

# The limits of anti-defection

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**"The prolonged political crisis in Karnataka has demonstrated the ways in which the nearly 35-year-old anti-defection law can be used and abused. Here's how the law was enacted, and how it has performed."**

The political crisis that began in Karnataka with the resignation of 15 MLAs on July 6, and ended on Tuesday with H D Kumaraswamy being defeated in a motion of confidence that took five days and multiple missed deadlines to be put to vote, underscored the tortuous working of India's anti-defection law — and threw up a range of associated legal and constitutional questions.

This is how the law — the Tenth Schedule of the Constitution, inserted by The Constitution (52nd Amendment) Act, 1985, when Rajiv Gandhi's government was in power — came to be, and how it evolved over the three decades that followed.

## The 1967 elections

The legislative journey of the anti-defection law is long and chequered. It involves the institution of Parliament that designed it, the office of the Speaker of Legislatures that implements it, and the judiciary that interprets the law. MPs, MLAs, and their political parties are the principal stakeholders who are impacted by the anti-defection law. It is a law whose unintended consequences outweigh its purpose — and its journey after its passage in 1985 mirrors the continuing political instability in the country.

The seeds of the anti-defection law were sown after the general elections in 1967. The results of those elections were a mixed bag for the Congress. It formed the government at the Centre, but its strength in Lok Sabha fell from 361 to 283. During the year it lost control of seven state governments as MLAs shifted their political allegiance.

In this backdrop, P Venkatasubbaiah, a Congress MP in Lok Sabha who served in the Cabinets of both Indira and Rajiv Gandhi, proposed the setting up of a high-level committee to make recommendations to tackle the "problem of legislators changing their allegiance from one party to another".

The proposal saw a spirited debate in Lok Sabha. Opposition members suggested renaming the proposal to "save Congress", while the ruling party accused the opposition of inducing MLAs to defect.

## The Y B Chavan panel

Despite the acrimony, the Lok Sabha agreed to the setting up of a committee to examine the problem of political defections. The then Home Minister, Y B Chavan, headed the committee. The panel defined defection — and an

exception for genuine defectors. According to the committee, defection was the voluntary giving up of allegiance of a political party on whose symbol a legislator was elected, except when such action was the result of the decision of the party.

In its report, the committee noted “that the lure of office played a dominant part in decisions of legislators to defect”. It pointed out that out of 210 defecting legislators in seven states, 116 were given ministerial berths in governments which they helped form by their defections.

To combat this, the committee recommended a bar on defecting legislators from holding ministerial positions for a year — or until the time they got themselves re-elected. It also suggested a smaller Council of Ministers both at the levels of the Centre and the states. The committee was in favour of political parties working together to help evolve a code of conduct to effectively tackle disruptions.

### **Early attempts at a law**

Following the report of the Y B Chavan committee, two separate legislative attempts, both unsuccessful, were made to find a solution to defections. The first one was made by Indira’s Home Minister Uma Shankar Dikshit in 1973; the second, in 1978, by Shanti Bhushan, Minister for Law and Justice in the Janata Party government of Morarji Desai. The third attempt — which was successful — was made in 1985, after the Congress won more than 400 seats in Lok Sabha in the aftermath of Indira’s assassination.

### **The Tenth Schedule**

The Bill to amend the Constitution was introduced by Rajiv Gandhi’s Law Minister Ashoke Kumar Sen, the veteran barrister and politician who had also served in the Cabinet of Jawaharlal Nehru. The statement of objects and reasons of the Bill said: “The evil of political defections has been a matter of national concern. If it is not combated, it is likely to undermine the very foundations of our democracy and the principles which sustain it.”

The amendment by which the Tenth Schedule was inserted in the Constitution, did three broad things.

One, it made legislators liable to be penalised for their conduct both inside (voting against the whip of the party) and outside (making speeches, etc.) the legislature — the penalty being the loss of their seats in Parliament or the state legislatures.

Two, it protected legislators from disqualification in cases where there was a split (with 1/3rd of members splitting) or merger (with 2/3rds of members merging) of a legislature party with another political party.

Three, it made the Presiding Officer of the concerned legislature the sole arbiter of defection proceedings.

#### **Criticism and passage**

During the debate in Parliament, Opposition MPs argued that the Bill would curtail the freedom of speech and expression of legislators. MPs like the socialist leader Madhu Dandavate expressed concern over the impact the amendment could have on the office of the Speaker.

The Law Minister, however, succeeded in navigating the Bill through Parliament in two days. The Bill was debated in Lok Sabha on January 30, the death anniversary of Mahatma Gandhi, and was passed by Rajya Sabha the following day. Prime Minister Rajiv Gandhi referred in Parliament to the Mahatma’s seven social sins, the first one being politics without principles.

### **The immediate challenges**

No sooner was the law put in place than political parties started to stress-test its boundaries. The issue of what constitutes a split in a political party rocked both the V P Singh and the Chandra Shekhar governments. The role of the



Presiding Officers also became increasingly politicised. Lok Sabha Speaker Shivraj Patil said in 1992: “The Speaker is not expected to dabble in keeping the political parties weak or strong or discipline the Parliamentarians for their party purposes.”

