

Anti Defection Law, Meaning, Provisions, Exceptions, Amendments

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What is the Anti Defection Law?

- Defection refers to switching political allegiance, particularly when a member of a political party leaves the party and joins another party or becomes independent.
- **Anti-defection Law in India** was enacted in **1985** through the **52nd Amendment Act** of 1985 as part of the **Tenth Schedule** of the Constitution of India. Anti-defection laws aim to prevent or discourage defection by imposing penalties on politicians who switch parties or otherwise violate party discipline.
- These laws may be designed to ensure that **politicians are held accountable** to the voters who elected them and to maintain the stability and cohesion of political parties.
- In some **countries**, anti-defection laws allow political parties to expel members who defect, while in others, they may disqualify defectors from holding public office or impose other penalties.

Why is an Anti-defection law needed?

An anti-defection law is needed in India to prevent elected representatives from switching political parties or factions frequently, which can lead to instability and a lack of accountability in government.

- **Prevention of 'Aya Ram - Gya Ram' Politics:** The phrase '**Aaya Ram - Gaya Ram**' implied frequent floor crossing by legislators in the party, which was developed by Haryana MLA Gaya Lal in 1967. He changed his party thrice in a fortnight from Congress to United Front back to Congress and then within nine hours to United Front again.
- **Curbing money power:** the perceived need to **curb the corrupting influence of money** and power on politicians and to ensure that politicians were accountable to the voters who elected them.
- **Ensuring cohesion:** It was also seen as a way to **promote stability** and **cohesion** within political parties and to prevent the fragmentation of the party system.
- **Political Stability:** To **strengthen democracy** by bringing stability to administration and ensuring legislative programmes of the Government are not jeopardized by a defecting parliamentarian.
- **Responsibility and Loyalty:** To make members of parliament more responsible and loyal to the political parties with whom they were aligned at the time of their election.

Anti Defection Law Important Provisions

The provisions of the anti-defection law of India, as set out in the Tenth Schedule of the Constitution of India, are as follows:

- **Disqualification:** A member of a House belonging to any political party becomes disqualified for being a member of the House,
 - if he voluntarily gives up his membership of such a political party; or
 - if he votes or abstains from voting in such House contrary to any direction issued by his political party without obtaining prior permission of such party and such act has not been condoned by the party within 15 days.
- **Independent Members:** An independent member of a House becomes disqualified from remaining a member of the House if he joins any political party after such an election.
- **Nominated Members:** A nominated member of a House becomes disqualified for being a member of the House if he joins any political party after the expiry of six months from the date he takes his seat in the House.
- **Exceptions:** The above disqualification on the ground of defection does not apply in the following two cases:
 - **Merger:** If a member goes out of his party due to a merger of the party with another party. A merger takes place when two-thirds of the members of the party have agreed to such a merger.
 - **Presiding Officer:** If a member, after being elected as the presiding officer of the House, voluntarily gives up the membership of his party or rejoins it after he ceases to hold that office. This exemption has been provided in view of the dignity and impartiality of this office.
- **Deciding Authority:** Under the 10th Schedule of the **Indian Constitution** (Anti-Defection Law), if any question arises as to whether a Member of the House has become subject to disqualification, the decision is made by the Speaker or Chairman of the House, not by the President, and not in accordance with the opinion of the Council of Union Ministers.

- **Rule-Making Power:** The presiding officer of a House is empowered to make rules to give effect to the provisions of the Tenth Schedule. According to the rules made so, the presiding officer can take up a defection case only when he receives a complaint from a member of the House.
- **Role of Whip:** The whip is responsible for communicating the party's position to its members and ensuring they vote in line with that position. In the case of a member defying the whip and voting against the party's official position, they may be subject to disciplinary action under the anti-defection law.

Why is the Anti Defection law under criticism?

The anti-defection law in India has been the subject of criticism from various quarters. Some of the main criticisms of the law are as follows:

1. **Curbing dissent:** The law infringes on the freedom of legislators to follow their conscience and stand up for their beliefs or represent the interests of their constituents.
2. **Lack of Intra-Party Democracy:** By punishing defectors, the law gives parties a strong incentive to exert control over their members and to discipline those who step out of line. This may discourage legislators from speaking out against party leaders or raising issues that may be unpopular within the party.
3. **Fragmentation of Parties:** To avoid being disqualified under the law, politicians may form their own parties or join existing small parties, leading to a fragmentation of the party system. This may make it harder for parties to form stable governments and to implement policies effectively.
4. **Undermining representative democracy:** The law has been abused for political gain. Political parties have been known to use the threat of defection to discipline their members or to coerce them into supporting certain policies or candidates. This may undermine the integrity of the political process and lead to the erosion of public trust in the political system.
5. **Controversial role of the speaker:** The law has been criticized for its ambiguity and lack of transparency. The provisions of the law are open to interpretation, and the decision of the Speaker or the Chairman on questions of defection is final and cannot be challenged in court. This lack of transparency and judicial oversight has led to concerns about the fairness and impartiality of the process.

