

# The Anti-Defection Law – Intent and Impact

## Background Note for the Conference on Effective Legislatures

The Anti-Defection Law was passed in 1985 through the 52<sup>nd</sup> Amendment to the Constitution, which added the Tenth Schedule to the Indian Constitution. The main intent of the law was to combat “the evil of political defections”. There are several issues in relation to the working of this law which need to be discussed. Does the law, while deterring defections, also 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?

In this note, we summarise the main features of this law and interpretation by the Courts and the presiding officers. We also see which other democracies have similar provisions.

### Main Features of the Anti-Defection Law

**Table 1: Anti-Defection provisions under the Tenth Schedule**

Subject	Provision in the Tenth Schedule
Disqualification	a. If a member of a house belonging to a political party: <ul style="list-style-type: none"> <li>- Voluntarily gives up the membership of his political party, or</li> <li>- Votes, or does not vote in the legislature, contrary to the directions of his political party. However, if the member has taken prior permission, or is condoned by the party within 15 days from such voting or abstention, the member shall not be disqualified.</li> </ul> b. If an independent candidate joins a political party after the election.                     c. If a nominated member joins a party six months after he becomes a member of the legislature.
Power to Disqualify	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.
Exception	<u>Merger</u> A person shall not be disqualified if his original political party merges with another, and: <ul style="list-style-type: none"> <li>- He and other members of the old political party become members of the new political party, or</li> <li>- He and other members do not accept the merger and opt to function as a separate group.</li> </ul> This exception shall operate only if not less than two-thirds of the members of party in the House have agreed to the merger.

Sources: Tenth Schedule of the Constitution; PRS.

We summarise the main arguments for and against an anti-defection law in Table 2.

**Table 2: Advantages and disadvantages of Anti-Defection Law**

Advantages	Disadvantages
Provides stability to the government by preventing shifts of party allegiance.	By preventing parliamentarians from changing parties, it reduces the accountability of the government to the Parliament and the people.
Ensures that candidates elected with party support and on the basis of party manifestoes remain loyal to the party policies. Also promotes party discipline.	Interferes with the member’s freedom of speech and expression by curbing dissent against party policies.

Sources: G.C. Malhotra, Anti-Defection Law in India and the Commonwealth, Lok Sabha Secretariat, 2005; PRS.

## Some important Judgements and Rulings on the Tenth Schedule in India

Table 3 gives details of some important judgements by the Supreme Court related to the working of the Tenth Schedule. Table 4 summarises some important recent rulings of the Speaker of Lok Sabha.

