

EVALUATING THE SPEAKER'S ROLE UNDER INDIA'S ANTI- DEFECTION LAW: A 'PARTISAN' CONSTITUTIONAL FUNCTIONARY

Rongeet Poddar*

ABSTRACT

Defections have historically been one of the primary causes of instability in India's multi-party system. Rampant defections are a contravention of the electorate's trust in political parties. To deter pervasive defections, the Tenth Schedule had been incorporated by amending the Constitution. The Speaker has been conferred the quasi-judicial power to decide disqualification petitions under Para 6. However, the application of the law has been riddled with challenges owing to the weaknesses in the legal regime. The Speaker's quasi-judicial function under the anti-defection law has been a contentious issue. The presiding officer of the legislative forum has failed to ensure time-bound resolution of defection claims or penalized defectors by transgressing constitutional limits. The author has taken up three case-studies, a decision from the Calcutta High Court and two recent rulings of the Supreme Court to evaluate whether the Speaker has been an ostensibly 'partisan' constitutional functionary when entrusted with defection petitions. The paper proposes the way forward to strengthen the constitutional provisions on anti-defection.

Keywords: *Defections; Tenth Schedule; Quasi-Judicial Function; Political Parties*

* Academic Fellow, National Law School of India University, Bengaluru, Email: rongeet22168@nujs.edu.

EVALUATING THE SPEAKER'S ROLE UNDER INDIA'S ANTI- DEFECTION LAW: A 'PARTISAN' CONSTITUTIONAL FUNCTIONARY

Introduction

The transplant of Western institutional practices has not been a seamless exercise in post-colonial states that have embraced a democratic polity.² India enacted a law in 1985 to proscribe defections in its parliamentary system.³ The 52nd Constitutional Amendment added an anti-defection framework under the Tenth Schedule.⁴ It is one of the few nascent democracies in the world that have sought to curb 'floor crossing' or defections by legislative or constitutional sanction.⁵ Many scholars have scrutinized the impact of the law on India's democracy since its inception. The argument advanced by opponents is that the anti-defection provisions stifle free speech on the floor of the House. It constitutes a threat to deliberative democracy⁶ by quelling dissent within party ranks.⁷

The Tenth Schedule was envisaged as a safety valve for India's multi-party democracy. The anti-defection law strictly enforces party discipline.⁸ Elected members cannot vote contrary to the direction of the party whip or join another party. Defection can be imputed to a member by the implication of conduct even in the absence of formal resignation.⁹ Independent legislators are also obliged to respect the mandate of anti-defection. The rigidity in the law ensures that

² Clemens Spieß & Malte Pehl, *Floor Crossing and Nascent Democracies — a Neglected Aspect of Electoral Systems? The Current South African Debate in the Light of the Indian Experience*, 37 VERFASSUNG UND RECHT IN ÜBERSEE / LAW AND POLITICS IN AFRICA, ASIA AND LATIN AMERICA 195–224, 197 (2004).

³ MR Madhavan, *Legislature: Composition, Qualifications, and Disqualifications*, in THE OXFORD HANDBOOK OF THE INDIAN CONSTITUTION 308, 314 (Sujit Choudhury, Madhav Khosla, & Pratap Bhanu Mehta eds., 1st ed. 2016).

⁴ THE CONSTITUTION (FIFTY-SECOND AMENDMENT) ACT, 1985, <https://legislative.gov.in/constitution-fifty-second-amendment-act-1985> (last visited Mar 7, 2022); K. T. Thomas, *Anti-Defection Law*, 3 NUALS L.J. 1, 3 (2009).

⁵ Charith Reddy & 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*, 10 NLIU LAW REVIEW 321–344, 328 (2020).

⁶ Nitika Bagaria & Vedika Shah, *Decoding Intra-Party Dissent: The Lawful Undoing of Constitutional Machinery*, 7 NLUJ LAW REVIEW 115–165, 163 (2021).

⁷ Kartik Khanna & Dhvani Shah, *Anti-Defection Law: A Death Knell for Parliamentary Dissent*, 5 NUJS LAW REVIEW 103–127, 112 (2012); Ayush Kashyap, *Unbottling Dissent: Scrapping the Anti-Defection Law*, 9 NLIU LAW REVIEW 339–357, 346 (2020); Udit Bhatia, *Guest Post: The Absence of Deliberative Democracy – The Fetters of the Anti-Defection Law*, INDIAN CONSTITUTIONAL LAW AND PHILOSOPHY (2018), <https://indconlawphil.wordpress.com/2018/06/24/guest-post-the-absence-of-deliberative-democracy-the-fetters-of-the-anti-defection-law/> (last visited Mar 7, 2022).