Anti Defection Law Amendments

Several amendments to the anti-defection law were made through the **91st constitutional amendment Act 2003**. Some of them are as follows:

1. The total number of ministers, including the Prime Minister, in the Central Council of Ministers shall not exceed **15 percent** of the total strength of the Lok Sabha.
2. A member of either House of Parliament belonging to any political party who is disqualified on the ground of defection shall also be **disqualified from being appointed as a minister**.
3. The total number of ministers, including the Chief Minister, in the **Council of Ministers** in a state **shall not exceed 15 percent** of the total strength of the Legislative Assembly of that state. But, the number of ministers, including the Chief Minister, in a state shall not be less than 12.
4. A member of either House of a state legislature belonging to any political party who is disqualified on the ground of defection shall also be **disqualified to be appointed as a minister**.

5. A member of either House of Parliament or the House of a State Legislature belonging to any political party who is disqualified on the ground of defection shall also be **disqualified from holding any remunerative political post**.
6. The provision of the **Tenth Schedule** (anti-defection law) pertaining to exemption from disqualification in case of split by one-third of members of a legislature party has been deleted. It means that the defectors have no more protection on the grounds of splits.

How do other countries deal with the question of political defection?

Some countries have laws similar to the Indian anti-defection law, which penalizes politicians who switch parties or violate party discipline. Other countries have no such laws and allow politicians to switch parties or become independents freely.

Here are some examples of how different countries deal with political defections:

- **United Kingdom:** In the United Kingdom, there is no law prohibiting politicians from switching parties or becoming independents. However, political parties may expel members who defect, and defectors may face backlash from voters in future elections.
- **USA:** In the United States, there is no law prohibiting politicians from switching parties or becoming independents. However, politicians who switch parties may face backlash from voters in future elections and challenges from within their parties in primary elections.
- Also, countries like **Canada, France, Australia, Germany, and Italy** do not have any laws against political defection.

What are some of the judicial observations regarding defection in India?

Some of the important cases related to anti-defection in India include

1. **Kihoto Hollohan vs. Zachillhu and Others (1992):** In this case, the Supreme Court of India upheld the constitutionality of the law and ruled that the provisions were necessary to prevent the destabilization of governments and to ensure the integrity of the electoral process.
2. **G. Viswanathan vs. Hon'ble Speaker, Tamil Nadu Legislative Assembly (1995):** In this case, the Supreme Court ruled that the Speaker of a legislative assembly has the power to decide on cases of defection and that the decision of the Speaker is final and cannot be challenged in a court of law.
3. **Ravi S. Naik vs. Union of India (1994):** In this case, the Speaker or Chairman of the relevant legislative body can disqualify an elected representative for defection.

What are the suggestions to reform the Anti Defection law in India?

There have been various suggestions for reform of the anti-defection law in India. Some of the reforms that have been proposed include:

1. **2nd ARC:** 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.

2. **Reducing the number of defections:** The threshold for disqualification should be raised from one-third to two-thirds or three-fourths. This would reduce the number of defections and make it harder for political parties to split.
3. **Allowing defections in certain circumstances:** Some have suggested that defections should be allowed in certain circumstances, such as when a political party merges with another party or when a member is expelled from their party.
4. **Removing the role of the Speaker:** Some have suggested that the role of the Speaker in deciding on cases of disqualification should be removed and replaced with an independent authority, such as the Election Commission.
5. **Allowing independents to join parties:** Some have suggested that independent members should be allowed to join political parties without being disqualified.
6. **Providing for a grace period:** Some have suggested that a grace period should be provided for members who have defected to allow them to prove their loyalty to their new party.
7. **Time frame:** In one of the judgments, the Supreme Court has held that the Speaker of the Legislative Assembly should decide on a petition seeking disqualification of a member under the Tenth Schedule of the Constitution within a period of three months.

Anti Defection Law UPSC PYQs

Q1. Consider the following statements: **(UPSC Prelims 2025)**

1. If any question arises as to whether a Member of the House of the People has become subject to disqualification under the 10th Schedule, the President's decision in accordance with the opinion of the Council of Union Ministers shall be final.
2. There is no mention of the word 'political party' in the Constitution of India.

Which of the statements given above is/are correct?

- a) 1 only
- b) 2 only
- c) Both 1 and 2
- d) Neither 1 nor 2

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