

Anti Defection Act, 2054 (1997)

Date of Authentication and Publication

2054-6-14 (30 Sept. 1997)

Amendment,

Republic Strengthening and Some Nepal

Laws Amendment Act, 2066

2066-10-7 (21 Jan. 2010)

Act Number 6 of the Year 2054 (1997)

An Act made to provide for provisions relating to party defection

Preamble: Whereas, it is expedient to provide for provisions relating to the conditions where a member of the Constituent Assembly¹ has defected from the political organization or party of which such member was a candidate and elected and, on providing the notification thereof,

Now, therefore, be it enacted by the parliament in Twenty six year of reign of His Majesty the King Birendra Bir Bikram Shah Dev.

1. **Short title and commencement:** (1) This Act may be called "Anti Defection Act, 2054 (1997)"
(2) It shall come into force immediately.
2. **Definition:** In this Act, unless the subject or context otherwise requires;
 - (a) "Party" means a political organization or a party of which a person was a candidate and elected as a member of the Constituent Assembly² constituted pursuant to the Interim Constitution of Nepal, 2063 (2007)³.

¹ Amended by Republic Strengthening and Some Nepal Laws Amendment Act, 2066

² Amended by Republic Strengthening and Some Nepal Laws Amendment Act, 2066

³ Amended by Republic Strengthening and Some Nepal Laws Amendment Act, 2066

- (b) "Constituent Assembly party⁴" means the Constituent Assembly party which consists of the members of the Constituent Assembly⁵ who were elected as a candidate of the concerned party.

Explanation: For the purpose of this Clause, in the case of a member who has joined a party pursuant to Sub-clauses (2) and (3) of Clause (d) the Constituent Assembly party also includes the Constituent Assembly Party⁶ of the party in which he/she has joined.

- (c) "Executive committee" means the Central Executive Committee of a party and this expression also includes the body constituted in order to perform the functions of the Central Executive Committee in the concerned party regardless of whatever name has been provided for the said body by the statute of the respective party.

- (d) "Member" means the following persons;

- (1) A person elected as a member of the Constituent Assembly⁷ upon being a candidate of a party regardless of whether he/she has taken an oath of office or not.
- (2) A person who joins a party and provides a notification thereof to the Secretariat of the Constituent Assembly⁸ after being elected as an independent candidate.
- (3) A person, after being elected in a member of the Constituent Assembly⁹ upon being a candidate of a party, joins to any other party pursuant to Clauses (c) or (d) of Section 5 and

⁴ Amended by Republic Strengthening and Some Nepal Laws Amendment Act, 2066

⁵ Amended by Republic Strengthening and Some Nepal Laws Amendment Act, 2066

⁶ Amended by Republic Strengthening and Some Nepal Laws Amendment Act, 2066

⁷ Amended by Republic Strengthening and Some Nepal Laws Amendment Act, 2066

⁸ Amended by Republic Strengthening and Some Nepal Laws Amendment Act, 2066

⁹ Amended by Republic Strengthening and Some Nepal Laws Amendment Act, 2066

provides a notification thereof to the Secretariat of the Constituent Assembly¹⁰.

- (e) "Whip" means the member who has been assigned by the concerned constituent Assembly Party¹¹ to perform the function in the capacity of whip and this expression also includes chief whip (Ruling party) and head whip (party in opposition).

3. **It may be deemed to have been occurred party defection:** (1) If a member commits any of the following acts, the concerned party may conclude that such member has defected from the party;

- (a) Resigns in writing from the membership of the party,
- (b) Joins any other party,
- (c) Constitutes another party upon including him/herself.
- (d) Casts his/her vote or remains neutral or absents from voting in the Constituent Assembly against the whip issued by the leader or¹² whip of his/her own Constituent Assembly Party¹³.
- (e) Commits an act in contravention of Clause (d) of Sub-section (1) of Section 5.

(2) Notwithstanding anything contained in Clause (d) of Sub-section (1), if a member or his/her representative submits an application in writing to the Constituent Assembly Party¹⁴ or whip within a period of Fifteen days from the date of commission of such an act upon stating the situation that was beyond his/her control and he/she failed to abide by the whip issued by the whip upon setting out the grounds and reasons thereof, the Committee

¹⁰ Amended by Republic Strengthening and Some Nepal Laws Amendment Act, 2066

¹¹ Amended by Republic Strengthening and Some Nepal Laws Amendment Act, 2066

¹² Amended by Republic Strengthening and Some Nepal Laws Amendment Act, 2066

¹³ Amended by Republic Strengthening and Some Nepal Laws Amendment Act, 2066

¹⁴ Amended by Republic Strengthening and Some Nepal Laws Amendment Act, 2066

of Inquiry constituted by the Constituent Assembly Party¹⁵ shall hold an official inquiry, as may be required, for this purpose and if the committee finds that the grounds or reasons mentioned in the said application are satisfactory to the committee, it may recommend to the Executive Committee that the condition of party defection has not taken place.

