

General Studies – 2 Topic: Parliament and State Legislatures – structure, functioning, conduct of business, powers & privileges and issues arising out of these

Anti-Defection Law

1) Introduction

- The anti-defection law was made by inserting the Tenth Schedule to the Constitution in 1985 to combat “the political defections”.
- The provisions require every Member of Parliament (MP) and of state legislative assemblies or councils (MLA or MLC) to abide by the party’s command on voting or abstaining on every vote.
- If a legislator fails to do so, he may be disqualified from his membership to the legislature.
- The provisions apply not only to votes that affect the stability of the government, i.e., no-confidence motions and money Bills. They are applicable to all votes.

2) Grounds for 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
- If any independently elected member joins any political party
- If any nominated member joins any political party after the expiry of six months.
- The decision on questions as to disqualification on ground of defection is referred to the Chairman or the Speaker of such House, and his decision is final.
- All proceedings in relation to disqualification under this Schedule are deemed to be proceedings in Parliament or in the Legislature of a state. No court has any jurisdiction

3) Present Scenario

- 'Aaya Ram Gaya Ram' expression continues in political parties
- In recent times, MLAs in West Bengal, Telangana and in Andhra Pradesh have switched to their respective ruling parties, and sought to retain their membership of the Legislative Assembly.
- This suggests that there is no constraint on Members of Legislative Assemblies to switch from parties which had nominated them as candidates in the last election.

4) Arguments in favour of Anti-Defection

- Provides stability to the government by preventing shifts of party allegiance.
- Ensures that candidates elected with party support and on the basis of party manifestoes remain loyal to the party policies
- Promotes party discipline.

5) Arguments against Anti-Defection

- Legislators often argue that defection is a matter of choice and as individuals they have a right to decide who to support.
- Several democracies have not adopted an anti-defection law, even though legislators often switch to the other side.
- In the U.K., Australia and the U.S., parliamentarians and senators often take positions contrary to their parties or vote against the party’s view, yet continue within the same party.
- Legislators should be allowed to express their own views and a defection law amounts to curtailment of the delegate’s freedom of choice.

- Anti-Defection goes against the basis of a representative democracy in which the elected representative is expected to act in public interest
- Even in India, several commentators have highlighted the irrelevance of the anti-defection law and called for reconsideration of such a legal provision.
- The current system forces him to blindly obey the instructions of the party leadership.
- This system weakens the checks and balances inherent in parliamentary democracy.
- The anti-defection law breaks the link between the elected representative and his electors.
- It is culminated into absence of constructive debates on critical policy issues.

6) Views of some Committees

- **Dinesh Goswami Committee**
 - a) The issue of disqualification should be decided by the President/ Governor on the advice of the Election Commission.
- **Law Commission (170th Report, 1999)**
 - a) Pre-poll electoral fronts should be treated as political parties under anti-defection law.
 - b) Political parties should limit issuance of whips to instances only when the government is in danger.
- **Election Commission**
 - a) Decisions under the Tenth Schedule should be made by the President/ Governor on the binding advice of the Election Commission.

7) Concerns and way forward

- The decision to disqualify a legislator is contingent on the institution of the Speaker.
- The partisan role of the Speaker in many States has ensured the continuation of turncoat legislators as legitimate members of the House.
- This is a good time to heed the advice of eminent constitutional experts to amend the anti-defection law and rest the authority to disqualify turncoats in the hands of an autonomous body.
- We need two reforms urgently: repeal the anti-defection law, and require that all Bills be passed only through recorded voting.
- Supreme Court order in *Kihoto Hollohan vs Zachillhu and others* (1992) said that parties should issue directions only on votes which are crucial to the stability of the government and should allow legislators the right to dissent.
- The phrase “voluntarily giving up membership” is too vague and needs comprehensive revision.