tenth Schedule lists down the methods through which the member can be disqualified from the assembly, it also provides for ‘Split’ and ‘Mergers’ among parties as the exception to the anti-defection law.⁷ These exceptions, the authors feel, are big loopholes because of which the members of political parties have gained undue benefits and become the source of mass defection. The

²HM Seervai, *Constitutional Law of India: A Critical Commentary*, Volume 3 (4th edn, Universal Law Publishing 1996).

³‘Defect’ (Merriam-Webster) <<https://www.merriam-webster.com/dictionary/defector>> accessed 28 August 2023.

⁴The Constitution (Fifty-second Amendment) Act, 1985 (22 of 1985).

⁵Paras Diwan, ‘Aya Ram Gaya Ram: The Politics of Defection’ (1979) 21(3) *Journal of the Indian Law Institute* 291-312 <<https://www.jstor.org/stable/43950639>>.

⁶ The Constitution (Fifty-second Amendment) Act, 1985 (22 of 1985).

⁷Shanthan Reddy, ‘Merger Exception to Defection – Obstacle or Facilitator?’ (*Law and Other Things*, 21 January 2022) <<https://lawandotherthings.com/merger-exception-to-defection-obstacle-or-facilitator/>> accessed 13 December 2023.

only good that came out of the amendment was that it made individual defections rare. However, contrary to the intended purpose, *en bloc* defections became frequent.⁸

Another area for scrutiny under the current anti-defection law is the role of the Speaker, who is the adjudicating authority to decide the cases of defection and decides the same impartially.⁹ The question of prejudice arises in the defection proceedings as the Speaker, being the partisan, favours the ruling party in most of the cases of defection.¹⁰ In *Kihoto Hollohan v. Zachillu*,¹¹ the minority opined that the “*tenure of the Speaker, who is the authority in the Tenth Schedule to decide this dispute, is dependent on the continuous support of the majority in the House and, therefore, he does not satisfy the requirement of such an independent adjudicatory authority.*” Therefore, the adjudicating power of the Speaker is also one of the reasons for the sordid drama of defection.

The recent development in Maharashtra politics exposes the lacunae of the Tenth Schedule, wherein the issue of mass defections once again came to light. This has resulted in filing of disqualification petition against the MLAs, leading to creation of two factions, both claiming to be the *real Shiv Sena*. The faction consisting of defecting MLAs did not merge with any party, which ensued a situation of ‘*Split without a*

⁸B Venkatesh Kumar, ‘Anti-Defection Law: Welcome Reforms’ (2003) 38(19) Economic & Political Weekly <<https://www.epw.in/journal/2003/19/commentary/anti-defection-lawwelcome-reforms.html>> accessed 28 August 2023.

⁹Charith Reddy and Shagun Bhargava, ‘For Laws May Come and Laws May Go, But Defections Go on Forever: A Critical Analysis of the Role of the Speaker in Indian Anti-Defection Laws’ X(I) NLIU Law Review 328 <<https://nliulawreview.nliu.ac.in/for-laws-may-come-and-laws-may-go-but-defections-go-on-forever-a-critical-analysis-of-the-role-of-speaker-in-the-indian-anti-defection-laws/>> accessed 28 August 2023.

¹⁰Umang Poddar, ‘Explainer: How speakers are undermining the anti-defection law by simply sitting on petitions’ (*Scroll.in*, 14 December 2021) <<https://scroll.in/article/1012515/explainer-howspeakers-are-undermining-the-antidefection-law-by-simply-sitting-on-petitions>> accessed 28 Aug 2023.

¹¹*Kihoto Hollohan v Zachillu* (1992) SCR (1) 686.

Merger'. This problem is much bigger than it seems because the provisions in the Anti-Defection law regarding the same are unclear on the current situation.

This paper traces the evolution of the anti-defection law and also analyses the Maharashtra political crisis in light of the recent Supreme Court judgement¹² about the same issue. It also delves into the lacunae of the judgement and proposes possible solutions to the quandary. This paper is divided into three parts wherein the first part addresses the need for Anti-Defection Law in India. In the second part, it discusses the provisions of the Anti-Defection Law, in order to have a proper base to analyse the lacunae in the given law. The third part delves into the recent issue in Maharashtra wherein the authors analyse the judgement of the Hon'ble Supreme Court on this issue. The authors conclude by propounding possible solutions to tackle such issues in the future.

II. ADDRESSING POLITICAL VOLATILITY: THE IMPERATIVE FOR ANTI-DEFECTION LAW

Before delving into the lacunae of Tenth Schedule which led to the Maharashtra crisis, there is a need to look at the events leading up to the introduction of the anti-defection law to comprehend the need for the same. India established a democratic form of government after gaining its independence. As political parties and democracy go hand in hand, they form an essential part of the success of any democracy. Additionally, for the effective functioning of a political party, it is a cardinal rule that all party members must abide by the whip issued by the party.¹³ A whip, as used in parliamentary language, is a formal order

¹²*Shubhash Desai v Principal Secretary, Governor of Maharashtra & Ors.* (2023) SCC OnLine SC 607.

¹³Explained Desk, 'What is a whip in a State Assembly or Parliament' *The Indian Express* (New Delhi, 2 March 2023) <<https://indianexpress.com/article/explained/everyday-explainers/what-whip-state-assembly-parliament-8473933/>> accessed 28 August 2023.

ordering party members to participate in contested sessions or to vote in a specific manner.¹⁴

In the first three general elections, Congress won with a resounding majority. Even then, there were still a few cases of defections, albeit the balance of power being largely unaffected.¹⁵ However, the fiasco of mass defections began in 1967, which was the last time both State Assembly and General elections took place simultaneously.¹⁶ In that year, State Assemblies saw large-scale defections, and the monopoly that Congress had previously enjoyed abruptly vanished due to the emergence of coalition politics. From 1967 to 1972, more than half of India's legislators changed sides at least once wherein approximately 2,000 defections and counter-defections were witnessed,¹⁷ compared to just approximately 500 defections before 1967, which were largely observed in the States.¹⁸

On the 8th of December 1967, a high-level committee of 18 members was appointed by the Lok Sabha under the chairmanship of Y.B. Chavan to look into the issue of political defections. It submitted its report in 1969 and defined defection as "*the voluntary giving up of allegiance of a political party on whose symbol a legislator was elected, except when such action was the result of the decision of the*

¹⁴ibid.

¹⁵C N Bhalerao, 'The Developing Pattern of the Congress Party' (1964) 16 (12) The Economic and Political Weekly <https://www.epw.in/system/files/pdf/1964_16/12/the_developing_pattern_of_the_congress_party.pdf?0=ip_login_no_cache%3D569ce655eea7907ce3dc8772854b5750> accessed 28 August 2023.