⁸ S.S. Visweswaraiah, *Deplorable Defections: In Search of a Panacea*, 39 JOURNAL OF THE INDIAN LAW INSTITUTE 47–66, 52 (1997).

⁹ Ravi S. Naik v. Union of India, AIR 1994 SC 1558.

lawmakers do not violate the trust reposed in political parties by their respective electoral constituencies. In recent years¹⁰, the efficacy of the law has again come under the spotlight.

The Speaker has been conferred jurisdiction to decide disqualification petitions.¹¹ Inordinate delay on the part of the Speaker to conclusively determine questions of disqualification has rendered the law toothless. The Speaker had transcended his authority by penalizing defectors beyond the ambit of the Constitution. The quasi-judicial function of the Speaker¹² has been particularly controversial¹³ since the introduction of the anti-defection law owing to political affiliation.¹⁴ When the Parliament passed the amending law, there were concerns regarding misuse of the adjudicatory function.¹⁵

Critics have highlighted that the Speaker remains a biased functionary of the ruling dispensation despite occupying a constitutional position.¹⁶ Moreover, judicial review remains barred prior to the Speaker's determination of a disqualification petition. Court intervention is permissible when there is a violation of "constitutional mandates, mala fides, non-compliance with rules of natural justice and perversity."¹⁷ The judiciary is restricted from taking preventive action as a consequence in the face of rampant horse-trading.¹⁸

Recently, the Supreme Court has implored lawmakers to reconsider the Speaker's quasi-judicial function in light of the abuse of authority. It was observed that having an alternative independent tribunal of retired judges from the higher echelons of the judiciary may make the anti-defection provisions more effectual. In light of this observation, the object of the paper is

¹⁰ Shameek Sen, *Anti-defection Law*, 56 ECONOMIC AND POLITICAL WEEKLY 21–24, 21 (2015).

¹¹ Para 6, Tenth Schedule, CONSTITUTION OF INDIA, <https://legislative.gov.in/sites/default/files/COI...pdf> (last visited May 7, 2022).

¹² Akshita Mittal, *Court's Jurisdiction to Enquire Into Proceedings of the Parliament: A Comparative Analysis*, 9 INDIAN CONSTITUTIONAL LAW REVIEW 56–72, 68 (2020).

¹³ Rakesh Kumar & Vandana Singh, *Anti-Defection Law in India: Emerging Issues and Challenges*, Summer Issue ILI LAW REVIEW 234–262, 246–251 (2021).

¹⁴ N.S. Gehlot, *The Anti-Defection Act, 1985 and the Role of the Speaker*, 52 THE INDIAN JOURNAL OF POLITICAL SCIENCE 327–340, 332 (1991); B Venkatesh Kumar, *Anti-Defection Law: Welcome Reforms*, 38 ECONOMIC AND POLITICAL WEEKLY 1837–1838, 1838 (2015); Ziya Us Salam, *Anti-Defection Law Ridden With Loopholes, Prone to Misuse*, 38 FRONTLINE, 2021, <https://frontline.thehindu.com/cover-story/anti-defection-law-ridden-with-loopholes-india-poaching-mps-mlas/article34037127.ece>.

¹⁵ S.P. Malaviya, *Case for a Constituent Assembly*, in REFORMING THE CONSTITUTION 170, 171 (Subhash C. Kashyap ed., 1st ed. 1992).

¹⁶ Arvind P Datar, *How can we guarantee the Speaker's impartiality?*, THE INDIAN EXPRESS, August 20, 2021, <https://indianexpress.com/article/opinion/columns/how-can-we-guarantee-the-speakers-impartiality-7460392/> (last visited Mar 7, 2022); B Venkatesh Kumar, *supra* note 14 at 1838.

¹⁷ Kihoto Hollohan v. Zachilhu, AIR 1993 SC 412; Justice (Retd) Ruma Pal, *Separation of Powers*, in THE OXFORD HANDBOOK OF THE INDIAN CONSTITUTION 292, 296 (Sujit Choudhury, Madhav Khosla, & Pratap Bhanu Mehta eds., 1st ed. 2016).

