



# CURRENT AFFAIRS



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## ANTI-DEFECTION LAW

This article covers 'Daily Current Affairs' and the topic details of "Anti-defection law". This topic is relevant in the "Polity" section of the UPSC CSE exam.

**UPSC Mains GS2 Syllabus :** Indian Constitution

### Why in the News?

The Speaker of the Maharashtra Legislative Assembly has declined to disqualify 40 MLAs from the Eknath Shinde faction after accepting it as the legitimate Shiv Sena.

### What is defection

- In the legislature, a defector is someone who abandons allegiance to one party to make way for allegiance to another, switching sides in an unlawful manner according to the first party.
- In India, parliamentarians' defections from their parent parties in the 1960s and 1970s caused political instability in numerous states, bringing down elected administrations.
- To protect the stability of democratically elected governments, the 52nd constitutional amendment, enacted under the Tenth Schedule in 1985, included a 'anti-defection' provision.

### About the Anti-Defection Law

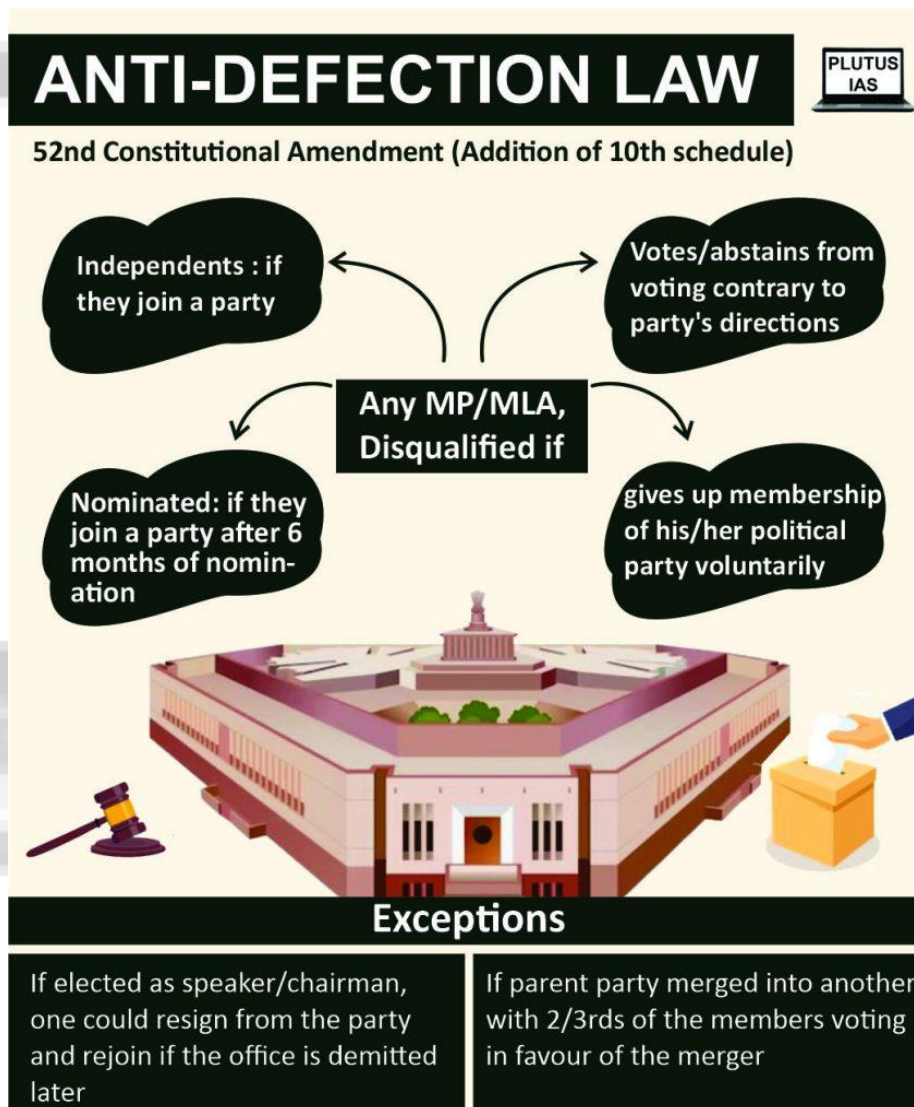
- The 52nd Amendment Act of 1985 disqualified members of Parliament and state legislatures for defecting from one political party to another. This amendment added a new Schedule, Schedule 10, to the Constitution. This statute is also known as the '**anti-defection law**'.
- Later, the **91st Amendment Act of 2003** made one alteration to the requirements of the Tenth Schedule. It deleted an exemption provision, which said that disqualification based on defection would not apply in the event of a split.

