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Political Defections Revive Debate on Electoral Mandate, Democratic Stability and Effectiveness of India's Anti-Defection Law

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Recent Developments:

- Frequent **post-election defections**, party realignments and changes in government across several States have once again brought the **Anti-Defection Law** under public and judicial scrutiny, raising concerns over democratic ethics and electoral accountability.
- Recent political developments have renewed demands for **time-bound disposal of disqualification petitions**, greater institutional neutrality of Presiding Officers and stronger safeguards against opportunistic defections.
- The continuing delay in deciding several disqualification petitions has reignited debate over whether adjudication under the **Tenth Schedule** should remain with the **Speaker/Chairman** or be transferred to an independent constitutional authority.

Political Defection:

Meaning:

- **Political defection** refers to the act of an elected representative changing political affiliation after being elected on the ticket of another political party, thereby altering the political composition of the legislature.
- Defections may occur through voluntary resignation from a political party, joining another party or acting contrary to the official party position in circumstances attracting disqualification under the Constitution.
- Such political shifts frequently influence government formation, legislative stability and the balance of power in parliamentary democracy.

Historical Background:

- Political defections became widespread during the **late 1960s and early 1970s**, leading to repeated collapses of elected governments and growing political instability.
- The expression "**Aaya Ram, Gaya Ram**" originated after repeated party switching by **Gaya Lal**, a legislator from Haryana, and subsequently became synonymous with opportunistic political defections in India.
- Increasing instances of unethical political realignments ultimately led to the enactment of the **Anti-Defection Law** through the **Fifty-second Constitutional Amendment Act, 1985**.

Why Political Defections are a Threat to Democracy:

Violation of Electoral Mandate:

- Voters elect representatives not only on the basis of individual merit but also considering the **political party's ideology, manifesto, leadership and policy commitments**.

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- Switching political allegiance after elections weakens the electoral mandate because the representative no longer reflects the political choice endorsed by the electorate.
- Frequent defections undermine public confidence in representative democracy and reduce electoral accountability.

Promotion of Opportunistic Politics:

- Defections often prioritise political survival, ministerial positions and short-term electoral gains over ideological commitment and public service.
- Such practices encourage transactional politics, weaken political ethics and diminish the role of principles in democratic governance.
- Opportunistic alliances also discourage long-term policy consistency and ideological clarity within political parties.

Weakening of Democratic Competition:

- Parliamentary democracy functions effectively only when both the **government** and the **Opposition** perform their constitutional responsibilities.
- Large-scale defections weaken the Opposition's ability to scrutinise executive decisions, question government policies and provide credible political alternatives.
- Reduced legislative competition may weaken parliamentary debates, committee oversight and executive accountability.

Political Instability and Governance Challenges:

- Repeated defections often trigger government collapses, frequent floor tests and prolonged political uncertainty.
- Administrative attention shifts from governance and development towards political management, coalition negotiations and legislative survival.
- Frequent changes in governments may delay policy implementation, discourage long-term investments and adversely affect institutional continuity.

Misuse of Public Mandate:

- Defections undertaken immediately after elections create the perception that electoral mandates are being used as instruments for political bargaining.
- Citizens may gradually lose trust in democratic institutions if elected representatives repeatedly alter party affiliation without seeking a fresh electoral mandate.
- Such practices weaken democratic legitimacy and reduce citizens' faith in constitutional governance.

Encouragement to Horse-Trading:

- Political defections frequently generate allegations of **horse-trading**, inducements and misuse of money or public office to alter legislative majorities.
- Such practices undermine constitutional morality, transparency and ethical standards expected from elected representatives.
- Preventing unethical defections remains essential for preserving the integrity of parliamentary democracy.

Anti-Defection Law:

Background and Constitutional Basis:

- The **Anti-Defection Law** was introduced through the **Fifty-second Constitutional Amendment Act, 1985**, which inserted the **Tenth Schedule** into the Constitution to curb the growing menace of political defections.
- The law was enacted following widespread political instability during the **1960s and 1970s**, when frequent party switching led to repeated government collapses and undermined the stability of parliamentary democracy.
- The principal objective of the law is to **promote political stability, preserve the electoral mandate, strengthen party discipline** and discourage unethical political defections motivated by personal or political gain.

Objectives of the Anti-Defection Law:

- To prevent elected representatives from changing political allegiance for ministerial positions, monetary benefits or other political incentives.
- To ensure that governments elected through the democratic process remain stable throughout their constitutional tenure.
- To uphold the integrity of the **electoral mandate** by ensuring that legislators remain accountable to the political party on whose ticket they were elected.
- To strengthen public confidence in representative democracy by reducing opportunistic political realignments.

