

The Anti-Defection Law: Intent and Impact

The anti-defection law was passed in 1985 through the 52nd Amendment to the Constitution. The Amendment added the Tenth Schedule to the Indian Constitution, with an intent to curb “the evil of political defections”. Under the anti-defection law, legislators may be disqualified from their membership to the House if they resign from their party after being elected, or defy the direction issued by the party leadership during a vote on any issue.

Over the years, several contentious issues in relation to the working of the law have arisen. Does the law, while deterring defections, restrict a legislator from voting as per his conscience and erode his independence? Does the law lead to suppression of healthy intra-party debate and dissent? Does it restrict representatives from voicing the concerns of their voters in opposition to the official party position? Should the decision on defections be judged by the Speaker who is usually a member of the ruling party or coalition, or should it be decided by an external neutral body such as the Election Commission?

India’s experience of nearly 35 years with the anti-defection law has been instructive on its limitations and failures. The anti-defection law was brought in as defections affected political stability and were fuelled by the lure of political office and other pecuniary gains. However, the law goes against fundamental democratic principles, which include the representative role of a legislator, his ability to hold the government to account, and the consultative process of decision-making in the House. There have also been several instances where this law has not been able to check defections, and in some cases, defecting members have been granted ministerial positions in the government.

Key features of the Anti-Defection Law

What does the anti-defection law say?

The anti-defection law deals with situations of defection in Parliament or state legislatures by: (i) members of a political party, (ii) independent members, and (iii) nominated members. In limited circumstances, the law allows legislators to change their party without incurring the risk of disqualification.

Table 1: Key provisions of the anti-defection law

Feature	Provision in the Tenth Schedule
When can a legislator be disqualified?	<ol style="list-style-type: none">a. If a member of a house belonging to a political party:<ul style="list-style-type: none">- Voluntarily gives up membership of his political party, or- Votes contrary to a direction issued by his political party, or does not vote in the House at all, when such a direction is issued. However, a member shall not be disqualified if he has taken prior permission of his party, or is condoned by the party within 15 days from such voting or abstention.b. If an independent candidate joins a party after the election.c. If a nominated member joins a party six months after he becomes a member of the legislature.
Are there any exceptions?	<ol style="list-style-type: none">a. A person shall not be disqualified if his original political party merges with another (applicable only if more than two-thirds of the members of the party have agreed to the merger), and:<ul style="list-style-type: none">- He and other members of the old political party become members of the new political party, or- He and other members do not accept the merger and opt to function as a separate group.
Who has the power to disqualify?	<ol style="list-style-type: none">a. The Chairman or the Speaker of the House takes the decision to disqualify a member.b. If a complaint is received with respect to the defection of the Chairman or Speaker, a member of the House elected by that House shall take the decision.

Note: Until 2003, the law also exempted defections caused by 1/3rd members of the original party splitting from the party. This exception was removed in 2003.

Sources: Tenth Schedule of the Constitution; PRS.

Why was the anti-defection law enacted?

Two key arguments have been used to justify an anti-defection law. One justification offered for the law is that it intends to combat political defections fuelled by political corruption and bribery. In the years preceding the passage of the anti-defection law, it was noted that legislators were often given the lure of executive office, or promised personal benefits, in order to encourage them to defect from their party.¹ A Committee formed under the chairmanship of the then Home Minister YB Chavan (1969) to examine the need for an anti-defection law, noted that out of 210 defecting legislators of various states in India, 116 were given ministerial positions in the new government which they helped form. It recommended that for defections that were fuelled by monetary gains or by the lure for political office, the defectors should not only be barred from office, but should also be barred from standing in future elections for a prescribed time period.¹

Others have argued that defections flout the voters' mandate. This argument is based on a recognition of the role of political parties in the parliamentary system. The argument is that most candidates are elected on the basis of the party which gives them a ticket.² The party also arranges for election expenses of the candidate and the candidate fights the election based on the manifesto of the party. Therefore, when a member defects from the party, he betrays the fundamental trust based on which people elected him to power.

