ANTI-DEFECTION LAW IN INDIA: AN ANALYSIS OF THE EFFECT OF UNREGULATED WHIP ON PARLIAMENTARY DEMOCRACY

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Abstract

Anti-defection law, as manifested in the Tenth Schedule of the Indian Constitution plays a pivotal role in maintaining the sanctity of a multi-party democracy inside the Parliament. However, the anti-defection law has often been criticised on grounds of having elements which are not in consonance with the principles of parliamentary democracy. The author while giving a brief overview about the need and evolution of this law, have specifically undertaken an in-depth analysis of the paragraph 2(1)(b) of the Tenth Schedule which demands the members of Parliament to act as per the whip issued by their respective political parties. This paper aims to analyse how this despotic mandate by way of party whips undermines the democratic spirit of our nation. The author has embarked upon an elaborate discussion on various sub-concerns and substantial legal questions including the indispensable need of debate and discussion in the Parliament, the fetters on the freedom of speech & expression of the members, right to vote, and their co-relation with the power to issue whips under paragraph 2(1)(b). The paper also analyses paragraph 2(1)(b) by the lens of democratic principles, namely, accountability, collective responsibility and separation of powers. The author has also done a comparative analysis to analyse how defections are dealt with in other democracies, specifically, United States, United Kingdom and Israel. By way of these arguments, the author's aim is to establish that paragraph 2(1)(b) of the Tenth Schedule circumvents the idea of parliamentary democracy and only undermines the constitutionals goals. Lastly, the author has presented some workable solutions to overcome the concerns relating to defection.

Keywords *: Whip, Parliamentary Democracy, Separation of Power, Executive Legislation and Disqualification*

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I. Introduction

THE FRAMERS of Indian Constitution, based on the supposition that since India already had the practice of British system, embraced the parliamentary form of democracy basing its premise on the Westminster Model.[1] The very foundation of the parliamentary democracy which India adopted is the exercise of power, founded on the popular will and the popular control.[2] The representative receiving the legislature's overwhelming support is elected as the head of government. This was indeed the intention of the Constitution framers while considering parliamentary democracy as a model which India should adopt. The progress of this model in India also evidenced the growth of multi-party system as the anti-thesis of populism is perceived to be one political party. The political parties in democracy are often well-established, well-organized and based on ideologies and values. However, sometimes they may be the result of mere rising up much like the mushrooms around a leader or group of leaders without any agenda or theory, motivated by the sheer desire to gain or share political influence.[3] The latter form of party politics is truer in developing countries and so was the case as evidenced in the late 1960s wherein a rampant rise in the defections took place, causing a serious threat to the Indian democracy.

Defections have been termed as a "political evil",[4] "odious form of political corruption",[5] "a pernicious form of political corruption threatening the functioning of parliamentary democracy contemplated in our Constitution".[6] Further, constitutional expert, H.M. Seervai referred to it as "defection in India generally took place because political support is sold for money or for promise of ministership or public office".[7] In a multi-party democracy, such defections are highly prevalent and often damage the dynamics of voters' representation in the house. To curb the menace of this ever-growing disorder, the anti-defection law (hereinafter referred to as "Tenth Schedule" or "Schedule X") was passed by the Parliament in the year 1985.

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[1] Geetika Sood, "Parliamentary Democracy in India: Legal Issues and Challenges" 15(1) *Facta Universitatis - Law and Politics* 96 (2017).
[2] The Constitution of India, art. 75(3) - The Council of Ministers shall be collectively responsible to the House of the people.
[3] Paras Diwan, "Aya Ram Gaya Ram: The Politics of Defection" 21(3) *Journal of the Indian Law Institute* 292 (1979).
[4] The Constitution (Fifty-second Amendment) Act, 1985 – Statement of Objects and Reasons.
[5] Dr. Subhash C. Kashyap, *Politics of Power: Defections and State Politics in India* 41 (National Publishing House, New Delhi, 1974); *Mian Bashir Ahmad* v. *State of Jammu and Kashmir*, AIR 1982 J&K.
[6] *Id*. at 34.
[7] H.M Seervai, III *Constitutional Law of India* 1832 (Universal Law Publishing, New Delhi, 1979).

The main intention of the Tenth Schedule was to bring firmness in the structuring of political parties and strengthening of the parliamentary process by banning floor-crossing. The necessity to check this malice has been intensified by the existence of the very fact that defection was being used as an instrument for engineering government overthrowing and formation.[8] Thus, it was a tool aimed at curing the malaise caused by practices of horse-trading and rampant corruption in the parliamentary functioning.[9] Thirty-five years down the road, it is pertinent to trace the journey traversed by the law so far.

The Amendment in a Nutshell

In his address to the Parliament after the 1984 Lok Sabha elections, the President highlighted the need and importance of a law to prevent defections and stated that the government was deliberating to enact a Bill to make a law in order to outlaw defections. To that effect, in January, 1985, the government presented the Constitution (Fifty-second Amendment) Bill on the House floor. The statement of objects and reasons appended to the Bill stated:[10]

> 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. The Bill is meant for out-lawing defection and fulfilling the above assurance.

In order to arrive at an agreement on the Bill, the Prime Minister consulted the leaders of opposition and all other political groups. The Bill was passed by both houses of Parliament in January, 1985 and received Presidential assent thereafter. It came into force in March, 1985, after being published in the official gazette. By this amendment, Tenth Schedule was appended to the Constitution with an overall objection of preventing the breach of faith of the electorate. The intention behind this amendment was that when a voter votes for a certain candidate, the ideology and the political party, he represents is the dominating factor which

[8] Kartik Khanna and Dhvani Shah, "Anti-Defection Law: A Death Knell for Parliamentary Dissent?" 5 *National University of Juridical Sciences Law Review* 105 (2012).
[9] M.P. Jain, *Indian Constitutional Law* 62 (LexisNexis, Gurugram, 6th edn., 2010).
[10] G.C. Malhotra, *Anti-Defection Law in India and the Commonwealth* 9 (Metropolitan Book Co. Pvt. Ltd, New Delhi, 1st edn., 2005).

influences his choice. Thus, if such candidate leaves his party after being elected, it is tantamount to betrayal of the faith of the voters and therefore, needs safeguard.[11]

Paragraph 2(1)(b) of the Tenth Schedule

Defections are not something which is novel to the Indian democracy,[12] or for that matter to any democracy.[13] They somehow are a fundamental part of parliamentary democracy. But, a mere appraisal of the defections which have taken place in India, raises several concerns and also pose a risk to the democratic principles on which our nation is founded. Thus, the need of the hour as served by the integration of Tenth Schedule into the constitutional mandate is much appreciable. However, certain provisions of the same are a clear breach of the democratic principles, which the Indian Constitution abides by. The author in this paper has examined paragraph 2(1)(b)[14] of the Tenth Schedule in this regard, which in the author's opinion has had some unintended consequences.