Grounds for Disqualification under the Tenth Schedule:

Members Elected on Political Party Ticket:

- A legislator becomes liable for disqualification if he or she **voluntarily gives up the membership** of the political party on whose ticket the election was contested.
- The expression "**voluntarily giving up membership**" has been interpreted broadly by the Supreme Court and does not necessarily require formal resignation from the political party.
- A legislator may also be disqualified for **voting or abstaining from voting** contrary to the official party direction (**whip**) without obtaining prior permission, unless such action is condoned by the political party within the prescribed period.

Independent Members:

- An **Independent Member** elected without the support of any political party becomes disqualified if he or she joins any political party after the election.
- This provision seeks to preserve the independent character of candidates elected outside the party system and prevent post-election political bargaining.

Nominated Members:

- A **Nominated Member** of Parliament or a State Legislature may join a political party within **six months** from the date of taking the seat in the House without attracting disqualification.
- Joining any political party after the expiry of this six-month period results in disqualification under the **Tenth Schedule**.

Exceptions under the Anti-Defection Law:

Merger of Political Parties:

- The Constitution provides protection against disqualification when a **merger** of political parties satisfies the conditions prescribed under the **Tenth Schedule**.
- A merger is considered valid only if **at least two-thirds of the members** of a legislature party agree to merge with another political party.

- Members accepting such a merger, as well as those choosing to function as a separate group after a valid merger, remain protected from disqualification under the law.

Presiding Officers:

- A legislator elected as the **Speaker, Deputy Speaker, Chairman or Deputy Chairman** may voluntarily resign from the original political party after assuming office without attracting disqualification.
- Such protection is intended to preserve the institutional neutrality and independent functioning of the Presiding Officer during the tenure of office.
- The exemption ceases once the individual demits office and rejoins a political party in accordance with constitutional provisions.

Ninety-first Constitutional Amendment Act, 2003:

Need for the Amendment:

- The original **Anti-Defection Law** permitted exemption from disqualification when **one-third** of the members of a legislature party split from the parent political party.
- This provision was frequently misused to engineer political defections under the guise of legitimate party splits, thereby defeating the purpose of the law.
- Growing instances of organised defections prompted Parliament to strengthen the legal framework through the **Ninety-first Constitutional Amendment Act, 2003**.

Major Changes Introduced:

- The amendment **abolished the exemption relating to one-third splits**, thereby eliminating an important loophole that had facilitated frequent defections.
- Thereafter, only a **merger supported by at least two-thirds of the members** of a legislature party remained eligible for protection under the **Tenth Schedule**.
- The amendment also inserted **Article 75(1B)** and **Article 164(1B)**, preventing legislators disqualified under the **Tenth Schedule** from being appointed as Ministers until they are re-elected or their term expires.
- **Article 361B** further prohibits a disqualified legislator from holding any remunerative political office during the period of disqualification.
- Collectively, these reforms sought to strengthen political stability, discourage opportunistic defections and reinforce constitutional morality within parliamentary democracy.

Role of the Presiding Officer:

Adjudicatory Authority:

- Under the **Tenth Schedule**, the authority to decide petitions relating to disqualification on the ground of defection rests with the **Speaker** of the **Legislative Assembly** and the **Lok Sabha**, and with the **Chairman** of the **Rajya Sabha** and the **Legislative Council**.
- The decision of the Presiding Officer determines whether a member continues to remain part of the legislature or stands disqualified under the constitutional provisions.
- Although the **Tenth Schedule** vests this responsibility in the Presiding Officer, the exercise of such power is subject to constitutional limitations and judicial review.

Concerns Associated with the Anti-Defection Law:

Partisan Role of the Presiding Officer:

- Under the **Tenth Schedule**, the authority to decide disqualification petitions rests with the **Speaker** or the **Chairman** of the respective House, raising concerns regarding institutional neutrality and impartiality.

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- While the **Chairman of the Rajya Sabha** is expected to function independently after assuming office, the **Speakers** of the **Lok Sabha** and **State Legislative Assemblies** generally continue to be members of their respective political parties.
- This institutional arrangement often creates a perception that disqualification proceedings may be influenced by political considerations rather than constitutional principles.

Delay in Deciding Disqualification Petitions:

- The **Tenth Schedule** does not prescribe a specific time limit for deciding disqualification petitions, resulting in prolonged delays in several cases.
- In many instances, petitions have remained pending for several months or even for the entire tenure of the legislature, allowing legislators to continue participating in proceedings despite the pendency of disqualification.
- Such delays defeat the very objective of the **Anti-Defection Law** by enabling political uncertainty and encouraging strategic defections.

