

Sena Vs Sena Tenth Schedule At The Heart Of Maharashtra Political Crisis Eknath Shinde Uddhav Thackeray Abpp

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Maharashtra Speaker Rahul Narwekar's recent decision recognising Chief Minister Eknath Shinde's faction as the "real Shiv Sena" has stirred a debate. (Image Source : PTI)

The recent decision of Maharashtra Speaker Rahul Narwekar recognising Chief Minister Eknath Shinde's faction as the "real Shiv Sena" has stirred a debate on the need for constitutional recognition of the internal organisation of political parties as they are the source of maintaining a connection between the representatives in the government or in the opposition and the people who elected them.

A political party is essential to the functioning of the Indian political system even though the Indian Constitution did not explicitly outline the provisions governing the inner conduct of the political parties. A political party is an organised group possessing common views on governance that aim to further its agenda and policy through political power. They mobilise the electorate, set agendas, and indulge in political propagation. However, due to a lack of internal democratic functioning, a party's leadership is often centralised, denying equal opportunity to other members, which was the claim made by the Shinde camp against the decision of then CM Uddhav Thackrey of disqualifying Shinde and his supporters.

In this light, a discussion surrounding the Tenth Schedule of the Constitution that deals with defection, and the need for inner-party democracy through a comparative analysis, assumes significance.

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What Is The Tenth Schedule Of The Constitution?

It was the 52nd Amendment to the Constitution that added the Tenth Schedule to deal with anti-defection. For the Tenth Schedule to operate, the member must have given up their membership to the party or must have voted or abstained from voting, disregarding a directive of the party. In the case of Eknath Shinde and his supporters, they claim the decision of Uddhav Thackrey to disqualify them was not binding as the decision was not passed by the national executive committee of the Shiv Sena. As the status of their membership was under scrutiny, the power to decide under the Tenth Schedule was with the Chairman or Speaker of the House, who decided in favour of Ekanth Shinde's faction, calling it the "real Shiv Sena".

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Inner-Party Democracy

In this light, there is a need to look into the legal aspects that govern the internal functioning of the political parties. Section 29 A of the Representation of the People Act, 1951, merely mandates the registration of political parties and orders that a political party shall bear true faith and allegiance to the Constitution of India, and the principles of secularism, socialism, and democracy, and uphold the sovereignty, integrity, and unity of India.

As a result, there is no legal ground on which elections can be mandated within political parties. Even the Election Commission of India (ECI) cannot ensure that political parties conduct fair and regular internal elections.

In the landmark judgment in *Indian National Congress (I) vs Institute of Social Welfare*, the Supreme Court reiterated that the ECI cannot take punitive action against registered parties for violating the principles of inner-party democracy.

Various efforts have been made to bring about some uniformity. The 1999 Law Commission Report recommended the introduction of a regulatory framework for governing the internal structure and inner-party democracy of the political parties. Further, a draft titled *Political Parties (Registration and Regulation of Affairs) Act, 2011* was submitted to the Ministry of Law and Justice. It emphasised creating an executive committee for every political party whose members would be elected by the members of the local committees of the state units of the party, who themselves would elect the office-bearers of the party from among themselves, without accepting any nomination.

The Basic Law of the Federal Republic of Germany (1949) gives constitutional status to political parties. For example, Article 21 of the Basic Law deals with their status, rights, duties, and functions and states that their internal organisation must conform to democratic principles. They must publicly account for their assets and the sources and use of their funds.

Similarly, in the UK, the Conservative Party has the National Conservative Convention as its top body. It has a Central Council and an Executive Committee. In the US, both the Democratic and Republican parties have the National Committee as their top decision-making body.

Seen in this light, the Election Commission of India needs to come up with reforms focusing not only on regulating the conduct of candidates during elections but also on initiating structural reforms in the functioning of the parties as well as in the conduct of the election campaign under its watch.