A plain reading of paragraph 2(1)(b) of Schedule X makes it clear that the party member is obliged to obey the direction in the case of a mandate issued by a party to vote in any manner on a particular matter. And anything that goes against this directive amounts to defection. This provision needs some serious examination by the lens of democratic ideals which our nation abides by and this paper aims at doing the same. The basic concept that underlies in the working of the democratic government structure is the principle of responsibility and accountability. It ensures that those who wield political influence must also be accountable to those over whom the power is exercised. Apart from this the executive is always answerable to the legislature for its actions. However, when the political party in power issues whip to its members who are part of the legislature, the objectives of both accountability as well as responsibility are infringed because of threat of disqualification under paragraph 2(1)(b). This is in direct breach of the democratic principles which the author has further discussed in this paper.

Further, the division of powers among the three organs of the State, popularly known as the principle of separation of powers is part of the basic structure of the Indian Constitution. The issuance of whip under paragraph 2(1)(b) is a clear violation of this principle as the executive

[11] Arvind P. Datar, II *Commentary on the Constitution of India* 2253 (Lexis Nexis, Gurugram, 2nd edn., 2010).
[12] *Supra* note 3 at 291.
[13] Austin Mitchell, *The Whigs in Opposition 1815-1830* (Oxford at the Clarendon Press, London, 1967).
[14] The Constitution of India, sch. 10, para 2(1)(b).

is interfering and, in a way, directing the other organ *i.e.,* legislature to undertake decision as per the direction issued. Consequently, the division of powers between the executive and parliament is undermined by the permitted authority bestowed upon the party leader. The bestowing of powers in one organ only leads to arbitrariness and infringes upon the liberty of the individuals. Thus, the separation of powers is necessary for the survival of a healthy democracy and paragraph 2(1)(b) deviates from this, which has been further analysed in this paper.

The paper also analyses the interplay between the freedom of speech and expression, parliamentary privileges, parliamentarian's right to vote on one side and the power of issuing unregulated whip under paragraph 2(1)(b) on the other. The issuance of whip is nothing but an unregulated power to issue direction which raises serious concerns. Eminent parliamentary expert, Subhash C. Kashyap has also stated in his works that issuance of whip is a breach of the freedom of speech and expression and parliamentary privileges. The Apex Court in the case of *Kihoto Hollohan* v. *Zachillhu*,[15] did provide some relief by harmonising parliamentary business in this regard. However, the author by indulging in this debate, aims to highlight that paragraph 2(1)(b) is an anti-thesis of the principles of parliamentary democracy and its essential features like accountability, responsibility and separation of powers etc.

II. History of Anti-Defection Law in India

General Developments

As mentioned earlier, the evil of political defections is not an issue attributable only to the Indian political system. Well before defections were seen in India, older democracies like Great Britain were already facing its repercussions. Political stalwarts like Joseph Chamberlain, William Gladstone, Ramsay McDonald and Winston Churchill have changed their party loyalty at one time or another, and even more than once in some cases.[16] Similarly, instances of defection were seen in countries like Canada, Australia and the United States of America.

[15] 1992 Supp (2) SCC 651. Five-judge Constitution Bench judgement.
[16] Dr. Subhash C. Kashyap, *Anti-Defection Law and Parliamentary Privileges* 1 (Universal Law Publishing Co. Pvt. Ltd., New Delhi, 2nd edn., 2003).

Defections in India can be traced back to pre-independence days of central legislative assembly and provincial legislatures. However, nothing was as grave and unprecedented as the political instability in the late 1960s, caused by horse trading before and after coalition governments were formed in many states. Resultantly, several state governments fell one after the other. In most cases, the reason behind the fall were disgruntled and dissatisfied legislators who were not at peace with the prospect of not being able to become a minister in the government. Between general elections in 1967 and 1972, from among 4000 total legislators across the state legislatures and union parliament, about 2000 cases relating to defection and counter defection came to the fore.[17] One member of legislative assembly was found to be defected for as many as five times to become a minister for just as many number of days.

Endeavors for bringing about a law to curb the malice of defections in India can be traced back to 1967, when Shri P. Vekatasubbaiah moved a private members' resolution in the Lok Sabha.[18] While this resolution was being discussed, the propriety of floor crossing and its impact on the growth of parliamentary democracy was also deliberated upon in the Presiding Officers' Conference held later that year.[19] After due deliberations, the task of curbing defections was left to the government. Shri Venkatasubbaiah's resolution was passed unanimously in December, 1967 in its final form by the Lok Sabha. It read as:[20]

> This House is of opinion that a high-level Committee consisting of representatives of political parties and constitutional experts be set up immediately by Government to consider the problem of legislators changing their allegiance from one party to another and their frequent crossing of the floor in all its aspects and make recommendations in this regard.

In 1968, under the chairmanship of the then Union Home Minister, Shri Yashwantrao Balwantrao Chavan, the government set up a committee comprising of both, constitutional representatives of political parties to discuss the question of defections. The primary role of the committee was to consider the problem of frequent political defections. The committee submitted its reports giving various recommendations to overcome the menace of political defections which was tabled in the Lok Sabha on February 18, 1969. Following the

[17] *Id*. at 2.
[18] *Supra* note 10 at 7.
[19] *Ibid*.
[20] *Ibid*.

recommendations of the Chavan Committee Report, two Constitution Amendment Bills were introduced in the Parliament in 1973 and then in 1978. The 1973 Bill was referred to a Joint Parliamentary Committee but it lapsed after the dissolution of the Lok Sabha.[21] On the other hand, the 1978 Bill was met with opposition at the stage of introduction itself and thus, the motion to introduce the Bill was withdrawn.[22]

The Constitution (Fifty-second Amendment) Act, 1985

Schedule X, added to the Constitution by way of the 52nd amendment, sets out the process by which a member of the Parliament or a state legislature, as the case may be, be disqualified from the membership of such house on the ground of defection. Anti-defection law has been seen as a reaffirmation of India's political values by making sure that only people have a voice in making policy. The Act allows for two main grounds for defection – first when a member voluntarily gave up the membership of the political party that had set him up as an electoral candidate, and second when a member abstained from voting or voted against the direction of the party head.[23] In other words, if a member votes against the party's whip, he will be disqualified for defection. In this paper, the author has limited the scope of discussion to the second basis of defection i.e. when a member votes against the direction of the political party. Relevant part of the paragraph 2 reads as:[24]

> **2. Disqualification on ground of defectio**n. - (1) Subject to the provisions of paragraphs 4 and 5, a member of a House belonging to any political party shall be disqualified for being a member of the House-
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> (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 authorised 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.

