
Prelims and Mains focus: about the SC judgement and concerns raised by it for timely disqualification of defecting MPs and MLAs; about the Tenth Schedule

News: The Supreme Court on Tuesday asked Parliament to amend the Constitution to strip Legislative Assembly Speakers of their exclusive power to decide whether legislators should be disqualified or not under the anti-defection law.

Context: On Tuesday, in a 31-page judgment, a three-judge Bench led by Justice Rohinton F. Nariman questioned why a Speaker, who is a member of a particular political party and an insider in the House, should be the “sole and final arbiter” in the disqualification of a political defector.

Background

- This is the second time in as many months the court has highlighted the issue of taking away the disqualification power under the Tenth Schedule from Speakers.

- In a 109-page judgment by a three-judge Bench led by Justice N.V. Ramana in the Karnataka MLAs’ disqualification case, the court had held that a Speaker who cannot stay aloof from the pressures and wishes of his political party does not deserve to occupy his chair.

- This judgment of November last, also urged Parliament to “reconsider strengthening certain aspects of the Tenth Schedule, so that such undemocratic practices are discouraged”.

- The Tuesday judgment came on an appeal filed by Congress legislator Keisham Meghchandra Singh against the Manipur Assembly Speaker for the disqualification of Minister T. Shyamkumar, who after contesting in the Congress ticket, switched sides to favour the BJP.

- The court asked the State Assembly Speaker to decide the disqualification
petition in four weeks. The petitioners were given liberty to approach the Supreme Court in case the Speaker failed to comply.

**Concerns highlighted by the SC**

- It is time Parliament had a rethink on whether disqualification petitions ought to be entrusted to a Speaker as a *quasi-judicial authority* when such Speaker continues to belong to a particular political party either *de jure* or *de facto*.

- For that matter, it asked why disqualification proceedings under the **Tenth Schedule (anti-defection law)** should be kept in-house and not be given to an “outside” authority. **Even the final authority for removal of a judge is outside the judiciary and in Parliament,** it reasoned.

- Only *swift and impartial disqualification of defectors* would give “real teeth” to the Tenth Schedule. The **anti-defection law was enacted in 1985** to weed out corruption and money power from politics. A person who had **incurred disqualification for defection does not deserve** to be an MP or an MLA even for a single day.

**What did the court recommend?**

- Disqualification petitions under the Tenth Schedule should be adjudicated by a mechanism outside Parliament or the Legislative Assemblies. The **court suggested a permanent tribunal headed by a retired Supreme Court judge or a former High Court Chief Justice.**

- The court said the Speakers should decide Tenth Schedule disqualifications within a “reasonable period”. What was ‘reasonable’ would depend on the facts of each case. Unless there were “**exceptional circumstances**”, disqualification petitions under the Tenth Schedule should be **decided by Speakers within three months.** The court noted that this period was ‘reasonable’, as the ordinary life of the Lok Sabha or the Legislative Assemblies was merely five years.

**About the Tenth Schedule**
The Tenth Schedule was inserted in the Constitution in 1985 by the 52nd Amendment Act.

- It lays down the process by which legislators may be disqualified on grounds of defection by the Presiding Officer of a legislature based on a petition by any other member of the House.

- The decision on question as to disqualification on ground of defection is referred to the Chairman or the Speaker of such House, and his decision is final.

- The law applies to both Parliament and state assemblies.

**Disqualification:**

If a member of a house belonging to a political party:

- Voluntarily gives up the membership of his political party, or
- Votes, or does not vote in the legislature, contrary to the directions of his political party. However, if the member has taken prior permission, or is condoned by the party within 15 days from such voting or abstention, the member shall not be disqualified.

- If an independent candidate joins a political party after the election.
- If a nominated member joins a party six months after he becomes a member of the legislature.

**Exceptions under the law:**

Legislators may change their party without the risk of disqualification in certain circumstances. The law allows a party to merge with or into another party provided that at least two-thirds of its legislators are in favour of the merger. In such a scenario, neither the members who decide to merge, nor the ones who stay with the original party will face disqualification.

**Decision of the Presiding Officer is subject to judicial review:**

The law initially stated that the decision of the Presiding Officer is not subject to judicial review. This condition was struck down by the Supreme Court in 1992,
thereby allowing appeals against the Presiding Officer’s decision in the High Court and Supreme Court. However, it held that there may not be any judicial intervention until the Presiding Officer gives his order.

Merits of anti-defection law:

- Provides stability to the government by preventing shifts of party allegiance.
- Ensures that candidates remain loyal to the party as well the citizens voting for him.
- Promotes party discipline.
- Facilitates merger of political parties without attracting the provisions of Anti-defection
- Expected to reduce corruption at the political level.
- Provides for punitive measures against a member who defects from one party to another.

Various Recommendations to overcome the challenges posed by the law:

1. **Dinesh Goswami Committee on electoral reforms**: Disqualification should be limited to following cases:
   - A member voluntarily gives up the membership of his political party
   - A member abstains from voting, or votes contrary to the party whip in a motion of vote of confidence or motion of no-confidence. Political parties could issue whips only when the government was in danger.

2. **Law Commission (170th Report)**
   - Provisions which exempt splits and mergers from disqualification to be deleted.
   - Pre-poll electoral fronts should be treated as political parties under anti-defection
   - Political parties should limit issuance of whips to instances only when the government is in danger.

3. **Election Commission**:
   - Decisions under the Tenth Schedule should be made by the President/Governor on the binding advice of the Election Commission.