

Anti Defection Law

- The anti-defection law under the 10th schedule of the Indian Constitution was enacted through the 52nd Amendment Act of 1985. It aims to cure the problems related to the culture of “Aaya Ram Gaya Ram”, in which legislators used to change parties frequently in Indian polity.
- Aaya Ram Gaya Ram phrase owes its origin from a popular phrase in Indian politics after an MLA in Haryana, Gaya Lal changed his party thrice within the same day in 1967.
- The Act provides for the disqualification of the members of Parliament and the state legislatures on the grounds of Defection.
- Rajiv Gandhi’s government introduced this law.
- Articles 102(2) and 191(2) deal with anti-defection.

Anti Defection Law Provisions

Grounds for Removal

- For Member of political parties-(a) if the Member voluntarily gives up his membership of such political party; or
- The member votes or abstain from voting in such House against any direction given by their political party without seeking the prior permission of the party and such act has not been condoned by the party within 15 days.
- Independent Members-becomes disqualified to remain a member of the House if he joins any Political party after such election.
- Nominated Members-a)If the nominated Member joins any political party after expiry of 6 month period from the date on which he takes his seat in the House. {this means he may join any political party within six months of his taking the seat in the House}

Exceptions of anti-defection law

- This law allows a party to merge with or into another party if at least two-thirds of their legislators are in favour of the merger.
- In such cases, neither the members who decide to merge nor the ones who stay with the original party will face disqualification.
- if a member after being elected as the presiding officer of the House (i.e. Speaker or Chairman), voluntarily give up his membership of the party or rejoins it after he ceases to hold that office.

91st Amendment Act of 2003

- It deleted the provision of the 10th schedule which allows disqualification in case of a split by one-third of members of the party.
- A Constitution Amendment Bill(2003) was introduced in Parliament by the government during the period of Prime Minister Atal Bihari Vajpayee for addressing some of the issues with the anti-defection law-.

A committee headed by Pranab Mukherjee examined the Bill.

Observations on Pranab Mukherjee Committee:

- It is observed that the greed of office of profit plays a dominant role in the political horse-trading resulting in defections and counter defections.
- The one-third split provision, which was a big loophole in the Act and was misused many times as it offered protection to defectors, was deleted from the law on the committee's recommendation.
- The 2003 Amendment also incorporated the 1967 advice of the Y B Chavan committee in limiting the size of the Council of Ministers and preventing defection.

Deciding Authority in case of disqualification arising out of Defection is the Presiding officer of the House. (*originally the decision of the presiding officer in such cases was final and unquestionable in any court.)

- But in *Kihoto Holohan v.Zachilhu*(1993) case, the Supreme Court declared this provision as unconstitutional. Subjecting the decision of the Presiding authority of the House under Judicial Review on the grounds of malafide.

Rulemaking powers regarding disqualification

- The presiding officer of a house has rulemaking powers with regard to disqualifications under the 10th schedule.
- All such rules need to be placed before the House for 30 day period, in order to get approval, modifications or disapproval.
- The presiding officer can bring up a defection case only on a complaint from a member of the House.
- Before taking the final decision presiding officer must give the Member (against whom a complaint is filed) a chance to submit his explanation.
- The presiding officer can also refer the matter to the committee of privileges for inquiry purposes.
- Therefore Defection has no immediate and automatic effect.

Judgements Regarding Anti-Defection law

- *Kihoto Hollohon vs Zachilhu and others*,1993: Supreme court declared that the decision of the presiding officer in a matter of disqualification is under the purview of Judicial review.
- *Ravi S Naik vs. Union of India*,1994:- Supreme court interpreted the phrase 'voluntarily gives up his membership' and said that the phrase is not synonymous with 'resignation' and thus have a wider meaning.
- *Vishwanathan vs Speaker, Tamil Nadu*,1996:- Court stated that a member could be said to voluntarily give up his membership of the political party if he joins another political party after being expelled from his old party.

Positive Aspects of the law

- It provides for more stability in the House by preventing legislators from frequently changing parties.
- It provides room for realignment on the ground of mergers in parties.
- It helps in preventing horse-trading in politics.

- It prevents unuseful expenditure from spending on irregular elections caused by Defection by some legislators.
- Provide stability to political parties and ensure the loyalty of party members.

Criticism of Anti-Defection law

- It hinders the legislators right to dissent and freedom of conscience. He/she has to obey the whip without questioning it. This impedes the ability of a legislator to take decisions independently.
- It bans retail Defection, i.e. individual Defection, and give rise to wholesale defections, i.e. group defections.
- Its distinction between an independent member and a nominated Member is very ambiguous. If the former joins a party, he is disqualified, but the nominated Member is given a leverage period of 6 months.
- There is no fixed time limit for the presiding officer of the House to decide on disqualification.
- Andhra Pradesh, Telangana and Tamil Nadu have had instances of Speakers not acting on disqualification questions for years.
- The Authority vested with final decision making power, i.e. presiding officer is criticised on grounds of being a political party member and not free of bias. Also, he lacks legal expertise to adjudicate upon the cases.

Example

- Karnataka Speaker K.R. Ramesh Kumar's disqualification of rebellious MLA is the case of a question. The fact that the speaker chose to 'disqualify', rather than accepting the resignation of 14 ruling alliance members, has brought the law in the limelight.
- IN recent years opposition party MLAs in a state like Andhra Pradesh, Telangana and Goa have broken into a small groups in order to join the ruling party and thus taking benefit of the loophole of two-third majority in the Anti defection law.

Committees and Commissions

- Dinesh Goswami Committee on electoral reforms,1990 suggested that disqualification should be limited to cases where
 - A member voluntarily gives up his membership of the political party,
 - Abstain or vote contrary to the party whip in a motion of no confidence.
- Halim Committee on Anti defection law 1998, recommend comprehensively defining words like 'voluntarily giving up membership of a political party.
- Law Commission in its 170th report,1999 suggested that
 - The provision exempting splits and mergers from disqualification should be deleted.
 - Parties should limit the issuance of whips only to cases where the rule of government is in danger.
- Constitution Review Commission,2002, suggested that defectors should be barred from holding public office or a remunerative political post for the remaining term of the House. Also, the vote cast by a defector to destabilise the government should be treated as invalid.

Way Forward

- Fixing time limits for presiding officers to decide on disqualification related cases, as of now, there is no time limit.
- Allowing MPs and MLAs to vote on the basis of their conscience in general matters.
- Making a separate body to investigate the matter of disqualification in houses consisting of members of ruling as well as other parties.

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