¹⁸ Gautam Bhatia, *Why the anti-defection law has failed to deliver*, HINDUSTAN TIMES, July 30, 2020, <https://www.hindustantimes.com/analysis/why-the-anti-defection-law-has-failed-to-deliver/story-JtDhIEFHZ8VPpnNBD7Fv9J.html>.

to critically analyze the constitutional power afforded to the Speaker as an arbiter of disqualification petitions.

In the paper, the author has evaluated the rationale behind the anti-defection law by locating the Tenth Schedule in the context of historical events. The author has critically analyzed a recent Calcutta High Court case which shed light on how the West Bengal Assembly Speaker insidiously delayed his ruling in a defection petition. The paper also provides an overview of two recent Supreme Court decisions concerning the Speaker's role under the Tenth Schedule. The judgements of the apex court have sought to transform the status-quo. Furthermore, the author has evaluated the recent transgressions of the Speaker which have resulted in the Tenth Schedule being rendered ineffective. In this light, the author has examined the critical issues highlighted in judicial pronouncements and offered suggestions to facilitate impartial adjudication of defection petitions under the Tenth Schedule.

Why was the anti-defection law originally enacted?

As recognized by the Supreme Court in *Kihoto Hollohan v. Zachilhu*¹⁹ (“*Kihoto Hollohan*”), political parties constitute the fulcrum of our parliamentary democracy. The electoral preference for a political party's programme catapults a candidate to the position of an elected representative.²⁰ Defections vitiate the basis of representative democracy as the electoral mandate is disregarded by an opportunistic shift of allegiance across party lines.²¹ The Tenth Schedule sought to ensure that a defecting legislator went back to the voters of his constituency to seek re-election.

The practice of defections had become more prominent following the General Elections in 1967, wherein the Congress Party suffered a blow to its erstwhile hegemony in Indian politics.²² As it assumed alarming proportions, a committee under the chairmanship of Y.V. Chavan enquired into the prospect of curbing defections.²³ The Committee on Defections proposed a code of ethics for political parties to deter floor-crossing.²⁴ Further, it recommended

¹⁹ *KIHOTO HOLLOHAN V. ZACHILHU*, *supra* note 17; Justice (Retd) Ruma Pal, *supra* note 17 at 296.

²⁰ Charith Reddy and Shagun Bhargava, *supra* note 5 at 326.

²¹ Thomas, *supra* note 4 at 2.

²² Subhash C. Kashyap, *The Politics of Defection: The Changing Contours of the Political Power Structure in State Politics in India*, 10 *ASIAN SURVEY* 195–208, 196 (1970); Paras Diwan, *Aya Ram Gaya Ram: The Politics of Defection*, 21 *JOURNAL OF THE INDIAN LAW INSTITUTE* 291–312, 298 (1979).

²³ Y.B. CHAVAN COMMITTEE ON DEFECTIONS, (1969), <https://indianculture.gov.in/report-committee-defections>, last seen on 07/11/2021.

²⁴ *Id.*

the introduction of a statutory enactment to disqualify lawmakers.²⁵ If a legislator switched allegiance in lieu of pecuniary benefits or office of profit, the disqualification could be applicable for an extended period.²⁶

An absence of political consensus ensured that a constitutional amendment on defections did not see the light of the day until 1985. A majoritarian Congress government had enacted the anti-defection law in an era where coalition politics had already come into vogue.²⁷ Ironically, the amendment was followed by a tumultuous phase in the Indian polity wherein the Congress Party was ousted from power. Multiple parties were embroiled in the coalition era's pluralistic power struggle²⁸ as regionalization of politics became the norm. The Congress was criticized for its lack of foresight in bestowing the Speaker with the power to decide disqualification petitions²⁹ as another ruling party could also misuse the adjudicatory power for giving effect to partisan motives in the future.³⁰

Defections could be attributed to the lure of occupying public office before an individual legislator. Moreover, large-scale defections are used to dislodge democratically elected governments or meet the requisite numerical strength for forming a government by evading a fragmented legislature.³¹ Penalizing political turncoats within the constitutional framework was thus considered necessary to enforce party discipline. The introduction of the Tenth Schedule was expected to make India's parliamentary democracy robust and offer an impetus towards stabilizing the polity.

