



INDORE WORLD SUMMIT



AIPPM
ALL INDIA POLITICAL PARTIES MEET

AGENDA:

Reviewing the 10th schedule of the constitution of india.

LETTER FROM THE EXECUTIVE BOARD

Greetings Members!

It gives us immense pleasure to welcome you to this simulation of All India Political Parties Meet Committee. We look forward to an enriching and rewarding experience.

This study guide is by no means the end of research, we would very much appreciate if the leaders are able to find new realms in the agenda and bring it forth in the committee. Such research combined with good argumentation and a solid representation of facts is what makes much as possible, as fluency, diction or oratory skills have very little importance as opposed to the content you deliver. So just research and speak and you are bound to make a lot of sense. We are certain that we will be learning from you immensely and we also hope that you all will have an equally enriching experience. In case of any queries feel free to contact us. We will try our best to answer the questions to the best of our abilities.

We look forward to an exciting and interesting committee, which should certainly be helped by the all-pervasive nature of the issue. Hopefully we, as members of the Executive Board, do also have a chance to gain from being a part of this committee. Please do not hesitate to contact us regarding any doubts that you may have.

All the Best!

Valid Sources

1. Government Reports (Each ministry publishes its own reports including External Affairs Ministry)
2. PTI, PIB
3. Government Websites
4. Government run News channels i.e., RSTV, LSTV, DD News
5. Standing Committee Reports/ Commission Reports
6. RTI Proofs
7. Parliamentary Standing Committee reports
8. Questions and Answers of the parliament

Introduction

The practice of legislators from changing political parties during their term continues unabated in Indian legislatures despite the tenth schedule having been inserted into the **constitution** in 1985.

Commonly known as the 'Anti - Defection Law', it was meant to arrest the practice of legislators from changing political affiliations during their term in office.

The political crisis in Maharashtra, and many others before it, are grim reminders of what the Tenth Schedule can and cannot do.



In recent times, Defection Laws have been a fundamental issue due to complete violation of the defection rules in the country by the leaders. Since independence, the practice of defection has been a debatable issue in India. We can take into account, the crisis of Madhya Pradesh Government in March, 2020, wherein Jyotiraditya Scindia along with 22 Member Legislative Assembly (“MLA’s”) gave resignation to the speaker of the assembly which in turn, resulted in a huge blow to the congress as they failed the floor test and accordingly BJP, which had the maximum number of seats came into the power and thereafter Shivraj Singh Chauhan was elected as the Chief Minister of Madhya Pradesh.

Recently the Deputy Chief Minister of Rajasthan (Sachin Pilot) and 18 other dissident leaders of the congress party were sent notices on the ground of defection. The notices were issued seeking their disqualification from the state assembly stating that all of them had defied the party whip by not attending 2 legislature meetings. The matter is pending adjudication in the High Court of Rajasthan.

What Do We Mean by Anti - Defection Law?

- The anti-defection law punishes individual Members of parliament (MPs)/ MLAs for leaving one party for another.
- Parliament added it to the Constitution as the **Tenth Schedule in 1985**. Its purpose was to bring stability to governments by discouraging legislators from changing parties.



Anti Defection Law

1. The Tenth Schedule - popularly known as the **Anti-Defection Act** - was included in the Constitution via the **52nd Amendment Act, 1985**.
 2. It sets the provisions for disqualification of elected members on the grounds of defection to another political party.
 3. It was a response to the toppling of multiple state governments by party-hopping MLAs after the general elections of 1967.
- However, **it allows a group of MP/MLAs to join** (i.e., merge with) another political party without inviting the penalty for defection. And it does not penalize political parties for encouraging or accepting defecting legislators.
1. As per the 1985 Act, a **‘defection’ by one-third of the elected members of a political party was considered a ‘merger’**.
 2. But the 91st constitutional amendment act changed this and now **at least two-thirds of the members of a party must be in Favour** of a “merger” for it to have validity in the eyes of the law.
- The members disqualified under the law can stand for elections from any political party for a seat in the same House.
- The decision on questions as to disqualification on ground of defection are referred to the or the **chairman and speaker** of such House, **which is subject to judicial review**
1. However, the law does not provide a timeframe within which the presiding officer has to decide a defection case.

How did the Law Evolve?

- In 1967, an MLA from Haryana, Gaya Lal changed his party thrice on the

same day.

