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# Anti-Defection Law in India

**Published On: 26-02-2023**

**Why is in news?** A five-judge Bench of the Supreme Court of India is presently hearing a set of cases popularly known as the “Maharashtra political controversy cases” which raises certain fundamental issues about the working of India’s “anti-defection law”.

## About Anti Defection Law

The anti-defection law was passed in 1985 through the 52nd Amendment to the Constitution.

The law that was contained in the 10th Schedule of the Constitution came into effect on March 1, 1985. It was formulated to bring in stability in the Indian political system. It was added to prevent political defections.

The rationale to curb such defections was that they undermine the foundations and principles of Indian democracy

The law disqualifies legislators for violating the will of their political party

Its purpose was to check increasingly frequent floor-crossing; lured by money, ministerial berths, threats, or a combination of the three, legislators were regularly switching party affiliations in the house (and bringing down governments with them).

## Features of the Anti-Defection Law

### 1 Disqualification on ground of defection:

A legislator belonging to a political party will be disqualified if he:

- (i) voluntarily gives up his party membership, or
- (ii) Votes/abstains to vote in the House contrary to the direction issued by his political party.

A member is not disqualified if he has taken prior permission of his party, or if the voting or abstention is condoned by the party within 15 days.

Independent members will be disqualified if they join a political party after getting elected to the House.

Nominated members will be disqualified if they join any political party six months after getting nominated.

### 2 Exemptions in cases of merger:

Members are exempted from such disqualification when at least two thirds of the original political party merges with another political party.

Further: (i) the members must have become members of the party they have merged with/into, or (ii) they should have not accepted the merger and choose to function as a separate group.

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### **3Decision making authority:**

The decision to disqualify a member from the House rests with the Chairman/Speaker of the House.

### **Significance of Anti Defection law**

It provides stability to the government by restricting the shift of party relations.

It ensures that candidate shall be loyal to his party and citizens also gave vote to him

It also promotes party discipline.

It allows the merger of political parties without disqualifying a member on the ground of defection.

It also helps in reducing corruption at the political level by restricting the change of party.

It provides procedure for those who defects from one party to another.

### **Limitations and Concerns with Anti defection law**

Parties often have to sequester MLAs in resorts to prevent them from changing their allegiance or getting poached by a rival party or an opposing faction of their party. Recent examples are Rajasthan (2020), Maharashtra (2019), Karnataka (2019 and 2018), and Tamil Nadu (2017).

Parties have also been able to use the anti-defection law to their advantage. In 2019 in Goa, 10 of the 15 Congress MLAs merged their legislature party with the BJP. In the same year, in Rajasthan, six BSP MLAs merged their party with the Congress (the case being heard in the Supreme Court), and in Sikkim, 10 of the 15 MLAs of the Sikkim Democratic Front have joined the BJP.

It is important that the decisions taken by the presiding officer under the Tenth Schedule are impartial and independent of political considerations. However, in several instances it has been seen that the presiding officers do not disqualify legislators or delay the decisions regarding disqualifications, therefore putting their allegiance into question

Another lacuna associated with the decision-making power of the presiding officer under the Tenth Schedule is the absence of a timeline to take decisions. The Anti-Defection Law is silent on the maximum time within which a decision must be taken on questions of disqualification.

### **The Way Ahead**

The Election Commission has suggested it should be the deciding authority in defection cases. Others have argued that the President and Governors should hear defection petitions. And last year, the Supreme Court said Parliament should set up an independent tribunal headed by a retired judge of the higher judiciary to decide defection cases swiftly and impartially. Even though the law has been able to curb the evil of defections to a great extent, the recent incidents in the Indian political scene underline the need for a review in order to tighten all the loopholes.