

A CRITICAL ANALYSIS OF ANTI-DEFECTION LAW THROUGH AN ECONOMIC LENS

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<https://doi.org/10.69893/gjle.2024.000065>

ABSTRACT

“If men were angels, no government would be necessary. If angels were to govern men, neither external nor internal controls on government would be necessary. In framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed; and in the next place oblige it to control itself.”

----James Madison, *The Federalist Papers*

Defection is not an unfamiliar term for parliamentary democracies like India. Though the evil practice was present since the pre-independence era, the advent of the multi-party system resulting in coalition governments increased floor crossing. The instabilities in the weak regimes followed by the political turmoil leading to the rise and fall of governments raised the demand for a law on regulating defection. Addressing popular demand, the 52nd Amendment Act of 1985² was brought into the picture which added, the 10th schedule to the constitution³. The law was drafted with due care and attention to retain political preferences and the public's choice. This legislation provided for the disqualification of members in case of defection except for a split or a merger. Subsequently, the law was judicially challenged and judgments were interpreted, where the deterrence effect of the law is highly doubtful. This paper makes an attempt to understand the development of anti-defection law, through judicial interpretations and pointing out the drawbacks of the legislation with the help of economic analysis. To determine the efficiency of the law, economic theories like game theory and public choice theory were applied.

Key Words: *Anti-Defection Law, Public Choice Theory and Game Theory*

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² INDIA CONST. amended by The Constitution (Fifty second Amendment) Act, 1985.

³ INDIA CONST. sched. X.

1. INTRODUCTION

Our Constitution's drafters used the Westminster model to create an independent India. In this system, the people choose the legislature and are responsible to them. Therefore, if a political party holds a majority in the legislature, it can establish and maintain an administration. This poses a problem to a political party in two ways. To create a government, it must first gain sufficient seats or form a coalition with other parties. Independents who won the election alone can also support the country's government. After creating the government, the challenge's second phase begins. The ruling party or coalition must unite its legislators to maintain its legislative majority.

The second challenge began the foul practice of political defection among the legislators for numerous considerations. According to the dictionary definition, "defection" appears to have been derived from the Latin word "*defectio*" which denotes abandoning a person or a cause to whom grounds of allegiance or duty, tie that person or to which he has fully committed himself. Similarly, it represents an individual or group's rebellion, dissent, and revolt. Thus, "defection" refers to giving up on a cause, distancing oneself from it, or leaving a group, party, or program.

2. LITERATURE REVIEW

Floor crossing is not a new term in party politics. Ever since defection was defined, academicians have examined the practice with a political or legal approach. However, as the relevance of economics in politics widens rapidly, this study adopts an economic angle to suggest legal reforms for the current legal framework concerning defection in India. The handbook on game theory by Sylvain Sorin⁴ delves into the practical application of game theory in political domains, while Duncan Snidal⁵ stresses the significance of strategic behaviour and rational decision-making in determining the course of international politics and illuminating the dynamics of power, conflict, and cooperation. Richard H. McAdams⁶ explores how

⁴ SYLVAIN SORIN, HANDBOOK OF GAME THEORY WITH ECONOMIC APPLICATIONS (Elsevier B. V., 1992).

⁵ Duncan Snidal, *The Game Theory of International Politics*, 38 WOR. POL., (2016).

⁶ Richard H. McAdams, *Beyond the Prisoner's Dilemma: Coordination, Game Theory, and Law*, 82 S. CAL. L. REV.

strategic interactions between people, organisations, and institutions impact legal outcomes as he applies the ideas of game theory to legal contexts. In order to study coordination problems—in which players must coordinate their activities to obtain mutually advantageous outcomes—McAdams goes beyond the traditional Prisoner's Dilemma scenario. He highlights the intricacies of law and social behaviour by highlighting the role of incentives, norms, and institutions in encouraging coordination and collaboration through incisive analysis and case examples. Drawing inspiration from these renowned scholars, we link the game theory to event of defection through the prisoner's dilemma model. Additionally, the theory of public choice is a suitable concept for the study of politics. The work on Public Choice by Lionel Orchard and Hugh Stretton⁷ examines the complex dynamics of group decision-making, focusing on how institutional structures, individual preferences, and incentives influence public policies. It deftly maneuvers through the intricacies of government, illuminating the factors that shape public opinion. This work on public choice helped us to analyse the decisions of defectors, presiding officers, and the public while witnessing the practice of defection.

