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The Big Picture – Anti-Defection Law & Karnataka Political Crisis

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Political defections aren't anything new. Any single party alone cannot be held accountable for what happened in the two southern states of Goa and Karnataka, as well as in the Rajya Sabha where four out of six TDP members resigned and joined the Treasury Benches.

Crossing the aisle has been part of India's democratic process ever since the first elections in 1952. The usual method of opposition parties has been to lure away ruling party/coalition legislators.

The floor-crossing in States reached epic proportions in the 1960s and 1970s when MLAs in some States changed their political allegiances multiple times during the day. Parliament amended the Constitution in 1985 in an attempt to stop this menace, and brought in the

anti-defection law.

What the incidents like that in Karnataka indicate?

- It has raised the question of whether one should **link or delink resignation with disqualification**.
 - The situation is that a resignation has been tendered and there is a disqualification proceeding that is also initiated.
 - The Speaker is in a fix, that is, whether to take a call on disqualification first, as a consequence of which, resignation becomes redundant or accept the resignation first, in which case perhaps the disqualification may become redundant.
- The incident calls for an interpretation of the three provisions of the Constitution: **Article 190** (vacation of seats), **Article 164 (1B)**, and the **Xth schedule** of the Constitution.
 - The Speaker has the power to not accept resignation if s/he comes to the conclusion that there are grounds to believe that the resignation is a consequence of coercion or any other kind of undue influence or inducement. Inducement could also mean some kind of post/position elsewhere.
 - If the Speaker comes to a conclusion that resignation is effectively connected and linked to the aspect of defection, then perhaps that particular resignation can be kept on hold and it need not be accepted.
- The **defection is happening due to the lure of money and ministerial offices**.
- The decision to **resign before disqualification** is taken because it allows one to **become a minister in the current House** otherwise one cannot become a minister in the current House until one's re-election or the expiry of term, whichever is earlier.

Anti-Defection Law

- What is the anti-defection law? It refers to the '**Aaya Ram, Gaya Ram**' culture, a phrase coined after Haryana MLA Gaya Lal changed his party twice in one day and thrice within a fortnight in 1967. In response to this, Rajiv Gandhi's government brought anti-defection law to prevent such political defections in the year **1985**.
- The law is necessary because when **a voter decides to cast his/her vote** for a candidate, he/she is considers not only the candidate but also **the party** that the candidate stands for and the **manifesto** the party presented. Hence, when the defection takes place, it's the electorate that is let down, making a mockery of democracy.

- That is why in the year **1985**, amendment to the constitution was effected and **Xth schedule was introduced**. The amendment and the schedule are connected to **Article 102** and **Article 191** of the Constitution. Both the articles pertain to disqualification for membership.
- The purpose of this mini-legislation within the constitution is to create a deterrent for any kind of defections and it prescribes disqualification for doing so.

Role of the Judiciary

- The practice so far is that **courts do not interfere until a decision regarding disqualification is taken**. The Xth schedule is pretty clear that on such particular issues, there is a bar on the jurisdiction of courts.
- However, there have been instances when people have approached courts for a direction to the Speaker for him/her to take an expeditious decision with respect to disqualification. There had been instances when the Speaker took 4 years to settle such matters.

Problems in the Anti-defection Law

- The real problem with the anti-defection law is that leaders have tried to solve a political problem using a law. If one tries to solve a political problem using law as a tool, it will always have limited applications because politics has its own ways and means of circumventing things.
- **Politics is all about power and individuals tend to shift to the political group which can offer them more power.**
- There can also be **genuine cases** where individual MPs or may be 6-10 MPs or **MLAs are genuinely not convinced by the line taken by their party**. Should s/he kill her/his conscience, then?
- **Article 105 (2)** and **Article 194 (2)** provide complete freedom of speech to MPs and also give them protection from any sort of consequences for anything said or vote given in the House. Xth schedule also goes against these articles.
- Another problem with anti-defection law is that too **much importance given to the Speaker**. On many instances speakers have not acted in a fashion that can be termed as neutral. Their partisan conduct has lowered the dignity of the office, which is why their decisions are questioned in a court of 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.
- The disqualified MLAs have an option to challenge the disqualification before the courts as the Speaker's decision is subjected to judicial review.

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.
- There is a need to provide the Speaker with a timeline i.e. providing him/ her specified number of days for reviewing a resignation.
- **The Speaker needs to strike a distinction between bonafide political reasons and malafide political reasons.**