



Anti-Defection Law

Why in News

Recently, the Calcutta High Court has given West Bengal Assembly Speaker a deadline to pass an order in the **defection case** involving a Member of Legislative Assembly (MLA).

- **Anti-defection** proceedings are also going on in other states such as Jharkhand and Rajasthan.

Key Points

▪ About:

- The anti-defection law **punishes individual** Members of Parliament (MPs)/MLAs **for leaving one party** for another.
- Parliament added it to the Constitution as the **Tenth Schedule in 1985**. Its purpose was to **bring stability to governments** by discouraging legislators from changing parties.
 - **The Tenth Schedule** - popularly known as the Anti-Defection Act - was included in the Constitution via the **52nd Amendment Act, 1985** and sets the provisions for disqualification of elected members on the grounds of defection to another political party.
 - It was a response to the toppling of multiple state governments by party-hopping MLAs after the general elections of 1967.
- However, it **allows a group of MP/MLAs to join (i.e. merge with) another political party** without inviting the penalty for defection. And it does not penalise political parties for encouraging or accepting defecting legislators.
 - As per the **1985 Act**, a 'defection' by **one-third** of the elected members of a political party was considered a 'merger'.
 - But the **91st Constitutional Amendment Act, 2003, changed this** and now at least **two-thirds of the members** of a party have to be in favour of a "merger" for it to have validity in the eyes of the law.
- The **members disqualified** under the law can **stand for elections** from any political party for a seat in the same House.
- The **decision** on questions as to disqualification on ground of defection are **referred to the Chairman or the Speaker of such House**, which is subject to '**Judicial review**'.
 - However, the law **does not provide a time-frame** within which the presiding officer has to decide a defection case.

▪ Grounds of Disqualification:

- If an elected member **voluntarily gives up his membership** of a political party.
- If he votes or **abstains from voting in such House contrary to any direction issued by his political party** or anyone authorised to do so, without obtaining prior permission.
 - As a pre-condition for his disqualification, **his abstention from voting should not be condoned by his party** or the authorised person within 15 days of such

incident.

- If any **independently elected member joins any political party.**
- If any **nominated member joins any political party after the expiry of six months.**

▪ **Related Issues:**

◦ **Undermining Representative & Parliamentary Democracy:**

- After enactment of the Anti-defection law, the MP or MLA has to follow the party's direction blindly and has no freedom to vote their judgment.
- Due to Anti-Defection law, the chain of accountability has been broken by making **legislators accountable primarily to the political party.**

◦ **Controversial Role of Speaker:**

- In many instances, the Speaker (usually from the ruling party) has **delayed deciding on the disqualification.**

◦ **No Recognition of Split:**

- Due to the 91st amendment, the anti-defection law created an exception for anti-defection rulings.
- However, the amendment **does not recognise a 'split' in a legislature party** and instead recognises a 'merger'.

◦ **Subversion of Electoral Mandates:**

- Defection is the **subversion of electoral mandates by legislators** who get elected on the ticket of one party but then find it convenient to shift to another, due to the lure of ministerial berths or financial gains.

◦ **Affects the Normal Functioning of Government:**

- The infamous "**Aaya Ram, Gaya Ram**" slogan was coined against the background of continuous defections by the legislators in the 1960s. The defection leads to instability in the government and affects the administration.

◦ **Promote Horse-Trading:**

- Defection also promotes **horse-trading of legislators** which clearly go against the mandate of a democratic setup.

▪ **Suggestions:**

- The **Election Commission** has suggested **it should be the deciding authority in defection cases.**
- Others have argued that the **President and Governors should hear defection petitions.**
- The **Supreme Court** has suggested that **Parliament should set up an independent tribunal** headed by a retired judge of the higher judiciary to decide defection cases swiftly and impartially.
- Some commentators have said the law has failed and recommended its removal. Former Vice President Hamid Ansari has suggested that **it applies only to save governments in [no-confidence motions.](#)**

Way Forward

- If government stability is an issue due to people defecting from their parties, the answer is for **parties to strengthen their internal part of democracy.**
- There is an ardent **need for legislation that governs political parties in India.** Such a law should bring political parties under RTI, strengthen intra-party democracy, etc.
- Chairman/Speaker of the house, being the final authority in terms of defection, affects the doctrine of separation of powers. In this context, transferring this power to higher judiciary or to **Election Commission may curb the menace of defection.**
- In order to shield the detrimental effect of the anti-defection law on representative democracy, **the scope of the law can be restricted** to only those laws, where the defeat of government can

lead to loss of confidence.

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