CHAPTER: 4

ROLE OF SPEAKER UNDER THE TENTH SCHEDULE

The Office of the Speaker enjoys a prestigious position and authority within the House. The Speaker is the chief officer of the Lok Sabha or the Legislature of a State. He/she has extensive powers to regulate the proceedings of the House under its rules of procedure. He is the representative and spokesmen of the House in its collective capacity and is the Chief custodian of its rule, regulation, powers and privileges. The Speaker is expected to act at all such times with fairness, lack of prejudice and detachment.

The Speaker and the Deputy Speaker are chosen by the House itself from amongst its members. A few Constitutional provisions ensure the impartiality and independence of the Speaker and the Deputy Speaker. Their salaries and allowances are to be fixed by parliament as per law, and are charged on the Consolidate Fund of India and the Consolidate Fund of the concerned States. The Speaker and the Deputy Speaker cannot be removed from office except by a resolution passed by the House itself.

The Constitution of India established a parliamentary form of government in union as well as in States. In a parliamentary form of government like ours, Speaker is the Chief Officer of the House. If we
look into the historical background of the Office of the Speaker it is found that, it had its origin in 1921 when the Central Legislative Assembly was constituted under the Montague-Chelmsford reforms. At that time, office of the Speaker did not enjoy much importance. But, after the Constitution of India has come into force, it is found that the Speaker enjoys high constitutional status and at the same time the Constitution of India reposes immense faith in him. Therefore, it is expected that the Speaker should have independence, impeccable objectivity and irreproachable fairness, and above all absolute impartiality. -Nabam Rebia & Bamang Felix Vs Deputy Speaker & Ors\textsuperscript{235}

4.1. Position of the Office of Speaker

“A Speaker is, or should be, one of the trustees of a nation’s liberties. The protection of the rights of members rest on his fair and impartial interpretation of the rules of procedure. In protecting these rights he is protecting the political freedom of the people as a whole”\textsuperscript{236}

While conducting the business of the House, the Speaker has the duty to see that business of the House is carried out in accordance with the rules and regulations of the House with a decorous and disciplined manner. This functioning requires him to have unimpeachable faith in the intrinsic

\textsuperscript{235} Civil Appeal No 6203-6204 of 2016
\textsuperscript{236} Philip Laundy, The Office of Speaker in the Parliaments of the Commonwealth 10 (1984) as quoted in Hon Magaret Wilson, Reflections on the Role of the Speaker in New Zealand, 22 NZULR 545, INTERNET
marrows of the Constitution, constitutionalism and, “Rule of Law”. The faith of the Speaker should be a visible and apparent one. In this regards, the former Speaker of the House of Commons of the United Kingdom, Baroness Boothroyd,\textsuperscript{237} stated that

“When you have been committed all your adult life to the ideals and policies of one party, impartiality is a quality that you have to work at. But if you cannot put aside partisanship you have no right to even think of becoming Speaker.”

In \textit{Kihota Hollohon Vs Zachilhu}\textsuperscript{238} the Supreme Court of India speaking about the office of Speaker observed that:

“The Office of the Speaker is held in the highest esteem and respect in Parliamentary traditions. The evolution of institution of Parliamentary has its pivot the institution of the Speaker. The Speaker holds a high, important and ceremonial office. (....) The Speaker is said to be the very embodiment of propriety and impartiality.”

The Hon’ble Supreme Court of India in \textit{Nabam Rebia & Bamang Felix Vs Deputy Speaker & Ors}\textsuperscript{239} speaking about the duty of the Speaker

\begin{footnotesize}
\textsuperscript{237} THE RT HON. BARONESS BOOTHROYD, The Role of the Speaker in the 20th Century, The Parliamentary History Yearbook Trust, Vol. 29 Issue 1, Feb 2010, page 136,
\textsuperscript{238} Supra Note 78
\end{footnotesize}
observed that the ancient wisdom would require the Speaker to abandon his “purbashrama” and get wedded to “parashrama”. That means, a Speaker has to constantly remain in company with the cherished values of incarnation of his office and not deviate even slightly from the constitutional conscience and philosophy. His detachment has to have perceptibility.

The Indian concept of the rule of the Speaker draws from the development of Speakership in Britain, which dates back to as early as 1377 when Sir Thomas Hungerford was appointed as the Speaker. In theory, Indian embraces the impartiality of the Speaker. The Speaker’s office is considered to be of great dignity as he represents the House – the collective of the nation’s expectations from the government and has been vested with considerable power.

The Speaker under the Constitution of India has two identities – firstly, that of a neutral head of the House and secondly, as a party member. The Speaker under the Tenth Schedule is at the same time, a judge in matters of alleged defection, and is subject to the prohibition against defection. Under the provisions of the Tenth Schedule to the Constitution of India, the Speaker/ Chairman of the House of Legislature have been empowered to decide the question of violation of the provisions of the Tenth Schedule. However, at the same time, the Speaker/ Chairman

239 Supra note 235
of the House of Legislature is also liable for disqualification if he/she violates the provision of the Tenth Schedule. But, the provisions contained in paragraph 5 of the Tenth Schedule provides certain situation in which the Speaker/Chairman of the House of Legislature is not liable for disqualification on the ground of defection.

