

# DOES THE ANTI-DEFECTION LAW NEED CHANGES?

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February 24, 2023 12:15 am | Updated 08:12 am IST

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File photo of Shiv Sena leaders Eknath Shinde and Uddhav Thackeray during a press conference in Mumbai. | Photo Credit: PTI

On February 17, the Election Commission of India (ECI) allotted the name 'Shiv Sena' and the party's Bow and Arrow symbol [to Maharashtra Chief Minister Eknath Shinde's faction](#), in effect recognising it as the original party founded by Balasaheb Thackeray. The political crisis in Maharashtra began last year after a group of 40 of the 55 Sena MLAs walked out of the Maha Vikas Aghadi (MVA) alliance under the leadership of Mr. Shinde, which caused a division in the party. Both the Uddhav Thackeray and Shinde sides staked claim to the party name and symbol, each claiming to represent the 'real' Shiv Sena. The ECI said that it had based its decision on a "test of majority." It said the group of MLAs supporting the Shinde faction got nearly 76% of the votes polled for the 55 winning Shiv Sena candidates in the 2019 Maharashtra Assembly elections, while the Uddhav Thackeray faction got 23.5% of votes. The crisis has thrown the spotlight once again on the [anti-defection law](#), whose purpose is to prevent political defections. In a conversation moderated by **Sonam Saigal**, **P.D.T. Achary** and **Ruchi Gupta** discuss whether the law needs changes. Edited excerpts:

The Tenth Schedule of the Constitution, or the anti-defection law, was enacted in 1985. What was the need to have this law then?

**P.D.T. Achary:** Before the law was enacted in 1985, the political class was anxiously trying to work out a measure to curb the regular defections that had been taking place in various parts of India. Defection causes destabilisation, which leads to governments falling and new governments coming up with the help of the defectors. After Rajiv Gandhi came to power with a massive majority, the government prepared the Bill. It was brought before the House and unanimously passed. Some people thought that this measure would curb freedom of speech and affect the free exercise of opinion by the members of the legislature who are elected by the people. But defection was recognised everywhere as an evil. There was a need to curb that evil; therefore, the law was brought in. There is a famous joke which goes, 'Aaya Ram, Gaya Ram.' It means Ram came out of a political party in the morning, joined another party by lunchtime, and is set to join yet another after lunch. That is why the law was brought in.

**Ruchi Gupta:** What the law tries to do is to stabilise party systems by consolidating control of the party leadership instead of through ideological cohesion or ownership [by constituent legislators] of the party. By doing this, it is framing democracy not as a system of representation

and accountability, but as a contest between factions which have consolidated power. So, it's one political party in a congealed way against another, as opposed to legislators being elected to represent people and then electing the government. This has effectively done away with the representative system of democracy in our country.

How do you think the law is faring today?

**P.D.T. Achary:** If you look at the scheme of the anti-defection law, you will find that the principal aim was to curb defections. Its most important aspect was that it was seeking to stabilise the party system because in our democracy, political parties are the principal stakeholders; they contest elections. The legislators are members of political parties. The stability of the political system became an imperative. The kinds of defections which used to take place before the passing of this law are not taking place now. But recent events show that this law needs to be tightened.

A little tightening was done earlier by doing away with a split, that is, paragraph three of the Tenth Schedule of the Constitution. It said, if there is a split in a particular party, and one-third of the legislators move along with the breakaway group, they will not be disqualified. So, split was a defence against disqualification. But that was done away with because of the experience which the political class gained. People were misusing that particular provision and breaking up parties.

But now, there is a very disturbing trend, which is to interpret paragraph four (decision on questions as to disqualification on ground of defection) in a particular way, because there is no authoritative declaration of law from the Supreme Court on the exact application of it.

**Ruchi Gupta:** People are principal stakeholders in a democracy; parties are merely the institutional intermediaries. A party's stability is required, but it is unclear why that stability should come on the back of exercising control over the legislators which effectively does away with their representative role in a democracy. Only a handful of countries like Pakistan and Zimbabwe have this law. Otherwise, legislators are well within their right to vote for a measure however they like. And it's not as if the anti-defection law is working as intended either: governments have fallen repeatedly without consequence for the defectors. There are suggestions to fix loopholes such as automatic disqualification, or that the Speaker must address the disqualification petitions in a time-bound manner, but politics of power is too wide to be captured by procedures. The law is trying to use a legal measure to address what is essentially a political problem.

You spoke about a disturbing trend. In Karnataka, some MLAs left the Congress- JD(S) alliance and joined the BJP to form the government. In Maharashtra, the MVA government was toppled as many elected MLAs left the alliance and formed a new government. And in Goa, after elections, the Congress emerged as the single largest party, but many MLAs broke away and the BJP came to power. Do you think political pressure along with monetary gains takes precedence over the anti-defection law?

**P.D.T. Achary:** That is precisely the point. Why do they defect when they are elected? They defect for the lure of office. Ideological defection doesn't take place in India. At least there is no empirical evidence about that. Paragraph four says two things. One is that a member goes to the Speaker and says that the party has merged with another party and me and my friends, two-thirds of the legislative party, agree with the merger. In that case, the Speaker shall not disqualify them. So, this is a defence like the split, which was there earlier. This is a defence which they can put up against the disqualification process. The political class has interpreted this differently. They say that if the legislature party merges with another party, and two-thirds of the

members merge with another party, they will escape disqualification. This is what happened in some of these States.

**Ruchi Gupta:** Politics is always contextual and there's an apprehension that if the anti-defection law is scrapped, it would have a disproportionate impact on the Opposition parties because of how power is consolidated in the ruling party. I think this is a wrong assumption because doing away with the law will also empower legislators within the ruling party to dissent. Even if an MP feels that the law is going against their own constituents and against their own interests, because they would have to face re-election again, they cannot go against the whip. An example is the recent farm laws where members of the ruling party had no option but to side with their party even if they disagreed with the Bill. This has a bigger impact on democratic functioning than party stability alone.

Do you think that the law in its current form is being misused? If yes, would you suggest any changes in it?

**P.D.T. Achary:** It is being misinterpreted as is seen in Maharashtra because there is no authoritative interpretation of the law. Once the Supreme Court lays down the law and says the merger has to take place between two parties and after that, two-third of the members, if they agree with the merger, then they are safe, and if not, they are not safe, must be made clear. In the 10th Schedule currently, there is no timeline fixed for the Speaker to determine the issue and the purpose of this anti-defection law is defeated.

**Ruchi Gupta:** I think the law needs to be scrapped as it is not able to stop defections. Political representatives are smart enough to work their way around loopholes. Talking about party stability, I think that the scope of the statute could be limited to only no confidence motions. If there is freedom of speech [for legislators], there also must be freedom of action.

*P.D.T. Achary is former Secretary General of the Lok Sabha; Ruchi Gupta is Executive Director of the Future of India Foundation*

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