In Depth - Anti Defection Law

Introduction

Last week, Karnataka Assembly Speaker K R Ramesh Kumar disqualified 17 MLAs for the entire term of the ongoing 15th Assembly. These include 14 from the Congress and three from JDS till the end of the current term, i.e. till 2023. The speaker said his action was based on the petitions moved by the Congress and JDS to disqualify the rebel MLAs, who had also submitted resignations as assembly members and were absent during the trust vote sought by the previous Chief Minister HD Kumaraswamy. The move, being seen as a stern and unprecedented one, is likely to be challenged by some disqualified legislators in court, who argue that it is against the law. Experts are of the view that it runs counter to the Bombay High Court’s latest judgment in the Goa Assembly case wherein the High Court held that disqualification under Tenth Schedule cannot debar a legislator to go back to people and get re-elected during the term of the present Assembly.

What is Anti-Defection Law?

The Tenth Schedule of Indian Constitution is popularly known as the Anti-Defection Act. Original constitution had no such provisions. It was included in the Constitution in 1985 by the Rajiv Gandhi government. The main intent of the law was to deter “the evil of political defections” by legislators motivated by the lure of office or other similar considerations.

Grounds of disqualification Anti-Defection Law:

- If an elected member voluntarily gives up his membership of a political party;
- If he votes or abstains from voting in such House contrary to any direction issued by his political party or anyone authorised to do so, without obtaining prior permission.

Points regarding Anti-Defection law:

- In Art 102(2) and Art 191(2) deals with anti defection law.
- The intention of the provision is to check the corruption/horse trading in parliament/to check the popular phenomenon “Aaya Ram Gaya Ram “ in the Indian polity which started in 1960’s.
- The law disallows MPs/ MLAs to switch parties after elections, make the members follow the whips issued by their party.
- It also applies to a nominated member if he/she joins a political party after 6 months of nomination and to an independent candidate if he/she joins a party after the election.
Reforms:

The issue of mass defection because of the 1/3rd rule was remedied through the 91st amendment which increased the bar from one third to two third. Thus at least two-thirds of the members of a party have to be in favour of a ‘merger’ for it to possess validity in the eyes of the law.

Can MLAs facing disqualification be tried under the Anti-Defection Law even after they resign?

- One way is to go with the way judges are removed i.e. wherein, if removal proceedings are going against a judge and the judge chooses to resign, immediately that proceeding ends. Going by that, in such cases, once the resignations are accepted, the disqualification proceedings will be over automatically.
- Another way is to take some kind of inspiration from the Company Law where even after a person has resigned from his post as a director, he can be held accountable for actions that he took as a Director under Section 168 (2) of the Companies Act.
- It can happen that the Speaker accepts the resignation when it is tendered, on the belief that the same has been tendered in a bonafide fashion but after sometime if s/he comes to realise that there has been malafide reason behind the resignation, due action can be taken.
- The fact is that the Speaker does not have a legal tool in his hand to actually hold that particular person accountable and to return that particular resignation. Presently, if the resignation is accepted, the Speaker has to necessarily declare that the particular seat has been rendered vacant.

Way Forward

Anti-Defection Law should be made applicable only in a situation where there is a vote for survival of the government or trust vote of no confidence motion. The Speaker’s power regarding such issue can be given to the governor or the President as in the case of Office of Profit or there should be a tribunal which can decide such cases. However, some political strategists consider that such matters are related to the House and should be resolved within it only. There has to be some way out for the cases in which the MPs or MLAs genuinely feel that they should not be voting on party lines. Also, there should be an option that a conscientious politician can resign and stand for election again, if he doesn’t agree with the party line.