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### Introduction

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Anti-defection law was introduced by the 52nd Constitutional Amendment Act, 1985 to prevent the defections from one political party to another in lieu of certain gains by members of parliament and state legislatures, it led to introduction of 10th Schedule. It was further refined by 91st Constitutional Amendment Act, 2003.

#### Law of Anti-Defection

Anti-Defection Laws basically provide for the grounds under which a Member Legislative Assembly or a Member Parliament can lose his privileges as an Elected Representative of a party and hence can be disqualified from the party. These Grounds have been provided under the Tenth Schedule of the Constitution. The Indian Judiciary has time and again intervened through various judicial pronouncements and has tried to lay down several guidelines through precedents in order to promote better politics and healthy competition among the parties.

The law of Anti Defection states that if a Member Parliament or Member Legislative Assembly:

- ❑ Voluntarily gives up the membership of the party.
- ❑ Votes or abstains for voting or defies any party whip.
- ❑ Joins any other party.

The member will be disqualified from the party and he will not hold the position of a nominated or an elected individual under the party. Thus, he will lose his position as a Member of Parliament or an MLA.

#### Introduction of Anti-Defection framework in Indian Constitution

- ❑ The bill for Anti- Defection was proposed by Rajiv Gandhi and it was approved unanimously by both the houses and came into effect on 18 March 1985, after receiving the assent of the President.
- ❑ The Anti-Defection provision was added into

the Constitution by the way of Tenth schedule of the Constitution by the 52nd Amendment in the Constitution in 1985. These provisions provide for the disqualification of Member Parliaments under Article 102(2) and Member Legislative Assembly under Article 191(2). Under these articles of the Constitution the legislators can be disqualified if they are disqualified under the Tenth Schedule.

#### History and need for Anti-Defection Laws

- ❑ There is a well-known phrase of “Aaya Ram Gaya Ram” which relates back to 1967, when Gaya Lal, who was a congress leader fortnight went from congress to Janata Party and then back to Congress and then again to Janata Party.
- ❑ In the journal titled “Aaya Ram-Gaya Ram: The Politics of Defection” by the Indian Law Institute in 1979, it was stated that between the period of 1967 to 1969 more than 1500 party defections and 313 independent candidate defections had taken place in the 12 states of the country. It is estimated that till 1971, more than 50% of the legislature had switched from one party to another.
- ❑ A common term which is used is “Horse Trading” of the legislators which in simple terms means shifting of legislators from one party to another by monetary means. There can be several reasons for shifting of parties.
- ❑ All of these circumstances were impelling the government to create a statutory provision in the Constitution which would create punitive sanctions for those who were found guilty of such conduct.

#### 10th Schedule – Provisions under Anti-Defection Law

- ❑ The Tenth Schedule includes the following provisions with regard to the disqualification of MPs and MLAs on the grounds of defection. Grounds for disqualification:
  - If an elected member gives up his membership of a political party voluntarily.
  - If he votes or abstains from voting in the House,

- contrary to any direction issued by his political party.
- If any member who is independently elected joins any party.
- If any nominated member joins any political party after the end of 6 months.
- ❑ The decision on disqualification questions on the ground of defection is referred to the Speaker or the Chairman of the House, and his/her decision is final.
- ❑ All proceedings in relation to disqualification under this Schedule are considered to be proceedings in Parliament or the Legislature of a State as is the case.

### ***Exceptions***

- ❑ Disqualification under the purview of Anti-Defection shall not apply in case of split/merger of 1/3rd or more of the members of a party to another party.
  - It shall also not apply in the event of a merger i.e., 1/3rd of the members or more merge with any other party.
  - This exception where 1/3rd members was however revised by the way of 91st Amendment in the Constitution and after which it the provision of split was removed.
  - Now it requires 2/3rd members of a party can merge with another party. This amendment revised these rules as there were mass defections by legislators and this amendment brought change in the requirements from 1/3rd members of party to 2/3rd members and by removing the provision of split from the party.
- ❑ All of these circumstances were impelling the government to create a statutory provision in the Constitution which would create punitive sanctions for such conducts.

### ***Decision of the Presiding Officer subject to Judicial Review***

- ❑ Originally, the Act provided that the presiding officer's decision was final and could not be questioned in any court of law. But, in Kihoto Hollohan case (1992), the Supreme Court declared this provision as unconstitutional on the ground that it seeks to take away the jurisdiction of the Supreme Court and the High Courts.

- ❑ The court held that while deciding a question under the 10th Schedule, the presiding officer should function as a tribunal.
- ❑ In this case the Supreme Court laid down grounds for review of the decision of the speaker.
  - If it is in violation of Constitutional mandate.
  - If it is made in a mala-fide way.
  - If the decision of Speaker is irrational.
  - If it is in non-compliance with rules of natural justice and unreasonable.
- ❑ However, it held that there might not be any judicial intervention until the Presiding Officer gives his order.
- ❑ A good example to quote is from 2015 when the Hyderabad High Court declined to intervene after hearing a petition which alleged that there had been a delay by the Telangana Assembly Speaker in taking action against a member under the anti-defection law.

### ***Time Limit within which the Presiding Officer should decide***

- ❑ There is no time limit as per the law within which the Presiding Officers should decide on a plea for disqualification.
- ❑ The courts also can intervene only after the officer has made a decision, and so the only option for the petitioner is to wait until the decision is made.
- ❑ There have been several cases where the Courts have expressed concern about the unnecessary delay in deciding such petitions.
- ❑ In a few cases, there have been situations where members who had defected from their political parties continued to be House members, because of the delay in decision-making by the Speaker or Chairman.
- ❑ There have also been instances where opposition members have been appointed as a Ministers in the Government while still being members of their original political parties in the State Legislature.

