



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 **52nd 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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