4. **Notification may be provided with regard to party defection:** If a member commits an act which may be deemed that he/she has defected from the party pursuant to Section 3, the concerned party may provide a notification that he/she has defected from the party.
5. **Party defection not to be deemed:** (1) It shall not be deemed that a member has defected from the party in the following condition;
 - (a) If the Chair person of the Constituent Assembly¹⁶ acts as referred to in Clause (a) or (d) of Section 3.
 - (b) If the member who presides over the meeting of the Constituent Assembly¹⁷ when the Chair Person is absent, acts as referred to in Clause (d) of Section 3 while he/she is on the chair
 - (c) If at least Forty percent members of Executive Committee in a party split and constitute a new party or merge in to an existing party.
 - (d) If at least Forty percent members of the Constituent Assembly Party¹⁸ of a party split and constitute a new party or merge in to an existing party.

¹⁵ Amended by Republic Strengthening and Some Nepal Laws Amendment Act, 2066

¹⁶ Amended by Republic Strengthening and Some Nepal Laws Amendment Act, 2066

¹⁷ Amended by Republic Strengthening and Some Nepal Laws Amendment Act, 2066

¹⁸ Amended by Republic Strengthening and Some Nepal Laws Amendment Act, 2066

Provided that, the member who once splits from a Constituent Assembly party shall not be permitted for re-split in the same tenure.

(2) If the members constitute a new party or merge in to an existing party pursuant to Clause (c) or (d) of Sub-section (1), the concerned party shall provide the name list of such members and other documents to the Secretariat of Constituent Assembly¹⁹.

6. **Opportunity for clarification shall be given:** The concerned party shall give a period of Fifteen days to the member to submit his/her clarification to the party before providing a notification to the Secretariat of the Constituent Assembly²⁰ which reads that he/she has defected the party pursuant to this Act.

7. **Procedure for providing notification relating to party defection:**

The concerned party shall follow the following procedures in the course of providing a notification to the Secretariat of the Constituent Assembly²¹ that a member has commits an act which may be deemed as party defection;

(a) The decision to provide a notification relating to party defection must be made by the majority votes of the total members of the Executive Committee of the party.

(b) While making a decision pursuant to Clause (a) the designation of the official who authenticates the said decision on the behalf of the party must be set out.

(c) The copy of the decision pursuant to Clause (a) which is authenticated by the official pursuant to Clause (b) and other evidence and document related with the said decision must be included.

¹⁹ Amended by Republic Strengthening and Some Nepal Laws Amendment Act, 2066

²⁰ Amended by Republic Strengthening and Some Nepal Laws Amendment Act, 2066

²¹ Amended by Republic Strengthening and Some Nepal Laws Amendment Act, 2066

8. **Submission of the notification**: After completing the registration of the notification regarding party defection pursuant to Section 7 the said notification and other document attached to it shall be produced before the Chairperson of the Constituent Assembly²².
9. **Inquiry**: After receiving the notification and documents pursuant to Section 8 the Chairperson of the Constituent Assembly²³ may hold an inquiry in to the notification whether the party has followed the conditions and procedures to be followed under this Act in the course of providing a notification regarding party defection or not
10. **Providing Information to the Constituent Assembly or publishing notice**: In the course of making an inquiry pursuant to Section 9 in to the notification produced pursuant to section 8 if it appears that the conditions and procedures to be followed under this Act in respect of proving a notification of party defection is followed by the concerned party ,the Chairperson of the Constituent Assembly²⁴ shall inform the notification provided by the party with respect of party defection to the Constituent Assembly²⁵ within a period of Fifteen days from the date of receiving such notification pursuant to Section 7; and in case of prorogation or recess of the meeting of the Constituent Assembly²⁶, such notification shall be published on the notice board of the Secretariat of the Constituent Assembly²⁷.
11. **Vacation of the seat**: After giving the notice of party defection to the Constituent Assembly or publishing such notice on the notice board of the

²² Amended by Republic Strengthening and Some Nepal Laws Amendment Act, 2066

²³ Amended by Republic Strengthening and Some Nepal Laws Amendment Act, 2066

²⁴ Amended by Republic Strengthening and Some Nepal Laws Amendment Act, 2066

²⁵ Amended by Republic Strengthening and Some Nepal Laws Amendment Act, 2066

²⁶ Amended by Republic Strengthening and Some Nepal Laws Amendment Act, 2066

²⁷ Amended by Republic Strengthening and Some Nepal Laws Amendment Act, 2066

Secretariat of the Constituent Assembly²⁸, it shall be deemed to have been vacated the seat of that member from the Constituent Assembly²⁹.

12. ³⁰

13. **To be deemed internal business**: The matter of providing a notification to the Constituent Assembly³¹ and publishing such notice by the Chairperson of the Constituent Assembly³² pursuant to Section 10 shall be deemed to be an internal business of the Constituent Assembly³³.

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²⁸ Amended by Republic Strengthening and Some Nepal Laws Amendment Act, 2066
²⁹ Amended by Republic Strengthening and Some Nepal Laws Amendment Act, 2066
³⁰ Repealed by Republic Strengthening and Some Nepal Laws Amendment Act, 2066
³¹ Amended by Republic Strengthening and Some Nepal Laws Amendment Act, 2066
³² Amended by Republic Strengthening and Some Nepal Laws Amendment Act, 2066
³³ Amended by Republic Strengthening and Some Nepal Laws Amendment Act, 2066