Gujarat Rajya Sabha Election

Why in news?

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Two votes cast in Gujarat Rajya Sabha election were invalidated, when two electors cast their ballots and showed it.

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What is the ground for invalidation?

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- As per the Conduct of Election Rules 1961, Rajya Sabha elections calls for a ballot-in-secret.
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- Rule 39A mandates that the elector cannot declare his/her ballot to anyone.
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- Any deviation in this results in the invalidation of the ballot by the presiding officer.
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How can secret voting be achieved?

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- Secrecy aims to protect the vote as it affords the right to the voter to keep silent over the choice of candidate.
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- This is achieved by two means - The duty-based measure and the rights-based measure.
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- **The rights-based measure** provides the voter the right to keep his/her vote secret.
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- According to this, election authorities should provide voting facilities that do not disclose the vote. But the voter can choose not to opt for secrecy.
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- **The duty-based measure** imposes secrecy as a statutory duty not only on the election authorities but also on the voter.
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- The voter even by his/her consent cannot declare his/her choice; doing so would invalidate his/her vote.
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- Rule 39A creates secrecy in the nature of a duty-based measure.
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What are the flaws in this system?

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- It is argued that the voter should not be given an option to declare his/her vote because the flexibility would allow others to pressure the voter informally into declaring his/her choice.
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- In reality, Rule 39AA of the Conduct of Election Rules defeats this purpose.
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- Rule 39AA mandates that an elector belonging to a political party must declare his vote to the party agent, if the political party has issued a whip regarding the vote.
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- Refusing to do so is a violation of the election procedure and the vote stands invalidated.
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- It allows for internal voter intimidation by parties.
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- Also, Rule 39A applies only while the election process is underway.
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- It does not prohibit a voter from declaring his/her vote after the process is completed.
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- It cannot control the behaviour of the elector outside the ballot box.
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- Therefore, the scheme of duty-based secrecy fails.
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What should be done?

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- Universal declaration could ease the political pressure that an elector might face.
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- Ballot secrecy should be guided by the idea of “consent” or "choice"; the means to adopt should be the rights-based measure.
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Source: The Indian Express

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