The 52nd Amendment Act was devised as a potent tool to eradicate the malaise of corruption in the multi-party system. The Parliament has acknowledged that defections were an issue of 'national concern'³² which had to be remedied by legislative deterrence. However, as demonstrated by recent trends, the loopholes in the law have become far too intractable to ignore. Allegations of bias against the Speaker on account of political affiliation have been the

²⁵ *Id.*

²⁶ *Id.*

²⁷ Rakesh Dixit, *Madhya Pradesh: The Dislodging of the Congress Government Leaves BJP with a Pyrrhic Victory*, 55 ECONOMIC AND POLITICAL WEEKLY (2020), <https://www.epw.in/engage/article/madhya-pradesh-dislodging-congress-government-BJP-pyrrhic-victory> (last visited Mar 7, 2022).

²⁸ Spieß and Pehl, *supra* note 2 at 200.

²⁹ Prashant Bhushan, *Are Amendments Required in the Anti-Defection Act*, 32 ECONOMIC AND POLITICAL WEEKLY 2987, 2988 (2015).

³⁰ *Id.*

³¹ Charith Reddy and Shagun Bhargava, *supra* note 5 at 325.

³² THE CONSTITUTION (FIFTY-SECOND AMENDMENT) ACT, 1985, *supra* note 4.

foremost cause of contention.³³ The frequency with which the Speaker's adjudicatory role has invited judicial scrutiny bears testament to the fact.

The Intervention of the Calcutta High Court: Diluting constitutional convention?

The Tenth Schedule does not confer a determinate timeline within which the Speaker is bound to decide a disqualification petition on merits. No defector in the West Bengal Legislative Assembly has been disqualified from membership in the past ten years.³⁴ The dubious distinction of the incumbent has not deterred the Speaker of the House from continuing the practice.

Following the West Bengal Assembly elections earlier this year, several defections have raised eyebrows in the state's political circle. Significantly, Mukul Roy, an opposition Member of the Legislative Assembly ("MLA") elected on a Bharatiya Janata Party ("BJP") ticket, switched his allegiance to his former party, the ruling Trinamool Congress. However, despite the development, he was appointed Chairman of the Public Accounts Committee ("PAC") by the West Bengal Assembly Speaker as an opposition nominee. The constitutional convention had been to appoint a member of the opposition as the Chairman of the Committee. In a petition filed challenging the nomination, the Calcutta High Court observed that the controversy arose on account of the Speaker's failure to decide the pending disqualification petition against Roy.³⁵

The court held that the Speaker was expected to discharge his constitutional duty of determining disqualifications under the Tenth Schedule as a 'neutral' arbiter and rise above the party lines in pursuance of his constitutional obligation.³⁶ Moreover, he had failed to abide by the precedent set by the Supreme Court in *Keisham Meghachandra Singh v. the Hon'ble Speaker, Manipur Legislative Assembly*³⁷ ("*Keisham Meghachandra*"). The apex court had imposed a three-month time span within which the Speaker had to settle a disqualification

³³ Kartik Agarwal & Jayesh Kumar Singh, *Office of the Speaker: An Anathema to the Doctrine of Constitutional Trust Updated: Oct 13, 2021*, SOCIO-LEGAL REVIEW FORUM (2021), <https://www.sociolegalreview.com/post/office-of-the-speaker-an-anathema-to-the-doctrine-of-constitutional-trust> (last visited Jul 3, 2022).

³⁴ Snigdendu Bhattacharya, *Bengal: In Ten Years of Mamata Rule, No Defector Has Been Disqualified*, THE WIRE, June 15, 2021, <https://thewire.in/politics/west-bengal-mamata-banerjee-tmc-defections-mukul-roy-disqualified>.

³⁵ *Ambika Roy v. The Hon'ble Speaker, West Bengal Legislative Assembly and Ors.*, WPA (P) 213 of 2021.

³⁶ *Id.*, para 62.

³⁷ *Keisham Meghachandra Singh v. Hon'ble Speaker, Manipur Legislative Assembly and Ors.*, Civil Appeal No. 547 of 2020.

petition filed against an elected member. In Roy's case, there was a dereliction of duty on the part of the West Bengal Assembly Speaker in following the precedent.