¹⁶Bibek Debroy and Kishore Desai, 'Analysis of Simultaneous Elections: The "What", "Why" And "How"' (Department of Legal Affairs), <https://legalaffairs.gov.in/sites/default/files/simultaneous_elections/NITI_AYOG_REPORT_2017.pdf> accessed 28 August 2023.

¹⁷Paras Diwan, 'Aya Ram Gaya Ram: The Politics of Defection' (1979) 21(3) Journal of the Indian Law Institute 291-312 <<https://www.jstor.org/stable/43950639>>.

¹⁸HR Saviprasad and Vinay Reddy, 'The Law on Anti-Defection: An Appraisal' (1999) 11 Student ADVOC 116 <<https://heinonline.org/HOL/LandingPage?handle=hein.journals/nlsind11&div=15&id=&page=>>> accessed 28 August 2023.

party.”¹⁹ It also mandated political parties to have a suitable code of conduct within the party for accountability and integrity, and stated that defectors should be removed from their seats, but permitted to run for office again if they defect on ideological grounds.²⁰ However, if the defector did so for monetary benefit or the promise of a position, he shall be disqualified and prohibited from running for office again for six years, as per the Committee. Further, the committee recommended that the size of the Council of Ministers in a government be limited, and that the Council of Ministers and not the Prime Minister or Chief Minister, should have the authority to dissolve the House.²¹ The Committee provided political, constitutional and legislative measures to deal with the issue of defections. But these recommendations were not accepted and no action on defection could be taken despite there being attempts to enact these recommendations through the Thirty Second²² and the Forty Forth²³ Amendment Bills, but the same could not be passed due to strong opposition at that time.²⁴

III. MULTIFACETED ASPECTS OF THE TENTH SCHEDULE

With the rising defections and abrupt political turmoil in the country, there arose a dire need for an anti-defection law. Mr. Rajiv Gandhi was adamant about resolving the problem of defection and therefore in 1984, when he came into power, he proposed a law to counter the

¹⁹YB Chavan, ‘Report of the Committee on Defections’ (*Ministry of Culture*) <<https://indianculture.gov.in/reports-proceedings/report-committee-defections>> accessed 28 August 2023.

²⁰Ibid; Chaksu Roy, ‘Explained: In Maharashtra drama, the key legal provision anti-defection law’ *The Indian Express* (New Delhi, 24 November 2019) <<https://indianexpress.com/article/explained/explained-in-maharashtra-drama-the-key-legal-provision-anti-defection-law-6133417/>> accessed 28 August 2023.

²¹S Mohan Kumaramangalam, ‘The Governor and His Ministers’ (1967) 2(46) *Economic and Political Weekly* 2059-2061 <<http://www.jstor.org/stable/24478341>> accessed 28 August 2023.

²²The Constitution (Thirty-second Amendment) Act, 1973.

²³The Constitution (Forty-fourth Amendment) Act, 1978.

²⁴HM Seervai, *Constitutional Law of India: A Critical Commentary*, Volume 3 (4th edn, Universal Law Publishing 1996).

menace of defection. The Bill was passed unanimously, leading to the insertion of the Tenth Schedule to the Constitution, which led to changes in Articles 101, 102, 190 and 191 of the Constitution of India. Article 101 of the Constitution²⁵ deals with the vacation of seats and a new clause was inserted for vacation under the application of Article 102(2) of the Constitution. Article 102²⁶ specifies the grounds for disqualification, and the said amendment added defection as the ground of disqualification. On the same lines, Articles 190 and 191, which apply to the State Assemblies,²⁷ also went through similar changes.

The Tenth Schedule enlists grounds for the disqualification of MPs and MLAs, which are specified under Para 2(1)²⁸ of the Schedule. They are as follows:

1. Voluntary giving up of membership of the House by an elected member.²⁹
2. A member of the party votes contrary to the whip. However, he can avoid disqualification if prior approval was given by the party or the party condoned the act within 15 days.³⁰
3. An independent member, if he joins any other political party.³¹
4. A nominated person, if he joins any political party after the expiry of 6 months from the date from which he holds the seat.³²

A member can escape from the above grounds if:

²⁵The Constitution of India, 1950 art 101.

²⁶The Constitution of India, 1950 art 102.

²⁷Parliament Library and Reference, Research, Documentation and Information Service, 'Anti-defection law in India' (July 2022) <https://loksabhadocs.nic.in/Refinput/New_Reference_Notes/English/15072022_111659_1021205175.pdf> accessed 12 December 2023.

²⁸The Constitution of India, 1950, Tenth Schedule, para 2(1).

²⁹The Constitution of India, 1950, Tenth Schedule, para 2(1)(a).

³⁰The Constitution of India, 1950, Tenth Schedule, para 2(1)(b).

³¹The Constitution of India, 1950, Tenth Schedule, para 2(2).

³²ibid.

1. There is a split³³ in the political party. This exception will not apply when the split faction contains less than one-third of the total members in the house of that political party.
2. There is a merger.³⁴ This exception will not apply when the faction which has merged with the other political party has less than two-thirds of the total strength of the party in the legislature.
3. The member resigns from his/her political party just before his/her election as the Speaker/ Deputy Speaker/ Chairman/ Deputy Chairman.³⁵

While there seems to be adequate protections against political defections by virtue of the enactment of the Tenth Schedule, it is saddening that the menace of defection persists in the Indian democracy even after such an enactment, primarily by virtue of the escaping provisions available under the same. For instance, in the year 1991, 22 members of the Congress party and 12 members of the Bahujan Samaj Party defected from their parties in the Uttar Pradesh Legislative Assembly and they were not disqualified by the speaker due to the provision of 'Split'.³⁶ Similar instances were prevailing all over the country which led to the introduction of the Ninety First Amendment Bill in 2003,³⁷ which was subsequently passed in the Parliament to remove the provision of 'Split'. The Bill was introduced under the leadership of Prime Minister Atal Bihari Vajpayee, who formed a Committee under Mr. Pranab Mukherjee to examine the Bill. The Committee observed that the *lure of office* and *horse trading* were the major factors leading to defections and counter-defections in the

³³The Constitution of India, 1950, Tenth Schedule, para 3. Para 3 was later omitted by the Constitution (Ninety-first Amendment) Act, 2003.

³⁴The Constitution of India, 1950, Tenth Schedule, para 4.

³⁵The Constitution of India, 1950, Tenth Schedule, para 5.