### Some important features of the Act

#### Disqualification :

- If he or she deliberately leaves a political party.
  1. In **Ravi S. Naik vs. Union of India (1994)**, the Supreme Court clarified that an MP/MLA does not need to formally resign from their party to be disqualified under the anti-defection law. The Supreme Court clarified that "voluntarily giving up his membership" does not imply resignation. Even in the absence of a formal resignation from membership, a member's actions can be interpreted as indicating that he has willingly resigned from the political party to which he belongs.

- If one participates in or refrains from voting in the House, as opposed to any order issued by his or her political party or anybody authorised to do so, without seeking prior approval.
- If any **independently elected member** decides to join a political party. The Supreme Court ruled in **Balchandra L. Jarkiholi Vs. B.S. Yeddyurappa (2010)** that any Independent member of Legislative Assembly who joins the Ministry in a coalition government without joining the main party will retain their independence. So becoming a member of the Council of Ministers does not preclude one's candidature.
- If a **nominated member** of a House joins a political party after the **6 month** period that ends on the day that he assumes his seat in the House, he loses his eligibility to serve in that House.



**Exceptions:**

- In the event that a party merges with another party and a member leaves the party. When the consent of two-thirds of the party involved is obtained, a merger occurs.

- If a member, after having been elected as the speaker of the House, willfully gives up or rejoins his party after he ceases to hold

### **Deciding Authority:**

Any question of disqualification arising from defection will be decided by the House's presiding officer. In the **Kihoto Hollohan case (1993)**, the Supreme Court ruled that when considering an issue under the Tenth Schedule, the presiding officer acts as a tribunal. Thus, his decision is open to review by the court on the basis of mala fides, perversity, etc.

### **Issues with the Anti Defection Law**

- **Undermine Democracy:** It undermines democracy by limiting politicians' freedom of speech and holding them answerable to party leaders rather than their constituents.
- **No fixed time frame:** The system lacks a time frame for determining defection cases and relies on presiding officers' discretion, which may be influenced by political influences. However, in **Keisham Meghachandra Singh vs Speaker Manipur Legislative Assembly & Ors (2020)**, the Supreme Court declared that Speakers of Assembly and Parliament must determine disqualification petitions within three months, unless there are unusual circumstances.
- **Defections still happening:** A group of members can defect to another party without punishment if they make up at least two-thirds of their previous party. This allows for opportunistic and unscrupulous party mergers and splits, undermining the political system's stability and integrity. This supports the practice of "horse trading," or the buying and selling of legislators.
- **Underlying issues still persisting:** It does not address the underlying causes of defection, which include a lack of intra-party democracy, corruption, and electoral malpractice. It also does not preclude the parties from persuading or accepting defectors, making it ineffective in discouraging defection.

### **Advantages of Anti-Defection Law**

- It promotes political stability by limiting parliamentarians' ability to switch parties.
- Reduces Horse trading and Money power.
- It allows the democratic realignment of parties in the legislature through party mergers.
- It decreases political corruption and non-developmental expenditures associated with irregular elections.

### **Different committees for the Anti-Defection Law**

- **Dinesh Goswami committee:** Disqualification should be limited to members who willingly leave their membership. and For members who behave or vote contrary to the confidence of their party. The decision to disqualify shall be made by the President/Governor on the guidance of the Election Commission.
- According to the **Law Commission's (170th Report, 1999)**, splits and mergers would no longer be considered an exception to disqualification. Pre-poll electoral fronts should be classed as political parties under the anti-defection legislation.

### **Conclusion:**

The Anti-Defection Law of the Indian Constitution attempts to promote democratic stability by limiting political defections. Regardless of its importance, concerns such as limiting legislators' flexibility and procedural issues highlight the need for reform. Inspired by worldwide experiences, the proposed initiatives seek to strike a balance between stability and accountability.

**Prelims practice questions:**

**Q1) Regarding India's anti-defection legislation, consider the following statements:**

- 1) A legislator nominated to the House is prohibited by law from joining any political party for a period of six months after their appointment.
- 2) There is no deadline set by law for the presiding officer to make a decision in a defection case.

**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

**Answer: b)**

**Q2) Consider the following statements regarding the implementation of anti-defection law:**

1. a) If an elected member voluntarily leaves the political party;
2. b) If an elected member participates in or refrains from voting in such House opposed to any order promulgated by his political party or anybody authorised to do so, without getting any prior approval.

**Which of the statements given above is/are correct?**

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

**ANSWER: b)**

**Mains practice question**

**Q1) Analyze the role of the Speaker or Chairman in deciding on disqualification cases under the Anti-Defection Law. How can the impartiality of this process be ensured, given the political nature of the decisions?**

**Q2) Critically evaluate the exceptions provided in the Anti-Defection Law for mergers. In your opinion, do these provisions effectively address the concerns of political defections, or do they create potential loopholes?**

**Himanshu Mishra**