



Law of Anti-Defection Law

This editorial is based on [“The anti-defection law - political facts, legal fiction”](#) which was published in The Hindu on 30/06/2022. It talks about the challenges in the Tenth Schedule and how members of the house are using them as safeguard to facilitate defections.

For Prelims: Schedules of Indian Constitution, Tenth Schedule, Anti-Defection Law, Constitution of India

For Mains: Legality of Tenth Schedule, Process of disqualification, Remedies against anti-defection law

The practice of legislators from changing political parties during their term continues unabated in Indian legislatures despite the [Tenth Schedule](#) having been inserted into the [Constitution](#) in 1985.

Commonly known as the ‘Anti - Defection Law’, it was meant to arrest the practice of legislators from changing political affiliations during their term in office.

The political crisis in Maharashtra, and many others before it, are grim reminders of what the Tenth Schedule can and cannot do.

What Do We Mean by 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 for Defection?

- **Voluntary Give Up:**
 - If an elected member **voluntarily gives up his membership** of a political party.
- **Violation of Instructions:**
 - 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.
- **Elected Member:**
 - If any **independently elected member joins any political party.**
- **Nominated Member:**
 - If any **nominated member** joins any political party **after the expiry of six months.**

How Defection Affects the Political System?

- **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.

What are the Challenges with Anti - Defection Law?

- **Paragraph 4 of the law:**
 - Paragraph 4 of the Anti - Defection Law creates an exception for mergers between political parties by introducing three crucial concepts:
 - **Original Party:**
 - The political party to which a member belongs (this can refer to the party generally, outside of the House).
 - **Legislature Party:**
 - Consisting of all elected members of a House for the time being belonging to one political party.
 - **Deemed Merger**
 - Paragraph 4 **does not clarify whether the original political party refers to the party at the national level or the regional level**, despite the fact that that is how the **Election Commission** of India recognises political parties.
 - **Paragraph 4 states that:**
 - A merger can take place only when an original party merges with another political party, and at least two thirds of the members of the legislature party have agreed to this merger.
 - Paragraph 4 seems to be creating a “legal fiction” so as to indicate that a merger of two third members of a legislature party can be deemed to be a merger of political parties, even if there is no actual merger of the original political party with another party.
- **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 Constitutional Amendment Act, 2003](#), 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'.
- **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.
- **Affects the debate and discussion:**
 - The Anti-Defection Law has created a democracy of parties and numbers in India, rather than a democracy of debate and discussion.
 - In this way, it does not make a differentiation between dissent and defection and weaken the Parliamentary deliberations on any law.

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.

What Can be Done to Make Anti-Defection Law More Effective?

- **Rational use of the anti-defection law:**
 - Several experts have suggested that the law should be valid only for those votes that determine the stability of the government. Example: passage of the annual budget or no-confidence motions.
- **Advice of Election Commission:**
 - Various commissions including National Commission to review the working of the constitution (NCRWC) have recommended that rather than the Presiding Officer, the decision to disqualify a member should be made by the President (in case of MPs) or the Governor (in case of MLAs) on the advice of the Election Commission.
- **Independent authority to deal with disqualification:**
 - Justice Verma in Hollohan judgment said that tenure of the Speaker is dependent on the continuous support of the majority in the House and therefore, he does not satisfy the requirement of such independent adjudicatory authority.
 - Also, his choice as the sole arbiter in the matter violates an essential attribute of the basic feature.
 - Thus, the need for an independent authority to deal with the cases of defection.
- **Promoting the principle of intra-party democracy:**
 - 170th Law Commission report underscored the importance of intra-party democracy by arguing that a political party cannot be a dictatorship internally and democratic in its functioning outside.
 - Thus, the parties should listen to the opinions of the members and have discussions on the same. This would give the freedom of speech and expression to its members and promote inner-party democracy.
- **Analysis by Supreme Court:**

- An academic revisiting of the Tenth Schedule by the Supreme Court, so as to guide future use of the anti - defection law, is timely and should happen soon.

Drishti Mains Question

The anti-defection law has been singularly responsible for stifling debate in our Parliament and state legislatures. Comment.

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