

**CASE COMMENTARY ON KIHOTA HOLLOHAN V. ZACHILHU &
ORS. (1992)**- Adrija Bhattacharyya¹**I. ABSTRACT**

This study provides honest information on the Anti-Defection statute, also known as the Tenth Schedule of the Indian Constitution. Here, we go through one of the key constitutional provisions of this anti-defection statute. As is well known, the law is intended to address corrupt defections that are not protected by "intellectual liberty, freedom of conscience, or the right to dissent." This law has both merits and cons, and it has been misused numerous times. The Kihoto Hollohan case only dispels some significant ambiguities about the benefits and drawbacks of the anti-defection law and provides us with some suggestions for handling cases like these. The Supreme Court here determined that the act in "Kihoto Hollohan v. Zachillhu" did not violate anyone's right to free speech or the tenets of parliamentary majority rule.

Keywords: Anti-defection law, Tenth Schedule, Supreme court, corrupt defections, free speech

II. BACKGROUND OF THE CASE

According to the Tenth Schedule of the Indian Constitution, which was added by the 52nd Constitutional Amendment Act of 1985, several members of the Nagaland Legislative Assembly were dismissed by the Speaker of the Assembly on the grounds of defection. They appealed the Speaker's decision to the State's High Court. The Speakers of the Legislative Assemblies of Manipur, Meghalaya, Madhya Pradesh, Gujarat, and Goa had issued a number

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of other similar orders that were also being challenged in front of the respective High Courts. All of those issues were brought before the Supreme Court for decision in the current case².

The constitutionality of the Tenth Schedule, as given under the Indian Constitution, had been contested by the petitioners on a number of grounds. Particularly, para 7 of the Tenth Schedule was contested on the grounds that it removed all courts' authority to review orders issued by the Speaker under that Schedule, along with the Supreme Court¹.

III. THE TENTH SCHEDULE IN BRIEF

The Constitution (Fifty-Second Amendment) Act of 1985 amended the Constitution to include the Tenth Schedule. In the event of a fault, it calls for the disqualification of state legislators and parliamentarians. This schedule states that "a member of the House from any political party will be disqualified if he has voluntarily resigned from that party, or if he votes or abstains from voting in the House in defiance of any directives made by that party without first obtaining permission"³.

SPEAKER'S AUTHORITY UNDER THE TENTH SCHEDULE

Also included in the tenth schedule are broad discretionary powers for the Speaker. It stipulates that if a member of a House is found to be ineligible, the Chairman/Speaker of that House will be consulted before making a decision. The Speaker's decision in this matter shall be final².

IV. FACTS OF THE CASE

In this case, multiple petitions were heard together.

- Firstly, the Constitution (Fifty-second Amendment) Act of 1985 added the tenth schedule.
- The united petition sought to contest the Tenth Schedule's constitutional validity as it was enacted by the Constitution (Fifty-second Amendment Act) of 1985.

² "<https://indianlawportal.co.in/kihoto-hollohan-v-zachillhu-and-ors/>"

³ "<https://www.gktoday.in/topic/kihoto-hollohan-judgment/>"

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- These cases were filed alongside a group of related and associated matters that raised related issues, such as Writ Petitions, Transfer Petitions, Civil Appeals, Special Leave Petitions, and other cases that were tried concurrently.
- The Constitution (Fifty-second Amendment) Act changed four Constitutional Articles.
- Articles 101(3)(a), 102(2), 190(3)(a), and 191 are among them (2). The tenth schedule was additionally included. The Anti-Defection Law is a common reason why this Amendment is brought up⁴.
- The Supreme Court upheld the validity of the Anti-Defection Law in a 3:2 ruling. Justices M.N. Venkatachaliah, K.J. Reddy, and S.C. Agrawal made up the majority, while Justices L.M. Sharma and J.S. Verma made up the minority.
- During the same point, the Supreme Court ruled that judicial review of the speaker's orders under the law barring an MLA from serving because of defection was subject³.

