Karnataka MLAs Defection

What is the issue?

- The Karnataka Members of Legislative Assembly (MLAs) defected, re-contested, and became members again, all in six months.
- The Karnataka by-election results have widely put to display the ineffectiveness of the Anti-Defection Law (ADL).

What is the story behind?

- Of the 17 defecting Congress-Janata Dal (Secular) MLAs, 11 were re-elected on a Bharatiya Janata Party (BJP) ticket.
- These events lay down a well-structured framework to sidestep the law.
- It also set a dangerous precedent for neutralising the consequences of the law altogether.

Is defection new in Indian politics?

- No. The phenomenon of defections has been plaguing the Indian political landscape for over five decades.
- As in the Indian political scene for a long time, the legislators used to change parties frequently which often brought about political instability.
- The recurrence of this evil phenomenon led to the Anti-Defection Law, which defined three grounds of disqualification of MLAs.

What is Anti-Defection Law?

- The ADL is contained in the **10th Schedule** of the Constitution.
- It was enacted by Parliament and came into effect in 1985.
- Its purpose is to **curb political defection** by the legislators.
- It has defined three grounds of disqualification of MLAs,
    1. Giving up party membership;
    2. Going against party whip; and
    3. Abstaining from voting.

Why resignation not being considered as a condition, a concern?

- Resignation as MLA was not one of the conditions of disqualification.
- Exploiting this loophole, the 17 Karnataka MLAs resigned, their act aimed at

ending the majority of the ruling coalition and, at the same time, avoiding disqualification.
- However, the Speaker (presiding officer of the Assembly) refused to accept the resignations and declared them disqualified.
- This was possible as the legislation empowers the presiding officer of the House to decide on complaints of defection under no time constraint.

What this legislation was constrained?

- **1985** - The law originally protected the Speaker's decision from judicial review.
- **1992** - This safeguard was struck down in Kihoto Hollohan case 1992.
- While the SC upheld the Speaker's discretionary power, it underscored that the Speaker functioned as a tribunal under the ADL, thereby making her/his decisions subject to judicial review.
- This judgment enabled judiciary to become the watchdog of the ADL, instead of the Speaker, who increasingly had become a political character contrary to the expected neutral constitutional role.
- **2019** - The same could be witnessed in Shrimanth Patel & Ors vs Speaker Karnataka Legislative Assembly, where the SC bench upheld the then Karnataka Speaker's decision of disqualification of the 17 MLAs.
- However, it struck down his ban on the MLAs from contesting elections till 2023, negating the only possible permanent solution to the problem.

What are the safeguards in ADL?

- The ADL provided a safeguard for defections made on genuine ideological differences.
- It allowed the formation of a new party or "**merger**" with other political party if not less than two-thirds of the party's members commit to it.
- The 91st Constitutional Amendment of 2003 barred the appointment of defectors as Ministers until their disqualification period is over or they are re-elected, whichever is earlier.
- But, obviously, such laws have not put to rest the trend of defections.

What could be done?

- As witnessed in Karnataka, the main problem is that the defectors treat disqualification as a mere detour, before they return to the House or government by re-contesting.
- This can only be stopped by **extending the disqualification period** from re-contesting and appointment to Chairmanships/Ministries to at least 6 years.

- The minimum period limit of 6 years is needed to ensure that the defectors are not allowed to enter the election fray for least one election cycle, which is 5 years.
- MLAs can still be bought from the ruling dispensation to bring it to a minority by being paid hefty sums, simply to stay at home for 6 years.
- Almost every political outfit has been party to such devious games, with hardly any political will to find a solution.

Source: The Hindu

