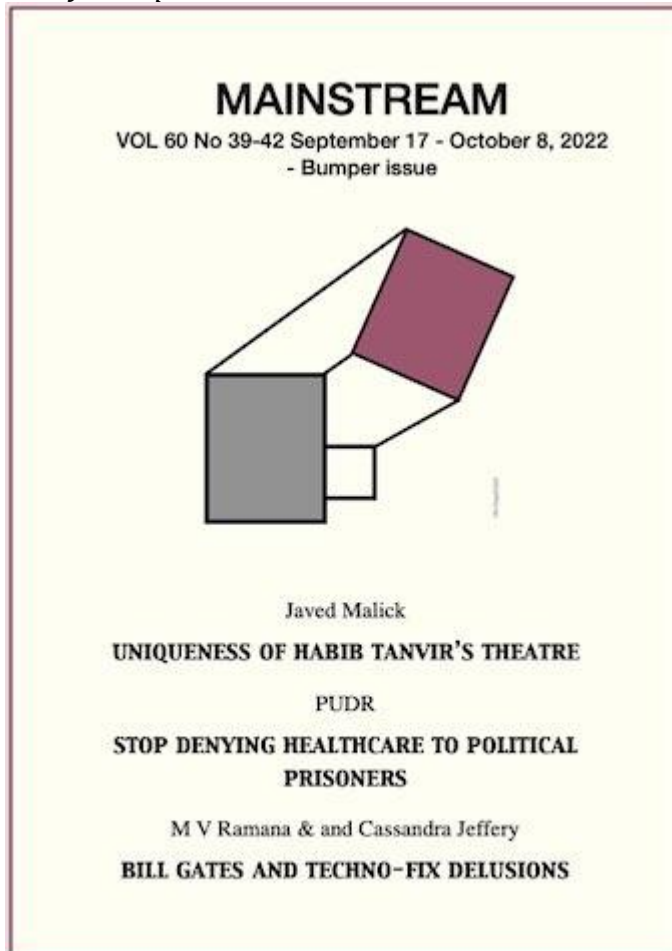


# Mainstream Weekly

ISSN (Mainstream Online) : 2582-7316

## **Table of Contents - Mainstream, Sept 17 - Oct 8, 2022 - Bumper issue**

*Friday 16 September 2022*



### **In the Issue:**

- [Letter to the readers, Mainstream, Sept 17 – Oct 8, 2022](#)
- [Ecosystem-Based Approach to Build Climate Resilience](#) | KN Ninan
- [Banks NPA Problem & NDA Government's Loan Write-Offs](#) | Pranjit Agarwala
- [What is the Civilization State?](#) | Muzban Jal
- [Uniqueness of Habib Tanvir's theatre](#) | Javed Malick
- [Gyanvapi, Mathura idgah disputes a boon for BJP electoral politics](#) | Faraz Ahmad
- [Pakistan – India: Recent Floods and Climate Change](#) | Soma Marla
- [Civil servants serving interest of their political masters](#) | Arun Srivastava
- [Kartavya Path: Another leap towards neo-colonialism!](#) | Prem Singh
- [Anti-Defection Law: A Review](#)] | Giresan & Bendre

- [Empire Strikes Back](#) | LK Sharma
- [What if they missed the gold medal](#) | Bharat Dogra
- [On Rapists' Remission](#) | Sagari Chhabra
- [Cartoon: India@75 – Freedom for whom?](#) | Goel & Kothari
- [Caricature – Tribute to Jean Luc Godard](#) | Jayaraj Vellur
- [Bill Gates and Techno-fix Delusions](#) | Ramana & Jeffery

**DOCUMENTS:**

- [Stop Denying Healthcare To Political Prisoners](#) – PUDR Statement
- [Denial of permission for padyatra by Chhattisgarh Govt Condemned](#) | CPI

**BOOKS:**

- [Book Review: Soviet Hippies](#) | Alexander Vari
- [Book Review: Amazing Truths about Our India](#) | M.R. Narayan Swamy

**IMAGE & SOUND:**

- [Chilean Singer Víctor Jara at an Anti-Vietnam War Demonstration, 1969\]](#)
- [Music: Mikis Theodorakis, Georges Moustaki – Imaste dio \(1970\)](#)
- [TV recording: Harindranath Chattopadhyay](#) | Doordarshan
- [Video: Nancy Fraser on Crisis – David Frisby Memorial Lecture 2014](#)

