

1. Anti-Defection Law – Polity

1. Why in News?

1. More than two-thirds of AAP's Rajya Sabha MPs have decided to merge with BJP, triggering debate on the application of the anti-defection law
2. This raises questions about whether such a merger attracts disqualification under the Tenth Schedule

2. Historical Background

1. "Aaya Ram Gaya Ram" phenomenon (1967): Haryana MLA Gaya Lal changed parties thrice in a single day
2. This phrase symbolized the rampant political defections in Indian politics
3. Led to demand for a law to check such opportunistic party-switching

3. What is the Anti-Defection Law?

1. Constitutional provision: Tenth Schedule added by the 52nd Constitutional Amendment Act, 1985
2. Primary objective: Prevent elected representatives from switching parties for personal gain
3. Aim: Ensure political stability and strengthen party-based democratic system

4. Constitutional Disqualifications (Separate from Anti-Defection)

Under Articles 102(1) and 191(1), a person is disqualified if they:

1. Hold any office of profit under government
2. Are of unsound mind (declared by competent court)
3. Are an undischarged insolvent
4. Are not an Indian citizen, or have acquired foreign citizenship, or show allegiance to a foreign state
5. Are disqualified under any parliamentary law

5. Grounds for Disqualification under Anti-Defection Law

For Party Members

Disqualified if they:

1. Voluntarily give up party membership
2. Vote or abstain contrary to party direction (defying the whip) without prior permission
3. Exception: Not disqualified if voting/abstention is condoned by the party within 15 days

For Independent Members

1. Disqualified if they join any political party after election

For Nominated Members

1. Disqualified if they join any party within six months of nomination
2. Can join after six months without disqualification

6. Decision-Making Authority

1. Presiding Officer (Speaker of Lok Sabha/Legislative Assembly or Chairman of Rajya Sabha/Legislative Council) decides on disqualification
2. No other authority specified in the original law
3. Decision-making process often criticized for delays and bias

7. Exceptions to Disqualification

Original Provisions (1985)

Two exceptions existed:

1. One-third split: If one-third of legislature party members split to form separate group
2. Merger: If two-thirds of legislature party approves merger with another party

After 2003 Amendment (91st Constitutional Amendment)

1. One-third split provision deleted to prevent easy defections
2. Only merger exception remains: Two-thirds of legislature party must approve merger with another political party

3. This is the provision now being invoked in the AAP-BJP case

8. Key Supreme Court Judgments

Kihoto Hollohan v. Zachillhu (1992)

1. Validated the Tenth Schedule as constitutional
2. Held that Speaker's decisions are subject to judicial review
3. Courts can examine whether decision-making was fair and in accordance with constitutional provisions
4. However, courts generally exercise restraint and don't interfere during the process

Keisham Megha Chandra Singh v. Speaker, Manipur (2020)

1. SC set three-month time limit for Speakers to decide disqualification petitions
2. Aimed to prevent indefinite delays in decision-making
3. Emphasized timely resolution to maintain democratic accountability

9. Major Issues and Challenges

Delay in Decision-Making

1. Speakers often delay decisions for months or years
2. Examples: Karnataka (2019), Manipur, Maharashtra cases
3. Delays affect government stability and legislative functioning
4. Defeats the purpose of preventing political instability

Allegations of Bias

1. Presiding Officer usually belongs to ruling party
2. Raises concerns about partisan decision-making
3. Conflict of interest when ruling party members face disqualification

Limited Scope of Judicial Review

1. Courts intervene only after Speaker's decision, not during the process
2. Leads to prolonged uncertainty
3. Some argue for independent tribunal instead of Speaker

Restriction on Legislators' Freedom

1. MPs/MLAs cannot vote according to conscience on important issues
2. Reduces independent thinking and parliamentary debate
3. Conflicts with Article 105 (freedom of speech in Parliament)
4. Undermines substantive democracy

Rigid Whip System

1. Party whips issued even on minor, non-confidence matters
2. Prevents healthy intra-party debate
3. Converts legislators into "voting machines"
4. Discourages dissent on policy issues

Mass Defections Still Possible

1. Two-thirds merger exception allows large-scale defections legally
2. Defeats the original purpose of preventing "Aaya Ram Gaya Ram"
3. Recent AAP-BJP case is an example
4. Creates loophole for opportunistic party-switching

10. Recommendations for Reform

Law Commission (170th Report, 1999)

1. Suggested limiting disqualification to confidence and money bill votes only
2. Recommended independent tribunal instead of Speaker
3. Proposed stricter timelines for decision-making

Other Suggested Reforms

1. Automatic disqualification upon defection without Speaker's discretion

2. Intra-party democracy: Encourage internal debate and dissent
3. Limited whip system: Use only for critical votes (confidence, budget)
4. Independent authority: Replace Speaker with Election Commission or special tribunal
5. Strengthen political parties: Internal elections, transparent funding

11. Conclusion

Anti-Defection Law has reduced political instability to some extent. However, suffers from implementation flaws: delays, bias, rigid application. Overreach limits democratic debate and freedom of conscience. Balance needed between party discipline and individual accountability. Reforms essential to strengthen both party system and parliamentary democracy. Current merger provision requires re-examination to prevent misuse.

Source: https://www.thehindu.com/news/national/raghav-chadha-aap-mps-join-bjp/article70901275.ece#google_vignette

