Anti-defection

GS-Paper-2 Governance (PT-MAINS)

The Tenth Schedule, technicalities and also the Anti Defection Law would be cited during the crisis. Ultimately the matter could also end up in the Supreme Court.

What is the anti-defection law?

The Tenth Schedule was inserted in the Constitution in 1985 by the 52nd Amendment Act.

- It lays down the process by which legislators may be disqualified on grounds of defection by the Presiding Officer of a legislature based on a petition by any other member of the House.
- The decision on question as to disqualification on ground of defection is referred to the Chairman or the Speaker of such House, and his decision is final.

The law applies to both Parliament and state assemblies.

Disqualification:

If a member of a house belonging to a political party:

- Voluntarily gives up the membership of his political party, or
- Votes, or does not vote in the legislature, contrary to the directions of his political party. However, if the member has taken prior permission, or is condoned by the party within 15 days from such voting or abstention, the member shall not be disqualified.
- If an independent candidate joins a political party after the election.
- If a nominated member joins a party six months after he becomes a member of the legislature.

Exceptions under the law:

Legislators may change their party without the risk of disqualification in certain circumstances.

- The law allows a party to merge with or into another party provided that at least two-thirds of its legislators are in favour of the merger.
- In such a scenario, neither the members who decide to merge, nor the ones who stay with the original party will face disqualification.

Decision of the Presiding Officer is subject to judicial review:
The law initially stated that the decision of the Presiding Officer is not subject to judicial review. This condition was struck down by the Supreme Court in 1992, thereby allowing appeals against the Presiding Officer’s decision in the High Court and Supreme Court. However, it held that there may not be any judicial intervention until the Presiding Officer gives his order.

Advantages of anti-defection law:

- Provides stability to the government by preventing shifts of party allegiance.
- Ensures that candidates remain loyal to the party as well the citizens voting for him.
- Promotes party discipline.
- Facilitates merger of political parties without attracting the provisions of Anti-defection.
- Expected to reduce corruption at the political level.
- Provides for punitive measures against a member who defects from one party to another.

Various Recommendations to overcome the challenges posed by the law:

1. Dinesh Goswami Committee on electoral reforms: Disqualification should be limited to following cases:

   A member voluntarily gives up the membership of his political party

   A member abstains from voting, or votes contrary to the party whip in a motion of vote of confidence or motion of no-confidence. Political parties could issue whips only when the government was in danger.

2. Law Commission (170th Report)

   Provisions which exempt splits and mergers from disqualification to be deleted.

   Pre-poll electoral fronts should be treated as political parties under anti-defection

   Political parties should limit issuance of whips to instances only when the government is in danger.

3. Election Commission:

   Decisions under the Tenth Schedule should be made by the President/ Governor on the binding advice of the Election Commission.