Another source relied upon is the book "Anti-Defection Law in India and the Commonwealth" by G.C. Malhotra⁸. The author examines the legal framework surrounding defection in Indian politics, focusing on the Anti-Defection Law. The goal of this rule is to stop elected officials from changing parties for political or personal benefit, and the book goes into great detail about the legislative aim, historical background, and practical applications of this statute. It compares India's defection policy with that of other Commonwealth countries. In general, the book thoroughly analyses the political and legal factors underlying defection in India and other countries. Further the research gathered factual evidence regarding the regular practice of defection from landmark rulings of the apex court and reliable news articles by Indian Express and India Today. Lastly, in support of the recommendations provided, the reports of the parliamentary committees were observed to find suggested legal reforms to prevent defection. A few recommendations were borrowed from the Dinesh Goswami report

209, (2009).

⁷ Lionel Orchard & Hugh Stretton, *Public Choice*, 21 *CAMB. J. ECON.* 409, (1997).

⁸ G.C. MALHOTRA, *ANTI-DEFECTION LAW IN INDIA AND THE COMMONWEALTH* (Metropolitan Book Co. Pvt. Ltd 2005).

on electoral reforms⁹ and the 170th Law Commission report¹⁰. Overall, the research paper aims to suggest legal and administrative reforms to the existing anti-defection statute through an economic analysis with the help of game theory and public choice theory. Also, different points of views and case studies were considered for a better understanding on the application of the anti-defection legal framework.

3. HYPOTHESIS

Null Hypothesis: A critical analysis of Anti- Defection law with economic tools like Game Theory and Public-Choice Theory suggests that the law is effective in curbing un-parliamentary practices of “horse-trading”, and the legislation deters politicians from engaging in this.

Alternative Hypothesis: An examination of Anti- Defection law with economic instruments like Game Theory and Public Choice Theory helps us to understand the lacuna in the anti-defection legislation and how politicians continue to engage and benefit from defection in spite of a legal mechanism in place to control it.

4. OVERVIEW OF THE ANTI-DEFECTION LAW

In democratic political systems worldwide, political defections among lawmakers have been a source of concern. This is especially true in parliamentary democracies where the stability of the government depends on the backing of the Legislature Party or a coalition of parties. Political instability is brought about by political defections, which violate people's will and the tenets of the party structure. Due to this, some nations have developed conventions or created laws and regulations to cope with political defections.

The threat of political defections has also regularly plagued Indian politics, leaving political instability at the Centre and in the States on several occasions. In light of this, the Constitution (Fifty-second Amendment) Act of 1985 was passed, enacting the anti-defection statute. The Act provided for the disqualification of the departing legislator to reduce individual defections

⁹ Association for Democratic Reforms, *Dinesh Goswami Report on Electoral Reforms*, ADRINDIA, <https://adrindia.org/sites/default/files/Dinesh%20Goswami%20Report%20on%20Electoral%20Reforms.pdf>.

¹⁰ LAW COMMISSION OF INDIA, REPORT NO. 170: REFORM OF THE ELECTORAL LAWS (1999).

in the legislatures while under certain exceptions permitting political party splits and mergers. The law provides for the punishment of disqualification of the defector. The offense of defection is committed when a member voluntarily gives up his or her membership of the political party or fails to comply with the directions of the whip officer in the house. An independent member is said to be a defector when he or she joins a party six months after the elections. The provisions of the law gave the final decision-making power to the presiding officer in the matters of disqualifying members for defection. The provisions with regard to disqualification on grounds of defection are as follows:

1. “2. Disqualification on ground of defection — (1) Subject to the provisions of 3 [paragraphs 4 and 5], a member of a House belonging to any political party shall be disqualified for being a member of the House—

(a) if he has voluntarily given up his membership of such political party; or

(b) if he votes or abstains from voting in such House contrary to any direction issued by the political party to which he belongs or by any person or authority authorized by it in this behalf, without obtaining, in either case, the prior permission of such political party, person or authority and such voting or abstention has not been condoned by such political party, person or authority within fifteen days from the date of such voting or abstention.”¹¹

2. Exceptions:

“4. Disqualification on ground of defection not to apply in case of merger— (1) A member of a House shall not be disqualified under subparagraph (1) of paragraph 2 where his original political party merges with another political party and he claims that he and any other members of his original political party—

(a) have become members of such other political party or, as the case may be, of a new political party formed by such merger; or

(b) have not accepted the merger and opted to function as a separate group,

and from the time of such merger, such other political party or new political party or group, as the case may be, shall be deemed to be the political party to which he belongs for the purposes of sub-paragraph (1) of paragraph 2 and to be his original political party for the purposes of this sub-paragraph.”