Effect of Anti-Defection Law on the role of a legislator

The anti-defection law provides for disqualification of a legislator if he votes contrary to the party whip. As a result, members are compelled to obey the party whip, in order to avoid losing their seat in the House. The law raises questions on the role of a legislator. One, it restrains legislators from expressing their conscience in the House. Two, it breaks the link of accountability between the voter and the elected representative. Three, it disturbs the balance of power between the executive and the legislature, by constraining the ability of a member to hold the government accountable. Four, it leads to major decisions in the House being taken by a few party leaders and empowers party leaders to compel legislators to vote as per their instructions.

How has the anti-defection law compromised the role of a legislator?

While the anti-defection law was introduced to curb political defections and ensure stability of government, it restrains legislators from effectively carrying out their functions. In a parliamentary system, legislators are expected to exercise their independent judgement while determining their position on an issue.³ The choice of the member may be based on a combination of public interest, constituency interests, and party affiliations. This fundamental freedom of choice could be undermined if the member is mandated to vote along the party line on every Bill or motion. Even if the member has an opinion that differs from his party leadership, he does not have the freedom to vote as per his choice. For example, in a discussion on river water sharing between states, MPs representing constituencies in different states may be forced to vote in a unanimous manner, despite holding divergent views, in order to avoid the risk of disqualification from office.

How has the anti-defection law affected a legislator's ability to hold the government accountable?

The anti-defection law deters legislators from holding the government accountable for its actions. One of the key features of a parliamentary democracy is that the government is accountable for its decisions to Parliament. This accountability is tested through questions posed to Ministers, discussions on various government policies, and by debating national issues. The directly elected House may even dismiss the government by way of a no-confidence motion.

However, the anti-defection law deters a legislator from his duty to hold the government accountable, by requiring him to follow the instruction of the party leadership on almost every decision. Therefore, he may debate and dissent from his party position on an issue in Parliament, but will still be compelled to vote as per the instruction of the party whip. This may raise a question on the redundancy of debate on issues in the House. For example, in December 2012, there was a vote in Lok Sabha on whether 51% foreign direct investment should be allowed in multi-brand retail. During the vote, all the members of the Congress party in the House voted for the policy and all the members of the Bharatiya Janata Party voted against the policy.⁴ It is unlikely that all legislators from a party had an identical stance on an issue with such wide-ranging implications.

By definition, the party or coalition in power has the majority of the membership in Lok Sabha. By prohibiting dissent, the anti-defection undermines the system of executive accountability to the legislature, and gives the executive control over Parliament on all votes. As a result, the legislator is no longer empowered to act as an effective check on the government of the day.

How has the anti-defection law affected a citizen's ability to hold his elected representative accountable?

The anti-defection also law breaks the chain of accountability between elected representatives and the voter. In India, citizens choose their member for a period of five years. During this term, they can judge the performance of the member based on his parliamentary record. For example, a citizen may have a strong opinion on the issue of land acquisition. He may convey this opinion to the legislator and ask him to vote in a particular way. The legislator would have to justify his decision if he differs from such view. Thus, citizens have the opportunity to have their views represented in the legislature, and if they feel the legislator has failed to do so, they can express their displeasure or even vote out the representative in the next election.

However, under the anti-defection law this accountability mechanism breaks down. Every member is required to vote as per the direction issued by their party. He can easily justify his voting decisions and absolve himself of this representational responsibility to his voters by merely saying that the party whip compelled him to vote in a particular way. For example, there may be a vote on a Bill in Parliament to regulate fish trawling, given its environmental impact. An MP representing a coastal constituency where large-scale fish trawling supports the local economy, may be required to vote in favour of a Bill, if a party whip is issued. If a voter from his constituency asks him to justify his support on the issue, the MP may say he had no choice given the anti-defection law. If he dissented from the party line, he would lose his seat, and would be unable to work for the citizens' interests on other issues. This further reduces the accountability of elected representatives to citizens.

How has the anti-defection law impacted decision-making in the House?

