



Anti-Defection Law

For Prelims: [Anti-Defection Law, Supreme Court \(SC\)](#), Tenth Schedule of the Constitution, Members of Parliament, 52nd Amendment Act, 1985, [91st Constitutional Amendment Act, 2003](#).

For Mains: Anti-Defection Law, Statutory, regulatory, and various quasi-judicial bodies, Separation of powers between various organs, Amendments.

[Source: TH](#)

Why in News?

Recently, the [Supreme Court \(SC\)](#) has rebuked the Speaker of the Maharashtra Assembly for prolonging [Anti-Defection](#) proceedings against the Chief Minister and other MLAs.

- The court expressed dissatisfaction with the **lack of progress in the disqualification proceedings** and urged the Speaker to make a decision within two months.
- Previously, the court had directed the speaker to prepare a timeline for completing the disqualification proceedings under the **Tenth Schedule of the Constitution**.

What is the Background?

- In 2022, the Uddhav Thackeray-led government was **toppled and replaced by another government**, comprising a faction of the Shiv Sena. The leader of the breakaway Sena faction, Eknath Shinde, **became the new Chief Minister** of Maharashtra.
- Thereafter, petitions were filed by the Thackeray group challenging the then-Maharashtra Governor's **decision to call for a trust vote before his resignation**.
- Disqualification, if imposed, would affect not only the Shiv Sena MLAs but also Shinde's **position as Chief Minister**.

What is an Anti-Defection Law?

- **About:**
 - The anti-defection law punishes **individual Members of Parliament (MPs)/Members of the Legislative Assembly (MLAs)** for leaving one party for another.
 - Parliament added it to the Constitution as the **Tenth Schedule** in 1985 in order 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 the **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.
- **Does not Penalise Group MP/MLAs:**
 - 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 penalise 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.
- **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.
 - **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 Does Defection Affect 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 goes 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 says that **if a political party merges with another party, its members will not lose their seats**.
 - But this merger must have the **support of at least two-thirds of the members** of that party in the House. **The law does not say if the merger is based on the national or regional level of the party**.
- **Undermining Representative & Parliamentary Democracy:**
 - After enactment of the law, the **MP or MLA has to follow the party's direction blindly** and has no freedom to vote in their judgment.
 - Due to the 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 of 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'.

- **Only Allows 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.

Way Forward

- 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.
- 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.
- **Justice Verma in Hollohan's judgment** said that the 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.

Legal Insights

[Disqualification of Legislators and Anti-Defection Laws](#)

UPSC Civil Services Examination, Previous Year Questions (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 anti-defection law which was legislated but with a different intention? (2013)

Q. 'Once a Speaker, Always a Speaker'! Do you think this practice should be adopted to impart objectivity to the office of the Speaker of Lok Sabha? What could be its implications for the robust functioning of parliamentary business in India? (2020)

PDF Refernece URL: <https://www.drishtias.com/printpdf/anti-defection-law-11>