(2) For the purposes of sub-paragraph (1) of this paragraph, the merger of the original political

¹¹ INDIA CONST. sched. X, ¶ 2.

party of a member of a House shall be deemed to have taken place if, and only if, not less than two-thirds of the members of the legislature party concerned have agreed to such merger.”¹²

Following its enactment, many ambiguities in the law have come to light. As a result, numerous calls were made for the law to be reviewed. Addressing various aspects of the law several committees conducted a detailed study of the statute to report numerous problems. At the Conferences of Presiding Officers of Legislative Bodies in India, the issues resulting from the decisions made by various Presiding Officers and the interpretation of the law by various courts were also covered. The then-Speaker of the Lok Sabha and Chairman of the Rajya Sabha formed a committee to revisit anti-defection law. The Constitutional 91st Amendment) Act 2003¹³ was passed in response to the committee recommendations headed by Y.B. Chavan, left out the splits provision from the Constitution's Tenth Schedule. The Act further provided that “A member of Parliament or of a State Legislature belonging to any political party who is disqualified under the provisions of the Tenth Schedule shall also be disqualified for being appointed as a Minister or for holding a remunerative political post for the duration of the period commencing from the date of his disqualification till the date on which the term of his office as such member would expire or where he contests any election to either House of Parliament before the expiry of such period, till the date on which he is declared elected, whichever is earlier”. Even with these significant changes the 91st Amendment was not a complete success. The law had no real big impact on the practice of defection. Ever since, the anti-defection law remained a point of discussion among the political circles.

5. UNDERSTANDING THE LACUNA IN THE ANTI-DEFECTION LAW WITH THE HELP OF AN ECONOMIC ANALYSIS

Game Theory

Game theory operates on these fundamental assumptions that build the entire structure. Game theory is dependent on understanding the process of choice making based on expected utility model of decision making. It generates predictions by drawing a connection between choice making and the notion of equilibrium.

¹² INDIA CONST. sched. X, ¶ 4.

¹³ INDIA CONST. *amended by* The Constitution (Ninety first Amendment) Act, 2003.

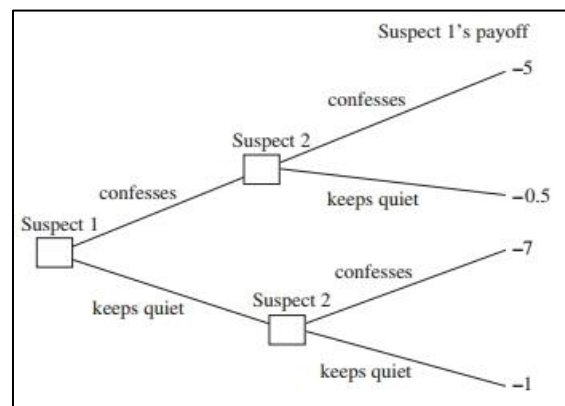
The rules of the game which include the set of players in a game, the choices they avail, their choice and preferences and the information they possess while making their decisions remain exogenous factors and constant.

Two aspects of rationality are especially important for game-theoretic analyses. “The first, common to both nonstrategic and strategic conceptions, is the ability to forgo short-run advantages for longer-run considerations. The second, which is the distinguishing trait of strategic rationality, is that actors choose courses of action based on preferences and expectations of how others will behave.”¹⁴

The General Theory of Prisoner’s Dilemma¹⁵

“Two people commit a crime and are arrested for the same, both of them are interrogated in different rooms, the prosecution offers both of them a deal which states that if they confess to their crime they will get 5 years imprisonment, if one suspects keep quiet and the other confesses, the suspect who kept quiet will get 7 years imprisonment whereas the one that confessed will get only 6 months imprisonment and vice versa. Both of the suspects are also presented with a choice of not confessing where they will be serving a sentence of 1 year.” In this scenario the optimal choice for both the suspects would be to confess and this is where the Nash Equilibrium rests. This is because both the suspects aren’t sure about the course of action taken by their partners, so the safest bet for them would be to confess in order to face minimum punishment.

		Suspect 1	
		Confess	Keep quiet
Suspect 2	Confess	-5, -5	-7, -0.5
	Keep quiet	-0.5, -7	-1, -1



¹⁴ Duncan Snidal, *The Game Theory of International Politics*, 38 WOR. POL., (2016).

¹⁵ SYLVAIN SORIN, *HANDBOOK OF GAME THEORY WITH ECONOMIC APPLICATIONS* (Elsevier B. V., 1992).

Drawing a Parallel Between the Prisoner's Dilemma and the Event of Defection

The players in game theory with regard to defection: the defector, the opposition party and the ruling party.

Instance 1: The event of both suspects confessing and getting 5 years imprisonment is equated to the defector not engaging in the defection process. This is because the defector is unsure about the course of action that would be taken by his political party and believes that there is a high probability of him being disqualified from the legislative assembly.

Instance 2: The event of suspect 1 confessing and getting 6 months imprisonment and suspect 2 not confessing and getting 7 years imprisonment is equated to one person filing an anti-defection suit and the other person being disqualified from the parliament. Because in this scenario, the defector is disqualified from the legislative assembly and is unable to reap the benefits of his "horse-trading", the probability that he will be re-elected after contesting in re-elections is also circumstantial. The probability of the person who files a defection suit may also face the same situation when he decides to defect to another party as a result of retributive politics.

