



THE ABSURDITY OF THE ANTI DEFECTION LAW

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(Mains GS-2: issues and challenges pertaining to the federal structure/ Parliament and State legislatures—structure, functioning, conduct of business, powers & privileges and issues arising out of these.)

Context:

- **Four Ruling MLAs** have resigned from the Puducherry government led by CM Narayanasamy, throwing the government in the Union Territory in a fresh crisis.
- The sudden and inexplicable **resignations** of ruling MLAs from the Puducherry Assembly have turned out to be an ingenious move to overbalance the government.
- The several MLAs from **the treasury** benches resigned, lowering the numbers required for a no-confidence motion to succeed. This formula also use in Madhya Pradesh and Karnataka.

The anti defection law:

- The anti-defection law was inserted in the Constitution in 1985 by the 52nd Amendment Act to combat the “evil of political defections”.
- The main purpose of the law was to preserve the stability of governments and insulate them from defections of legislators from the treasury benches.
- It lays down the process by which legislators may be disqualified on grounds of defection by the Presiding Officer of a legislature based on a petition by any other member of the House.

- A legislator is deemed to have defected if he either *voluntarily gives up the membership of his party or disobeys the directives of the party leadership on a vote.*
- This implies that a legislator defying (abstaining or voting against) the party whip on any issue can lose his membership of the House.
- The law applies to both Parliament and state assemblies.
- The decision on question as to disqualification on ground of defection is referred to the Chairman or the Speaker of such House, and his decision is final.

Disqualification:

- If a member of a house belonging to a political party:
- Voluntarily gives up the membership of his political party, or
- Votes, or does not vote in the legislature, contrary to the directions of his political party. However, if the member has taken prior permission, or is condoned by the party within 15 days from such voting or abstention, the member shall not be disqualified.
- If an independent candidate joins a political party after the election.
- If a nominated member joins a party six months after he becomes a member of the legislature.

Exceptions:

- Legislators may change their party without the risk of disqualification in certain circumstances.
- The law allows a party to merge with or into another party provided that at least two-thirds of its legislators are in favour of the merger.
- In such a scenario, neither the members who decide to merge, nor the ones who stay with the original party will face disqualification.

Range of the provision:

- 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.
- Thus an MP (or MLA) has absolutely no freedom to vote their judgment on any issue.

Against the concept of representative democracy:

- There are two broadly accepted roles of a representative such as an MP in a democracy.

- They are agents of the voters and are expected to vote according to the wishes and for the benefits of their constituents.
- Their duty to their constituents is to exercise their judgement on various issues towards the broader public interest.
- In exercising their role, they deliberate with other MPs and find a reasonable way through complex issues.
- But 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.
- **They have to blindly** follow the direction of the party. Thus goes against the concept of representative democracy.

A broken chain in India:

- Example of Indian democracy contrast with other democracies.
- 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.
- However, such a decision does not have any legal repercussion.
- This is the core design element of representative democracy. In which legislator is accountable to voters, and the government is accountable to legislators.
- In India, this chain of accountability of MP/MLA has been broken by making legislators accountable primarily to the party.
- This means, anyone from the party has a majority in the legislature which is, by definition, the party forming the government is unable to hold the government to account.
- 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.

Hollowing legislatures:

- **Due to anti defection law, our legislature is hollowing out because** 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.

Intend of our constitution makers:

- 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.
- But the anti-defection law weakens the accountability mechanism.

Against the very idea of anti defection law i.e. stability:

- The anti-defection law now even not ensured stability and India's political system has found ways to topple governments.
- The Constitution was amended to ensure that any person disqualified for defecting cannot get a ministerial position unless they are re-elected
- But as Speaker is usually from the ruling party he deliberately delayed taking a decision on the disqualification
- This led to strange situations such as members who continue to be part of the main Opposition party becoming Ministers (happens in Andhra Pradesh).

A unique method:

- The resignations of MLA lead to the fall of the government and resignations take place only from the ruling parties in the States which are opposed to the ruling party at the Centre.
- In most cases, the resignations are quite unanticipated and reduce the **party's majority** in the House abruptly.
- Resignations are done with such precision that the exact number of MLAs required to reduce the majority resign, not more.
- This mode of toppling a government has an odd attractiveness about it because of its sheer novelty.
- The beauty of this scheme is that no MLA has to defect and face **disqualification** and get a bad name. It is a wonderful way to end defection and save the honour of the legislators.

Supreme court on anti defection law:

- The Supreme Court has tried to plug this instability 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 Supreme Court in *Kihoto Hollohan versus Zachillu*, 1992 has said that judicial review cannot be available at a stage prior to taking of a decision by the Speaker/Chairman.
- Therefore, courts cannot judicially review disqualification proceedings under the Tenth Schedule of the Constitution until the Speaker or Chairman makes a final decision on merits.

Onus is on parties:

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

Conclusion:

- The anti-defection law has become detrimental to the functioning of our legislatures as deliberative bodies which hold the executive to account on behalf of citizens.
- This also turned legislatures into fora to endorse the decision of the government on Bills and budgets and even not done the job of preserving the stability of governments.
- Thus anti-defection laws need to be more rationalised which will help establish a truly representative democracy.

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