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Disqualification Powers of Speakers

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This article is based on **“Course correction for the Speaker’s office”** which was published in The Hindu on 06/02/2020. It highlights the issues associated with the role of Speaker while adjudicating cases of disqualification of members of the House under the Tenth Schedule.

Recently, the Supreme Court in ***Keisham Meghachandra Singh vs. the Hon’ble Speaker Manipur Legislative Assembly & Ors. (2020)*** case made a significant suggestion regarding disqualification powers of the Speaker. The Court was adjudicating upon the matter relating to the disqualification of Members of the Legislative Assembly (MLAs) in the Manipur Legislative Assembly under the Tenth Schedule.

Court’s Recommendations

- The Court recommended the Parliament to amend the Constitution regarding the **role of Speaker as a quasi-judicial authority** while dealing with disqualification petitions under the anti-defection law (when such a Speaker continues to belong to a particular political party either *de jure* or *de facto*).
- The Court suggested that an **independent tribunal** can be appointed which will substitute the Speaker of the Lok Sabha and Legislative Assemblies to deal with matters of disqualifications under **Tenth Schedule**.
Currently, **disqualification of members of a House/Assembly** is referred to the Speaker of the House/Assembly.
- The Tribunal will be headed by a retired Supreme Court judge or a retired Chief Justice of a High Court. The Court also suggested that some other outside **independent mechanism** can adjudicate on such matters. This will ensure that such disputes are decided both **swiftly and impartially**.

Role of Speaker

- The **sole representative and guardian of powers and privileges** of the members, the House as a whole and its Committees.
- **Principal spokesperson** of the House and represents the **collective voice** of the House.
- **Quasi-Judicial Body:** His/her decision in all Parliamentary matters (including disqualification matters under Tenth Schedule) is **final, binding** and **ordinarily cannot** be challenged in the Court of law. Thereby, Speaker acts as the **ultimate arbitrator**.
 - **For example**, on this question **whether a bill is a money bill or not**, his/her decision is final.
 - **However, on the questions of disqualification of the members**, the Supreme Court in *Kihoto Hollohan vs Zachillhu and Others, 1992* case ruled that the decision of the Speaker in this regard is subject to judicial review.
- **Maintains order and decorum** in the House for conducting its business and regulating its proceedings.
 - Allocates duration for debates, can discipline members of the House, and even override decisions taken by the Committees of the House.
- **Final interpreter** of the provisions of the Constitution of India, Rules of Procedure and Conduct of Business of Lok Sabha, and Parliamentary precedents within the House.

Constitutional Provisions Related to Speaker

- **Article 93/178: Appointment** of the Speaker and Deputy Speaker of the Lok Sabha/ Legislative Assembly.
- **Article 94/179: Vacation/resignation/removal** from the offices of Speaker and Deputy Speaker of the Lok Sabha/ Legislative Assembly.
- **Article 95/180:** Power of the Deputy Speaker or other person(s) **to perform the duties of** the office of or to act as the Speaker of the Lok Sabha/ Legislative Assembly.
- **Article 96/181:** The Speaker or the Deputy Speaker **not to preside** while a resolution for his removal from office is under consideration.
- **Article 97/186: Salaries and allowances** of the Speaker and Deputy Speaker.

Issue of Impartiality

As the office of the Speaker is vested with great prestige, position, and authority, **independence and impartiality of the Speaker** becomes its sine qua non (an essential condition). However, the office of Speaker has been criticised time and again for being an agent of partisan politics.

- 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 ***Kihoto Hollohan 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).
- Also in the recent case of **Manipur Legislative Assembly (2020)**, the Supreme Court **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."
- Hence, there are **structural issues** regarding the manner of appointment of the Speaker and her tenure in office which need urgent redressal.

Possible Solution

- **Adopting Global Practices:** 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. Also, once elected remains in office until retirement, even though the majority may change.
 - Currently, this Convention is not fully established in India where the Speaker does not resign from the membership of the party on his/her election to the office.
 - 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.
- **Time-frame for Adjudication:** Currently, there is **no time frame** to adjudicate cases of disqualifications of members of the House.

However, to contain this liberty of Speaker, the Court in the recent judgment held that, "unless there are any exceptional circumstances, disqualification petitions under the Tenth Schedule should be decided by Speakers **within three months.**"

Conclusion

- **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 out of Parliament to take steps to **revamp and strengthen** the institution of the Speaker.

In this regard, **Jawaharlal Nehru** described: “As the House represents the nation (in a particular way), the Speaker being its sole representative becomes a symbol of the nation’s freedom and liberty. Therefore, this free and honoured position shall always be occupied by persons of outstanding ability and impartiality.”

Drishti Mains Question

Speakers are not apolitical entities and are embedded in party politics. Critically examine.