**JUDICIAL INTERPRETATION OF ANTI-DEFECTION LAW**

**Introduction**

Defection is a common occurrence worldwide, not only in India. It is widespread in all democracies that have embraced the party system. The British House of Commons is where political defections first blossomed. Therein, if a lawmaker was discovered to cross the floor, the party deemed him disloyal. On the floor of the Indian Parliament, the politics of defection had been a rare and well-known phenomenon that was slowly consuming the democratic spirit. In India, the need for tackling defection was felt after 1967. Before 1967, the cases of defection were mostly at the level of the State. These defections were not merely motivated by a desire for power; they were also motivated by ideological disagreements. The act of switching allegiances in order to achieve office became known as ‘horse-trading.’ To curb this problem of political defections, after taking the initiative in 1973 and 1978, the (Fifty-Second Amendment Bill), in 1985 was passed. The 10th Schedule of the Indian Constitution, often known as the Anti-Defection Law, contains the defection-related laws. It was added by the Constitution (52nd Amendment) Act of 1985 and then updated by the Constitution (91st Amendment) Act of 2003. Additionally, the constitutionality of the anti-defection law was contested for the 1st time before the Punjab and Haryana High Court in Parkash Singh Badal vs. Union of India. The 10th Schedule is legally legitimate, with the exception of Paragraph 7, according to the Court's ruling. However, the Supreme Court invalidated Para 7 of the Schedule, which prevents courts from having jurisdiction, in the most relevant case, *Kihoto-Hollohan v. Zachilhu*. This article attempts to investigate whether or not representational democracy has lost its core as a result of political defections.

**1. DEFINITION OF DEFECTION**

The 10th Schedule of the Indian Constitution and the Rules adopted thereunder do not define the word ‘defection.’ There is no specific definition of ‘defection’ in the Indian Constitution. It primarily addresses defection in 2 ways: firstly, voluntarily leaving a political party; and secondly, voting or refraining in opposition to any instructions given by a political party.[[1]](#footnote-1) However, neither the 10th Schedule nor the Rules made thereunder define the phrase ‘voluntarily giving up membership.’

Defection as defined by Prof. Madhu Dandavate[[2]](#footnote-2):

“Defection occurs when a legislator who was given the reserved symbol of one political party renounces allegiance to or association with that party after being elected to the state legislature (either house or the legislative assembly or council) but not as a result of a decision made by that party.”[[3]](#footnote-3)

The SC in *Kihoto Hollohan v. Zachillhu* *and Others[[4]](#footnote-4)* describes defection as ‘After being elected to either the Legislative Council or Legislative Assembly or the House of Parliament of a Union Territory or State, a legislator who previously received the reserved symbol of another political party is considered to have defected if he or she renounces allegiance to or association with that party voluntarily and not in accordance with a decision made by that party.’

However, in *Ravi S. Naik v. Sanjay Bandekar[[5]](#footnote-5)*, the Apex Court made the undermentioned comments regarding anti-defection legislation[[6]](#footnote-6), Even in the lack of a formal resignation from membership, it may be assumed from a member's behavior that he has "voluntarily given up membership" of the political party to which he belongs. The term "voluntarily given up membership" is not the same as ‘resignation’ and has a broader sense. Defection, in essence, is the act of a party member renunciation his allegiance to that party and declaring his allegiance to a different party.

