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LEGISLATION TRACKER

Constitution (Fifty-Second Amendment) Act, 1985 — Anti-Defection Law

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ACT NUMBER
YEAR ENACTED
52nd Constitutional Amendment 1985
KEY PROVISIONS

- 1 Tenth Schedule added to the Constitution — grounds for disqualification on basis of defection
- 2 Paragraph 2 — A member is disqualified if they voluntarily give up membership of a political party or vote contrary to party direction/whip
- 3 Paragraph 3 — Disqualification does not apply to the presiding officer (Speaker/Chairman) who severs party ties on election
- 4 Paragraph 4 — Merger exception: no disqualification if two-thirds of a legislature party agree to merge with another party (amended by 91st Amendment, 2003)
- 5 Paragraph 6 — The Speaker/Chairman of the House is the final authority on disqualification questions
- 6 91st Amendment (2003) removed the exemption for splits — only mergers (two-thirds) are now protected
- 7 Disqualified members are barred from being appointed as Ministers or holding remunerative political office

BACKGROUND

The Constitution (Fifty-Second Amendment) Act, 1985, popularly known as the Anti-Defection Law, was enacted to combat the political evil of defection — the practice of elected legislators switching parties after being elected, often in exchange for ministerial positions or financial inducements. The amendment inserted the Tenth Schedule into the Constitution, which lays down the provisions for disqualification of members of Parliament and State Legislatures on the ground of defection.

The problem of political defection plagued Indian democracy from its early decades. The phenomenon was particularly acute in the 1960s and 1970s, when legislators frequently “crossed the floor” to topple elected governments and install new ones. The term “Aaya Ram, Gaya Ram” — coined after Haryana MLA Gaya Lal

who changed parties three times in a single day (March 1967) — became a metaphor for political opportunism. Between 1967 and 1971, approximately 142 state legislators defected across India, and several state governments fell due to mass defections.

The Y.B. Chavan Committee (1969) first recommended anti-defection legislation. The Dinesh Goswami Committee on Electoral Reforms (1990) and the Law Commission's 170th Report (1999) further recommended strengthening the law. The 52nd Amendment was passed during the Rajiv Gandhi government and came into effect on March 1, 1985. It was subsequently amended by the 91st Constitutional Amendment Act, 2003, which removed the one-third split exemption and restricted the exception to mergers involving two-thirds of a legislature party.

KEY CONCEPTS

- **Voluntary giving up of membership (Paragraph 2(1)(a)):** A member is disqualified if they voluntarily give up their membership of the political party on whose ticket they were elected. This covers both formal resignation and conduct that amounts to voluntarily giving up membership — such as publicly opposing the party, joining another party's activities, or expressing support for a rival party. The Supreme Court has held that formal resignation is not necessary; conduct is sufficient.
- **Voting against party whip (Paragraph 2(1)(b)):** A member who votes or abstains from voting in the House contrary to any direction issued by the political party (through a whip) is disqualified, unless the member obtained prior permission from the party or the party condoned the action within 15 days.
- **Merger exception (Paragraph 4, as amended by 91st Amendment):** No disqualification if two-thirds of the members of a legislature party agree to merge with another party. The original provision (before 2003) allowed one-third of members to form a "split" — this was widely misused to engineer defections under the guise of splits. The 91st Amendment raised the threshold to two-thirds and limited the exception to mergers only.
- **Role of the Speaker (Paragraph 6):** The Speaker of the Lok Sabha (or Chairman of the Rajya Sabha, or the presiding officer of a State Legislature) is the authority to decide disqualification petitions. The Speaker's decision is subject to [judicial review](#), but courts have traditionally been reluctant to interfere until the Speaker decides. This has been criticised because the Speaker often belongs to the ruling party and may have a conflict of interest.
- **No time limit for Speaker's decision:** The Tenth Schedule does not prescribe any time limit for the Speaker to decide on a disqualification petition. This has led to deliberate delays — Speakers have sat on petitions for years, allowing defectors to continue as members and even hold ministerial positions. The Supreme Court addressed this in [Keisham Meghachandra Singh \(2020\)](#).
- **Independent members:** An independently elected member (not belonging to any party at the time of election) is disqualified if they join any political party after the election.

IMPORTANT PROVISIONS

- **Paragraph 2(1)(a) – Disqualification for Voluntary Giving Up Membership:** A member of a House belonging to any political party shall be disqualified for being a member of the House if they have voluntarily given up their membership of such political party.
- **Paragraph 2(1)(b) – Voting Contrary to Party Direction:** A member is disqualified if they vote or abstain from voting contrary to the direction issued by the political party, without obtaining prior permission. The party must condone the act within 15 days.
- **Paragraph 2(2) – Independent Members:** An independently elected member is disqualified if they join any political party after election.
- **Paragraph 2(3) – Nominated Members:** A nominated member is disqualified if they join a political party after six months from the date they take their seat.
- **Paragraph 4 – Merger (as amended by 91st Amendment, 2003):** A member shall not be disqualified if the original political party merges with another party, and at least two-thirds of the members of the legislature party have agreed to such merger. Members who do not accept the merger may form a separate group without disqualification.
- **Paragraph 6 – Decision Authority:** If any question arises as to whether a member has become subject to disqualification, the question shall be referred to the Chairman/Speaker, whose decision shall be final. This decision is subject to judicial review on grounds of mala fides, perversity, or violation of constitutional provisions.