³⁶Ian Duncan, 'New Political Equations in North India: Mayawati, Mulayam, and Government Instability in Uttar Pradesh' (1997) 37(10) Asian Survey 979-996 <<https://www.jstor.org/stable/2645617>> accessed 28 August 2003.

³⁷The Constitution (Ninety-first Amendment) Bill, 1978.

country and the provision of ‘Split’ was grossly misused by the members.³⁸ For instance, in the 1990s, Goa was the hotspot of mass defection resulting in continuous change in power. From 1990 to 2002, thirteen different governments were formed in Goa.³⁹

The aforesaid amendment, in addition to removing the exception of *Split*, added the advice of the Y.B Chavan Committee, limiting the number of the Council of Ministers up to 15% (the provision was added in Article 75(1A) of the Constitution).⁴⁰ Thus, it could be said that the amendment partially resolved the problem, as the issue involving the provision of *Merger* remained untouched. It was presumed that the requirement of two-third members of a political party for a valid merger shall prevent mass defections. However, the presumption turned out to be inappropriate since it further exacerbated the issue, thereby paving the way for *en bloc* defections in place of small defections. To illustrate, in 2016, 44 out of 45 Congress MLAs merged with the People’s Party in Arunachal Pradesh,⁴¹ in 2021, 12 out of 17 Congress MLAs merged with the Trinamool Congress in Meghalaya.⁴² Similarly, in 2022, 8 out of 11 Congress MLAs joined the BJP by passing a resolution to merge the Congress party with the BJP in the

³⁸Chakshu Roy, ‘Explained: The Limits of Anti-Defection’ *The Indian Express* (25 July 2019) <<https://indianexpress.com/article/explained/explained-the-limits-of-anti-defection-karnataka-5849316/>> accessed 28 August 2023.

³⁹Anil Sastry, ‘A history of instability’ *The Frontline* (25 February 2005) <<https://frontline.thehindu.com/politics/article30203733.ece>> accessed 28 August 2023.

⁴⁰The Constitution (Ninety-First Amendment) Act, 2003.

⁴¹Anuja, ‘Congress loses Arunachal as chief minister, 43 MLAs defect to BJP “ally”’ *Mint* (17 September 2016) <<https://www.livemint.com/Politics/hX40QyuxZKwiudAS8FOvO/Arunachal-Pradesh-Congress-in-turmoil-again-as-CM-Khandu-4.html>> accessed 28 August 2023.

⁴²The Wire Staff, ‘Meghalaya: 12 of 17 Congress MLAs, Led By Ex CM Mukul Sangma, Jump Ship to TMC’ *The Wire* (25 Nov 2021) <<https://thewire.in/politics/meghalaya-12-of-17-congress-mlas-led-by-ex-cm-mukul-sangma-jump-ship-to-tmc>> accessed 29 August 2023.

Legislative Assembly of Goa.⁴³ The above instances depict the pervasiveness of mass defections all over the country for a long period.

The other pertinent issue that demands discussion is the decisive role played by the Speaker in disqualification proceedings. Such proceedings are decided at the discretion of the Speaker,⁴⁴ who holds the proceeding of disqualification in the light of Articles 102 and 191 in consonance with the provisions of the Tenth Schedule. The Speaker is not constrained by the passage of time, and it is just provided that he has to decide on disqualification within reasonable time.⁴⁵ While reasonable time can be subjective, the Supreme Court, in a recent judgment,⁴⁶ clarified that “*What is reasonable will depend on the facts of each case, but absent exceptional circumstances for which there is good reason, a period of three months from the date on which the petition is filed.*” However, a Speaker cannot determine the question of disqualification *suo moto*, but only when a petition for disqualification is filed by a member of the House.⁴⁷

In the landmark judgment of *Kihoto Hollohan v. Zachillu*,⁴⁸ the Court asserted the issue of whether the speaker’s power violates basic structure doctrine or not and whether the Speaker’s decision is subject to judicial review or not. The Court while deciding the issues opined that “*The Speakers/Chairmen hold a pivotal position in the scheme of Parliamentary democracy and are guardians of the rights and*

⁴³PTI, ‘Merger of group of eight Cong MLAs with BJP in Goa as per constitutional norms: Speaker Tawadkar’ *The Indian Express* (Panaji, 12 October 2022) <<https://indianexpress.com/article/cities/goa/merger-congress-mlas-bjp-go-constitutional-norms-speaker-tawadkar-8203729/>> accessed 29 August 2023.

⁴⁴The Constitution of India, 1950, Tenth Schedule, para 6(1).

⁴⁵Udisha Mishra, ‘Anti-Defection Law: Analysis of the Role of Speaker’ IRALR <<https://www.iralr.in/post/anti-defection-law-analysis-of-the-role-of-speaker>> accessed 29 August 2023.

⁴⁶*Keisham Meghachandra Singh v Hon'ble Speaker Manipur Legislative Assembly and Others* (2020) SCC OnLine SC 55.

⁴⁷*Babulal Marandi v Speaker, Jharkhand Vidhan Sabha* (2020) SCC OnLine Jhar 1017.

⁴⁸*Kihoto Hollohan v Zachillu* (1992) SCR (1) 686.

*privileges of the House.*⁴⁹ The majority ruled that the speaker's decision will be subject to judicial review only when there have been some judicial errors based on constitutional mandates, *mala fides*, and non-compliance with natural justice.⁵⁰ The Court, through the above judgement, upheld the power of the Speaker to decide the matters of disqualification albeit adding restraints to the power of the Speaker by making him subject to judicial review in certain situations. Nevertheless, it is essential to mention that the role of the Speaker is always under the scanner due to partial decisions taken by him in favour of the ruling party. Even the Supreme Court observed the same and noted that "*there is a growing trend of the Speaker acting against the constitutional duty of being neutral.*"⁵¹ To sum up, the anti-defection law which was introduced after a lot of hardships still failed to curb the mass defections that led to political upheavals throughout the country.

IV. UNRAVELLING THE MAHARASHTRA CRISIS

The sordid drama of defection continued and it once again disrupted the political equations in Maharashtra, which has witnessed political instability since the 2019 State Assembly elections. There has been a division in Shiv Sena ("**Sena**"), with one faction forming a coalition with their age-old political ally, the Bhartiya Janata Party ("**BJP**"). The current defections have created a major conundrum in the politics of the state as both factions of the party are claiming to be the *Real Shiv Sena*. To understand the current scenario, there is first a need to delve into the history of the BJP-Sena relations.

