Subject Name: Constitution Law
Topic Name: Anti Defection Law

Table of Content:-

Introduction..... 1
Tenth Schedule of Constitution..... 1
Cases on Defection..... 3

Introduction

Political defection refers to the act of a legislator elected as a member of a particular political party changing their party allegiance without resigning their seat. This phenomenon often occurs due to various factors, including personal considerations such as the lure of money, as well as broader political dynamics such as unstable government, coalition politics, dissidence, and infighting within parties.

Defection encompasses situations where a legislator changes their party affiliation, shifts loyalty from one party to another, or engages in "crossing the floor" inside the legislative chamber. This behaviour can have significant implications for the political landscape, affecting the balance of power, the functioning of governments, and the representation of constituents.

The readiness of some MLAs (Members of Legislative Assembly) and MPs (Members of Parliament) to change party loyalty for personal gain underscores the challenges of maintaining party discipline and ensuring political stability. In systems where party loyalty is weak or where there are incentives for defection, the integrity of democratic institutions can be undermined.

Efforts to address political defection may include legislative measures such as anti-defection laws, which seek to discourage and penalise legislators for switching parties without valid reasons. However, the effectiveness of such laws can vary depending on their implementation and enforcement, as well as the broader political culture and environment.

Tenth Schedule of Constitution

The Tenth Schedule, also known as the Anti-Defection Law, was introduced through the Constitution (52nd Amendment) Act, 1985. This amendment aimed to address the issue of political defection by setting out provisions for disqualification of legislators on grounds of defection. Here are the key points of the Tenth Schedule:

1. **Voluntarily giving up party membership:** A member will be disqualified if they voluntarily give up the membership of the political party on whose ticket they were elected to the House.

2. **Voting against party whip:** Disqualification occurs if a member votes or abstains from voting in the House against any direction of the political party, without prior permission from the party, and unless such action is condoned by the party within 15 days from the date of voting or abstention.

3. **Joining another party after nomination**: Nominated members will be disqualified if they join any political party after the expiry of 6 months from the date on which they take their seat in the House.

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Exceptions to disqualification include:

1. **Split in the original party:** Disqualification does not apply if a member leaves their party as a result of a split in the original party, provided that such a splinter group consists of not less than one-third of the total membership of that party in the House.

2. **Merger of political parties:** Members are not disqualified if they leave their original party due to a merger with another political party, provided that two-thirds of the members of the legislature party have agreed to such a merger.

3. **Presiding officer:** Disqualification does not apply if a member, after being elected as the presiding officer, gives up the membership of the party to which they belonged, or does not rejoin that party, or becomes a member of another party.

The Tenth Schedule aims to curb political defections and ensure stability in legislatures by discouraging opportunistic party-hopping and maintaining party discipline. However, its implementation and interpretation have sometimes been subject to controversy and judicial review.