[21] The Constitution (Thirty-second Amendment) Bill, 1973.
[22] The Constitution (Forty-eight Amendment) Bill, 1978.
[23] The Constitution of India, sch. 10, paras 2(1)(a) and 2(1)(b).
[24] The Constitution of India, sch. 10, para 2(1)(b).

Thus, as per the Schedule X, floor crossing is not the only kind of defection. There may be cases where a particular political party has issued directions requiring all its members to vote in a specific manner on any subject matter. In such a case, legislators belonging to that party are required to vote strictly according to such direction. Voting otherwise than in the manner so directed also constitutes defection.

The person who has the power to issue such directions is called the party's whip. The idea of whip has been adopted from the British Parliament. Whips play a crucial role in the Parliament. They ensure party members attendance and enforce voting on the party lines.[25] The Tenth Schedule specifically envisages that the legislators must cast their vote in accordance with the party's instructions by the way of party's whip. This significantly restricts their individual decision making. By placing a restriction on the choice of voting for parliamentarians, this provision effectively nullifies the purpose of debate in the house. It has also reduced the House's space for freedom of expression in the form of dissent as a corollary.

In order to represent the best interests of his constituents and serve his obligation as a representative in the House, a legislator should be free to vote according to his conscience, and not be firmly tied to the path his party identifies with. In order to guarantee freedom of action of members, intra-party dissent must be permitted on the House floor. It will ensure that no governmental branch is left unregulated.[26] Thus, the author contends by this paper that this unregulated power to issue whips by the political parties is an attack on the basic tenets of parliamentary democracy i.e. debate and dissent, legislative scrutiny of executive actions and separation of powers between the executive and legislature.

Challenge to the Constitutionality of the Tenth schedule

In *Kihoto Hollohon* v. *Zachilhu*,[27] the Apex Court was called upon to determine whether the Tenth Schedule limits the freedom of speech and expression and violates the political freedoms of elected parliamentarians and state legislators. The court took into account a detailed view of how Parliaments and political parties work.

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[25] Subash C. Kashyap, II *Parliamentary Procedure: The Law, Privileges, Practice and Precedents* 2345 (Universal Law Publishing Company, New Delhi, 2000).
The whips issued in parliament can of three types: one-line, two-line or three-line, which indicates the severity and importance of the mandate.
[26] L.S. Amery, *Thoughts on the Constitution* 12 (Oxford University Press, London, 1947).
[27] *Supra* note 15.

The court held that there is a need to maintain party cohesion but only in limited cases. Parliamentary democracy and its essential foundations cannot be compromised to maintain stability within a political party. The court, instead of declaring the provisions of the Tenth Schedule as *ultra vires*, resorted to constructing them harmoniously.[28] It placed a limitation on the types of cases wherein a member could be disqualified for voting against party whip. These cases were motions of confidence, no confidence and matters concerning policies on the grounds of which the political party came to power.[29] The author agrees that motions of confidence and no-confidence are justified cases for disqualifying a member for voting against party lines. However, the issue lies with the matters concerning policies of political party in power. It would not be only difficult, but, in certain instances impossible to ascertain as to what is an important matter and what is not a contributing factor to the victory of political party in power. Thus, a totally minor issue, with no role to play in party's victory may undermine members' right to vote according to their conscience. Subsequently, exposing them to disqualification. Thus, even though the court intended to do the best, this inherent flaw does not restrict, in any manner, the number of issues regarding which whips can be issued.

III. Paragraph 2(1)(b) – A Challenge to the Democratic Principles

In this part, the author has tried to do an in-depth analysis of paragraph 2(1)(b) as to how it breaches the democratic principles which are essential for the smooth functioning of a nation.

Debate and Discussion

Debate and discussion are one of the most important essentials of a parliamentary democracy. Thus, they are an essential feature of the Indian legislature as well.[30] This has been asserted by various academicians who consider Parliament to be an agency charged with the responsibility of debating the various government policies.[31] Further, this sensitive role is exercised by relentless review of all issues posed by the government.[32] There are three readings of a Bill before it is put to vote in a house. The Bill is debated after the second, and to some extent, after the third reading. The Bill is discussed clause by clause during the

[28] *Id*., at para 49.
[29] *Id*., at para 9.
[30] S.H. Belavadi, *Theory and Practice of Parliamentary Procedure in India* 174 (N.M. Tripathi, Bombay, 1988).
[31] J.A.G. Griffith, Michael Ryle, *et.al.*, *Parliament: Functions, Practice and Procedures* 6 (Sweet and Maxwell, London, 1989).
[32] *Id*., at 13.

second reading. After a limited discussion post the third reading, the Bill is either passed or rejected. A debate, even if limited can have significant impact on the voting, and thus, is important. Unchecked use of whip by a party and the lurking threat of disqualification undermines this. The last two readings are effectively rendered useless because even after all the debate and discussion, members will have to vote in a particular manner under compulsion. Hence, it is recommended that decisions made in the Parliament must be deliberated and sustained by reason.

Even in the case of *Kihoto Hollohan* v. *Zachillhu*,[33] this has been reiterated. While emphasizing the value of a separate opinion, the Apex Court stated that "debate and expression of different viewpoints serve as an essential and healthy purpose in the functioning of parliamentary democracy". Thus, it must be the ultimate aim of all rules and procedures followed in the Parliament to facilitate a fruitful debate and a healthy discussion. Without free debate, there can be no scope for a member to register their dissent.

Parliamentary Performance

A detailed appraisal of the functioning of the 16th Lok Sabha for a period of five years i.e. 2014 to 2019, reveals that close to 68% of the Bills were discussed for less than three hours.[34] This is very appalling as debate is very much essential for the appropriate functioning of the democratic process. However, it is understandable that often due to time limitations, it is not feasible for each member to review and scrutinize all of the House's Bills, and thus, committees provide for thorough statutory analysis, offering a venue for input from diverse constituents, and serve as a medium for creating unity between political parties. But, upon bare perusal of the data available, one may find out that the Lok Sabha has referred a considerably lesser number of Bills to committees for analysis which is even more staggering. Just 25 percent of the Bills were referred to Committees in the 16th Lok Sabha Session. Thus, making it much more important for all these Bills to be addressed and discussed at the floor.