**2. LANDMARK JUDGEMENTS ON ANTI DEFECTION LAW**

The process of the anti-defection law in the Union Parliament and in State Legislatures has reflected a number of peculiarities in interpretation or procedural as well as operative aspects of the law. To properly appreciate the law, its usage, and its impact on our democratic polity, it is very important to go through some of the significant cases which are decided by the Hon'ble Courts of the nation. Some of the landmark cases are discussed in brief as under: The 1st need for liberty is seen to be the freedom of speech. Because it is highly visible and important in the hierarchy of rights, the freedom of speech is occasionally referred to as the mother of all other freedoms. The right to free speech is now largely regarded as being a necessary element of a free society and as such, it must always be preserved. An unrestricted exchange of ideas in a public arena is the fundamental tenet of a free society. The freedom to express ideas and thoughts without restrictions, especially without fear of retribution, is important to the growth of that specific society and, eventually, to that State. The most significant basic right protected from state repression or control is this one.[[7]](#footnote-7) The rights discussed under Art. 19[[8]](#footnote-8) are the rights of free men. These rights were created by Natural Law or Common Law rather than by any law. Each citizen is thus entitled to exercise these rights, subject to any limitations that the State deems appropriate.[[9]](#footnote-9)

In one of the most remarkable judgments *Kihota Hollohon v. Mr. Zachillhu & Others[[10]](#footnote-10)* on December 12, 1990, Khusatho, L. Mekiye Sema, and Zachilhu, Sarvashri Konngam, and T. Miachieo, MLAs were sued under the 10th Schedule for voluntarily leaving their original political party, the Congress (I), by MLA of Nagaland Legislative Assembly, Shri Kihota Hollohan. Due to individual resignations that led to a division of the Congress (I) Party, the aforementioned individuals didn’t makeup 1/3rd of the 24 Congress (I) MLAs who were currently serving in the House. The Assembly's Speaker dismissed all five of the aforementioned legislators. The Speaker's ruling was contested before the Gauhati High Court. The Constitution (52nd Amendment) Act, 1985's introduction of the 10th Schedule to the Constitution was contested on a number of grounds, including its constitutionality. In addition, other writ petitions were filed with several HCs around the nation contesting the Speakers' rulings as well as the legitimacy of the 10th Schedule. Each of these petitions posed important legal and constitutional problems, thus at the Government of India's request, the SC transferred them all to itself.

The Punjab & Haryana High Court saw Para 7 of the above-mentioned Schedule, which restricts the courts' ability to hear cases, as being beyond their authority. The administration has appealed this decision to the Supreme Court. To consider these whole special leave petitions, writ petitions, civil appeals, as well as transfer petitions, the Supreme Court set up a 5-judge Constitution Bench.

Issues involved in this were: -

***(a) Constitutional Validity of the 10th Schedule***

In this case, it was argued that the Constitution's 10th Schedule was unconstitutionally presented by the Constitution (52nd Amendment) Act of 1985. With a 3:2 vote, the Hon’ble SC upheld the amendment's and the 10th Schedule's provisions as constitutional, apart from Para 7, which was deemed to be unconstitutional.

***(b) Freedom of Speech & Expression***

The 10th Schedule was also contested on the grounds that it violates the Constitution's fundamental principles of the right to dissent, freedom of speech, parliamentary democracy, and freedom of conscience by disqualifying elected officials from exercising these rights, which are vital to the parliamentary democracy system's survival.  The nation's Supreme Court ruled that the 10th Schedule's provisions are legally lawful since they do not infringe upon any rights or freedoms guaranteed to elected members of Parliament or State Legislatures under Articles 105[[11]](#footnote-11) or 194[[12]](#footnote-12). The alleged violations of their rights to free expression, freedom of conscience and free elections, are false. The provisions of the 10th Schedule are not supposed to hold members of a House accountable for their statements or votes in parliament, and the freedom of expression is not absolute.

***(c) Jurisdiction of the Courts***

As stated in Para 7 of the 10th Schedule to the Constitution, it has the benefit of eliminating the HC's and the SC's jurisdiction under Art. 226 & Art. 136, correspondingly, with regard to any issue involving the disqualification of a member of a House under the 10th Schedule. As per the Proviso to Clause (2) of Article 368, the Constitution (52nd Amendment) Act establishing Para 7 of the 10th Schedule was not supported by fifty percent of the Population of the state, making it ultra vires and illegal. However, if Para 7 were to be found to be unconstitutional, the entire Constitution (52nd Amendment) Act, 1985, would not be subject to being overturned.