The Speaker holds a pivotal position in scheme of Parliamentary democracy and are guardians of the rights and privileges of the House. It is inappropriate to express distrust in the high office of the Speaker and it would be unfair to the high traditions of that great office to say that the investiture in it of the jurisdiction to adjudicate disputed defection would be vitiated for violation of a basic feature of democracy. It is not proper to express distrust in the high office of the Speaker, merely because some of the Speakers are alleged, or even found, to have discharged their functions not in keeping with the great traditions of that high office. – *Kihoto Hollohan Vs Zachilhu.*

**4.2 Exemption to Presiding Officer**

Under Paragraph 5 of the Tenth Schedule, a person who has been elected to the office of the Speaker or the Deputy Speaker of Lok Sabha or Deputy Chairman of Rajya Sabha or the Speaker or Deputy Speaker of the Legislative Assembly of a State or the Chairman or the Deputy Chairman

---

240 *Supra Note 78*
of the Legislative Council of a State, shall not be disqualified, if he/she by reason of his election to such office, voluntarily gives up the membership of the political party to which he belonged and so long as he continues to hold such office, does not rejoin the political party or becomes a member of another political party or, if he/she rejoins such political party after he ceases to hold such office.\textsuperscript{241}

Paragraph 5 is a special provision intended to cover the Presiding Officers of the Houses of Legislatures who on their election may like to express their firm resolve to function in a non-partisan manner by resigning and severing their links from their erstwhile political party. The Paragraph provides that no disqualification shall be incurred by such Presiding Officers voluntarily giving up their party membership on rejoining their party on ceasing to hold the office of Presiding Officer.\textsuperscript{242}

The exemption under Paragraph 5 would be available where a person, upon his being elected the Speaker, in view of his high office, and to sustain the image of impartiality of that office, resigns from the membership of the political party to which he belonged prior to his election as Speaker.

The exemption would not however be available where such person, while holding the office of the Speaker defects from the party to which he belonged and thereafter resign from the office of Speaker. By such

\textsuperscript{241} Paragraph 5 of the Tenth Schedule to the Constitution of India
\textsuperscript{242} Supra note 2, p.164
resignation, he does not gain immunity from liability for disqualification on the ground of defection.

In *Luis Proto Barbosa Vs Union of India* the Apex Court held that the exemption under Paragraph 5 would be available where the Speaker, in view of the high office of the Speaker on a question of propriety and to sustain the image of impartiality of that office, resigns from the membership of the political party to which he might have belonged prior to his election as Speaker. The circumstances in this case are such that the appellant cannot avail of that exemption.

**4.3 Defection by the Speaker**

Under the provisions of the Tenth Schedule to the Constitution of India (para-6) Presiding Officer of the concerned House is the sole and final authority to determine the alleged question of disqualification on the ground of defection. On the other hand, to determine the question as to whether the Speaker/Chairman of a House has indeed defected, the Tenth Schedule provides for a procedure according to which a member of concerned House is elected on an ad-hoc basis to determine the alleged question of disqualification on the ground of defection. Dr. Luis Proto Barbosa, former Speaker of the Legislative Assembly of Goa is the only Presiding Officer of a Legislative House in India who has been subjected to such proceedings hereto.

---

243 *Supra Note 120*
The same issue again arose when the former Lok Sabha Speaker Mr. Somnath Chatterjee refused to resign as Speaker in spite of implied and arguably express direction to him from his original political party. When his party has withdrawn support to the central Government, he was expected to resign from his post of Speaker, but he refused to comply with the party direction which resulted in consequential expulsion from his party. This incident created a confusion as to the meaning of the term “voluntarily gives up his membership”, appearing in paragraph 2(a) of the Tenth Schedule in relation to the office of Speaker.

In *Dr. Luis Proto Barbosa Vs Union of India and Others* the Goa Speaker Barbosa was alleged to have voluntarily given up his membership of his party and formed under his own leadership a new party. In fact he was believed to have engineered defection in order to himself become the Chief Minister on December 13, 1990. Dr. K.G. Jhalmi, a member of the Goa Legislative Assembly was elected under Paragraph 6(1) of the Tenth Schedule to consider a petition for disqualification of Speaker Dr. Luis Proto Barbosa, decided that Dr. Barbosa had become subject to disqualification for having voluntarily given up the membership of his party (Congress) and having formed or joined under his own leadership a new Goan People’s party.

---

244 Supra Note 120
Dr. Jhalmi held that the protection from exemption under paragraph 5 of the Tenth Schedule was available to a Speaker only for the purpose of being non-party or above parties while discharging the duties of a presiding officer. It would not be used to encourage the Speaker for becoming an active politician while remaining Speaker.