BJP and Sena shared a poignant relationship establishing their alliance in the 1984 elections.⁵² Balasaheb Thackeray, leader of the Sena, formed

⁴⁹ibid.

⁵⁰ibid.

⁵¹*Shrimanth Balasaheb Patil v Hon'ble Speaker, Karnataka Legislative Assembly* (2020) 2 SCC 595 para 152 (i).

⁵²Prabhash K Dutta, '35 years of Shiv Sena-BJP alliance: Hindutva proposes, rivalry

an agreement with the BJP leaders L.K. Advani and Atal Vajpayee to allow some members of the Sena to contest the elections under the symbol of BJP.⁵³ ‘Hindutva’ was the binding force that aligned both parties to ally again in the 1989 elections.⁵⁴ The coalition lost the election with Sena and BJP bagging 52 and 42 seats respectively. The coalition won its first election in 1995,⁵⁵ in a highly polarized background, due to the *Babri Masjid incident* and the *Bombay Blast* involving communal rights in 1993. Sena’s Manohar Joshi became the Chief Minister as per the condition set out by Bal Thackeray that the party which won more seats would take the post of Chief Minister.⁵⁶ Throughout their tenure, there were various conflicts among the parties over seat allocation and policy formulation. The coalition lost the next election as they tried to sabotage each other’s campaigns to outperform the other.⁵⁷ For the next 15 years, the alliance was unable to assume power and a power struggle for the seat of the opposition leader ensued. In the 2014 elections,⁵⁸ both parties decided to fight the elections independently, and this time, the tables turned as BJP bagged 122 seats

disposes’ *India Today* (New Delhi, 7 November 2019) <<https://www.indiatoday.in/news-analysis/story/35-years-of-shiv-sena-bjp-alliance-hindutva-proposes-rivalry-disposes-1616546-2019-11-07>> accessed 29 August 2023.

⁵³ibid.

⁵⁴Zeeshan Shaikh, ‘BJP longest, but once earlier too Congress was a Shiv Sena friend’ *The Indian Express* (Mumbai, 13 October 2022) <<https://indianexpress.com/article/political-pulse/bjp-longest-but-once-earlier-too-congress-was-a-shiv-sena-friend-8204394/>> accessed 29 August 2023.

⁵⁵ibid.

⁵⁶Venkat Ananth, ‘The anatomy of an alliance: The BJP-Shiv Sena story’ *Mint* (22 September 2023) <<https://www.livemint.com/Politics/VbrxNc2F5ZuGroknO7I97M/The-anatomy-of-an-alliance-The-BJPShiv-Sena-story.html>> accessed 29 August 2023.

⁵⁷IDEA, ‘Democracy and Deep-Rooted Conflict: Options for Negotiations’ (1998) <<https://www.idea.int/sites/default/files/publications/democracy-and-deep-rooted-conflict.pdf>> accessed 12 December 2023.

⁵⁸Shubhangi Khapre, ‘Shiv Sena to join Fadnavis govt; gives up claim to home minister, deputy CM post’ *The Indian Express* (Mumbai, 3 December 2014) <<https://indianexpress.com/article/political-pulse/shiv-sena-to-join-fadnavis-govt-accepts-offer-of-12-cabinet-berths/>> accessed 29 August 2023.

whereas Sena only managed to win 63 seats.⁵⁹ The Sena first resisted joining the BJP's alliance, but after briefly siding with the opposition, they once again joined hands. Twelve non-essential ministerial positions were assigned to Sena ministers in the administration which led to Sena's continued opposition to the BJP policies both at the National and State level during their term in coalition.⁶⁰ Again in 2019, both decided to form a coalition under the name *Mahayuti*.⁶¹ National Congress Party ("NCP") and Indian National Congress ("INC") contested under the coalition *Maha Aghadi*. The outcomes were as follows: Out of the 288 seats, BJP won 105 seats, while Sena, NCP and Congress won 56, 54 and 44 seats respectively.⁶² Sena proposed before the polls that the Chief Minister's chair should be shared in a 50:50 ratio of tenure. However, the BJP rejected the power-sharing proposal, claiming Sena had assumed on its own. Due to this tussle, Sena and BJP parted their ways and with no single party in a position to form the government, Sena, NCP and Congress also called *Maha Vikas Aghadi* came together to form the government.

The political experts termed the coalition 'fragile' as the political ideologies of the political parties were not aligned due to which the ideology of Sena had shifted towards *Soft Hindutva*.⁶³ This changed

⁵⁹Aadil Ikram Zaki Iqbal, 'Maharashtra State Assembly Election Results 2014 Live News Update: BJP Wins 122 Seats, Shiv Sena 63' *India.com* (19 October 2022) <<https://www.india.com/news/india/maharashtra-state-assembly-election-results-2014-live-news-update-175245/>> accessed 29 August 2023.

⁶⁰Venkitesh Ramakrishnan, 'BJP retired hurt in Maharashtra' *Frontline* (4 December 2019) <<https://frontline.thehindu.com/cover-story/article30146629.ece>> accessed 29 August 2023.

⁶¹PTI, "'Mahayuti' will soon form Maharashtra govt: Devendra Fadnavis' *The Economic Times* (Mumbai, 30 October 2019) <https://economictimes.indiatimes.com/news/politics-and-nation/mahayuti-will-soon-form-maharashtra-govt-devendrafadnavis/articleshow/71820358.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst> accessed 29 August 2023.

⁶²Rishabh Mishra, 'A Brief History of Shiv Sena-BJP Alliance of 23 Years' *Republic World* (12 November 2019) <<https://www.republicworld.com/india-news/politics/a-brief-history-of-shiv-sena-bjp-alliance-of-23-years.html>> accessed 29 August 2023.

⁶³Vikas Kumar and Ayesha Jain, "'Middlemen', Pressure Politics, Ideology: 6

conduct and ideology of Chief Minister Uddhav Thackeray led to the resentment of Eknath Shinde (“**Shinde**”), a senior leader of Sena and the State’s Urban Affairs Minister. Shinde, along with his supporters, rebelled against the incumbent government and withdrew their support.⁶⁴ Consequently, Sena filed a petition against the rebel MLAs demanding the disqualification of 16 MLAs from Narahari Zirwal, the Deputy Speaker of the Maharashtra Assembly (the Speaker post was vacant then).⁶⁵ The Deputy Speaker issued notice against 16 MLAs and directed them to file their written submissions in 2 days. Consequently, those MLAs approached the Supreme Court against the Deputy Speaker’s notice and the deadline for responses to the petitions for disqualification was extended by the Court from 27 June 2022 to 12 July 2022.⁶⁶ On the other hand, the Governor of Maharashtra, Bhagat Singh Koshiyari, at the request of Shinde, ordered the *floor test* to be conducted on 28 June 2022 believing that the incumbent government has lost the majority in the House.⁶⁷

Reasons Behind the Shiv Sena Crisis’ *The Quint* (23 June 2022) <<https://www.thequint.com/news/politics/six-factors-behind-maharashtra-political-crisis-eknath-shinde-uddhav-thackeray#read-more#read-more>> accessed 29 August 2023.

