

## Speakers' power over MLA's resignations

### Why in news?

A split verdict was delivered by the Himachal Pradesh High Court on whether the court can impose a timeline on the Speaker for accepting MLA resignations.

### What is the case?

- The case revolves around the resignation of three independent MLAs who joined the BJP after submitting their resignations to the Speaker of the Himachal Pradesh Assembly.
- The Speaker, instead of immediately accepting the resignations, issued show-cause notices and directed an inquiry to ascertain the voluntariness of the resignations.
- The Speaker said that action could be taken under anti-defection law could be taken against the 3 independent MLAs as they joined another party before the acceptance of their resignation.
- In response to the delay in acceptance of their resignations, the three independent MLAs filed a petition in the Himachal Pradesh High Court seeking to quash the show-cause notices and prompt acceptance of their resignations.

### What is Anti-defection law?

- **Anti-defection law**- It punishes individual MPs/MLAs for leaving one party for another.
- **10<sup>th</sup> Schedule**- It was added by 52nd Constitutional Amendment Act as the Tenth Schedule in 1985.
- It was a response to the toppling of multiple state governments by party-hopping MLAs after the general elections of 1967.
- **Deciding authority**- The Presiding Officer of the House is empowered to make rules to give effect to the provisions of the 10th schedule.
- **Role of judiciary**- The decision can be challenged before the higher judiciary.

| Type                      | Defection   |
|---------------------------|---|
| Member of political party | <ul style="list-style-type: none"> <li>• Voluntarily giving up the membership of political party (or)</li> <li>• Voting or abstain from voting in that House contrary to the direction issued by the political party</li> </ul> |
| Independent candidate     | <ul style="list-style-type: none"> <li>• If an MP/MLA who has been elected as an independent candidate joins a political party later</li> </ul>   |
| Nominated member          | <ul style="list-style-type: none"> <li>• If nominated legislators joins a political party after 6 months of being appointed to the House</li> </ul>   |

- **Exemptions**- The law allows a group of two-third MP/MLAs to join (merger) another political party without inviting the penalty for defection.

- If a person is elected as the Speaker of Lok Sabha or the Chairman of Rajya Sabha, then he could resign from his party and re-join the party once he demits the post.
- **91st Amendment Act, 2005**- It deleted the exemption from disqualification in case of split by 1/3rd members of legislature party.

### What does the law say about MLAs resignation?

#### Article 190

- Article 190(3)(b) of the Constitution of India outlines the process for an MLA’s resignation and the subsequent vacancy of their seat.
- **Resignation process**-An MLA can resign by submitting a written resignation addressed to the Speaker or the Chairman (as applicable).
- **Vacant seat**- If the Speaker or Chairman accepts the resignation, the seat becomes vacant.
- **Speaker’s discretion**- The Speaker has the authority to inquire into the resignation.
- **Acceptance**- If the Speaker is satisfied that the resignation is voluntary and genuine, they may accept it immediately.
- **Non-acceptance**-If there are doubts about the voluntariness or genuineness, the Speaker can choose not to accept the resignation.

#### Rule 287 of the Rules of Procedure and Conduct of Business in Himachal Pradesh Legislative Assembly

- It provides guidelines for the Speaker’s powers.
- **Speaker’s role**-If the resignation letter is personally handed over to the Speaker members confirm its voluntariness and genuineness, the Speaker may accept it promptly.
- Otherwise, the Speaker has discretion to withhold acceptance.

### Why have the judges disagreed with each other?

| Refused to direct Speaker   | Court can direct Speaker   |
|---|--|
| <ul style="list-style-type: none"> <li>• The judge emphasized the Speaker's constitutional authority and refused to direct the Speaker to immediately accept the resignations of independent MLAs.</li> <li>• <b>Pratap Gouda Patil vs State of Karnataka, 2019</b>- The Supreme Court did not specify a timeline for the Speaker to address the resignations of Karnataka Assembly members.</li> <li>• The judge suggested that the independent MLAs, by seeking judicial intervention, were attempting to override the Speaker’s role in assessing the validity of their resignations.</li> </ul> | <ul style="list-style-type: none"> <li>• The other judge argued that the court could instruct the Speaker to make a prompt decision if there is an unreasonable delay.</li> <li>• <b>Rajendra Singh Rana vs Swami Prasad Maurya, 2007</b>- The Supreme Court intervened due to the Speaker's prolonged inaction over disqualification petitions.</li> <li>• The court could involve itself at a “pre-decisional stage” if there is inaction or indecision on the part of the Speaker.</li> </ul> |

## What lies ahead?

- The case may be escalated to a larger bench of the Himachal Pradesh High Court for a final decision.
- Alternatively, the MLAs could appeal to the Supreme Court for resolution.

## Reference

[The Hindu- HC split verdict on MLA resignation](#)

