

# Anti-Defection Law Passed: This Day in History – Jan 31

31 January 1985, the Constitution (52<sup>nd</sup> Amendment) Bill was passed by the Rajya Sabha. It is also known as Anti-Defection Law. As per this Amendment Bill, 4 Articles in the Constitution were modified. This article shares details on the meaning of Defection and how this problem came to limelight in the 1967 elections, and the measures are taken to address the issue in 1985.

Aspirants would find this article very helpful while preparing for the IAS Exam.

## Background of the Anti- Defection Law

1. The 52<sup>nd</sup> Amendment Act, more commonly known as the anti-defection law was passed by the Rajya Sabha in 1985 under the Rajiv Gandhi government.
2. The bill had been passed by the lower house the previous day. It received the presidential assent in February 1985.
3. This law is contained in the Tenth Schedule of the Constitution of India. Articles 101, 102, 190 and 191 were changed.
4. Defection basically means a person quits his/her political party and joins another one, especially the winning party in an election, in order to gain personal benefits such as a ministry or other plum posts in the new government.
5. The 1967 elections proved to be a seminal moment in India's electoral history. Elections were conducted in about 16 states in the country that year.
6. The Congress Party was able to form government in only one of the states and had lost its majority in others.
7. The country then saw a barrage of defections. About 142 MPs and 1900 MLAs switched loyalties to gain ministries. In Haryana, one MLA Gaya Ram changed his party three times on a single day! It was then that the phrase 'Aaya Ram, Gaya Ram' ensued for defectors.
8. In spite of this travesty of the democratic process, the issue was addressed only in 1985.
9. The 52<sup>nd</sup> Amendment established the process to be followed while disqualifying legislators who defected.

## What are the details for Anti-Defection Law?

1. As per this law, a person can be disqualified on grounds of defection when:
  - A member of a political party voluntarily resigns from his party or disobeys the party leadership's directives on a vote.

- A member of a political party does not vote as per the party whip or abstains from voting unless he/she has taken prior permission, or is condoned by the party within 15 days of such voting or abstention.
  - A member who has been elected as an 'independent' joins a political party.
  - A nominated member joins a party six months after he becomes a legislative member.
2. Exceptions to defection:
- A person who is elected as the Speaker or the Chairman could resign from his party and then rejoin that party if he/she demits that post.
  - In case of merger of two parties: In this case, at least 1/3<sup>rd</sup> of the party legislators should vote for such a merger. Neither would the members who joined the new party nor those who decided to remain with the old party would be considered defectors. In 2003, the 91<sup>st</sup> Amendment Act was passed which made this number 2/3<sup>rd</sup> of the party legislators.

## **Drawbacks of the Anti-Defection Law**

1. Experts have pointed out several loopholes in this law. The first one is that the term 'voluntarily resigns from his party' or 'voluntarily gives up membership from his party' is rather vague.
2. Another big lacuna is that the speaker or the chairman is given arbitrary power in deciding the matter of defection. Earlier, the decision taken by the presiding officer was not subject to judicial review. But from 1992, the Supreme Court allowed appeals against the presiding officer's orders.
3. One obvious problem is that there is no prescribed time limit given to the presiding officer in deciding the matter.
4. Experts also point out that this law doesn't allow legislators to vote in agreement to their own judgement, morality and conscience in the house. They have to follow the party whip. It is suggested that this rule be limited only to those votes where the stability of the government was in question and not on other subjects because otherwise the freedom of speech of the legislator was being impinged upon.
5. There is no doubt that an anti-defection law is absolutely necessary to stop power-hungry representatives from making a mockery of the electoral process. However, the present law also needs to be looked into.