***(d) Applicability of Doctrine of Severability***

Whether the law of severability applies to constitutional amendments was one of the main points of contention. According to the Proviso to Art. 368(2) of the Constitution, Para 7 of the 10th Schedule needed to be approved; however, this was not done. According to the severability concept, it is feasible to argue that the provision included in Para 7 of the Schedule is separate from and unrelated to the major provisions of the 10th Schedule, which are planned to address the issue of unethical and unprincipled political defections. As a result, this part is a severable part.

Other than Para 7, the other provisions of the 10th Schedule exist independently of Para 7, are sufficient on their own, and are not ended prematurely by the removal of Para 7. The remaining provisions of the 10th Schedule are thus not regarded as unacceptable since Paragraph 7 was not ratified.

The Supreme Court of India stated that laws passed by bodies that do not have unrestricted legislative authority are the only ones that can raise the query of whether a statute that is invalid in part should be treated as invalid in its entirety or whether it can be enforced in relation to the part that is valid.[[13]](#footnote-13) The Court relied on the doctrine of separation explained by Cooley.

***(e) Conclusiveness of Decision of Presiding Officers***

The validity of 10th Schedule Para 6, which grants the Speaker and Chairman's decision finality, was a key additional question. The Apex Court noted that:

If the clause makes the Speaker's decisions definitive, then it should be upheld. However, judicial review is a power granted by the Constitution to the HCs and the SC. There should be no judicial review of any proceedings until a decision is made by the Speaker and Chairmen.

The 10th Schedule’s Paragraph 6(1)[[14]](#footnote-14) is legitimate insofar as it attempts to give the Speaker’s or Chairmen’s decision finality. The courts' authority under Article 136,[[15]](#footnote-15) 226, and 227[[16]](#footnote-16) of the Constitution is not completely rejected by the finality provision in Para 6. It does, however, have the impact of limiting the Apex Court's as well as the High Courts' scope of jurisdiction.

***(f) Adjudicatory Power of Speaker***

The Speakers and Chairpersons play a very important in the parliamentary democracy system as the custodians of the House's rights and privileges. The high office would be wrong to claim that the 10th Schedule's grant of determinative authority to it would invalidate a fundamental aspect of democracy. The Court concluded that the clause is invalid and unsound because giving the Speaker or Chairman authority to make decisions would not by itself render it invalid due to the possibility of political bias. In *H. H. Maharajadhiraja Madhav Rao Jiwaji Rao Scindia Bahadur v. Union of India*[[17]](#footnote-17), it was decided that the Court is the appropriate venue under Indian law for resolving legal disputes. The right of a person who feels wronged to seek recourse in the courts to have his rights determined shall not be denied unless the courts' authority is expressly prohibited by law or required inference. Any clause that seeks to limit a court's ability to hear a case or deny an injured party their ordinary remedy will be severely interpreted.

In *Parkash Singh Badal and Others v. Union of India and Others*,[[18]](#footnote-18) there were 73 MLAs in the Shiromani Akali Dal Legislature party. On 7th May 1986, the Akali Dal Legislature party presented a memo to the former speaker Shri Ravi Inder Singh, they reminded the Speaker that they had been elected to the Punjab Vidhan Sabha on the Shiromani Akali (Longowal) ticket, but that the party's current leader, who had fundamental differences with S. Surjit Singh Barnala, Chief Minister of Punjab, had decided to create a different Legislative group of the Shiromani Akali Dal, and had thus asked the Speaker to reveal their identities. The speaker at that time acknowledged the organization. In the aforementioned ruling, the Honorable Speaker said that the newly formed Akali Dal Legislative Party didn’t suffer any disqualification due to the clause in Para 3 of the 10th Schedule. Based on the petition the former CM had presented to the new Speaker, who had now assumed control, the Speaker gave each member a display notice. The key question in this decision was whether the petitioners should be given a chance to demonstrate their eligibility for membership in the Punjab Legislative Assembly under Art. 191(2) as read with Paragraphs 2 & 6 of the 10th Schedule and his order of July 4, 1986. The Constitution (52nd Amendment) Act of 1985 was found to be legally valid overall, apart from Paragraph 7 of the 10th Schedule, according to the Hon'ble Court. Para 7 of the Schedule of the Constitution is thus declared unconstitutional and stillborn.