⁶⁴Vibha Sharma, ‘Maharashtra ruling alliance in turmoil as Sena leader Shinde rebels; CM Thackeray calls cabinet meet on Wednesday’ *The Tribune* (New Delhi, June 2021) <<https://www.tribuneindia.com/news/nation/maha-sena-minister-eknath-shinde-goes-incommunicado-may-be-in-gujarat-with-some-mlas-party-leader-405731>> accessed 29 August 2023.

⁶⁵Omkar Gokhale, ‘Explained: In Shiv Sena crisis, the issues before Supreme Court’ *The Indian Express* (Mumbai, 27 June 2022) <<https://indianexpress.com/article/explained/what-grounds-eknath-shinde-rebel-mla-seeking-relief-supreme-court-7993518/>> accessed 29 August 2023.

⁶⁶Krishnadas Rajagopal, ‘SC gives Sena rebels time till July 12 to respond to disqualification notice for defection’ *The Hindu* (New Delhi, 27 June 2022) <<https://www.thehindu.com/news/national/sc-gives-sena-rebels-time-till-july-12-to-respond-to-disqualification-notice-for-defection/article65570536.ece>> accessed 29 August 2023.

⁶⁷Ayushi Saraogi, ‘SC Refuses to Stay Maharashtra Governor’s Call for Floor Test’ (*Supreme Court Observer*, 29 June 2022) <<https://www.scobserver.in/journal/sc-refuses-to-stay-maharashtra-governors-call-for-floor-test/>> accessed 29 August 2023.

The floor test was challenged before the Supreme Court on account of pending disqualification petitions. However, it refused to put a stay on the floor test.⁶⁸ Following the denial of any relief from the Apex Court against a floor test, Chief Minister Uddhav Thackeray resigned from his post one day before the floor test. As a consequence, Shinde (being supported by BJP and Independents) was invited by the Governor to prove his majority and form the government. In the 287-member Assembly, Shinde, who has 39 Sena dissidents backing him, in addition to the BJP and Independents, secured 164 votes.⁶⁹ After that, he assumed the office of Chief Minister with Devendra Fadnavis as his Deputy. In furtherance of the defection notices sent by the Deputy Speaker, Shinde demanded a no-confidence motion against the deputy speaker which was disallowed. Later he approached the Supreme Court and filed a petition for the same. Subsequently, there had been a writ filed by the Uddhav Thackeray (“**Thackrey**”) faction against the Governor’s decision to call for a floor test and invite Shinde to form the government and allow him to take oath as Chief Minister of Maharashtra. Moreover, they have also filed another writ challenging the whip nominated by the Shinde faction, which was declared as the chief whip of the Sena by the newly elected Maharashtra Assembly Speaker, Rahul Narvekar.⁷⁰ This ultimately led to a situation where there were two whips of the same party.

⁶⁸ibid.

⁶⁹Faisal Malik and Dhaval Kulkarni, ‘Eknath Shinde proves majority in Maharashtra House’ *The Hindustan Times* (5 July 2022) <<https://www.hindustantimes.com/india-news/shinde-proves-majority-in-maharashtra-house-101656959215220.html>> accessed 29 August 2023.

⁷⁰Scroll Staff, ‘Uddhav Thackeray group moves SC against Speaker’s decision to appoint whip backed by Eknath Shinde’ (*Scroll*, 4 July 2022) <<https://scroll.in/latest/1027547/uddhav-thackeray-group-moves-sc-against-speakers-decision-to-appoint-whip-backed-by-eknath-shinde>> accessed 29 August 2023.

V. DISSECTING THE CONVOLUTIONS OF THE SUPREME COURT JUDGMENT

The above political imbroglio once again exposed the predicaments of the anti-defection law. The duty to resolve the lacunae of the anti-defection law came into the hands of the Supreme Court through this case as a large number of writ petitions were filed by both sides. The issues under these petitions⁷¹ were as follows:

- I. *If proceedings of disqualification are pending against the Speaker, whether the Speaker has the power to disqualify a member under the Tenth Schedule of the Indian Constitution as held in Nabam Rebia and Ors. v. Deputy Speaker and Ors.*⁷²?
- II. *Whether the courts have the power to adjudicate upon the disqualification petition filed against MLAs?*
- III. *What authority does the Speaker have to determine the whip and the leader of the House of the Legislative Party?*
- IV. *What is the impact of the removal of Para 3 of the Anti-Defection Law?*
- V. *Whether Governor was justified in ordering a floor test and inviting Eknath Shinde to form the government?*

Now, the authors shall enunciate the approach taken by the Hon'ble Supreme Court in the order in which the issues have been identified. To decide upon the first issue, the Court relied on the case of *Nabam Rebia* wherein it was held that the Speaker against whom a no-confidence motion was pending cannot adjudicate the disqualification petition. In the current scenario, the office of the Speaker was vacant and Mr. Narhari Zirwal, the Deputy Speaker was discharging the

⁷¹*Shubhash Desai v Principal Secretary, Governor of Maharashtra & Ors.* (2023) SCC OnLine SC 607.

⁷²*Nabam Rebia and Ors. v Deputy Speaker and Ors.* (2016) 8 SCC 1.

functions of the Speaker. The Deputy Speaker did not exercise his power to adjudicate on the disqualification petitions. Meanwhile, Mr. Rahul Narwerkar was appointed as the Speaker and now the newly appointed speaker shall exercise its jurisdiction over the matter. Thus, *Nabam Rebia* does not apply to the present factual matrix.

It was found by the Court that the judgment of *Kihoto Hollohan*⁷³ was in conflict with *Nabam Rebia*, as in that case, it was held that the independence and impartiality of the Speaker cannot be put into question when the Speaker is adjudicating the proceeding under the Tenth Schedule. Moreover, it was also found by the majority that the *Nabam Rebia* case did not take into account the effect and import of Article 181⁷⁴ into consideration, which envisages that the Speaker shall not preside over the Legislative Assembly when a resolution against him is pending. Thus, the Court was of the opinion to refer *Nabam Rebia* to a *Seven-Judge Bench*.

