

Spotlight again on Anti-Defection Law

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Context - The unfolding political crisis in Maharashtra has thrown the spotlight on the anti-defection law, and the roles of the Deputy Speaker and the Governor.

Some legislators have aligned themselves with the party's rebel leader and are camping in Guwahati. The party has warned its MLAs that their absence from the meeting would lead to the presumption they wanted to leave the political party and this would therefore lead to action against them under the anti-defection law.

About Anti-Defection Law

- The anti-defection law provides for the disqualification of MLAs who, after being elected on the ticket of a political party, “voluntarily give up their party membership”.
- The Supreme Court has interpreted the term broadly and ruled an MLA's conduct can indicate whether they have left their party. The law is also applicable to independent MLAs.

- But the anti-defection law does not apply if the number of MLAs who leave a political party constitute two-thirds of the party's strength in the legislature.
- These MLAs can merge with another party or become a separate group in the legislature.

Current Scenario in Maharashtra

- Reports indicate that 30 MLAs are with the rebel leader. Taking this number at face value means it does not reach the two-thirds (37) mark of the 55 MLAs the party has in the Maharashtra Assembly.
- Therefore, the protection under the anti-defection law would not be available to the rebel group.
- It is the Assembly Speaker who decides whether an MLA has left a party or a group that constitutes two-thirds of a party.
- The position of the Speaker of the Maharashtra Assembly is, however, currently vacant.
- Article 180(1) of the Constitution states that the Deputy Speaker performs the Speaker's duties when the office is vacant. Since then, the Deputy Speaker has been acting as the Speaker.

Applicability of ADL

Under the current circumstances, two ways would lead to adjudication under the law:

- **Approaching the acting Speaker to file defection petition**
- First, any MLA of the Assembly can petition that certain MLAs have defected from their political party.
- Such a petition has to be accompanied by documentary evidence.
- The Deputy Speaker would then forward the petition to the MLAs against whom their colleagues are making the charge of defection.
- The MLAs would have **seven days** or such time that the Deputy Speaker decides is sufficient to enable them to put across their side of the story.

- **Proving of two-third majority**
- Rebel leaders and MLAs supporting too can write to the Deputy Speaker with evidence claiming that they represent two-thirds of the strength and claim protection under the anti-defection law.
- In either case, Speakers will decide the matter after hearing all parties, which could take time.

Governor's Role in ADL

- **Declaration of President's Rule (NA)**
- The Governor has a crucial role when there is political instability in a state.
- Before 1994, Governors were quick to dismiss a state government, charging that it did not have a majority in the state legislature and recommending the imposition of the President's rule in the state.
- But the Supreme Court ended this practice with its judgment in the S R Bommai case in 1994.
- **Holding Assembly**
- In this landmark case, the court ruled that the place for deciding whether a government has lost its majority was in the legislature.
- Hence, Maharashtra Governor can ask Chief Minister to convene the Assembly and prove his majority on the floor of the House.
- **Governors Discretion**
- The CM can recommend to the Governor to dissolve the legislature before the end of its five-year term and call for elections under Article 174(2)(b). Here, the Governor's discretion comes into play.

- The Governor may choose not to dissolve the legislature. This is when he or she believes that the recommendation is coming from a council of ministers who do not enjoy the confidence of the state legislature.
- **Floor test**
- Under Article 175(2), the Governor can summon the House and call for a floor test to prove whether the government has the numbers.
- In a detailed judgment, the Court also explained the scope of the power of the Governor and the law revolving around floor tests. When the House is in session, it is the Speaker who can call for a floor test.
- But when the Assembly is not in session, the Governor's residuary powers under Article 163 allow him to call for a floor test.

Conclusion

The spectacle of rival political parties whisking away their MLAs to safe destinations does little credit to the state of our democratic politics. It is an unfortunate reflection on the confidence which political parties hold in their own constituents and a reflection of what happens in the real world of politics. Political bargaining, or horse-trading, as we noticed, is now an oft repeated usage in legal precedents.