Dissent *vis-à-vis* Freedom of Speech and Expression and Right to Vote

[33] *Supra* note 15.
[34] PRS Legislative Research, *Vital Stats: Functioning of 16th Lok Sabha (2014-2019)*, *available at*: https://www.prsindia.org/parliamenttrack/vital-stats/functioning-16th-lok-sabha-2014-2019 (last visited on April 14, 2021).

It is a given fact that only free debate could lead to the scope for expressing dissent. This dissent can be demonstrated by way of either discussion or vote. However, paragraph 2(1)(b) curtails this by mandating that once the political party has mandated a parliamentarian to vote in a specific manner, the political party member cannot vote in a conflicting manner. This authorization comes in picture in the form of a whip. There is no rational connection between this provision of whip and the aim of refining party stability. The author is of the opinion that this mechanism somewhat limits individual decision-making and even in a situation where the member finds value in a contrary view, he is required to obey the directives as per the party whip to which he shows allegiance.[35] It takes away any reason for parliamentarians to really want to know more about laws as they would have to vote along party lines anyway, regardless of their views.[36] This essentially mitigates the need for dialogue and discussion in Parliament by curtailing the power of a parliamentarian when voting.

The unrestricted speech as mentioned above is supplemented by the provision of free voting in Parliament.[37] This is nothing but a mode of expressing one's opinion and is the essence of democracy. In order for a member of Parliament to carry out his duties effectively, he must be given the freedom to vote according to his conscience, and not be bound by his party lines. The right to vote for or against party lines is a legal manifestation of democratic expression of freedom of speech. This freedom of speech is especially important within Parliament, as it can be a source of policy criticism or dissent. The Parliament is required to carry out not only a report on the government's activity but also discuss matters of public interest and vote on Bills. The U.K. Parliament, for example, employs the form of discussion to perform its duties. These functions, taken from a medieval interpretation of the Parliament, apply for a speech or conference to any assembly.[38] A strong repercussion of impeded voting is that paragraph 2(1)(b) has deprived the members from voicing their dissent in the House.[39]

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[35] *Supra* note 8 at 106.
[36] C.V. Madhukar, "House this for debate?", *The Indian Express*, January 3, 2007, *available at*: http://archive.indianexpress.com/news/house-this-for-debate---------/19938/0 (last visited on April 14, 2020).
[37] The Constitution of India, art. 105(2) - No member of Parliament shall be liable to any proceedings in any court in respect of anything said or any vote given by him in Parliament or any committee thereof, and no person shall be so liable in respect of the publication by or under the authority of either House of Parliament of any report, paper, votes or proceedings.
[38] C.H. McIlwain, *The High Court of Parliament and Its Supremacy: An Historical Essay on the Boundaries Between Legislation and Adjudication in England* 27 (Yale University Press, New Haven, 1910).
[39] Mahendra Pal Singh (ed.), *V. N. Shukla's The Constitution of India* 1064 (Eastern Book Company, Lucknow, 13th edn., 2017).

Even if we don't place voting on the same footing, one cannot deny that it is a subject of privilege under article 105(2). Thus, some restrictions can still be placed on the right to vote, and such restriction must be reasonable.[40] However, a restriction in the nature of what has been spelled out in paragraph 2(1)(b) undermines any legitimate scope for dissent.[41] The right to vote for a candidate of one's choice is an essential feature of democracy. Even if the right to vote is a statutory right; the freedom to vote has been recognised as a facet of article 19(1)(a).[42] By extension, voting develops as an indispensable constituent of freedom under article 105(1).[43] Thus, it must not be restricted by the Tenth Schedule.

The wide wordings used in paragraph 2(1)(b) by way of the expression "any direction" has limited parliamentary freedom to vote solely on the basis of conscience. In the case of *Kihoto Hollohan* v. *Zachilhu,*[44] while interpreting the words of paragraph 2(1)(b), emphasised that, "we approve the conclusion that these words require to be construed harmoniously with the other provisions and appropriately confined to the objects and purposes of the Tenth Schedule". However, mass-member political parties' dominance in the electoral process, each of which expects all its members to lead the party line once they are a part of Parliament, has undermined, the distinction between Parliament and Government.[45]

Furthermore, the author finds paragraph 2(1)(b) to be detrimental or even counter-productive to the privilege guaranteed under article 105(1) of the Indian Constitution. The privilege under article 105(1) and even article 194(1)[46] is similar to the freedom of speech and expression ensured under article 19(1)(a)[47]. Although, these are merely parliamentary privileges and not fundamental rights,[48] the ambit of these privileges is much wider, as held in the case of *M. S. M. Sharma* v. *Shri Krishna Sinha*.[49] This can be understood by the fact

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[40] *Mian Bashir Ahmad* v. *State of J&K*, AIR 1982 J&K 26. Four-judge bench.
[41] *Supra* note 25 at 2157.
[42] *People's Union for Civil Liberties* v. *Union of India*, (2009) 3 SCC 200. Full-bench judgement.
[43] The Constitution of India, art. 105(1). It reads as:
Subject to the provisions of this constitution and the rules and standing orders regulating the procedure of Parliament, there shall be freedom of speech in Parliament.
[44] S*upra* note 15.
[45] Andrew Geddis, "Some Questions for the United Kingdom's Republican Constitution" 19(1) *Canadian Journal of Law & Jurisprudence* 177 (2006).
[46] The Constitution of India, art. 194(1). It reads as:
Subject to the provisions of this Constitution and to the rules and standing orders regulating the procedure of the Legislature, there shall be freedom of speech in the Legislature of every State.
[47] The Constitution of India, art. 19(1)(a). It reads as:
All citizens shall have the right to freedom of speech and expression.
[48] *K. Ananda Nambiar* v. *Chief Secretary to the Govt. of Madras*, AIR 1966 SC 657. Five-judge Constitution Bench decision.
[49] AIR 1959 SC 395. Five-judge Constitution Bench decision.

that article 19 has inherent reasonable restrictions, whereas, no such restrictions exist in case of parliamentary privileges.[50] Thus, restricting this privilege raises an inconsistency and the same hinders the democratic values. The restriction as imposed under paragraph 2(1)(b) breaches the right of freedom of speech of a parliamentarian. However, the author would not engage into this debate as there has been sufficient jurisprudence on the same. Nonetheless the author would like to contest that such restrictions go beyond the premise of free speech and expression and challenge the fundamental principles of parliamentary democracy.

The control as sanctioned by the Tenth Schedule restricts the parliamentarian's free speech. The disastrous outcome of that is quality degeneration of debate in the House.[51] Paragraph 2(1)(b) does not allow honest dissent on the grounds of any fundamental reasons as to what might be appropriate for the nation according to the view of a particular candidate, somehow undermines the very object of the free will of Parliament. This works as nothing but a State supported oligarchy.[52] The people may be totally unaware of how their support for a particular party had led to the support for oligarchic tendencies of the party. This connection can only be breached when the party has no active part to play in the voting decisions of the parliamentarians.

