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Need for Changes in Anti-Defection Law

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Why in News

The **Leader of Opposition** in the Goa Legislative Assembly is **set to move a private member's resolution** to recommend to the Central government to address the various issues associated with the **anti-defection law**.

Key Points

- **About Anti-Defection Act:**

- The **Tenth Schedule — popularly known as the Anti-Defection Act** — was included in the Constitution via the **52nd Amendment Act, 1985** and sets the provisions for **disqualification of elected members on the grounds of defection to another political party.**

- The **grounds for disqualification** under the Anti-Defection Law are as follows:
 - 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.

As a pre-condition for his disqualification, his abstention from voting should not be condoned by his party or the authorised person within 15 days of such incident.

- If **any independently elected member joins any political party.**
- If **any nominated member joins any political party after the expiry of six months.**

- As per the 1985 Act, a 'defection' by **one-third of the elected members** of a political party was considered a '**merger**'.

But the **91st Constitutional Amendment Act, 2003**, changed this and now **at least two-thirds of the members** of a party have to be in favour of a "merger" for it to have validity in the eyes of the law.

- The **members so disqualified can stand for elections from any political party for a seat** in the same House.

- The decision on questions as to disqualification on ground of defection are referred to the **Chairman or the Speaker of such House, which is subject to 'Judicial review'**.

- **Issues Related to Anti-Defection Law:**
 - **Undermining Representative Democracy:** After enactment of the Anti-defection law, the MP or MLA has to follow the party's direction blindly.
 - This leaves them with **no freedom to vote** their judgment on any issue and undermines representative democracy.
 - **Undermining Legislatures:** The core role of an elected MLA or MP is to examine and decide on a policy, bills, and budgets.
 - Instead, the MP becomes just another number to be tallied by the party on any vote that it supports or opposes.
 - **Undermining Parliamentary Democracy:** In the parliamentary form, the government is accountable daily through questions and motions and can be removed any time it loses the support of the majority of members of the Lok Sabha.
 - Due to Anti-Defection law, this **chain of accountability has been broken** by making legislators accountable primarily to the political party.
 - Thus, anti-defection law is acting against the concept of parliamentary democracy.
 - **Controversial Role of Speaker:** In many instances, the Speaker (usually from the ruling party) has delayed deciding on the disqualification.
 - The Supreme Court has tried to plug this by ruling that the Speaker has to decide the case in three months, but it is not clear what would happen if a Speaker does not do so.
 - **No Recognition of Split:** Due to the **91st constitutional amendment 2004**, the anti-defection law created an exception for anti-defection ruling.
 - According to this, if two-thirds of the strength of a party should agree for a 'merger' then it will not be counted as a defection.
 - However, the amendment does not recognise a 'split' in a legislature party and instead recognises a 'merger'.
- **Proposed Changes:**
 - One option is that **such matters be referred directly to the high court or the Supreme Court for an express judgment** -- should be **given within a period of 60 days**.
 - The second option is that if **somebody has any difference of opinion with respect to the party** or the party leadership, he **has the option to resign** and seek the fresh mandate of the people.
 - These changes **envisage the need for an elected representative to be accountable and responsible** towards the people.

Way Forward

- **Strengthening Intra-Party Democracy:** If government stability is an issue due to people defecting from their parties, the answer is for parties to strengthen their internal part of democracy.

- **Regulating Political Parties:** There is an ardent need for legislation that governs political parties in India. Such a law should bring political parties under RTI, strengthen intra-party democracy, etc.
- **Relieving Chairman/Speaker From Adjudicating Powers:** Chairman/Speaker of the house, being the final authority in terms of defection, affects the doctrine of separation of powers.
In this context, transferring this power to higher judiciary or to Election Commission (recommended by 2nd ARC report) may curb the menace of defection.
- **Restricting the Scope of Anti-defection Law:** In order to shield the detrimental effect of the anti-defection law on representative democracy, the scope of the law can be restricted to only those laws, where the defeat of government can lead to loss of confidence.

Source: IE