**Table 3: Important judgements on disqualification and the Tenth Schedule by the Supreme Court.**

Main Issue(s) in the case	Judgement of the Court and the name of the case
Whether the right to freedom of speech and expression is curtailed by the Tenth Schedule.	The provisions do not subvert the democratic rights of elected members in Parliament and state legislatures. It does not violate their conscience. The provisions do not violate any right or freedom under Articles 105 and 194 of the Constitution. [ <b>Kihota Hollohon vs. Zachilhu and Others AIR 1993 SC 412</b> ]
Whether only resignation constitutes voluntarily giving up membership of a political party.	The words “voluntarily giving up membership” have a wider meaning. An inference can also be drawn from the conduct of the member that he has voluntarily given up the membership of his party. [ <b>Ravi S Naik v. Union of India AIR 1994 SC 1558</b> ]
Whether a member can be said to voluntarily give up his membership of a party if he joins another party after being expelled by his old political party.	Once a member is expelled, he is treated as an ‘unattached’ member in the house. However, he continues to be a member of the old party as per the Tenth Schedule. So if he joins a new party after being expelled, he can be said to have voluntarily given up membership of his old party. [ <b>G. Vishwanathan v. Speaker, Tamil Nadu Legislative Assembly (1996) 2 SCC 353</b> ]
Whether paragraph 7 of the Schedule barring the jurisdiction of courts in cases of disqualification is constitutional.	The paragraph seeks to change the operation and effect of Articles 136, 226 and 227 of the Constitution which give the High Courts and Supreme Court jurisdiction in such cases. Any such provision is required to be ratified by state legislatures as per Article 368(2). The paragraph was therefore held invalid as it had not been ratified. [ <b>Kihota Hollohon vs. Zachilhu and Others AIR 1993 SC 412</b> ]
Whether paragraph 6 of the Tenth Schedule granting finality to the decision of the Speaker/ Chairman is valid.	To the extent that the provisions grant finality to the orders of the Speaker, the provision is valid. However, the High Courts and the Supreme Court can exercise judicial review under the Constitution. Judicial review should not cover any stage prior to the making of a decision by the Speakers/ Chairmen. [ <b>Kihota Hollohon vs. Zachilhu and Others AIR 1993 SC 412</b> ]
Whether a Speaker can review his own decision to disqualify a member under the Tenth Schedule.	The Speaker of a House does not have the power to review his own decisions to disqualify a candidate. Such power is not provided for under the Schedule, and is not implicit in the provisions either. [ <b>Dr. Kashinath G Jhalmi v. Speaker, Goa Legislative Assembly (1993) 2 SCC 703</b> ]
Whether the Speaker of a legislature is bound by the directions of a Court.	The Court cited the case of Kihota Hollohon where it had been said that the Speaker while passing an order under the Tenth Schedule functions as a Tribunal. The order passed by him would therefore be subject to judicial review. [ <b>Ravi S Naik v. Union of India AIR 1994 SC 1558</b> ]
Whether judicial review by courts extends to rules framed under the Tenth Schedule.	Rules under the Tenth Schedule are procedural in nature. Any violation of those would be a procedural irregularity. Procedural irregularity is immune from judicial scrutiny. [ <b>Ravi S Naik v. Union of India AIR 1994 SC 1558</b> ]
When can a court review the Speaker’s decision making process under the Tenth Schedule.	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 Court said that ignoring a petition for disqualification is not merely an irregularity but a violation of constitutional duties. [ <b>Rajendra Singh Rana and Ors. vs. Swami Prasad Maurya and Ors. (2007) 4 SCC 270</b> ]

Sources: Various judgements of the Supreme Court; Anti-Defection Law in India and the Commonwealth; PRS.

**Table 4: Some recent orders on disqualification by the Speaker for defection.**

Issue	Factual background	Final order of the Speaker
Requirements for proving an inability to obey a party whip due to external factors.	▪ <b>Shri Rajeev Ranjan Singh “Lalan” vs. Dr. P.P. Koya, JD(U)</b> , (January 9, 2009). Dr. Koya defied a party whip requiring him to be present in the House and vote against the Motion of Confidence for the government. He claimed he was too ill to be present in the House.	▪ The Speaker concluded that Dr. Koya abstained from voting by remaining absent, and the evidence of the ‘illness’ is not sufficient to conclude that he was so ill that he could not be present in the House.
When can it be said that a party member has deliberately defied a party whip.	▪ <b>Shri Prabhunath Singh vs. Shri Ram Swaroop Prasad, JD(U)</b> , (October 3, 2008). Shri Prasad defied a party whip requiring him to be present in the House. In his defence, he denied that any whip was issued or served.	▪ The Speaker held that in view of the fact that there is evidence to show that the whip had been delivered to Shri Prasad’s house, and had been duly received, it cannot be said that Shri Prasad had no knowledge of the whip.
Whether public criticism of one’s political party amounts to defection.	▪ <b>Shri Avtar Singh Bhadana vs. Shri Kuldeep Singh, Indian National Congress</b> , (September 10, 2008). The INC alleged that Shri Bishnoi often dissented from, and criticized the Congress government publicly, and had demanded the dismissal of the government in Haryana.	▪ The Speaker held that a person getting elected as a candidate of a political party also gets elected because of the programs of the party. If the person leaves the party, he should go back before the electorate.
Whether stories in the print or electronic media can be taken as evidence of defection.	▪ <b>Shri Rajesh Verma vs. Shri Mohammad Shahid Akhlaque, BSP</b> , (January 27, 2008). It was alleged that Shri Akhlaque joined the Samajwadi Party in a public meeting. It was alleged that at this meeting, Shri Akhlaque had said that at heart, he had always been a member of the SP.	▪ The Speaker reasoned that there is no reason why news clippings and stories in the media would be untruthful. The Speaker therefore held Shri Akhlaque disqualified for having voluntarily given up membership of the BSP.

Sources: Bulletin II of the Lok Sabha on different dates; PRS.