- “Aaya Ram Gaya Ram” became a popular phrase in Indian Politics after this.
- It became a common practice to switch political parties across States which brought down state governments from their power.
- This raised concerns in the Lok Sabha and a committee was set up under Home Minister Yashwantrao Balwantrao to assess the problem.
- It was the Chavan Committee that recommended that if a legislator changes party for monetary gains, they should be excluded from the Parliament and also be barred from contesting elections for some time.
- The anti-defection law was introduced to prevent such floor choosing and was therefore inaugurated under Rajiv Gandhi’s rule through the 52nd Amendment.
- In 1992, the Tenth Schedule was brought to the Supreme Court and challenged its constitutionality under a landmark case of **Kihoto Hollohan v. Zachillhu and others**.
- In 2003, through the **91st Amendment**, the anti-defection law was made more effective to deal with regular defection.
 1. It deleted the provisions that protected legislators in case of a split in the party.
 2. It also stated that any legislator disqualified under Tenth Schedule would be disqualified from the executive or ministerial post as well.

What are its Objectives?

- ❑ It is to prevent defections motivated by the lure of office or material advantages or other such considerations.
- ❑ It deters the legislators from shifting their political association to gain any personal advantages.
- ❑ It maintains stability in the party system and prevents the threat of toppling the governments.
- ❑ It promotes party discipline by ensuring that the legislators vote in favour of the party whip.
- ❑ It permits the merger of political parties without disqualification of members.
- ❑ It strengthens the institution of democracy and keeps corruption in check.

What are the Grounds of Defection?

- ❑ The Supreme Court has interpreted various provisions of the Anti-Defection Law.
- ❑ One of the most important grounds is the phrase “**Voluntarily giving up his membership**”.
 1. It has a wider connotation than resignation.
 2. In absence of formal resignation, the giving up of his membership can also be inferred from the legislator’s **conduct**.
 3. Example: Two members of Janata Dal (United) were disqualified in 2017 by the Chairman of Rajya Sabha, on the grounds of “voluntary giving up their membership”. They criticised the party on public forums at multiple events and attended rallies of opposition parties.
- ❑ Another ground of Defection is “**Violation of Instructions**”. It means that if

the legislator votes or abstains from voting in the House contrary to a direction issued by the political party he belongs to, he is deemed to be disqualified.

1. The direction issued by the political party is famously referred to as the party whip.
- A legislator can further be disqualified if he is an independently elected member and joins a political party.
 - A legislator will be deemed to be disqualified if he is a nominated member and joins any political party, after six months from the day he became a legislator.
 - **The decision of the presiding officer** who decides the legitimacy of grounds of disqualification of defection is **subject to the Judicial Review**.
 1. Initially, the decision of the presiding officer was not subject to Judicial Review.
 2. It was in 1992 when the Supreme Court allowed appeals against the Presiding Officer's decision in the High Court and Supreme Court.
 3. But there can be no judicial intervention until the Presiding Officer gives his order.

What are the Exceptions under the Law?

- The law enables a party to merge with another party **if at least two-thirds of the legislators of the party are in favour of such a merger**.
- Neither the members who decide to merge nor the ones who stay in the original party will face any disqualification.

- According to Paragraph 5 of the Anti-Defection Law, the section provides an **exemption** to the speaker, chairman, and deputy chairman of the legislature from disqualification on grounds of defection.

What are the different Opinions on Anti-Defection Law?

- Expert committees suggest that the decision to disqualify a member of Parliament should be made by the President and the decision to disqualify a member of the State Assembly should be made by the Governor, based on the advice of the Election Commission.
- The Supreme Court has recommended that the Parliament can consider setting up an independent tribunal, which will be headed by a retired judge. It will allow the defection cases to be settled quickly and timely.
- Some suggest that the anti-defection law has ceased to function and has various flaws. Hamid Ansari, the former Vice President of India opined that it applies only in cases of no-confidence motions.
- After enactment of the Anti-defection law, the MP or MLA has to follow the party's direction blindly and has no freedom to vote their judgment.
 1. Due to Anti-Defection law, the chain of accountability has been broken by making legislators accountable primarily to the political party.

What are the Challenges with Anti - Defection Law?

