



Mains Practice Question

Q. “Parliament is a deliberative assembly, and that the parliamentarian owes his constituents not his industry only, but his judgment” Explain this statement in the context of the Tenth Schedule to the Indian Constitution. (250 words)

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Approach

- Describe the Tenth Schedule of the Indian Constitution briefly highlighting its importance.
- Discuss the issues with anti defection law with respect to roles and responsibilities of the parliamentarians.
- Substantiate your arguments with examples.
- Conclude by assessing the premises of your answer.

Introduction

The Tenth Schedule to the Constitution was added through the **52nd Amendment Act in 1985**. The main rationale of this legislation was to combat **“the evil of political defections”** thus it is also called the Anti-Defection Law. The objective was to enhance the credibility of the Indian polity by addressing rampant party hopping by elected representatives.

- Under the law, the Speaker of the House – in Parliament and the state assemblies – can disqualify Members, if they switch parties or vote/abstain on an issue against their party’s directions (also called the ‘party whip’).
- Members may only defy their party whip if two-thirds of their party decides to defect or rebel against the whip.

Body

In a diverse country like India, legislators also represent their constituencies. Hence, every member needs to be given a voice in order to give voice to all regions and sections of the population which he represents. Anti defection law compromises on this role of the elected representatives in the Parliament and State legislatures.

Issues with the Anti defection Law:-

- **Unsync with original Constitution:** Constitution drafters didn't intend to give the control of members to political parties.
 - The ‘political party’ term is mentioned only in the 10th Schedule of the Indian constitution.
- **Limits Parliamentarian’s freedom of expression:** This law prohibits the elected members to vote within the house as per their choice, conviction and conscience.
 - Freedom to vote or abstain from voting as per conscience is very much part of the constitutional right under Powers, Privileges and Immunities of Parliament granted to the members of parliament.

- **Establishes hegemony of political parties:** This law has led to a situation where the political party has been given a higher decision making power than the parliament and court.
- **Whip undermines individual judgements:** Whip curbs the free individual will of a party member and they are not able to exercise their own judgement and articulate their own opinion.
 - Thus, there is a need to build a political consensus in the country so that enough room can be given for political and policy expression for an individual member.
- **Disincentivizing research in debates:** There is no incentive for members to research and understand policies, as at the end of the day, he has to follow his party whip's order.

Way forward

The Anti-Defection Law has created a democracy of parties and numbers in India, rather than a democracy of debate and discussion. Lawmaking is increasingly driven, not by the compulsive force of a party's argument, but by the brute force of a party's numbers in the legislature.

- Thus, anti defection law **limits real democratic discussions** about major issues affecting the country. Individual MPs and MLAs need to be empowered to think independently. So, in order to promote this:
 - Anti defection law should be applied only to Confidence and No-Confidence motions.
 - The rationale that a representative is elected on the basis of the party's program can be extended to pre-poll alliances.
 - There should be additional penalties on the defectors as well like suspension for a few years from contesting elections.

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