

THE ABSURDITY OF THE ANTI-DEFECTION LAW

Relevant for: Indian Polity | Topic: Parliament - structure, functioning, conduct of business, powers & privileges and issues arising out of these

The [events in Puducherry](#) highlight, yet again, the absurdity of the [anti-defection law](#). In what has now become the standard operating procedure, several MLAs from the treasury benches resigned, lowering the numbers required for a no-confidence motion to succeed. This formula has been seen recently in other States such as [Madhya Pradesh](#) and [Karnataka](#).

The anti-defection law was [included in the Constitution as the Tenth Schedule in 1985](#) to combat the “evil of political defections”. The main purpose was to preserve the stability of governments and insulate them from defections of legislators from the treasury benches. The law stated that any Member of Parliament (MP) or that of a State legislature (MLA) would be disqualified from their office if they voted on any motion contrary to the directions issued by their party.

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The provision was not limited to confidence motions or money bills (which are quasi-confidence motions). It applies to all votes in the House, on every Bill and every other issue. It even applies to the Rajya Sabha and Legislative Councils, which have no say in the stability of the government. Therefore, an MP (or MLA) has absolutely no freedom to vote their judgement on any issue. They have to blindly follow the direction of the party. This provision goes against the concept of representative democracy.

There are two broadly accepted roles of a representative such as an MP in a democracy. One is that they are agents of the voters and are expected to vote according to the wishes and for the benefits of their constituents. The other is that their duty to their constituents is to exercise their judgement on various issues towards the broader public interest. In this, they deliberate with other MPs and find a reasonable way through complex issues. The anti-defection law turns the concept of a representative on its head. It makes the MP neither a delegate of the constituency nor a national legislator but converts them to be just an agent of the party.

Look at the contrast with other democracies. For example, in the recent vote on the impeachment of former U.S. President Donald Trump, seven members from his party in the U.S. Senate, the Republicans, voted to convict him. Such a decision does not have any legal repercussion. Of course, the party may take action (it did not). Also, voters may decide to reject the legislator for re-election — and that is the core design element of representative democracy. The legislator is accountable to voters, and the government is accountable to legislators.

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In India, this chain of accountability has been broken by making legislators accountable primarily to the party. This means that anyone from the party having a majority in the legislature — which is, by definition, the party forming the government — is unable to hold the government to account. Further, all legislators have a ready explanation for their voting behaviour: they had to follow the party's direction. This negates the concept of them having to justify their positions on various issues to the people who elected them to the post.

An important consequence of the anti-defection law is the hollowing out of our legislatures. If an MP has no freedom to take decisions on policy and legislative proposals, what would be the incentive to put in the effort to understand the different policy choices and their outcomes? The

core role of an MP to examine and decide on policy, Bills and budgets is side-lined. Instead, the MP becomes just another number to be tallied by the party on any vote that it supports or opposes.

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The framers of our Constitution did not intend this outcome. While introducing the draft Constitution, Dr. B.R. Ambedkar outlined the differences between the presidential and parliamentary forms of government. He said that the presidential form (such as in the United States) had higher stability but lower accountability as the President is elected for four years, and cannot be removed except for proven misdemeanour. In the parliamentary form, the government is accountable on a daily basis through questions and motions, and can be removed any time it loses the support of the majority of members of the Lok Sabha. The drafting committee believed that India needed a government that was accountable, even at the cost of stability. The anti-defection bill weakens the accountability mechanism.

What is more, it does not even provide stability. The political system has found ways to topple governments. This includes the methods used in Puducherry this week — of reducing the total membership through resignations. The Constitution was amended to ensure that any person disqualified for defecting cannot get a ministerial position unless they are re-elected; the way around this has been to resign rather than vote against the party. In other instances, the Speaker — usually from the ruling party — has delayed taking a decision on the disqualification. This has led to strange situations such as members who continue to be part of the main Opposition party becoming Ministers (Andhra Pradesh in the term of the last Assembly). The Supreme Court has tried to plug this by ruling that the Speaker has to take the decision in three months, but it is not clear what would happen if a Speaker does not do so. The premise that the anti-defection law is needed to punish legislators who betray the mandate given by the voters also seems to be flawed. If voters believe that they have been betrayed by the defectors, they can vote them out in the next election. However, we have seen many of the defectors in States such as Karnataka and Madhya Pradesh being re-elected in the by-polls, which were held due to their disqualification.

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The problem arises from the attempt to find a legal solution to what is essentially a political problem. If stability of government is an issue due to people defecting from their parties, the answer is for parties to strengthen their internal systems. If they attract members on the basis of ideology, and they have systems for people to rise within the party hierarchy on their capabilities (rather than inheritance), there would be a greater exit barrier. These characteristics seem absent in many of the political parties, and we have seen a large number of defections despite the anti-defection law.

To sum up, the anti-defection law has been detrimental to the functioning of our legislatures as deliberative bodies which hold the executive to account on behalf of citizens. It has turned them into fora to endorse the decision of the government on Bills and budgets. And it has not even done the job of preserving the stability of governments. The Tenth Schedule to the Constitution must be repealed.

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