Instance 3: When both the suspects don't confess, both of them get one-year imprisonment, this is equated to the defector not facing any consequences irrespective of the law in force. This option though seems to be the best choice is highly improbable.

In simple game theory, Nash equilibrium is attained when both the persons confess and get 5 years imprisonment after taking into account all the optimal choices available to them. Likewise, in the first instance of defection, there will be deterrence to all prospective defectors, thereby ultimately reducing the number of defectors on a whole.

But in reality the event of defection takes place repeatedly leading to the repeated game theory. Repeated game theory is a situation where the same occurrence happens for an indefinite period of time. Defection as an event has continued to happen for decades in spite of a legal mechanism in place to control it. Irrespective of the parties and the person involved in the event of defection, there are only three probable events that could take place.

Using folk-theorem¹⁶, we are assuming that the defectors are well informed of all the past choices and consequences that took place in recent events. In the long run, we see many

¹⁶ Richard H. McAdams, *Beyond the Prisoner's Dilemma: Coordination, Game Theory, and Law*, 82 S. CAL. L. REV. 209, (2009).

instances of defections going unnoticed or the speaker sits on the petitions for an indefinite period of time. Even though there is a probability of the defector being disqualified in a majority of the cases, he was subsequently re-elected within a few months. A party could also merge with another political party and not lose its seat in the legislative assembly provided that not less than two-thirds of the party members have agreed to such a merger. In this instance, we see that the equilibrium changes, and the optimal choice for the defector are to defect rather than to remain in his original party.

Lack of Defection Petitions Being Filed

“Recent cases of defection is a political stunt of Mukul Roy, who won the March-April Assembly polls on a BJP ticket but switched to the TMC in Kolkata. In the 16th Assembly alone, around 24 of the 44 congress and 8 of the 32 Left MLAs had crossed over to either the TMC or the BJP. Although only 12 disqualification petitions were filed and even in that there was no action taken by the speaker in the disqualification petition.”¹⁷

Defectors Being Re-Elected in By- Elections

A real-life application of the same could be seen in the case of 2020 Madhya Pradesh Political Crisis. A resignation of 22 MLAs along with a senior leader, Jyotiraditya Scindia from the Indian National Congress led to the toppling of the Kamal Nath government following which Shivraj Singh Chouhan came to power. “On 20th March 2020, Kamal Nath resigned as CM prior to the floor test and on the next day, 22 rebel ex-congress MLAs joined the BJP, following which another three congress MLAs had also resigned to join the BJP. Out of the total 25 candidates who defected, 18 of them were re-elected as a BJP candidate. This clearly proves the assumption that defection on a majority takes place because of political gains and probable monetary compensations”.¹⁸

Results of by-elections held on 3rd November 2020:

¹⁷ PTI, *Will seek action under anti-defection law against Mukul Roy if he doesn't quit as MLA: Suvendu Adhikari*, THE NEW INDIAN EXPRESS (Jun. 15, 2021, 05:17 AM), <https://www.newindianexpress.com/nation/2021/Jun/14/will-see-action-under-anti-defection-law-against-mukul-roy-if-he-doesnt-quit-as-mla-suvendu-adhik-2316273.html>.

¹⁸ Mukesh Rawat, *MP govt crisis: Kamal Nath announces resignation, Congress falls and BJP rejoices*, INDIA TODAY (Mar. 20, 2020, 2:23 PM), <https://www.indiatoday.in/india/story/madhya-pradesh-govt-crisis-floor-test-kamal-nath-congress-bjp-1657768-2020-03-20>.

Party	Popular vote		Seats		
	Votes	%	Contested	Won	+/-
Bharatiya Janata Party	2,229,584	49.5	28	19	▲ 18
Indian National Congress	1,825,488	40.5	28	9	▼ 18
Bahujan Samaj Party	259,155	5.75	28	0	—
Communist Party of India		0.08		0	—
Shiv Sena		0.13		0	—
Samajwadi Party		0.25		0	—
All India Forward Bloc		0.00		0	—
Others (Not including NOTA)		2.95		0	—
None of the Above		0.88			
Total/Turnout	4,512,231	70.86			

