

What is Anti Defection Law?

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Introduction:

The **Anti Defection Law** was included in the Constitution as the Tenth Schedule in 1985 by the 52nd constitutional amendment act to combat the “evil of political defections”. The main purpose was to preserve the stability of governments and insulate them from defections of legislators from the treasury benches. The law stated that any Member of Parliament (MP) or that of a State legislature (MLA) would be disqualified from their office if they voted on any motion contrary to the directions issued by their party.

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Background:

Aaya Ram Gaya Ram was a phrase that became popular in Indian politics after a Haryana MLA Gaya Lal changed his party thrice within the same day in 1967. The anti defection law sought to prevent such political defections which may be

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due to reward of office or other similar considerations.

To deal with this political instability, during the fourth Lok Sabha in 1967 a committee was formed under the chairmanship of Y. B. Chavan. This committee submitted a report in 1968 which led to a first attempt to submit an antidefection bill in Parliament which did not succeed to bring the legislation for it. A joint committee was formed in parliament by the then government.

1977–79 was one of the crucial periods in Indian politics when the first-ever national non-Congress Government, led by Morarji Desai, was driven out of power due to the defection of 76 parliamentarians. This caused political uncertainty until 1979 and also a trend set during this period that whichever party got a majority in the centre, the regional government fell due to defection of the member who did not belong to the central government party.

With rising public opinion for an anti defection law a new anti defection bill was introduced in the parliament in 1984 which passed unanimously by both the houses on 31st Jan 1985. The bill received the President's approval on 15 February 1985 and the act came into effect on 18 March 1985. In such a way the legislation came into force to bring more stability to the government.

Disqualification procedure

The tenth schedule, which was added by the 1985 act, covers three kinds of scenarios. One is when legislators elected on the ticket of one political party “voluntarily give up” membership of that party or vote in the legislature against the party’s wishes. A legislator’s speech and conduct inside and outside the legislature can lead to deciding to voluntarily give up membership.

The second scenario arises when an MP/MLA who has been elected as an independent joins a party later. The third scenario relates to nominated legislators. In their case, the law specifies that they can join a political party within six months of being appointed to the House, and not after such time.

Violation of the law in any of these scenarios can lead to a legislator being penalised for defection. The Presiding Officers of the Legislature (Speaker, Chairman) are the deciding authorities in such cases. The Supreme Court has held legislators can challenge their decisions before the higher judiciary.

Exceptions to the disqualification

The disqualification given above does not apply in the following cases:

If a member goes out of the party in case of a merger of parties. A merger takes place when two-thirds of the members of the party have agreed to such a merger. This exception has been deleted by the 91st constitutional amendment act of

2003. It means that the defectors have no more protection on the ground of split. If a member voluntarily gives up the membership of his party after being elected as the presiding officer of the house.

Deciding authority

The presiding officer of the house has been authorised to decide any question arising out of the defection. Earlier the decision of the presiding officer was final and cannot be questioned in any court, which was later changed by the supreme court in the Kihoto Holohan case (1993). With this SC held that the presiding officer, while deciding a question under the tenth schedule, functioned as a tribunal. His decision is subject to judicial review like that of any other tribunal.

91st Amendment act (2003)

To make the existing law more effective in dealing with the frequent defections, an amendment was proposed to the Tenth Schedule in 2003. It added the following provision to the constitution:

- Limit the strength of the council of ministers as 15 percent of the total strength of the lok sabha and state legislative assembly.
- A member of either house of parliament who is disqualified on the ground of defection shall also be disqualified to be appointed as minister. A member of either house of parliament or of a state legislature belonging to any political party who is disqualified on the ground of defection shall also be disqualified to hold any remunerative political post. Remunerative political post means any office under the central government or a state government or remunerative for such office is paid out of the concerned government or any office under a body, whether incorporated or not, which is wholly or partially owned by the central government or a state government.
- Exemption from defection provision under tenth schedule for the defection in case of merger of party has been deleted with this amendment act.

Impact analysis

The law stated that any member of parliament or state legislature would be disqualified from their office if they voted on any motion contrary to the direction issued by their party. The provision was not limited to confidence motion or money bills, it applies to all votes in the house, on every bill and on every other issue. This implies that an MP or MLA has no freedom to vote their judgement on any issue. This provision goes against the concept of representative democracy. Henceforth this breaks the chain of accountability in Indian democracy by making legislators accountable primarily to the party. The events in Puducherry highlight the absurdity of the anti defection law. In contrast with the other country, in the United States, seven Republican senators

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voted to convict President Trump by breaking ranks with their party. Also in the United Kingdom, 55 MPs from Prime Minister Boris Johnson's party voted against the government's proposal for stricter lockdown restrictions.

If stability of government is an issue due to people defecting from their parties, the answer is for parties to strengthen their internal systems. To sum up, the anti defection law has been detrimental to the functioning of our legislatures as deliberative bodies which hold the executive to account on behalf of citizens. It has not even done the job of preserving the stability of governments. The Tenth Schedule to the Constitution must be repealed.

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