



Merger Under Tenth Schedule

Why in News

Recently, the Bahujan Samaj Party (BSP) has **issued a whip** in Rajasthan Assembly and asked all its six Member of Legislative Assemblies (MLAs) to vote against Indian National Congress (INC) government on floor test.

- However all six BSP MLAs had joined the INC by announcing the **merger in September 2019**.

Key Points

- The BSP is arguing that a **state unit of a national party** cannot be merged **without the party being merged at the national level**. It has termed the merger of six MLAs as illegal and unconstitutional.
- It has cited **two decisions of the Supreme Court** to support its arguments:
 - *Jagjit Singh v State of Haryana 2006 case*.
 - In this case, four legislators from single-member parties in the Haryana Assembly, who said their parties had split and later joined the Congress. The court upheld the Speaker's decisions disqualifying them.
 - *Rajendra Singh Rana And Ors vs Swami Prasad Maurya 2007 case*.
 - In the 2002 Uttar Pradesh elections, 37 MLAs — one-third of the BSP strength — “split” from the party after its government fell, to support Samajwadi Party. The SC ruled that the split cannot be recognised primarily because not all these MLAs split at once.
- It can be noted that the above two cases were **prior to the 91st Constitutional Amendment of 2003** which deleted the **Paragraph 3** of the **Tenth Schedule**.
 - This amendment was made as the **one-third split rule** was grossly misused by parties to engineer divisions and indulge in horse-trading. One-third was regarded as an **easy target to achieve** and the law now exempts defection only when it is at **two-thirds (in a merger)**.
- **Constitutional Experts on Merger:**
 - According to **P.D.T. Achary**, merger under the **Tenth Schedule** (anti-defection law) **can take place only between two original political parties**. There are two conditions that need to be fulfilled for a merger under the **Tenth Schedule**.
 - There should be a **merger between two original political parties**.
 - Subsequently, **2/3rd of the members of that House** belonging to that party should accept the merger. If 2/3rd of the members do not accept it, then the merger doesn't happen as per the law.
 - According to Achary, the anti-defection law basically **aims at protecting the party system and not just at curbing defection**.
 - **Subhash C. Kashyap** also agreed with **P.D.T. Achary** by saying that for a merger, the **party which sets up candidates for the election is the party which has to**

- merge** under the Tenth Schedule. And one of the requirements for this is that 2/3rd MLAs of that party should agree to the merger.
- However, Faizan Mustafa disagreed with the above position and questioned the concept of merger between two original parties. According to him, this would mean that **the legislative party will not have any right to merge with anybody in any state.**
 - He referred to the definition of **'Legislature Party'** under the Tenth Schedule, which is defined as a **'group consisting of all the members of that House'**.
 - According to him, the **merger has to be seen "locally" and not at the national level.** Mustafa also pointed out that nowhere does the Tenth Schedule talk about how a 'national party' should split or a 'regional party' should split.

▪ **Previous Similar case:**

- In June 2019, the Vice President issued orders to **"merge"** the Telugu Desam Party (TDP) with the ruling BJP in Rajya Sabha after four of TDP's five MPs defected.
 - Although TDP still has a presence in the Upper House through its lone MP, the party was deemed to have merged only for the purpose of not attracting penalty under the Tenth Schedule for the four MPs who defected.
 - The TDP, too, raised arguments similar to what BSP is now claiming that a "merger" can only take place at an organisational level of the party and not in the House.
- In 2016, 12 out of 15 of TDP MLAs joined the ruling TRS. The Speaker recognised the defection as a merger since more than two-thirds had moved.

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