



## 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 **52<sup>nd</sup> 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 **[91<sup>st</sup> 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 91<sup>st</sup> 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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