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## **KIHOTO HOLLOHAN VS ZACHILLHU AND OTHERS, 1992 SCR (1) 686**

*~Vrinda Yadav*

### **I. INTRODUCTION**

In the Indian political system, deflection by the political leaders has turned out to be a bane for the parliamentary system of the country. The misconduct of deflection has been rampant in the country, especially at the state level, and to prevent this, anti-deflection laws were introduced in the country by the 52<sup>nd</sup> amendment under schedule 10 of the Indian constitution. Deflection refers to cross flooring by the elected MLA or MP after winning the election with the support and symbol of one party and joining the other after results are declared. Deflection can be done by crossing the floor, voting against the party line, and abstention from voting.

This not only causes instability but is also highly undemocratic in nature, as the party chosen by the people is not the one who gets to form the government. So, to reduce the cases of deflection, the rule governing the Speaker's powers and the disqualification of MPs in such situations became part of the constitution in 1985 with the ratification of the Tenth Schedule, sometimes known as the 'anti-defection statute.' In the Kihoto Hollohan case<sup>1</sup>, the constitutional challenge to the anti-defection statute was resolved. The main point before the Supreme Court was whether the Speaker's significant role violated the theory of basic structure.

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<sup>1</sup> Kihoto Hollohan vs Zachillhu And Others, 1992 SCR (1) 686

## **II. FACTS**

In the given case, multiple applications pending the Supreme Court were taken at the same time and heard together. The case was taken up after the addition of the 10th schedule in the Indian constitution, and the combined petition sought to challenge the schedule. This petition included SLP, Writ petition, and civil petition as well as transferred petitions from the high courts of different states. The Constitution (Fifty-second Amendment) Act changed four articles of the Constitution. The articles are 101(3)(a), 102(2), 190(3)(a), and 191(2). The tenth schedule has also been included. This adjustment is commonly referred to as the anti-defect approach. Another issue addressed in the case was that the Supreme Court ruled that the speaker's directives under the statute preventing an MLA from serving due to defection are susceptible to judicial review.

## **III. ISSUES**

The issues that were dealt with in the following case included:

1. Whether judicial review applicable to the Rules listed in the tenth schedule?
2. Are the revisions to the 52nd Amendment constitutionally valid?
3. Is it correct that the Speaker should only have such extensive powers if there is a substantial possibility of prejudice?

## **IV. JUDGMENT**

The majority argued that Paragraph 7 of the Tenth Schedule<sup>2</sup> changes the operation of Articles 136, 226, and 227, requiring ratification by at least half of the states before it can be presented to the president for assent. It is also determined that paragraph 7 is unconstitutional. The Tenth Schedule is constitutionally unlawful without prior approval under Article 368's caveat to the clause. The doctrine of severability does not allow for the removal of paragraph 7 without affecting the remaining sections of the Constitutional Amendment. This is because Article 368(2) only

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<sup>2</sup> Indian Constitution 1949, Schedule 10 *Added by* The Constitution ( fifty second amendment) Act, 1985

applies to paragraph 7. The word 'final' in Paragraph 6 (1) refers to the Speakers'/Chairman's decision, which is lawful. The principle of statutory finality does not exclude judicial review under Articles 136, 226, and 227 of the Constitution. The Speakers/Chairmen have judicial power and operate as a tribunal to adjudicate rights and responsibilities under the Tenth Schedule. Their rulings can be judicially reviewed. The case of *Ravi S Naik v. Union of India*<sup>3</sup> established that "deliberately quitting membership has higher importance." The member's regulation also indicates that he willingly quit his party membership. The Court dismissed the claim that failing to comply with the disqualification requirements was a breach of constitutional responsibilities. They argued that elevating standards to the status of constitutional provisions was unacceptable. The disqualification requirements were developed by the Speaker as part of his obligations under Article VIII of the Constitution. Hence, they cannot be compared to constitutional regulations.<sup>4</sup>

## V. ANALYSIS

The introduction of the tenth schedule in the Indian constitution was a landmark step toward the anti-defection policy of the country. It is ensuring stability in the parliament and maintaining the democracy in the country. It maintains the integrity of the electoral mandate and ensures that the elected representatives do not wear away the decisions of the people by changing the party for personal benefits. Some argue that the Speaker should not have this autonomous ability to decide on defections because their authority is contingent on the House's support. Because of this dependency, they may not always be unbiased or independent.

The power to declare whether the person shall be held liable or not was given to the speakers, but it is important to note that with this power comes great responsibility, and so the speakers shall not get immunity from the following law and the inclusion of judicial review was an essential step to ensure fairness and neutrality of the judges.

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<sup>3</sup> *Ravi S. Naik vs Union Of India*, 1994 AIR 1558

<sup>4</sup> Next IAS, *Kihoto Hollohan' Judgement*, available at: <https://www.nextias.com/ca/current-affairs/29-06-2022/kihoto-hollohan-judgement> (Last visited on 2/06/2024)

The Kihoto Hollohan case ruling, which allows for judicial review of the Speaker's choices, offers an important protection. This is critical because it guarantees that the Speaker, who may have party ties and biases, does not abuse the authority placed on them. The judicial review guarantees that the Speaker's possible misuse of authority is checked, guaranteeing fairness and justice in the process of disqualifying defecting members.

## **VI. CONCLUSION**

The Kihoto Hollohan case is a watershed moment in Indian constitutional law, specifically regarding the anti-defection provision enshrined in the Tenth Schedule of the Indian Constitution. This case highlighted the difficult balance between legislative authority and judicial monitoring, ensuring that anti-defection laws achieve their intended goals of maintaining political stability and democratic integrity.

The judgment upheld the Tenth Schedule's validity, recognizing the importance of anti-defection measures in combating the widespread practice of political defections, which has traditionally weakened government stability and the democratic mandate of the people. By upholding the Tenth Schedule, the Supreme Court upheld the idea that elected members must adhere to the party's policies and ideology for which they were elected, so honoring the voters' decision.

Importantly, the case underscored the importance of the Speaker or Chairman in resolving defection-related concerns. While appreciating the enormous authority granted to these legislative officials, the Court emphasized that their actions are subject to judicial scrutiny. This clause serves as a key check against any biases, ensuring that the Speaker's or Chairman's powers are utilized properly and justly, so preventing abuse of authority.

In essence, the Kihoto Hollohan decision is significant because it takes a holistic strategy to resolve political defections. It strengthens anti-defection rules while also ensuring that enforcement procedures are fair and reasonable. This ruling has a significant influence on the stability and integrity of the Indian parliamentary system, bolstering the country's democratic framework.