**Editor's Picks:**

- [\*After 5 Years In Jail, 121 Chhattisgarh Adivasis Are Set Free But Find Freedom Hard To Regain\*](#)
- [\*Divided by borders, united by aspirations\*](#)
- [\*Maternal Instinct Is a Myth That Men Created\*](#)
- [\*'A new way of life': the Marxist, post-capitalist, green manifesto captivating Japan\*](#)

## Anti-Defection Law: A Review | Gireesan & Bendre

Friday 16 September 2022



### Abstract

*The Anti-Defection Law introduced by the Constitution (Fifty-Second Amendment) Act, 1985 has curbed defections and shifting allegiances in our legislatures. However, the law has failed to address some complex problems in Indian politics. The powers of the Presiding Officer to disqualify legislators for defection remain controversial. Over the years, expert Committees and Commissions have concluded that the conditions of the Office subject the Presiding Officers to political pressures resulting in issues such as non-admission of disqualification petitions and delays in adjudication. However, fewer attempts have been made to highlight certain legislative grey areas that require a review. Presiding Officer's power to disqualify legislators while the legislature is in suspended animation, withdrawing disqualification petitions pending with the Presiding Officer, Presiding Officers' Suo Motu powers to act on defection, and taking cognizance of petitions addressed to the Secretary of Legislature are some of the key issues which remain unresolved under the Tenth Schedule of the Constitution. This article, written in the background of the growing political defections, highlights the areas of 'legislative silence', throws light on certain judicial verdicts, and advocates for depriving the Presiding Officer/ Speaker of the power to rule on defection petitions.*

**Key Words:** Anti-Defection Law, Tenth Schedule, Presiding Officer, Speaker, Suo Motu powers, Legislative Silence.

The political landscape in India is riddled with numerous controversies in the present times. To some, it is a matter of amusement. However, as keen observers of politics, we find ourselves concerned. The current political situation has propelled us to explore anti-defection law in India. Through this article, we would like to highlight certain silent areas in the law. And by drawing lessons from history, we would like to conclude by addressing a controversial question: Should the Speaker be deprived of the power to rule on defection petitions?

### Genesis:

Political defections have been at the heart of the fall of popular governments around the world. Many countries had to contend with political instability due to shifting allegiances of the legislators. For instance, in Sri Lanka on two occasions, once in 1964 and later in 2001, governments fell due to defections. According to the former Secretary-General of Lok Sabha, "Defection indicates revolt, dissent, and rebellion by a person or a party. It

connotes the process of abandoning a cause or withdrawing from it or a party or program. Thus, it has an element of giving up as well as an element of joining another. When the process is complete by reason of a person defecting from a cause or a party or a program, he is termed as a defector” (Malhotra 2005: 3–4).

The genesis of anti-defection law in India can be traced to a private members’ resolution moved by P Venkatasubbaiah on August 11, 1967 (Moily 2010). In the Presiding Officers’ Conference held in October 1967 in New Delhi, it was agreed by the members to take up the matter seriously. Consequently, a ‘Committee on Defections’ was constituted under the chairmanship of the then Home Minister, YB Chavan. Further attempts to curb the menace of defections were made via the Constitution (Thirty-Second Amendment) Bill of 1973 and the Constitution (Forty-Eight Amendment) Bill of 1978. However, none of the attempts proved fruitful until the Rajiv Gandhi government introduced the Constitution (Fifty-Second Amendment) Bill in the Lok Sabha on January 24, 1985. The Statement of Objects and Reasons appended to the Bill stated as follows, “The evil of political defections has been a matter of national concern. If it is not combated, it is likely to undermine the very foundations of our democracy and the principles which sustain it. With this object, an assurance was given in the Address by the President to Parliament that the Government intended to introduce in the current session of Parliament an anti-defection Bill. This Bill is meant for outlawing defection and fulfilling the above assurance” (Legislative Department 1985). Following the notification in Official Gazette, the act came into force on March 1, 1985.

**Existing Provisions:**

According to para 2(1)(a) of the Tenth Schedule of the Indian Constitution, a legislator is deemed to have defected if “he has voluntarily given up membership of such political party,” or according to para 2(1)(b), “if he votes or abstains from voting in such House contrary to any direction issued by the political party to which he belongs.” Moreover, the grounds for disqualification for independent members are also prescribed under para 2(2) wherein the law states that a member “shall be disqualified for being a member of the House if he joins any political party after such election.” Furthermore, the law also stipulates disqualification for nominated members under para 2(3) “if he joins any political party after the expiry of six months from the date on which he takes his seat.”

