

Polity Class 32

4th November, 2023 at 9:00 AM

ANTI-DEFECTION LAW (09:12 AM)

- The culture of defection became extremely prevalent in Indian politics from the 1960s to the 1980s.
- Political representatives would often change their political allegiance or vote in the House due to the consideration of money and power.
- This phase in Indian politics was often termed 'Aaya Ram and Gaya Ram' politics.
- The Parliament enacted the 52nd CAA and added the provisions under Article 102(2) and Schedule 10.
- The objective of the anti-defection law is to prevent corrupt practices and voting in the House.
- Disqualification under the Anti-Defection law
- If a chosen member of the house voluntarily gives up the membership of his political party from which he has been chosen to the house, he shall be liable for disqualification.
- If a person votes contrary to the direction issued by the political party or abstains from voting and if his actions are not condoned by the political party within a period of 15 days.
- The meaning of the term 'Voluntarily gives up membership'- The court has held that this term is wider than resignation and includes the conduct and the behaviour of the legislator concerned. Therefore, if a person's behaviour is such that it amounts to switching the political party it shall be fit for disqualification.
- It also stated expulsion of a member by a political party is an internal matter and the anti-defection law would not apply in such cases.
- Originally, the law provided exceptions in case of splits i.e. if 1/3rd of members of a political party split from the original party and form a new party, join another party, or form a new party through the merger with another party, the anti-defection law would not apply.
- The 91st CAA has replaced the concept of 'split' with the concept of a merger. It means that if 2/3rd members of the house split from the political party and join another political party or form a new political party or join another political party to form a new political party.
- Exemption in case of presiding officer-
- If a presiding officer after getting elected resigns from his political party and does not join a political party during the term of office as a presiding officer or rejoins the political party to which he originally belonged after demitting the office, the provisions of the anti-defection law shall not apply. This provision is inspired by the convention of 'Once a Speaker always a Speaker' followed in the UK.

- Decision w.r.t. to disqualification under the anti-defection law
- According to Paragraph 6 of the anti-defection law, all the decisions w.r.t. to the anti-defection law shall be taken by the presiding officer of the house.
- The constitution does not prescribe any time limit for the decision of the presiding officer.
- Paragraph 7 of the 10th schedule barred the courts from exercising any jurisdiction on matters of disqualification under the anti-defection law.
- The Supreme Court in the Kihoto Holohan case has upheld the constitutional validity of the anti-defection law on the grounds that it promotes clean politics and reduces the role of money power in politics. But in the same case, the Supreme Court struck down Paragraph 7 barring the courts from enquiring into such matters as unconstitutional.
- The court held that judicial review is a part of the Basic Structure of the Constitution and can not be taken away by an amendment of the Constitution.
- It held that the speaker while deciding on disqualification cases acts like a tribunal and therefore the courts can not be excluded from jurisdiction on such matters.

CHALLENGES ASSOCIATED WITH ANTI-DEFECTION LAW (10:32 AM)

- It compromises the role of an individual legislator to comment on the legislation enacted in the House.
- The lack of internal party democracy forces an individual to follow the directions of the political party rather than one's own conscience.
- It undermines representative democracy as the legislator is supposed to follow the whip of the political party that may be contrary to the opinion of the constituency.
- The law is silent on the time to be taken by the Presiding officers to decide on the matters of disqualification. Since the presiding officer is usually partisan towards his/her own political party, it results in an undue advantage for the ruling party.
- In certain cases, the presiding officers have deliberately delayed taking decisions on matters of disqualification even when the individuals were appointed as ministers after defection.
- The exception of merger under the law has only made it difficult to influence the individual legislators but it has not curbed the wholesale trading of legislators.
- It has further weakened the position of the opposition in the parliament as the executive already majority in the directly elected house and as a result of this law, the members of the ruling party can not question the executive.
- The law does not apply to political parties and coalitions and the political parties are free to choose new alliance partners even though they may have been given a mandate by the electorate with some other political party.
- Way ahead

- The 2nd ARC has recommended that the Presiding officers should be relieved from the powers to disqualify and such powers should be vested with ECI or an independent tribunal formed for this purpose.
- We may consider adopting the British principle of once a speaker, always a speaker in practice to make this position as neutral as possible.
- We may follow the principles laid down by the court in the Kihoto Hollohan case, according to which the whip of a political party should apply only in those cases where the stability of government is in question or in those matters that are central to the manifesto of party in power.
- There is an urgent need to introduce reforms to ensure internal party democracy that should be accompanied by reforms in electoral funding.

VACANCY OF SEATS IN PARLIAMENT (11:19 AM)

- A legislator may resign by submitting the resignation to the Presiding officer of the house.
- In such a case, it is the duty of the Presiding officer that the resignation is voluntary and genuine, or otherwise he should not accept such resignation.
- A person absent for a continuous period of more than 60 days without the permission of the presiding officer may be removed from the membership of the house by passing a resolution
- If a person is elected to two seats in Lok Sabha, he should choose which seat he wants to retain. If he fails to do so, his both seats shall become vacant.
- If a person is elected to both houses of the Parliament, he should choose which seats he wants to retain, if he fails to do so, then his seat in the CoS shall become vacant.
- If a person is chosen as a member both of Parliament and State Legislature, unless previously resigned, the seat in the Parliament shall become vacant.

PRESIDING OFFICERS OF PARLIAMENT (11:33 AM)

- According to Proviso 294, the Speaker shall continue to hold the office till the first sitting of the newly elected Lok Sabha.
- Protem Speaker
- As a convention, the senior-most member of the newly elected Lok Sabha is asked to preside over the proceedings of the house for the purpose of administering oaths to the newly elected members and to oversee the election of the new speaker.
- Speaker and Deputy Speaker are elected by the members among themselves.
- Once the Speaker is elected, the Protem speaker gives way to the new speaker.
- Removal
- The Speaker and the Deputy Speaker can be removed as per a resolution passed by the House with a majority of the then membership of the House.

- Such a resolution must be moved by giving at least 14 days' notice.
- While the motion for removal is under consideration, the speaker shall not preside over the proceedings of the house but can take part in the proceedings as a member. He can vote in the first instance but does not have a casting vote in case of a tie.
- The Speaker of the Lok Sabha can submit his resignation to the Deputy Speaker and the Deputy Speaker shall submit the resignation to the Speaker.
- Removal of Chairman and Deputy Chairman of Rajya Sabha
- There is no separate procedure for the removal of the Chairman of the Rajya Sabha and the procedure followed is that for the removal of the Vice President.
- For his removal, Rajya Sabha must pass a resolution by an effective majority of the house which should be approved by the Lok Sabha with a simple majority.
- The Chairman can take part in the proceedings for the removal but can not vote in such proceedings.
- The Deputy Chairman is removed from office upon a resolution passed by the house with an effective majority.
- In both cases, 14 days notice is mandatory.
- The Chairman can submit his resignation to the President and the Deputy Chairman can submit his resignation to the Chairman.

TOPIC OF THE NEXT CLASS- POWERS OF PRESIDING OFFICERS, FUNCTIONING OF PARLIAMENT