

THE HOLLOWING OUT OF THE ANTI-DEFECTION LAW

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Haryana BSP Leader Kartar Singh Bhadana joins the BJP in New Delhi in 2019. | Photo Credit: MOORTHY R.V.

It is highly unlikely that political defections as well as India's anti-defection law will ever not be a part of public discourse. The Speaker of the Maharashtra Assembly, Rahul Narwekar, is currently juggling his responsibilities of presiding over the Assembly's winter session alongside hearing the disqualification petitions against the rival factions of the Shiv Sena.

The anti-defection law, found under the Tenth Schedule of the Constitution, was enacted to curb frequent floor-crossing by legislators. It provides for the disqualification of elected legislators from the legislature in instances where they voluntarily switch parties or vote against the party's direction. But when two-thirds of elected members of a party agree to "merge" with another party, they become exempt from disqualification. Before 2003, there was a provision where, if as a result of a split in the original party, one-third of the members of the legislature moved out of the party, they were exempt from disqualification. However, given its excessive misuse, the provision was omitted by the 91st Amendment to the Constitution.

The years following the implementation of the Tenth Schedule have exposed the chinks in its armour. Political defections have persisted and, more worryingly, gone unpunished or undetected. Owing to the deft use of the exemptions under the Tenth Schedule, political parties have caused democratically elected State governments to fall. In the last 10 years alone, group defections have caused the unravelling of State governments in Maharashtra, Madhya Pradesh, Manipur, Karnataka, and Arunachal Pradesh.

In the splits that occurred in the Shiv Sena and the Nationalist Congress Party (NCP), a group in each of these parties mustered the required two-thirds majority of legislators in the legislature party, and formed a separate faction. The splitting factions of the Shiv Sena and the NCP neither merged with an existing political party nor established a new one. Instead, each of them claimed to be the original political party themselves, and then forged alliances with the Bharatiya Janata Party (BJP) to form or join the ruling government. With the split exception gone, the only protection available to group defectors is that of a merger. However, there was no merger between any two parties in Maharashtra. Needless to say, this will be a concern which factions of both the Shiv Sena and the NCP will have to contend with in the disqualification hearings.

A brief survey by the Vidhi Centre for Legal Policy, of disqualification petitions filed under the

Tenth Schedule before the Speaker of the Uttar Pradesh Legislative Assembly (1990-2008), revealed another practice which can be loosely termed as “splits followed by mergers”. In this trend, an elected legislator (or a group of legislators) would separate from the political party they belonged to, and avail themselves of the exemption given to splits between political parties by forming a group of one-third MLAs of the legislature party. After that, the entire group of splitting legislators would merge with another party. Given that they would merge in full, they would meet the threshold of two-third of the MLAs required to effectuate a merger with another party. From the disqualification petitions surveyed in U.P., several occurrences of splits followed by mergers emerged. In 2003, U.P. MLA Rajendra Singh Rana from the Bahujan Samaj Party, along with 36 MLAs, split to form the Loktantrik Bahujan Dal (LBD). In the same year, these 37 MLAs of the LBD merged with the Samajwadi Party (SP). Similarly, another U.P. MLA, Rajaram Pandey, defected thrice between the Janata Dal, the Lok Janshakti Party, and the Samata Party, to ultimately move to the SP. In many such instances, through a combined use of both these exceptions, MLAs could jump ship more than once, blatantly mocking the anti-defection law.

This trend was also visible in the Haryana Assembly (1989-2011). Some of these splits and mergers happened in quick succession, and sometimes within the same day. For instance, a group comprising Kartar Singh Bhadana and 16 other MLAs split from the Haryana Vikas Party on August 13, 1999, and merged with the Haryana Lok Dal Rashtriya in just three days.

Splitting and merging MLAs were exempted from disqualification under the Tenth Schedule to protect instances of principled defections, especially where MLAs found themselves at odds with the ideology of their original party. However, the practical use of these exceptions belies this expectation, with mergers being engineered strategically to bring down elected governments. The very provisions of the anti-defection law have become a potent tool in the hands of political parties to defeat the object of the law. The way in which the merger provision has come to be used also fuels speculation. In Karnataka, for instance, Janata Dal (Secular) leader H.D. Kumaraswamy predicted the downfall of the incumbent Congress government spurred by the exit of 50-60 MLAs. Irrespective of the veracity of these claims, such speculation is not conducive for the seamless working of a representative democracy. No provision of law should be a fallback option for parties in the Opposition to upend democratically elected governments. The merger exception should be deleted from the Tenth Schedule. That should be the first step towards ridding the Tenth Schedule of its ailments, after which other steps should follow.

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