Anti-defection law

What is the issue?

- 10 of 15 Congress MLAs in Goa joined the ruling BJP a month ago.
- 12 of 16 Congress MLAs in Telangana had merged with TRS.
- These issues are dealt with under India's anti-defection law (ADL).

Why was the anti-defection law instituted?

- The anti-defection law is contained in the **10th Schedule** of the Constitution. It was enacted by Parliament and came into effect in **1985**.
- **Purpose** - To curb political defection by the legislators.
- As in the Indian political scene for a long time, the legislators used to change parties frequently, the governments to fall due to the chaos.
- They often brought about political instability. This caused serious concerns to the right-thinking political leaders of the country and at last, the ADL was enacted.

What are the efforts made before the ADL?

- Several bills were brought in by the government at different times. But nothing could be passed.
- The most important reason why the bills couldn't be passed was that there was no consensus on the basic provisions of the anti-defection law.
- The legislators feared that law too stringent on defection would likely curb their freedom of speech (a constitutional right) in legislatures.
- A lot of time was taken before a consensus could be reached on this issue.
- Finally, in 1985, the government brought a bill to curb defection by amending the Constitution to add 10th Schedule to it.

What are the grounds of disqualification under ADL?

- If the member voluntarily gives up the membership of the party, he shall be disqualified. **Voluntarily giving up the membership is not the same as resigning from a party.** Even without resigning, a legislator can be disqualified if by his conduct the Speaker/Chairman of the concerned House draws a reasonable inference that the member has voluntarily given up the membership of his party.
- If a **legislator votes in the House against the direction of his party** and

his action is not condoned by his party, he can be disqualified.

What is an exception in ADL?

- If there is a merger between two political parties and 2/3rd of the members of a legislature party agree to the merger, they will not be disqualified.

When and why the law was amended?

- The above-mentioned exception resulted in large scale defections and the lawmakers were convinced that the provision of a split in the party was being misused.
- Therefore, the law was amended in 2003 and this provision was deleted.
- Now, the only provision which can be invoked for protection from disqualification is the provision relating to the merger.

Is the law open to interpretation?

- The ground for disqualifying a legislator for defecting from a party is his **voluntarily giving up the membership** of his party, which is susceptible to interpretation.
- As has been explained earlier, voluntarily giving up the membership is not the same as resigning from a party.
- The Supreme Court has said that the presiding officer, who acts as a tribunal, has to draw a reasonable inference from the conduct of the legislator.
- So, there won't be much problem in how can one decide that a member of a legislature has voluntarily given up the membership of his party.

How far has the law succeeded in achieving its goal?

- The law has been able to curb the evil of defection to a great extent.
- But lately, an alarming trend of legislators defecting in groups to another party in search of greener pastures is visible.
- This only shows that the law needs a relook in order to plug the loopholes.
- But it must be said that this law has served the interest of the society.
- Political instability caused by a frequent and unholy change of allegiance by the legislators of our country has been contained to a very great extent.

Source: The Indian Express



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