Source:ECI^{[9][10]}

In the Case of a Merger

In a recent Charade (July 2022) in Maharashtra politics, a Public Interest Litigation was filed in the Bombay high court challenging the defection of legislators on ground of merging with another political parties. Para 4 of the 10th constitution allows the defectors to continue in the legislature and hold constitutional posts until the issue of their disqualification is finally decided. “The PIL urges the SC to declare para 4 of the 19th schedule as ultra vires to the constitution and the legislators defecting their original parties must not participate in house proceedings or hold constitutional posts until their disqualification petition is finally decided.”¹⁹ The issue arose after a section led by Ajit Pawar and Praful Patel broke ranks from their original party and joined hands with the BJP and the Shinde faction. Ajit Pawar was sworn in as the deputy chief minister and 8 other NCP MLAs took oath as Ministers in the Eknath Shinde government. The NCP retaliated by filing a disqualification petition against the 9 members. Ajit Pawar responded by claiming he represents the “real NCP” and Praful Patel had also subsequently announced that Ajit Pawar as the leader of the NCP legislative party in the

¹⁹ Express News Service, *Para 4 of Tenth Schedule of Constitution: PIL in HC challenges provision allowing defection in the name of merger of parties*, THE INDIAN EXPRESS (Aug. 29, 2023, 04:27 AM), <https://indianexpress.com/article/cities/mumbai/para-4-tenth-schedule-constitution-pil-hc-defection-merger-of-parties-8913461/>.

assembly. The supreme court had recently criticized the speaker of the Maharashtra Legislative assembly for postponing the hearing of the disqualification petitions where a total of 56 MLAs, are facing disqualification under the 10th schedule. The speaker had kept the disqualification petitions pending since July 2022, following this the CJI, J. D.Y. Chandrachud had asked the Solicitor General of India Tushar Mehta to advise the speaker on how to proceed further, stating that it was a summary procedure and he must decide upon the 34 disqualification petitions pending before him.

In the Case of Coalition Governments

After the Bihar elections in 2020, the JDU lead by Nitish Kumar emerged as the 3rd largest party with over 40 seats with no single party being able to attain the majority. Since then, Nitish Kumar have switched sides for political considerations. The recent political turmoil in the Bihar state assembly began when Nitesh Kumar was asked to prove his majority in floor test, he switched sides along with all his party MLAs to the NDA alliance from RJD and Congress coalition government. This move resulted in a walkout by opposition MLAs, allowing the Nitish Kumar government to win a 129-0 majority in the trust vote.²⁰ Also, this phenomenon attracted 3 RJD MLAs defecting in support of NDA and JDU alliance with no fear of disqualification. This event depicts the significance of political power over public interest, where politicians de-stabilize the government for retaining power. This incident in the Indian democracy reveals the shortcomings of the anti-defection law while dealing with coalitions. The logic remains incomplete, as a coalition regime taking power and dissolving have the same impact on the overall state of democracy and function similar roles when it comes to toppling elected governments. The law needs to be addressed and corrected to de-incentivize defectors and to protect public will.

Public Choice Theory

Public choice theory refers to an economic approach to the study of politics. “The theory is propounded by Vincent Ostrom, William Niskanen, and Gordon Tullock in the mid-20th century. American Nobel laureate James Buchanan, a prominent Virginia School of Political

²⁰ Santosh Singh, *Three RJD MLAs cross-vote in Bihar trust vote, kin of two ‘bahubalis’ among them*, THE INDIAN EXPRESS (Feb. 13, 2024, 09:02 AM), <https://indianexpress.com/article/political-pulse/rjd-mlas-cross-vote-bihar-trust-vote-9158378/>.

Economy member, characterized the public choice approach to politics as the study of “politics without romance.”²¹ The theory draws its roots from the new rights philosophy, which criticized the concept of the welfare state and elaborated on efficiency by concentration in the core. Public choice theory works to establish a link between economics and political science. It provides an economic angle for the bureaucrats in decision-making. The critical assumption of this theory is that man is a rational being who looks at the logic and facts for making choices. The theory assumes that individuals are utility maximisers who place their interests over the public good. This analysis applies to present-day politics, where politicians choose party jumping over general welfare, and the public ignores politics for personal priorities. Here the application of the public choice theory is two-fold considering the defector on one side and public perception on the other.

From the Perspective of the Defector

The anti-defection law successfully strives to place democratic and constitutional ideas and the interests of the citizenry at the center of the legislative process. The defection law was passed to promote political stability in the government, which is required to protect the citizens' democratic rights in the nation. After the Anti-Defection law was passed, the parliament and state assembly members were forced to follow party directives blindly and lost their ability to cast independent ballots.

As a result, the member is at last more responsible to the party than to the people for whose benefit he was elected. It was made challenging to distinguish between “dissent and defection”, which weakens legislative deliberations on any law. Instead of a democracy based on debate and discussion, the law has produced a democracy of pure politics. This unintended result goes against public choice theory. Where the elected representatives are forced to vote for the prevailing hierarchies over the public interest, the limited scope for the representative to express the problems of his citizens will be defeated by political priorities. The creation of the anti-defection law for protecting democracy proves to be contrary to its original intentions.

