Tenth Schedule (Anti Defection Law)

Mains: *GS – II – Polity & Governance*

Why in News?

Defection is not just a matter of changing a party. It involves questions of political morality, judicial review, constitutional governance, legislative autonomy, and deliberative democracy.

What is the rationale behind the anti-defection law?

- **Meaning** – Constitutional expert Subhash C. Kashyap described defection as "abandonment of loyalty, duty or principle, or of one's leader or cause".
- In political terms, it refers to *legislators switching political parties* for personal gain, undermining collective responsibility.
- **Anti-Defection Law** – It was enacted in 1985 during the Prime Ministership of Rajiv Gandhi through the *52nd Constitutional Amendment Act*, which inserted the 10th Schedule into the Constitution.
- **Objective**
  - To establish constitutional mechanisms to discourage unprincipled practices/defections,
  - Protect the stability of government, and
  - Preserve the integrity of the electoral mandate.

What about the prelude to the enactment of the law?

- **Era of Instability** – The period *between 1967 and 1971* is usually referred to as the "Era of Instability".
- **Decline of one-party dominance** – After the 1967 general elections, defection became a strategic tool to capture or topple governments.
- Between 1967–71, 45 governments were formed and collapsed across various states because of frequent defections by legislators.
- Legislators often switched sides not for ideology but for ministerial posts or material benefits.
- **Popular phrase** – *"Aya Ram, Gaya Ram"* got popularized in Indian politics to describe turncoats and defections — coined after Haryana MLA who switched parties thrice in one day (1967).
- **Y B Chavan Committee on Defections (1969)** – It was the first systematic study of defections; it documented the extent of the problem and recommended several measures to address it.

- **Definition** – Defection as voluntary giving up of allegiance to a political party on whose symbol a legislator had been elected, except when such action resulted from a decision of the party.

India, Pakistan, Bangladesh, Guyana, Sierra Leone, Zimbabwe *– MPs can be disqualified for defying party whip.*

UK, US, Canada *– Do not have an anti-defection law, legislators retain seats even if they defy party directions; parties may discipline internally.*

What constitutes defection under the Tenth Schedule?

- **Applicability** – The Anti-Defection law applies to both members of Parliament and state legislatures.

Grounds for Disqualification

- If a member of a House voluntarily gives up membership of their political party.
- If a member votes or abstains from voting in a house, contrary to the directions of their political party, without prior permission, and such voting or abstention has not been condoned by the party within 15 days.
- If an independent member joins a political party after elections.
- If a nominated member joins a political party after six months of taking their seat.

What is the exception to disqualification?

- **Main Exception** – The principal exception to disqualification under the Tenth Schedule is *merger of parties*.
- **Merger of Parties** – A legislator is protected from disqualification if at least two-thirds of legislators of a party agree to merge with another political party.
- **Split Exception (Removed)** – Originally, the Tenth schedule allowed one-third of members to split from their party without attracting disqualification.
- But this provision was abused, leading to mass defections under the guise of internal factionalism.
- **91st Constitutional Amendment Act, 2003** – Addressed this issue by removing the split exception entirely and retaining only the exception for mergers.
- **Safeguards Against Rewards** – The 91st Amendment also inserted *Articles 75(1B), 164(1B), and 361B* to prevent defectors from being rewarded with ministerial offices and remunerative political posts until re-elected.
- **Role of Presiding Officers** – The effectiveness of the Anti-Defection Law depends on Presiding Officers (Speaker/Chairman).

What is the role of the Speaker with respect to the 10th Schedule?

- **Para 6 (1) of the Tenth Schedule** – Vests the power to decide disqualification petitions in the office of the Presiding Officer of the House, and their decision shall be final.

- **Sole Authority** – Only the Speaker (or Chairman in the Rajya Sabha) can decide whether a legislator has defected and must be disqualified; no other body has original jurisdiction.
- **Neutrality Concerns in Practice** – Speakers are typically elected members of the ruling party.
- Allegations of political bias, particularly in deciding petitions against their own party's rivals have repeatedly raised questions about institutional independence.
- **Timing as a political tool** – Speakers have been accused of deliberately delaying decisions on disqualification petitions keeping legislators in midpoint and allowing governments to survive floor tests.

Judicial review of Speaker's decision

- **Kihoto Hollohan vs Zachillhu (1992)** – The Supreme Court upheld the constitutional validity of the Anti-Defection Law while saying that the Speaker's decisions are subject to judicial review.
- The court held that the Speaker acts as a Tribunal under the Tenth Schedule, and judicial review remains part of the basic structure of the Constitution, which cannot be by-passed.
- **Ravi S Naik vs Union of India (1994)** – The SC ruled that voluntarily giving up membership does *not necessarily require a formal resignation by a legislator* to be disqualified under the Anti-Defection Law.
- **Nabam Rebia vs Deputy Speaker (2016)** – The Supreme Court held that a Speaker should not decide on disqualification petitions while a notice seeking his/her removal is pending.
- **Keisham Meghachandra Singh vs Speaker, Manipur (2020)** – The Court recommended that Speakers ordinarily decide disqualification petitions within three months.

What are the impact of anti-defection law in India?

- **Government Stability** – Reduced frequent collapses seen in the "Aya Ram, Gaya Ram" era (1967–71).
- **Party Discipline** – Legislators are compelled to follow the party whip, preventing opportunistic defections.
- **Curbing Corruption** – Intended to check defections motivated by ministerial posts or monetary gains.
- **Integrity of Mandate** – Reinforces the idea that voters elect parties, not just individuals.

- **Weakening Accountability** – Legislators justify votes by citing the whip, breaking the link with constituents.
- **Executive Dominance** – By prohibiting dissent, the law strengthens the ruling party's control over Parliament.
- **Failure to Prevent Defections** – Despite the law, defections continue (e.g., Arunachal Pradesh 2015, Uttarakhand 2016).

What are the ethical dimensions on the Anti-Defection Law in India?

- **Integrity & Loyalty** – Loyalty to the party and voters' mandate.
- This law prevents legislators from betraying the trust of those who elected them.
- **Example** – A legislator elected on a party symbol cannot ethically switch sides for personal gain — it violates integrity and loyalty to mandate.
- **Stability vs Conscience** – Should stability of government outweigh freedom of conscience?; the law enforces party discipline but restricts individual moral judgment.
- **Example** – An MP opposing a flawed policy may still be forced to vote with the party whip, raising questions of ethical autonomy vs collective responsibility.
- **Preventing Corruption & Opportunism** – It stops legislators from defecting for ministerial posts or monetary benefits, which promotes righteousness in public life and discourages opportunism.
- **Example** – Mass defections in the 1960s–70s ("Aya Ram, Gaya Ram") showed how unchecked opportunism eroded public trust.

What lies ahead?

- **Limit the Scope of the Law** – It restrict disqualification to critical votes like confidence motions & money bills, which keeps governments stable while allowing free debate on other issues.
- **Neutral Authority for Decisions** – Move the adjudication from the Speaker/Chairman (often politically aligned) to a neutral body like the Election Commission to ensures fairness and reduces bias.
- **Preventing Rewards for Defectors** – Strengthen provisions that bar defectors from holding ministerial posts/political offices & prevents defections driven by personal gain.
- **Ensuring Timely Decisions** – Mandate a fixed timeline (e.g., 3 months) for deciding disqualification petitions; builds public trust and prevents manipulation through delays.

References

1. Indian Express | How the Tenth Schedule regulates political defections
2. PRS | Anti-Defection Law - Intent and Impact

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