

10th Schedule: RSTV – Big Picture

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Context:

Vice President Venkaiah Naidu recently expressed that the time has come to **revisit** the **Tenth Schedule of the Constitution**.

Tenth Schedule:

- The tenth Schedule of the Constitution contains provisions with respect to disqualification **on the grounds of defection**.
- It is applicable to the members of **either house of the Parliament** as well as **either house of the State Legislature**.
- It defines the following terms:
 - **Legislature Party**: The group of all members of the house who belong to a political party.
 - **Original Political Party**: The political party to which a member of the house belongs to.
 - In the Constitution of India, political parties are mentioned in the 10th schedule only.
- An **elected member** of a house belongs to a political party if he contested in the election as a candidate of that party.
- A **nominated member** of a house belongs to a political party if he was a member of the party on the day of nomination.
 - Further, he can become a member of a political party within a period of 6 months from the date on which he takes the seat.

Disqualification on Ground of Defection:

- The 10th schedule lists out the following grounds for defection:
 1. If he has **voluntarily given up his membership** of such political party.
 2. If he votes or abstains from voting, in **contrary to the directives of the political party** or of the person authorised by the party.
- However, he can vote against the directives if he has obtained a **prior permission** from the political party.
- 3. A member who has been elected without being set up as a candidate by a political party shall be disqualified **if he joins any political party** after such election.
- 4. A **nominated member** shall be disqualified for being a member of the House if he **joins any political party after the expiry of six months** from the date on which he takes his seat.

Exemptions in the Case of Mergers:

- A member of a House shall **not be disqualified** if his original political party merges with another political party and he claims that he and any other members of his original political party:
 - Have **become members of such other political party or of a new political party** formed by such merger or
 - Have **not accepted the merger** and opted to function as a **separate group**.

- The merger of the **original political party** shall be deemed to have taken place **if, and only if, two-thirds or more** of the members of the **legislature party** concerned have agreed to it. Prior to the **Constitution (91st Amendment) Act, 2003**, the requirement set was **one-third**

Decision on Questions with respect to Disqualification:

- The question shall be referred for the **decision of the Speaker or the Chairman** of such House and **his decision shall be final**.
- **No court** shall have any jurisdiction in respect of any matter connected with the disqualification of a member of a House under this Schedule.

Rules with Respect to the Schedule:

- The **Chairman or the Speaker** of the House may make rules for giving effect to the provisions of this Schedule.
- The Chairman or the Speaker of the House may direct that any **wilful contravention** by any person of the rules may be dealt with in the same manner as a **breach of privilege of the House**.

Evolution of the 10th Schedule:

- The schedule was added by the **Constitution (52nd Amendment) Act, 1985**.
- The **Constitution (91st Amendment) Act, 2003** made the following changes to the schedule:
 - A member who is disqualified for being a member of that House under the 10th Schedule shall also be **disqualified to be appointed as a Minister** until the time he is re-elected as a member of the house.
 - He shall also be **disqualified to hold any remunerative political post** for the duration of that period.
 - It also states that the size of the council of ministers should not be more than 15% of the total members of the lower house. Since the scope is reduced for attracting members to the ruling party by offering ministerial posts, the amendment acts as a disincentive against defection.

Significance of 10th Schedule:

- The political landscape was infamous for “**Aaya Rams and Gaya Rams**”, that means defection was widespread.
- It had led to **instability of governments**, particularly those formed by a coalition of political parties.
- In 1990, the V.P Singh Government was abruptly ended because 28 members of the ruling Janata Dal party were expelled by the party and later joined the Janata Dal(S) headed by Chandra Shekhar.
 - The Speaker declared the expelled members as ‘**unattached**’, even though the 10th schedule does not mention the term.
 - The schedule does not provide for disqualification of members who have been **expelled** from a party either.
 - The Speaker consequently recognised Janata Dal(S) headed by Chandra Shekhar, which consisted of the 28 ‘unattached’ members.
 - However, few of the 28 members were disqualified eventually.
- There were instances where **minority governments** absorbed **splinter groups** into the ambit of the party and transformed into **majority governments**.
- Members belonging to smaller parties were **offered with ministerial positions** if they undertook defection.
- A number of members of the Houses were accused of accepting **bribe money** for defection.

Is There a Need to Revisit the 10th Schedule?