Dr. Jhalmi said in his decision: “Even if one presumes the cause of resignation as ‘election to the office’ of the Speaker, in absence of specific mention of it in the letter of resignation one cannot explain why he should do so after a period of two months after such election.” Thus, he held that the Speaker giving up the primary membership of his political party more than two months after he was elected as a Speaker cannot be considered as resignation by reason of election to the office of Speaker.245

Both the Goa Bench of the Bombay High Court and the Supreme Court rejected Barbosa’s appeals challenging Jhalmi’s ruling. The Supreme Court in Dr. Luis Proto Barbosa Vs Union of India and Others,246 specifically held that Paragraph 5 of the Tenth Schedule of the Constitution did not protect the appellant, Barbosa. It only shows that the basis for Dr. Jhalmi’s ruling was correct and can be considered a precedent.

A somewhat same case happened with the former Lok Sabha Speaker Somnath Chatterjee. Mr. Chaterjee was a ten time M.P. who, among other

245 Frontline, August 15, 2008, Page 23
246 Supra Note 120
things, own the best Parliamentarian award in 1996 and was the first Communist M.P. to be elected as Lok Sabha Speaker. Generally by convention the Speaker belongs to the ruling party or a ruling combination of parties. Therefore, to have a member of an opposition party as the Speaker is inconsistent with such convention. No doubt Somnath Chatterjee as a Speaker, was chosen by the entire House, cutting across party lines, but his office is contingent on his membership of the House.

However, since the withdrawal of support to the United Progressive Alliance Government by the left parties, India’s Parliamentary History will place Mr. Chatterjee and Dr. Barbosa together for a dubious reason. Both “voluntarily gave up” their membership of the political parties to which they belonged rendering themselves venerable to disqualification as legislators on the ground of defection under the Tenth Schedule to the Constitution.247

The former Lok Sabha Speaker, Somnath Chatterjee, did not also explain, as was expected of him, why he had “voluntarily given up his membership of the CPI(M)” four years after assuming office by adopting a course inconsistent with his party’s line. Implicit in the CPI (M)’S inclusion of Somnath Chatterjee’s name in the list it submitted to the President, of its MPs withdrawing support to the government, is the clear indication that the Speaker, by virtue of his having been elected as a

member of the CPI(M), and by not resigning his membership of the party after assuming office as Speaker, was also withdrawing support to the government. The party, therefore, expected that Somnath Chatterjee would resign as Speaker in keeping with the convention and spirit of the Constitution.

The CPI(M)’s subsequent expulsion of Chatterjee from the party does not mean he did not voluntarily give up his membership of the party earlier. Rather, precisely because he had voluntarily given up his membership of the party by his implied conduct in not resigning as the Speaker, the party was forced to expel him. Therefore, his expulsion does not protect him from disqualification as a member of the Lok Sabha.

It is pertinent to mention here, that the Tenth Schedule prescribes disqualification on two grounds, namely, (1) voluntarily giving up of membership in a party, (2) voting or abstaining from voting against the direction of the party or of the person or the authority authorized by the party to issue such direction.

The latter ground is not of much relevance in the context of Speaker as the ‘whip’ issued by a political party, being a general instruction to the members regarding their conduct during vote in the House, is not usually applicable to the Speaker who by the constitutional mandate does not vote in the first instance. With respect to the former ground, an exception has been provided by paragraph 5 of the Schedule so that a person who resigns
from his party immediately following his election as the Speaker and does not rejoin the party or join any other political party during his continuation in office shall not be liable to disqualification on this ground.

Thus, a person who continues in his office as Speaker at the cost of his primary membership in his party and had not availed of the option provided under paragraph 5 immediately following his election to the office is liable to be disqualified on the ground of defection appears to lean on two Judgment by the Supreme Court namely, Ravi Naik Vs Union of India\textsuperscript{248} and G.Viswanathan Vs Hon’able Speaker, Tamil Nadu Legislative Assembly\textsuperscript{249} wherein it was held that in order to constitute “voluntary giving up of membership” within the meaning of the Tenth Schedule, no formal resignation was necessary and that an “implied or express giving up” as inferred from the conduct of the member will suffice.

In Ravi Naik Vs Union of India\textsuperscript{250} the member whose disqualification was sought had informed the Governor that he no longer supported the political party to which he belonged and had issued public statement to the effect that he had voluntarily given up membership in the party. However, no formal resignation from primary membership from the party was tendered.

\textsuperscript{248} Supra Note 116
\textsuperscript{249} Supra Note 94
\textsuperscript{250} Supra Note 116
4.4. Speaker’s role as a judge under the Tenth Schedule

The Speaker/Chairman is the sole and final authority to decide as to whether or not a legislator had defected from a party. His decision in this matter was final and the Courts were barred from interfering in his decision. The role of the Speaker as an adjudicatory authority has also been called in question. The Speaker of the Legislature is a political creature and therefore, he is not impartial. Most of the times Speaker takes a view which is in the interest of the party to which he belongs.