The anti-defection law leads to major decisions in the legislature being taken by a few party leaders and not by the larger body of legislators. In India, political parties frequently issue whips on matters which are subject to a vote in Parliament. This implies that anyone who controls the party leadership can issue directions to all legislators. Thus, voting in the House will be as per the wishes of a few party leaders rather than the beliefs of all legislators.

This reduces Parliament from a deliberative body to one where party leaders are able to unilaterally decide the vote on an issue, without consulting with members of their political party. As a result, to win a motion in Parliament, the government is only required to consult with leaders of the major political parties in the House. This number for consensus may further be reduced if a single party has majority in the House. For example, if the ruling party has a majority in the House and the party leader issues a whip during a vote on an issue, the government's policy can be upheld without needing to build support of any other MPs within the party or outside.

How do other democracies deal with the question of political defections?

The issue of political defections is not unique to India. Mature democracies, such as the US, UK, and Canada, do not have an anti-defection law. Parties may issue directions or exert pressure if a member goes against the party line. However, legislators are not disqualified for defying the directives of their party. For example, whips are often issued by political parties in the UK. If an individual MP or MLA defies the whip, they continue to retain their membership to the legislature (although the party may take disciplinary action against them).

Currently, among the 40 countries that have an anti-defection law, only six countries have a law that mandates legislators to vote according to party diktat.⁵ The remaining countries only disqualify legislators if they are found to resign from their party or be expelled from it. Note that the six countries that disqualify legislators who defy the party whip are India, Pakistan, Bangladesh, Guyana, Sierra Leone and Zimbabwe.⁵

Failure of the Anti-Defection Law

Has the anti-defection law achieved its objective of ensuring political stability?

As per the Statement of Objects and Reasons of the Bill which introduced the anti-defection law, the law was intended to combat political defections. It aimed at providing stability to the government by preventing shifts of party allegiance.⁶ However, despite the law, whips have been regularly defied in both centre and states on important votes affecting government stability.

2008 Confidence Motion (Centre)

A confidence motion was moved by the United Progressive Alliance government in Lok Sabha in July 2008. The motion was necessitated since the Communist Party of India (Marxist) withdrew support from the government over the nuclear deal with the USA. Although the anti-defection law was in force, 21 MPs defied the whips issued by their party while voting on the motion.

2016 Appropriation Bill (Uttarakhand)

Nine MLAs of the ruling party sided with the opposition in demanding a counting of votes on an Appropriation Bill that could have potentially led to the downfall of the Congress government.

2015 No-Confidence Motion (Arunachal Pradesh)

In 2015, 20 Congress (ruling party) MLAs defected in Arunachal Pradesh. These MLAs with the opposition passed a no-confidence vote against the ruling government in a special session. In 2016, the Supreme Court held the dismissal of the Congress government as illegal and called for its restoration.

Sources: Nabam Rebia, and Bamang Felix vs. Deputy Speaker Arunachal Pradesh Assembly and Ors. (2016) 8 SCC 1; Various news reports; PRS.

Has the law ensured impartial decisions on defections?

Another factor which has impacted the efficacy of the law is with respect to the role of the Speaker in deciding disqualification petitions. As discussed earlier in this note, the decision on disqualification is taken by the presiding officer of the House. The question of determining disqualification was left to the presiding officer to ensure that defection cases are determined expeditiously, and the decision is impartial, objective and non-partisan.⁷

However, there have been several instances where the anti-defection law has failed at achieving these objectives. As the law does not fix a time frame within which presiding officers are required to decide disqualification petitions, in several cases, the Speaker has rendered decisions after a long period of time. In some cases, the delay in rendering decisions has resulted in defecting members continuing to be members of the House for a significant term of the assembly and even becoming Ministers while still retaining membership of their original political party.^{8,9,10}

Delay in decision on disqualification of legislators

Andhra Pradesh: 23 YSR Congress Party MLAs defected to the ruling Telegu Desam Party from 2015-18. No action was taken by the Speaker on the petitions seeking their disqualification. Further, four of these legislators were appointed as Ministers in the government.