**3. JUDGEMENTS ON ROLE OF GOVERNOR UNDER 10TH SCHEDULE**

In our political system, the position of governor of a state has enormous importance. It is regarded as one of the foundations of the ‘checks and balances’ system of which our democracy is so proud. The Lieutenant Governors and Governors of the Union Territories and the States of our country have been given authority and responsibilities that are similar to those of India’s President at the Union level. Since the Governor is the de jure head of the State Government, all executive decisions are made in his or her honor. While the Indian President is ‘elected,’ the Governor is ‘selected’ through compulsion by the current central government.[[19]](#footnote-19) Article 153 to 163[[20]](#footnote-20) deal with the role, power, and functions of the Governor.

A Governor acting in line with processes started under the 10th Schedule would be acting improperly under the Constitution. The Governor has been given no authority to take any action on reviewing the 10th Schedule's provisions regarding a member's disqualification.[[21]](#footnote-21) Therefore, the governor should maintain his distance and refrain from attempting to decide who should lead the legislative party or solve conflicts in a political party. If the governing party withdraws its support and the government is set to fail, calling for the start of the constitutional process might result in disqualification under the terms of Para 2(1)(a) of the 10th schedule. Whether the letter sent to the Governor withholding support results in disqualification under the 10th schedule depends on how it affects the stability of the government.[[22]](#footnote-22)

In *Nabam Rebia, and Bamang Felix v. Deputy Speaker and others*[[23]](#footnote-23) the SC restored the Congress Government of Arunachal Pradesh which was dismissed by the Centre by imposing President’s rule and also elucidating the role of Governor under 10th Schedule. The observations of the Court regarding the role of the Governor are as given:

1) That the governor does not have the jurisdiction to settle disputes inside a political party or between competing political parties, as provided for in Articles 163, 174, 175, 179, and the 10th Schedule. The Governor's action of raising the President's attention to a real problem may have been warranted in order to highlight the political atmosphere of the state. However, it is obvious that the Governor's power to intervene through his constitutional post and use that power to resolve the issue is outside the bounds of his constitutional authority.

2) The Governor has not been granted a role in the procedure, making any direct or indirect engagement with it unlawful, even if a petition is presented to have one or more MLAs declared ineligible under the 10th Schedule.

3) The Governor cannot call an Assembly meeting in the absence of any recommendations from cabinet and set an agenda for the session which is prerogative of Speaker.

4) Under Article 179, the Governor has no authority to depose the Deputy Speaker or the Speaker. The decision on whether to approve or reject the Speaker's dismissal rests with the lawmakers.

5) A challenge to a decision taken without the governor's consent would be covered by the judicial review and would be rejected.

In this landmark judgment *Nabam Rebia v. Deputy Speaker Arunachal Pradesh*,[[24]](#footnote-24) 60 members of the Arunachal Pradesh State Legislative Assembly where the party position was Bharatiya Janta Party 11 MLAs, Indian National Congress 47 MLAs, along with 2 Independent MLAs. There were disputes among INC MLAs about Shri Nabam Tuki's leadership as the state's CM. The dissident MLAs called for the Chief Minister, Nabam Tuki, to be replaced. 16 INC MLAs submitted a notice of motion on November 16, 2015, calling for the dismissal of Tenzing Norbu Thongdok, the Deputy Speaker. The Deputy Speaker entered the House of Representatives under the INC ticket. 13 MLAs (11 BJP & 2 Independent MLAs) submitted an identical notice of resolution to remove Speaker Nabam Rebia on November 19, 2015.

