

AN ANALYSIS OF THE ANTI DEFECTION LAW & THE WAY AHEAD**Context:**

- ▶▶ The recent political instability that have arisen in the states of Karnataka and Goa has brought the Anti-Defection law again in the limelight.

Introduction:

- ▶▶ Political defections are not new to Indian democracy. Crossing the aisle has been part of India's democratic process ever since the first elections in 1952. The usual method of opposition parties has been to lure away ruling party/coalition legislators.
- ▶▶ The floor-crossing in States reached epic proportions in the 1960s and 1970s when MLAs in some states changed their political allegiances multiple times during the day.
- ▶▶ So the Parliament has amended the Constitution in 1985 in an attempt to stop this menace, and brought in the anti-defection law.

What is Anti-defection law?

- ▶▶ The anti-defection law (Tenth Schedule) was inserted in the Constitution in 1985.
- ▶▶ 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.

What does the present anti-defection law say?

- ▶▶ It provided that in case a member of a legislature voluntarily gives up the membership of her party (overtly, or even by merely abstaining from voting), he or she will be disqualified from becoming a member of that House until he/she is re-elected afresh.
- ▶▶ Further amendment provided that a member so disqualified could not become a minister unless first re-elected, thus dissuading defections for the sole purpose of immediate ministerial berth in a rival government (Usually, any person can be appointed minister given that he/she gets elected within the next six months.)

▶▶ Thus, at present, the 10th Schedule of the Indian Constitution provides for the following grounds for disqualification:

1. If he voluntarily gives up his membership.
2. He votes or abstains from voting in the House, contrary to his party's direction and without obtaining prior permission — on the condition is that his abstaining from the voting should not be overlooked by his party by more than 15 days.

Factors that doesn't come under defection:

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 do not accept the merger between the two parties and opt to perform as a separate group from the time of such a merger.

The Stance of Judiciary on Anti Defection

1. Kihoto Hollohon vs. Zachilhu case ,1992

- ▶▶ The law initially stated that the decision of the Presiding Officer is not subject to judicial review.
- ▶▶ However, this condition was struck down by the Supreme Court thereby allowing appeals against the Presiding Officer's decision in the High Court and Supreme Court.
- ▶▶ However, it was held that there may not be any judicial intervention until the Presiding Officer gives his order.

2. Ravi Naik vs Union of India case ,1994

- ▶▶ The law provides for a member to be disqualified if he voluntarily gives up his membership.
- ▶▶ However, the Supreme Court has interpreted that even in the absence of a formal resignation by the member, the giving up of membership can be inferred by his conduct. (publicly expressed opposition to their party or support for another party).

Resignation v/s Disqualification Issue (Karnataka Issue):

- ▶▶ The Speaker has the power to not accept resignation if he/she comes to the conclusion
- ▶▶ that there are grounds to believe that the resignation is a consequence of coercion or any other kind of undue influence or inducement.
- ▶▶ If the defection is happening due to the lure of money and ministerial offices. The
- ▶▶ decision to resign before disqualification is taken because it allows a member to become a minister in the current House.
- ▶▶ Otherwise the member cannot become a minister in the current House until his/her re-election or the expiry of term, whichever is earlier.

- ▶▶ In a situation where a resignation has been tendered and disqualification proceedings have also been initiated, the Speaker is in a fix, whether to take call on disqualification
- ▶▶ or resignation first.
- ▶▶ If speaker takes call on disqualification first, as a consequence of which, resignation becomes redundant or accept the resignation first, in which case perhaps the disqualification may become redundant.
- ▶▶ In the recent Karnataka controversy which is of similar case ,the Hon'ble Apex Court walked a tightrope to maintain the constitutional balance.
- ▶▶ The rebel MLAs wanted their resignations to be accepted fast by the Speaker and pleaded that they should not be forced to attend the house.
- ▶▶ The Speaker on the other hand maintained that the MLAs have already incurred disqualification under the Xth Schedule of the Constitution and urged that the Court cannot direct the Speaker to take decisions within a time frame.
- ▶▶ The Hon'ble Supreme Court passed an interim order giving Speaker as much time as required to decide on the resignations and permitting the MLAs to stay out of the House proceedings if they choose to do so, until further orders.

Problems in the Anti-defection Law:

- ▶▶ The law doesn't touch on the time period for the speaker to decide on disqualification.
- ▶▶ Given that the Courts can intervene only after the Presiding Officer has decided on the matter, the petitioner seeking disqualification has to wait till the decision is made.
- ▶▶ Doubts regarding "voluntarily" resigning from a party, as the term is not detailed. This gives rise to different interpretations of the term.

Regarding Whips:

- ▶▶ Political parties issue a direction to MPs on how to vote on most issues, irrespective of the nature of the issue.
- ▶▶ It restricts a legislator from voting in line with his conscience, judgement and interests of his electorate. Such a situation impedes the oversight function of the legislature over the government, by ensuring that members vote based on the decisions taken by the party leadership, and not what their constituents would like them to vote for.

Challenging the decision of the presiding officer in the courts:

- ▶▶ The law states that the decision is final and not subject to judicial review. There are several instances that presiding officers take politically partisan view.
- ▶▶ The Supreme Court struck down part of this condition. It held that there may not be any judicial intervention until the presiding officer gives his order. However, the final decision is subject to appeal in the High Courts and Supreme Court.

Anti-defection law: The Way Ahead:

- ▶▶ The power to decide on the disqualification of the members of a House can be delegated to the Hon'ble Chief Justice of the concerned High Court in case of the State Legislature & the Hon'ble Chief Justice of India or a Judge of the Supreme Court nominated by him in case of Parliament.
- ▶▶ A Tribunal can also be constituted which shall be presided by a former Chief Justice to decide such matters within a time frame.
- ▶▶ There is a need to provide the Speaker with a definite timeframe to decide on the resignation or disqualification of the Members.
- ▶▶ Another way is to take some kind of inspiration from the Company Law where even after a person has resigned from his post as a Director, he can be held accountable for actions that he took as a Director under Section 168 (2) of the Companies Act.
- ▶▶ It can happen that the Speaker accepts the resignation when it is tendered, on the belief that the same has been tendered in a bonafide fashion but after sometime, if he comes to realize that there has been mala fide reason, due action can be taken.
- ▶▶ Anti-Defection Law should be made applicable only in a situation where there is a vote for survival of the government or trust vote of no-confidence motion.
- ▶▶ There must be specific law to provide for internal democracy within political parties, providing for transparency and accountability in the internal structure and the conduct of affairs of political parties, as they constitute the bedrock of Parliamentary Democracy.

Conclusion:

- ▶▶ Although the matter boils down to the anti-defection law, yet more than the deficiency in the law it is the degeneration of the moral and ethical values of the current crop of politicians that to blame for the trouble.
- ▶▶ The long-drawn-out events in the Karnataka have shown that even after three decades, the anti-defection law has not been able to stop political defections. But just as every cloud has a silver lining, every political crisis churns the judicial thought-process.
- ▶▶ The Anti-Defection law has many ambiguities and questions have raised time and again on the law. So the recommendations of Election commission, Law commission, Dinesh Goswami committee should be given due importance and applied by the political parties.