

# Political crisis in Karnataka

July 18, 2019

**Source:** *The Hindu*

## **Manifest pedagogy**

Defection has been making news since the time congress started losing its base as a party. The History of it starts with Rajiv Gandhi and furthered during the time of Vajpayee. Students need to know the entire history to write good answers on issues which are purely current. The present issue of Karnataka also needs such a a background which the article below would help understand

## **In news**

- **16 MLAs from the Congress and JD(S) in Karnataka have resigned thus threatening the survival of one-year-old Mr. HD Kumaraswamy government.**

## **Placing it in syllabus**

- **Parliament and state legislatures functioning – Anti defection (not explicitly mentioned)**

## **Static dimensions**

- Resignation by members constitutional procedure (both MPs and MLAs)
- Anti-defection law and its provisions, Speaker's role
- Overall problems in Defection law
- Suggestions

## **Current dimensions**

- **Genesis of political drama in Karnataka**
- **Karnataka's present political issue and recent developments**

## **Content**

Allegations of legislators defecting in violation of the law have happened in many states across India and such defections have led to grave constitutional crises in the states and prompted judicial interventions that have only offered partial solutions. Recently Karnataka Assembly Speaker Ramesh Kumar rejected the resignations of eight of the 13 Congress-Janata Dal (Secular) MLAs who wanted to quit the House as they had not filed their appeals in the prescribed format.

### **Constitutional provisions for resignation by members (both MPs and MLAs)**

#### **According to Rules of procedure of the house,**

(1) A member who desires to resign one's seat in the House shall intimate in writing under one's own hand addressed to the Speaker, such intention to resign the seat in the prescribed form and shall not give any reason for the resignation. Provided that where any member gives any reason or introduces any extraneous matter, the Speaker may while exercising discretion omit such words, phrases or matter and the same shall not be read out in the House.

- If a member hands over the letter of resignation to the Speaker personally and informs that the resignation is voluntary and genuine and the Speaker has no information or knowledge to the contrary, the Speaker may accept the resignation immediately.
- If the Speaker receives the letter of resignation either by post or through someone else, the Speaker may make such inquiry as is considered necessary to get satisfied that the resignation is voluntary and genuine. If the Speaker, after making a summary enquiry is satisfied that the resignation is not voluntary or genuine, he shall not accept the resignation.
- A member may withdraw the letter of resignation at any

time before it is accepted by the Speaker.

(2) The Speaker shall, as soon as may be, after accepting the resignation of a member, inform the House about resignation of seat by the member and acceptance of such resignation. When the House is not in session, the Speaker shall inform the House immediately after the it reassembles.

Originally constitution did not contain any provision for acceptance of the resignation by the Presiding Officer and this implied that the resignation became effective when it was received by the Presiding Officer or the Secretariat. To place a check on any forced resignations by members, **Articles 101 (3) (b) and 190(3) (b)** were added by **33rd Constitutional amendment Act, 1974** to permit a member of either House of Parliament or a member of a House of the Legislature of a State respectively to resign his seat by writing under his hand addressed to the Speaker or the Chairman, as the case may be.

### **Genesis of political drama in Karnataka**

In the 2018 Karnataka state assembly election, no party was able to attain majority on its own. The Bharatiya Janata Party (BJP) emerged as the single-largest party with 105 MLAs in the 225-member assembly but fell short of the majority. After the assembly election results were announced, the Governor invited the BJP to form government on the ground that it is the single largest party.

Mr. Yeddyurappa was sworn in but the Supreme Court made it clear that he can't appoint any minister nor take any decision before proving his majority on the floor of the state assembly. When the assembly met to vote, Yeddyurappa resigned even before the motion for trust vote was taken up because BJP had failed to secure the numbers needed to cross the majority mark. The Congress and JD(S) stitched a post-poll alliance and formed the government in Karnataka with HD Kumaraswamy of the

JD (S) as chief minister.

