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Mains Practice Questions

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Q. The anti-defection law works best as an insurance against violation of the people's mandate for a party, but it cannot be made a tool to stifle all dissent. Discuss. (250 words)

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Approach

- Introduce briefly the anti-defection law.
- State the need for anti-defection law and its criticism related to stifling dissents and freedom of expression.
- Give a conclusion

Introduction

- 10th schedule more commonly known as the anti-defection law was inserted in the Constitution in 1985 through 52nd constitutional amendment act.
- It lays down the process by which legislators may be disqualified on grounds of defection by the Presiding Officer of the legislature.
- A legislator is deemed to have defected if he either voluntarily gives up the membership of his party or disobeys the directives of the party leadership on a vote.

Body

Need for Anti-defection law

- **Corruption:** Law seeks to prevent political defections which may be caused by the lure of office or other similar considerations thus deterrent to reduce political corruption and bribery.
- **Political Stability:** Due to the increasing phenomenon of coalition government, the defection of a few individual legislators can cause a collapse of the government. This can give rise to political instability for personal benefits.
- **Party discipline:** Political parties are important institutions in representative democracies. An individual who contests on a party ticket is bound by its electoral manifesto and broad political ideology. When these candidates get elected, political propriety demands that they continue to support the party and its policies, promoting party discipline.

Criticism of Anti-defection law

- **Against freedom of speech and expression of legislators:** It interferes with the freedom of speech and expression of a legislator. A legislator is guaranteed this freedom under various provisions of the Constitution. The anti-defection law curbs this right by mandating that all members must vote strictly on party lines, and in complete obedience to party whips. By doing this, it takes away the ability of a legislator to vote according to his conscience.

- **Prohibit dissents:** It further prohibits voicing dissent against his party's positions and policies, except through intra-party debate. Prohibition against dissent may undermine the role of Parliament as an effective check on the executive. Once a whip is issued by the ruling party in such a House, there can be no dissent or disapproval voiced by any of the members of the party having a majority. This may have a deleterious impact on government accountability.
- **No accountability of legislators to people:** The anti-defection law breaks this accountability link between the elected representative and the voter. Legislators can now claim that they voted in a particular manner because their party required them to do so. Their justification can be that they exercise no control over their vote and therefore ought not to be held accountable for it.
- **Role of Mp's diminished in Parliament:** The anti-defection law also considerably diminishes the role of an MP in Parliament to that of a person who only follows orders of the party whip.

Conclusion

- In the case of *Kihoto Hollohan vs Zachillhu*, it was argued that the anti-defection law is against freedom of speech, the right to dissent and the freedom of conscience. Supreme Court ruled that the law is targeted at addressing unprincipled defections, which cannot be protected under freedom of conscience or the right to dissent or intellectual freedom.
- Thus this law has certain dysfunctional consequences however it is necessary in the present era when dealing with political corruption is an important area of electoral reforms.