In a petition submitted under the 10th Schedule on December 7, 2015, the Chief Whip of the Congress Legislature Party requested the disqualification of 14 INC dissident MLAs, including the Deputy Speaker, for their anti-party conduct. To guarantee that the Speaker removal notice was submitted on December 9, 2015

**4. JUDGMENT ON DISQUALIFYING THE PETITIONERS TILL THE END OF THE TERM OF LEGISLATIVE ASSEMBLY**

Recently, in a matter of 2019, *Shrimanth Balasaheb Patil v. Hon’ble Speaker Karnataka Legislative Assembly and Others*[[25]](#footnote-25) the results of the 15th Karnataka Legislative Assembly were announced on May 15th, 2018. Here are the results for the competing political parties: BJP [Bharatiya Janata Party] - 104, Bahujan Samaj Party - 1, JD(S) [Janata Dal (Secular)] -37 KPJP [Karnataka Pragnyavantha Janatha Party] -1, INC [Indian National Congress] -78, Independent - 1 and Total 222

The petitioners in this case were elected to the 15th Karnataka Legislative Assembly, despite the fact that the only biggest party in the state was the BJP. Under Mr. Kumaraswamy's direction, an INC and JD(S) coalition government was established. This administration only lasted for about fourteen months. The present Petitioners' case is set against the backdrop of events that led up to the Chief Minister's resignation on July 23, 2019, after the trust vote had been postponed for several days.

Issues of the case were:

***a. Disqualified the Petitioners till the End of the 15th Legislative Assembly Term***

All of the Petitioners approached the Apex Court under Article 32 after feeling aggrieved by the aforementioned disqualifications. The nation's highest court declared, in light of the reasoning above, that each case's particular facts and circumstances determine whether or not a specified amount of time was granted. No one should interpret that to indicate that the Speaker might end the hearing early. Before making a decision regarding a disqualification proceeding, the Speaker should give a member ample opportunity, and they should typically adhere to the deadline set forth in the Rules of the Legislature. Until the end of their term has passed, the Speaker cannot remove a member from office in accordance with the present constitutional obligation. A member disqualified under the 10th Schedule, however, is subject to the sanctions outlined in Articles 361B, 164(1B), & 75(1B), It prohibits him from being named a minister or holding any high-paying political job from the date of his disqualification until the day his term of office would finish or he is re-elected to the legislature, whichever comes first.

***b. Rejected the Resignation of the Members Asserting that they were not Voluntary or Genuine***

When deciding whether to accept or reject a member of the legislature's resignation, the Speaker's inquiry is limited to determining whether the resignation was made voluntarily and honestly. The Speaker is forced to accept resignations once it is shown that a member is prepared to do so of his own free choice. The Speaker is not permitted by the Constitution to consider any irrelevant circumstances while deciding whether to retire. Legal review is permitted at the Speaker's pleasure.

Disqualification Petition No.s 1, 3, 4, 5, 7, and 8 of 2019 are upheld to the degree that the Petitioners were disqualified by the Speaker's orders of July 25, 2019, and July 28, 2019. The portion of the Speaker's instructions that outlined the period of disqualification, i.e., But for the period of the 15th Karnataka Legislative Assembly, the order has been suspended, until the Assembly's term is over, starting on the date of the applicable order.[[26]](#footnote-26)

**5. ADJUDICATORY POWER OF SPEAKER**

Recently, in the case of *Keisham Megha Chandra Singh v. the Hon’ble Speaker Manipur Legislative Assembly and Others.*[[27]](#footnote-27) the Apex Court of the land in which a 3-judge Bench was led by Justice Rohinton F. Nariman and he asked what justification there is for making the Speaker of the House, who is a member of one political party and an insider in the House, the ‘single and ultimate arbitrator’ in determining whether or not a political defector should be disqualified. He argues that the Parliament should stop treating the Speaker as a quasi-judicial power while the “Speaker is still a member of a certain political party, whether that membership is de jure or de facto. In the matter *of Keisham Meghachandra Singh v the Hon'ble Speaker Manipur Legislative Assembly & Others*, the SC said the following:

A permanent Tribunal led by a former Chief Justice of an HC a retired SC Judge or some other external independent process may be seriously considered by Parliament as a replacement for the Speaker as the arbitrator of issues over disqualification

In addition to the authority, the nation's Highest Court recommended that decisions be made in a timely manner. Although the Constitution or any other Statute does not specify a certain time period, *In Keisham Meghachandra Singh v. the Hon'ble Speaker Manipur Legislative Assembly and Others*, the court” declared that the Speaker could not indefinitely delay a decision on a disqualification petition. A petition like this would have to be fixed in a timely way. In this matter, however, the Court chose to elaborate on that judgment and define what was meant by a reasonable length of time, ultimately deciding that, barring extraordinary circumstances, the Speaker should have three months to reach a decision on the petition.

We also advocate for the Speaker's operations to be subjected to more scrutiny or examination. According to Article 192, the Governor will be consulted on any issue involving disqualification under Article 191(1) before making a final judgment after considering the Election Commission's conclusive finding. This effectively raises the disqualification judgment by two tiers: the electoral commission, an independent entity, and the governor, who can act along party lines.

This is true despite Article 191(1)'s disqualifications being stricter and objective than those in the rest of Article 191(2). We propose “that the speaker’s decision to disqualify a member under the 10th Schedule be subject to further, obligatory review by the Governor. On the one side, it is a democratic process that adheres to legislative norms and keeps the courts out of the process, which is a good thing.

**CONCLUSION**

Undoubtedly, the Constitution's 10th Schedule sparked a great deal of controversy. The Hon'ble Supreme Court has discussed and provided a broad interpretation of the meaning of various provisions of the 10th Schedule. Provisions of the 10th Schedule have been challenged before the Hon'ble SC repeatedly for its interpretation and regarding the exercise of its power of judicial review. The constitutionality of the 10th Schedule, what is meant by ‘voluntarily giving up membership,’ the range of judicial review by the SC and HC, the nature, powers, and responsibilities of the Speaker or Chairman under the 10th Schedule, the Speakers' review authority under the 10th Schedule, the disqualification of independent members, etc., are the most contentious issues that have come up as a result of the 10th Schedule. The 10th Schedule's Para 2 was the main source of debate most of the time.

The Hon'ble SC ruled that the 10th Schedule is valid since it does not infringe on any rights, including the freedom of expression, the freedom of the vote, and the freedom of the conscience. The fault of undermining elected members of the House's democratic rights is not included in its laws. Even when the Speaker/Chairman is given the authority to make decisions, this does not automatically render the provision invalid due to the possibility of political prejudice. The Speaker/decision Chairman's has been given finality under Para 6 of the 10th schedule.

It was made clear in several instances that the Speaker and Deputy Speaker lack the authority to examine his own orders under the 10th Schedule and that any order of disqualification issued by him in accordance with Para 6 is only subject to judicial review. A Speaker can’t disobey an order on the grounds that the court that made it had jurisdiction to do so, as was established in *Ravi S. Naik v. Union of India & Others*. An order of the Court, even one of an interim character, is obligatory on the Speaker until it is reversed by a competent court.[[28]](#footnote-28)

The member's request for the Governor to replace one CM with another did not constitute voluntary resignation from the party. It was made clear in *Balchandra L. Jarkiholi v. B.S.Yeddyurappa*[[29]](#footnote-29) however, *as explained in the matter of Rajendra Singh Rana & Others v. Swami Prasad Maurya & Ors*[[30]](#footnote-30)if a member voluntarily resigns from a political party, it can be inferred from their actions that they wished to end their membership.

