



Speaker and Anti-Defection Law

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Why in News

The ruling party crisis in Manipur has raised questions on the **Speaker's powers to disqualify** under the Constitution.

Key Point

- **Background:**

- In 2017, Bharatiya Janata Party (BJP) formed the government in Manipur after seven legislators of Congress joined the BJP.
- The Congress party asked the Speaker to disqualify these seven, but the petitions were kept pending.

According to **paragraph 2(1)(a) of the Tenth Schedule** of the **Constitution, an elected member of the house shall be disqualified from being a member if they win the election as a candidate of one party and then join another.** The power for this disqualification is vested in the Speaker, who is usually a nominee of the ruling party.

- Recently, a crisis in the ruling party emerged because the four MLAs (out of seven MLAs, who had in 2017 jumped to BJP) once again pledged their votes to the Congress and the rest three were disqualified.

- **Role of Supreme Court:**

- Citing the 2016 *SA Sampath Kumar vs Kale Yadaiah and Others case* relating to the disqualification of a Telangana MLA, the Supreme Court directed the Speaker of Manipur to rule on the **disqualification within three months**.
- The Supreme Court also 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 cases of disqualification of a political defector”.
- The Speaker did not take a call on the disqualifications.
- After, the Manipur High Court also passed similar orders relying on the SC verdict, the Speaker finally ruled on the petitions.

The High Court also reasoned that since the remedy under Tenth Schedule is an alternative to moving courts and if the remedy is found to be ineffective due to deliberate inaction or indecision on the part of the Speaker, the court will have jurisdiction.

- **Speaker and Issue of Impartiality:**

- The **office of Speaker** has been criticised time and again for being an **agent of partisan politics** especially in context of **power for the disqualification**.
- The Supreme Court in *Jagjit Singh versus State of Haryana (2006)* highlighted the similar allegations about the confidence on the **role of Speaker** in the matters of impartiality.
- In the *Kihoto Hollohan versus Zachillhu case (1992)*, one of the judges observed that the suspicion of bias on the Speaker’s role could not be ruled out as his/her election and tenure depends on the majority will of the House (or specifically of the ruling party).

- **Suggestions:**

- The Supreme Court has held that the **Parliament** consider taking a relook at the powers of the Speakers citing instances of partisanship.
It has suggested independent **tribunals** to decide on disqualification.
- In Britain, the Speaker is strictly a non-party person. There is a convention that the Speaker has to resign from his party and remain politically neutral. .
Hence, this mechanism can be adopted whereby Speakers need to renounce all political affiliations, membership and activity once they have been elected to the office.

Disqualification under the Tenth Schedule

- The **Anti-Defection Law** was passed in **1985 through the 52nd amendment** to the Constitution. It added the **Tenth Schedule to the Indian Constitution**. The main intent of the law was to combat “the evil of political defections”.

- According to it, **a member of a House belonging to any political party** becomes disqualified for being a member of the House, if:
 - he voluntarily gives up his membership of such political party; or
 - he votes or abstains from voting in such House contrary to any direction issued by his political party without obtaining prior permission of such party and such act has not been condoned by the party within 15 days.

Exceptions to the Disqualification on the Ground of Defection

- If a member **goes out of his party as a result of a merger of the party** with another party. A merger takes place **when two-thirds of the members** of the party have agreed to such merger.
- If a member, after **being elected as the presiding officer of the House, voluntarily** gives up the membership of his party or rejoins it after he ceases to hold that office. This exemption has been provided in view of the dignity and impartiality of the office.

Powers of Speaker with regard to Anti-Defection Law

- Any question **regarding disqualification** arising out of defection is to be decided by the presiding officer of the House.
- After the ***Kihoto Hollohan case (1992)*** the Supreme Court declared that the decision of the presiding officer is not final and can be questioned in any court. It is subject to judicial review on the grounds of malafide, perversity, etc.

Way Forward

- **Impartiality, fairness and autonomy in decision-making** are the hallmarks of a robust institution. It is the freedom from interference and pressures which provide the necessary atmosphere where one can work with an absolute commitment to the cause of neutrality (as a Constitutional value).
- At a time when India's rank has fallen in the latest **Democracy Index** (2019), it is expected from Parliament to take steps to **revamp and strengthen** the institution of the **Speaker**.
- Further, the structural issues regarding the manner of appointment of the Speaker and his tenure in office needs an urgent redressal.

Source: IE