One more critical reason for the rapid practice of anti-defection is the benefit derived from the

²¹ Lionel Orchard & Hugh Stretton, *Public Choice*, 21 CAMB. J. ECON. 409, (1997).

same. The ambitious representatives supported by the masses chose to maximize power over the cost of defection. A rational representative's foremost aim is to gain and retain power, which is probable with the choice of defection rather than fulfilling their duties in the opposition party with minimal impact and diminishing political influence. Some other factors that lead to defections are the risks associated with their original political party, hence they join other parties which increases their chance of a prospective win in subsequent elections. Also, factors like negligence in the party, lack of significance in decision-making, ideological differences, etc., contribute to rational decisions.

From the Perspective of the Public

Another essential element that must be considered is the voters' dissatisfaction. The public representative deceiving his or her voters for personal gains will hurt their reputation which may affect the future poles. However, this needs to be addressed by the power-driven leaders. The public perception of an individual keeps changing depending on their utility. The focus of the citizens is shifted through providing high living standards and short-term monetary benefits. This increases the effectiveness of the leader's political influence, which overshadows the lost reputation. Similar to the politicians, the citizens are also assumed to be rational and can identify and maximize their utility. When their needs are satisfied and their wants are approachable, they forget about the politician's reputation and part allegiance. The citizens value the available economic benefits over their leaders' morals and loyalty to his or her voters. This reasoning must raise the question of whether the opposition party can always exercise the remedy to file a disqualification petition before the speaker. This is a very valid question which can be answered in various dimensions. Firstly, the repercussions of a disqualification petition can amount to additional complications like retributive politics. The fear of cases on disciplinary action and reopening of past litigation discourages the opposition members. Also, the high discretion of the speaker over these matters results in unintended consequences. The speaker may sit on the petitions or dismiss the petitions that are in favor of his or her party. These matters are again brought into court, which requires further time and effort.

Speaker's Role

The anti-defection law brought the office of the speakers of legislatures into disrepute. The law makes the speakers the deciding authority in defection proceedings. This decision by the

lawmakers ultimately defeated the purpose of the legislation. To look at this from an economic angle, the speaker is also a rational man striving to maximize utility, as the public choice theory states. He or she, being rational, shall always act according to their advantage. The speaker is not an independent authority, but a party member and will act in favor of the party's political will resulting in no significant sanctions other than ethical considerations. The speaker delays the disqualification process or disqualifies members on irrelevant grounds for an extended period. The speaker's choice to prefer loyalty over ethics gives him a prominent position in the party with probable monetary gains. To support the given argument, relevant examples are cited below.

For instance, in the All-India Anna Dravida Munnetra Kazhagam (AIADMK), the party in power, there was a struggle for leadership of the organization about two years after the anti-defection statute was passed. It happened after M.G. Ramachandran, the chief minister of Tamil Nadu, passed away in 1987. When there was a vote of confidence on the legislature floor, the speaker, who belonged to one party group, immediately disqualified 27 opposition MLAs. Similarly, the court acknowledged the growing pattern of speakers behaving contrary to their constitutional duty to be impartial in *Shrimanth Baladaheb Patil v. Hon. Speaker*²². Thus, this instance again emphasizes the necessity of reassessing the Speaker's duties under the Tenth schedule.

The speaker's actions were also criticized when they had unreasonably prolonged defection proceedings. The speakers did not rule on defection processes in the previous Andhra Pradesh and Telangana legislative assemblies till the end of the legislature's tenure. In the case of *Keisham Meghachandra Singh v. Hon' Speaker Manipur*,²³ "A Manipur MLA who was elected on a Congress ticket in 2017 was appointed to the BJP cabinet as a minister. The speaker postponed the defection procedures against the MLA for more than three years. The apex court's intervention resulted in the MLA's disqualification. "Over the years, their actions in defection proceedings have strengthened the belief that they act as party members rather than impartial adjudicators."

²² *Shrimanth Balasaheb Patil v. Karnataka Legislative Assembly*, (2020) 2 SCC 595.

²³ *Kshetrimayum Biren Singh v. Speaker, Manipur Legislative Assembly*, (2022) 2 SCC 759.

Changing Perspective of the Speaker's Role

In the Speaker Haryana Vidhan Sabha V. Kuldeep Bishnoi²⁴ case, it was said that “The order of speaker's actions regarding defections would be subject to judicial review on the grounds of violating a constitutional obligation, having malicious intent, failing to follow natural justice's standards, and perversity.”

According to the ruling in Ms. Sundaram Finance Ltd. v. Regional Transport Officer²⁵, "the speaker cannot be the sole arbitrator as it would be a clear violation of the basic structure of the constitution as the speaker is someone who is appointed by the majority of the house and therefore the speaker cannot be considered as the sole arbitrator."