As a consequence of the above debate, it may be concluded that the Indian court has broadened the scope of the provisions of the” Constitution's 10th Schedule by doing so. A gap in the 10th Schedule's provision has been addressed in various situations by the higher courts. To combat the immoral and unprincipled practice of defection by MPs and MLAs, the Supreme Court has exercised its judicial review power to expand the scope of the 10th Schedule, and each time, the 10th Schedule has caused any problems. Moreover, the SC at the same time played a crucial role in guaranteeing the freedom of speech & the freedom of expression of both MPs and MLAs. The 10th Schedule's legal interpretation holds that the existing anti-defection law, which restricts members' voting rights, has not rendered democratic institutions undemocratic. At the same time, it is crucial to have a law like this in India that takes into account the Parliamentary system of government in the country. Members who are elected with party backing and based on party platforms must uphold party discipline in order to maintain their allegiance to the party's policies. According to the Indian Judiciary, the Speaker of the House has failed to preside over the House impartially and to uphold the high standards of that august position, which commands great respect from the populace. Few Speakers and political parties both contribute to the vice of defection.[[31]](#footnote-31)

1. Durga “Das Basu, *Shorter Constitution of India* 24 (Lexis Nexis, 14th ed., vol. 2, 2012). [↑](#footnote-ref-1)
2. Ex Deputy Chairman of Planning Commission. [↑](#footnote-ref-2)
3. Lok Sabha Debate on January 30, 1985. Avialable at https:/ / eparlib.nic.in/ bitstream/ 123456789/319/1/lsd\_08\_1\_30-01-1985.pdf (visited on Aug. 30, 2023) [↑](#footnote-ref-3)
4. AIR 1992 SC” 412. [↑](#footnote-ref-4)
5. AIR 1994 SC 1558. [↑](#footnote-ref-5)
6. Ibid. [↑](#footnote-ref-6)
7. Dheerendra Patanjali*, “Freedom of Speech and Expression, India v America - A Study”* *Indian Law Journal* (2007). [↑](#footnote-ref-7)
8. The Constitution of India art. 19 (1). Article 19- (1) All citizens shall have the right (a) to freedom of speech and expression; (b) to assemble peaceably and without arms; (c) to form associations or unions 1[or co-operative societies]; (d) to move freely throughout the territory of India; (e) to reside and settle in any part of the territory of India; 2[and] 3(g) to practise any profession, or to carry. [↑](#footnote-ref-8)
9. A.K. Gopalan v. State of Madras AIR 1950 SC 27. [↑](#footnote-ref-9)
10. AIR 1993 SC” 412. [↑](#footnote-ref-10)
11. The Constitution of India art.105 (1); Article “105(1) There must be freedom of speech in Parliament, subject to the provisions of this Constitution and the rules and standing orders governing the conduct of Parliament. (2) No member of Parliament shall be subject to any proceedings in any court with respect to anything said or any vote cast by him in the House of Representatives or any of its committees, and no person shall be subject to such liability with respect to the publication of any report, paper, votes, or proceedings by or under the authority of either House of Parliament. (3) The powers, privileges, and immunities of each House of Parliament, as well as its members and committees, shall, in all other respects, be those that may from time to time be defined by law by Parliament; however, until such time as they are defined, 1[shall be those of that House as well as those of its members and committees immediately prior to the enactment of section 15 of the Constitution (Forty-fourth Amendment) Act of 1978]. (4) In the same way as they do for members of Parliament, the provisions of clauses (1), (2), and (3) shall apply to everyone who, by virtue of this Constitution, has the right to speak in or otherwise participate in a House of Parliament or any committee thereof. [↑](#footnote-ref-11)
