



India's Anti-Defection Law: Challenges and Solutions

This editorial is based on [“The hollowing out of the anti-defection law”](#) which was published in The Hindu on 19/12/2023. The article discusses the problems and consequences of the anti-defection law in India, which was enacted in 1985 to prevent legislators from switching parties or voting against their party’s direction.

For Prelims: [Anti-defection law](#), [Supreme Court](#), Rajendra Singh Rana vs. Swami Prasad Maurya and Others (2007), Ravi S. Naik versus Union of India (1994), Balchandra L. Jarkiholi Vs. B.S. Yeddyurappa (2010), [91st Amendment to the Constitution in 2003](#).

For Mains: Anti defection Law, Challenges and Way forward

After long years of legislative meanderings, Parliament enacted the anti-defection law (10th Schedule) to curb political defection. The volume, intensity, recklessness and uncontrolled venality seen in defections in the 1960s and thereafter almost came to a stop after this. Defections not only caused the frequent fall of governments but also caused great instability in political parties with power-seeking politicians wreaking havoc on political parties.

What is Anti Defection Law?

- **The Law:**
 - The [anti-defection law](#) (found under the Tenth Schedule of the Constitution) was **enacted to curb frequent floor-crossing** by legislators.
 - It was added to the Constitution through 52nd Amendment Act in 1985.
 - It provides for the disqualification of elected legislators from the legislature in instances where they voluntarily switch parties or vote against the party’s direction.
- **Ground for Disqualification:**
 - If he or she **voluntarily gives up** his or her membership of a political party.
 - in **Ravi S. Naik versus Union of India (1994)**, the [Supreme Court](#) clarified that **an MP/MLA need not formally resign from their party to attract disqualification** under the anti-defection law.
 - The SC had said: “The expression ‘voluntarily given up his membership’ is **not synonymous with ‘resignation’**... Even in the **absence of a formal resignation from membership an inference can be drawn from the conduct** of a member that he has voluntarily given up his membership of the political party to which he belongs.”
 - In **Rajendra Singh Rana vs. Swami Prasad Maurya and Others (2007)**, the SC held that the act of giving a letter requesting the governor to call on the leader of the other side to form a government would amount to an act of voluntarily giving up membership of the previous party.
 - If he or she **votes or abstains from voting in the House**, contrary to any direction

issued by his or her political party or anyone authorized to do so, without obtaining prior permission.

- If any member who is **independently elected joins any political party.**
 - In **Balchandra L. Jarkiholi Vs. B.S. Yeddyurappa (2010)**, the Supreme Court made it clear that **independent MLAs joining the Ministry in a coalition govt., without joining the ruling party, will not sacrifice their independent identity.** Hence joining Council of Ministers doesn't amount to disqualification.
- **Exceptions to the anti-defection law:**
 - A member will not be disqualified if:
 - His or her original political party merges with another party, and he or she and at least two-thirds of the members of the original party agree to the merger.
 - Under the **91st Amendment to the Constitution in 2003**, the exemption from disqualification if one-third of the members form a separate group (the rule prior to the amendment) was removed.
 - He or she or any other member of his or her party has not accepted the merger and opts to function as a separate group.
 - He or she makes a split from his or her original party, but does not join any other party.

What are the issues with the Anti Defection Law?

- **Undermines the Idea of Democracy:** It undermines the representative and parliamentary democracy by **restricting the legislators' freedom of speech and expression**, and making them accountable to their party leaders rather than the people who elected them.
- **Doesn't set any time frame:** It does not provide a clear and timely mechanism for deciding the cases of defection, and leaves the power to disqualify the members to the discretion of the presiding officers of the houses, who may be biased or influenced by political pressures.
 - However, the Supreme Court in **Keisham Meghachandra Singh vs The Hon'ble Speaker Manipur Legislative Assembly & Ors (2020)** ruled that Speakers of assemblies and the Parliament must decide disqualification pleas within a period of three months except in extraordinary circumstances.
- **Still Allows Defection:** It allows a group of members to **defect to another party without penalty, if they constitute at least two-thirds of their original party.** This creates a loophole for opportunistic and unethical mergers and splits of parties, and undermines the stability and integrity of the political system.
 - This way it **encourages the practice of "horse-trading"** or buying and selling of legislators.
- **Doesn't address the Root Cause:** It does not address the root causes of defection, such as lack of intra-party democracy, corruption, and electoral malpractices. It also does not prevent the parties from enticing or accepting the defectors, and thus fails to deter the phenomenon of defection.

What steps should be taken to Strengthen the Anti Defection Law?

- **Addressing Procedural Issues:**
 - **Shifting Adjudication Power:** The current practice of Speakers of the House deciding on defection cases raises concerns about bias and political influence. Shifting adjudication power to an independent body like the **Election Commission** could enhance impartiality.
 - The **2nd ARC recommended** that the issue of disqualification of members on the grounds of **defection should be decided by the President/Governor** on the advice of the Election Commission.
 - **Time-bound Decisions:** Setting a strict timeframe for adjudicating defection cases would prevent prolonged uncertainty and political manipulation.
 - **Judicial Recourse:** Allowing direct appeals to the Supreme Court or High Courts in certain cases could provide additional safeguards against arbitrary decisions.
- **Strengthening Party Accountability:**
 - **Internal Democracy:** Introducing regulations to enforce internal party democracy and transparency could reduce disillusionment among legislators, potentially curbing defection motivated by discontent within parties.

- **Party Funding Reforms:** Making party funding more transparent and accountable could diminish the influence of money power in politics, which can incentivize defections.
- **Anti-Poaching Measures:** Prohibiting or penalizing attempts to induce defections through offers of positions or benefits could discourage such practices.
- **Balancing Stability and Accountability:**
 - **Exempting Mergers:** Exempting defections due to bona fide mergers of parties could encourage political restructuring without undermining stability.
 - **Public Interest Considerations:** Introducing a mechanism to assess the public interest in cases of defection, allowing for disqualification only when it demonstrably harms public good, could strike a balance between stability and accountability.
 - **Right to Dissent:** Recognizing the right of legislators to dissent on specific issues without triggering disqualification could promote healthy debate and independent thought within legislatures.

How are Other Countries dealing with Defections?

- **UK:** Political defections in the UK are not explicitly prohibited by law, but defectors may face repercussions from their party and constituents. Consequences may include losing party privileges, facing disciplinary action, and risking legal challenges such as recall petitions or by-elections.
- **USA:** Similarly, the USA lacks a specific law against political defections. While rare, defections may occur for ideological or strategic reasons. Backlash from the former party, constituents, and media is possible, but defectors may also gain new support. Running for re-election under the new party label presents both challenges and opportunities, depending on the political climate.

Conclusion

The Anti-Defection Law in the Indian Constitution aims for democratic stability by curbing political defections. Despite its importance, challenges such as restricting legislators' freedom and procedural issues underscore the necessity for reforms. Inspired by international experiences, proposed steps aim to balance stability and accountability. Recognizing exemptions for party mergers and public interest, the law must evolve to remain relevant in India's dynamic political landscape, ensuring a robust democracy.

Drishti Mains Question:

Identify and discuss the challenges associated with the Anti-Defection Law. Propose reforms to address the concerns related to the law.

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)**

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