The Speakers/Chairpersons hold a pivotal position in the Scheme of Parliamentary democracy and are guardians of the rights and privileges of the House. It would indeed be unfair to the high tradition of that great office to say that the investiture in it of determinative jurisdiction under the Tenth Schedule would vitiate the basic feature of democracy. - *Kihoto Hollohon Vs Zachillhu.*

The contention that vesting of adjudicatory functions in the Speaker would vitiate the provision on the ground of likelihood of political bias is not tenable. - *Mayawati Vs. Markandeya Chand.*

---

251 Supra Note 78
252 Supra Note 89
Constitutional Validity of Paragraph 6

Paragraph 6(1) of the Tenth Schedule, to the extent it seeks to impart finality to the decision of the Speakers/Chairmen, is valid. The finality clause in paragraph 6 does not completely exclude the jurisdiction of the courts under Arts. 136, 226 and 227 of the Constitution. But it does have the effect of limiting the scope of jurisdiction. -Kihoto Hollohan Vs. Zachilhu.\(^{253}\)

Nature of Speaker’s Power

The power to resolve any dispute relating to disqualification, as vested in the Speaker or Chairman under the Tenth Schedule is a judicial power. The Speakers and Chairpersons, while exercising powers and discharging functions under the Tenth Schedule, act as Tribunal adjudicating rights and obligations under the Tenth Schedule and their decisions in that capacity are subjected to judicial review by High Court and Supreme Court. -Kihoto Hollohan Vs. Zachilhu.\(^{254}\)

A decision under paragraph 6(1) is not a decision of the House, nor is subject to the approval by the House. Therefore, a proceeding under para 6(1) before the Speaker or the Chairperson cannot be construed as a

\(^{253}\)Supra Note 78
\(^{254}\)Ibid
proceeding in the Parliament or the Legislature of a State. - *Kihoto Hollohan Vs. Zachilhu*.\(^\text{255}\)

**Disqualification Proceeding – whether can be initiated suo motu by the Speaker:**

Paragraph 6 is worded in such a manner as to comprehend suo motu exercise of jurisdiction by the Speaker in initiating a disqualification proceeding. -*Banjak Phom Vs. Thenucho*.\(^\text{256}\)

Independent of a claim that someone has to be disqualified, the Scheme of the Tenth Schedule or the rules made there under do not contemplate that the Speaker should embark upon an independent enquiry as to whether there has been a split in a political party or there has been a merger. The Speaker acts under the Tenth Schedule only on a claim of disqualification being made before him in terms of paragraph 2 of the Tenth Schedule. - *Rajendra Singh Rana Vs. Swami Prasad Maurya*.\(^\text{257}\)

**Speaker’s personal knowledge – Whether taints the fairness of procedure:**

The Speaker, in law, is the only authority to decide whether the petitioners incurred or not any disqualification under the Tenth Schedule to the Constitution in his capacity as Speaker. He had obviously the

\(^{255}\) Supra Note 78  
\(^{256}\) Supra Note 80  
\(^{257}\) Supra Note 76
opportunity to see the petitioners and hear them and that is what has been stated by the Speaker in his order. It is held that the Speaker has not committed any illegality by stating that he had on various occasions seen and heard these MLAs. It is not a case where the Speaker could transfer the case to some other tribunals. Therefore, no illegality can be inferred merely on the Speaker relying upon his personal knowledge of having seen any heard the petitioners for coming to the conclusion that persons in the electronic evidence are the same as he has seen and so also their voices.-

_Jagjit Singh Vs. State of Haryana._258

**Disqualification due to defection- Relevant date for deciding the question:**

The Speaker has to decide the question of disqualification with reference to the date on which the member voluntarily gives up his membership or defies the whip. It is really a decision ex post facto. The fact that in terms of paragraph 6 a decision on the question of disqualification has to be determined by the Speaker or the Chairman only with reference to a claim or complaint made or filed, cannot lead to a conclusion that the disqualification should start only from the date of

---

258 _Supra Note 133_
decision or that it should be determined only with reference to the date of such decision. -Rajendra Singh Rama Vs. Swami Prasad Maurya.259

In Kihoto Hollohan Vs Zachillhu260 Supreme Court of India held that, it is inappropriate to express distrust in the high office of the Speaker, merely because some of the Speakers are alleged, or even found, to have discharged their functions not in keeping with the great traditions of that high office. But the high ethical standard which was set up by the majority Judges in this case is seldom reached by the Speakers in India.

Certain decisions of the Speaker

The way in which the adjudicatory power had been exercised by the Speaker/Chairman in various States had left enough scope for controversy in the Indian political scenario. In many cases allegations of political consideration, favouritisms have been made against the Presiding Officers in deciding the matters of disqualification on the ground of defection. In a parliamentary democracy, it reduces the dignity of the High office of the presiding officer. In some occasions there have been causes to justify prima facie such allegations. The way this power had been exercised by the Speaker in various states had left enough scope for controversy.

For instance, the decision of the Lok Sabha Speaker Mr. Ravi Roy in declaring the 25 “unattached members” without giving them opportunity

259 Supra Note 76
260 Supra Note 78
of hearing and later on agreeing to reconsider his decision was highly objectionable. He knew that Janata Dal had split and dissidents had formed a new party under the leadership of Mr. Chandra Shekhar and its strength was more than $1/3^{rd}$ of the original party and thus beyond the purview of defection law. But by declaring the 25 M.P.s as “unattached members” he presumably tried to disqualify the remaining 31 dissidents whose strength was less than $1/3^{rd}$ of the Janata Dal. Tenth Schedule does not at all mention the words “unattached members”. If there is a split and the group has the strength of $1/3^{rd}$ of the original party it becomes a new political party straightway but if the strength of the dissidents is less than $1/3^{rd}$ they should be disqualified under the anti-defection law.

