

1. Anti Defection Law - Polity

Telangana Speaker courting 'gross contempt' by not deciding disqualification pleas - Supreme Court. The Supreme Court has reprimanded the Telangana Assembly Speaker for delaying disqualification decisions against defecting BRS MLAs, asserting that the Speaker acts as a Tribunal under the Tenth Schedule and does not enjoy immunity from judicial scrutiny regarding such delays.

1. Context - Telangana Assembly & The Speaker's Role

Current Development - The Telangana Assembly Speaker is set to begin hearing arguments on disqualification petitions against four BRS MLAs accused of defecting to the ruling party. The Speaker acts as the Tribunal under the Tenth Schedule for these proceedings.

Supreme Court's Intervention

Warning issued - The Supreme Court warned the Speaker of "gross contempt" for delaying decisions on petitions filed by the Bharat Rashtra Samithi (BRS) against 10 defecting MLAs.

Deadline set - In July, a bench led by CJI B.R. Gavai granted the Speaker a three-month deadline to conclude proceedings.

Constitutional Stance (*Padi Kaushik Reddy vs. State of Telangana*) - The Court explicitly remarked that the Speaker does not enjoy constitutional immunity when functioning as a Tribunal under the Tenth Schedule.

2. Understanding Defection

Definition - Defection is the act of an elected representative abandoning the political party on whose ticket they were elected to join another party or become an independent member.

Consequences

Instability - It alters legislative majorities, threatening the survival of governments.

Undemocratic Nature - It betrays the public mandate, encourages political opportunism ("horse-trading"), and erodes trust in the democratic process.

3. The Anti-Defection Law (Tenth Schedule)

Origin - Introduced by the 52nd Constitutional Amendment Act, 1985, which added the Tenth Schedule to the Constitution.

Objective - To curb political defections, ensure party discipline, and prevent legislators from voluntarily giving up membership or disobeying party whips.

Grounds for Disqualification

Category of Member	Grounds for Disqualification	Exception/Safe Period
Elected Member	1. Voluntarily giving up membership of the political party. 2. Voting or abstaining from voting contrary to party directions (Whip) without prior permission.	If the party condones the vote/abstention within 15 days.
Independent Member	If they join any political party after the election.	None.
Nominated Member	If they join a political party after the expiry of 6 months from taking their seat.	Can join a party within 6 months of taking the seat.

Major Exception (Merger) - Disqualification does not apply if a merger takes place and is supported by at least two-thirds of the legislative party members.

4. Adjudicating Authority & Procedure

Deciding Authority - The Presiding Officer of the respective House decides on disqualification cases.

Lok Sabha - Speaker

Rajya Sabha - Chairperson

State Assemblies - Speaker

Procedure - The Officer acts only upon receiving a formal complaint from a member of the House.

Principles of Natural Justice - The accused member must be given an opportunity to explain their stance before a final decision is made.

Judicial Review - The Speaker's decision functions as a quasi-judicial authority (Tribunal). It is subject to judicial review by the High Courts and Supreme Court (it is *not* final in the absolute sense, though final within the legislature).

5. 91st Constitutional Amendment Act, 2003

This amendment was introduced to strengthen the Anti-Defection Law and limit the size of the Council of Ministers.

Ministerial Limits

Central - Prime Minister + Ministers cannot exceed 15% of the total strength of the Lok Sabha.

State - Chief Minister + Ministers cannot exceed 15% of the Assembly strength (with a minimum absolute number of 12 ministers).

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Disqualification Consequences - A defector is disqualified from being appointed as a Minister. A defector is disqualified from holding any remunerative political post.

Raising the Split Threshold - Original 52nd Amendment allowed a "split" by one-third of members.

91st Amendment removed the "split" provision and raised the "merger" requirement to two-thirds. This made individual or small-group defections significantly harder.

6. Evaluation of the Law

Advantages

Political Stability - Prevents the fall of governments due to frequent party-switching for personal gain.

Discipline - Ensures legislators adhere to the party manifesto and policy lines.

Electoral Integrity - Respects the mandate of the voters who voted for a specific party ideology.

Limitations & Loopholes

Role of the Speaker

Bias - The Speaker remains a member of the ruling party, raising questions about impartiality.

Indefinite Delays - There is no statutory time limit for the Speaker to decide cases, allowing defectors to continue in office for years (though courts are now intervening).

Merger Loophole - The two-thirds rule is often misused to engineer "wholesale defection" disguised as a merger.

Stifling Dissent - The law forces MPs/MLAs to follow the party line even on non-critical issues, suppressing individual conscience and legitimate dissent.

7. Key Supreme Court Judgments

Kihoto Hollohan vs. Zachillhu (1993) - Upheld the validity of the Tenth Schedule. Declared that the Speaker's decision is subject to Judicial Review on grounds of malafide intent or perversity.

Ravi S. Naik vs. Union of India (1994) - Clarified that "voluntarily giving up membership" is not limited to formal resignation. It can be inferred from the legislator's conduct (e.g., publicly campaigning for an opposing party).

Keisham Meghachandra Singh vs. Speaker, Manipur (2020)

Time Limit - Directed that disqualification petitions should ideally be decided within three months.

Independent Tribunal - Recommended stripping the Speaker of this power and handing it to an independent tribunal headed by retired judges to ensure neutrality.

8. Recommendations for Reform

Various committees have suggested changes to plug existing loopholes

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Dinesh Goswami Committee (1990) – Disqualification should be limited to Confidence Motions, No-Confidence Motions, Money Bills, and the President's Address (not all votes).

Halim Committee (1994) – Called for a clearer definition of "voluntarily giving up membership."

Suggested restrictions on expelled members.

Law Commission (170th Report, 1999) – Proposed disqualification for *all* forms of switching (pre-poll and post-poll alliances).

2nd Administrative Reforms Commission (ARC)

Major Reform – Defection decisions should be made by the President/Governor on the binding advice of the Election Commission, similar to disqualifications for holding an office of profit.

Law Commission (255th Report, 2015) – Recommended a complete overhaul, focusing on the conduct of members rather than just party affiliation.

Conclusion

The Anti-Defection Law was a landmark step in Indian democracy to curb the "Aya Ram, Gaya Ram" culture. However, the partisan role of the Speaker and the lack of strict timelines have diluted its efficacy. Implementing the Supreme Court's suggestion for an independent tribunal or the ARC's recommendation to involve the Election Commission is crucial for restoring the law's intent.

Source – <https://www.thehindu.com/news/national/telangana/telangana-speaker-courting-gross-contempt-by-not-deciding-disqualification-pleas-supreme-court/article70289853.ece>