For the second issue, the Court again referred to the case of *Kihoto Hollohan*, wherein the Speaker was declared as a Tribunal and its exercise of power under the Tenth Schedule is subject to the jurisdiction of Articles 136, 226 and 227 of the Constitution. The Court further observed that the jurisdiction of the Court is not completely excluded as per Para 6(2) of the anti-defection law, but it does restrict the scope of judicial review when the decision is pending before the Speaker.⁷⁵ Therefore, it is clear from the aforementioned case that the Speaker solely has the authority to decide on the disqualification petition. The Petitioner has placed reliance on the case *Rajendra Singh Rana v. Swami Prasad Maurya*,⁷⁶ wherein the Apex Court used its exceptional power to decide upon the disqualification petition. But in the present case, the Court declined to rely on the case since the Speaker already pronounced its decision over the disqualifications. It

⁷³*Kihoto Hollohan v Zachillu* (1992) SCR (1) 686.

⁷⁴The Constitution of India, 1950 art 181.

⁷⁵*Kihoto Hollohan v Zachillu* (1992) SCR (1) 686.

⁷⁶*Rajendra Singh Rana And Ors v Swami Prasad Maurya and Ors* (2007) 4 SCC 270.

relied on the case of *Shrimath Balasaheb Patil v. Speaker, Karnataka Legislative Assembly*⁷⁷ in which it was opined that the Speaker should not be reposed of trust and confidence if they are unable to be neutral and impartial and favours their political party, however initially, the Speaker shall adjudicate the disqualification petition.

In deciding whether the Speaker has the power to appoint the whip and the leader of the party, the Court initially decided if they could interfere with legislative proceedings⁷⁸ and referred to Article 212⁷⁹ of the Constitution which restricts interference of the judiciary in legislative proceedings. However, in *Special Reference No. 1 of 1964 (Powers, Privileges and Immunities of State Legislatures)*,⁸⁰ a seven-judge Bench noted that Article 212 is not a bar to judicial review in cases of illegal and unconstitutional procedure adopted in Assembly. The Court opined that “*The procedural infringements would vitiate the proceedings based on their purpose and the impact of their infringement on the democratic functioning of Parliament.*”⁸¹ Thus, the Court once again upheld the interference of the judiciary as it was deemed necessary for the sustenance of Parliamentary Democracy.

Moreover, the Court examined the terms *political party* and *legislative party*. As per the opinion of the Bench, the Tenth Schedule would become inapplicable if these phrases were used interchangeably. Para 4 of the Tenth Schedule makes a clear demarcation between both these terms. It specifies that a political party, not the legislative party, shall appoint the whip and the leader. If it is asserted that the legislative party appoints the leader and the whip, *then the umbilical cord which connects the whip to the political party would be severed*. Thus, it

⁷⁷*Shrimanth Balasaheb Patil v Hon'ble Speaker, Karnataka Legislative Assembly* (2020) 2 SCC 595.

⁷⁸The Constitution of India, 1950, Tenth Schedule, para 6(2).

⁷⁹The Constitution of India, 1950 art 212.

⁸⁰*Keshav Singh v Speaker* AIR 1965 SC 745.

⁸¹*Shubhash Desai v Principal Secretary, Governor of Maharashtra & Ors.* (2023) SCC OnLine SC 607.

would mean that the legislators would rely on the political party for getting a ticket and voter's affiliation, but later they would disconnect themselves and work as a group of MLAs who no longer are in allegiance to the political party. From the above analysis, it was held that the Speaker must recognise the whip and leader of the political party which was appointed by the political party after making necessary inquiries. Consequently, the Court concluded that the Speaker's decision to recognise the decision of the faction and Shinde as the leader of the political party was illegal.

The fourth issue revolves around the possible implication of the deletion of *Split*. As discussed earlier, the exception of Split was removed from the Tenth Schedule in 2003. Thus, if a Split occurs in a party, neither faction could take the defence that they are a political party in the event of each faction filing a petition for disqualification of members of another faction.⁸² The members of different factions can exist simultaneously in the Parliament if one of the factions comes under the exception of Para 4(1)(a), i.e. *Merger*. However, if one of the factions fulfils the conditions of disqualification and they are unable to take any of the defences, they would stand disqualified. If they are not disqualified, then the deletion of Para 3 would become worthless since it is trite law that what cannot be done directly cannot be permitted to be done indirectly.⁸³ Moreover, the Speaker should not make his decision on the sole criteria of the majority of the House in deciding the case of which group is a political party. The structure of leadership outside the Legislative Assembly is also a crucial point that the Speaker must take into consideration.

Lastly, the Court emphasized the Governor's action of ordering a floor test and inviting Shinde to form the government. The court referred to

⁸²'Key Takeaways of SC's Maharashtra Verdict' (*Civils Daily*, 12 May 2023) <<https://www.civildaily.com/news/key-takeaways-of-scs-maharashtra-verdict/>> accessed 13 December 2023.

⁸³*Delhi Administration v Gurdip Singh Uban and Ors.* (2000) 7 SCC 296.

SR Bommai v. Union of India,⁸⁴ in which it was held that the Governor cannot claim that the Council of Ministers has lost the majority in the house and subsequently require them to prove the majority in the House. Moreover, the Court also relied on the *Shivraj Singh Chauhan case*,⁸⁵ wherein it was held that *the Governor should use its discretionary power in such a manner that reliance should be placed on objective materials and reasons that are relevant and germane to the discretion, not extraneous*. In the present case, since there was no objective material with the Governor that Chief Minister Thackeray had lost the confidence of the House. Further, at the highest, it can only be concluded that a faction of MLAs was dissatisfied with the policy decision of the party. Hence, it was concluded by the Bench that the decision to conduct a floor test was unlawful.

It was also opined that the floor test should not be used as a method to resolve internal disputes of the party, and the Constitution of the party must be relied on to establish a truce between the dissenting factions.⁸⁶ The Court further provided that if Thackeray had faced the floor test or *refrained from resigning from the post of the Chief Minister, this Court could have considered the grant of the remedy of reinstating the government headed by him*.⁸⁷ It was also clarified by the Court that the disqualification proceeding does not bar an MLA from participating in a floor test. The Petitioners also contended that Shinde was barred from becoming the Chief Minister as per Article 164(1B)⁸⁸ of the Constitution. The Court clarified that Article 164(1B) is a hindrance for a member who has been disqualified under Para 2 of the Tenth

⁸⁴*SR Bommai v Union of India* (1994) 3 SCC 1.

⁸⁵*Shivraj Singh Chouhan v Union of India* (2020) 17 SCC 1.