### ***Courts interpretation of the law while deciding on related matters***

- ❑ The Supreme Court has interpreted different provisions of the law.
- ❑ The phrase 'Voluntarily gives up his membership' has a wider suggestion than resignation.

- ❑ The law says that a member can be disqualified if he 'voluntarily gives up his membership'. However, the Supreme Court has interpreted that without 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 considered as having resigned. Recently, the Chairman of the Upper House of Parliament disqualified two Janata Dal leaders from the house based on the allegation that was indulging in anti-party politics, and they had "voluntarily" given up their membership of the party (which is not synonymous to resignation as per the Supreme Court orders).

### ***Anti-Defection Law affect legislators' ability to make decisions***

- ❑ The anti-defection law aims to maintain a stable government by ensuring that the legislators do not switch sides. However, this law also limits a legislator from voting according to his conscience, judgement and electorate's interests.
- ❑ This kind of a situation hinders the oversight functions of the legislature over the government, by making sure that members vote based on the decisions taken by the party leadership, and not based on what their constituents would like them to vote for.
- ❑ Political parties issue directions to MPs on how to vote on most issues, irrespective of the nature of the issue.
- ❑ Anti-defection does not provide sufficient incentive to an MP or MLA to examine an issue in-depth and ponder over it to participate in the debate.
- ❑ The Law breaks the link between the elected legislator and his elector.
- ❑ Importantly, several experts have suggested that the law should be valid only for those votes that determine the stability of the Government (passage of the annual budget or no-confidence motions).

### ***91st Amendment Act***

#### ***Reasons***

The reasons for enacting the 91st Amendment Act (2003) are as follows:

- ❑ Demands have been made from time to time in

certain quarters for strengthening and amending the Anti-defection Law as contained in the Tenth Schedule, on the ground that these provisions have not been able to achieve the desired goal of checking defections. The Tenth Schedule has also been criticised on the ground that it allows bulk defections while declaring individual defections as illegal. The provision for exemption from disqualification in case of splits as provided in the Tenth Schedule has, in particular, come under severe criticism on account of its destabilising effect on the Government.

- ❑ The Committee on Electoral Reforms (Dinesh Goswami Committee) in its report of 1990, the Law Commission of India in its 170th Report on "Reform of Electoral Laws" (1999) and the National Commission to Review the Working of the Constitution (NCRWC) in its report of 2002 have, inter alia, recommended omission of the provision of the Tenth Schedule pertaining to exemption from disqualification in case of splits.
- ❑ The NCRWC was also of the view that a defector should be penalised for his action by debarring him from holding any public office as a minister or any other remunerative political post for at least the duration of the remaining term of the existing Legislature or until, the next fresh elections whichever is earlier.
- ❑ The NCRWC has also observed that abnormally large Councils of Ministers were being constituted by various Governments at Centre and states and this practice had to be prohibited by law and that a ceiling on the number of ministers in a state or the Union Government be fixed at the maximum of 10% of the total strength of the popular House of the Legislature.

### ***Provisions in 91st Amendment Act***

To limit the number of the Council of Ministers, prohibit defectors from holding public office, and tighten the anti-defection statute, the 91st Amendment included the following provisions:

- ❑ The overall number of ministers in the Central Council of Ministers, including the Prime Minister, should not exceed 15% of the Lok Sabha's total strength.
- ❑ Any member of either House of Parliament who

is disqualified from serving as a minister due to defection is likewise barred from serving as a minister.

- ❑ The total number of ministers in a State Council, including the Chief Minister, cannot exceed 15% of the Legislative Assembly's total strength. The total number of ministers of a state, including the Chief Minister, shall not be less than 12.
- ❑ A member of either House of a State Legislature who is disqualified from serving as a minister due to defection is likewise prohibited from serving as a minister.
- ❑ A member of either House of Parliament or the House of a State Legislature from any political party who is disqualified for defection from any political party is also barred from holding any remunerative political office.
- ❑ Any office under the Central Government or a State Government where the salary or remuneration for such office is paid out of the concerned government's public revenue;
- ❑ The exemption from the disqualification clause in the Tenth Schedule (Anti-Defection Act) has been abolished. This means that the divides no longer shield the defectors.

#### ***Significance of Anti-Defection Law***

- ❑ It improves the stability of Parliament and State Legislatures by preventing legislators from switching parties.

- ❑ It reduces political corruption, which is a critical first step in combating the country's other forms of corruption.
- ❑ It strengthens democracy by establishing political stability and guaranteeing that the government's legislative programs are not harmed by a defecting member.
- ❑ It makes Members of Parliament more accountable and faithful to the parties with which they were aligned at the time of their election, as it is a belief that many believe that party allegiance plays a significant role in their election success.

#### ***Concerns regarding Anti-Defection Law***

- ❑ The Anti-defection statute has failed to prevent defections in the past. This is due to the fact that it does not distinguish between disagreement and defection. For the sake of party loyalty, it limits the legislator's right to dissent and freedom of conscience.
  - ❑ The distinction drawn between individual and collective defection is completely irrational. Even the distinction it creates between independent and nominated members is illogical. If the former joins a political party, he is disqualified, whereas the latter is permitted to do so.
  - ❑ It encourages horse-trading of legislators, which clearly contradicts the values of a democratic system.
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