

# Does the anti-defection law serve any purpose?

PARLEY

The law is against the principles of representative democracy and needs to be reformed

*The Supreme Court has held that it is the Speaker's discretion to decide on the resignations of the 15 dissident MLAs belonging to the Congress-Janata Dal (Secular) coalition government of Karnataka as and when he considers appropriate. What is the right course of action for the Speaker? Srinivasan Ramani discusses the political saga in the State with P.D.T. Achary and M.R. Madhavan. Edited excerpts:*

**Mr. Achary, the Supreme Court has said that the Speaker has complete discretion in deciding on the resignations of the MLAs. While the Speaker has the duty to verify the voluntary nature of the resignations, does this mean he can question the letters of resignation that were handed over to him in person even if they were in the prescribed format?**

**P.D.T. Achary:** Yes, certainly. Under Article 190(3) of the Constitution, the Speaker has to satisfy himself that the resignations are voluntary and genuine and can reject them if he feels they are not. The Speaker has absolute discretion in this matter.

**In this case, the legislators have filed sworn affidavits in the court saying they have resigned voluntarily. Should this not put the matter to rest?**

**PDTA:** The Constitution is clear on this. Only the Speaker has the discretion to decide whether the resignations were voluntary or genuine. No other constitutional authority can decide this.

**Mr. Madhavan, in the specific case of Karnataka, the legislators have resigned saying they do not have confidence in the current government. The argument being made by their detractors is that these resignations are a ruse to evade disqualification. What is your position on this?**

**M.R. Madhavan:** There are far more fundamental issues to be discussed here. All the institutions including the legislature and the judi-

ciary follow certain rules based on the Constitution. But beyond that, there are certain conventions and assumptions under which these institutions operate. For example, the Speaker... there are only a certain set of rules to be followed by him/her. Beyond that, there is an assumption that the Speaker is a neutral person and acts in good faith. Unfortunately, that assumption has been broken into pieces in our country.

In the last Parliament, there was a no-confidence motion tabled by a set of MPs. The Speaker refused to consider this saying there was too much disturbance in the Lok Sabha, but during the same period allowed the Finance Bill to be passed without discussion. In the elected House prior to this, a similar incident occurred in the way the Reorganisation Bill [that bifurcated Andhra Pradesh] was passed. In the States, in the last Andhra Pradesh Assembly, for example, four MLAs who officially belonged to the YSRCP were in the Cabinet led by Chandrababu Naidu [of the TDP]! Yet the Speaker did not act on their disqualification. What more proof was required to prove that they had switched sides? There is therefore the problem of lack of ethics, and the judiciary cannot do much about this.

In the Karnataka case, the Supreme Court would have embroiled itself in a political crisis and did the right thing by allowing the Speaker the discretion to rule on the resignations.

**Mr. Achary, as Speakers generally belong to the ruling party, they have tended to act less as neutral institutions. In some instances, despite clear cases of defections, Speakers have refused to act. Is this not against the spirit of the anti-defection law?**

**PDTA:** Yes. Speakers have not acted as impartial umpires generally on issues related to defection. There is a basic assumption in the Tenth Schedule that the Speaker will decide things on merit and be impartial. Invariably, they come from ruling parties – Somnath Chatterjee being the Speaker in UPA-1 was an exception. There have been many issues on



which Speakers have not acted – sitting on cases of defection, the way they have conducted proceedings, etc. The anti-defection law is handled by politicians. Also, there have been demands that it should be handled by the Election Commission; politicians have resisted it. They [politicians] being what they are, they have dealt it in their own way.

In the case of Karnataka, there are issues which are quite important. The Supreme Court has said that the Speaker will have the discretion to decide upon the resignations and after that, he has to convey it to the Supreme Court. I have some reservation about this. The Speaker has the authority to decide upon the resignations and no outside authority should come into the picture. Merely because the matter was brought to the Supreme Court and the court has given an interim order doesn't mean that the Speaker's decision should be conveyed back to the court. What happens if the Speaker rejects the resignations – and I think there are reasons for doing so in this case? What does the Supreme Court do?

