



Time to Review Tenth Schedule

This article is based on [“The absurdity of the anti-defection law”](#) which was published in The Hindu on 26/02/2021. It talks about the issues related to anti-defection law.

Recently, the resignation of MLAs in the Puducherry assembly, yet again, highlighted the absurdity of the [anti-defection law](#). Resignations are done with the intent of 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.

In this way, no MLA has to face disqualification under the anti-defection law. The anti-defection law was included in the Constitution as the Tenth Schedule in 1985 to combat the “evil of political defections.”

The primary purpose was to preserve the stability of governments and insulate them from the defections of legislators. However, the law has reduced legislators to being accountable primarily to the party and failed to preserve governments’ stability.

Issues Related to Anti-Defection Law

- **Undermining Representative Democracy:** There are two broadly accepted roles of a representative, such as an MP in a democracy. One, as agents of the voters, and the other is to exercise their judgment on various issues of public interest.
 - After enacting the Anti-defection law, the MP or MLA has to follow the party’s direction blindly. This leaves them with absolutely **no freedom to vote their judgment on any issue**.
 - It makes the MP neither a delegate of the constituency nor a national legislator but converts them to be just **agents of the political party**.
 - Thus, this provision goes against the concept of representative democracy.
- **Eroding Legislatures:** An important consequence of the anti-defection law is the hollowing out of our legislatures.
 - The core role of an MP to examine and decide on a 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.
- **Undermining Parliamentary Democracy:** While introducing the draft Constitution, Dr. B.R. Ambedkar outlined the differences between the presidential and parliamentary forms of government.
 - According to him, the presidential form had higher stability, but lower accountability as the President is elected for four years, and cannot be removed except for proven misdemeanor.
 - In the parliamentary form, the government is accountable daily through questions and motions and can be removed any time it loses the support of the majority of members of the Lok Sabha.

- In India, this chain of accountability has been broken by making legislators accountable primarily to the political party. Thus, anti-defection law is acting against the concept of parliamentary democracy.
- **No Longer Provides Political Stability:** The Anti-defection law envisages political stability by ensuring that any person disqualified for defecting cannot get a ministerial position unless they are re-elected.
 - However, Puducherry's example shows that the political system has found ways to topple governments by resigning rather than vote against the party.
- **Controversial Role of Speaker:** Resigning from the membership of the House is every member's right.
 - However, according to Article 190 of the Constitution, the resignation **should be voluntary or genuine**. If the Speaker has information to the contrary, they are not obliged to accept the resignation.
 - In many instances, the Speaker (usually from the ruling party) has delayed deciding on the disqualification.
 - The Supreme Court has tried to plug this by ruling that the Speaker has to decide in three months, but it is not clear what would happen if a Speaker does not do so.

Way Forward

- **Strengthening Intra-Party Democracy:** If government stability is an issue due to people defecting from their parties, the answer is for parties to strengthen their internal part of democracy.
 - If people rise within the party hierarchy on their capabilities (rather than inheritance), there would be a greater exit barrier.
- **Regulating Political Parties:** There is an ardent need for legislation that governs political parties in India. Such a law should bring political parties under RTI, strengthen intra-party democracy, etc.
- **Final Authority of Election Commission:** Chairman/Speaker of the house, being the final authority in terms of defection, affects the doctrine of separation of powers.
 - Designating the Election Commission as the final authority in dealing with matters of defections may curb the menace of defection.
- **Restricting the Scope of Anti-defection Law:** In order to shield the detrimental effect of the anti-defection law on representative democracy, the scope of the law can be restricted to **only those laws, where the defeat of government can lead to loss of confidence**.

Conclusion

To sum up, the anti-defection law has been detrimental to legislatures' functioning as deliberative bodies that 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. In this context, it is time to review the Tenth Schedule to the Constitution.

Drishti Mains Question

The premise that the anti-defection law is needed to punish legislators who betray the voters' mandate also seems flawed. Discuss.

This editorial is based on [“Leverage tech for migrants' sake”](#) published in The Economic Times on February 24th, 2020. Now watch this on our Youtube channel.