However, the law provides for some exceptions also. As per para 5(a) and 5(b) of the Tenth Schedule, the provisions for disqualification shall not apply to a “person who has been elected to the office of the Speaker or the Deputy Speaker of the House of the People or the Deputy Chairman of the Council of States or the Chairman or the Deputy Chairman of the Legislative Council of a State or the Speaker or the Deputy Speaker of the Legislative Assembly of a State.” Law under para 4(2) exempts disqualification where “the merger of the original political 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.”

It is important here to note that, the provisions of defection and exceptions apply to both Parliament and State Legislatures.

### **Legislative Silence:**

The spirit behind the anti-defection law, as enacted in the mid-eighties was undisputedly laudable. Nonetheless, the law has failed to address some complex problems in Indian politics. In this section, we wish to highlight the grey areas in the law that relate to the authority of the speaker.

1. Can the Speaker rule on defection cases when the legislature is placed under suspended animation?

This question came up in the Selkai Hrangchal and Krishna Singh Case (1992) in Manipur when Amutombi Singh, MLA, and leader of the Janata Dal filed a petition for a decision of the Speaker seeking disqualification of the aforementioned members while the state legislature was under suspended animation (Malhotra 2005: 457–458). In this regard, the Speaker made the following observation on the Tenth Schedule: “... As pointed out by the Supreme Court in the operative part of its order dated November 12, 1991, in a bunch of cases relating to the Tenth Schedule, the Speaker acts as a tribunal in quasi-judicial cases and not as part of the State Legislature while exercising his power under the Tenth Schedule. I hold accordingly that the said proclamation under article 356 of the Constitution does not have the effect of ousting the Speaker from exercising his power under the Tenth Schedule” (Malhotra 2005: 977–978).

## 2. Can a petition filed under the Tenth Schedule be withdrawn?

Another interesting issue came up before the Speaker of the Meghalaya Legislative Assembly in the Lehinson Sangma Case (1988). One of the two questions before the Speaker was whether a petition seeking disqualification already filed can be withdrawn. The Speaker observed that “It is necessary to see the legal position regarding the withdrawal of a complaint under the Tenth Schedule to the Constitution of India before pronouncing a decision which was reserved due to withdrawal of the complaint by the original political party...There is no provision for withdrawal of a complaint under the Tenth Schedule to the Constitution of India. Therefore, the natural inference would be that withdrawal of a complaint cannot be entertained under the Tenth Schedule to the Constitution.” (Malhotra 2005: 978).

## 3. Do the Speaker have *Suo motu* power to decide on a disqualification petition?

According to para 6 of the Tenth Schedule, the question of disqualification “shall be referred” to the Speaker or Chairman. The phrase has been misconstrued as an inhibition of the jurisdiction of the Speaker to act *suo motu*. Nonetheless, the Andhra Pradesh High Court has observed the following in the case of C Ramachandra Reddy Vs the Speaker, Andhra Pradesh Vidhan Sabha (1987). “[The rules] do not inhibit in any manner the jurisdiction of the Speaker to entertain a reference based on information that he may have from any source other than by way of a petition by a member of the House” (Malhotra 2005: 277–278). However, a Division Bench of Jharkhand High Court took a diametrically opposite view in the case of Babulal Marandi Vs the Speaker, Jharkhand Vidhan Sabha (2020). The Court ruled that the Speaker is required to exercise the power for deciding if the question about disqualification is referred for such decision before him/ her. In other words, the Constitution has not conferred any powers on the Speaker to take *suo motu* decisions on the matter of disqualification under the Tenth Schedule.

## 4. Can a disqualification petition be addressed to the Secretary of State Legislature?

One interesting question that came up before Yudhisthir Das, the Speaker of Odisha Legislative Assembly in December 1994 was whether the Speaker

should take cognizance of a petition addressed to the Secretariat of the Legislative Assembly. In this case, the Speaker observed that “though the petition was addressed to the Secretary of the Legislative Assembly, the same was duly placed before him and he had taken cognizance of the matter” (Malhotra 2005: 515–517).