The development of a cogitative democracy commands an analytical evaluation of all the predetermined interests of the society.[53] This can be achieved only when the parliamentarians can act freely without any restrictions. An open debate is must for the smooth functioning of the democratic process and the cycle can be completed only if the political members are allowed to exercise their vote in the manner, they deem fit. This should not be risked even if the political members go against the whip issued by the party. The author contests that a voice of dissent or disagreement should always be welcomed as it only strengthens the democratic process by making the parliamentary proceedings more inclusive. Dissent forms an integral part of a parliamentary democracy, however, paragraph 2(1)(b) restricts not only defection but also any form of dissent. The author is of the view that every act of dissent by

[50] Madhavi Goradia Divan, *Facets of Media law* 102 (Eastern Book Company, Lucknow, 2006).
[51] Shalaka Patil, "Push Button Parliament – Why India needs a Non-Partisan, Recorded Vote System" 4 *Anuario Colombiano de Derecho Internacional – ACDI* 163 (2011).
[52] *Id*., at 188.
[53] John S. Dryzek, *Deliberative Democracy and Beyond: Liberals, Critics, Contestations* (Oxford University Press, London, 2000).

the member of a political party cannot be patented, plainly as a defection which entails disqualification.[54]

Every parliamentarian must be given the freedom to showcase his dissent when his political party deviates from its declared path and professed ideology. Such a dissent should be commended as it only infuses democratic values into the institution.

In this context, even the Law Commission recommended:[55]

> So far as the issuance of the whip is concerned, it is not governed by any law. Neither the Rules framed under the Tenth Schedule nor the Rules of Procedure and Conduct of Business in the Lok Sabha/Council of States provide for or regulate the issuance of whip……. It is undoubtedly desirable that whip is issued only when the voting in the House affects the continuance of the government and not on each and every occasion. Such a course would safeguard both the party discipline and the freedom of speech and expression of the members.

Accordingly, the author is of the opinion that paragraph 2(1)(b) in a way curtails the air of democracy in the Parliament, the inherently democratic institution.[56] The aspect of parliamentary representation should not be left to struggle on the altar of pure solidarity between the members of the party.

Accountability and Responsibility

Only in cases of constitutional amendments and not otherwise, do the rules of procedure of the Indian Parliament require the votes of parliamentarians to be recorded.[57] The normal business which takes place in the Parliament requires only voice votes whereas, only in cases wherein, the member demands a division or in case of the constitutional amendments, the recording of votes is mandatory. This has resulted in making the voting process totally mechanical and being ordered as per party politics. Thus, making the whole process questionable as it is devoid of any accountability. As per a study conducted in the year 2006,

[54] S.S. Visweswaraiah, "Deplorable Defections: In Search of a Panacea" 39(1) *Journal of Indian Law Institute* 64 (1997).
[55] Law Commission of India, "170th Report on Reform of the Electoral Laws" (May, 1999).
[56] *Supra* note 8 at 110; Nick Robinson, "Expanding Judiciaries: India and the Rise of the Good Governance Court" 8(1) *Washington University Global Studies Law Review* (January, 2009).
[57] Rules of Procedure and Conduct of Business in Lok Sabha, rules 158 and 367.

it was ascertained that the Parliament as an institution has lost its magnificence owing to its muddled working and various other aspects both within as well as outside the Parliament. One of the most triggering result of this research was that despite of their being various mechanisms to check accountability put in place, political parties exercised power over their party members, thereby inhibiting their performance to a greater extent.[58] The study observed:[59]

> The fact that MPs often consider their primary function as a go-between says something about how the function of representatives is seen in Indian politics. MPs are not often seen as lawmakers; most of their constituents are unaware of the bills they are associated with and they are seldom judged on policy accomplishments.

It is an inherent feature of democracy that an elected official is accountable to his constituents even after he has been voted to the office. His constituents keep him accountable for their votes and actions during his next term re-election campaign. Paragraph 2(1)(b) undermines this accountability, as all his actions and decisions can be explained solely on the basis of the directives of the political party. And the bond between the political official and his constituents is broken.[60] Accountability is the foundation of the republican political system, i.e. those in positions of governmental power must be responsible to those on whom the authority is exercised.[61] Paragraph 2(1)(b) only adds fuel to the contrary, because the leaders of a political party are merely operating on their party's whims which limit their actions to a greater degree and hence, display little responsibility to the House and to the people they serve.

In a representative democracy, the legislature's proper role is to monitor and oversee the administration, i.e., executive; and challenge or request justifications for any of its acts. Thus,

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[58] Devesh Kapur & Pratap Bhanu Mehta, "*The Indian Parliament as an Institution of Accountability"* United Nations Research Institute for Social Development: Democracy, Governance and Human Rights Programme, Paper No. 23 (2006), *available at*: http://www.unrisd.org/80256B3C005BCCF9/httpNetITFramePDF?ReadForm&parentunid=8E6FC72D6B546696C1257123002FCCEB&parentdoctype=paper&netitpath=80256B3C005BCCF9/(httpAuxPages)/8E6FC72D6B546696C1257123002FCCEB/$file/KapMeht.pdf (last visited on April 13, 2021).

[59] *Id*., at 19.

[60] Trina Roy, "Parliament Logjam Part 8: Anti-Defection Law must be curbed to empower legislature, promote deliberative democracy", *Firstpost*, June 21, 2018, *available at*: https://www.firstpost.com/india/parliament-logjam-part-8-anti-defection-law-must-be-curbed-to-empower-legislature-promote-deliberative-democracy-4468399.html (last visited on April 14, 2021).

[61] Adam Tomkins, *Our Republican Constitution* 64-65 (Hart Publishing, Oxford, 2005).

if the Parliament is removed from such a power to seek the executive's responsibility, then the Parliament's role shrinks completely. This further adds to the government's decreased responsibility towards the Parliament.

In the given scenario, consider a political party which has more than fifty percent seats in the Parliament, then there would be very few chances of failing of any legislation as proposed by the executive. For example, the ruling government at present, holds 303 seats out of the total 545 seats in the Lok Sabha (amounts to 55.4%). In such a case, after presenting a particular legislation by the executive, the political party can simultaneously issue a whip directing all the members of their political party (having majority in the House) to act in a certain manner and can successfully pass a Bill. Thus, by way of paragraph 2(1)(b), a democratically elected government can become an autocratic government for a period of 5 years being answerable to no one, as the survival of the executive is dependent on the party instead of the Parliament. Thus, by means of paragraph 2(1)(b), a constitutionally elected government can become an autocratic regime that is responsible to no one for a term of five years, [62] because the executive's existence relies on the party rather than on the Parliament.

