

## **Maharashtra political turmoil: Judiciousness of deputy speaker**

1. The anti-defection law punishes individual Members of Parliament (MPs)/MLAs for leaving one party for another.
2. Parliament added it to the Constitution as the Tenth Schedule (popularly known as the Anti-Defection Act) in 1985. Its purpose was to bring stability to governments by discouraging legislators from changing parties.
3. However, it allows a group of MP/MLAs to join (i.e., merge with) another political party without inviting the penalty for defection. And it does not penalize political parties for encouraging or accepting defecting legislators and at least two-thirds of the members of a party must be in Favour of a "merger" for it to have validity in the eyes of the law.
4. The decision on questions as to disqualification on ground of defection are referred to the Chairman or the Speaker of such House, which is subject to 'Judicial review'.
5. It can be noted that the law does not provide a timeframe within which the presiding officer has to decide a defection case
6. The Supreme Court in the Kihoto Hollohan versus Zachillu and Others, 1992 has said that judicial review cannot be available at a stage prior to the making of a decision by the Speaker/Chairman. Nor would interference be permissible at an interlocutory stage of the proceedings.
7. The only exception for any interlocutory interference (decree or judgment) being cases of interlocutory disqualifications or suspensions which may have grave, immediate and irreversible repercussions and consequences. Therefore, Constitutional courts cannot judicially review disqualification proceedings

under the Tenth Schedule (anti-defection law) of the Constitution until the Speaker or Chairman makes a final decision on merits.

8. The scope of judicial review against an order of a Speaker or Chairman in anti-defection proceedings would be confined to jurisdictional errors, that is infirmities based on violation of constitutional mandate, mala fide actions and non-compliance with rules of natural justice.