

# Anti-Defection Law

## [UPSC Notes]

### What is Anti-Defection Law?

The Anti-Defection Law in India, which is part of the Constitution's Tenth Schedule, penalizes MPs and MLAs who defect from their party by removing them from the legislature.

- It grants the Speaker of the House of Representatives the authority to decide on defection proceedings.
- When Rajiv Gandhi was Prime Minister, the Fifty-Second (Amendment) Act of 1985 was passed, adding the law to the Constitution of India.
- The statute applies to both Parliament and state legislatures.

The anti-defection law is stated in the 10th Schedule of the Indian Constitution that punishes individual Members of Parliament (MPs)/MLAs who desert from one party to another.

### Origin of Anti-Defection Law

In 1967, Gaya Lal, an MLA from Haryana, changed parties three times in one day, and the expression "Aaya Ram Gaya Ram" was set off widespread in the Indian political scenario. Good governance became elusive as a result of frequent defections of elected and nominated party members, creating an uncertain climate for the state and federal administrations to function in. To combat similar political resignations, it was essential that an anti-defection act was required.

Hence, Rajiv Gandhi, India's Prime Minister at that time, suggested a proposal to eliminate the dangers of desertion. The Fifty-Second (Amendment) Act of 1985 was used to add it to the Constitution. The Anti-Defection Law, also known as the 10th Schedule of the Indian Constitution, was inserted by the 52nd Amendment to the Indian Constitution in the year 1985.

### Role of Anti-Defection Law

The Anti-Defection law tries to keep the government stable by punishing members who change their political party affiliation. Anti-defection legislation also tries to inculcate a

sense of loyalty to one's own political party in members. This is accomplished by ensuring that members elected in the name of the party, its support, and the party manifesto remain faithful to the political party to which he belongs and its policies.

## Ant- Defection Law Cases

The Ant- Defection Law in India addresses three scenarios in which a member of parliament or a member of the legislature switches political parties:

1. Voluntary give-up  
The first is when a member elected on a political party's ticket "voluntarily" ceases to be a member of that party or votes in the House against the party's desires. Such people are ejected from their seats.
2. Independent members  
When an independent candidate wins a legislative seat and then enters a political party afterward.  
In each of these cases, the legislator's seat in the legislature is forfeited when he or she joins (or leaves) a political party.
3. Nominated MPs  
They have six months after being chosen to join a political party, per the law. If they join a party later than that, they stand to lose their seat in the House.

## Exceptions under the Anti-Defection law

In specific conditions, legislators can switch parties without risking disqualification. The law permits any political group to combine with or into another if at least two-thirds of its legislators support the merger. Neither the individuals that are in question opt to merge nor those who are loyal to the old party will be disqualified in this case.

Any elected Chairman has the option to withdraw from his party and reunite it if he relinquishes his position. Previously, the legislation permitted the splitting of parties, but this is now prohibited.

- In 1985, A'merger' was defined as a 'defection' by one-third of a political party's elected members.
- However, the 91st Constitutional Amendment Act of 2003 amended this, requiring at least two-thirds of a party's members to support a "merger" in order for it to be legal.

## Challenges of the Anti-Defection Law

Following are the challenges of the Anti-Defection Law:

- It infringes on the members' entitlement to freedom of speech and freedom of expression by suppressing disagreement among the party's members.
- This law also hinders the member's capacity to be an effective lawmaker.
- Restricts shifting allegiances, which reduces the government's accountability.
- When an individual who is a senator of the parliament receives a party position, he or she is reduced to a simple voting entity in the House of Representatives.

## Committees on the Anti-Defection Law

Various committees have been established for Anti-Defection Law. Go through the suggestions of each committee for a better understanding of the law.

- **Dinesh Goswami Committee on Electoral Reforms (1990)** : Exemption should be limited to situations wherein a member (a) voluntarily resigns from his political party, (b) abstains from voting or votes against the party whip in a motion of confidence or no-confidence. In the opinion of the Election Commission, the President/Governor should decide on disqualification.
- **Law Commission (170th Report, 1999)**: Provisions exempting mergers and splits from disqualification should be removed. Anti-defection legislation should recognise pre-poll electoral fronts as political parties. Political parties should restrict the use of whips to situations in which the government is in jeopardy.
- **Election Commission**: Important decisions by the Election Commission under the Tenth Schedule should be made by the President/Governor based on the Election Commission's binding advice. Commission on Constitutional Amendments (2002). For the remainder of the term, defectors should be forbidden from entering a public office or any remunerative political position. A vote to undermine a government cast by a defector should be declared null and void.
- **Haleem Committee(1998)**: It demanded that the terms "voluntarily giving up political party membership" and "political party" be fully defined. Certain restrictions will be imposed, such as a potential prohibition on expelled members holding government positions.

**Constitution Review Commission(2002)**: The committee recommended that the defectors be barred from holding public office or any other political position for the remainder of their tenure. A vote to undermine a government cast by a defector should be declared null and void.