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## Grounds of criticism:

### 1. Ground of voluntary Resignation :-

The legal framework of "Anti-Defection Law" does not clarify that what constitutes voluntary resignation. It is a very subjective matter where the presiding officer remains the main adjudicating authority to decide whether resignation is voluntary or not.

Supreme Court in Ravi Naik Nayak case, 1994 adjudicated that the conduct of a member both outside & within the house remains the most deciding factor to determine that resignation is voluntary or not. Here, the court of law provides a type of protection to disqualified member on the ground of voluntary resignation.

## 2. Ground of Bulk Defection :-

The legal framework of Anti-Defection prohibits retail defection but legalise wholesale defection. However, this provision of Bulk Defection remains unpragmatic for those pol. parties which are having very few members in the house.

No. of times by the large pol. establishments by using unscrupulous means try to secure the mandate of these members in their favour.

The provision of Bulk Defection provides a type of stability to large pol. parties or govt. in power. Practically, it is impossible for the large pol. parties to get defected by this provision of Bulk Defection.

### 3. Bulk Defection before the general election :-

In the  
last 35 years of the enactment  
of this law, it has been observed that  
abundant amount of defections normally  
takes place just before the general election  
of Lok Sabha or legislative assembly.  
It is because there is no provision in  
the law that prohibits a disqualified  
person to ~~coming~~ contest the coming  
general election.

Recently in State of Karnataka case  
2019, Supreme court also clarifies that  
no authority can prohibit a disqualified person  
to contest the coming general election.

In a democratic & organic  
parliamentary system like India every  
member should be allowed to show  
its inclination towards any pol. party.  
The authority should be given to them  
to follow or to get detached from  
the ideology of a respective pol. party.

#### 4. Ground of Cross Voting :

- Normally, pol. parties are not taking disciplinary action against their member ~~in~~ spite of the fact that they are involved in cross voting.
- It is because they always have the fear to loose the mandate at parliamentary level. Generally by giving some warnings or advisories pol. parties try to maintain decorum in their system. However, disciplinary actions are normally taken when the members are involved in cross voting in matters or proceedings like confidence or No-confidence motions. It means the efficacy of this law depends on the stability of govt. in power.

- This tendency of flexibility in the matters like cross voting is compatible to Indian Democratic System where a pub. representative have

the authority to raise its objection, dissatisfaction & argument with regard to any proposal or bill.

5. Role & position of M.P. & members  
State legislature :

The provisions of Anti-Defection law not only curtails individual behaviour, thought process, mode of thinking, decisiveness & pro-activeness on the part of members but also restricted different types of constructive debates & discussions in the parliamentary proceedings.

Normally, members are required to follow the directions given by their respective pol. party because in the case of non-compliance/non-adherence the political party could take different types of disciplinary actions against them.

Supreme court in Keshav Holloman case 1992, held that the defection law does not subvert the democratic rights of members. It does not violate their freedom of speech & expression in any matter or proceedings. The courts are authorised enough to provide adequate remedy in all such considerations.

#### 6. Role or Position of Speaker :

Speaker is a political incumbent without any judicial competence, which adjudicates the matter of disqualification under Anti-Defection law.

Two speakers <sup>namely</sup> Ravi Rai & Shirraji Patil

have shown their limitations in adjudicating matters like voluntarily giving up membership, cross voting etc.

Supreme Court in Kihoto Holloman case clarifies this position by observing that the role of speaker is like a tribunal under Anti-Defection law.

Subsequently the decisions of speaker remain the subject matter of judicial scrutiny Questioning & Scrutinization.

## Parliamentary Privileges

Parliamentary privileges are the peculiar rights enjoyed by the members of each house individually & both houses of Parliament in collective manner. The basic objective is to vindicate the authority of parliament so that the members of parliament should perform their functions without any fear, favour, pressure or intimidation. They are basically the ancillary powers under which some protections & immunities are given to members of Parliament.

Article 105 & 194 reflect the subject matter of privileges in our constitutional framework. Freedom of speech & publication of proceedings are the 2 codified privileges incorporated under Art. 105 (1) & 105 (2).

With regard to other privileges Art. 105 (3)

makes a provision that other privileges would be those which are determined by Parliament through legislative instrument. Until parliament enact such type of law, the privileges would be those which are immediately before 1979.

It should be noted that not even a single law has been enacted by Parliament which to specify their privileges. Subsequently the main source of privileges in our constitutional mediated parliamentary system is nothing but the same privileges enjoyed by British house of commons.