



## Disqualification of Karnataka MLAs

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### Why in News

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Recently, the Supreme Court upheld the disqualification of 17 dissident legislators approved by the then Karnataka Assembly Speaker K.R. Ramesh Kumar under the Tenth Schedule (**Anti-Defection law**).

### Background

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- In 2019, a **motion of no-confidence was to be** considered in Karnataka Assembly against the ruling party. During this process, a few of the legislators resigned from their respective parties. However, their resignation was not taken under consideration by the then Assembly Speaker in lieu of the confidence vote that was to be held within a few days.
- As soon as the trust vote was not achieved during the **floor test** by the ruling party, the **Speaker disqualified those rebellious members**. This raised the question of the *disqualification of members under the Anti-defection law (Tenth Schedule) versus the role of Speaker to accept their resignation*.
- Also, the **Speaker barred those MLAs from contesting elections** till the time incumbent Assembly's term gets over, i.e, by 2023. This raised another question whether *disqualification under Tenth Schedule can lead to a bar upon legislators to contest by-elections during the tenure of the incumbent Legislative Assembly*.

### Supreme Court Ruling

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- **Tenth Schedule versus Re-contesting elections:** The Supreme Court **upheld the disqualification** of the dissident legislators however it also held that their **ouster does not put any bar upon them from contesting by-polls.**
  - According to the Court, '**neither under the Constitution** nor under the **statutory scheme** (i.e, **Representation of the People Act, 1951** or the **Anti-Defection Law**) it is mentioned that disqualification under the Tenth Schedule would lead to a bar for contesting re-elections.'
  - The court also remarked that even the **91<sup>st</sup> Amendment Act, 2003** which did not allow a disqualified member to be appointed as a minister, did not give Speaker the power to put a ban upon them to contest elections till the end of the term.
- **Resignation versus Disqualification:**
  - A member may choose to resign for a variety of reasons which represents an individual's choice or will. An elected member if chooses to resign cannot be compelled to continue in the office. Whereas, a disqualification leads to the expulsion of the member from the office, irrespective of their will.
  - In this case, the court observed, 'on the one hand, resignation does not take away the effect of a prior act that amounts to disqualification. On the other, Speakers are not given a free power to sit on resignation letters indefinitely.'
    - Under **Article 190(3) of the Constitution**, the Speaker has to ascertain the **voluntary and genuine** nature of a resignation before accepting it.
    - It is a limited inquiry process only to check if the letter is authentic and if the intent to quit is based on free will. Once it is clear, the Speaker has no option but to accept the resignation.
  - The Court also observed that a pending disqualification action does not become nonfunctional by mere submission of the resignation letter. This would defeat the purpose of the Tenth Schedule if it was held that disqualification proceedings would become unfruitful upon tendering resignation.

### **Anti-Defection Law**

- 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, (a) if he voluntarily gives up his membership of such political party; or (b) if 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.

### **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.
- After **Kihoto Hollohan versus Zachilhu case (1993)**, the Supreme Court declared that the decision of the presiding officer is **not final and can be questioned in any court**. It is subject to **judicial review** on the grounds of malafide, perversity, etc.

**Source: TH**