### **Karnataka's present political issue and recent developments**

- 16 MLAs of the ruling parties (13 of Congress and three of JD (S)) have tendered their resignations as MLAs on July 6th (3 MLAs tendered resignations later).
- If their resignations are accepted, the HD Kumaraswamy government's majority in the state assembly will become questionable and the government will have to win a trust vote .
- KJKP MLA R Shankar, who was a minister, along with an independent candidate have also withdrawn support to the government. Thus the government's tally in the state assembly will be reduced by 18 if the Speaker accepts all resignations.
- BJP is sensing a chance of ousting the present government and form its own and has been mounting pressure on the Speaker for not accepting the resignations.
- After Speaker K.R. Ramesh examined the 13 resignations that were submitted to his office he found that eight of them were not in proper order. His office thus returned their resignations and asked the MLAs to send them in prescribed form if they still wanted to resign.
- For the remaining five MLAs whose resignations were found to be in order, the Speaker asked them to meet him in person to discuss their resignations. However, Speaker KR Ramesh wrote to the Governor saying none of these MLAs met him.
- Unhappy with this move, the rebel JD (S)-Congress MLAs moved the Supreme Court to challenge speaker's decision where he rejected some resignations.
- On 11th July the Supreme Court asked the rebel MLAs to meet the Speaker and also said the Speaker must decide on the resignations by midnight. In response, the Speaker's counsel pleaded the court that he would need

more time to decide on the matter and that he cannot work at “lightning speed”.

- Hearing the pleas, the Supreme Court (SC) has said that status quo should be maintained in Karnataka till 16th July, when it will hear the case again. The SC told the Speaker not to take any decision till then.
- At this moment the Congress-JD (S) government is in power in Karnataka. None of the 16 resignations are effective until 16th July and the government has a majority

### **Anti-defection law and its provisions, Speaker's role**

**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. The anti-defection law sought to prevent such political defections which may be due to reward of office or other similar considerations. Hence the **Tenth Schedule was inserted in the Constitution by 52nd Amendment Act of 1985** which lays down the process by which legislators **may be disqualified on grounds of defection by the Presiding Officer of the house based on a petition by any other member of the House**. 91st Amendment Act of 2003 omitted an exception provision from tenth schedule, i.e disqualification on ground of defection not to apply in case of split.

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.

The following, however, **will not be considered defections** –

1. If a complete political party merges with another political party.
2. If a new political party is created by the elected

members of one party.

3. If the party members don't accept the merger between the two parties and opts to perform as a separate group from the time of such a merger.

The presiding officer can take up a defection case only when receives a complaint from a member of the house. Before taking the final decision, he must give the member against whom the complaint has been made, a chance to submit his explanation. He may also refer the matter to the committee of privileges for inquiry. Hence, **defection has no immediate and automatic effect.**

The Supreme Court has interpreted different provisions of the law.

- The phrase 'Voluntarily gives up his membership' has a wider connotation than resignation. The Supreme Court has interpreted that in the absence of a formal resignation by the member, the giving up of membership can be inferred by his conduct.
- In other judgments, members who have publicly expressed opposition to their party or support for another party were deemed to have resigned.
- **The law initially stated that the decision of the Presiding Officer is not subject to judicial review. This condition was struck down by the Supreme Court in Kihoto Holohan case (1993), thereby allowing appeals against the Presiding Officer's decision in the High Court and Supreme Court. Hence the decision of the Presiding Officer is subject to judicial review.**

### **Overall problems in anti-defection law**

- The law does not specify a time-period for the Presiding Officer to decide on a disqualification plea.
- The law restricts a legislator from voting in line with his conscience, judgement and interests of his

electorate.

- The law allows a nominated member to join a party but restricts the same to an independent member, thus discriminating between the two.
- Vesting of decision-making authority in the presiding officer is criticised as he may not exercise this authority in an impartial and objective manner due to political exigencies. He also lacks the legal knowledge and experience to adjudicate upon the cases.
- Since the role of the Speaker is very important, he or she must be an impartial arbiter. Under the current rules, a lawmaker elected as Speaker (or Chairman) is allowed to resign from the party, and rejoin it if the person demits office. But Speakers in India have often, invariably allowed themselves to be used for gain of their party or leader.

### **Suggestions by committees**

- **Law commission** in its 170th report, 1999 suggested that the question of disqualification of a member should be made by the President (in case of MPs) or the Governor (in case of MLAs) on the advice of the Election Commission.
- The rationale behind this is that the legislators should not be free to ditch the voters who vote not only the individual but also opt for a particular party on the basis of its manifesto.
- The manifestos of the parties should also be given statutory recognition so that they may not work against their manifestos and act in accordance with the mandate of the people.
- **National Commission to Review the Working of the Constitution (NCRWC), 2002** has recommended that the power to decide on questions as to disqualification on ground of defection should vest in the Election Commission instead of in the Chairman or Speaker of the House

concerned.

- It also recommended that 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.

Evil of political defections need to be addressed seriously. Anti-defection law when was passed, it aimed at bringing down the political defection but due to ever increasing political dishonesty and corruption this law never evolved properly. It is high time that the menace of corruption and defection needs to be combated which has eroded the values of democracy