Separation of Powers

All the constitutional democracies of the world are focused on a sort of separation between three different branches of government, i.e. the legislative, the executive and the judiciary. This theory, phrased as the separation of powers, has arisen as a bulwark against bestowing power in one single organ which can lead to arbitrariness which is inherently dangerous for the citizens. The doctrine appeared at various stages in several forms. Although, various theorists have concluded that the separation of powers is the basic "essence of constitutionalism"[63] although "a fundamental federal government requirement".[64]

[62] Shoaib Daniyal, "The Political Fix: Has the anti-defection law hollowed out India's representative democracy?", *Scroll*, July 22, 2019, *available at*: https://scroll.in/article/931323/the-political-fix-has-the-anti-defection-law-hollowed-out-india-s-representative-democracy (last visited on April 12, 2021).
[63] Eric Barendt, "Is there a United Kingdom Constitution?" 17(1)*Oxford Journal of Legal Studies* 137 (1997).
[64] M. J. C. Vile, *Constitutionalism and the Separation of Powers* 97 (Oxford University Press, London, 1967); Eoin Carolan, *The New Separation of Powers: A Theory of the Modern State* 18 (Oxford University Press, London, 2009).

The author would like to reiterate the idea of separation of powers as enunciated by Montesquieu in his work '*Espirit des Louis*' (The Spirit of the Laws).[65] The principle as put forward by Montesquieu is self-explanatory. He states:[66]

> When the legislative and executive powers are united in the same person, or in the same body of magistrates, there can be no liberty; because apprehensions may arise, lest the same monarch or senate should enact tyrannical laws, to execute them in a tyrannical manner.

Despite many attempts to do so, the framers of the Constitution rejected the idea of strict separation of powers in *toto*. The doctrine of the separation of powers in India, thus, does not enjoy a constitutional status. There is although, no doubt that Indian Constitution by way of directive principle[67] envisages the application of this principle. However, the constitutional scheme does not embody any formalistic and dogmatic division of powers.[68]

In this regard, the judicial decisions provide more clarity. The Supreme Court in the case of *Ram Jawaya Kapur* v. *State of Punjab*,[69] held:

> Indian Constitution has not indeed recognized the doctrine of separation of powers in its absolute rigidity but the functions of the different parts or branches of the government have been sufficiently differentiated and consequently it can be very well said that our Constitution does not contemplate assumption by one organ or part of the State of functions that essentially belong to another.

The air was cleared when the principle was recognised as the basic feature in the case of *Kesavananda Bharti* v. *State of Kerala*,[70] which was further elaborated in the case of *Indira Nehru Gandhi* v. *Raj Narain*.[71]

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[65] Montesquieu, *The Spirit of the Laws* (1748).
[66] Montesquieu, *The Spirit of Laws* (1748), *as translated by Thomas Nugent (1752)* 173-174 (Batoche Books, Ontario, 2011), *available at*: https://socialsciences.mcmaster.ca/econ/ugcm/3ll3/montesquieu/spiritoflaws.pdf (last visited on April 16, 2020).
[67] The Constitution of India, art. 50. Separation of judiciary from executive-
The State shall take steps to separate the judiciary from the executive in the public services of the State.
[68] Upendra Baxi, "Developments in Indian Administrative Law", in A.G. Noorani (ed.), *Public Law in India* 136. (Vikas Publishing House, New Delhi, 1982).
[69] AIR 1955 SC 549, para 12. Five-judge Constitution Bench judgement.
[70] (1973) 4 SCC 225. Thirteen-judge Constitution Bench judgment.
[71] AIR 1975 SC 2299. Five-judge Constitution Bench judgement.

Those who are members of the Council of Ministers must be a member of any house of the legislature, being a parliamentary form of government.[72] The anti-defection legislation dilutes the division of powers between the executive and the legislature, centralizing the authority of the cabinet.[73] When a legislation is introduced in the House by the government for consideration and passing, it has to discussed by the legislature in the House followed by voting. In this way, a Bill introduced by the executive has to go through the legislative scrutiny. However, when the ruling party issues whip to vote in favour of the bill to its legislators, it renders the whole legislative process meaningless. This is because, irrespective of the individual stand of a legislator who is from the ruling party, he has to vote in accordance with the whip issued by the party. We have already discussed that voting in the house is an essential part of legislative scrutiny. The result of this process is an "executive Legislation" which is contrary to the fact that law making is a primary function of the legislature. So, a Bill introduced by the executive become an Act without any kind of legislative scrutiny due to unregulated use of power to issue whip to its legislators under paragraph 2(1)(b). The author argues that this whole process is in infraction of doctrine of separation of powers which is a basic feature of the Constitution.

IV. Defection in Other Jurisdictions

United States

A more liberal model pertaining to party discipline is followed in the United States. A member of the House can vote on any matter of policy as per their choice and no matter what, such person shall not be disqualified for exercising their vote in a specific manner. Even though the U.S. has a presidential form of government, the legislature maintains separation of powers and keeps a check on the working of the executive. Therefore, the U.S. model is worth considering in terms of voting on the House's board. It is pertinent to highlight here that U.S. has undergone various defections, nevertheless, it does not have any anti-defection law in place.

[72] The Constitution of India, art. 75(5). It reads as:
A Minister who for any period of six consecutive months is not a member of either House of Parliament shall at the expiration of that period cease to be a Minister.
[73] Mohamed Zeeshan, "India's Anti-Defection Law Needs Changes to Promote Party-Level Dissent on Issues like CAA", *The Print*, March 17, 2020, *available at*: https://theprint.in/opinion/indias-anti-defection-law-needs-changes-to-promote-party-level-dissent-on-issues-like-caa/382505/ (last visited on April 19, 2021).

Although, there is no legal framework put in place to check defections, party discipline is something which has been emphasized upon. Strictly speaking, party unity implies the party's solidarity or the willingness of representatives of the party in the legislature to find agreement on policy issues.[74] The party leaders will exert a degree of influence to ensure that the lawmakers belonging to the specific party act as a majority on legislation that is necessary for the resolution of party objections.[75] That control is not, however, a feature of the Constitution. In fact, it is the internal structure of the political parties in the U.S. that allows legislators who do not vote on party lines to be penalized.

