

Cross-voting and defections in focus again (GS Paper 2, Indian Constitution)

Why in news?

- The recent voting in the Rajya Sabha polls has brought the issues of cross-voting and defections practised by lawmakers into focus again.
- The lawmakers find some loopholes in the law and skirt around them. Parliament passed the anti-defection law in 1985. Despite the stringent anti-defection laws, cross-voting or floor crossing is going on.



Vice President on the anti-defection law:

- Vice President of India recently commented that the anti-defection law must be amended to rectify the loopholes.
- He said there was **no clarity about the time frame for the Speaker or Chairman of the Rajya Sabha to decide on anti-defection cases.**
- His comment is significant because elected representatives have been familiar with party-hopping tactics for decades.
- The defecting lawmakers have found a way to skirt the restrictions in the Tenth Schedule.
- Instead of formally “crossing the floor” or voting against their party in a confidence motion, **they resign from the party.**

‘Ayaram, Gayaram’ in Indian politics:

- In the past, there have been some bizarre cases. In 1967 when Haryana was carved out of Punjab, an independent MLA, Gayalal, first joined the Congress Party; by evening, he shifted to the United Front, and within nine hours, he re-joined the Congress party. Ironically, he returned to the United Front within a fortnight. This case is known as ‘Ayaram, Gayaram’ in political circles.

- The penalty for shifting political loyalties is the loss of membership and a bar on becoming a minister. The law has been contested in courts multiple times. It was amended in 2003.

Dissent:

- Another objection to the anti-defection law is the **unlimited powers given to every political party to put down dissent or an alternative view**.
- However, recent developments in many states show that it does not check defections. To keep the flock together, parties often play resort politics by shepherding them to some resort, sometimes outside the state.
- Defectors have shown this trend many times – Rajasthan (2020), Maharashtra (2019), Karnataka (2019 and 2018), and Tamil Nadu (2017).
- In March 2020, Jyotiraditya Scindia and 22 Congress MLAs resigned, resulting in a government change in Madhya Pradesh. In 2019 in Goa, 10 of the 15 Congress MLAs merged their legislature party with the BJP. In Rajasthan, six BSP MLAs merged their party with the Congress, and in Sikkim, 10 of the 15 MLAs of the Sikkim Democratic Front have joined the BJP. The list goes on.

Central flaw of anti-defection law's:

- Critics believe the anti-defection law's central flaw has been the presiding officers' full authority to decide on the petition.
- The law initially stated that the **decision of the Presiding Officer is not subject to judicial review**. The Supreme Court struck down this condition in 1992.
- The Apex court intervened again in July 2019 when ten Congress MLAs and two Maharashtra Gomantak Party MLAs defected to the BJP and were rewarded with ministries. The court prescribed a **maximum of three months for deciding on anti-defection cases in 2020**.

How could the loopholes be plugged?

- In the past, expert committees have recommended that rather than the presiding officer, usually a ruling party member, the **decision to disqualify a defector should be vested in an independent agency**.
- However, political parties might oppose this change, mainly ruling parties at the Centre and in the states. With presiding officers in their hands, it would be easier to manipulate politically.

What Supreme Court has observed?

- In recent times the Supreme Court also observed, that it is time that Parliament has a rethink on **whether disqualification petitions ought to be entrusted to a Speaker as a quasi-judicial authority** when such Speaker continues to belong to a particular political party either de jure or de facto.
- Parliament may seriously consider amending the Constitution to substitute the Speaker of the Lok Sabha and Legislative Assemblies as the arbiter of disputes concerning disqualification which arise under the Tenth Schedule.

Way Forward:

- There are apprehensions of cross-voting by MLAs and M.P.s who form the electorate in the Presidential polls. As long as givers and takers are there, defections will not stop. The best way is to tweak the law.
- There could be other punishments for an errant legislator. Resort politics should also be banned. Defectors should be barred from holding public office for a reasonable period, and the vote cast by a defector should be considered invalid. The electorate should also have a right to recall the representative.
- The mass exodus of MLAs from the vanquished Congress to winning parties shows no respect for the anti-defection law. What is needed is political will, and all parties should come together and look at the law afresh.