
1. Institutional Fixes and the Need for Ethical Politics

Context:

- The Political Skulduggery in Madhya Pradesh represents a New Method of bypassing the anti-defection law and toppling Elected Governments
- Under this Novel Method, a set of Legislators of the party in power is made to resign from the Assembly to reduce the total strength of the House enough for the BJP to cross the halfway mark to form government.

What is Anti-Defection Law?

- The **Tenth Schedule** was inserted in the Constitution in **1985** by the 52nd Amendment Act.
- 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.
- 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
- The law applies to both Parliament and State Assemblies

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 Under the Law:

- 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

Inherent weakness of the law:

- The **Method of mass defection circumvents the provisions of the Tenth Schedule** of the Constitution.
- The recurrence of this model of defection signals the exploitation of the inherent weaknesses of the anti-defection law.
- While solo legislators jumping ship might have reduced now, “horse-trading” seems to have gone from retail to wholesale
- This threatens the underpinnings of India’s electoral democracy since such surreptitious capture of power essentially betrays the people’s mandate in a general election

Rethinking the Law:

- The anti-defection law raises fundamental concerns regarding the role of a legislator in a parliamentary democracy
- It denies the legislator the right to take a principled position on a policy matter and reduces her to an involuntary supporter of the whims of party bosses.
- The constitutionality of the Tenth Schedule was challenged for violating the Basic Structure of Constitution with regard to parliamentary democracy and free speech.
- But the Supreme Court in **Kihoto Hollohan v. Zachillhu (1992)** in a 3-2 verdict upheld the law while reserving the right of judicial review of the Speaker’s decision.
- On the one hand, it severely restricts the freedom of a legislator and makes her a slave of party whips. On the other hand, it has not been able to meet its primary objective of preventing horse-trading and continues to be circumvented to bring down Elected Governments

Reforms Needed:

- As the **Dinesh Goswami Committee** suggested, the scope of the binding whip should be restricted to a vote of confidence. This will ensure free speech of legislator to some extent. **To bar the defected members from contesting in the ensuing by-poll**, if not for a longer period, and thereby disincentivise MLAs from Jumping Ship.

Conclusion:

- Beyond institutional fixes, we also need a popular articulation of an ethical politics that causes the public to shun such Political Manoeuvres.

Source: The Hindu