Constitutional conventions such as the appointment of an opposition MLA in the post of PAC Chairman were designed to ensure checks and balances. The nomination ensures that a concrete institutional mechanism is in place to scrutinize government expenditure. The Speaker's inaction had enabled the ruling party to usurp the post of the PAC Chairman, thereby making a mockery of prevalent democratic practice.³⁸

The Calcutta High Court's timely intervention³⁹ serves as another cogent precedent against the Speaker's "soft attitude"⁴⁰ in dealing with disqualification petitions when these are opposed to the political interests of the ruling dispensation. The Speaker had erred by deliberating, delaying the outcome of the disqualification petition such that Roy could be considered eligible for appointment as the PAC Chairman.⁴¹ The judgment highlights how the colourable exercise of power by the Speaker compromises our parliamentary democracy. Moreover, it offers yet another compelling case for re-evaluating the limits of a court's jurisdiction when it is called upon to review the Speaker's role under the Tenth Schedule. Finally, the Speaker has recently dismissed a disqualification petition filed against Roy based on inadequacy of evidence after protracted litigation in the matter.⁴²

Recent trends before the Supreme Court

There have been two notable episodes of defection in the recent past which have necessitated authoritative pronouncements from the Supreme Court to clear the air surrounding the anti-defection law. In *Keisham Meghachandra*, an elected representative from the Congress Party had defected to the BJP and played a critical role in forming the BJP-led state government in Manipur. The legislator was consequently rewarded with a ministerial berth.⁴³ However, the Speaker made little progress on deciding the disqualification petitions filed against the dissident MLA for more than a year.

³⁸ AMBIKA ROY V. THE HON'BLE SPEAKER, WEST BENGAL LEGISLATIVE ASSEMBLY AND ORS., *supra* note 35, para 60.

³⁹ *Id.*

⁴⁰ *Id.*, para 65.

⁴¹ *Id.*, para 28.

⁴² Shiv Sahay Singh, *West Bengal Assembly Speaker rejects plea for Mukul Roy's disqualification*, THE HINDU, February 11, 2022, <https://www.thehindu.com/news/national/other-states/west-bengal-assembly-speaker-dismisses-plea-seeking-mukul-roys-disqualification-as-mla/article38413682.ece> (last visited May 7, 2022).

⁴³ KEISHAM MEGHACHANDRA SINGH V. HON'BLE SPEAKER, MANIPUR LEGISLATIVE ASSEMBLY AND ORS., *supra* note 37, para 2.

The Supreme Court clarified that judicial review could be resorted to if the Speaker failed to determine disqualification petitions within a reasonable time.⁴⁴ The Speaker's deliberate inaction had undermined the anti-defection mechanism under the Constitution. Judicial supervision was necessary to facilitate a prompt response from the Speaker. It ensures that defection petitions are not kept in abeyance to favour the ruling party.

On behalf of the court, Justice Nariman pronounced that a restrictive timeline of three months would be a sufficient for the Speaker to decide the fate of the alleged defectors. While the three-month limitation would be the norm, relaxations could be permitted in "exceptional circumstances,"⁴⁵ which were incidentally not enumerated by the court. In a scathing critique, the court expressed its reservation about the increasing politicization of the Speaker's role.

The apex court also urged the Parliament for evaluating the prospect of constituting an independent tribunal headed by a "retired Supreme Court judge or a retired Chief Justice of a High Courts"⁴⁶ or an alternative impartial authority that could quickly dispose of defection matters.⁴⁷ However, no rationale was offered to explain why such a tribunal would be the panacea to address the existing lacunae under the anti-defection regime.

Similarly, in 2019, a coalition government of Congress and Janata Dal (Secular) in Karnataka failed to obtain the requisite numbers in a trust vote. The defeat was attributed to the absence of seventeen MLAs on the day of the vote. The defiance of the party whip led to the institution of defection proceedings, and the members were subsequently disqualified until the Assembly term concluded. Moreover, the Speaker of the state legislature had rejected the resignations submitted by the concerned members on the rationale that they were not voluntary or genuine.⁴⁸

The Supreme Court opined that the Speaker is bound to accept the resignations if the member had exercised the right to resign out of free will.⁴⁹ However, mere acceptance of resignation would not nullify the taint of defection. Otherwise, members of the House could evade the anti-defection law by tendering resignations, leading to a slippery slope.⁵⁰ The apex court refused to permit such a dilution of the Tenth Schedule as it is integral to our multi-party democracy. The three-judge bench also invalidated the Speaker's decision to disqualify the members for

⁴⁴ *Id.*, para 22.