The intervention of the higher judiciary was sought to decide questions such as what kinds of conduct outside the legislature would fall in the category of defection, and what was the extent of the Speaker’s power in deciding defections. The Supreme Court, while upholding the supremacy of the Speaker in defection proceedings, also held that the Speaker’s decisions were subject to judicial review.

### **The 2003 Amendment**

The last step in the legislative journey of the anti-defection law came in 2003. A Constitution Amendment Bill was introduced in Parliament by the government of Prime Minister Atal Bihari Vajpayee to address some of the issues with the law. A committee headed by Pranab Mukherjee examined the Bill.

The committee observed: “The provision of split has been grossly misused to engineer multiple divisions in the party, as a result of which the evil of defection has not been checked in the right earnest. Further it is also observed that the lure of office of profit plays dominant part in the political horse-trading resulting in spate of defections and counter defections.”

The one-third split provision which offered protection to defectors was deleted from the law on the committee’s recommendation. The 2003 Amendment also incorporated the 1967 advice of the Y B Chavan committee in limiting the size of the Council of Ministers, and preventing defecting legislators from joining the Council of Ministers until their re-election. However, as events in the years and decades since have demonstrated, these amendments have had only limited impact.

### **The (ab)use of the law**

The removal of the split provision prompted political parties to engineer wholesale defections (to merge) instead of smaller ‘retail’ ones. Legislators started resigning from the membership of the House in order to escape disqualification from ministerial berths.

The ceiling on the size of the Council of Ministers meant an increase in the number of positions of parliamentary secretaries in states. The Speakers started taking an active interest in political matters, helping build and break governments. The anti-defection law does not specify a timeframe for Speakers to decide on defection proceedings. When the politics demanded, Speakers were either quick to pass judgment on defection proceedings or delayed acting on them for years on end.

The long drawn-out events in the Karnataka Vidhan Sabha have shown that even after three decades, the anti-defection law has not been able to stop political defections.



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## Anti-defection Laws

### Why in the discussion?

- The Congress-JD (S) coalition government in Karnataka fell on Tuesday after failing to gain confidence in the Assembly.
- At the same time, the term of Chief Minister HD Kumaraswamy, who has been facing a period of instability for 14 months in the state and the political crisis in Karnataka, also ended. Since this incident, anti-Defection law has again been in the spotlight.
- It may be noted that in 1985, the anti-defection law was brought through the constitution amendment.

### 10th Schedule of Constitution?

- The 10th Schedule of the Indian Constitution, popularly called 'Anti-Defection Law', was brought in by the 52nd Amendment to the Constitution in 1985.
- It includes the provisions relating to the definition of Anti-Defection and disqualification of members of the party.
- It is aimed at disqualifying the people's representatives who have changed the party for political gains and for the greed of the post, to maintain the stability of the Parliament.
- Grounds for disqualification of people's representatives
- If an elected member voluntarily leaves membership of a political party.
- If an independent elected member joins a political party.
- If a member votes in opposition of the party.
- If a member keeps himself separate from voting.
- After the end of six months, if any nominated joins involved in any political party.

### Opposed against is

- If a person is elected as speaker or president, then he can resign from his party and when he leaves the post, he can join the party again. In such a case, he will not be disqualified.
- If one-third of the party's legislators have voted in favor of the merger then that party can be merged with another party.

### 91st Amendment to the Constitution

- The size of the cabinet was also reduced by 15 percent through this amendment. However, the number of any cabinet will not be less than 12.
- Section 3 of the 10th Schedule was abolished by this amendment, in which there was a provision that one-third of the members could change the party together.

### Office of profit

- The post of profit has been mentioned in Article 102 (1) (a) and Article 191 (1) (a) in the Constitution of India, but the office of profit has not been defined.
- For members of Parliament under article 102 (1) (a) and for the members of the State Assembly under Article 191 (1) (a), there is restriction on holding any other position where salary, allowances or any other kind government benefits is received. The amount of such benefits does not have any effect on this.
- If a Member of Parliament / MLA is found to be in the office of profit, his membership in Parliament or the relevant assembly can be disqualified.
- According to the notification issued by the central government, such a 'office of profit' can not be taken by any legislator in the government, where government allowances or other powers are available.
- Even in Section 9 (A) of the Representation of People Act, MPs and MLAs are not allowed to hold the office of profit.





**Expected Questions (Prelims Exams)**

1. In the context of Anti- Defection Law, consider the following statements-

1. It has been mentioned in the 10th schedule of the Constitution.
2. It has been added through the 52nd Constitutional Amendment Act, 1985.
3. Y.B. Chavan is related to anit-defection law.

Which of the above statements are correct?

- (a) 1 and 2                      (b) 2 and 3  
(c) 1 and 3                      (d) All of the above

**Expected Questions (Mains Exams)**

Q. Considering the recent political crisis of Karnataka, explain to what extent, the anti-defection law is relevant in present. (250 Words)

**Note:** Answer of Prelims Expected Question given on 24 July. is 1(d).

