

Will AAP MPs face disqualification after joining BJP?

Is there a law against defection? What are the exceptions to it and how has the Supreme Court interpreted them? What are experts' view on seven of AAP's 10 Rajya Sabha members joining the BJP last week?

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The story so far:

In a setback to the Aam Aadmi Party (AAP), seven of its 10 Rajya Sabha members, amounting to two-thirds of its strength in the Upper House, joined the Bharatiya Janata Party (BJP) on April 24. AAP MP Raghav Chadha, who was removed as the party's deputy leader in the Rajya Sabha three weeks ago, announced that he and six other party members had decided to "merge with the BJP".

Is there a law against defection?

The anti-defection law, enshrined in the Tenth Schedule to the Constitution by the 52nd Constitutional Amendment Act, 1985, seeks to curb rampant floor-crossing by elected representatives in Parliament and State legislatures. It provides for the disqualification of a legislator if they voluntarily relinquish membership of the political party on whose ticket they were elected, or if they vote, or abstain from voting, in defiance of directions issued by their party or by an authorised functionary.

What are the 'split' and 'merger' exceptions?

The Tenth Schedule originally recognised two exceptions under which members would not

incur disqualification. The first, the "split" exception under paragraph 3, insulated legislators from disqualification if at least one-third of the members of a legislature party defected together. Owing to its misuse to engineer defections, this exception was subsequently removed by the 91st Constitutional Amendment in 2003.

The second, the "merger" exception under paragraph 4, stipulates that a legislator will not be disqualified for joining another political party if the move is part of a merger involving their original party. Under sub-paragraph (1), a member will not be disqualified if their original party merges with another political party, and they act in accordance with such merger. Sub-paragraph (2) deems such a merger valid only if at least two-thirds of the legislature party agree to it. This exception remains in force and was intended, as reflected in parliamentary debates, to protect principled defections grounded in ideological differences.

However, paragraph 4 has been criticised for its convoluted drafting. The ambiguity lies in whether its two sub-paragraphs are to be read conjunctively or disjunctively. On a conjunctive reading, a valid merger requires both an actual merger of the original political party (under paragraph 4(1)) and the consent of at least two-thirds of the legislature party (under paragraph 4(2)). On a disjunctive reading, however, a merger may be "deemed" once two-thirds of the legislature party agrees to join

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How has the 'merger' exception been interpreted?

In 2019, 10 MLAs from the Indian National Congress in Goa joined the BJP, then in power in the State, claiming they constituted two-thirds of the 15-member Congress legislature party. Disqualification petitions were rejected by the Speaker of the Goa Legislative Assembly, who held that the move amounted to a valid "merger" under paragraph 4 of the Tenth Schedule. On February 24, 2022, the Bombay High Court upheld this decision, ruling that since the defecting legislators met the two-thirds threshold, their move constituted a "deemed merger" with the BJP.

Notably, the High Court adopted a disjunctive reading of paragraph 4 and ruled that a "deemed" merger is triggered once two-thirds of a legislature party agrees to join another party, even without approval from the original political party at the national level.

What do experts say?

According to former Lok Sabha Secretary-General P.D.T. Achary, a valid merger under Paragraph 4 of the Tenth Schedule requires the original political party to first merge with another party, and then the decision to be backed by at least two-thirds of the legislature party. "An interpretation faithful to the anti-defection law's intent would mean that Rajya Sabha MPs cannot, on their own, decide to merge with another party. In this case, it would require Arvind Kejriwal to agree to a merger with the BJP," he said. Any member, he noted, may now move a disqualification petition before the Rajya Sabha Chairman, whose



Rajya Sabha MPs Raghav Chadha, Sandeep Pathak and Ashok Mittal meet BJP National President Nitin Nabin in New Delhi. ANI

another party, even without a corresponding merger at the national level.

What did the Supreme Court rule on the 'split' exception?

The Supreme Court has endorsed a conjunctive reading while interpreting the now-deleted "split" exception. In *Rajendra Singh Rana v. Swamy Prasad Maurya* (2007), where 37 MLAs of the Bahujan Samaj Party sought recognition of a formal split, the Court held that for the exception to apply, a split in the "legislature party" must stem from a corresponding split in the "original political party". The "legislature party" refers to all elected members of a House belonging to a political party, while the "original

decision would be open to judicial review.

However, Swapnil Tripathi, who heads Charkha, the Constitutional Law Centre at the Vidhi Centre for Legal Policy, said that the support of two-thirds of the AAP's Rajya Sabha members could allow the move to be treated as a "deemed" merger under paragraph 4(2).

He, however, pointed to a larger anomaly that is likely to be challenged. "Rajya Sabha MPs are elected by MLAs of State legislatures. Here, the MLAs who elected these members continue to belong to the AAP in Punjab, while the MPs have switched to the BJP. This creates a disconnect between the electoral base and the MPs' party affiliation, undermining the underlying objective of Rajya Sabha representation," he said.