In the year 1992 the then Lok Sabha Speaker Shivraj Patil recognised the 20 members Janata Dal group led by Ajit Singh as a validity constituted faction of the Janata Dal Parliamentary Party, but disqualified 4 of its M.P.s for their failure to abide by the party whip stipulating that they vote for the no-confidence motion against the P.V. Narshimha Rao Government on July 17, 1992 while 4 M.P.s were disqualified for violating a whip of their party, the Speaker dismissed the petitions of Janata Dal President Mr. Bommai against 8 others expelled by the Janata Dal.

Mr. Patil stated that “Political Parties have no right under the constitution or law to expel members from the legislative parties”.

170
Mr. Patil ruled that the expulsion of members by the Janata Dal had “no effect on their constitutional and legal status as members of the Janata Dal Parliamentary Party.” The 20 M.P.s who had applied for recognition to him on August 7, 1992 belonged to the J.D.P.P. and had “strength in excess of 1/3rd of the strength of the original J.D.P.P.. Mr. Patil observed that “the Speaker is severally handicapped in determining the conduct of members outside the House. The Speaker did not disqualify 8 M.P.s who had neither been expelled from the party nor had violated the whip on account of their association with 12 other members of their faction.

A peculiar situation that has been resulted from the decision of the Speaker in deciding the question of disqualification on the ground of defection case as final. For instance, when in July, 1998, the Nagaland Speaker recognised a split in the NPCC(L) political party as well in the Legislature Party, the Governor of the State refused to accept the Speaker’s decision and held that there was no split.

During 1990, three Nagaland Government fell due to defection. In Nagaland, the Speaker disqualified ten members of the breakaway group of the Congress-I whose defection led to fall of the S.C. Jamir ministry which had come to power after election in January 1990. Later on, the Speaker declared this member disqualified. The Chishi led U.L.F. also collapsed after 28 days in the similar manner when 17 of the N.P.C. members in a House of 50 withdrew their support to the Chief Minister.
Mr. Vomuzo, who had toppled the Chishi led font and had become the Chief Minister on June 1990 with the Congress-I support. Later on 12 members of N.P.C. withdrew support to the Chief Minister. Following withdrawal of support by 12 M.L.As the ruling party was reduced to minority but the Chief Minister claimed that he would prove his majority in the House. A day before the Assembly Session the Chief Minister expelled two M.L.A. s out of the 12 M.L.A. s, who had withdrawn support to the Chief Minister. Since ten N.C.P. members did not constitute 1/3rd and hence were declared disqualified under the anti-defection law by the Speaker.

In Meghalaya, the Speaker suspended the voting right of five independent members before the House was due to take up no confidence motion against the Government. Later the Speaker disqualified five members of the opposition and even ignored the stay order which these members had obtained from the Supreme Court. The Apex Court asked the State Governor to include the disqualified members in the trial of strength in the House. The stage was thus set for a confrontation between the Court and the Legislature. The situation was however saved by the imposition of the President’s rule in the State and the dissolution of the State Legislature.

A sorry state of affairs in Goa is disclosed by the factual situation in *Dr. Kashinath G. Jalmi Vs The Speaker of the Goa Legislative*
Shri Ravi S. Naik, assumed office of the Chief Minister of Goa on 25/01/1991. On 15.02.1991 Speaker Sirsat disqualified Naik from the membership of the House on the ground of defection. On 04.03.1991, Sirsat was removed from Speakership and the Deputy Speaker functioning as Speaker reviewing the order earlier made by Sirsat set aside the order. In the instant case, the Apex Court quashed the order made by the Deputy Speaker on the ground that there was no inherent power of review vested in the Speaker.

In *Manilal Singh Vs Dr. H. Borobabu Singh* in determining the question of disqualification a different situation arose, when the Supreme Court quashed the Manipur Speaker Mr. Borbabu’s decision of disqualifying seven legislators but the Speakers refused to be bound by the Supreme Court’s decision. The crisis was somewhat resolved when the centre at the instance of the Supreme Court virtually arrested the Speaker, Mr. Borbabu Singh and produced him before the Supreme Court and the Supreme Court dropped the Contempt proceedings against him.

In *Balchandra L. Jarkiholi and Ors. Vs B.S.Yeddyurappa and Ors.* even before the confidence motion the Speaker disqualified all the 13 B.J.P. M.L.A. s who had joined the revolt against Chief Minister Yeddyurappa by writing a letter to the Governor intimating withdrawal of

---

261 Supra Note 86
262 1994 AIR 505
263 MANU/SC/0617/2011
support from the Government. The Speaker issued notice to all the 13 Bharatiya Janata Party (B.J.P.) legislators, who had joined the revolt against Chief Minister Yeddyurappa and given letters to the Governor withdrawing their support to the government. If the members who declared their withdrawal of support were to go ahead and vote against the government when the motion of confidence comes up, they would clearly incur the disqualification except in the unlikely circumstances of the party either permitting them to vote that way or condoning their vote later. Therefore, there is no question of disqualification of the 11 dissident BJP MLAs before the vote. The entire process was illegal and that the Speaker has misused his chair.

