

Kihoto Hollohan Judgment

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Why is it in the news?

- In the recent Karnataka political crisis case, the judgement was cited in defence of the speaker to justify his actions. In the Kihoto Hollohan judgment, the court had upheld the sweeping **discretion available to the Speaker** in deciding cases of disqualification of MLAs.

What was the Kihoto Hollohan judgment?

- **Paragraph 6(1) of the Tenth Schedule** describes the Speaker's sweeping discretionary powers: "If any question arises as to whether a member of a House has become subject to disqualification under this Schedule, the question shall be referred for the decision of the Chairman or, as the case may be, the Speaker of such House and his decision shall be final."
- The petitioners in Hollohan argued whether it was fair that the Speaker should have such broad powers, given that there is always a reasonable likelihood of bias.
- The majority judgment answered this question in the affirmative: "The Speakers/Chairmen hold a pivotal position in the scheme of Parliamentary democracy and are **guardians of the rights and privileges of the House**. They are expected to and do take far reaching decisions in Parliamentary democracy. Vestiture of power to adjudicate questions under the Tenth Schedule in them should not be considered exceptionable."

Anti-Defection

- Through the **52nd Constitutional Amendment Act** of 1985, the **10th Schedule** of the Constitution, which contains the anti-defection law, was added to the Constitution.
- There are two grounds on which a member of a legislature

can be disqualified.

- If the member voluntarily gives up the membership of the party: Voluntarily giving up the membership is not the same as resigning from a party. Even without resigning, a legislator can be disqualified if by his conduct the Speaker/Chairman of the concerned House draws a reasonable inference that the member has voluntarily given up the membership of his party.
- If a legislator votes in the House against the direction of his party and his action is not condoned by his party, he can be disqualified.