Telangana: 26 MLAs defected from opposition parties to Telangana Rashtriya Samiti from 2014-18. No action was taken by the speaker against these defectors. Out of these defectors, 12 were made Ministers.

Sources: Various news reports; PRS.

This has defeated the objective of expeditious disposal of defection petitions. Over the years, courts have also expressed concern about the amount of delay in deciding such petitions.¹¹ The Chairman of the Rajya Sabha has recommended that all disqualification petitions should be decided by the presiding officer within three months.

The Law Commission (2015) noted that the Speaker is elected by a majority vote of the House, and is usually the nominee of the ruling party or coalition. Therefore, he may not satisfy the requirement of an independent adjudicating authority.¹² Others have argued that it may be unrealistic to expect a Speaker to deal with the question of defections objectively.^{7,13} In the past, decisions of the Speakers with regard to disqualifications have also been challenged before courts for being biased and partial.¹⁴

Way going forward

The anti-defection law has failed to meet its objective of curbing political defections and ensuring political stability. Further, the law has unintended consequences which refrain legislators from effectively carrying out their duties. The legislator is not able to exercise his own conscience and judgement, and is unable to discharge his constitutional duty to hold the government accountable. The law has also impacted the ability of voters to hold their elected representative accountable. For these reasons, it may be pertinent to consider whether the anti-defection law should be repealed.

Over the years, several amendments have also been suggested to reform various aspects of the law. For instance, one of the main objectives behind the introduction of the law was to ensure stability of the government. Therefore, several bodies have recommended that the application of the law should be restricted to votes which affect the stability of government, i.e., votes on no-confidence motions and money bills.² This would also imply that the law would not apply to the upper houses of the legislature, i.e., Rajya Sabha and the Legislative Councils of states. This amendment was endorsed in a private member bill proposed by a Member of Parliament in 2010.¹⁵

Another area of reform has focussed on the need for an independent adjudicating authority to decide disqualifications under the law. Several experts have noted that the office of the Speaker may not meet this requirement.¹² Therefore, it has been suggested that decisions for defection cases should be taken by the President (for the centre), or Governor (for states), on the binding advice of the Election Commission.¹² This is similar to the practice that is followed for deciding questions related to disqualification of legislators on other grounds such as holding an office of profit under the Constitution.¹⁶

Recommendations of expert bodies on the Law

Table 2: Recommendations of various bodies on reforming the anti-defection law

Provision	Main reforms suggested/ recommended
Coverage	<ul style="list-style-type: none"> ▪ Political parties should limit issuance of whips to instances only when the government is in danger. ▪ Disqualification should be limited to cases where (a) a member voluntarily gives up the membership of his political party, (b) a member abstains from voting, or votes contrary to the party whip in a motion of vote of confidence or motion of no-confidence. ▪ Provisions which exempt mergers from disqualification should be deleted.
Definitions	<ul style="list-style-type: none"> ▪ The words 'voluntarily giving up membership of a political party' should be comprehensively defined. ▪ The term political party should be defined clearly. For example, pre-poll electoral fronts could be treated as political parties under the law.
Decision making	<ul style="list-style-type: none"> ▪ The issue of disqualification should be decided by the President/ Governor on the advice of the Election Commission. ▪ The Speaker must rule on a dispute under the Tenth Schedule as expeditiously as possible. For this, a period of six months for disposal of the petition has been recommended.
Implications of defecting	<ul style="list-style-type: none"> ▪ Restrictions like prohibition on joining another party or holding offices in the government should be imposed on expelled members. ▪ Defectors should be barred from holding public office or any remunerative political post for the duration of the remaining term of the legislature. ▪ The vote cast by a defector to topple a government should be treated as invalid.

Sources: Law Commission, 1999; National Constitution Review Commission, 2002; Law Commission Report, 2015; Law Commission Draft Report, 2018; Dinesh Goswami Committee on electoral reforms, 1990, Halim Committee on anti-defection law, 1998 (from R. Kothandaraman Ideas for an alternative Anti-Defection law, 2006); PRS.

