

EDITORIAL ANALYSIS

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Two judgments and the principle of accountability

- Source: THE HINDU

Prelims:

Anti-defection law, floor test, Tenth schedule, MP/ MLA, Article 239AA, powers of speaker

Mains GS Paper II:

State legislature- functioning, role and conduct of business, role of judiciary in checks and balances etc

Context:- Two Constitution Benches of the **Supreme Court** of India delivered important judgments last week. The first case decided was regarding the Delhi government, while the second case involved the formation of the government in Maharashtra.

Contradiction of Two principle

- **Delhi case:** SC explained that there exists triple chain of command: civil service officers are accountable to Ministers; Ministers are accountable to the legislature; and the legislature is accountable to the electorate.
- **Maharashtra Judgement:** Court stated that 10th schedule marks difference between the legislature part and political party. It ruled that power to issue directions was with the political party and not the legislature party.
- **Contradiction:** The judgement establishes the power of the Party leadership over the legislature. It reinforces the idea that MP/MLA is not accountable to the electorate but only to party. This contradicts the triple chain of accountability.

Anti-Defection Law:

- Its **purpose was to bring stability** to governments by discouraging legislators from changing parties.
- It **sets the provisions for disqualification of elected members** on the grounds of defection to another political party.
- It **allows a group of MP/MLAs** to join (i.e., merge with) another political party without inviting the penalty for defection.
- And it does not penalize political parties for encouraging or accepting defecting legislators.
- **91st Constitutional Amendment Act, 2003**, changed this and now at least **two-thirds of the members** of a party must be in favour of a “merger” for it to have validity in the eyes of the law.



- The **members disqualified under the law** can stand for elections from any political party for a seat in the same House.
- The **decision on questions as to disqualification** on ground of defection are referred to the **Chairman or the Speaker of such House, which is subject to 'Judicial review'**.
- The **law does not provide a timeframe** within which the presiding officer has to decide a defection case.

Grounds of Disqualification:

Elected member voluntarily gives up his membership of political party

If elected member abstain from voting in such House contrary to any direction issued by his political party or anyone authorised to do so, without obtaining prior permission.

If any independently elected member joins any political party

If any nominated member joins any political party after expiry of six months

Problems in the judgment and anti-defection:

- In the **Delhi judgment**, they were clarifying the gaps in the Constitution by using standard interpretation methods.
- In the **Maharashtra judgment**, they were bound in their interpretation by the clear language of the Tenth Schedule.
 - The idea of the anti-defection law contradicts the democratic principle of accountability of legislators to their voters.
- The **anti-defection law** is based on the assumption that any vote by an MP/MLA against the party direction is a betrayal of the electoral mandate.
- The **anti-defection law** upends this design by breaking both links of the chain.
 - Legislators have to obey the party diktat even if that comes in the way of holding the government accountable.
 - They can easily take refuge in their lack of freedom to make decisions if their constituents question them.



- This is clearly a violation of the central principle of parliamentary democracy, which is part of the basic structure of the Constitution.

The problem is with Anti-defection law

Wrong assumption:

The underlying assumption behind the enactment of the anti-defection law is that any vote by an MP/MLA against the party mandate is **treachery against the electoral mandate**. This is faulty understanding of the representative democracy.

Party affiliation is not absolute

While party affiliation is an important element in elections, it is not the sole criterion for voters. Supreme Court has recognised this principle and asked all candidates to disclose information in order to allow voters to take an informed decision.

Example: Karnataka by-elections were triggered due to the defection of several Congress and Janata Dal (Secular) MLAs in 2019. 13 of the defectors contested on a BJP ticket, and 11 of them were re-elected. Thus the electorate endorsed the candidate and not the original party.

Need for a relook

Breaking accountability

There exists accountability of the government to the legislature, and legislators have to justify their actions to their voters in every election. However, anti-defection law breaks this chain.

Relooking SC judgement

SC in 1992 ruled that anti-defection law did not violate the basic structure. A re-examination of this issue is required.

Issues with speaker

Two five-judge Benches have reached opposite conclusions on the Speaker's ability to make independent and impartial decisions.