⁸⁶Ananthkrishnan G and Omkar Gokhale, 'Governor asking Thackeray for floor test not justified, but can't restore govt: SC' *The Indian Express* (Mumbai, New Delhi, 12 May 2023) <<https://indianexpress.com/article/india/governor-asking-thackeray-for-floor-test-not-justified-but-cant-restore-govt-sc-8604768/>> accessed 12 December 2023.

⁸⁷*Shubhash Desai v Principal Secretary, Governor of Maharashtra & Ors.* (2023) SCC OnLine SC 607.

⁸⁸The Constitution of India, 1950 art 164(1B).

Schedule. Since the seat of Chief Minister felt vacant and Shinde was not disqualified from the House, and additionally enjoyed the support of the majority MLAs, the Governor's decision to invite Shinde to form the government was justified.

VI. DECODING THE OBSERVATIONS OF THE SUPREME COURT JUDGEMENT

It was an arduous effort by the Supreme Court to answer the complexities of the Maharashtra Crisis. However, the Court failed to take into account the prevailing circumstances and practicalities of the anti-defection law. The authors would like to term it untimely justice facilitated by the Court against the issue raised. One of the major highlights of the pronouncement was referring the *Nabam Rebia* judgment to the Seven-Judge Bench to further deliberate over the said verdict. It is considered an essential move since the verdict was making the provisions of the anti-defection law redundant and inconsistent with the earlier precedents.

Further, while the Court asserted that the power to adjudicate upon the disqualification proceedings shall vest with the Speaker alone, the reasoning towards the same seems unconvincing. It is deeply rooted in the Indian Constitution that the Speaker is an impartial body or position that shall be devoid of any personal bias towards the party's interests. Even the Tenth Schedule provides an exception to the disqualification when the Speaker assumes office, leaving party membership, and it can be positively construed that the Indian speaker is aligned on the lines of a British Speaker i.e., free from any bias.⁸⁹ However, it is pertinent to note that the sanctity of this position is in shambles, especially after the growing instances of mass defection. Since the Speaker belongs to the ruling party, it exerts significant control over the functioning of the

⁸⁹Pracin Jain Academy, 'Once a speaker, always a speaker!' *The Times of India* (18 January 2021) <<https://timesofindia.indiatimes.com/readersblog/pracin-jain-academy/once-a-speaker-always-a-speaker-29142/>> accessed 29 August 2023.

Legislature, particularly through the Speaker, whose authority is broad and unquestionable. This includes the ability to postpone decisions on disqualification petitions brought by betrayed opposition parties for months or even years if it serves the ruling party's interests. For instance, in 2020, the Speaker of the Manipur Assembly did not decide on the defection petition for three years⁹⁰ and the Supreme Court ordered the Speaker to decide the petition within three months.⁹¹ Cases of the Speaker failing to act on the disqualification of members are on the rise. This, coupled with the fact that the anti-defection law makes no mention of a deadline despite expressly stipulating that a member who deserted their party shall be disqualified, seems to create difficulties. This is because, Speakers have taken advantage of this oversight to grant themselves a pocket veto over the procedure.⁹² Although the Courts have compelled them to take action within time,⁹³ they have only had sporadic success.

Moreover, the deletion of the exception of *Split* in 2003 was termed as a reaction by the government to stop the defections that were toppling many State governments. However, in the present case, there are two factions of the Sena and the delay in deciding the disqualification petition once again led to a situation wherein two factions emerged from a single party, without any actual disqualification. The above situation has rendered the 91st Amendment ineffective and the issue of

⁹⁰Krishnadas Rajagopal, 'SC again highlights taking away disqualification power from Speakers' *The Hindu* (New Delhi, 21 January 2020) <<https://www.thehindu.com/news/national/sc-asks-parliament-to-rethink-powers-of-the-speaker-in-disqualification-of-ministers/article30615269.ece>> accessed 29 August 2023.

⁹¹*Keisham Meghachandra Singh v Hon'ble Speaker Manipur Legislative Assembly and Others* (2020) SCC OnLine SC 55.

⁹²Shoaib Daniyal, 'What is the Anti-Defection Law and how will it shape the Maharashtra crisis?' (*Scroll*, 23 June 2022) <<https://scroll.in/article/1026761/what-is-the-anti-defection-law-and-how-will-it-shape-the-maharashtra-crisis>> accessed 23 June 2022.

⁹³*Indira Nehru Gandhi v Raj Narain* (1976) 2 SCR 347; *Brundaban Nayak v Election Commission of India and Anr.* (1965) 3 SCR 53; *Pema Khandu and Ors v Speaker, Arunachal Pradesh Legislative Assembly and Ors* (2016) SCC OnLine Gau 284.

Split continues. Moreover, the exception of the merger still subsists under the Tenth Schedule and if the faction of Shinde opts to merge with BJP then the disqualification petition will also turn out to be infructuous. Thus, the removal of the *Split* has done no good to the contemporary scenario.

The rationale given by the Court for not reinstating Uddhav Thackeray as the Chief Minister seems righteous. However, when this crisis is seen as a whole, it can be seen that the situation, in the first place, was created by a Bench of this Court which later was found impossible to be resolved by this very Court. In June 2022, the Vacation Bench of the Supreme Court provided interim orders on two issues. The first order extended the time for the MLAs of the Shinde faction to respond to the disqualification notices that were pending against them.⁹⁴ The second order, which is the primary reason for the conundrum, was that the Court refused to stay the floor test which was directed by the Governor.⁹⁵ The orders created a double effect, wherein it not only allowed the floor test, but it also allowed the Shinde faction to take part in the floor test without facing the immediate fear of disqualification. Thus, it would be disingenuous to separate Thackeray's decision of resigning from this *judicially-created context*.⁹⁶

⁹⁴Krishnadas Rajagopal, 'SC again highlights taking away disqualification power from Speakers' *The Hindu* (New Delhi, 21 January 2020) <<https://www.thehindu.com/news/national/sc-asks-parliament-to-rethink-powers-of-the-speaker-in-disqualification-of-ministers/article30615269.ece>> accessed 29 August 2023.

⁹⁵Ayushi Saraogi, 'SC Refuses to Stay Maharashtra Governor's Call for Floor Test' (*Supreme Court Observer*, 29 June 2022) <<https://www.scobserver.in/journal/sc-refuses-to-stay-maharashtra-governors-call-for-floor-test/>> accessed 29 August 2023.

