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ANTI DEFECTION LAW

Relevance for Prelims: Tenth Schedule, Anti-defection law

Relevance for Mains: Horse trading, ethics in public administration, electoral democracy.

WHY IS IT IN THE NEWS?

Justice P S Narasimha, who was a member of the five-judge panel hearing the petitions related to the political unrest that erupted in Maharashtra last year, stated that Parliamentarians had determined that the Speaker “shall be the Tribunal per the 10th Schedule (anti-defection law)” and the court is only interpreting it.

WHAT IS ANTI DEFECTION LAW

“Aaya Ram Gaya Ram” was a phrase that became popular in Indian politics after a Haryana MLA Gaya Lal changed his party thrice on the same day in 1967. The anti-defection statute aimed to stop such political defections that may be brought on by office rewards or other similar factors.

In 1985, the Tenth Schedule was added to the Constitution. It outlines the procedure by which parliamentarians may be excluded from serving on a legislative body based on defection based on a petition by any other member of the House. A lawmaker is considered to have defected if he either willingly leaves his party or defies the leadership’s instructions during a vote. This suggests that a lawmaker who defies (abstaining from voting or voting against) the party whip on any matter risked losing his seat in the House. Both the Parliament and state legislatures are subject to the statute.

IMPORTANT HIGHLIGHTS OF THE TENTH SCHEDULE

- Both Elected and Nominated members of Parliament would be disqualified on the ground of defection if

- She/he voluntarily relinquishes his membership of such political party or
- votes or abstains from voting in such House contrary to any direction of such party or is expelled from such a party.
- If an elected member of a House joins a political party after being chosen as such rather than as a candidate put out by a political party, he will no longer be eligible to serve in that body.
- A nominated member of a House is unable to serve if, after the lapse of six months from the day on which he assumes his seat after satisfying the conditions of Article 99 or, if applicable, Article 188, he joins any political
- Disqualification due to defection will not apply in the event of a merger. A member of a House may only join a new political party if at least two-thirds of the members of the original party have consented to the
- The Presiding Officer of the House shall decide on the issue of disqualification under the Tenth Schedule. A member of the House chosen by the House to act in that capacity will, however, determine if the issue involves the presiding officer himself.
- The decision of the Presiding Officer on disqualification due to defection shall be subject to Judicial Review.

EFFECTS OF DEFECTION POLITICS

- Governmental instability and administrative issues result from the
- Defection also encourages the exchange of lawmakers for favors, which is plainly against the spirit of a democratic system.
- Legislators who are elected on the platform of one party but later decide it would be more convenient to switch to another party because of the allure of cabinet slots or financial rewards are said to be defying their constituents' will through defection.
- In instances of anti-defection, the Speaker delays the procedure in a biased manner.
- Party whips limit people's ability to vote and exercise their right to political freedom.

CHALLENGES WITH ANTI-DEFECTION LAW

- Since the Anti-defection law was passed, the MP or MLA is forced to vote by the party's platform and is not allowed to do otherwise. The Anti-Defection statute has broken the chain of responsibility by holding MPs solely responsible for their politics.

- The legal definition of the period for the Speaker or House Chairperson to act in anti-defection matters is unclear. Cases might take anything from six months to three years in certain situations are resolved after the term is done.
- Instead of a democracy of discourse and discussion, the Anti-Defection Legislation has turned India into a democracy of parties and This undermines the strength of the Parliament's debates on any measure since it does not distinguish between dissent and defection.

WAY FORWARD

- The Supreme Court has recommended that Parliament create an independent tribunal to handle defection cases quickly and The tribunal would be led by a retired judge from the higher court.
- According to some analysts, the rule should only apply to votes that have an impact on the stability of the A no-confidence motion or the approval of the yearly budget are two examples.
- Election Commission has suggested that the President or Governor should act on the Election Commission's legally binding advice when making decisions under the Tenth Schedule.
- A separate authority should have the ability to address the issue of disqualification. According to Justice Verma in the Hollohan Judgment, the speaker should not hold such power because their term is dependent on their party holding the majority in the House.

Source:
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