⁴⁵ *Id.*, para 28.

⁴⁶ *Id.*, para 30.

⁴⁷ *Id.*; Shameek Sen, *supra* note 10 at 21.

⁴⁸ Shrimanth Balasaheb Patil v. Speaker, Karnataka Legislative Assembly and Ors., (2020) 2 SCC 595, para 16.

⁴⁹ *Id.*, para 45.

⁵⁰ *Id.*, para 51.

the entire Assembly term. Under Article 191(2) of the Constitution⁵¹, a legislator is merely barred from being a member the Legislative Assembly in the state; the provision does not bar a legislator disqualified by defection to seek re-election. The sanction imposed by the Speaker was thus contrary to law.⁵²

Evaluating the Speaker's Transgressions: The Quest for an Impartial Adjudicator

The political class has often utilized the legislative shortcomings to secure undue gains. The weaknesses in the Tenth Schedule continue to subvert the foundations of our democracy. The Speaker's power to deliver a verdict on defection under the Tenth Schedule was based on the underlying premise that the presiding officer would relinquish partisan identities in pursuance of a constitutional function.⁵³

However, the recent trends before the courts indicate the contrary as the Speaker is consistently failing to rise above political affiliation. In each of these instances, there has been a glaring abuse of constitutional office. Firstly, a constitutional convention was bypassed in West Bengal by evading the contours of the anti-defection law.⁵⁴ Secondly, the Manipur Assembly Speaker had kept a crucial defection petition pending to ward off any threat to the ruling party's political aspirations in the state.⁵⁵ Thirdly, in Karnataka, the Speaker had penalized the defecting legislators till the term of the Assembly. As rightly observed by the apex court, the Constitution did not bar re-election in the same term. The Speaker's transgression was thus a clear act of political vendetta.⁵⁶

There is a pronounced judicial distrust in the Speaker's role as a constitutional functionary, which does not bode well for the future of democratic institutions in India as accountability deficit fosters public apathy. Moreover, in any phase of one-party dominance, the Speaker is likely to be more susceptible to political pressure. The presiding officer of the legislature is

⁵¹ Article 191(2), CONSTITUTION OF INDIA, *supra* note 11.

⁵² SHRIMANTH BALASAHEB PATIL V. SPEAKER, KARNATAKA LEGISLATIVE ASSEMBLY AND ORS., *supra* note 48, para 56.

⁵³ Gautam Bhatia, *Judicial Supremacy amid the Breakdown of Constitutional Conventions: What the Karnataka Controversy Tells Us about our Parliamentary Democracy*, INDIAN CONSTITUTIONAL LAW AND PHILOSOPHY (2019), <https://indconlawphil.wordpress.com/2019/07/16/judicial-supremacy-amid-the-breakdown-of-constitutional-conventions-what-the-karnataka-controversy-tells-us-about-our-parliamentary-democracy/> (last visited Mar 8, 2022).

⁵⁴ AMBIKA ROY V. THE HON'BLE SPEAKER, WEST BENGAL LEGISLATIVE ASSEMBLY AND ORS., *supra* note 35.

⁵⁵ KEISHAM MEGHACHANDRA SINGH V. HON'BLE SPEAKER, MANIPUR LEGISLATIVE ASSEMBLY AND ORS., *supra* note 37.

⁵⁶ SHRIMANTH BALASAHEB PATIL V. SPEAKER, KARNATAKA LEGISLATIVE ASSEMBLY AND ORS., *supra* note 48.

nominated at the unfettered discretion of the political party or alliance commanding a majority. Therefore, the Speaker is often a cog in the wheel for advancing political interests.

The *raison d'être* of the anti-defection law is negated if the Speaker is complicit in political maneuvering. Imbibing a culture of 'constitutional morality'⁵⁷ is a long-drawn process and is unlikely to happen overnight. Since the majority judgement in *Kihoto Hollohan*, there has been a marked change in the judiciary's evaluation of the Speaker's role. The deferential tone of judges towards the office of the Speaker has transformed into unrelenting criticism or even a sense of pessimism. In the present context, two significant questions therefore emerge. How can political bias be eliminated from the constitutional office in the immediate future? Moreover, could an alternative quasi-judicial tribunal be a viable alternative to the Speaker?