⁹⁶Gautam Bhatia, 'The Supreme Court's Maharashtra Political Crisis Judgment – I: To Be Hoisted on Someone Else's Petard' (*Indian Constitutional Law and Philosophy*, 11 May 2023) <<https://indconlawphil.wordpress.com/2023/05/11/the-supreme-courts-maharashtra-political-crisis-judgment-i-to-be-hoisted-on-someone-elses-petard/>> accessed 29 August 2023.

VII. CONCLUSION

While the conundrum of disqualification still persists in Maharashtra, the Election Commission has decided that the Shiv Sena symbol would be possessed by the Shinde Faction based on the test of majority, as the faction has got support of 76% of MLAs.⁹⁷ The Commission made scathing remarks towards the Sena faction and observed that “*it (Shiv Sena constitution) has been mutilated to undemocratically appoint people from a coterie as office bearers without any election at all.*”⁹⁸ The Supreme Court had given 10 January 2024 as deadline to the Speaker for deciding 34 disqualification petitions that the two opposing Shiv Sena factions had filed against one another in an attempt to disqualify a total of 54 MLAs, as a result of the party’s 2022 split.⁹⁹ The Speaker (Mr.Rahul Narwekar) held that the Shinde faction is the real Shiv Sena due to the overwhelming majority of 37 of 55 MLAs. On procedural grounds, he also denied the disqualification petitions filed against the MLAs of Thackrey faction.¹⁰⁰ The decision further legitimises the Maharashtra government, and the authors feel that the decision was on expected lines, by virtue of the Indian Speakers being party’s marionette.

Thus overall, the current dynamics of Indian politics make it clear that anti-defection laws do not cater to contemporary standards, be it the

⁹⁷The Hindu Bureau, ‘Eknath Shinde faction gets Shiv Sena name, symbol’ *The Hindu* (New Delhi, 17 February 2023) <<https://www.thehindu.com/news/national/eknath-shinde-faction-recognised-as-real-shiv-sena-allotted-bow-and-arrow-symbol/article66521586.ece>> accessed 29 August 2023.

⁹⁸ibid.

⁹⁹Mrityunjay Bose, ‘Shiv Sena disqualification case: Landmark verdict expected on Jan 10’ *Deccan Herald* (Maharashtra, 8 January 2024) <<https://www.deccanherald.com/india/maharashtra/verdict-in-shiv-sena-disqualification-case-by-jan-10> 28399-18> accessed 15 January 2024.

¹⁰⁰Explained Desk, ‘Maharashtra Speaker gives verdict on Shiv Sena split: what was the case before him’ *The Indian Express* (New Delhi, 11 January 2024) <<https://indianexpress.com/article/explained/explained-politics/maharashtra-shiv-sena-split-speaker-disqualification-9103871/>> accessed 15 January 2024.

controversial position of the Speaker or the horse-trading taking place for toppling governments. In addition to the Tenth Schedule itself being a delayed response to the issue of defection, its provisions further provide leeway to the ruling party by giving disproportionate power to its Speaker. Furthermore, contrary to the intention of the enactment, *en bloc* defections started taking place in place of individual defections. The authors opine that the mandate of the public has been taken for granted by the political parties, who tweak the defection law in a manner that suits their interests. For instance, in the present case, not only were the number of defectors higher, they switched the government without even facing any consequence. Additionally, this matter went to the Apex Court, where timely justice was denied and the final verdict of the Court rendered the interim orders of the same Court ineffective, which also makes us think that the Judiciary has contributed to this crisis. From the above discussion, it is crystal clear that courts have failed to match the pace of political developments in the country.

It thus ensues from the discussion so far that modern defection politics can overturn the will of the people and our beloved representatives happily accept money and ministerial position as allurements to defect from their party. One possible solution that was proposed was that the defectors not be allowed to assume ministerial positions for some years.¹⁰¹ It could also be ensured that a Speaker in India possesses the characteristics of an American Speaker rather than a British one. On the issue of delay, it has been observed by the Court that *“There have been so many cases where there are delays by the Speaker and when such cases come to this court, we are told that you cannot pass any order till the Speaker decides. This has been a common experience.”*¹⁰²

¹⁰¹Dipankar Sarkar, ‘How politicians normalized defections’ *Mint* (25 March 2019) <<https://www.livemint.com/opinion/columns/opinion-how-politicians-normalized-defections-1553428879362.html>> accessed 29 August 2023.

¹⁰²Umang Poddar, ‘Explainer: How speakers are undermining the anti-defection law by simply sitting on petitions’ (*Scroll*, 14 December 2021) <<https://scroll.in/article/1012515/explainer-how-speakers-are-undermining-the-anti->

Therefore, an impartial Tribunal may be constituted which shall entertain all the disqualification petitions in a *time-bound manner* and it shall be presided by a Retired Supreme Court or High Court Judge for effective delivery of justice. This could be a potential game-changer to check the Speaker's misuse of power and shall also ensure a time-bound redressal mechanism for the betrayed party. Not only this, the failure of the Supreme Court to lay down some guidelines for the office of Speaker poses a question as to why Courts allow such efforts to murder democracy.

Another peculiar situation arose in Maharashtra, which witnessed a 'Split' without a merger thereby debilitating the political dynamics of Maharashtra. NCP senior leader Ajit Pawar parted from the NCP with some MLAs and took oath as the deputy Chief minister, with many NCP leaders getting inducted into the cabinet.¹⁰³ The faction however confirmed that they had not merged with BJP and they are an independent faction. The NCP situation once again highlights that *the existing law on defection only addresses 'splits and mergers' within political parties, leaving 'splits without merger' unanswered.*¹⁰⁴ Thus, there is also a dire need for amendments in the current Tenth Schedule to resolve the lacuna of the split without a merger. It can thus be concluded that though the anti-defection law has been introduced with a reverent motive, its implementation negates its very objective and thus, the authors assert that there is an urgent requirement to introduce new amendments to revamp it.

defection-law-by-simply-sitting-on-petitions> accessed 29 August 2023.

¹⁰³Ajit Pawar appointed deputy CM, 8 other NCP MLAs take oath as ministers in Eknath Shinde government: Key developments' *The Times of India* (2 July 2023) <<https://timesofindia.indiatimes.com/india/ajit-pawar-9-other-ncp-mlas-to-take-oath-in-shinde-government/articleshow/101432071.cms?from=mdr>> accessed 29 August 2023.

¹⁰⁴Chinmay Bendre and Vishal Chaudhari, 'Defects writ large in the anti-defection law' (*The Leaflet*, 6 August 2023) <<https://theleaflet.in/defects-writ-large-in-the-anti-defection-law/>> accessed 29 August 2023.