

Applicability of Anti-defection law for nominated MPs

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In news: Recently, Swapan Dasgupta, a nominated member of Rajya Sabha has resigned from the membership of the upper house

A brief note on the issue

A member of Parliament had raised the issue of Swapan Dasgupta's disqualification from Rajya Sabha under the anti-defection law, after the BJP had fielded Dasgupta as its candidate for Tarakeswar constituency in the West Bengal Assembly elections.

Anti-defection law & its applicability to nominated member of Rajya Sabha

- **Year of passing the law:** Tenth Schedule, popularly known as the anti-defection law, was added to the Constitution in 1985
- **Its origin:** Aaya Ram Gaya Ram was a phrase that became popular in Indian politics after a Haryana MLA Gaya Lal changed his party thrice within the same day in 1967.
- **Purpose:** The anti-defection law sought to bring stability to governments by deterring MPs and MLAs from changing their political parties on whose ticket they were elected.
- **Penalty:** The law makes it clear that a member who is shifting the political parties will lose the parliamentary membership and a bar on becoming a minister.
- It lays down the process by which legislators may be disqualified on grounds of defection by the Presiding

Officer of a legislature based on a petition by any other member of the House.

- A legislator is deemed to have defected if he either voluntarily gives up the membership of his party or disobeys the directives of the party leadership on a vote.
- This implies that a legislator defying (abstaining or voting against) the party whip on any issue can lose his membership of the House. The law applies to both Parliament and state assemblies.

Criteria for actions under the law

The anti-defection law provides the following three types circumstances/scenarios under which changing of political parties by MPs invite action under the law:

1. When a member elected on the ticket of a political party **“voluntarily gives up”** membership of such a party or votes in the House contrary to the wishes of the party
2. When an MP who has won his or her seat as **an independent candidate after the election joins a political party**. In both these instances, the MP lose the seat in the House on changing (or joining) a party.
3. It is related to nominated MPs.

Applicability in the case of nominated member of Rajya Sabha

- The **law specifies that within six months of being nominated to the House, they can choose to join a political party**.
- The time is given so that if a nominated MP is not a member of a political party, they can decide to join one if they want. But if they don't join a political party during the first six months of their tenure, and join a party thereafter, then they lose their seat in Parliament. (It was applied in Swapan Dasgupta case)

Nominated member of Rajya Sabha

Need for Nominated members:

During the discussions at Constituent Assembly N Gopaldaswami Ayyangar had said that nominating members to Rajya Sabha gives “an opportunity, perhaps, to seasoned people who may not be in the thickest of the political fray, but who might be willing to participate in the debate with an amount of learning and importance which we do not ordinarily associate with the House of the People” and this will bring knowledge and expertise to discussions in the Upper House

The above discussion led to Rajya Sabha having 12 nominated members from different walks of life

Other details

- **Criterion for their nomination:** They should have distinguished themselves in fields like literature, science, art, and social service
- **Nomination by:** They are nominated by the President of India, but they cannot vote in the election of President
- **Their rights:** Nominated members have the same rights and privileges as elected members, with one notable difference

Nominated members of Lok Sabha

The recent amendment to the constitution (104th) has stopped the reservation of the 2 Lok Sabha seats reserved for members of the Anglo-Indian Community and thus the practice of nominating two members of the Anglo-Indian community by the President of India under the recommendation of the Prime Minister of India was effectively abolished.