

**ANTI-DEFECTION LAW**

**Prelims- Polity & Governance: Parliament, State Legislatures**

**Mains- GSII- Parliament and State Legislatures - structure, functioning, conduct of business, powers & privileges and issues arising out of these.**

- ✚ **Context:** In the light of the Karnataka Assembly crisis, the Anti-Defection Law is being debated nationally.

**About Anti-Defection Law:**

- ✚ Anti-Defection law is contained in the Tenth Schedule of the Constitution, which was introduced by the 52<sup>nd</sup> Amendment in 1985 During tenure of Rajiv Gandhi.
- ✚ **Definition of Defection:** Defection is defined as” to abandon a position or association, often to join an opposing group” which essentially describes a situation when a member of a particular party abandons his loyalty towards that party and provide his support (in the form of his vote or otherwise) to another party.

**When was the Anti-Defection Law instituted and what was the Trigger?**

- ✚ For a long time, the Indian political scene was besmirched by political defections by members of the legislature. This situation brought about greater instability in the political system.
- ✚ The infamous “Aaya Ram, Gaya Ram” slogan was coined against the background of continuous defections by the legislators. Legislators used to change parties frequently, bringing about chaos in the legislatures as governments fell. In sum, they often brought about political instability.
- ✚ This caused serious concerns to the right-thinking political leaders of the country.
- ✚ Several efforts were made to make some law to curb defections. Starting from private members’ efforts, Bills were brought in by the government at different times.
- ✚ No Bill could be passed because of one reason or the other. However, the most important reason was that there was no consensus on the basic provisions of an anti-defection law.
- ✚ Members of Parliament were concerned about the freedom of speech in Parliament and other legislatures as they had a fear that too stringent a law on defection would likely curb the freedom of speech (which is a constitutional right) of the legislators. A lot of time was taken before a consensus could be reached on this issue.

- ✚ Finally, in 1985, the Rajiv Gandhi government brought a Bill to amend the Constitution and curb defection.
- ✚ The 10th Schedule of the Constitution, which contains the anti-defection law, was added to the Constitution through this amendment.

## What is the purpose of the anti-defection law? What are the grounds of disqualification?

- ✚ The purpose of the law is to curb political defection by the legislators.
- ✚ There are **two grounds** on which a member of a legislature can be disqualified:
  1. If the member voluntarily gives up the membership of the party, he shall be disqualified. Voluntarily giving up the membership is not the same as resigning from a 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.
  2. If a legislator votes in the House against the direction of his party and his action is not condoned by his party, he can be disqualified. These are the two grounds on which a legislator can be disqualified from being a member of the House.
- ✚ However, there is an exception that was provided in the law to protect the legislators from disqualification. The 10th Schedule says that 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.

### Exceptions:

- ✚ If a Person is elected as speaker or chairman then he could resign from his party, and rejoin the party if he demitted that post. No Disqualification in this case.
- ✚ A Party could be merged into another if at least one – thirds of its party legislators voted for the merger. The Law initially permitted splitting of parties, but that has now been made two – third. As Soon as this law was passed, it was met with severe oppositions on logic that it impinged on right to free speech of legislators. A PIL was filed in the supreme court in the form of famous Kihoto Hollohon vs Zochillhu and others (1992). This PIL had challenged the constitutional validity of the law.
- ✚ But SC upheld the constitutional validity of 10<sup>th</sup> Schedule. Court also decided that the law does not violate any rights of free speech or basic structure of the parliamentary democracy.
- ✚ However, Supreme Court also made some observations on section 2(1) (b) of the Tenth Schedule, Section 2(1) (b) reads that a member shall be disqualified if he votes or abstains from voting contrary to any direction issued by the Political party.

- ✚ The Judgement highlighted the need to limit disqualifications to votes crucial to the existence of the government and to matters integral to the electoral programme of the party, so as not to ‘unduly impinge’ on the freedom of speech of members.

### **91<sup>st</sup> Amendment Act, 2003**

- ✚ When it was enacted first, there was a provision under which if there occurs a split in the original political party and as a result of which one-third of the legislators of that party forms a separate group, they shall not be disqualified.
- ✚ This provision resulted in large scale defections and the lawmakers were convinced that the provision of a split in the party was being misused.
- ✚ Therefore, they decided to delete this provision.
- ✚ Now at least two-thirds of the members of a party have to be in favor of a “merger” for it to have validity in the eyes of the law.
- ✚ The 91<sup>st</sup> Amendment also makes it mandatory for all those switching political sides – whether singly or in groups – to resign their legislative membership. They now have to seek re-election if they defect.

### **Is the law, as it stands now, open to interpretation?**

- ✚ The first ground for disqualifying a legislator for defecting from a party is his voluntarily giving up the membership of his party. This term “voluntarily giving up the membership of his party” is susceptible to interpretation.
- ✚ As has been explained earlier, voluntarily giving up the membership is not the same as resigning from a party.
- ✚ Then what exactly it means? How can one decide that a member of a legislature has voluntarily given up the membership of his party? The Supreme Court has clarified this point by saying that the presiding officer, who acts as a tribunal, has to draw a reasonable inference from the conduct of the legislator.

### **How far has the law succeeded in achieving its goal?**

- ✚ The law certainly has been able to curb the evil of defection to a great extent. But, of late, a very alarming trend of legislators defecting in groups to another party in search of greener pastures is visible.
- ✚ The recent examples of defection in state Assemblies and even in Rajya Sabha bear this out. This only shows that the law needs a relook in order to plug the loopholes if any. But it must be said that this law has served the interest of the society.
- ✚ Political instability caused by frequent and unholy change of allegiance on the part of the legislators of our country has been contained to a very great extent. That is a story of success of one of the most important legislation that the Indian Parliament has enacted.