

Anti-defection law and its effect on politics

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Manifest Pedagogy:

Defections within political parties are on rise in various states. Although the Anti-defection Law makes an effort to reduce these occurrences, it has not been adequately effective thus far. There is also a need for building up a political consensus so that there is room for political expression in the Parliament for the members. There is an urgent need for a watchdog to stop future incidences of defection and escalating levels of corruption within the Indian political system.

In news– Political crisis in Maharashtra has brought back the focus on effectiveness of Anti-Defection law.

Placing it in syllabus: Polity

Static Dimensions:

- About Tenth Schedule of the Constitution (Anti defection)
- Advantages of Anti-Defection Law
- Court Cases related to Defection

Current Dimensions:

- Issues with Anti Defection Law
- Best Practices around the world
- Recommendations of various bodies on reforming the Anti-defection law

Content:

Tenth Schedule of the Constitution (Anti defection)-

- The Tenth Schedule, which was inserted in the

Constitution by the Constitution **(Fifty-Second Amendment) Act, 1985**, provides for the disqualification of Members of Parliament and state legislatures who defect.

- **Objective:** Intended to strengthen the fabric of Indian Parliamentary democracy by curbing unprincipled and unethical political defections.
- **Disqualification-**
 - If a member of a house belonging to a political party:
 - Voluntarily gives up the membership of his political party, or
 - Votes, or does not vote in the legislature, contrary to the directions of his political party. However, if the member has taken prior permission, or is condoned by the party within 15 days from such voting or abstention, the member shall not be disqualified.
 - If an independent candidate joins a political party after the election.
 - If a nominated member joins a party six months after he becomes a member of the legislature.
- **Power to Disqualify-**
 - The **Chairman or the Speaker of the House** takes the decision to disqualify a member.
 - If a complaint is received with respect to the defection of the Chairman or Speaker, a member of the House elected by that House shall take the decision.
- **Exception-**
 - A person shall not be disqualified if his original political party merges with another,
 - He and other members of the old political party become members of the new political party,
 - He and other members do not accept the merger and opt to function as a separate group (This

exception shall operate only if not less than two-thirds of the members of the party in the House have agreed to the merger).

Advantages of Anti-Defection Law-

- Provides stability to the government by preventing shifts of party allegiance.
- Ensures that candidates elected with party support and on the basis of party manifestos remain loyal to the party Policies.
- Promotes party discipline.

Issues with Anti Defection Law-

- Hurts accountability- By preventing parliamentarians from changing parties, it reduces the accountability of the government to the Parliament and the people
- Interferes with the member's freedom of speech and expression by curbing dissent against party policies.
- Time Limit- The law does not specify a time-period for the Presiding Officer to decide on a disqualification plea.
- Merger- The provision tends to safeguard the members of a political party where the original political party merges with another party subject to the condition that at least two-third of the members of the legislature party concerned have agreed to such merger. This allows wholesale defection.
- Role of Speaker- Many times speakers act in a biased way supporting the ruling party or not taking decisions for indefinite time as it goes against the ruling party.
- Instead of curbing, it has promoted horse-trading of legislators which clearly go against the mandate of a democratic setup.
- The anti-defection law leads to major decisions in the legislature being taken by a few party leaders and not by the larger body of legislators.

- The burden of proof that there was no willingness to leave the party will always be against the legislator against whom charges are made.

Court Cases related to Defection-

- **Kihoto Hollohan case**
 - 'The Speakers/Chairmen hold a pivotal position in the scheme of Parliamentary democracy and are guardians of the rights and privileges of the House.
 - They are expected to and do take far reaching decisions in the Parliamentary democracy.
 - Vestiture of power to adjudicate questions under the Tenth Schedule in them should not be considered exceptionable.
 - The tenure of the Speaker, who is the authority in the Tenth Schedule to decide this dispute, is dependent on the continuous support of the majority in the House and, therefore, he does not satisfy the requirement of such an independent adjudicatory authority.
 - Hence the **decision of the presiding officer is subjected to Judicial Review.**
 - The Speaker's choice as the sole arbiter in the matter violates an essential attribute of the basic feature.
- **Rajendra Singh Rana vs. Swami Prasad Maurya. (2007)**
 - If the Speaker fails to act on a complaint, or accepts claims of splits or mergers without making a finding, he fails to act as per the Tenth Schedule.
 - Ignoring a petition for disqualification is not merely an irregularity but a violation of constitutional duties.

Best Practices around the world-

- **Bangladesh**– The dispute is referred by the Speaker to the Election Commission.
- **Singapore**– Constitution says a member must vacate his seat if he resigns, or is expelled from his party. Article 48 states that Parliament decides on any question relating to the disqualification of a member.

Recommendations of various bodies on reforming the Anti-defection law-

- **Dinesh Goswami Committee on electoral reforms (1990)**
 - Disqualification should be limited to cases where (a) a member voluntarily gives up the membership of his political party, (b) a member abstains from voting, or votes contrary to the party whip in a motion of vote of confidence or motion of no-confidence.
 - The issue of disqualification should be decided by the President/ Governor on the advice of the Election Commission.
- **Halim Committee on anti-defection law (1998)**
 - The words 'voluntarily giving up membership of a political party' be comprehensively defined.
 - Restrictions like prohibition on joining another party or holding offices in the government be imposed on expelled members.
 - The term political party should be defined clearly.
- **Law Commission 170th Report, (1999)**
 - Provisions which exempt splits and mergers from disqualification to be deleted.
 - Pre-poll electoral fronts should be treated as political parties under anti-defection law.
 - Political parties should limit issuance of whips to instances only when the government is in danger.
- **Constitution Review Commission (2002)**

- Defectors should be barred from holding public office or any remunerative political post for the duration of the remaining term.
- The vote cast by a defector to topple a government should be treated as invalid.

Way Forward-

- Time limit must be fixed within which the Speaker should decide the case of defection
- To ensure impartiality of the Speaker, he/she when elected, must resign from the party to which they belong.
- Ardent need for legislation that governs political parties in India. Such a law should bring political parties under Right to Information (RTI), strengthen intra-party democracy, etc.
- The scope of the law can be restricted to only those laws, where the defeat of government can lead to loss of confidence.
- Transferring the deciding power to higher judiciary or to Election Commission may curb the menace of defection.

Mould Your Thoughts-

1. The Anti Defection law is intended to strengthen the fabric of Indian Parliamentary democracy. Analyse. (250 Words)

Approach to the answer-

- Write about Anti defection law and its importance
- Issues with the usage of the law
- Suggestion of various committees
- Way forward and Conclusion.