

Guidelines of SC on anti-defection law

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Why is it in the news?

- The SC recently urged the parliament to set up an **independent tribunal to decide disqualification petitions** within a reasonable time to give teeth to the anti-defection law instead of leaving it to speakers who continue to remain, political party members, either de jure or de facto.

What is the anti-defection law?

- Anti-defection policies were a good step to safeguard voter interest in a democracy, however, lately, the provision of 2/3rd representation as a whole defecting has set a dangerous precedent.
- Through the **52nd Constitutional Amendment Act of 1985**, the **10th Schedule** of the Constitution, which contains the anti-defection law, was added to the Constitution. The purpose is to curb political defection by the legislators.
- There are two grounds on which a member of a legislature can be disqualified
- If the member voluntarily gives up the membership of the party. Even without resigning, a legislator can be disqualified if by his conduct the Speaker/Chairman of the concerned House draws a reasonable inference that the member has voluntarily given up the membership of his party.
- If a legislator votes in the House against the direction of his party and his action is not condoned by his party.
- An exception provided in the 10th schedule is, if there

is a merger between two political parties and two-thirds of the members of a legislature party agree to the merger, they will not be disqualified.

What are SC directives?

- Supreme Court urged Parliament to set up an independent permanent tribunal to decide disqualification petitions within a reasonable time.
- The Constitution would be amended to “substitute” Speakers of the Lok Sabha and Assemblies as “arbiter of disputes concerning disqualifications” who arises under the Tenth Schedule “with a permanent tribunal”.
- The tribunal could be headed by a retired SC judge or a retired chief justice of an HC or some outside independent mechanism to ensure that such disputes are decided swiftly and impartially.
- The following criticisms have been made against the proposed changes
 - Violates Separation of powers principle
 - Violates Art 122 which bars courts from inquiring into the proceedings of the Parliament.
 - Anti-Defection proceedings fall under parliamentary proceedings.