

EDITORIAL ANALYSIS → 13 MAY 2023 → THE INDIAN EXPRESS:

ROLE OF GOVERNOR:

- **Context:**

- The Uddhav Thackeray government cannot be reconstituted because there was no floor test conducted and a voluntary resignation was made, according to the most recent Supreme Court decision on the roles of the governor and speaker in Maharashtra.

- **Important aspects of the decision:**

- **Governor's Function:**

- Because the MLAs' resolution letter did not explicitly state that they wanted to leave the government, the Governor did not have enough unbiased material evidence. His request for a floor test was therefore unlawful.
- Additionally, the Council of Ministers must be consulted in order for the Governor to utilise his or her right to summon the House under Article 174 of the Constitution. It is prohibited and against the law to exercise it without the assistance.
- It is impossible to settle party disagreements by a floor vote.

- **the speaker's role:**

- In accordance with the Tenth Schedule of the Constitution, the Speaker is only required to recognise the whip that the political party has appointed.
- As a result, the Speaker's action in recognising the whip based on the decision of the opposing faction within the party was illegitimate since he did so without checking to see if the decision was made by the political party as a whole, not only the legislative party.

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- Additionally, the disqualification petitions of 16 dissident MLAs in the Maharashtra Assembly must be decided by the Speaker "within a reasonable period." This case has been waiting before the Speaker since last year.
- Election Commission's Functions:
- The Tenth Schedule gives the Election Commission and the Speaker the authority to decide on petitions that are brought before them while simultaneously determining whether political party is involved.

- **Why the opposition MLAs are still in the House:**
- According to the Nabam Rebia ruling from 2016, the assembly speaker cannot move on with a request for the disqualification of MLAs if a prior notice requesting his removal is still pending before the House.
- The renegade MLAs were able to stay in the assembly thanks to the judgement, which benefited the faction commanded by Mr. Shinde.

- **Real Shiv Sena, according to the Election Commission's judgement:**
- The Eknath Shinde faction has been given the party name "Shiv Sena" and its bow and arrow emblem by the Election Commission of India (ECI). The Election Commission's decision took into account a number of factors and was based on the Election Symbols (Reservation and Allotment) Order, 1968.
- Key justifications for the judgement include
- The ECI took into account the party constitution's goals and objectives. The Uddhav faction was accused by the Eknath Shinde faction of deviating from the party's "aims and objects" by forging a partnership with groups with opposing views, which included the main cause of dissatisfaction and discontent among the party's rank and file.
- Despite being requested, the Election Commission should have been informed of the revision to the party constitution that Uddhav Thackeray made in 2018 and the process of doing so. The Shiv Sena's 1989 registration requirements, which the party's new constitution violates, were filed to the Election Commission.
- The Representation of People's Act of 1951's Section 29 A and the current Election Commission recommendations on the registration of political parties, which include complying to internal democracy, have been incorporated into Eknath Shinde's 2018 party constitution.

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- The 'test of the majority' in the legislative wing, which was discovered to be with the Shinde faction, was once again the only option available to the ECI under the circumstances.
- In the 2019 State Assembly elections, the 40 MLAs who supported Ekanth Shinde received 76% of the votes cast in favour of the 55 winning MLAs.
- In the 2019 Lok Sabha elections, the 13 MPs backing Eknath Shinde received 73% of the votes cast in favour of 18 MPs.
- **Basic Clauses of the Constitution:**
- **Tenth Timetable:**
- The 52nd Constitutional Amendment Act added it to the Constitution in 1985. It outlines the procedure through which a legislator's defection by the presiding officer of a legislature may result in their disqualification. Both the Parliament and state legislatures are subject to the statute.
- **Ineligibility under the Tenth Schedule:**
- if a political party member who sits in a House.
- gives up his political party membership voluntarily.
- votes against or abstains from voting in that House in accordance with any directive given by his political party without first receiving that party's consent, and that action has not received the party's blessing within 15 days.
- if an independent candidate changes their party affiliation following the election.
- six months after being elected to the legislature, a nominated member joins a party.
- **Lawful deviations from the rule:**
- if a party merges with another party and a member leaves that party as a result. When two-thirds of the party's members approve a merger, it becomes official.
- if a member re-joins his party after resigning as the house's presiding officer or willingly leaves it after being elected to that position.
- **The Presiding Officer's Decision is Open to Judicial Review:**
- The Supreme Court ruled in the Kihoto Hollohan case (1993) that the presiding officer should act as a tribunal while deciding a case under the 10th Schedule.

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- Therefore, his or her decision was open to judicial review on the grounds of mala fides, perversity, etc., just like the decision of any other tribunal.
- **The Presiding Officer has the following discretion:**
- According to the statute, the Presiding Officers have no time constraint in which to decide whether to accept a petition for disqualification.
- The petitioner's only choice is to wait until the officer makes a decision because the courts cannot interfere until after that.
- In a number of instances, the courts have voiced their displeasure with the unnecessarily long time it takes to decide these petitions.
- According to a recent ruling by the SC, disqualification petitions under the Tenth Schedule shall be considered by Speakers within three months, barring "exceptional circumstances."



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