- **Paragraph 4 of the law:**
 1. Paragraph 4 of the Anti - Defection Law creates an exception for mergers between political parties by introducing three crucial con-

cepts:

- **Original Party:**
The political party to which a member belongs (this can refer to the party generally, outside of the House).
 - **Legislature Party:**
 - Consisting of all elected members of a House for the time being belonging to one political party.
 - **Deemed Merger**
2. Paragraph 4 **does not clarify whether the original political party refers to the party at the national level or the regional level**, despite the fact that that is how the election commission of India recognises political parties.
 3. **Paragraph 4 states that:**
 - A merger can take place only when an original party merges with another political party, and at least two thirds of the members of the legislature party have agreed to this merger.
 4. Paragraph 4 seems to be creating a “legal fiction” so as to indicate that a merger of two third members of a legislature party can be deemed to be a merger of political parties, even if there is no actual merger of the original political party with another party.
- **Undermining Representative & Parliamentary Democracy:**
1. After enactment of the Anti-defection law, the MP or MLA has to follow the party’s direction blindly and has no freedom to vote in their judgment.
 2. Due to Anti-Defection law, the chain of accountability has been broken by making legislators accountable primarily to the political party.
- **Controversial Role of Speaker:**
1. There is no clarity in the law about the timeframe for the action of the

House Chairperson or Speaker in the anti-defection cases.

2. Some cases take six months and some even three years. There are cases that are disposed - off after the term is over.

□ **No Recognition of Split:**

1. Due to the 91st constitutional amendment act, the anti-defection law created an exception for anti-defection rulings.
2. However, the amendment does not recognize a 'split' in a legislature party and instead recognizes a 'merger'.

□ **Allows only Wholesale Defection:**

1. It allows wholesale defection, but retail defection is not allowed. Amendments are required to plug the loopholes.
2. He raised concern that if a politician is leaving a party, s/he may do so, but they should not be given a post in the new party.

□ **Affects the debate and discussion:**

1. The Anti-Defection Law has created a democracy of parties and numbers in India, rather than a democracy of debate and discussion.
 - In this way, it does not make a differentiation between dissent and defection and weaken the Parliamentary deliberations on any law.

What are the Suggestions for making Anti Defection Law more effective?

- Anti-Defection Law should be used in a rational and fair sense. Experts have suggested that the law should be valid in cases where the votes decide the stability of the government.
1. Example: In the case of **No-Confidence motions** or annual budget, where the votes decide the stability of the government.

- Some believe that the power to deal with the question of disqualification should be decided by an independent authority. Since the speaker's tenure relies on the party's majority in the House, according to Justice Verma in Hollohan Judgement, the speaker should not enjoy such authority.
- According to the 170th Law Commission Report, intra-party democracy should be endorsed, which would enable discussion among members of the party and prevent dictatorship within the party.
- An examination of the Tenth Schedule by the Supreme Court should take place to ensure that the use of Anti Defection Law is directed in the right manner. The role of the Court as a guiding institution can supervise and correct the drawbacks of the law.

What are the Recent occurrences on Anti Defection Law?

- In 2020, the Supreme Court stated that the speakers should decide on the question of disqualification within a "reasonable time".



- The case of *Keisham Meghachandra v. the Hon'ble Speaker Manipur* (2020)
 1. In *Keisham Meghachandra v. the Hon'ble Speaker Manipur*, Justice Rohinton Nariman talked of the need to set an external means to deal with defection cases.
 2. In his words, “Parliament may seriously consider amending the Constitution to substitute the Speaker of the Lok Sabha and Legislative Assemblies as an arbiter of disputes concerning disqualification which arise under the Tenth Schedule”
 3. He further continued that it can be **“with a permanent Tribunal headed by a retired Supreme Court Judge or a retired Chief Justice of a High Court**, or some other outside independent mechanism to ensure that such disputes are decided both swiftly and impartially, thus giving real teeth to the provisions contained in the Tenth Schedule, which are so vital in the proper functioning of our democracy”

Recent Maharashtra political crisis

The unfolding **crisis in Maharashtra** has thrown the spotlight on the anti-defection law, and the roles of the Deputy Speaker and the Governor.

On Wednesday (June 22), the ruling Shiv Sena called a meeting of all its MLAs in Mumbai. Some of its legislators have aligned themselves with the party's rebel leader Eknath Shinde and are camping in Guwahati. The party has warned its MLAs that their absence from the meeting would lead to the presumption they wanted to leave the political party. And this would therefore lead to action against them under the anti-defection law.



What is the anti-defection law, and would it apply to Shiv Sena ?

The anti-defection law provides for the disqualification of MLAs who, after being elected on the ticket of a political party, “voluntarily give up their party membership”. The Supreme Court has interpreted the term broadly and ruled an MLA’s conduct can indicate whether they have left their party. The law is also applicable to independent MLAs. They are prohibited from joining a political party, and in case they do so, they can also lose their membership in the legislature.

But the anti-defection law does not apply if the number of MLAs who leave a political party constitute two-thirds of the party’s strength in the legislature. These MLAs can merge with another party or become a separate group in the legislature.

