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Disqualification Powers of Speakers

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Why in News

The Supreme Court has recently held that disqualification petitions under the tenth schedule should be **adjudicated by a mechanism outside Parliament or Legislative Assemblies.**

- The Court has suggested a **permanent tribunal headed by a retired Supreme Court judge or a former High Court Chief Justice** as a new mechanism. This would require an amendment to the Constitution.

Currently, disqualification of members of a House/Assembly is referred to the Speaker of the House/Assembly.

- However, for the present, the court said the Speakers should decide Tenth Schedule disqualifications within a **“reasonable period”**. What is ‘reasonable’ would depend on the facts of each case.
- The Court held that unless there are “exceptional circumstances”, disqualification petitions under the Tenth Schedule should be decided by Speakers within three months.

Logic Behind the Supreme Court’s Judgement

- 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 disqualification of a political defector.
- For that matter, it asked why disqualification proceedings under the Tenth Schedule should be kept in-house and not be given to an “outside” authority. It reasoned that **even the final authority for removal of a judge is outside the judiciary and in Parliament.**
- The Court held that only **swift and impartial disqualification** of defectors would give **“real teeth” to the Tenth Schedule.**

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 (Two cases)

- 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 **Kihoto Hollohan versus Zachilhu case (1993)**, 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.

Note

- This is the **second time in recent months** the court has highlighted the issue of taking away the disqualification power under the Tenth Schedule from Speakers.
- In the **Karnataka MLAs’ disqualification case**, the court had held that a Speaker who cannot stay away from the pressures and wishes of his political party does not deserve to occupy his chair.

Source: TH