## Recommendations of various bodies on Anti-defection law

**Table 5: Recommendations of various bodies on reforming the Anti-defection law.**

Body/ Committee	Main reforms suggested/ recommended
Dinesh Goswami Committee on electoral reforms (1990)	<ul style="list-style-type: none"> <li>▪ 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.</li> <li>▪ The issue of disqualification should be decided by the President/ Governor on the advice of the Election Commission.</li> </ul>
Halim Committee on anti-defection law (1998)	<ul style="list-style-type: none"> <li>▪ The words ‘voluntarily giving up membership of a political party’ be comprehensively defined.</li> <li>▪ Restrictions like prohibition on joining another party or holding offices in the government be imposed on expelled members.</li> <li>▪ The term political party should be defined clearly.</li> </ul>
Law Commission (170 <sup>th</sup> Report, 1999)	<ul style="list-style-type: none"> <li>▪ Provisions which exempt splits and mergers from disqualification to be deleted.</li> <li>▪ Pre-poll electoral fronts should be treated as political parties under anti-defection law.</li> <li>▪ Political parties should limit issuance of whips to instances only when the government is in danger.</li> </ul>
Election Commission	<ul style="list-style-type: none"> <li>▪ Decisions under the Tenth Schedule should be made by the President/ Governor on the binding advice of the Election Commission.</li> </ul>
Constitution Review Commission (2002)	<ul style="list-style-type: none"> <li>▪ Defectors should be barred from holding public office or any remunerative political post for the duration of the remaining term.</li> <li>▪ The vote cast by a defector to topple a government should be treated as invalid.</li> </ul>

Sources: R. Kothandaraman, Ideas for an alternative Anti-Defection law, 2006; PRS.

## Disqualification in Parliament and state Legislatures

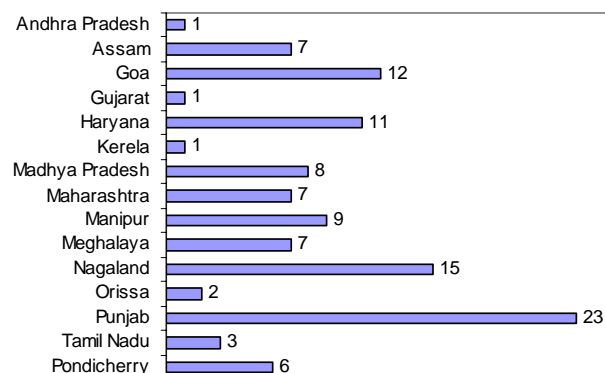
**Table 6: Disqualifications from 1985 to 2009**

	Parliament	States (till 2004)
<b>Persons complained against</b>	88	268
<b>Disqualification</b>	26	113
<b>Number of disqualifications on the ground of</b>		
Violating party whip	19	26
Voluntarily resigning	7	74
Others*	-	13
<b>Mergers</b>	26	81

Sources: G.C. Malhotra; RTI filed by PRS; PRS.

\* Independent or nominated candidates disqualified for joining a party after being elected.

**Figure 1- Number of disqualifications in state legislatures (till 2004)**



## The law relating to defection in some other countries

The table below highlights the regulation of defection in some countries:

**Table 7: Regulation of defection in some countries**

Country	Experience of Defection	Law on defection	The Law on Defection
Bangladesh	Yes	Yes	Article 70 of the Constitution says a member shall vacate his seat if he resigns from or votes against the directions given by his party. The dispute is referred by the Speaker to the Election Commission.
Kenya	Yes	Yes	Section 40 of the Constitution states that a member who resigns from his party has to vacate his seat. The decision is by the Speaker, and the member may appeal to the High Court.
Singapore	Yes	Yes	Article 46 of the Constitution says a member must vacate his seat if he resigns, or is expelled from his party. Article 48 states that Parliament decides on any question relating to the disqualification of a member.
South Africa	Yes	Yes	Sections 47 of the Constitution provides that a member loses membership of the Parliament if he ceases to be a member of the party that nominated him.
Australia	Yes	No	
Canada	Yes	No	
France	Yes	No	
Germany	Yes	No	
Malaysia	Yes	No	
United Kingdom	Yes	No	

Sources: G.C. Malhotra, Anti-Defection Law; Respective constitutions of these countries; PRS.

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