The other part of the order was that the members are free and nobody can be compelled to enter the House. The ruling party and other parties have the right to issue a whip to their members to attend the House and vote on a measure. I am not able to understand this part of the order. Suppose the MLAs who have resigned do not attend the proceedings despite the whip, they should be bound to face the consequences. I think this part of the Supreme Court order is problematic.

**Mr. Achary, the penalty for defection is disqualification. Doesn't the member, therefore,**

**The law is clear: mergers are between two parties and two-thirds of the members will agree to the merger. Now the practice is the other way around – two-thirds of the members or more move out and then merge with the new party**

**have the right to join another party after resignation? Can a Speaker prevent the member from resigning only to hold him guilty for defection?**

**PDTA:** I think the petitions under the Tenth Schedule in these cases were given much before the resignations. Cases for anti-defection were filed before the resignations came up. Suppose the Speaker refuses to accept the resignations, they will continue to remain members of the ruling party [the Congress] and the party has the right to issue a whip. And if they don't attend the House, they will face the consequences. That is the law. But in Karnataka, every day something new emerges – a trust vote followed by a possible fall of the government and so on. It is difficult to know what lies ahead in such a fluid situation.

**Mr. Madhavan, considering the Speaker is not an impartial person in practice, shouldn't the anti-defection law be implemented by an authority such as the Election Commission? Or should there be a time frame to decide upon actions related to the anti-defection law?**

**MRM:** The Election Commission being impartial is another assump-

tion, probably a reasonable one. But I think looking for another institution to decide on this process is to look for a bureaucratic solution to what is essentially a political problem. The whole problem arises in the anti-defection law itself, which goes against the principles of representative democracy.

If you go back to 1774 to Edmund Burke's famous speech on representation, he said that the representative should think of what is good for the country and not just for his constituents. Similarly, there is a famous speech by Winston Churchill. For him, first came the nation, then the constituents, and then the party. What we have done with the anti-defection law is that we have made every MP or MLA a slave of the party leadership. Invariably, we have converted a parliamentary system to a de facto presidential system because the head of the executive who happens to be the Prime Minister also controls the majority party in the legislature. In essence, the executive and the legislature seem to have merged. We have chosen the parliamentary system, but the anti-defection law has hollowed out the deliberative aspect of representative democracy. To me, there is one solution: delete the Tenth Schedule.

**Mr. Madhavan has a strong view that the anti-defection law has reduced the legislator to a figurehead of the party leadership and is against the deliberative nature of parliamentary democracy. But at the same time, there is an expectation that legislators delineate themselves on ideas and issues, which is why they go to elections for a mandate on the party ticket. Defections reduce them to individuals who seek the loaves of power to move from one party to another. Mr. Achary, how would you address these two aspects and what is your view on the anti-defection law as it exists?**

**PDTA:** When the anti-defection law was passed, people were very afraid about the curbs on freedom of expression and speech of the legislators. The evil that was staring us in our face then was the "Aaya Ram, Gaya Ram" business which was shaking up the entire party system.

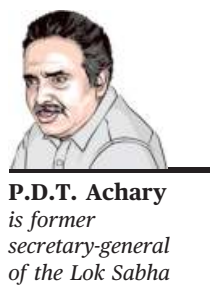
In order to put an end to this and to preserve the party system, the law came about, with some important weapons for the political party. But there are some provisions that are problematic. The law says, for example, that even if a legislator has been expelled by a party and continues to be a member in the legislature, he/she will still be held against the party whip and could be disqualified if he/she voted against the whip's directions. This is illogical.

The Supreme Court has said that when the party issues a whip, it must be for a very important legislative measure or a trust vote on which the government's survival is at stake, for example. For all occasions, parties need not issue a whip. I don't think parties are clearly aware of this. I know instances when the Parliament Secretariat had to circulate this decision by the court to parties. Whips should be used only for crucial issues.

