



ANTI-DEFECTION LAW: THROWING THE BABY OUT WITH THE BATHWATER?

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A 'whip' was colloquially associated with disciplining horses, and sometimes an errant child, until the Rajiv Gandhi government with overwhelming majority in the parliament amended the Constitution in 1985 to introduce the Tenth Schedule. With the Tenth Schedule, 'whip' became a powerful tool in the hands of political parties to ensure their elected representatives in parliament and state assemblies do not jump ship, or act like horses which could be traded.

The amendment has, however gone way beyond the stated objective of bringing an antideflection law, and has stifled our legislators' freedom to reason, debate, agree, disagree and vote in accordance with their conscience while enacting laws. Unless a legislator is willing to be disqualified, she has no option but to vote on bills based on party leadership's position or whip, effectively turning legislators in parliament and assemblies akin to horses under their master's whip.

Anti-Defection

The Constitutional amendment gave teeth to the whip. No doubt it was a welcome and much needed measure to curb widespread menace of horse trading of legislators, which exposed duly elected governments to instability, and diminished public trust and confidence in the legislators.

The anti-defection law brought in by the Tenth Schedule disqualifies a legislator if she voluntarily gives up the membership of her party or votes or abstains from voting against the whip issued by her party.

It is arguable that disqualification ought to be triggered upon voluntary resignation from the membership of the political party of which the legislator was a member at the time of election. Though a no-confidence motion is considered an important tool of democratic accountability, a disqualification that is triggered due to abstaining from or voting against the whip in case of a no-confidence motion, is also understandable. The contention that if a political party has been voted to power by the public, its legislators have a duty to vote in a manner such that any noconfidence motion against the government is defeated, has some weight. Disqualification in case of defiance of whip in respect of certain bills, such as the money bills, is also understandable, since inability of the government to have such bills passed may paralyze governance and administration, thereby defeating the mandate given by the public. However, the Tenth Schedule does not carve out any exceptions, and defiance of a whip,

which could be issued by party leadership for any motion in the parliament or assemblies, attracts disqualification.

Breaking the Chain of Accountability

The law may have reduced the cases of hard and shrewd bargaining in politics, however, its sweeping and broad ambit has diminished the very foundation of democracy in the country. A democracy of parliamentary form is founded on a two-step process of accountability. One is that the ministers must justify their work in parliament/legislative assemblies, answer questions posed to them and face the possibility of censure or even removal. The second is that members of parliament and members of legislative assembly must defend as well as justify their performance to people at the time of elections. In the present form, the anti-defection law weakens both these aspects. There is no incentive for legislators to air their views or provide suggestions in a non-partisan manner to important bills that have profound impact on everyday lives of citizens. Debates and motions have become mere exercises, already pre-decided by party leadership, rather than exchange of views and deliberations, which is hallmark of a thriving democracy.

Legislators' Independence Compromised

An important role of legislators is to balance party positions with the interests of the nation, their constituencies and their own conscience. However, under the anti-defection law, they cannot vote against their party's stance, even if a bill or provision is detrimental in their own judgment to the nation as a whole, or contrary to their conscience and reasoning. They cannot express agreement with the suggestions of their opposition, nor can they exercise autonomy in their views. The primary duty of any legislator is not to be blinded by allegiance but to give an informed judgment. When the freedom to reason and dissent becomes a ground for disqualification, not only the *raison d'être* for electing legislators is lost, but it also strikes at the very idea of a democracy. This type of straitjacket approach also negates the framers' intent behind adopting a parliamentary system of democracy. Dr. B.R. Ambedkar had stressed that unlike the presidential system, the parliamentary model values accountability over stability, yet the anti-defection law shifts this balance towards party control, which in a way, stifles dissent and legislative scrutiny.

Party Loyalty Over Independent Judgment

The issue is not merely that legislators just have to represent their constituencies, but that the independent judgment must be protected. Legislators often justify their votes by claiming they had no choice but to obey party directives. This makes them less accountable to the electorate and undermines the very foundation of representative democracy. In the truest form of democracy, people elect individuals, not mere numbers. The contrast with other democracies is appealing, for instance, in the United Kingdom, Members of Parliament have often rejected their government's proposed bills and policies despite the official stance of their party. Such acts of independent judgment form the very soul of parliamentary democracy, a spirit that the anti-defection law has profusely curtailed.

Stability Without Deliberation

One could argue that the anti-defection law ensures stability by preventing defections that could topple governments, yet evidence shows that en masse defections through the merger provision (which is an exemption under the anti-defection law), when at least two-thirds of the members of a political party merge with a different political party, continue to destabilise state governments. The promise of stability has not materialised into something fruitful over the years. In fact, such stability has come at the cost of intellectual inertia. When every vote is dictated by the party whip, the legislature loses its power to think and deliberate independently, striking at the very heart of the intent behind a representative legislature.

Towards an Amended Law

Reform committees such as the Dinesh Goswami Committee have recommended limiting the anti-defection law to votes contrary to party's whip that directly determine government stability such as no-confidence motions or even money bills. An amendment to the law would clearly distinguish between the survival of the government and the freedom to make independent decisions as the process of lawmaking must be rooted in reasoned thinking and analysis. An amended and balanced anti-defection law would allow legislators to exercise their judgment freely, ensuring that debates and deliberations remain constructive and meaningful. Such a reform would restore the essence of parliamentary democracy which makes a government accountable not just every five years at the ballot box but every day in the legislature.

Conclusion

The anti-defection law was brought into the Constitution's Tenth Schedule mainly due to the rising problems of defections, instability and opportunism in the political landscape of the country. However, the law has also muffled the independent voices of the legislators and has made them subservient to the directions of their party's leadership. It has eroded their capacity to think independently and to vote in accordance with their conscience and reasoning. The law may have restored a measure of stability to the political system; however, it has done so at the cost of the independence of the legislative mind. Accountability can be brought back when the legislators have the freedom to participate in debates, deliberations, express dissent and vote independently while protecting defections that may hinder the government's tenure. Democracy prospers when legislators can think, not when they merely obey.