In *D.Sudhakar & Ors Vs D.N. Jeevanraju and Ors* 264 even before the confidence motion the Speaker disqualified 5 Independent M.L.A.s who had joined the revolt against Chief Minister Yeddyurappa by writing a letter to the Governor intimating withdrawal of support from the Government. It is wrong to say that there are no provisions for disqualifying independent members for defection from their independent status. If an independent legislator joins a political party he would lose membership. Law mandates an independent legislator to maintain the independent status. He can choose to support any political party but should not attach himself to any political party. If it is proved that independent

---

264 Supra note 139
MLAs in Karnataka were ‘attached’ or ‘associated’ with BJP, their disqualification could be justified as per the provisions of Tenth Schedule of the Constitution of India. The Apex Court allowing the appeals set aside the orders of disqualification passed by the Speaker on 11.10.2010 and by the Full Bench of the Karnataka High Court on 14.02.2011.

In this two case namely Balchandra L. Jarkiholi and Ors. Vs B.S.Yeddyurappa and Ors.\(^\text{265}\) and D.Sudhakar & Ors Vs D.N. Jeevanraju and Ors.\(^\text{266}\) the desperate government and obliging Speakers had sought to shore up their prospects through anticipatory disqualification before any voting had taken place, using the provision dealing with a legislator voluntarily giving up the membership of his political party. Regarding the conduct of the Speaker, question arises as to what would be the type of conduct that would amount to voluntarily giving up membership by a legislator. Though, it is clearly not necessary for the legislator to formally resign but if by his conduct he has severed the link with his party, it can be inferred that he has voluntarily given up his membership. Neither the Tenth Schedule to the Constitution of India nor the Supreme Court’s decisions are very clear on what type of conduct could lead to such an inference.

The office of the Speaker in Britain underwent further changes over time to ensure that neutrality of the office so much so that Speaker of the

\(^{265}\) Supra Note 263
\(^{266}\) Supra Note 139
House of Commons resigns from his political party on election and, even after his tenure takes no part in politics. This seems to reaffirm the view that there has been an effort not only to ensure the impartiality of the Speaker but also to ensure that his impartiality is generally recognised. The Speaker has very important responsibility vested in him—he act as the judge in deciding disputes relating to the defection by party members. However, though much importance is attributed to maintaining this office above petty political games and subterfuges; unlike the British system, the Speaker continues to be part of a political party and after his tenure, he can even return to active politics. Thus, there are no actual conventions to ensure the impartiality of the office even though it is expected.

The Speaker of the Legislature is a political creature and therefore, generally he is not impartial. The minority view in *Kihoto Hollohan Vs Zachilhu* was that as the Speaker depends for his tenure on the majority in the Legislature, he does not satisfy the requirement of an “independent adjudicatory authority”. Subsequent events in various Legislatures have proved this assertion of the minority Judges right. It is found that, the decisions of Speakers with regard to disqualification on the ground of

---

267 Bhattacharyya, Indian Government & Politics 250 (2001)
269 Supra Note 244
270 Supra Note 78
defection under the Tenth Schedule have been challenged in various instances for being biased and partial.

For instance, in *Mayawati Vs Markandeya Chand and Ors*271 Speaker’s decision was challenged as being perverse because the Speaker unduly delayed the proceedings under the disqualification petition filed on the ground of defection under the Tenth Schedule to the Constitution. In this case, though the Supreme Court refused to set aside the order of the Speaker but the legal challenge like these erode the confidence posed in the office of the Speaker.

Again, in *D. Sudhakar v. DN Jeevaraju and Ors.*272 the impugned order of the Speaker was held to be vitiated by *mala fides* because the disqualification petition was decided by him in haste and revealed a partisan attitude in his approach. The Court observed that the Speaker’s decision is subject to judicial review under Articles 32, 226 and 136 as the Speaker discharges quasi-judicial functions when acting under Paragraph 6 of the Tenth Schedule.

In *Balchandra L. Jarkiholi –Vs – B.S. Yeddyurappa*273 the Speaker was held to have not taken into consideration rules of evidence while acting on the disqualification petition, and to have acted in haste and in violation of the principles of natural justice. The Court said that the

