



## Politics of Defection

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This article is based on the **“Does the anti-defection law serves any purpose?”**. It talks about the desirability of Anti-defection law in Indian democracy.

Recently, the Supreme Court has held that it is the Speaker’s discretion to decide on the resignations of the 15 dissident MLAs belonging to the Congress-Janata Dal (Secular) coalition government of Karnataka. The legislators have resigned saying they do not have confidence in the current government while the critics held that these resignations are rendered so to evade disqualification.

The Supreme Court ruled on the Karnataka incidents saying that the Speaker has the complete discretion to decide upon the resignations of the MLAs. The resignation issue has raised some important questions on the working of the anti-defection law.

### What is the Anti Defection law?

The Anti-Defection Law was **passed in 1985** through the **52<sup>nd</sup> Amendment to the Constitution**, which added the **Tenth Schedule** to the Indian Constitution. The main intent of the law was to combat “the evil of political defections”.

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### What is the issue?

- Under **Article 190(3)** of the Constitution, the Speaker has to satisfy himself that the resignations are voluntary and genuine and can reject them if he feels they are not. **The Speaker has absolute discretion in this matter.**
- The resignations were tendered with a view to avoid disqualification pertaining under Anti-defection law.

- As the supreme court in *G. Vishwanathan v. Speaker (Tamil Nadu Legislative Assembly)* 1996 case, held that once a member is expelled, he is treated as an 'unattached' member in the house. However, he continues to be a member of the old party as per the Tenth Schedule. So if he joins a new party after being expelled, he can be said to have voluntarily given up membership of his old party.

However, while deterring defections, the law also leads to the suppression of healthy intra-party debate and dissent.

## Should, the anti-defection law be repealed?

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- According to Edmund Burke's famous speech on representative democracy, the representative should think of what is good for the country and not just for his constituents.
- Due to Anti-defection law, the parliamentary system in India is converted to a de-facto presidential system, as the head of the executive (Prime Minister) also controls the majority party in the legislature.
- Further, while discussing the draft constitution, Dr Ambedkar held that despite the stability inherent in the presidential system, responsibility provided by the parliamentary system is more important in a country like India.
- But anti-defection law has led to the **silencing of dissent in the legislature**, in this light, the anti-defection law has **hallowed the deliberative aspect of representative democracy**.
- Also, features like Anti-defection are generally not observed in mature democracies:
  - Like in UK politics, including the defection of Ramsay Macdonald, the first Labour Prime Minister, in 1931, defected from his party following disagreements on policy responses to the economic crisis.  
Neither Macdonald nor any of his three cabinet colleagues who defected with him resigned.
  - In the US too, Congressmen often vote against the party programme on important issues without actually defecting from the party.

On the positive side, **Anti-Defection law deters the horse-trading in the parliament** as was observed during the decade of 1970-80s.

This anti-defection law has regulated parliamentary behaviour for over the three decades now. Though it has the advantage of **providing stability to governments** and **ensuring loyalty to party manifestos**, it **reduces the accountability of the government to Parliament** and **curbs dissent against party policies**.

## Way Forward

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- The words 'voluntarily giving up membership of a political party' should be comprehensively defined.
- According to 2<sup>nd</sup> ARC, decisions under the Tenth Schedule should be made by the President/ Governor on the binding advice of the Election Commission.
- According to law commission, provisions which exempt splits and mergers from disqualification should be deleted.
- Disqualification should be limited to cases where :
  - a member voluntarily gives up the membership of his political party,
  - a member abstains from voting, or votes contrary to the party whip in a motion of vote of confidence or motion of no-confidence.
- The vote cast by a defector to topple a government should be treated as invalid.

It is not feasible to completely repeal the Anti-defection law, it should be amended appropriately, but the long term solution lies in **checking the political culture** and the legislators who act in unscrupulous ways should be voted out in subsequent elections, as the ultimate sovereignty lies with the people of India.

### ***Drishti input***

The Anti-defection law has provided stability to governments, however, it reduces the accountability of the government to Parliament and curbs dissent against party policies. In this context discuss the viability of repealing Anti-defection law?