As there is no law in place, the penalties inflicted on legislators who do not vote as per the party instructions have come to be ascertained by the court of law in a variety of cases. In the majority of these judgements, the urgings against the sanctions stem from the First Amendment which prohibits the infringement of free speech.[76] *Bond* v. *Floyd* was the first case in this respect that dealt with the interests of a House representative who made anti-Vietnam remarks.[77] The member was disqualified; however, the Supreme Court reversed the decisions on grounds of breach of rights granted under First Amendment.[78] The Court held that the lawmakers were obliged to take a stand on controversial matters. The case of *Gewertz* v. *Jackman*,[79] further developed the underlying concept of a relationship between First Amendment and disciplinary action which can be taken by a decision of a political party as defined in *Bond* v. *Floyd*.

Therefore, it can be seen that a legislator in the U.S. is protected from disqualification in case he wants to oppose his political party on a specific issue. He may be disqualified from a party, but not from the House itself.[80]

Even though the mechanism of defection is controlled internally in the U.S. rather than by way of constitutional provisions as in the case of India. India can very well learn from the

[74] Michael Stokes, "When Freedoms Conflict: Party Discipline and the First Amendment" 11 *Journal of Law and Politics* 751, 753 (1995).
[75] Jonathan Lemco, "The Fusion of Power, Party Discipline and the Canadian Parliament: A Critical Assessment" 18 *Presidential Studies Quarterly* 283, 284 (1988).
[76] Constitution of the United States of America, First Amendment - Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.
[77] 385 U.S. 116 (1966).
[78] Karen Atkinson, "Constitutional Law - Free Speech - Judicial Review of Qualifications of Legislators – Bond v. Floyd, 87 S. Ct. 339 (1966)" 9 *William and Mary Law Review* 245 (1967).
[79] 67 F. Supp. 1047 (D.N.J. 1979).
[80] *Supra* note 77.

U.S. experiences by limiting the scope of penalties that a political party can place on the individual. In India, the imposition of penalties can be scaled down like for example a deficient leader can be excluded from the party without having to cost him his chair in the Parliament. In this way, stress can be made upon political parties to strengthen the regulation of their members internally.

United Kingdom

Like the U.S., the British Parliament does not have a separate anti-defection law, either. That stems from the perception of the role of a parliamentarian as enunciated by Edmund Burke. He stated, "your representative owes you, not just his business, but his judgment; and if he sells it to your vote, he betrays you instead of representing you".[81] Therefore, according to this moderate philosophy, it is appropriate for a leader to break from the party line.

The Burkean explanation for this privilege is somewhat uncertain as people vote for parties rather than individuals, as they do in India. The interest of the electorate rests solely with the party one serves and not the individual himself.[82] Therefore, a parliamentarian's loyalty will rest not with the electorate but to the party he belongs. Burke adopted a democratic judgment, which allowed him to split from his peers. This allows a candidate to conscientiously vote and disagree on his party's specific agenda which may or may not influence his electorate's interests. The internal laws and legislation deal with problems of failure to obey the party line on the house floor.

An observational research conducted during voting on the Nolan Committee Recommendations to classify cases of dissent reveals that dissent is most frequently limited to long-serving backbenchers,[83] representatives planning to retire at the end of the session, and others who have contrasting opinions with the constituency interests.[84] Therefore, dissent is more of a concern for such members.

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[81] Edmund Burke, *Speech to the Electors of Bristol* (Nov. 3, 1774), *available at*: http://press-pubs.uchicago.edu/founders/documents/v1ch13s7.html (last visited on April 20, 2021).
[82] *Supra* note 8 at 121.
[83] In Westminster parliamentary systems, a backbencher is a member of parliament (MP) or a legislator who occupies no governmental office and is not a frontbench spokesman in the Opposition, being instead simply a member of the "rank and file".
[84] R.J. Johnston, C. J. Pattie, *et al*., "Sleaze, Constituency and Dissent: Voting on Nolan in the House of Commons" 29(1) *Area* 23 (1997).

India's system of parliamentary democracy is hugely based upon the Westminster Model. However, U.K. does not have any specific legislation which regulates the issues of defection and regulates the same by internal rules for the conduct of political parties. Similarly, India can also stress for internal rules of conduct to be strengthened in the case of political parties.

Israel

In order to curb defections or floor crossing, the Israeli Parliament – The Knesset made amendments to its Constitution in 1991. This was aimed at promoting unity among members of the legislative parties. The twelfth amendment enacted in Israel and the fifty-second amendment to the Indian Constitution – both impose a heavy cost on a legislator for defecting from his party.[85] Both – the Israeli and the Indian laws regarding defection were passed by almost uniform votes. That is a remarkable occurrence in the legislative history of both the countries.[86]

Floor-crossing has been a regular feature of Israel's parliamentary politics since the election of the first Knesset in 1949; however, unlike in India, defections were never associated with political instability and government crises until the drama in 1990.[87] The political realignment that started in Israel with the 1977 elections brought defections to the center of political instability in the twelfth Knesset (1988–92).[88] In February 1991, the Knesset passed the anti-defection law in the form of the twelfth amendment of the Basic Law of the Knesset.

It places a much softer sentence than the Indian law on defection. The amendment reads as:[89]

> A member of Knesset who leaves his faction and does not resign from office at the time of his leaving, shall not be included, in the election of the next Knesset, in the list of candidates submitted by a party that was represented by a faction of the outgoing Knesset.

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[85] Csaba Nikolenyi and Shaul R. Shenhav, "The Constitutionalisation of Party Unity: The Origins of Anti-defection Laws in India and Israel" 21(3) *The Journal of Legislative Studies* 391 (2015).
[86] *Ibid.*
[87] Csaba Nikolenyi, "The Adoption of Anti-Defection Laws in Parliamentary Democracies" 15 *Election Law Journal* 102 (2016).
It is interesting to note that the Israeli idiom for party defection is *kalanterism*, a term coined after Rahamim Kalanter, a member of the Jerusalem Municipal Council whose famous defection saved the mayor of Jerusalem, Gershon Agron, in office in 1955.
[88] *Ibid.*
[89] The Basic Law: The Knesset, 1958, s. 6a.

However, Section 6a provides that "this regulation shall not apply to a faction split under circumstances determined by the Knesset Election Law". Two such conditions are provided for under the statute. First, is where the defecting party, composed of at least three members of the Knesset are also equivalent to at least one-third of the faction. Second is where defection takes after the list of nominees is registered, but prior to elections.[90] The 1991 amendment to the Basic Law: The Knesset also included the provision concerning defections during (no) confidence votes, stating that:[91]

> resignation from a faction – including a vote in the Knesset plenum not in accordance with the position of the faction concerning the expression of confidence or no confidence in the government; voting shall not be construed as resignation if the Knesset member has not received consideration in exchange for his vote.