Weakening of Legislative Deliberation:

- The law promotes strict party discipline by discouraging legislators from voting independently even on issues involving public interest or constituency concerns.
- Excessive dependence on the **party whip** may reduce meaningful parliamentary debate and limit the ability of legislators to exercise independent judgment.
- Critics argue that the law has gradually shifted the balance of accountability from the **legislature** towards the **political party leadership**.

Limited Scope of Intra-Party Democracy:

- The existing legal framework discourages dissent within political parties by treating deviation from the official party position as a possible ground for disqualification.
- Legislators often hesitate to express genuine policy differences due to the risk of losing their legislative membership.
- This tendency weakens **internal party democracy**, policy innovation and constructive legislative discussion.

Failure to Prevent Mass Defections:

- Although the law has reduced individual defections, large-scale defections continue through the **two-thirds merger provision**, enabling political realignments without attracting disqualification.
- Several recent political developments have demonstrated that governments can still change despite the existence of the **Anti-Defection Law**, raising questions about its long-term effectiveness.
- Critics therefore argue that the law has controlled isolated defections more effectively than organised political shifts.

Important Supreme Court Judgments:

Kihoto Hollohan v. Zachillh(1992):

- The Supreme Court upheld the **constitutional validity of the Tenth Schedule**, observing that the **Anti-Defection Law** serves the legitimate objective of protecting the stability of parliamentary democracy.
- The Court held that the decision of the **Speaker** is **not final or absolute** and remains subject to **judicial review** on grounds such as mala fides, constitutional violations or procedural irregularities.
- The judgment established that judicial review constitutes part of the **Basic Structure of the Constitution**, thereby ensuring constitutional accountability of the Presiding Officer.

Ravi S. Naik v. Union of India (1994):

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- The Supreme Court clarified that **voluntarily giving up party membership** extends beyond formal resignation from a political party.
- A legislator's conduct, public statements or political activities may also indicate voluntary abandonment of party membership even in the absence of a written resignation.
- The judgment significantly broadened the interpretation of disqualification under the **Tenth Schedule**.

Rajendra Singh Rana v. Swami Prasad Maurya (2007):

- The Supreme Court held that the **Speaker** cannot indefinitely postpone decisions on disqualification petitions where constitutional requirements are clearly attracted.
- The judgment reinforced the principle that constitutional authorities must exercise statutory powers fairly, promptly and in accordance with constitutional morality.

Keisham Meghachandra Singh v. Speaker, Manipur Legislative Assembly (2020):

- The Supreme Court observed that prolonged delays in deciding disqualification petitions undermine the purpose of the **Anti-Defection Law** and weaken democratic governance.
- The Court recommended that **Speakers ordinarily decide disqualification petitions within three months**, except where exceptional constitutional circumstances justify a longer period.
- The judgment also suggested that **Parliament may consider establishing an independent permanent tribunal** to adjudicate defection disputes instead of leaving such decisions exclusively to the Presiding Officer.

Contemporary Reform Debate:

Need for Institutional Neutrality:

- Constitutional experts increasingly advocate transferring adjudicatory powers under the **Tenth Schedule** from the **Speaker** to an independent judicial or quasi-judicial authority.
- Such a mechanism is expected to strengthen public confidence, reduce allegations of political bias and ensure uniform application of constitutional principles.

Need for Time-Bound Decision Making:

- Several constitutional scholars have recommended statutory timelines for deciding disqualification petitions to prevent undue political advantage arising from procedural delays.
- A clearly defined adjudicatory framework would enhance certainty, preserve legislative stability and reinforce constitutional governance.

Balancing Stability with Legislative Freedom:

- The continuing challenge is to maintain **governmental stability** without completely eliminating the legitimate autonomy of legislators.
- Many experts suggest restricting the operation of the **party whip** only to matters affecting **government survival**, such as **confidence motions, no-confidence motions, Money Bills** and other critical votes, while permitting greater legislative independence on ordinary policy matters.

Way Forward:

Institutional Reforms:

- A **time-bound statutory mechanism** should be introduced for deciding disqualification petitions to prevent prolonged uncertainty and preserve the objective of the **Anti-Defection Law**.

- Parliament may consider transferring adjudicatory powers under the **Tenth Schedule** to an **independent tribunal** or another neutral constitutional authority to strengthen institutional impartiality.
- The adjudicatory process should be transparent, reasoned and consistent with the principles of **natural justice** and **constitutional morality**.

Political Reforms:

- Political parties should strengthen **internal party democracy** by encouraging greater participation of members in policy formulation and organisational decision-making.
- Candidate selection should become more transparent, merit-based and ideology-oriented so that electoral politics is driven by public service rather than political expediency.
- Political parties should evolve effective internal grievance redressal mechanisms to reduce intra-party dissatisfaction that often leads to defections.

