



# Anti-Defection Law

## What is Anti-Defection Law?

- The anti-defection law was introduced in 1985, through the **52<sup>nd</sup> Amendment Act** of 1985.
- It was inserted in the **Tenth Schedule** of the Indian Constitution and is popularly known as **Anti Defection Act**.
- Defection has been defined as a "conscious abandonment of allegiance or duty".
- It lays down the process of disqualification on grounds of defection.
- The presiding officer has the authority to disqualify a member on proven grounds of defection.
- The goal was to prevent the legislators from changing their political affiliations during their tenure in office.
- It applies to both the Parliament and the state assemblies.

## How did the Law Evolve?

- In 1967, an MLA from Haryana, Gaya Lal changed his party thrice on the same day.
- "Aaya Ram Gaya Ram" became a popular phrase in Indian Politics after this.
- It became a common practice to switch political parties across States which brought down state governments from their power.
- This raised concerns in the Lok Sabha and a committee was set up under Home Minister Yashwantrao Balwantrao to assess the problem.
- It was the Chavan Committee that recommended that if a legislator changes party for monetary gains, they should be excluded from the Parliament and also be barred from contesting elections for some time.
- The anti-defection law was introduced to prevent such floor choosing and was therefore inaugurated under Rajiv Gandhi's rule through the 52<sup>nd</sup> Amendment.
- In 1992, the Tenth Schedule was brought to the Supreme Court and challenged its constitutionality under a landmark case of **Kihoto Hollohan v. Zachillhu and others**.
- In 2003, through the **91<sup>st</sup> Amendment**, the anti-defection law was made more effective to deal with regular defection.
  - It deleted the provisions that protected legislators in case of a split in the party.
  - It also stated that any legislator disqualified under Tenth Schedule would be disqualified from the executive or ministerial post as well.

## What are its Objectives?

- It is to prevent defections motivated by the lure of office or material advantages or other such considerations.
- It deters the legislators from shifting their political association to gain any personal advantages.
- It maintains stability in the party system and prevents the threat of toppling the governments.
- It promotes party discipline by ensuring that the legislators vote in favour of the party whip.
- It permits the merger of political parties without disqualification of members.
- It strengthens the institution of democracy and keeps corruption in check.

## What are the Grounds of Defection?

- The Supreme Court has interpreted various provisions of the Anti-Defection Law.

- One of the most important grounds is the phrase "**Voluntarily giving up his membership**".
  - It has a wider connotation than resignation.
  - In absence of formal resignation, the giving up of his membership can also be inferred from the legislator's **conduct**.
  - Example: Two members of Janata Dal (United) were disqualified in 2017 by the Chairman of Rajya Sabha, on the grounds of "voluntary giving up their membership". They criticised the party on public forums at multiple events and attended rallies of opposition parties.
- Another ground of Defection is "**Violation of Instructions**". It means that if the legislator votes or abstains from voting in the House contrary to a direction issued by the political party he belongs to, he is deemed to be disqualified.
  - The direction issued by the political party is famously referred to as the party whip.
- A legislator can further be disqualified if he is an independently elected member and joins a political party.
- A legislator will be deemed to be disqualified if he is a nominated member and joins any political party, after six months from the day he became a legislator.
- **The decision of the presiding officer** who decides the legitimacy of grounds of disqualification of defection is **subject to the Judicial Review**.
  - Initially, the decision of the presiding officer was not subject to Judicial Review.
  - It was in 1992 when the Supreme Court allowed appeals against the Presiding Officer's decision in the High Court and Supreme Court.
  - But there can be no judicial intervention until the Presiding Officer gives his order.

### What are the Exceptions under the Law?

- The law enables a party to merge with another party **if at least two-thirds of the legislators of the party are in favour of such a merger**.
- Neither the members who decide to merge nor the ones who stay in the original party will face any disqualification.
- According to Paragraph 5 of the Anti-Defection Law, the section provides an **exemption** to the speaker, chairman, and deputy chairman of the legislature from disqualification on grounds of defection.

### What are the different Opinions on Anti-Defection Law?

- Expert committees suggest that the decision to disqualify a member of Parliament should be made by the President and the decision to disqualify a member of the State Assembly should be made by the Governor, based on the advice of the Election Commission.
- The Supreme Court has recommended that the Parliament can consider setting up an independent tribunal, which will be headed by a retired judge. It will allow the defection cases to be settled quickly and timely.
- Some suggest that the anti-defection law has ceased to function and has various flaws. Hamid Ansari, the former Vice President of India opined that it applies only in cases of no-confidence motions.
- 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 their judgment.
  - Due to Anti-Defection law, the chain of accountability has been broken by making legislators accountable primarily to the political party.

### What are the Suggestions for making Anti Defection Law more effective?

- Anti-Defection Law should be used in a rational and fair sense. Experts have suggested that the law should be valid in cases where the votes decide the stability of the government.
  - Example: In the case of **No-Confidence motions** or annual budget, where the votes decide the stability of the government.
- Some believe that the power to deal with the question of disqualification should be decided by an independent authority. Since the speaker's tenure relies on the party's majority in the House, according to Justice Verma in Hollohan Judgement, the speaker should not enjoy such authority.
- According to the 170th Law Commission Report, intra-party democracy should be endorsed, which

would enable discussion among members of the party and prevent dictatorship within the party.

- An examination of the Tenth Schedule by the Supreme Court should take place to ensure that the use of Anti Defection Law is directed in the right manner. The role of the Court as a guiding institution can supervise and correct the drawbacks of the law.

## What are the Recent occurrences on Anti Defection Law?

- In 2020, the Supreme Court stated that the speakers should decide on the question of disqualification within a "reasonable time".
- The case of *Keisham Meghachandra v. the Hon'ble Speaker Manipur* (2020)
  - In *Keisham Meghachandra v. the Hon'ble Speaker Manipur*, Justice Rohinton Nariman talked of the need to set an external means to deal with defection cases.
  - In his words, "Parliament may seriously consider amending the Constitution to substitute the Speaker of the Lok Sabha and Legislative Assemblies as an arbiter of disputes concerning disqualification which arise under the Tenth Schedule"
  - He further continued that it can be "**with a permanent Tribunal headed by a retired Supreme Court Judge or a retired Chief Justice of a High Court**, or some other outside independent mechanism to ensure that such disputes are decided both swiftly and impartially, thus giving real teeth to the provisions contained in the Tenth Schedule, which are so vital in the proper functioning of our democracy"
- The political crisis that occurred in Maharashtra has also thrown new light on the roles of Speaker and Governor and anti-defection Law.

## Legal Insights

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## UPSC Civil Services Examination, Previous Year Question (PYQ)

### Prelims

**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)**

### Mains

**Q. The role of individual MPs (Members of Parliament) has diminished over the years and as a result healthy constructive debates on policy issues are not usually witnessed. How far can this be attributed to the antidefection law which was legislated but with a different intention? (2013)**