The word "consideration" has also been defined in the law. It means, "directly or indirectly, by a promise or future commitment, including the assurance of a place on a list of candidates for the Knesset, or the appointment of the Knesset member himself or someone else to a certain position."[92]

Two things can be concluded here. First, that the member will not be disqualified immediately from the House membership. The representative shall not be permitted to contest the election for the next Knesset in the event of a disqualification under the law. Second, in the event of a vote of confidence motion or no confidence, if the legislator has not received any consideration in exchange for his vote, then the legislator is not bound to vote in accordance with his party's position. Otherwise, it will be treated as floor-crossing without resignation.

Here, the legislators can only be punished only when they vote against the direction of party on motion of confidence or no confidence for some considerations. These considerations are also well defined in the law. Takeaway for India is that the scope of disqualification should be limited to specific instances only instead of disqualifying members for not following party's directions on trivial issues.

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[90] *Supra* note 88 at 401.
[91] *Ibid.*
[92] *Id*., at 402.

V. The Way Forward

The wide wordings and application of paragraph 2(1)(b) have directly resulted into the harms caused by it. Even though its scope was read down in *Kihoto Hollohon,* no mechanism was provided to challenge a whip that was not in conformity with constitutional boundaries. No guidelines were framed by the court to ensure that the presiding officer of the House keeps the court's observations in mind while adjudicating upon a matter of defection. There is a lack of formal regulation for issuance of whips. The disqualified member has no remedy before the completion of disqualification process and only *ex post facto* remedy is available by way of challenging it on grounds of unconstitutionality. This means that legislators are most likely going to obey the political party's instructions at the time of voting.

In 1990, a committee constituted by Ministry of Law and Justice on electoral reforms recommended to restrict the grounds of disqualification under paragraph 2(1)(b).[93] It proposed disqualification must only be enforced in cases of vote of confidence or of no-confidence motion. The Law Commission in its 170th report in 1999, recommended measures to remove some lacunas in the anti-defection law.[94] It suggested that the issuance of whips must be regulated. The commission recommended to limit the issuance of whip to the instances when the government is in danger.

The inability of members to express dissent freely encouraged the then member of Parliament, *Sh. Manish Tiwari* to move a private member's bill.[95] Interestingly, *Manish Tewari* was elected to the Parliament on the ticket of the then ruling party, Indian National Congress. He proposed an amendment to the Constitution to limit the scope of paragraph 2(1)(b) along the following terms:

> (i) motion expressing confidence or want of confidence in the Council of Ministers,
>
> (ii) motion for an adjournment of the business of the House,
>
> (iii) motion in respect of financial matters as enumerated in articles 113 to 116 (both inclusive) and articles 203 to 206 (both inclusive),

[93] Government of India, "Report of the Committee on Electoral Reforms" (Ministry of Law and Justice, May, 1990). This committee is known as Goswami Committee.
[94] *Supra* note 55.
[95] The Constitution (Amendment) Bill, 2010, Bill No. 16 of 2010. (hereinafter "Bill").

(iv) Money Bill.

The Bill addresses a very important point that the political parties must be allowed to issue directions to its legislators when there is a threat to the stability of the government. It is important to note that the stability is not limited to confidence motion or no-confidence motion. The government's existence can be in danger through a motion of no-confidence, money bills and some crucial financial matters. The Bill keeps in mind the previous experiences of Indian democracy and try to balance the interest of political parties and legislators.

The recommendations of the *Dinesh Goswami* Committee and the provisions of the Bill to narrow the extent of disqualification provided under paragraph 2(1)(b) are not identical to the recommendations of the 170th Report of the Law Commission. The distinction is that the former provides for limiting the scope of a constitutional clause while the latter provides for restricting whip issuance to occasions where the government is at risk.

Placing a direct restriction on the use of whip will be an impediment to the associational rights of political parties. Thus, it is necessary that the scope of disqualification under paragraph 2(1)(b) is reduced.[96] The associational rights ensure that political parties are able to formulate their own rules and procedures and also provide for punishment in event of their violation.[97] Issuance of whip and the manner in which party deals with cases where someone acts contrary to the whip is also part of these rules. Resultantly, any restriction on whip issuance could may amount to unreasonably restricting parties' rights to manage their own internal affairs.

As per the discussions made in this paper, it can be understood that Indian Parliament introduced the anti-defection law to introduce stability to the government and to reduce the influence of money power in politics. Although, by modifying the relationship between government and legislature and reducing administrative responsibility to Parliament, the legislation has changed the fundamental framework of the Constitution. It has also limited freedom of expression and voting rights, thereby, diminishing the constitutional privilege provided to elected representatives. The legislation also limited the accountability of the

[96] Constitution of India, art. 19(1)(c). It provides that all citizens shall have the right to form associations or unions subject to reasonable restrictions provided under art. 19(4).
[97] *Supra* note 77 at 777.

member of government towards the individual constituents, thereby, eliminating the citizen's political right to have representation in the decision-making process.

The political parties being part of the legislative structure render the House proceeding pointless to great extent by the issuance of whip. This goes totally against the guiding principles of the Indian democratic structure. It is an accepted phenomenon that progressive and mature democratic nations are inclined to enact legislations that require or promote the politics of competitive parties. Thus, as per the suggestions made, the anti-defection needs an overhaul so that a balance can be achieved between party stability and maintain the essence of democratic principles which our nation adheres by. This will overturn the unintended consequences of this legislation and provide brick and mortar to the model of parliamentary functioning in India.

VI. Conclusion

The effect of issuance of whip in the house is to curb any defective vote on a Bill and any member going against the party whip would face disqualification. This forms step one of surpassing the collective will of the Parliament. Secondly, when a Bill is presented, it is largely based on the opinion of the Council of Ministers i.e. the ruling dispensation. This constitutes step two of surpassing collective will of the Parliament. On a combined construction of these two provisions, it is observed that if a Bill is voted upon in the House after issuance of whip on the members, it would effectively lead to an act of direct legislation by the Council of Ministers i.e. an act of executive legislation. Such a scenario would be in gross derogation of the fundamental concept of separation of powers vested in the Indian Constitution.

In the light of the above submissions, it can be concluded that the anti-defection laws need heavy balancing to be done within the Constitution. At any point of time, the tenure and freedom to put forth their views in public interest need to be protected at any cost. It is often seen that laws either suffer from over-regulation and under-regulation. The anti-defection laws suffer from the latter and restrict more than the Constitution would permit them to. It is this balancing that this paper demands from the legislature.