- In recent years, a number of legislators took to defection in several states including Karnataka, Andhra Pradesh, Arunachal Pradesh, Goa, Manipur, Nagaland, Telangana and Uttarakhand.
- Speaker or the Chairman of the House has been accused of causing **inadvertent delays** in processing the disqualification.
 - They have been accused of resorting to **politically motivated decisions**.
 - Delay caused in the procedure gives the political party **time to persuade the members** to abstain from defection.
- Prior to the dismissal of governments in Uttarakhand and Arunachal Pradesh, the Speakers have allegedly helped ruling parties by using their powers to disqualify MLAs under the Tenth Schedule.
 - When petitions were moved against the acts of the respective Speakers, the Supreme Court held that the Speaker, when he functions as a tribunal, is required to maintain his conduct 'perceptibly impartial' and beyond reproach.
- The question of **betraying the trust of the electorate** needs to be given greater importance.
- The law has been criticised for it has **outlived its utility**. Lawmakers have found ingenious ways to circumvent the law, violating the electoral mandate.
- There is **no external monitor** for whether a party's directives are deviating from its **election manifesto**.
 - If a **particular member of the party wants to stick to the manifesto**, he would be disqualified for not following the latest directives of the party.
 - Party allegiance of the members need to be ensured, but not at the cost of his/her right to dissent if the Party fails to meet the promises set in the manifesto.
- The role of the political party or the **whip** has grown to become larger than the role of elected members:
 - Legislatures are for **debate and discussion without disruption**.
 - However, **individual members** often stay away from personal views, in the fear of disqualification if they went against the party directive.
- There is delay associated with expediting election petitions and corruption cases as well. Combined with the delay in expediting defection cases, it leads to erosion of faith in the mechanism of elections.
- **Caste, cash and criminality** have replaced **credibility, capability and capacity** as the yardstick for anyone to enter the legislature.

Inherent Weakness of the Law:

- There has been apprehension about the '**two-thirds' limit** set by the law with respect to merger.
- The law gives a bad precedent that **defection is bad but merger is alright**; in such a way that retail is bad but wholesale is alright.
- There are **no definitions to the terms** such as split, merger etc. It invites various interpretations of the clauses.
- It gives **immense powers and responsibilities** upon the **Speaker or the Chairman**.
- The members of the party, which chose to merge with another one in a particular house, may still have representatives in other houses, who are not associated with the merger.

Judicial Intervention:

- The 10th schedule **bars any court** from having any jurisdiction in respect of matters connected with the disqualification of a member of a House under the Schedule.
- Further, **Articles 122 and 212** expressly prevent intervention of courts in the **proceedings of Parliament and State Legislature**
 - The doctrine of **Basic Structure**, as declared in the **Kesavananda Bharati vs. State of Kerala** consequently include bar of formal jurisdiction related to **Articles 122 and 212**.
- However, the power of the Supreme Court and the High Courts with respect to issuing **writs**, as given by **Articles 32 and 226**, remain applicable.

- In **Chandra Kumar vs. Union of India**, the Supreme Court held that if any provision of any law takes away the writ jurisdiction of any court, it will be deemed as a violation of the basic structure of the Constitution.
- In the **Kihoto Hollohan vs. Zachillhu and Others** verdict, Supreme Court laid down a balance between the **judiciary's intervention** and the **level of autonomy and discretion of speaker** with respect to disqualification on the ground of defection:
 - 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** and **allowed appeals** in the Supreme Court and High Courts against the Presiding Officer's decision.
 - However, it held that there may **not be any judicial intervention until the Presiding Officer gives his order.**
 - In 2015, the **Hyderabad High Court, refused to intervene** after hearing a petition which alleged that there had been a delay by the Telangana Assembly Speaker in acting against a member under the anti-defection law.

Way Forward:

- The restructuring of the schedule must take into account the **free and fair will of the elected representatives as well as the electorate.**
- A revisit to the schedule must **redefine what amounts to defection**, considering individual members' rights to dissent against party directives.
- Political **parties issue directions to MPs** on how to vote on most issues, irrespective of the nature of the issue.
 - Several experts have suggested that the law should be valid **only for those votes that determine the stability of the government** (Report of the **National Commission to review the working of the Constitution**)
- There shall be a **time bound process** for speaker's decision on such cases.
- Voters' mandate and choices could be more prioritised through the introduction of provisions such as the **right to question or recall** the elected representative.
 - Former Speaker of Lok Sabha **Somnath Chatterjee** had supported introducing such procedures.
 - It will be a tribute to **Direct Democracy** as well.
- Parties shall be allowed to undertake **merging** only if they are willing for the same in every Houses in which they have a representation.
- **Very specific rules** need to be made to **avoid arbitrariness** and to inspire confidence in the electorate.
- The proposed amendment and rules should be displayed on the internet and **comments of the civil society and academicians** need to be considered before expediting the changes.
- Political parties need to encourage **intra-party democracy and internal dissenting.**

Alternate Mechanisms:

- The powers with the Presiding officer can be dissipated to a **Committee** consisting of an **odd number** of members such as the Presiding officer (as the chairman), a retired member of the judiciary and an expert of Constitutional matters.
 - The committee may **put pressure on speaker** to expedite the procedure of disqualification promptly.
- A **separate tribunal or special court** can be set up to speed up the proceedings. However, it will be a **significant departure** from the exclusivity of the Legislature from the Judiciary.
- The **Election Commission (EC)** could be assigned with additional responsibilities in deciding disqualification of members.
 - However, the **integrity of EC** has already been questioned by a number of opposition parties.

Assigning powers related to disqualification of elected representatives, which involve intensely **political underpinnings**, may further erode the faith in the non-partisan status of EC.

Conclusion:

The Constitution of India gives more importance to the **primacy of the electorate and the elected representatives**. However, the 10th Schedule empowers political parties disproportionately. An amendment to the schedule should amount to the restoration of faith in **Representative Democracy**.