**So, both of you agree that there is a problem with political culture that well-thought-out laws or institutional corrections cannot address?**

**MRM:** I agree to an extent. We certainly need well-thought-out laws. But I think on the question of defections and other acts, the larger society and the electorate need to act on this kind of political culture. Legislators who act in unscrupulous ways should be voted out in subsequent elections. That is how democracy is supposed to work.

**PDTA:** The anti-defection law needs to be looked into again by the lawmakers and reformed in light of the experience of its implementation since 1985. There have been a large number of cases of defections and [look at] how they have been handled. Lately, we have seen people moving out of parties in large numbers and eluding disqualification by suggesting that they have merged with a new party. The law is clear: mergers are between two parties and two-thirds of the members will agree to the merger. Now the practice is the other way around – two-thirds of the members or more move out and then merge with the new party. The law is made to stand on its head by the legislators. In the light of this, if the law, the way it is, has to go, I would agree with that.



**P.D.T. Achary**  
is former secretary-general of the Lok Sabha



**M.R. Madhavan**  
is president of PRS Legislative Research

## A journalist's right to loiter

The intent of the Finance Ministry seems to be to know which official met which journalist and when

ANURADHA RAMAN

Any reporter worth her beat will tell you that the fine art of loitering is a very useful tool in journalism. It is cultivated with patience and honed with experience. Even before the notebook and pen are fished out for a briefing, it is the wait in corridors that helps 'beat' reporters forge relationships with the powers-that-be.

When journalists loiter around a Ministry, they get to speak to a range of people – the support staff who fetch tea for the Minister's guests, the people meeting the Minister, and the senior officials in the Ministry. Sometimes, eye contact with an official allows a journalist access to the official. We journalists earn our spurs when the support staff of a Minister recognise us enough to share dribbles of information that others don't hear. Familiarity with the ecosystem comes from pottering about.

So, it came as a shock when Finance Minister Nirmala Sitharaman made permanent a diktat which was meant to be temporary – namely, keeping the media out as deliberations on the Budget were under way – and said that a procedure has been put in place for "streamlining and facilitating" the entry of media persons inside the Ministry of Finance. She later clarified that there was "no ban in place" for journalists, including those accredited by the Government of India, to enter the Ministry, but that journalists cannot meet officials without prior appointment. This is an unfortunate development. It is the fundamental right of the citizens of this country to be informed about the government, and there are professionals trained in the dissemination of news.

**Anonymous sources**  
During the Atal Bihari Vajpayee regime, senior Ministers of the Cabinet did not bother about journalists waiting around in the corridors of Shastri Bhawan. Often, a Minister would call a reporter loitering in the corridor in for a chat that was informal and completely off the record. We could get

Ministers to comment on issues and report on them. We could write about the meeting without attributing the information to the Minister. Secretaries would inform Ministers when they saw us waiting. Joint secretaries would not shoo us away.

All this was made possible for journalists with accreditation. A Press Information Bureau card is given after the credentials of a reporter – a minimum of five years of work experience in a news organisation and residence proof – are vetted by the Ministry of Home Affairs and verified by the police.

No journalist walks into an official's office unless she is allowed. At best, journalists keep a watchful eye on the visitors walking in with appointments and even throw a question at them as they came out of their appointments. Journalists do this after making calls to their sources to check the visitor's list.

### Keeping watch

The intent of the Ministry seems to be to know which official met which journalist and when. One of the tricks of the profession is to call on the information officer and on that pretext meet the source. But what the Finance Ministry wants to do is to track down critical news to the source. Often, officials are willing to part with information only if they are not named in the report. The Ministry's decision will not only curtail press freedom, but also prevent officials from revealing any information to journalists they trust.

As the Editors Guild said, there is "no dispute with the Ministry that journalists should behave with restraint and responsibility while enjoying their access to the Finance Ministry" but "a blanket order is not the answer". It is a pity that the Ministry has issued such an order, especially at a time when India's ranking in the World Press Freedom Index has fallen by two ranks to 140 out of 180 countries.