Electoral Reforms:

- The **Election Commission of India (ECI)** may be entrusted with a greater role in monitoring post-election political realignments and maintaining transparency in legislative changes.
- Mandatory public disclosure of the reasons for political defections would improve accountability and enable voters to make informed electoral choices.
- Electoral reforms should reinforce the principle that the **electoral mandate belongs primarily to the electorate rather than to individual legislators**.

Judicial and Constitutional Reforms:

- Parliament may examine the recommendations of the **Supreme Court** regarding the establishment of an independent mechanism for deciding defection disputes.
- Constitutional conventions should evolve to ensure that **Presiding Officers** discharge their adjudicatory responsibilities with complete neutrality and without political influence.
- Greater adherence to **constitutional morality**, legislative ethics and democratic accountability should guide the interpretation and implementation of the **Tenth Schedule**.

Important Committees and Commission Recommendations:

Dinesh Goswami Committee on Electoral Reforms (1990):

- The Committee recommended that disqualification under the **Anti-Defection Law** should primarily apply to votes affecting the stability of the government, such as **confidence motions, no-confidence motions** and similar matters.
- It observed that legislators should enjoy greater freedom to express independent views on ordinary legislative business without the constant fear of disqualification.

Law Commission of India – 170th Report (1999):

- The Commission recommended strengthening **internal democracy within political parties** and making political functioning more transparent and accountable.
- It also favoured limiting the operation of the **party whip** to crucial votes directly affecting the survival of the government.

National Commission to Review the Working of the Constitution (2002):

- The Commission emphasised the need to strengthen democratic institutions while preventing unethical political defections.

- It supported reforms that would preserve governmental stability without undermining meaningful legislative debate and democratic accountability.

Second Administrative Reforms Commission (2007):

- The Commission recommended improving ethical standards in public life through greater transparency, accountability and adherence to constitutional values.
- It stressed that political reforms should promote responsible governance alongside institutional integrity.

International Perspective:

United Kingdom:

- The **United Kingdom** does not have an **Anti-Defection Law**, and legislators are generally free to change political parties without losing their seats.
- Political accountability is maintained primarily through constitutional conventions, party discipline and electoral responsibility.

South Africa:

- **South Africa** earlier permitted **floor crossing** under constitutional provisions but abolished the practice in **2009** after concerns regarding political instability and erosion of voter confidence.

Bangladesh and Pakistan:

- Both countries have constitutional provisions against political defections, particularly in relation to voting on matters affecting government stability, including **confidence motions**, **constitutional amendments** and **Money Bills**.
- These provisions seek to balance legislative discipline with the stability of parliamentary governments.

Constitutional Significance of the Anti-Defection Law:

Strengthening Parliamentary Democracy:

- The **Anti-Defection Law** seeks to preserve the stability of elected governments while ensuring that the electoral mandate is respected throughout the legislative tenure.
- It discourages opportunistic political behaviour and promotes continuity in governance and public administration.

Protecting Constitutional Morality:

- The law reinforces the constitutional principles of **accountability**, **responsibility**, **transparency** and **collective governance** by discouraging unethical political realignments.
- Effective implementation of the law strengthens public confidence in representative institutions and democratic processes.

Balancing Stability and Freedom:

- A mature parliamentary democracy requires a careful balance between **party discipline** and the legitimate independence of elected representatives.
- Future reforms should preserve governmental stability while ensuring that legislators continue to participate meaningfully in parliamentary deliberations and policy discussions.

Value Addition for UPSC:

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Important Constitutional Provisions:

- **Article 102(2)** provides for the disqualification of Members of Parliament under the **Tenth Schedule**.
- **Article 191(2)** provides for the disqualification of Members of State Legislatures on the ground of defection.
- The **Tenth Schedule**, inserted by the **Fifty-second Constitutional Amendment Act, 1985**, forms the constitutional basis of the **Anti-Defection Law**.
- The **Ninety-first Constitutional Amendment Act, 2003** strengthened the law by abolishing the exemption relating to **one-third splits** and recognising only mergers supported by **at least two-thirds** of the members of a legislature party.

Important UPSC Keywords:

- **Constitutional Morality, Electoral Mandate, Legislative Accountability, Party Whip, Collective Responsibility, Institutional Neutrality, Representative Democracy, Judicial Review, Political Stability, Internal Party Democracy, Floor Crossing, Coalition Politics, Natural Justice, Democratic Ethics.**

UPSC Value Statement:

- *The **Anti-Defection Law** represents an attempt to balance **political stability** with **democratic accountability**. Its long-term effectiveness depends not merely on stricter legal provisions but also on **institutional impartiality, internal party democracy, constitutional morality** and sustained respect for the electoral mandate.*