



ANTI DEFECTION LAW - POLITY - GS II MAINS

Q. The Anti-defection law in India is enacted to protect the stability of the government at the cost of freedom of speech and expression of the elected representatives. Comment (15 marks, 250 words)

News: *The hollowing out of the anti-defection law*

What is in the news?

- The Speaker of the Maharashtra Assembly, Rahul Narwekar, is currently juggling his responsibilities of presiding over the Assembly's winter session alongside hearing the disqualification petitions against the rival factions of the Shiv Sena.

Anti-defection law:

- **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.
 - The anti-defection law sought to prevent such political defections which may be due to reward of office or other similar considerations.
- **10th Schedule:**
 - **Constitutional basis:**
 - The Tenth Schedule was inserted in the Constitution in by **52nd Amendment Act, 1985.**
 - **Lays down the Procedure:**
 - 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.
 - **Condition of Defection:**
 - 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.
 - **Applicable to:**
 - The law applies to **both Parliament and State assemblies.**
- **Exceptions in Law:**
 - Legislators may change their party without the risk of disqualification in certain circumstances.



- The law allows a party to merge with or into another party provided that at least two-thirds of its legislators are in favour of the merger.
 - In such a scenario, neither the members who decide to merge, nor the ones who stay with the original party will face disqualification.
- **Interpretation by Courts:**
 - The Supreme Court has interpreted different provisions of the law.
 - **The phrase 'Voluntarily gives up his membership' has a wider connotation than resignation.**
 - The law provides for a member to be disqualified if he 'voluntarily gives up his membership'.
 - However, 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.
- **Decision of the Presiding Officer is subject to judicial review:**
 - **Initially it was not subject to Judicial Review:**
 - 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 1992, thereby allowing appeals against the Presiding Officer's decision in the High Court and Supreme Court.
 - However, it held that there may not be any judicial intervention until the Presiding Officer gives his order.
- **It affects the ability of legislators to make decisions:**
 - The anti-defection law seeks to provide a stable government by ensuring the legislators do not switch sides.
 - However, this law also restricts a legislator from voting in line with his conscience, judgment 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.

Issues:

- **Time Limit for Presiding Officer:**
 - The law does not specify a time-period for the Presiding Officer to decide on a disqualification plea.
 - Given that courts can intervene only after the Presiding Officer has decided on the matter, the petitioner seeking disqualification has no option but to wait for this decision to be made.
 - There have been several cases where the Courts have expressed concern about the unnecessary delay in deciding such petitions.



- In some cases this delay in decision making has resulted in members, who have defected from their parties, continuing to be members of the House.
- There have also been instances where opposition members have been appointed ministers in the government while still retaining the membership of their original parties in the legislature.
- **Ambiguous Nature of Split:**
 - In recent years, opposition MLAs in some states, such as Andhra Pradesh and Telangana, have broken away in small groups gradually to join the ruling party.
 - In some of these cases, more than 2/3rd of the opposition has defected to the ruling party.
 - In these scenarios, the MLAs were subject to disqualification while defecting to the ruling party in smaller groups.
 - However, it is not clear if they will still face disqualification if the Presiding Officer makes a decision after more than 2/3rd of the opposition has defected to the ruling party.
- **Defecting to party forming Government after election:**
 - There have been instances wherein after the declaration of election results, winning candidates have resigned from their membership of the House as well as the party from which they got elected.
 - Immediately, they have joined the political party which has formed the government and have again contested from that political party, which appears to be a fraud and goes against the spirit of the democracy and 52nd constitutional amendment.
- **Power to the Speaker:**
 - One of the major criticisms of this power is that it is not necessary that the speaker has legal knowledge and expertise to look upon and perform such acts in such cases.
- **No Freedom to go against party whip**
 - A political party acts as a dictator for its members who are not allowed to dissent. In this way it violates the principle of representative democracy wherein the members are forced to obey the high command.
- **Problem with merger provision:**
 - 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.
 - The flaw seems to be that the exception is based on the number of members rather than the reason behind the defection.