The writer is an Associate Editor at The Hindu



## NOTEBOOK

### Rising above sports fandom

Wimbledon ensures that reporters conceal their loyalty towards a player

N. SUDARSHAN

To be a Rafael Nadal fan is to be an underdog. It feels unreasonable, for Nadal is an 18-time Grand Slam champion and a serial winner. But in a universe full of Roger Federer supporters, I have often felt like a mere speck. The American writer David Foster Wallace didn't help matters, as his famous 2006 essay, published in *The New York Times*, titled 'Roger Federer as Religious Experience', made it unfashionable to root for Nadal. "A classic is something that everybody wants to have read and nobody wants to read," Mark Twain once said. Wallace's classic was something I didn't go anywhere near.

Wimbledon 2019, though, changed certain things. Federer and Nadal were drawn to meet in the semifinals for what could potentially be their first on grass since that iconic clash

in 2008. Once the draw held good, friends and family told me to feel "blessed" and "privileged" that I could watch it live. To be sure, I was. But as a reporter deputed to cover it, I had to shed the mask of a fan. In fact, 13 of the duo's 40 meetings have come after I turned a journalist and I have had to write about many of them dispassionately. But not once before was I pressured to look the part even as the spectacle was unfolding.

In a way, sports journalism, more than others, can tolerate some subjectivity but not of the kind that clouds perspective. As my previous Sports Editor, the late Nirmal Shekar, once wrote to all of us, "Sports stories are by nature subjective. They need you to editorialise. Even the smallest things, putting down a wicket to poor judgment instead of sloppy execution, for example, is a judg-

ment call – drawn, of course, from a thorough understanding of the sport you are writing about." To rise above sports fandom is to be accountable, shed biases and provide a fair, comprehensive account of events and act independently. On that Friday, I had to suspend the disbelief that Nadal could lose, even on Federer's favourite surface, despite the Swiss being better on the day, disregard the queries from fellow Nadal fans – there were, of course, only three of them – as to what had come over their hero, and report on it.

Wimbledon, which prizes its etiquette more than any other sporting event, thankfully had a way of settling such nerves. "No cheering or clapping from the press box please," a security officer never tired of telling us. Appreciating a well-executed stroke, be it by any player, shouldn't

## The Hindu

### FROM THE ARCHIVES

FIFTY YEARS AGO JULY 19, 1969

### Meagre rise in profits of banks

The working results of scheduled commercial banks for the first six months of 1969 are yet to be published by many banks as there has been some delay in finalising the accounts. But the earnings of two major institutions, which have been published, seem to indicate that even with a spectacular growth in deposits, it has not been possible to improve profitability significantly as working expenses have been rising and heavy expenditure is also being incurred on the opening of new branches. But there would have been a higher level of gross income if available funds could be used. As the heavy expansion of credit against foodgrains has been effected mainly by the State Bank of India, the credit-deposit ratio of other banks particularly has tended to decline and there has been a heavy accumulation of surplus resources. The banking system, however, is in a position to derive good benefit out of the sizable additions to working funds, if as a result of a revival in economic activity there was an increase in demand for funds.

A HUNDRED YEARS AGO JULY 19, 1919.

### Hockey at Madras. Y.M.C.A. vs. Y.M.I.A.

A rather tame game was witnessed in this match, which came off last evening [July 17] on the Y.M.C.A. grounds, the visitors eventually scoring an easy win by 4 goals to 1. They no doubt proved a bit too good for their rivals, but it was by no means a high standard of hockey that they displayed, for, as it was, the forwards all with the exception of Kesavan looked lifeless, while the defence too were not without their faults, the halves particularly being out of place time and again. As for Kesavan he was however lively all and tricky too but it was all not to much avail for he seemed to think that he alone could do the trick and failed more often than not naturally. Now about Lakshman Rao, he was slow, in fact very slow, and uncertain too in front of goal for want of practice obviously, but he was unquestionably the least selfish of the lot and made some very good passes now and again. Coming now to the halves Ramaswami was without doubt the stand out man, but he must give up the idea of mixing with the forwards on the half chances of scoring, if he really means to serve his side best. Then regarding the backs M.V. Ramanjulu and Sankaran, they looked safe enough last evening, but they have yet to be tested however to know their real mettle.