

ISSN: 2582-6433



INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS

Open Access, Refereed Journal Multi Disciplinary
Peer Reviewed 6th Edition

VOLUME 2 ISSUE 7

www.ijlra.com

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ANTI-DEFECTION: SHIV SENA CASE

AUTHORED BY - MAHI DHAKAD

Schedule 10 of the Constitution

52nd Constitutional Amendment Act, 1985 added Schedule 10 in the Constitution which talks about Anti Defection. It provides Grounds for Disqualification, its exception and procedure.

History of Anti-defection Law in India

In 1967, an MLA, Gaya Lal, changed his party 3 times in a single day. A saying became famous at that time: “Aaya Ram Gaya Ram”. Due to such acts, corruption was encouraged among members. Thus, Anti-Defection Law became necessary.

Grounds Of Disqualification

- If an elected member willingly gives up his membership in a political party.
- If an elected member votes in the house against any instructions given by his/her political party or abstains from voting.
- If any independently elected member joins any political party.
- If any nominee joins a political party after a period of 6 months.

Exceptions

- If a person's original party combines with another (applicable only if more than $\frac{2}{3}$ of the party's members have approved the merger), they are not automatically banned from running for office.
- Any person elected as chairman or speaker can resign from his party and rejoins the party if he demits that post.

Procedure

- Defection cases can be only taken if the presiding officer of a house receives a complaint. The Presiding Officer of a house is empowered to make rules to give effect to provisions of the 10th schedule.

All rules must be placed before the house for 30 days.

- Before taking the final decision, the officer must give the member a chance to submit his explanation. Presiding Officer can also refer the matter to the committee of privileges for inquiry.

The decision can be questioned in a court of law, as while deciding a question under Schedule 10th the presiding officer acts as a tribunal.

Shiv Sena Case

Facts:

Uddhav Thackeray, a leader of the Shiv Sena and the Maha Vikas Aghadi (MVA), was sworn in as Maharashtra's chief minister on November 28, 2019. The Shiv Sena, Nationalist Congress Party, and Indian National Congress have joined forces to form MVA.

According to a number of Shiv Sena MLAs led by Eknath Shinde, Uddhav Thackeray's choice to associate himself with Congress and the Nationalist Congress Party was contrary to the party's Hindutva doctrine. This rebellion occurred in June 2022.

On June 25, 2022, the Thackeray group delivered a notice for acting against party interests and began disqualification procedures against the dissident group. The notification was handed to the rebel group with 48 hours to reply.

On June 26th, 2022, Mr Shinde filed a petition with the Supreme Court of India disputing the actions taken to remove him and the other "rebel" MLAs from office.

On June 27, 2022, the highest court extended the deadline for filing answers to the disqualification letters, providing interim respite to Shinde.

Later, on June 29, it approved the governor's request for a floor test. Uddhav Thackeray resigned as

chief minister because the Maha Vikas Aghadi administration lacked the necessary support. With the support of the BJP, Shinde took the oath of office as chief minister.

The Thackeray camp subsequently petitioned the Supreme Court. According to Bar and Bench, one of them contested the governor of Maharashtra's summons to the legislature. It has also contested the speaker's decision to remove Ajay Chaudhary and Sunil Prabhu from their positions as the leader and chief whip of the Shiv Sena Legislative Party.

Issues:

1. Can a court rule that a member is presumed to be disqualified by virtue of his or her acts without a decision by the Speaker? Does the Speaker's notice of removal prevent him from continuing the disqualification process under Schedule X of the Indian Constitution?
2. What authority does the Speaker have to choose the whip and leader of the parliamentary party's house?
3. Does the governor have the authority to invite someone to form the government and is this decision subject to judicial review?
4. How far does the Election Commission of India's authority extend in terms of preventing an ex-parte split within a party?

Arguments:

By Uddhav Thakrey's Faction

The Thackeray team maintained that the June 27 and June 29 court rulings had led to the election of the new administration. In accordance with its ruling from June 27, the Apex Court awarded Eknath Shinde temporary relief by extending the deadline for submitting his reply to the disqualification letters.

Later, on June 29, the court approved the governor's request for a floor test. The Thackeray faction requested the restoration of the status quo ante as of June 27, 2022, arguing that if there was one initial error in a court order, all subsequent consequences would be nullified. This would put the parties back in the same situation as they would have been had it not been for the court's interim orders.

Additionally, it was asserted that ECI had noted a rift inside the party. The only defence against

disqualification under the Tenth Schedule, which excluded split as a defence, was a merger with another party.

It was suggested that such appointments should be made by the Party Chief rather than the Speaker. The Speaker has demonstrated clear prejudice in making these nominations.

Additionally, it was contended that the Election Commission, rather than the Governor, was the entity with the legal authority to recognise and legitimise the conduct of renegade MLAs of political parties.

By Eknath Shinde's Faction

The Shinde side asserted that once the Ministry's help ended, the governor was left with little alternative except to conduct a floor test. Given that a sizable number of MLAs had written to him to inform him that the Ministry no longer had a majority, the Governor was correct to ask for a floor test.

As long as the Shinde side claimed to represent the authentic Shiv Sena, which the Indian Election Commission had formally recognised, there were no conversations about a "split" within the party, according to them.

Because Uddhav Thackeray never underwent the floor test and left office before the same thing could happen, it was contended that the "floor test"—used by the Thackeray side to argue that the new administration would not have been elected but for the court orders—could not apply in the current situation.

Additionally, it was asserted that disagreement within parties was not only lawful but also a necessary component of democracy and the constitutional system.

The Shinde group also argued that politicians, not the courts, should have jurisdiction over the situation. It was contended that the Speaker could not identify which group was the actual political party while using his or her authority under the tenth schedule since the Election Commission should be the one to make such a determination.

Judgement:

The bench issued a warning, stating that the governor could not have intervened in the intra-party

conflict by ordering the floor test, especially in the lack of any "objective material" to undermine the House's inherent faith in a democratically elected administration. It said that letters from several MLAs (or even the then-Leader of the Opposition in this case) asking the Chief Minister to demonstrate his majority do not when considered individually, amount to a valid cause to call for a floor test.

The MP Political Crisis case, which ruled that the choice to call for a floor test should be based on objective information and reasons that are pertinent and relevant to the exercise of discretion and not unrelated to it, was often cited by the Court.

The Governor should not use their discretionary authority to topple or undermine democratically elected governments, the Court underscored.

Because he lacked evidence supporting his assertion that Mr Thackeray had lost the confidence of the House, the Governor was not justified in asking Mr Thackeray to demonstrate his majority on the House floor.

The Governor was right to ask Mr Shinde to form the government, but the status quo ante cannot be returned because Mr Thackeray did not submit to the floor test and resigned his resignation.

According to the ruling in Shrimanth Balasaheb Patil, activities or occurrences that occur after the commission of the behaviour forbidden by the Tenth Schedule do not have an exonerating impact since disqualification is based on the date on which the act of defection occurs.

In other words, future behaviours or occurrences do not absolve the actor of the repercussions that result from their actions. This is in accordance with the ruling in Rajendra Singh Rana (previous). The nomination of Mr Shinde is thus not prohibited by Article 164(1B) of the Constitution.

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