In 2008, the Communist Party of India (Marxist) ("CPI(M)") had withdrawn its legislative support to the United Progressive Alliance government at the Centre. Elected as a CPI(M) legislator, the late parliamentarian Somnath Chatterjee was unanimously nominated to the Speaker's post in the Lok Sabha. However, when his party withdrew support, the erstwhile Lok Sabha Speaker refused to toe the party line of resigning from the constitutional office to vote against the incumbent.⁵⁸ Explaining the reasoning behind his decision, Chatterjee had clarified that partisan actions should not denigrate the office of Speaker.⁵⁹ The remarkable act of statesmanship had not only exalted his status as an eminent parliamentarian, but it had set a glowing precedent for preserving the sanctity of the constitutional office. The recent judicial interventions, however, indicate that it was merely a flash in the pan.

As identified in the paper, the Speaker's decisions have often been motivated by political considerations. It constitutes a major hurdle towards realizing the objectives of the Tenth Schedule. The minority judgement in *Kihoto Hollohan* had first recognized the ominous signs.⁶⁰ With the Speaker as the exclusive arbiter of disqualification petitions, the likelihood of bias cannot be ruled out. The Speaker's tenure is "dependent on the will of the majority"⁶¹ in

⁵⁷ Abhinav Chandrachud, *Is "Constitutional Morality" A Dangerous Doctrine?*, BLOOMBERG QUINT, December 19, 2019, <https://www.bloombergquint.com/opinion/indian-judiciary-is-constitutional-morality-a-dangerous-doctrine-by-abhinav-chandrachud> (last visited Aug 3, 2022).

⁵⁸ Somnath Chatterjee, *'A great shock': Somnath Chatterjee (1929-2018) on being expelled from the CPI(M) after 40 years*, SCROLL.IN, August 17, 2018, <https://scroll.in/article/890671/a-great-shock-somnath-chatterjee-1929-2018-on-being-expelled-from-the-cpi-m-after-40-years> (last visited Mar 8, 2022).

⁵⁹ Full statement of Somnath Chatterjee on why July 23 was the saddest day of his life, THE ECONOMIC TIMES, August 1, 2008, <https://economictimes.indiatimes.com/news/politics-and-nation/full-statement-of-somnath-chatterjee-on-why-july-23-was-the-saddest-day-of-his-life/articleshow/3316039.cms> (last visited Mar 8, 2022).

⁶⁰ *KIHOTO HOLLOHAN V. ZACHILHU*, *supra* note 17.

⁶¹ *Id.*

the legislature. Before appealing to the legislature to rethink the Speaker's adjudicatory function, Justice Nariman in *Keisham Meghachandra* had acknowledged the concerns raised by the minority view in *Kihoto Hollohan*.⁶²

The current state of affairs necessitates a radical overhaul of the decision-making authority under the Tenth Schedule. The scourge of defections is detrimental in the long run as it erodes public confidence in democratic institutions. Effective measures must be taken immediately to add more rigour to the anti-defection law. The lawmakers can explore two potential options in this regard.

Firstly, the office of the Speaker can be depoliticized by a constitutional amendment to facilitate independent decision-making in defection petitions. It is likely to be a contested exercise. Insisting upon temporary withdrawal from party membership during the term of office is unlikely to have a positive impact as the legislator would return to the party fold once again at the end of his tenure. In fact, the promise of more influential positions in the party or plum ministerial posts upon return⁶³ could further exacerbate the crisis. To overcome this issue, a nominated Speaker must be unequivocally barred from holding further public office. Moreover, the Speaker could be obligated to stay aloof from party politics in the event of nomination. For instance, in the United Kingdom, the Speaker is required to disassociate from the political party following election.⁶⁴ The Parliament could also scrap the option of re-nomination as Speaker beyond a single term.

The additional safeguards discussed are unlikely to yield dividends unless the appointment process of the Speaker is changed drastically. Presently, the nomination of the Speaker is subject to majoritarian will in the legislature. The weakness in the institutional structure effectively makes the Speaker a pliant figure. The likelihood of quid pro quo cannot be ruled out as the security of tenure is conditional upon favourable defection orders or deliberative inaction. Therefore, the Speaker's nomination could be unanimously affirmed by a panel comprising the Leader of the House, the Leader of the Opposition, and a retired judge of the Supreme Court.

