

Anti-Defection, Role of Speaker, 10th Schedule

This article will describe concepts such as Anti-defection, Role of Speaker and the 10th Schedule.

Polity concepts like Anti Defection, Role of Speaker & 10th Schedule are important topics in the [UPSC Syllabus](#) and aspirants should be well aware of these concepts for the General Studies Paper-II.

Polity forms a major chunk of the questions asked in the General Studies Paper-II. The concepts described in this article are all related to recent developments in Indian politics and hence, is relevant for the IAS Mains.

[IAS Exam](#) aspirants can find more notes for UPSC Mains General Studies topics from the links given at the end of the article.

Anti-Defection Law

The 10th Schedule of the Indian Constitution (which talks about the anti-defection law) is designed to prevent political defections prompted by the lure of office or material benefits or other like considerations. The Anti-defection law was passed by Parliament in 1985 and reinforced in 2002.

- The 10th Schedule of the Indian Constitution popularly referred to as the 'Anti-Defection Law' was inserted by the 52nd Amendment (1985) to the Constitution.
- 'Defection' has been defined as, "To abandon a position or association, often to join an opposing group".
- The anti-defection law was enacted to ensure that a party member does not violate the mandate of the party and in case he does so, he will be disqualified from participating in elections.
- The aim of the Anti-Defection Law is to prevent MPs from switching political parties for any personal motive.

Provisions of the Act

The Tenth Schedule includes the following provisions with regard to the disqualification of MPs and MLAs on the grounds of defection:

Grounds for disqualification:

- If an elected member gives up his membership of a political party voluntarily.
- If he votes or abstains from voting in the House, contrary to any direction issued by his political party.
- If any member who is independently elected joins any party.
- If any nominated member joins any political party after the end of 6 months.
- The decision on disqualification questions on the ground of defection is referred to the [Speaker](#) or the Chairman of the House, and his/her decision is final.
- All proceedings in relation to disqualification under this Schedule are considered to be proceedings in Parliament or the Legislature of a state as is the case.

Exceptions under the Anti Defection law:

- In the situation where two-thirds of the legislators of a political party decide to merge into another party, neither the members who decide to merge, nor the ones who stay with the original party will face disqualification.
- Any person elected as chairman or speaker can resign from his party, and rejoin the party if he demits that post.

- Earlier, the law allowed parties to be split, but at present, this has been outlawed.

Deciding Authority

- Any question regarding disqualification arising out of defection is to be decided by the presiding officer of the House.

Is the decision of the Presiding Officer subject to judicial review?

- Originally, the Act provided that the presiding officer's decision was final and could not be questioned in any court of law. But, in Kihoto Hollohan case (1993), the Supreme Court declared this provision as unconstitutional on the ground that it seeks to take away the jurisdiction of the SC and the high courts.
- The court held that while deciding a question under the 10th Schedule, the presiding officer should function as a tribunal. Hence, his/her decision (like that of any other tribunal) was subject to [judicial review](#) on the grounds of malafides, perversity, etc. But, the court rejected the argument that the vesting of adjudicatory powers in the presiding officer is by itself invalid on the ground of political bias.
- However, it held that there may not be any judicial intervention until the Presiding Officer gives his order. A good example to quote in this respect is from 2015, when the Hyderabad High Court declined to intervene after hearing a petition which alleged that there had been a delay by the Telangana Assembly Speaker in taking action against a member under the anti-defection law.

Is there a time limit within which the Presiding Officer should decide?

- There is no time limit as per the law within which the Presiding Officers should decide on a plea for disqualification. The courts also can intervene only after the Officer has made a decision, and so the only option for the petitioner is to wait until the decision is made.
- There have been several cases where the Courts have expressed concern about the unnecessary delay in deciding such petitions.
- In a few cases, there have been situations where members who had defected from their political parties continued to be House members, because of the delay in decision-making by the Speaker or Chairman.
- There have also been instances where opposition members have been appointed ministers in the government while still being members of their original political parties in the state legislature.

How have the Courts interpreted the law while deciding on related matters?

- The SC has interpreted different provisions of the law.
- The phrase 'Voluntarily gives up his membership' has a wider suggestion than resignation.
- The law says that a member can be disqualified if he 'voluntarily gives up his membership'. However, the SC has interpreted that without a formal resignation by the member, the giving up of membership can be inferred by his conduct.
- In other judgments, members who have publicly expressed opposition to their party or support for another party were considered as having resigned. Recently, the Chairman of the Upper House of Parliament disqualified two Janata Dal leaders from the house based on the allegation that indulging in anti-party politics, they had "voluntarily" given up their membership of the party (which is not synonymous to resignation as per the SC orders).

Does the anti-defection law affect legislators' ability to make decisions?

- The anti-defection law aims to maintain a stable government by ensuring that the legislators do not switch sides. However, this law also limits a legislator from voting according to his conscience, judgement and electorate's interests.

- This kind of a situation hinders the oversight functions of the legislature over the government, by making sure that members vote based on the decisions taken by the party leadership, and not based on what their constituents would like them to vote for.
- Political parties issue directions to MPs on how to vote on most issues, irrespective of the nature of the issue.
- Anti-defection does not provide sufficient incentive to an MP or MLA to examine an issue in depth and ponder over it to participate in the debate.
- The Law breaks the link between the elected legislator and his elector.
- Importantly, several experts have suggested that the law should be valid only for those votes that determine the stability of the government (passage of the annual budget or no-confidence motions).

President's Rule in Arunachal Pradesh

<https://www.youtube.com/watch?v=62QSTsSrJUE>

Several recommendations have come up regarding this issue:

- **Dinesh Goswami Committee:** Recommendations include that disqualification should be only for cases such as:
 - Member giving up his membership of his political party voluntarily.
 - Member voting or abstaining from voting opposed to party directions.
- **Law Commission 170th Report:**
 - Delete the exemption in case of splits and mergers.
 - Consider the pre-poll electoral fronts as one party under the 10th Schedule.
 - Parties should issue whips only on critical situations or votes.
- **Election Commission:**
 - Make the President/Governor the decision-maker with respect to disqualification subject to binding advice from the [Election Commission](#) on the lines of disqualifications based on the Representation of Peoples Act's provisions regarding the Office of Profit.

To conclude, regulation of the 10th Schedule along with the correct working directives that adhere to transparency and accountability in a democracy is the need of the hour. However, this provision should also aid stability in the government which would in turn, decrease corruption and steer the focus of the parliamentarians/legislators towards governance.

