



The absurdity of the anti-defection law

Bottom Line: It has reduced legislators to being accountable primarily to the party and failed to preserve the stability of governments

Tenth Schedule

The anti-defection law was included in the Constitution as the Tenth Schedule in 1985 to combat the “evil of political defections”. The main purpose was to preserve the stability of governments and insulate them from the defections of legislators. The law stated that any Member of Parliament (MP) or that of a State legislature (MLA) would be disqualified from their office if they voted on any motion contrary to the directions issued by their party.

Range of the provision: Assault on representative democracy

1. 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.
2. It even applies to the Rajya Sabha and Legislative Councils, which have no say in the stability of the government.
3. Therefore, an MP (or MLA) has absolutely no freedom to vote their judgement on any issue. They have to blindly follow the direction of the party. This provision goes against the concept of representative democracy.

Role of Representatives: Relegated to mere agents of Political parties

1. There are two broadly accepted roles of a representative such as an MP in a democracy. One is that they are agents of the voters and are expected to vote according to the wishes and for the benefits of their constituents.
2. The other is that their duty to their constituents is to exercise their judgement on various issues towards the broader public interest. In this, they deliberate with other MPs and find a reasonable way through complex issues.
3. 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.

Example of USA

1. Look at the contrast with other democracies. For example, 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. Such a decision does not have any legal repercussion. Of course, the party may take action (it did not).



2. Also, voters may decide to reject the legislator for re-election — and that is the core design element of representative democracy. The legislator is accountable to voters, and the government is accountable to legislators.

A broken chain in India

1. In India, this chain of accountability has been broken by making legislators accountable primarily to the party.
2. This means that anyone from the party having a majority in the legislature — which is, by definition, the party forming the government — is unable to hold the government to account.
3. Further, 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.

Eroding legislatures

1. An important consequence of the anti-defection law is the hollowing out of our legislatures. If an MP has no freedom to take decisions on policy and legislative proposals, he has no incentive to put in the effort to understand the different policy choices and their outcomes.
2. 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.

The Parliamentary form, Higher Accountability and the Paradox

1. The framers of our Constitution did not intend this outcome. While introducing the draft Constitution, Dr B.R. Ambedkar outlined the differences between the presidential and parliamentary forms of government.
2. 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.
3. 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.
4. The drafting committee believed that India needed a government that was accountable, even at the cost of stability. The anti-defection bill weakens the accountability mechanism.



Inducing instability

What is more, it does not even provide stability. The political system has found ways to topple governments. This includes the methods used in Puducherry this week — of reducing the total membership through resignations. In other instances, the Speaker — usually from the ruling party — has delayed taking a decision on the disqualification.

The onus is on parties

The problem arises from the attempt to find a legal solution to what is essentially a political problem.

Conclusion:

To sum up, the anti-defection law has been detrimental to the functioning of our legislatures as deliberative bodies which 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. And it has not even done the job of preserving the stability of governments. The Tenth Schedule to the Constitution must be repealed.

Should governments regulate online platforms?

Context: Australia's new News Media and Digital Platforms Mandatory Bargaining Code will force platforms like Facebook and Google to pay local media outlets and publishers to link their content in news feeds or search results. The Australian law is being seen as one of the early shots fired in the coming battle by countries to regulate tech giants to take back some of the control they have on global communications.

Dealing with Giants

1. The Australian case tries to deal with two realities. The first is that they have a highly concentrated Internet with Google, for example, accounting for 95% of search queries. Google and Facebook together take 61% of the country's online advertising.
2. The proposed code would require Facebook and Google to open up their algorithmic black boxes, and their datasets that underpin the advertising market, to regulatory scrutiny.
3. It would also enable the Australian Competition and Consumer Commission to compel Google and Facebook to carry certain news services for a yet-to-be specified fee.



4. If the platforms are required by such a precedent for carrying official speech, they can also carry hatred, incitement and all kinds of bad things that Facebook gets accused of having carried in Myanmar.

Problems in regulating the Internet:

1. We're going to hurt ourselves in how we treat the Internet and speech on it. It's important to point out that it's only because of social media that we have #BlackLivesMatter and #MeToo; that the voices too long not heard in the mainstream media run by people who look like me, old white men, are now finally being heard.
2. Part of the problem is that the old voices resent the presence of those voices at the table. So, when we have governments joining together to fight the Internet — we see old institutions, old governments that are challenged by the Internet taking advantage of the moral panic and trying to stop a wind that I don't think can be stopped.

Few Big tech Giants: Advertizing and Misinformation

1. It doesn't help to talk generically about the Internet. It's about this idea that the Internet itself has been hijacked by a small group of companies that are rewiring it.
2. They control audience data, which is the currency upon which this walled-garden version of the Internet works. They also control advertising, which is the money underpinning the so-called free Internet.
3. This rewiring of the Internet was one to bring about the online advertising system with hyper-targeted ads. But it's been hijacked for disinformation operations, and to fan the flames of political polarisation, hate speech, misogynistic abuse, terrorist propaganda — all the stuff that give rise to the moral panic.
4. One is very uneasy about private corporate actors having the power to de-platform the most powerful politician, the U.S. President.
5. But Mr Trump is an index of a bigger problem, that something is fundamentally wrong with a conception of freedom of speech that does not draw boundaries around assaults on democracy.
6. There must be a means — an institutional arrangement — by which those assaults can be brought to heel. Critically, the mechanism cannot be left at the mercy of a handful of private corporations.



Journalism as Public Good and Financing it

Journalism is a service. It has to fundamentally rethink its role in the public conversation. We need a new definition of journalism and a new mission, which is to convene communities into a respectful, informed and productive conversation. We all have to imagine a different future to support a quality public conversation.

We have to realise that journalism has always been a public good in an economic sense. Historically, the general public has never, ever paid the full freight of a general journalistic or news service. It has always had to be subsidised, either by wealthy patrons or by governments in democratic societies through the public service media system — like the CBC here in Canada, the BBC in the U.K. — or by advertising. Now that the advertising subsidy is falling away from journalism, we have to recognise that advertising was never a virtuous means of subsidising the general availability of news. We can come up with some form of public subsidies. This is difficult, but it's been done for half a century in some European countries. Forcing tech platforms to share a larger pie for this may not be a good idea.