12. The Constitution of India art. 194 (1); Article 194 (1) There must be freedom of speech in the Legislature of every State, subject to the provisions of this Constitution and the rules and standing orders governing the procedure of the Legislature. (2) No member of the legislature of a State shall be subject to any proceedings in any court with respect to anything he or she may have said or voted on in the legislature or any committee thereof, and no person shall be subject to such liability with respect to the publication of any report, paper, votes, or proceedings by or under the authority of a House of such a Legislature. (3) In all other respects, a State's House of the Legislature, along with its members and committees, shall have such powers, privileges, and immunities as the Legislature may from time to time define by law; however, until such time as they are defined, they shall be those that applied to the House, as well as to its members and committees, immediately prior to the effective date of Section 26 of the Constitution (Forty-Fourth Amendment) Act of 1978. (4) In regards to individuals who, by virtue of this Constitution, have the right to speak in and otherwise participate in the proceedings of a House of the Legislature of a State or any committee, the provisions of clauses (1), (2), and (3) shall” apply. [↑](#footnote-ref-12)
13. R.M.D. “Chamarbaugwalla v. Union of India (1957) 1 SCR 930. [↑](#footnote-ref-13)
14. The Constitution of India 10th Schedule 6(1). [↑](#footnote-ref-14)
15. The Constitution of India art. 136; Article 136-Special leave to appeal by the Supreme Court-(1) Any judgment, ruling, resolution, sentence, or order in any cause or matter passed or made by any court or tribunal within the territory of India may, notwithstanding anything to the contrary in this Chapter, be appealed against with special leave, at the Supreme Court's discretion. (2) Nothing in paragraph (1) shall be applicable to any decision made or order made by a court or tribunal established by or according to a legislation related to the Armed Forces. [↑](#footnote-ref-15)
16. Article 227-Power of superintendence over all courts by the High Court-(1) Every High Court shall have administrative control over all courts and tribunals within the jurisdictional territories. (2) Without limiting the scope of the aforementioned provision, the High Court may: (a) request reports from such courts; (b) issue general rules and prescribe forms for governing the practice and proceedings of such courts; and (c) prescribe forms in which the officers of any such courts shall maintain books, entries, and accounts. (3) The High Court may also establish fees to be paid by the sheriff, all court clerks and officers, as well as attorneys, advocates, and pleaders who practice there: provided, however, that any rules established, forms prescribed, or fees established under clauses (2) or (3) must not conflict with any currently prevalent laws and must have the Governor's prior approval. (4) Nothing in this article should be interpreted as giving a High Court the authority to supervise any courts or tribunal established by or according to laws relating to the armed forces. [↑](#footnote-ref-16)
17. AIR 1971” 530. [↑](#footnote-ref-17)
18. AIR 1987 P & H 263. [↑](#footnote-ref-18)
19. Shubhendu Anand, “*Powers, Functions and Role of Governor*”, *Dr. Syama Prasad Mookerjee Research Foundation* 3 (2017). [↑](#footnote-ref-19)
20. The Constitution of India, The Governor , Chapter- II.- The Executive. [↑](#footnote-ref-20)
21. *Vinod Kumar Binny v. The Speaker, Delhi Legislative Assembly”*(2014). https://www.scconline.com/ (last visited on June 18, 2023). [↑](#footnote-ref-21)
22. *Vetrivel “v. Mr. P. Dhanabal* (W.P. Nos 25260-25267/2017. https://www. scconline.com/ (last visited on Aug. 13, 2023). [↑](#footnote-ref-22)
23. 2016(3)RCR(Civil)838. [↑](#footnote-ref-23)
24. 2016 SC 694. [↑](#footnote-ref-24)
25. (2020) 2 SCC” 595. [↑](#footnote-ref-25)
26. Ibid. [↑](#footnote-ref-26)
27. (2020) SCC Online SC 55. [↑](#footnote-ref-27)
28. AIR 1994 SC 1558. [↑](#footnote-ref-28)
29. 2011 (7) SCC 1. [↑](#footnote-ref-29)
30. 2007(4) SCC 270. [↑](#footnote-ref-30)
31. Om Parkash, “*Judicial Interpretation of the Anti Defection Law: A Review,”* Volume 5, Issue 12 *Journal of Emerging Technologies and Innovative Research* 715 (2018). [↑](#footnote-ref-31)