The Supreme Court ruled that the decision made by the speaker in the case of Rajendra Singh Rana v. Swamy Prasad Maurya²⁶ in 2007 is unconstitutional because, among other things, it was not supported by any evidence and determined that certain assembly members are not disqualified on the basis of defection. As a result, under Schedule 10, the speaker of the house is given the authority of a sole arbitrator. However, because the speaker is chosen by the majority party, there have been instances in which the speaker has abrogated the representative democracy principle.

“The court found that the Speaker of the Karnataka Legislative Assembly "acted in 'hot haste' and in violation of the principles of natural justice while disposing off the disqualification petition, even though there was no conceivable reason for the Speaker to have taken up the matter in such a hurry" in the B.S. Yeddyurappa Case.²⁷

In an analogous circumstance, the Madras High Court ruled in A.K. Bose, MLA v. Tamil Nadu Legislative Assembly²⁸ that "He should have been given an opportunity to state his case and no such opportunity has been given to him and instead, he has been thrown out of the House which is arbitrary, unreasonable, and in violation of Article 14."

In the case of Kihoto Hollohan v. Zachillhu²⁹ it was held that Para 7 of schedule 10 violates constitutional provisions and attacks the root of the legislation. Para 7 essentially stated that “no court shall have jurisdiction with respect of any matter connected with the disqualification

²⁴ Speaker, Haryana Vidhan Sabha v. Kuldeep Bishnoi, (2015) 12 SCC 381.

²⁵ Ms. Sundaram Finance Ltd. v. Regional Transport Officer, AIR 1992 SC 117.

²⁶ Rajendra Singh Rana v. Swami Prasad Maurya, AIR 2007 SC 1305.

²⁷ Balchandra L Jarkiholi & Ors v. B.S.Yeddyurappa & Ors., (2011) 10 SCR. 877.

²⁸ A.K. Bose, MLA v. Tamil Nadu Legislative Assembly, 2008 (2) LW 1001.

²⁹ Kihoto Hollohan v. Zachillhu, 1992 Supp (2) SCC 651.

of a member of a house” and was subsequently struck down.

All this suggests that the court has taken precedence over the arbitrary power of the speaker and instances of his discriminatory behavior. The court’s suggestion to impose a restriction on the time limit for the speaker to decide upon a disqualification petition and the stance taken by the supreme court to review speaker’s decision in certain instances suggests that the judiciary is moving towards the right direction.

5. SUGGESTIONS

After examining the above-mentioned analysis, it can be rightly inferred that the law is more about arming the political party leadership with more power to deal with rebellious legislators than providing stability to governments. Despite these shortcomings, there are efforts to enhance rather than scrap the anti-defection statute. The following amendments can be made for better enforcement of the law.

1. With the underlying idea that a person elected on the ticket of a political party should remain with it during the life of the House or leave the House, the law must be amended to strengthen the effect of disqualification resulting from defection. One of the amendments in need of the hour is restricting the time on the speaker for the disposal of a disqualification petition. The time limit will help improve the effectiveness of the law where the disqualification is not delayed due to the speaker’s arbitrary power, as shown above. Due to this amendment, the likelihood of disqualification rises, making politicians take a back in choosing defection for complexities involved in re-elections.

Implementing this rule addresses two major problems; firstly, the speaker is highly pressed to make a choice in a stipulated time, which incapacitates the speaker to leave the disqualification petition unattended. Secondly, this restriction builds confidence in opposition leaders to trust the process. The opposition parties will be incentivized to file disqualification petitions before the speaker due to the increase in assurance regarding the response. Even when the speaker delivers a biased verdict, the petitioner will have sufficient time to approach the judiciary. As we proceed in the path of public choice theory, it is vital to develop a legal framework in which the parties are persuaded to make the right choices. Also, implementation of this suggestion goes a long way in curtailing the situation of repeated game theory, where the implementation

of a time limit will help in dealing with the dismissal of the defected legislators. The main problem of defection law lies in its implementation, leading to a situation of repeated game theory where defectors are well aware of the lack of repercussions for their actions. Implementing this suggestion will help in changing that stance.

2. Here, we stand with the recommendations made by several committees, including the 170th Law Commission report. The commission report stated the transfer of discretionary power of the speaker to disqualify the members of the legislature to the President and Governor with the consultation of the election commission in central and state legislatures, respectively. This suggestion if implemented will de-centralize the arbitrary power vested with the administrators to an impartial constitutional body. This method allows the disposal of disqualification petitions to be improved with impartial choices as stated in the public choice theory. The influence of the government is comparatively reduced in deciding the petition.

Dinesh Goswami Committee on Electoral Reforms and the National Commission to Review the Working of the Constitution recommend that “the power to decide on questions as to disqualification on ground of defection should vest in the Election Commission instead of in the Chairman or Speaker of the House concerned.” The Election Commission and “Ethics in Governance” report of the Second Administrative Reforms Commission also both recommended that the issue of disqualification on grounds of defection should be decided by the President/Governor concerned under the advice of the Election Commission instead of relying on the objectivity of the decision from the Speaker.