V. ISSUES OF THE CASE

1. Is the 52nd Amendment's amendment, constitutional?
2. Do the Rules listed in the tenth schedule fall under Judicial Review?
3. Before the Speaker/Chairman makes a judgement, if Judicial Review is available.
4. Is it accurate to say that the Speaker should only have such vast powers if there is a constant, foreseeable risk of bias?³

VI. JUDGEMENT

- Speakers/Chairmen are key figures in parliamentary democracy because they guard the rights and freedoms of the House. In a Parliamentary democracy, they are expected to and do make important choices. They should not be regarded as exceptionable because they have been given the authority to make decisions about issues under the Tenth Schedule.
- The Speaker does not meet the requirements for this type of independent adjudicatory jurisdiction because his tenure as the authority to resolve this dispute under the Tenth Schedule is contingent on the House's continued support.

⁴ “<https://articles.manupatra.com/article-details/CASE-ANALYSIS-OF-KIHOTA-HOLLOHON-V-ZACHILHU-AND-OTHERS-WITH-CLOSE-REFERENCE-TO-ANTI-DEFECTION-LAW>”

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- It was also found that the tenth schedule's paragraph 6 does not establish a zone that is not subject to legal proceedings. The ability of the Speaker or Chairman to settle disputes can also be seen as judicial.
- Based on the opinions of Justices L.M. Sharma and J.S. Verma, the Election Commission adopted a similar strategy. It provided recommendations and proposed, as was the case with other disqualifications linked to articles 102 and 191 of the constitution, that defection-related disqualifications be presented to the Election Commission for a viewpoint to be conveyed to the President or Governor, as the situation may be³.

In conclusion, the "KihotoHollohan case" involved a challenge to the Speakers' discretionary powers based on a plausible risk of prejudice. The Supreme Court affirmed that Speakers and Chairmen play a crucial role in the structure of parliamentary democracy. They serve as the House's defenders of its rights and privileges. In a parliamentary system, they can make significant choices². In a 3:2 judgement, the Honorable Supreme Court also upheld the Anti-Defection Law's constitutional legitimacy. Justices M.N. Venkatachaliah, K.J. Reddy, and S.C. Agrawal made up the majority, while Justices L.M. Sharma and J.S. Verma made up the minority³.

VII. ANALYSIS OF THE CASE

- It was argued that the anti-defection statute is incompatible with freedom of speech, dissent, and conscience in the case of "KihotoHollohan v. Zachillhu". According to the Supreme Court, the act is designed to deal with corrupt defections that are not safeguarded by "intellectual liberty, freedom of conscience, or the right to dissent". Because of this, even though this rule has certain unexpected consequences, it is essential in today's society when addressing political concerns. The court ruled that the statute did not infringe on anyone's right to free speech or the fundamental principles of parliamentary majority rule³.
- The managing authority is the only person with the power to make the choice, and the court highlighted that after the choice has been made and is having an impact, the final decision is subject to legal review³.

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- It can be also mentioned here that this decision significantly tied the Speaker's hands by giving defecting lawmakers a chance to stall or go around the Tenth Schedule by asking for the Speaker's removal while disqualification proceedings are expected⁵.
- An overview of the advantages of the anti-defection law, after looking into the above mentioned case, can be said to stop political defections that might be brought on by the allure of power and acts as a disincentive to cut down on corruption. Because coalition governments are becoming more common, a few legislators defecting for personal gain might bring down the entire government. Political candidates must maintain their support for the party and its policies in accordance with political propriety⁶.
- An over view of the disadvantages of the anti-defection law can be briefly highlighted. The right of MPs to vote in accordance with their conscience is restricted by the anti-defection law. Additionally, it reduces an MP's importance in Parliament to the status of a party whip who must be obeyed. This might negatively affect how accountable the government is⁵.

VIII. CONCLUSION

Thus we can conclude by saying that it was argued in the case of "KihotoHollohan vs. Zachillhu" that the anti-defection statute violates the "rights to free speech, dissent, and conscience"⁵. The Supreme Court concluded that corrupt defections cannot be safeguarded by the freedom of conscience, the right to dissent, or intellectual freedom, and that the legislation is intended to confront them. Therefore, despite the fact that dealing with rampant corruption is a key component of democratic reforms today, this law has some undesirable repercussions.

⁵ “<https://www.nextias.com/current-affairs/29-06-2022/kihoto-hollohan-judgement>”

⁶ “https://probono-india.in/Indian-Society/Paper/429_Anjali.docx”

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