Apart from the aforementioned inconsistencies, the Tenth Schedule also fails to provide directions on miscellaneous issues such as the applicability of anti-defection law in the absence of rules. In the case, Madan Mohan Mittal Vs The Speaker, Punjab Vidhan Sabha (1993), the Punjab–Haryana High Court has placed on record that “in the absence of rules framed under para 8 of the 10th Schedule, it is open to the Speaker, to adopt such procedure as s/he deems fit, proper, expedient and just in the circumstances of any particular case. The law remains silent also on the issue of the rendition of a petition by another representative (Malhotra 2005: 982). The law has also been interpreted in variance on the question of subsequent disqualification of the same members. In the case of Ravi Naik (1991), Simon D’Souza, the acting Speaker of the Goa Legislative Assembly held that the respondent was not allowed sufficient opportunity for his defense and set aside the decision of his predecessor, Surendra Sirsat (Malhotra 2005: 320–323). On the contrary, in the case of Luis Alex Cardozo & Others (1992), the Speaker held that reconsideration of a disqualification petition is prejudicial to the principle of *Res-judicata*, that is, a matter which has been decided and settled (Malhotra 2005: 326–328).

As may be seen, the provisions of anti-defection law have been interpreted differently. In some cases, the concerned members filed writ petitions in the Courts of Law and sought relief, while in some other cases, the Courts upheld the decisions of Presiding Officers. Significantly the decisions in cases of defection have brought to light, myriad perspectives vis-à-vis interpretations. And this brings us to the most enthralling question that needs to be answered.

### **Should the Presiding Officer / Speaker be deprived of the power to rule on defection petitions?**

To address this question, numerous efforts have been made in the past few years starting with the Committee on Electoral Reforms chaired by Dinesh Goswami. In the report submitted by the committee on May 4, 1990, the members recommended that the question of disqualification should not be decided by the Presiding Officer (Committee on Electoral Reforms 1990).

The Supreme Court judgment in *Kihota Hollohon Vs Zachilhu Case* (1991) gave a critical judgment in this regard. The Court *inter-alia* held that the decision of the Speaker of Nagaland Legislative Assembly on a matter of disqualification of a legislator is subject to judicial review (Kaushik 2020). A Committee of Presiding Officers chaired by Hashim Abdul Halim in January 1994 gave the following recommendations (Malhotra 2005: 992):

1. An appeal against the decision of the Presiding Officer may lie in the Supreme Court or the High Court, as the case may be.
2. An appeal against the decision of the Presiding Officer may lie with the President in the case of Lok Sabha, and jointly with the President and the Vice-President in the case of Rajya Sabha.
3. The case may be decided by a committee of senior members of the House and an appeal may lie with the Presiding Officer.

The Law Commission of India (1999) chaired by Justice BP Jeevan Reddy on 'Reform of Electoral Laws' recommended scrapping the provisions regarding splits and mergers. The National Commission to Review the Working of the Constitution (2002) under the Chairmanship of Justice MN Venkatachaliah also made a similar recommendation. The 4th report of the Second Administrative Reforms Commission (2007) chaired by Veerappa Moily suggested that the matters of disqualification for political defection should rest with the President or the Governor on the advice of the Election Commission of India, as the case may be.

And, in *Keisham Meghachandra Singh Vs the Speaker, Manipur Legislative Assembly* (2020) Case, the Supreme Court recommended that an independent tribunal can be appointed which will substitute the Speaker of the Lok Sabha and Legislative Assemblies to deal with matters of disqualifications under the Tenth Schedule to the Constitution.

As can be seen, the recommendations of various Committees, Commissions, Conferences, and Courts have explored the possibility of adjudicating disqualification matters without involving the Presiding Officers. Almost all the Presiding Officers are de-facto members of political parties. This makes them susceptible to political pulls and pressures as well as vulnerable given their career prospects. As the powers of the Presiding Officer concerning political defection were widely contested during the Conference of Presiding Officers of legislatures in India held in 1951 and 1953, a resolution was passed for the adoption of the British Convention in which political parties



do not field a candidate against the Speaker at the time of general elections. And the Speaker can continue in office until decided otherwise. By convention, the Speaker also gives up the membership of his/her political party (Roy 2019).

In India, such conventions may be hard to implement. Nonetheless, it can act as a guiding light for our policymakers. It is therefore prudent to argue that the presiding officer/ speaker should be deprived of his power to rule on defection petitions.

*(Authors: Dr. K. Gireesan, Director, MIT School of Government, MIT World Peace University, Pune - 411038; E-mail ID: gireesan.k[at]mitwpu.edu.in ; Mr. Chinmay Bendre, Research Associate, MIT School of Government, MIT World Peace University, Pune — 411038; E-mail ID: chinmay.bendre[at]mitwpu.edu.in)*

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