

Welcome assertion: The Supreme Court's on the defection issue

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Context:

Supreme Court (SC) of India has fixed a deadline for the Maharashtra Assembly Speaker to adjudicate on petitions seeking the disqualification of members who had broken away from the leadership of the Shiv Sena and the Nationalist Congress Party (NCP).

Disqualification of legislators:

1. Constitutional provisions consist of Articles 102 & 191: The basic disqualification criteria for an MP are outlined in Article 102 of the Constitution, while those for an MLA are outlined in Article 191.
2. Grounds for disqualification under the Constitution include conditions like holding a profit-making position in the Government of India or a state government, Being of unsound mind, being an unpaid insolvent, not being an Indian citizen, or acquiring citizenship of another country.
3. Article 102 also empowers the Parliament to enact legislation governing the conditions of disqualification.

Anti-defection law (ADL) and 10th schedule:

Parliament added 10th schedule to the Constitution via the 52nd Amendment Act, 1985. Grounds of Disqualification under the law are:

1. If an elected member voluntarily gives up his membership of a political party.
2. If s/he votes or abstains from voting in such House contrary to any direction issued by his political party or anyone authorized to do so, without obtaining prior permission.
3. If any independently elected member joins any political party.
4. If any nominated member joins any political party after the expiry of 6 months.

Role of Speaker:

1. Pressing officers of the legislature are empowered to take the final decision in matters of disqualification of legislators under 10th schedule, although after Kihoto Hollohan case (1992), their decision in the matter is now subject to judicial review (eg, on grounds of mala fide/bad intent etc).
2. There is no clarity in the law about the timeframe for the action of the House Chairperson or Speaker in the anti-defection cases. In the Maharashtra assembly case, it has been pending since July 2022.
3. Long experience shows that Speakers tend to treat disqualification issues with great alacrity or supine indifference, depending on their political affiliations. Despite being reminded from

time to time of their duty to remain neutral and demonstrate a sense of urgency in dealing with questions arising out of the Tenth Schedule of the Constitution, presiding officers appear to place political loyalties above their constitutional duty.

Role of the judiciary:

1. It is quite fitting, therefore, that the apex court has asked Speaker Rahul Narwekar to decide the disqualification petitions against Chief Minister Eknath Shinde's camp by December 31 and those concerning the NCP's breakaway group headed by Deputy Chief Minister Ajit Pawar by January 31, 2024.
2. The directions are a natural followup to the outcome of a Constitution Bench decision on May 11, 2023, in which the Speaker was asked to decide the disqualification issue "within a reasonable period".
3. None can dispute that the Speaker has had enough time to decide the matter, even though a few procedural aspects and the clubbing of petitions may account for some delay. In an earlier order in September, the Court had observed that it expected the Speaker to show deference to its directions, especially when he is acting as a tribunal under the Tenth Schedule.
4. Even without judicial orders, the issue of whether a member has incurred disqualification is not a matter which can be dealt with in a leisurely or partisan manner. Recent political history is rife with instances of ruling parties casually recruiting members of the Opposition in several States without any fear of disqualification, as they know that friendly Speakers will not disqualify them.

Way forward:

So long as the Speaker is vested with the authority to adjudicate disqualification issues, it will be difficult to free matters of defection from the thicket of politics.

India may examine following the UK model regarding the position of the Speaker, whereby a legislator elected as Speaker to the House resigns from his/her political party membership in order to remain neutral in his/her functions.