LANDMARK JUDGMENTS

- **Kihoto Hollohan v. Zachillhu (1992):** A five-judge Constitution Bench of the Supreme Court upheld the constitutional validity of the Tenth Schedule. The Court held that the Speaker’s power under Paragraph 6 is a “tribunal” function subject to judicial review on limited grounds – violation of constitutional mandate, mala fides, non-compliance with natural justice, and perversity. However, the Court struck down Paragraph 7 (which barred judicial review of the Speaker’s decision) as unconstitutional for violating basic structure.
- **Ravi S. Naik v. Union of India (1994):** The Supreme Court held that “voluntarily giving up membership” is not synonymous with formal resignation. Conduct that is inconsistent with party membership – attending rival party meetings, publicly criticising the party, or canvassing for a rival candidate – amounts to voluntarily giving up membership.
- **Keisham Meghachandra Singh v. Hon’ble Speaker, Manipur Legislative Assembly (2020):** The Supreme Court held that the Speaker must decide disqualification petitions within a “reasonable period” and suggested a three-month timeline. The Court observed that delays by

Speakers in deciding disqualification petitions make a mockery of the anti-defection law and undermine democratic principles.

- **Nabam Rebia v. Deputy Speaker (2016):** The Supreme Court held that a Speaker against whom a no-confidence motion is pending cannot decide disqualification petitions. This addresses the conflict of interest when a Speaker facing removal uses disqualification powers against those seeking to remove them.

RECENT AMENDMENTS / DEVELOPMENTS

- **91st Constitutional Amendment Act, 2003:** Removed the “split” exception (one-third threshold) from Paragraph 3, which was widely misused. Now, only a merger involving two-thirds of the legislature party is protected. Also added Article 75(1B) and 164(1B) – the total number of Ministers in the Council of Ministers shall not exceed 15% of the total membership of the House, to prevent the practice of “buying” defectors with ministerial berths.
- **Maharashtra political crisis (2022):** The defection of Eknath Shinde faction (40 out of 55 Shiv Sena MLAs) raised complex questions about the anti-defection law. The Supreme Court in Subhash Desai v. Principal Secretary (2023) held that the Speaker cannot recognise a breakaway faction as the “real” party without following the Tenth Schedule procedure, and that the question of which faction represents the “real” party must be determined by the Election Commission.
- **Padi Kaushik Reddy v. State of Telangana (2025):** The Supreme Court (CJI B.R. Gavai and Justice Augustine George Masih) directed the Telangana Assembly Speaker to decide all pending disqualification petitions against defecting MLAs within three months. The Court criticised the Speaker for delay, holding it “violates the intent of the Tenth Schedule and undermines trust in the Speaker’s office.” Importantly, the Court called on Parliament to reconsider whether entrusting disqualification adjudication to the Speaker has effectively served its purpose – the strongest judicial call yet for structural reform of the anti-defection mechanism.
- **Contempt proceedings (2025-2026):** After prolonged non-compliance with the Telangana order, contempt notices were issued in November 2025; a final three-week extension was granted in February 2026.
- **Ongoing reform demands:** The Law Commission, the National Commission to Review the Working of the Constitution (NCRWC, 2002), and the Dinesh Goswami Committee have recommended that disqualification decisions be transferred from the Speaker to the President/Governor acting on the Election Commission’s advice, to eliminate partisan bias. The 2025 Telangana judgment has renewed momentum for this reform.
- **Recent disqualification cases:** Petitions remain pending in multiple states (Maharashtra, Jharkhand, Goa, Telangana) alleging defection. The delays in disposal by Speakers continue despite the Keisham Meghachandra Singh (2020) and Padi Kaushik Reddy (2025) judgments.

UPSC RELEVANCE

52nd Amendment (1985) – Tenth Schedule; 91st Amendment (2003) – removed split exemption, raised merger threshold to two-thirds, 15% cap on Council of Ministers; Paragraph 2 grounds for disqualification; Speaker as deciding authority; Kihoto Hollohan case upheld Tenth Schedule; “Aaya Ram, Gaya Ram” origin (1967, Haryana). **Mains GS-2:** Anti-defection law – merits and demerits; role of the Speaker as quasi-judicial authority; party discipline vs. individual conscience; impact on parliamentary democracy; reform proposals (transferring decision to Election Commission or President); comparison with anti-defection provisions in other democracies. **Interview:** “Does the anti-defection law, by forcing legislators to follow party whips, effectively convert representatives of the people into delegates of their parties, undermining the deliberative character of Parliament?”

RELATED TERMS

[Anti Defection](#)
[Tenth Schedule](#)
[Speaker](#)



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