

Kihoto Hollohan Judgment

On June 27, 2022, the supreme court asked 16 rebel Shiv Sena MLAs to respond to disqualification notice issued by Deputy Speaker, until July 12.

Key Facts

- Earlier, deputy speaker had given 48 hours to MLAs to respond.
- In this crisis, references have been made to landmark 1992 judgment in 'Kihoto Hollohan vs Zachillhu And Others'. In this case, Supreme Court upheld sweeping discretion available with the Speaker in deciding disqualification of MLAs cases.

About Kihoto Hollohan case

The law dealing with powers of the Speaker and disqualification of lawmakers in deciding such matters became part of constitution in 1985 with the adoption of Tenth Schedule or 'anti-defection law'. In Kihoto Hollohan case, constitutional challenge to anti-defection law was settled. Main question before the Supreme Court was whether powerful role provided to Speaker violated doctrine of basic structure.

About Tenth Schedule of the Constitution

The Tenth Schedule was added in the Constitution by Constitution (Fifty-Second Amendment) Act, 1985. It provides for disqualification of Members of Parliament and state legislatures in case of defect. According to this schedule, "Member of a House, from any political party, will be disqualified, if he has given up his membership of political party voluntarily; or if he votes or abstains from voting in House as opposed to any direction issued by the political party with getting prior permission.

Power of Speaker under the Tenth Schedule

Tenth Schedule also provides for sweeping discretionary powers of Speaker. It states, if a member of a House become subject to disqualification, question will be referred for decision of the Chairman or Speaker of such House. In this regard, decision of the Speaker shall be final.

Supreme Court ruling in 'Kihoto Hollohan' case

In the 'Kihoto Hollohan case' discretionary powers of Speakers were challenged, citing reasonable likelihood of bias. Supreme court maintained that, Speakers or Chairmen hold a pivotal position in Parliamentary democracy scheme. They are the guardians of rights and privileges of the House. They can take far reaching decisions in Parliamentary democracy.