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**DAILY EDITORIAL
ANALYSIS**

TOPIC

**SHARPENING THE ANTI DEFECTION LAW
& STRENGTHENING DEMOCRACY**

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SHARPENING THE ANTI DEFECTION LAW & STRENGTHENING DEMOCRACY

Context

- The **Anti Defection Law** in India, a crucial instrument designed to maintain the stability of governments and **uphold the integrity of democratic institutions**, has **several gaps** which need to be addressed to make it more effective and impartial.

Anti-Defection Law in India: An Overview

- The **Anti-Defection Law** in India, encapsulated in the **Tenth Schedule** of the Constitution, was introduced through the **52nd Amendment Act in 1985**.
- It was enacted to address the rampant issue of political defections, which were destabilising elected governments and undermining the democratic process.

Historical Context

- The need for an anti-defection law arose from the frequent party-switching by legislators, a practice that led to political instability.
- This phenomenon, often referred to as 'Aaya Ram, Gaya Ram' became particularly notorious in the 1960s when a legislator in Haryana switched parties multiple times in a single day.

Key Provisions

- The Anti-Defection Law lays down the grounds for disqualification of Members of Parliament (MPs) and Members of Legislative Assemblies (MLAs) on the basis of defection. A member can be disqualified if they:
 - ♦ Voluntarily give up the membership of their political party.
 - ♦ Disobey the directives of the party leadership on a vote, such as a confidence motion or budgetary matters.
- However, the law **allows for a 'merger'** if at least two-thirds of the members of a legislative party decide to join another party, thus avoiding disqualification.

Major Concerns and Issues

- **Loopholes and Misuse:** Despite amendments, the law has several loopholes. For instance, the provision allowing a split if one-third of the members defect was misused until it was amended.
 - ♦ Even now, the requirement for a two-thirds majority for a merger can be manipulated.
- **Role of the Speaker:** The Speaker of the House, who decides on disqualification petitions, is often seen as biased, especially if they belong to the ruling party.
 - ♦ It has led to delays and questionable decisions, undermining the law's effectiveness.
- **Judicial Delays:** Cases of defection often end up in courts, leading to prolonged legal battles.
 - ♦ The lack of a fixed timeframe for the Speaker to decide on defection cases further exacerbates the issue.
- **Freedom of Expression:** The law's stringent provisions sometimes restrict legislators' freedom of expression and their ability to represent their constituents' views effectively.
- **Ethical Concerns:** The law has not entirely succeeded in curbing unethical practices. Legislators continue to switch allegiances for personal gain, and political parties often engage in 'poaching' members from rival parties.
- **Impact on Democracy:** The anti-defection law, while aiming to provide stability, has sometimes stifled legitimate dissent within parties. Legislators are forced to toe the party line, even if it goes against their conscience or the interests of their constituents.

Amendments and Reforms

- The law has undergone significant amendments to close loopholes. The **91st Amendment Act of 2003** was a major reform, which made it more challenging for small-scale defections by requiring a larger consensus for a merger.
- **Kihoto Hollohan vs Zachillhu (1992):** Supreme Court of India upheld the sweeping discretion available to the Speaker in deciding cases of disqualification of MLAs.

Proposed Reforms

- **Independent Adjudicatory Mechanism:** Establishing an independent tribunal to decide on disqualification petitions can help reduce biases and expedite the process.
- **Clearer Definitions:** Providing clearer definitions of what constitutes defection and voluntary resignation can help in better implementation of the law.
- **Clear Timeframes:** Implementing strict timeframes for the Speaker or the adjudicatory body to decide on defection cases can prevent undue delays.
- **Periodic Review:** Regularly reviewing and updating the law to address emerging challenges and loopholes can ensure its continued effectiveness.
 - ◆ Recent political events have highlighted the need for a comprehensive review to tighten the law and address its shortcomings.
- **Transparency and Accountability:** Increasing transparency in the decision-making process and holding decision-makers accountable can enhance trust in the system.
 - ◆ Ensuring that legislators remain accountable to their constituents while adhering to party discipline is crucial. It can be achieved by balancing party directives with individual freedom of expression.
 - ◆ Publicly accessible records of defection cases and decisions can help achieve this.
- **Encouraging Internal Democracy:** Promoting internal democracy within political parties can reduce the need for defections.
 - ◆ Allowing more freedom for legislators to express dissent within the party can help address grievances without resorting to defection.
- **Ethical Guidelines and Enforcement:** Strengthening ethical guidelines for legislators and ensuring strict enforcement can help curb unethical practices.
 - ◆ It could include penalties for parties and legislators involved in “poaching” members.

Conclusion and Way Forward

- The Anti-Defection Law remains a crucial instrument in maintaining the stability of governments and the integrity of democratic institutions in India.
 - ◆ However, continuous reforms and vigilant implementation are necessary to ensure it effectively curbs the menace of political defections.
- By closing loopholes, ensuring impartial adjudication, and promoting ethical conduct, the law can better serve its purpose of upholding the democratic principles of accountability, representation, and integrity of democratic institutions.

Source: TH

Mains Practice Question

[Q] Critically analyse the effectiveness of the anti-defection law in India. Discuss its limitations and propose measures to strengthen it to promote political stability and ethical governance.

