



Understanding the Anti-Defection Law for Independent Legislators | Haryana | 10 Oct 2024

Why in News?

Recently, three Independent [MLAs](#) in Haryana extended support to the winning party, securing the party's third term in power. This situation raises questions about the [anti-defection law](#), especially for independent legislators.

Key Points

- **Tenth Schedule of the Constitution (Anti-Defection Law):**
 - The [Tenth Schedule](#) defines circumstances under which a legislator changing political allegiance invites action.
 - Independent MLAs joining a political party after election are also subject to disqualification under the law.
- **Three Scenarios Covered Under the Law:**
 - A legislator elected on a party ticket voluntarily gives up party membership or votes against party wishes.
 - An independent MLA joins a political party after election, leading to disqualification.
 - Nominated MLAs have six months to join a political party after nomination, or they face disqualification.
- **Disqualification Process:**
 - The [presiding officer](#) of the legislature decides on disqualification. Speaker in the Lok Sabha and Chairman in the Rajya Sabha are the presiding officers.
 - No specified timeframe exists for this decision, leading to delays and accusations of political bias.
 - In 2023, the [Supreme Court](#) suggested anti-defection cases be resolved within three months.

10th Schedule of the Indian Constitution

- **About:**
 - The Tenth Schedule of the Indian Constitution, also known as the [Anti-Defection Law](#), was added by the [52nd Amendment in 1985](#).
 - It was a response to the toppling of multiple state governments by party-hopping MLAs after the general elections of 1967.
 - It lays down the provisions related to disqualification of Members of Parliament (MPs) and State Legislatures on grounds of defection.
- **Exception:**
 - 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 [Anti Defection Act, 1985](#), 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.
- **Discretion:**

- 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:**
- If an elected member voluntarily gives up his membership of a political party.
 - If he/she votes or abstains from voting in such House contrary to any direction issued by his political party.
 - If any independently elected member joins any political party.
 - If any [nominated member](#) joins any political party after the expiry of six months.

PDF Refernece URL: <https://www.drishtias.com/statepcs/11-10-2024/haryana/print>

