



Anti-Defection Law

For Prelims: Anti Defection Law, Tenth Schedule, Parliament, Constitutional Amendments

For Mains: Indian Constitution, Constitutional Amendments, Anti Defection Law and related issues, Tenth Schedule, judicial review, Right to Information

Why in News?

Recently, the **Vice-President** has said that the time has come to **amend the [anti-defection legislation](#)** in the country to plug existing loopholes.

What is Anti Defection Law?

- The anti-defection law **punishes individual Members of [Parliament](#) (MPs)/MLAs for leaving one party for another.**
- Parliament added it to the Constitution as the [Tenth Schedule in 1985](#). Its purpose was to bring stability to governments by **discouraging legislators from changing parties.**
 - **The Tenth Schedule** - popularly known as the Anti-Defection Act - was included in the Constitution via the **52nd Amendment Act, 1985**.
 - It sets the provisions for disqualification of elected members on the grounds of defection to another political party.
 - It was a **response to the toppling of multiple state governments** by party-hopping MLAs **after the general elections of 1967**.
- However, it **allows a group of MP/MLAs to join (i.e., merge with) another political party** without inviting the penalty for defection. And it does not penalize political parties for encouraging or accepting defecting legislators.
 - As per the **1985 Act**, a 'defection' by one-third of the elected members of a political party was considered a 'merger'.
 - But the [91st Constitutional Amendment Act, 2003](#), changed this and now at **least two-thirds of the members of a party must be in Favour of a "merger"** for it to have validity in the eyes of the law.
- The **members disqualified under the law can stand for elections** from any political party for a seat in the same House.
- The **decision on questions as to disqualification on ground of defection** are referred to the Chairman or the Speaker of such House, which is subject to **'[Judicial review](#)'**.
 - However, the **law does not provide a timeframe** within which the presiding officer has to decide a defection case.

What are the Grounds of Disqualification?

- If an **elected member voluntarily gives up** his membership of a political party.
- If **he votes or abstains from voting in such House contrary** to any direction issued by his political party or anyone authorized to do so, without obtaining prior permission.
 - As a **pre-condition for his disqualification**, his abstention from voting should not be

condoned by his party or the **authorized person within 15 days of such incident.**

- If any **independently elected member joins any political party.**
- If any **nominated member joins any political party** after the expiry of six months.

What are the issues with Anti Defection Law?

- **Undermining Representative & Parliamentary Democracy:**
 - After enactment of the Anti-defection law, **the MP or MLA has to follow the party's direction blindly and has no freedom** to vote in their judgment.
 - Due to Anti-Defection law, the **chain of accountability has been broken** by making legislators accountable primarily to the political party.
- **Controversial Role of Speaker:**
 - There is **no clarity in the law about the timeframe** for the action of the House Chairperson or Speaker in the anti-defection cases.
 - Some cases take **six months** and some even three years. There are cases that are disposed off after the term is over.
- **No Recognition of Split:**
 - Due to the 91st amendment, **the anti-defection law created an exception for anti-defection rulings.**
 - However, the **amendment does not recognize a 'split'** in a legislature party and instead recognizes a 'merger'.
- **Subversion of Electoral Mandates:**
 - **Defection is the subversion of electoral mandates by legislators** who get elected on the ticket of one party but then find it convenient to shift to another, due to the lure of ministerial berths or financial gains.
- **Affects the Normal Functioning of Government:**
 - The infamous **"Aaya Ram, Gaya Ram"** slogan was coined against the background of continuous defections by the legislators in the 1960s.
 - The defection **leads to instability in the government and affects the administration.**
- **Promote Horse Trading:**
 - Defection also **promotes horse-trading of legislators** which clearly go against the mandate of a democratic setup.
- **Allows only Wholesale Defection:**
 - It allows wholesale defection, but **retail defection is not allowed.** Amendments are required to plug the loopholes.
 - He raised concern that if a politician is leaving a party, **s/he may do so, but they should not be given a post in the new party.**

What are Different Suggestions related to the Anti-defection Law?

- The [Election Commission](#) has suggested **it should be the deciding authority** in defection cases.
- Others have argued that the [President](#) and [Governors](#) **should hear defection petitions.**
- The [Supreme Court](#) has suggested that **Parliament should set up an independent tribunal** headed by a retired judge of the higher judiciary to decide defection cases swiftly and impartially.
- Some commentators have said the law has failed and recommended its removal. Former Vice President Hamid Ansari has suggested that it applies only to save governments in [no-confidence motions.](#)

Way Forward

- The problem **arises from the attempt to find a legal solution** to what is essentially a political problem.
- If **stability of government is an issue due to people defecting** from their parties, the **answer is for parties to strengthen** their internal systems.
- There is an **ardent need for legislation that governs political parties in India.** Such a **law should bring political parties under [Right to Information \(RTI\)](#),** strengthen intra-party

democracy, etc.

- In order to **shield the detrimental effect of the anti-defection law on representative democracy**, the scope of the law can be restricted to only those laws, where the defeat of government can lead to loss of confidence.

UPSC Civil Services Examination, Previous Year Question (PYQs)

Q. Which one of the following Schedules of the Constitution of India contains provisions regarding anti-defection? (2014)

- (a) Second Schedule
- (b) Fifth Schedule
- (c) Eighth Schedule
- (d) Tenth Schedule

Ans: (d)

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