⁶² *Id.*, para 29.

⁶³ B Venkatesh Kumar, *supra* note 14 at 1838; Charith Reddy and Shagun Bhargava, *supra* note 5 at 333.

⁶⁴ Stanley Bach, *The Office of Speaker in Comparative Perspective*, 5 THE JOURNAL OF LEGISLATIVE STUDIES 209–254, 218 (1999); Matthew Laban, *More Westminster than Westminster? The Office of Speaker across the Commonwealth*, 20 THE JOURNAL OF LEGISLATIVE STUDIES 143–155, 144 (2014).

Secondly, the adjudicatory function could be transferred from the Speaker altogether. The 255th Law Commission Report on ‘Electoral Reforms’ had acceded to the minority view of *Kihoto Hollohan* that the Speaker cannot be an independent arbiter of defection petitions.⁶⁵ It was recommended that the decision-making power in Para 6 of the Tenth Schedule vest with the ‘President or the Governor’, subject to the opinion expressed by the Election Commission.⁶⁶

The Law Commission had not proposed any sweeping change but had merely sought replication of the existing post-election disqualification process available in the Constitution under Articles 103 and 192⁶⁷. It was a reiteration of the proposal made by the Dinesh Goswami Committee on Electoral Reforms⁶⁸ and even the Y.B. Chavan Committee on Defections.⁶⁹ Even though the independence of an alternative adjudicatory body could also be compromised by executive influence,⁷⁰ there is limited evidence to confirm such a hypothesis at this stage. In light of the extensive politicization of the Speaker’s role⁷¹, the viability of past recommendations must be carefully evaluated afresh by the Law Commission.

Conclusion

The defection law remains a necessary evil in its present form, as there is no scope for recalling legislators in India following a shift of political allegiance. Defections continue to be a recurrent phenomenon that has severe ramifications for the numerical majority enjoyed in the legislature by a government. The constitutional provisions on anti-defection obligate ideological conformity. However, loopholes such as the Speaker’s adjudicatory function are used for oblique purposes, making the law ineffective. The legislative paternalism to instill ‘constitutional morality’ is rendered futile as a consequence.

While the scope of judicial review may be limited following *Kihoto Hollohan*, the pro-active role of the Supreme Court in recent pronouncements constitutes an incremental step in the right direction. The apex court rulings and the Calcutta High Court decision represent a much-needed pushback against the abuse of constitutional office by the Speaker. However, the capacity of judicial interventions to usher in far-reaching structural modifications in the

⁶⁵ REPORT NO. 255: ELECTORAL REFORMS, (2015), <https://lawcommissionofindia.nic.in/reports/report255.pdf>, para 5.18.3.

⁶⁶ *Id.*, para 18.4.

⁶⁷ See Articles 103 and 192, CONSTITUTION OF INDIA, *supra* note 11.

⁶⁸ REPORT OF THE COMMITTEE ON ELECTORAL REFORMS, (1990) Chapter X, para 1.4.

⁶⁹ Y.B. CHAVAN COMMITTEE ON DEFECTIONS, *supra* note 23.

⁷⁰ Charith Reddy and Shagun Bhargava, *supra* note 5 at 338.

⁷¹ Shameek Sen, *supra* note 10 at 23.

defection law is limited. The office of the Speaker has been weaponized by the political class for evading anti-defection provisions.

Much like its predecessors, the current regime has not shown sufficient political will to drastically alter the anti-defection provisions as it remains the primary beneficiary.⁷² The sustenance of an existing defection law is often contingent on the nature of the party system.⁷³ A ruling party or political alliance enjoying a comfortable majority in the legislature would be unwilling to cede ground as the status quo of a weak or lenient anti-defection law⁷⁴ favours its interests. In the absence of political consensus, concrete reforms in the Tenth Schedule seem to be an uphill task.

⁷² Nearly 45% of MLAs Who Defected Between 2016 and 2020 Joined the BJP, THE WIRE, December 3, 2021, <https://thewire.in/politics/mlas-defection-2016-2020-bjp-congress-adr> (last visited Mar 8, 2022).

⁷³ Spieß and Pehl, *supra* note 2 at 221.

⁷⁴ Csaba Nikolenyi, *Government termination and anti-defection laws in parliamentary democracies*, 45 WEST EUROPEAN POLITICS 638–662, 641 (2022).