

ANTI DEFECTION LAW: POLITY

NEWS: Anti-defection law is pivotal in safeguarding democracy: Sukhvinder Sukhu

WHAT'S IN THE NEWS?

The Anti-Defection Law under the Tenth Schedule aims to prevent unethical party-switching by legislators, but faces criticism over delays, Speaker bias, and loopholes despite its role in protecting democratic stability.

Context: Recent Relevance of Anti-Defection Law

- In 2024, during a political crisis in **Himachal Pradesh**, the Chief Minister emphasized the **Anti-Defection Law's importance** in **upholding democratic values** and preventing political instability.

What is Defection?

- **Defection** refers to a legislator:
 - Voluntarily giving up membership of their party
 - Voting against the official party whip
 - Being **absent from voting** when instructed to be present
- It is often linked to **political opportunism**, bribery, or promises of office.

Origin and Purpose of the Anti-Defection Law

1. Constitutional Provision

- Contained in the **Tenth Schedule** of the Constitution
- Introduced through the **52nd Constitutional Amendment Act, 1985**

2. Objective

- Aimed at **curbing rampant defections** that destabilized governments
- Seeks to **preserve democratic mandates** and reduce unethical practices like **horse-trading**

3. Historical Background

- Response to the “**Aaya Ram, Gaya Ram**” **phenomenon** of frequent defections for personal gain
- Introduced to restore **trust in democratic institutions** and **voter decisions**

Key Provisions of the Anti-Defection Law

1. Grounds for Disqualification

- A legislator can be disqualified if:
 - They **voluntarily give up membership** of the party under which they were elected
 - They **vote or abstain** contrary to a **party whip**, without prior permission

2. Who Decides Disqualification?

- The **Presiding Officer (Speaker or Chairman)** of the House decides on disqualification petitions
- The decision is based on a **petition by another member**

Exceptions to Disqualification

1. Original Exceptions (Before 2003)

- **Split** by one-third members of a legislative party (recognized as a group)
- **Merger** if two-thirds members join another party or form a new one

2. 91st Constitutional Amendment (2003)

- **Abolished the "split" provision** to prevent misuse
- Only **mergers with support of two-thirds** of members are now valid

Significance of the Anti-Defection Law in Strengthening Democracy

1. Upholding Electoral Mandate

- Prevents MLAs/MPs from **betraying the political party** under which they were elected
- **Protects voters' trust** by ensuring post-election allegiance remains intact

2. Ensuring Government Stability

- Minimizes **unethical party-switching** that could lead to **collapse of governments**, especially during:
 - Budget sessions
 - Confidence votes

3. Promoting Party Discipline

- Enforces party coherence by making **whip binding**
- Ensures members vote according to **collective party decisions**

4. Reducing Corruption and Opportunism

- Discourages **monetary incentives** and **ministerial offers** to induce defection

- Attempts to eliminate **bribery, deal-making, and manipulation**

Criticisms and Limitations of the Anti-Defection Law

1. Discretion and Delay by Speaker

- No **fixed time limit** for deciding disqualification petitions
- Speaker's role is often influenced by **political allegiance**
- Supreme Court in *Keisham Meghachandra Singh v. Manipur Speaker (2020)* advised a **3-month deadline**, but it is **not enforceable**

2. Lack of Transparency in Party Whips

- Whips are often issued **without public notice**
- Legislators may be **unaware** of exact instructions

3. Judicial Hesitation

- Courts avoid prompt intervention citing **legislative autonomy**
- Allows defectors to **continue holding power** until legal delays conclude

4. Loopholes in “Merger” Clause

- Still permits **mass defections** under the garb of two-thirds majority
- Example:
 - **Goa (2019)**: 10 Congress MLAs joined BJP
 - **Arunachal Pradesh (2016)**: Mass defections despite anti-defection safeguards

Reforms and Way Forward

1. Time-Bound Decisions

- Amend Tenth Schedule to mandate a **fixed period** (e.g., 90 days) for deciding disqualification
- In case of failure, **automatic disqualification** should apply

2. Transparent Whip System

- Require **public disclosure** of whips via **official gazettes, newspapers, or websites**
- Ensure legislators are **formally notified**

3. Independent Tribunal

- Transfer adjudicating power from Speaker to an **independent tribunal**

- Possible authority: **Election Commission of India (ECI)**

4. Expert Committee Recommendations

- **Dinesh Goswami Committee (1990):** Favoured non-political body to decide cases
- **Law Commission Report 170 (1999):** Suggested independent adjudication
- **NCRWC (2002):** Called for reforms to **strengthen impartiality**

Source: <https://www.thehindu.com/news/national/himachal-pradesh/anti-defection-law-is-pivotal-in-safeguarding-democracy-sukhvinder-sukhu/article69755219.ece>