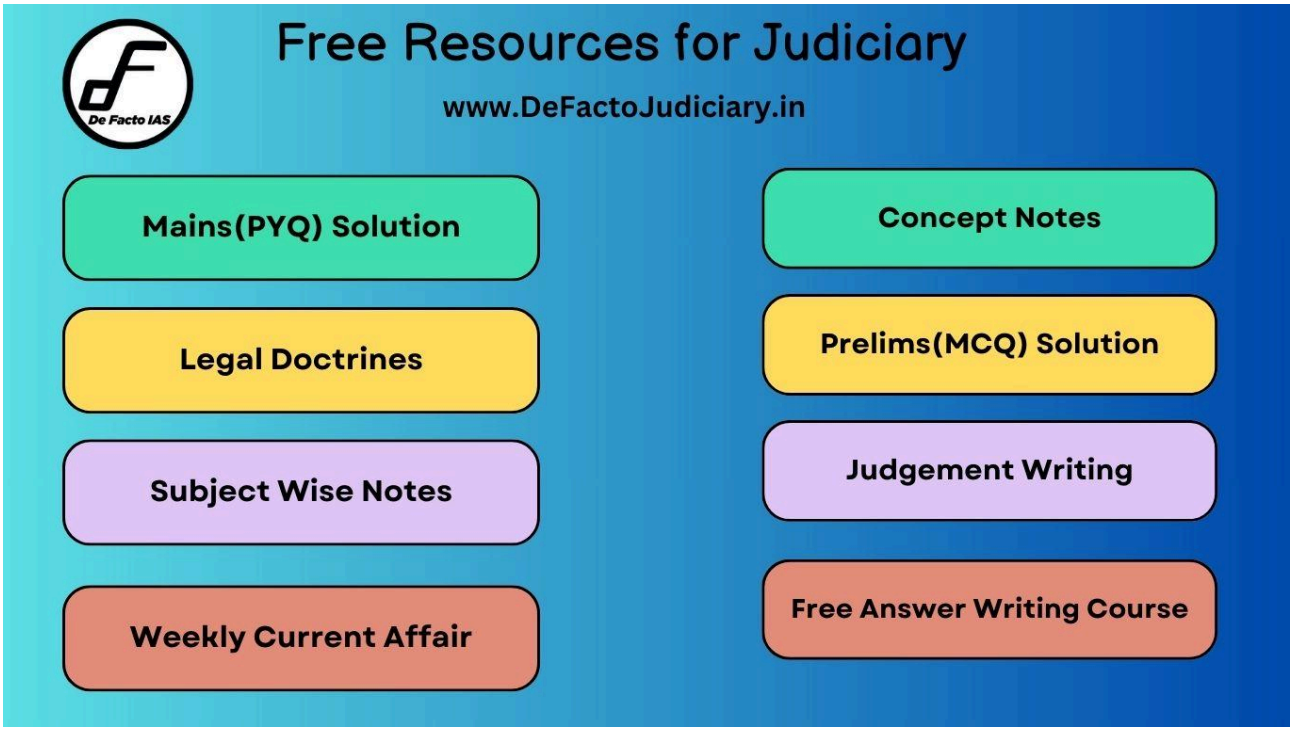
The Constitution 91st Amendment Act, 2003, made significant changes to the Tenth Schedule, also known as the Anti-Defection Law. Here are the key provisions introduced by this amendment:

1. **Omission of Para 3:** The amendment omitted Paragraph 3 of the Tenth Schedule, which previously provided an exemption for one-third of defectors from a political party, stating that they shall not be disqualified under the defection law.

2. **Addition of Article 361-B:** The amendment added a new Article 361-B to the Constitution, which states that a member disqualified under the Anti-Defection Law shall not be appointed as a Minister or hold any remunerative political post from the date of their disqualification until the expiry of the term of the House of which they were a member, or until they are re-elected to a House, whichever is earlier.

3. **Disqualification Decision:** If any question arises regarding whether a member of a House has become subject to any disqualifications under the Tenth Schedule, the question shall be referred to the Chairman or the Speaker of the House, whose decision shall be final. If the question pertains to whether the Speaker or Chairman themselves have become subject to such disqualification, the question shall be referred for the decision of such Member of the House as the House may elect on their behalf, and their decision shall be final.

4. **Presiding Officers' Rules:** The presiding officers of the House are required to make rules for giving effect to the provisions of the Tenth Schedule. These rules must be approved by the House. Willful contravention of these rules may be treated as a breach of the privilege of the House and be punished accordingly.



Cases on Defection

The cases of Kihoto Hollohan (AIR 1993 SC 412) and Jagjit Singh v. State of Haryana (AIR 2007 SC 590) have had significant implications on the judicial review of the Speaker's decisions regarding disqualification under the Tenth Schedule:

1. **Kihoto Hollohan Case:** In this case, the Supreme Court struck down Paragraph 7 of the Tenth Schedule, which had provided that the Speaker's decision regarding disqualification shall be final and not subject to judicial review. The Court held that the function of the Speaker, while applying the Anti-defection law, is akin to that of a Tribunal and is therefore open to judicial review. It emphasised that the process of determining the question of disqualification cannot be considered part of the proceedings of the House.

2. **Jagjit Singh v. State of Haryana:** In this case, the Supreme Court clarified that while the Speaker's order is open to judicial review, it can only be challenged on limited grounds. However, if the Speaker's order is found to be violative of the principles of natural justice, it would be deemed null and void. The Court distinguished between giving outside support and joining political parties, stating that they are two different actions. In the case of independent members, the test for disqualification is whether they have given up their "independent character."

Furthermore, the Supreme Court held that when an application under the Tenth Schedule is made to the Speaker, he should decide it according to the procedure laid down under the rules. If the Speaker himself decides the matter, it constitutes a clear misuse of power, and the Court has the authority to review the Speaker's decision.