



# Challenge to Anti Defection Law

## Why in News

Recently, the 19 rebel MLAs of Rajasthan's ruling party (Congress) have filed a petition before the High Court **challenging the disqualification notices** issued to them by the Assembly [Speaker](#) under [Anti Defection Law](#).

- The disqualification notice was issued on MLAs' absence from **successive Congress Legislature Party (CLP) meetings** and a **"conspiracy to bring down the government"**.

## Key Points

### ▪ Rebel MLAs Arguments:

- In their writ petition, **citing violation of their freedom of speech and expression** the legislators argued that they **had neither given up their membership of the House** nor did their failure to attend the two CLP meetings render them liable for disqualification on the ground of defection.
- Therefore they challenged **Clause 2(1)(a) of the Tenth Schedule of the Constitution**, and the validity of the **Rajasthan Assembly Members (Disqualification on the Grounds of Changing Party) Rules, 1989**.

- **Clause 2(1)(a) of the Tenth Schedule** states that a member may be disqualified "if he has voluntarily given up his membership" of a political party.

- They also contended that they could not be disqualified merely for disagreeing with the decisions and policies of some leaders outside the Assembly.

- **Supreme Court's Ruling:** The [Supreme Court](#) in the ***Kihoto Hollohan versus Zachillu and Others, 1992*** has said that **judicial review** cannot be available at a **stage prior** to the making of a **decision by the Speaker/Chairman**.

- Nor would interference be permissible at an interlocutory stage of the proceedings.
- The only exception for any **interlocutory interference (decree or judgment)** being cases of interlocutory disqualifications or suspensions which may have **grave, immediate and irreversible repercussions and consequences**.
- Therefore, Constitutional courts cannot judicially review disqualification proceedings under the **Tenth Schedule (anti-defection law)** of the Constitution until the **Speaker or Chairman makes a final decision on merits**.

- **Reason for Limited Role of Courts:** The Bench explained that the reason for limiting the role of courts in ongoing defection proceedings is that the **office of the Speaker** is held in the **highest respect and esteem** in parliamentary traditions.

- **Judicial Review:** It had said that even the **scope of judicial review against an order of a Speaker or Chairman** in anti-defection proceedings would be confined to **jurisdictional errors**, that is infirmities based on **violation of constitutional mandate, mala fide actions** and **non-compliance with rules of natural justice**.

## Disqualification under the Tenth Schedule

- The **Anti-Defection Law** was passed in 1985 through the **52<sup>nd</sup> amendment to the Constitution**. It added the **Tenth Schedule to the Indian Constitution**. The main intent of the law was to combat “the evil of political defections”.
- According to it, **a member of a House belonging** to any political party becomes disqualified for being a member of the House, if:
  - He **voluntarily gives up his membership** of such political party; or
  - He **votes or abstains from voting in such House** contrary to any direction issued by his political party without obtaining prior permission of such party and such act has not been condoned by the party within 15 days.

### **Exceptions to the Disqualification on the Ground of Defection**

- If a member **goes out of his party as a result of a merger of the party** with another party. A merger takes place when two-thirds of the members of the party have agreed to such a merger.
- If a member, **after being elected as the presiding officer of the House, voluntarily gives up the membership** of his party or rejoins it after he ceases to hold that office. This exemption has been provided in view of the dignity and impartiality of the office.

### **Powers of Speaker with regard to Anti-Defection Law**

- Any question **regarding disqualification** arising out of **defection is to be decided by the presiding officer of the House**.

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