---

271 Supra Note 89
272 Supra Note 139
273 Supra Note 263
Speaker acted in ‘hot haste’ while disposing off the disqualification petition, even though there was no conceivable reason for the Speaker to have taken up the matter in such hurry. In this case, on 6/10/2010, on receipt of the letters from the 13 BJP and 5 independent rebel MLAs withdrawing support from the Yeddyurappa lead BJP Government, the Governor informed the matter and request the Speaker to prove majority in the Assembly on or before 12/10/2010 by 5pm. On the same day Yeddyurappa filed an application before the Speaker for disqualification of those rebel MLAs. On 7/10/2010, the Speaker issued Show Cause notice to the aforesaid MLAs under paragraph 2(1)(a) of the Tenth Schedule and were given time till 5.00 pm on 10/10/2010, to submit their objection. Again, such notice had not been served directly and the same were pasted on the doors of their MLA quarters and that to without copies of the various documents. The Speaker refused to give them reasonable time to respond to show cause notice. The Speaker did not supply the copies of the affidavits filed by Shri MP. Renukacharya and Shri Narasimha Nayak, whereby they retracted the statements which they had made in their letters submitted to the Governor on 6/10/2010. The Speaker not only relied upon the said affidavits, but also dismissed the disqualification petition against Shri MP. Renukacharya and Shri Narasimha Nayak, on the basis of such retraction. A further incident of partisan behaviour on the part of the Speaker reveals from the fact that the time given to submit the show-cause
notice was preponed from 5.00pm to 3.00 pm. The procedure adopted by the Speaker indicate that he was trying to meet the time schedule set by the Governor for the trial of strength in the Assembly and to ensure that the Appellants and the other independent MLAs stood disqualified prior to the date on which the floor test was to be held. The vote of confidence took place on 11/10/2010, in which the disqualified members could not participate and, in their absence Shri B.S. Yeddyurappa was able to prove his majority in the House. Unless it was to ensure that the Trust Vote did not go against the Chief Minister, there was no conceivable reason for the Speaker to have taken up the disqualification application in such a great hurry violating the principles of natural justice and fair play.

In Speaker, Haryana Vidhan Sabha Vs Kuldip Bishnoi & Ors274 the Hon’ble Apex Court while deciding the question as to whether the Speaker have an independent power to decide the claim of split or merger without considering the disqualification petition which is pending before the Speaker held that under the Tenth Schedule the Speaker does not have an independent power to decide that there has been split or merger as contemplated by paragraphs 3 and 4 respectively and such a decision can be considered only when the question of disqualification arises in a proceeding under paragraph 6.

---

274 AIR 2013 SC 120,
Without disregard to the high office of the Speaker, apprehensions regarding the partisan nature of the Speakers’ decisions have been a cause for concern. Former Speaker Mr. Shivraj Patil himself in his decision of June 1, 1993 observed that:\(^{275}\)

“Since Speakers in India are, after all, party members, they should not be burdened with the job of pronouncing on the membership of their fellow members. Whatever they decide, motives would be imputed to them.”

In Indian parliamentary democracy, these instances proved that even though Paragraph 6 of the Tenth Schedule to the Constitution of India gives finality to the Chairman/Speaker’s decision, but there is ample scope for his decision to be reviewed. Therefore, the decision of the Speaker is not immune from challenge before the High Court under Articles 226 and 227 of the Constitution.

It would be unrealistic to expect a Speaker to completely abjure all party considerations while deciding any question of disqualification on the ground of defection under the Tenth Schedule to the Constitution.\(^{276}\) Therefore, various Committee Report/Law Commission recommended that the anti-defection law should be changed and the adjudicatory power to decide the question of disqualification on the ground of defection should

be entrusted to the President and the Governor, as the case may be, who shall act in accordance with the advice of the Election Commission.

4.5 Judicial Review of Speaker’s orders

Under the Tenth Schedule, the Speaker is invested with adjudicatory power to resolve disputes arising under the said Schedule. While exercising such powers, as decided by the Supreme Court, the Speaker acts as a Tribunal and his decision in that capacity is amenable to judicial review though the same is limited. As held by the Supreme Court, the decisions of the Speaker, acting as a Tribunal, is open to judicial review on grounds of violations of Constitutional mandates, malafides, and non compliance with rules of Natural Justice.

In a landmark judgment of Kihoto Holohan Vs. Zachilhu the Apex Court has struck down paragraph 7 of the Tenth Schedule which provided that the Speaker’s decision regarding the disqualification shall be final and no court could examine its validity. The position has now more or less been settled.

Scope of Judicial Review

277 Supra Note 78
There is no immunity under Art. 122 and 212 from judicial scrutiny of the decision of the Speaker or Chairman exercising power under paragraph 6(1) of the Tenth Schedule. – *Kihoto Hollohan Vs. Zachilhu*.278

The scope of judicial review under Articles 136, 226, and 227 of the Constitution in respect of an order passed by the Speaker or Chairperson under paragraph 6 would be confined to jurisdictional errors only. – *Kihoto Hollohan Vs. Zachilhu*.279

The High Court has no jurisdiction to entertain a writ-petition under Art. 226 to decide the legality of a proceeding in the Legislature of a State. *Saradhakar Supakar Vs. Speaker, Orissa Legislative Assembly*280 and *Godavri Misra Vs. Nandakisore Das*.281 Validity of the proceedings inside the Legislature of a State cannot be called in question on the allegation that the procedure laid down by the law had not been strictly followed. No court can go into those question which are within the special jurisdiction of the Legislature itself which has the power to conduct its own business. *M.S.M. Sharma Vs. Dr. Shree Krishna Sinha*.282

As the Speaker has not yet taken a final decision and has merely referred the matter of disqualification to the Committee of Privileges for enquiry and report, on the receipt of which only he would take a final

278 Supra Note 78
279 Ibid
280 AIR 1952 Orissa 234;
281 AIR 1953 Orissa 111
282 AIR 1960 SC 1186
decision, and the Committee is yet to conclude its proceeding, the present
writ-petition is held as premature and not maintainable on this ground alone. *Bhajaman Bohera Vs. Speaker, Orissa Legislative Assembly*.283