Some judgements on the Anti-Defection Law

Table 3: Important judgements by the Supreme Court on the anti-defection law

	Main Issue(s)	Judgement of the Court
Right to freedom of speech and expression	<ul style="list-style-type: none"> ▪ Whether the right to freedom of speech and expression is curtailed by the Tenth Schedule. 	<ul style="list-style-type: none"> ▪ The provisions do not subvert the democratic rights of elected members or violate their conscience. They do not violate any right or freedom under Articles 105 and 194 of the Constitution.
Voluntarily giving up membership	<ul style="list-style-type: none"> ▪ Whether only resignation constitutes voluntarily giving up membership of a political party. ▪ Whether an unattached member can be said to voluntarily give up his membership if he joins another party, after being expelled. 	<ul style="list-style-type: none"> ▪ The words “voluntarily giving up membership” have a wider meaning. An inference can also be drawn from the conduct of the member. ▪ Once a member is expelled, he is treated as an ‘unattached’ member and continues to be a member of the old party. If he joins a new party after being expelled, he can be said to have voluntarily given up membership of his old political party.
Effect of resignation on disqualification	<ul style="list-style-type: none"> ▪ Whether the Speaker can disqualify MLAs after they have submitted their resignations. 	<ul style="list-style-type: none"> ▪ Disqualification proceedings can be initiated even if members have submitted resignations, as long as the act resulting in disqualification has arisen prior to the resignation.
Jurisdiction of courts	<ul style="list-style-type: none"> ▪ Whether paragraph 7 barring the jurisdiction of courts in cases of disqualification is constitutional. 	<ul style="list-style-type: none"> ▪ The Constitution gives courts the jurisdiction in such cases. Any such provision that seeks to change this is required to be ratified by state legislatures. The provision was therefore held invalid as it had not been ratified.

- Whether the Court can issue interim directions to disqualify MLAs during the pendency of a disqualification petition.
- Whether non-adherence to the disqualification rules could constitute grounds for setting aside the Speaker's order.
- The Court is competent to issue directions to the Speaker to decide the pending disqualification petitions (within a fixed time period). However, it does not have the competence to disqualify the MLAs in the interim period.
- Even if the disqualification rules are not mandatory, some basic principles of natural justice and fair play must be fulfilled. Non-adherence to the same, would constitute valid grounds for setting aside the Speaker's order.

Power and duties of the Speaker/ Chairman

- Whether granting finality to the decision of the Speaker/ Chairman is valid.
- Failure of the Speaker to act as per the Tenth Schedule.
- Whether the Speaker has the power to disqualify members for the remaining term of the assembly.
- Granting finality to the orders of the Speaker is valid. However, courts can exercise judicial review which should not cover any stage prior to the Speaker's decision.
- If the Speaker fails to act on a complaint, or accepts claims of splits or mergers without making a finding, he fails to act as per the Tenth Schedule.
- The Speaker cannot extend the duration of the disqualification till the expiry of the legislative term. The disqualified member can contest in re-elections.

Sources: Various judgements of the Supreme Court: *Kihota Hollohon vs. Zachilhu and Others* AIR 1993 SC 412, *Ravi S Naik v. Union of India* AIR 1994 SC 1558, *G. Vishwanathan v. Speaker, Tamil Nadu Legislative Assembly* (1996) 2 SCC 353], *Dr. Kashinath G Jhalmi v. Speaker, Goa Legislative Assembly* (1993) 2 SCC 703, *Rajendra Singh Rana and Ors. vs. Swami Prasad Maurya and Ors.* (2007) 4 SCC 270, *Balachandra L. Jarkiholi and Ors. vs. BS Yeddyurappa and Ors.* (2011) 7 SCC 1, *Speaker Haryana Vidhan Sabha vs. Kuldeep Bishnoi and Ors.* AIR 2013 SC 120, *Speaker Karnataka Legislative Assembly and Ors. vs. Shrimanth Balasaheb Patil W.P. No. 992 of 2019; PR*