Through this transfer of power, a significant drop in bias could be observed as we include independent bodies such as the election commission to handle disqualification petitions of political defections. When independent parties with varied preferences gets involved, the strong affiliation to a political group is diluted. The election commission may not completely overtake the political will in decisions, but it helps the system to land at a better position.

3. A better mechanism to end the bureaucratic nature of the law is establishing an independent adjudicating authority. As noted by the court in the case of “Keisham Meghachandra Singh v. Hon’ Speaker Manipur,” there is a necessity for an impartial tribunal after identifying the Speaker’s pattern of partisan acts. We believe that the tribunal should be led by a retired Supreme Court judge, along with two other retired Supreme Court or High Court judges. The judge’s choices in dealing with the disqualification disputes are possibly the

least biased, considering the independent nature of the judiciary. So, there is a higher probability of public good from the rationality of a judge than a party member. The tribunal shall have the power of Suo-moto cognizance and shall take up the Prima Facie cases of anti-defection. We recommend the time period of 3 months for the disposal of a petition. If either party is dissatisfied with the judgment, they shall apply to the Supreme Court within 30 days of the order.

a. The appointment for the tribunal shall be done by the collegium system where the strength of the tribunal can be increased based on the number of cases with a simple majority vote in the center or state legislature.

We don't see any different solution to diminish political partiality to the most possible extent other than handing over the issue to a tribunal. A judge is said to possess the least amount of bias in the Indian governance model, where the judiciary is independent from the other branches. This measure shall deter the politicians from practicing defection where a strengthened independent institution is in place with the power of Suo moto cognizance. Additionally, an independent adjudicating authority helps in Swift's handling of cases and better implementation of the law.

4. Another recommendation to tighten the anti-defection statute is to exclude the vote of a defecting legislator when determining whether a government will remain in power in case of a no-confidence motion. This recommendation is relevant because of the influence of votes in the democratic setup. Imposing restrictions on the voting rights of a defector deters the tendency to commit defection. Due to the fall in the incentives of defection, the opposition parties will not expect more members who are incapable of voting in no-confidence. This effect shall have a direct impact on the benefits of defection. So, a member will not choose to defect, and a political party will not offer as many opportunities for a defector.

Thus, when a defector notices the reduction in advantages with party jumping, he/she shall not risk his/her political career settling for low utility and decide to refrain from shifting parties for a better future in politics. This significant change will help in curtailing the situation of repeated game theory ensuring that the defectors are not being benefited by the subsequent government and that there is a check to the aspect of government toppling.

6. WAY FORWARD

- The unintended nature of the law in prioritizing party responsibilities over the public interest may be explored further to distinguish between dissent and defection. The grounds of defection under the law are possibly interpreted strictly to provide scope for the representative to express. Future research in the area could elaborate on the directions of the whip officer of the political party and the extent to which the binding nature of the party's decisions extends to representatives.
- Another aspect to be considered is the instance on merger. Acting as an exception under the law, the merger is a legal method of wholesale defection. The economic analysis of the instance of a merger may be carried out better to understand the real need and effect of the exception.
- This paper provides several examples for highlighting the practice of defection but lacks a full-fledged data analysis. However, upcoming research may adopt a data-driven approach through an econometric analysis of defection. Theories like cost-benefit or SWAT analysis may be applied to the representatives when deciding to defect.

7. CONCLUSION

"The evil of political defections has been a national concern. If it is not combated, it is likely to undermine the very foundations of our democracy and the principles which sustain it."³⁰ Defection is a prominent political problem rather than a legal apprehension. Even though the search for legal and constitutional restrictions on political defections have merit, the long-lasting solution to the issue can only come from political parties adhering to a core political morality and upholding certain proprietaries of public's choice and preferences.

An analysis of the efficiency of anti- defection law with the help of economic tools helps us to understand the lacuna present in the current framework. Anti-defection law viewed through the lens of repeated-game theory lays down the reason for the surge in defection cases in spite of a framework there to curb and prevent it. Public choice theory helps us to understand the perspective of the public and the legislator where each rational person maximizes his own

³⁰ G.C. MALHOTRA, ANTI-DEFECTION LAW IN INDIA AND THE COMMONWEALTH (Metropolitan Book Co. Pvt. Ltd 2005).

benefit and as long as his wishes and needs are satisfied, they remain nonchalant in the instances of defection.

Legislators' failure to uphold party discipline in India is a matter of political contention between them and their political party. Political parties' leadership needs to put more effort into fostering internal party democracy, communication, and growth opportunities for its members if they wish to attract supporters who follow the party line.