# All about Tenth Schedule

## Why in news?

Maharashtra Speaker's interpretation of the anti-defection law could be challenged in the Supreme Court.

## What is the issue?

- Maharashtra Assembly Speaker has refused to disqualify 40 MLAs of the Eknath Shinde faction after recognising it as the real Shiv Sena and held the appointment of whip by this group as valid.

  *A 'whip' is a member of the legislature party in a House who is appointed as such by the respective political party.*

- He also did not disqualify 14 MLAs of the Uddhav Balasaheb Thackeray (UBT) group.
- The speaker said the Tenth Schedule of the Constitution could not be invoked to quell "intra-party dissent and indiscipline".

To know about the political crisis in Maharashtra click here

## What are the provisions under 10th schedule?

- **Anti-defection law-** It punishes individual MPs/MLAs for leaving one party for another.
- It was added by ***52nd Constitutional Amendment Act*** as the Tenth Schedule in 1985.
- It was a response to the toppling of multiple state governments by party-hopping MLAs after the general elections of 1967.
- **Deciding authority**- ***The Presiding Officer of the House*** is empowered to make rules to give effect to the provisions of the 10th schedule.
- **Role of judiciary-** The decision can be challenged before the higher judiciary.

| Type | Defection |
|---|---|
| **Member of political party** | • Voluntarily giving up the membership of political party (or)<br>• Voting or abstain from voting in that House contrary to the direction issued by the political party |
| **Independent candidate** | • If an MP/MLA who has been elected as an independent candidate joins a political party later |
| **Nominated member** | • If nominated legislators joins a political party after 6 months of being appointed to the House |

| Exemptions |
| --- |
| • The law allows a group of ***two-third MP/MLAs*** to join (***merger***) another political party without inviting the penalty for defection.<br>• If a person is ***elected as the Speaker of Lok Sabha or the Chairman of Rajya Sabha***, then he could resign from his party and re-join the party once he demits the post.<br>***91st Amendment Act, 2005*** *deleted the exemption from disqualification in case of split by 1/3rd members of legislature party.* |

## What are the issues in the Act?

- **Time limit**- The law ***does not provide a time-frame*** within which the presiding officer has to decide a defection case.
- **Favouritism**- The deciding authority is expected to perform this constitutional role in a neutral manner, but the past instances show that the Speakers have favoured the ruling dispensation.
- **No liability for political party**- It only punishes legislators for switching parties but political parties who are at the heart of the politics have no liability under the law.
- **Problem with merger**- The exception provision for merger is based on the number of members rather than the reason behind the defection.
- **Limited scope**- The law focuses on voluntary defection and remain silent about expulsion of member from the party.
- If expelled then such member would be an independent in the House with the option of joining another party.
- **Unable to curb instability**- The mass departures of rebel legislators have become political normal thus disrupting the governance.

## What are the reforms needed?

- **Three test formula-** It was laid by the Supreme Court in 1971 for determining which faction is to be recognised as the original political party by the Election Commission.
    - Aims and objects of the party
    - Its affairs as per the party's constitution that reflect inner party democracy
    - Majority in the legislative and organisation wings
- **External mechanism**- An independent tribunal is the need of the hour to prevent the Speaker from acting on partisan lines and acting in an undemocratic manner.
- **Internal democracy**- Regular inner-party elections in our political parties is needed with strict monitoring by the Election Commission.
- **Ethics committee**- Active involvement of Ethics committee as done in Cash for Query case can help in horse trading of legislators.
- **Deciding authority**- As per ***2nd ARC recommendation***, the issue of disqualification of members on the ground of defection should be decided by the *President/ Governor* on the advice of *Election Commission.*
- **Narrowing the definition of defection**- Defining actions or conduct which constitutes defection that does not inhibit independent thinking and expression by legislators.

To know about reforming anti-defection laws click here

## References


1. The Hindu- Understanding 10th Schedule


