

## **Amid the surge of Maharashtra Political crisis, the Apex Court calls for strengthening the Anti-Defection Law again**

Certain comments made by the Supreme Court on the rising trend of poaching lawmakers and organising unrest to overthrow elected governments take importance in light of the political turmoil that is currently engulfing Maharashtra.

The Supreme Court made its comments in cases involving Karnataka and Madhya Pradesh, where scenes of a group of ruling coalition MLAs declaring an instantaneous rebellion, the rebel MLAs remaining disconnected from the rest of the coalition and confining themselves to locations (often resorts in other states), and the government collapsing due to a lack of the necessary number of MLAs were all too common. The same events are taking place in Maharashtra, where the rebel leader Eknath Shinde and his followers evade capture before being apprehended in Gujarat. The rebel MLAs were flown to Assam in the early hours of morning.

Shinde claimed to have the backing of 40 MLAs in a media interview. If the allegation is accurate, the rebels will be able to avoid facing disqualification under the Constitution's Tenth Schedule. Because, according to Section 4 of the Tenth Schedule, a merger or split involving at least 2/3 of the members of the parliamentary party (the Shiv Sena has 55 members, making the 2/3rd figure 37) is not recognised as a "defection."

The Speaker has no power to reject the MLAs' decision to resign, which they may also exercise. According to the Supreme Court's decision in the Karnataka MLAs case (2019), the Speaker is not permitted to enquire into the resignation's rationale and is also not permitted to dispute the assertion that it was prompted by political pressure. The court ruled that the Speaker may only determine if a resignation was "genuine" and "voluntary" in the case (*Shrimant Balasaheb Patil vs. Hon'ble Speaker, Karnataka Legislative Assembly*). "Genuine" refers to whether or not the resignation letter is genuine and not a forgery. The Court also declared that "*when a member is resigning on political pressure, he is still voluntarily doing so*".

Court calls for improving the 10th schedule in response to worries it has regarding "horse trading" tendency that denies citizens stable governance.

The Supreme Court issued stronger comments on the practise of poaching lawmakers in the case involving the Madhya Pradesh political crisis in 2020 (*Shivraj Singh Chouhan v. Speaker, Madhya Pradesh Legislative Assembly*).

Justice DY Chandrachud said that breakdown in the structure and loyalties of the political party as a result of private allures provided to members is being witnessed more frequently. He labelled such activities as poaching, political bargaining, and horse-trading as "burgeoning evils".

The Supreme Court stated in the Kihoto Hollohan case that the tenth schedule aims to address "unprincipled defection which is a political and social evil." However, some legislators get away with it because to a few legal loopholes. One is the resignation method, which is used to avoid disqualification. There is no recourse against legislators who choose to leave solely in response to a financial offer or pressure from another party, despite the Supreme Court's ruling in the Karnataka MLAs case that the resignation would not nullify the effect of the disqualification already suffered. The Court's justification

for considering resignation to be voluntary even in the face of such political pressure is flawed. It might be necessary to reconsider this definition of "voluntary."

Another drawback is that the legislation permits a legislator who is disqualified due to defection to run for office again even while the current parliament is still in session. In the Karnataka MLAs case, the Supreme Court ruled that the Speaker does not have the authority to expel a delinquent member before the assembly term of office is over. As the defected members may return to the same assembly on a new policy agenda, this could make a mockery of democracy. As a result, political opportunists and traitors benefit more.

If defection is a "social and political evil," then those who engage in corrupt electoral behaviour or are convicted in the defined offence shall be disqualified for a specific number of years, as provided in the Representation of the Peoples Act.