Reforming Anti-defection Laws

Why in news?

Ajit Pawar being sworn in as the Deputy CM of Maharashtra raises several questions about the health of our democracy.

What was the issue?

- Ajit Pawar was the Leader of the Opposition in Maharashtra from the Nationalist Congress Party (NCP).
- The intraparty dissent in NCP led to the switch of Ajit Pawar from NCP to the BJP-Shiv Sena government.
- Pawar took 8 MLAs with him from the NCP, which is currently in opposition in the state Legislative Assembly.

What is anti-defection law and how it is governed in India?

- The *Tenth Schedule* to the Constitution does not allow a legislator to switch party loyalties through voting against party direction on the floor of the House or through actions outside the House.
- The political party can choose to condone the actions of a legislator in case of voting against party direction.
- But a merger of two-thirds or more legislators in that House with any other party is not considered defection.

- **Political party Vs Legislature party -** The SC clarified a few points under the anti-defection law in Subhash Desai v Principal Secretary, Governor of Maharashtra (2023).
- The Court drew a distinction between a political party and legislature party.
- Only the political party can appoint the leader of the legislature group and the whip.
- **Issue -** Dispute in determining which is the political party that gets to decide on the appointment of leader of the group and whip.

What is the role of ECI in regulating Political parties?

- Election Commission of India (ECI) fundamentally draws its power from ***Article 324*** of the Constitution.
- The article provides the power of “superintendence, direction and control of elections” to ECI.
- **Register & deregister -** ECI under ***Section 29A*** of the Representation of People Act of 1950, has the power to register political parties.
- The Supreme Court in Indian National Congress (I) vs Institute of Social Welfare & Ors (2002) made it clear the ECI cannot deregister a party for violating the Constitution.
- The ECI also cannot deregister a party for breaching the undertaking given to it at the

time of registration.
- The ruling makes the ECI a mere spectator to the violation of the core principles of the Constitution which derives its powers from.
- **Adjudicate -** The ECI has the power to decide disputes between factions of a political party, in case of a "split" under Para 15 of the Election Symbols (Reservation and Allotment) Order, 1968.
- The Supreme Court in *Sadiq Ali v Election Commission of India* (1971) said, in such cases the "test of majority", "test of party constitution", and the "test of aims and objectives" can be used.

Why do we need reforms?

- Gaps in anti-defection laws is used to dislodge governments, to break parties apart and to lure leaders.

- **Intraparty regulations -** Lack of regulations in the internal functioning of political parties is the fundamental problem in anti-defection.
- With people coming up with newer forms of subverting the constitutional order and innovative ways of avoiding defection using loopholes in the way parties are organised.
- Solving this could help strike a balance between dissent within the party and constitutional morality.
- **Absence of party constitution -** Not all parties have a constitution, even if they have they are not relevant and comprehensive.
- Not having a constitution may leave the members vulnerable to the realpolitik of defections.

Out of more than 2,500 registered parties, the Election Commission website shows constitutions of 34 parties.

What should be done to solve this conundrum?

- The regulation of internal party democracy can be seen on a large scale in European countries.
- Few have provided the right to dissent and have an internal arbitration body.
- A party constitution that lays down procedures beyond the existing requirement at the time of registration under Section 29A should be mandatory.
- It should outline the role of the political party in relation to the legislature party
    1. Appointment of whip, etc.
    2. Removal and suspension of members
    3. Leadership challenges
    4. Involvement of members in questions of leadership
- The ECI must be empowered to suspend registration or deregister a party on non-compliance with basic requirements.
- An empowered ECI can ensure the enforcement of these rules to promote internal party democracy.

The 170th Law Commission Report had recommended the addition of a Part IVC to the Representation of People Act to regulate the internal functioning of parties.

Reference

1. IE - NCP split - Why anti-defection laws need to be reformed.

