

Anti Defection Law

Supreme Court asks Parliament to review whether Speakers should decide defection cases under the anti-defection law. The Supreme Court urged Parliament to reconsider giving disqualification powers under the anti-defection law to Speakers and Chairmen due to frequent delays and bias, as seen in the pending case of 10 BRS MLAs in Telangana.

It highlighted the need for impartial and time-bound adjudication under the Tenth Schedule.

Supreme Court on Anti-Defection Law – 2024 Telangana Case

The Supreme Court has urged Parliament to reconsider the current mechanism of using Assembly Speakers and Chairmen to adjudicate disqualification petitions under the Tenth Schedule (Anti-Defection Law). This came while directing the Telangana Legislative Assembly Speaker to promptly decide disqualification petitions pending since 2024 against 10 BRS MLAs who defected to the Congress. The Court criticised the bias and delay by presiding officers, which undermines the intent of the law.

Origin of Anti-Defection Law

The phrase "Aaya Ram, Gaya Ram" became infamous in Indian politics after a Haryana MLA Gaya Lal switched parties three times in one day in 1967. Rampant political defections led to frequent collapses of elected governments, prompting the need for a legal framework.

Constitutional Basis and Evolution

1. Tenth Schedule of the Constitution contains the Anti-Defection Law.
2. It was inserted by the **52nd Constitutional Amendment Act, 1985**.
3. Aimed to ensure stability in elected governments by discouraging defections for personal or political gain.

Key Features of the Anti-Defection Law

1. Grounds for Disqualification

A legislator is liable for disqualification if voluntarily gives up membership of their political party. Votes or abstains from voting in the

House against party directions (without permission or condonation within 15 days).

2. Independent and Nominated Members

Independent members: Disqualified if they join any political party after election. Nominated members: Disqualified if they join a party 6 months after nomination.

3. Authority to Decide

The Speaker/Chairman of the House decides disqualification petitions. Their decisions were initially final and beyond judicial review, but this was changed later by Supreme Court judgments.

4. Exceptions to Disqualification

Originally two exceptions were allowed

1. Split – One-third of a party's legislators splitting was protected.
2. Merger – Two-thirds of a legislature party merging with another party is not defection.

Split clause was removed in 2003 (91st Amendment) to make the law stricter.

Key Supreme Court Judgments on Anti-Defection

1. Kihoto Hollohan v. Zachillhu (1992)

Held that Speaker's decision under the Tenth Schedule is subject to judicial review by High Courts and the Supreme Court.

2. Keisham Meghachandra Singh v. Speaker, Manipur (2020)

SC ruled that disqualification petitions must be decided within 3 months. Criticised inordinate delays and suggested independent authorities be considered for such adjudication.

Issues and Challenges

1. Delay and Bias by Presiding Officers

No constitutional timeline for deciding petitions (though courts suggest 3 months). Speakers often act under political pressure, especially when they belong to the ruling party.

2. Judicial Review Limitations

While SC allows judicial review, courts are reluctant to intervene early due to legislative privilege and separation of powers.

3. Restrictions on Free Speech

The law curbs legislators' freedom of conscience and debate within Parliament and Assemblies. Legislators cannot vote against party lines, limiting intra-party democracy.

4. Whip System and Lack of Internal Democracy

Whip system forces strict adherence to party line. MPs and MLAs cannot differ even on issues of national or local importance, diluting their representative role.

Objectives of the Anti-Defection Law

1. Prevent political horse-trading and instability.
2. Promote loyalty to political parties and protect mandate of the voters.
3. Ensure the stability of governments by reducing opportunistic defections.
4. Uphold constitutional morality in electoral and legislative practices.

Reforms and Way Forward

1. Parliamentary Reconsideration

Parliament should consider assigning disqualification powers to an independent body, such as the Election Commission or a tribunal.

2. Set Binding Timelines

The law should mandate a strict timeline (e.g., 3 months) for adjudication of disqualification petitions.

3. Promote Intra-Party Democracy

Reforms should balance party discipline with individual freedom, promoting healthy internal debates.

4. Strengthen Whistle-blower Protection

Legislators raising ethical or public interest concerns against their party should be protected.

Representation of the People Act, 1951

Governs elections, qualifications, disqualifications, and election-related offences in India.

Section 8 – Disqualification on Conviction

1. Section 8(1) – Disqualifies for offences like promoting enmity, bribery, electoral fraud.
2. Section 8(2) – Covers offences like hoarding, food adulteration, and dowry-related crimes.
3. Section 8(3) – Disqualifies anyone convicted and sentenced to 2+ years in prison, with disqualification lasting during sentence + 6 years after release.
4. Section 8(4) – Earlier provided a 3-month appeal window, struck down by Lily Thomas v. Union of India (2013) enabling immediate disqualification upon conviction.

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