The Gauhati High Court in the case of *Keshab Gogoi Vs. The Speaker, Assam Legislative Assembly*284 has held that power of judicial review in respect of the order passed by the Speaker/Chairman of the House acting as a Tribunal under Tenth Schedule of the Constitution adjudicating any matter is limited and this power cannot be exercised in case of apprehended or threatened action. Judicial review is not available at a stage prior to the making of decision by the Speaker/Chairman, nor would it be available for interfering against any interlocutory order. However, there are exemptions in respect of cases where disqualification or suspension is imposed during the pendency of the proceeding or where such disqualification or suspension is likely to have grave, immediate and irreversible repercussion and consequences. It would be interesting to note here that in the said case the Divisional Bench of the Gauhati High Court while reiterating the law laid down by the Apex Court that the scope of judicial review in cases under the Tenth Schedule is restricted/limited and that judicial review is not available at the interlocutory stage or at a stage prior to the making of decision by the Speaker, nevertheless granted substantial relief to the petitioner though the petition was filed prior to the

283 *AIR 1990 Orissa 18 (FB).*

284 *Supra Note 204*
making of decision by the Speaker and on the alleged ground of violation of the Members of Assam Legislative Assembly (Disqualification on the ground of defection) Rules, 1986.

Having regard to the Constitutional Scheme in the Tenth Schedule Judicial review should not cover any stage prior to the making of a decision by the Speakers or Chairpersons, as the case may be, except in cases of interlocutory or suspensions which may have grave, immediate and irreversible repercussions and consequences. *Kihoto Hollohan Vs. Zachilhu.*\(^{285}\)

Where a motion for disqualification of certain MLA was moved before the Speaker, and subsequently some more members applied to the Speaker that there was a split in the original political party and that the split be recognised, and the Speaker recognised the split but postponed the decision on the question of disqualification, in that case and to this extent, the decision of the Speaker cannot be said to be an order in terms of the Tenth Schedule. Held that the order of the Speaker, therefore, does not enjoy the full immunity in terms of paragraph 6(1) of the Tenth Schedule. - *Rajendra Singh Rana Vs. Swami Prasad Maurya.*\(^{286}\)

Where in a case of merger of political parties, grievances have been raised relating to the Bulletin issued under the authority of the Speaker, that the very identity of the party has been affected and that the members

---

\(^{285}\) *Supra Note 78*

\(^{286}\) *Supra Note 76*
are, as a result, without any original political party, and where the orders of disqualification passed by the Speaker have eventually been upheld by the Supreme Court, it is held that the High Court still can look into the grievances even after the orders of disqualification, subject to the decision of the Supreme Court already made. *O Lohri & ors. Vs. The Speaker, Manipur Legislative Assembly & ors.*

**Jurisdictional Error**

Judicial review in respect of an order passed by the Speaker or Chairman under para 6 of the 10th Schedule of the Constitution is held confined to jurisdictional errors only. If the impugned notice of the Speaker creates only an apprehension in the mind of the appellant-petitioner that a wrongful action is going to be taken against him under 10th Schedule to the Constitution and no decision has been taken by the Speaker causing the injury to the appellant-petitioner, judicial review will not be available against such wrongful action or injury apprehended by the petitioner-appellant. - *Keshab Gogoi Vs. Speaker, Assam Legislative Assembly.*

It is primarily the jurisdiction of the Speaker to go into the question whether a member of the Legislative Assembly is disqualified under the Anti-Defection Laws and the decision of the Speaker, if any, can be

---

287 1997 (II) Gau LT 47
288 Supra Note 204
challenged in High Court under Articles 226 and 227 of the Constitution only on limited grounds. - *Majji Dharma Rao Vs. Goutu Syamasunder Sivaji.*

In *Rajendra Singh Rana & Ors Vs Swami Prasad Maurya & Ors.*, the Speaker was in error in not deciding the application for disqualification of the 13 B.S.P. members first and in proceeding to decide the application for recognition of a split and merger by the 37 B.S.P legislators before him. Thereby the Speaker has failed to exercise the jurisdiction conferred on him by paragraph 6 of the Tenth Schedule. The Apex Court held that the Speaker has committed an error that goes to the root of the matter or an error that is so fundamental, which attracted the jurisdiction of the High Court in exercise of its power of judicial review. In this regards the Apex Court further went to observe that, even within the parameters of judicial review laid down in *Kihoto Hollohan* and in *Jagjit Singh Vs State of Haryana* it has to be found that the decision of the Speaker impugned is liable to be set aside in exercise of the power of judicial review by the constitutional Court.

---

289 AIR 1996 A.P. 354
290 Supra Note 76
291 Supra Note 78
292 Supra Note 133
Jurisdictional errors would include infirmities based on violation of Constitutional mandate, malafides, non-compliance with rules of natural justice and perversity. - *Kihoto Hollohan Vs. Zachilhu.*

The failure on the part of the Speaker to decide the application for disqualification, before or at the time of recognition of the alleged split, cannot be said as a mere procedural irregularity. It being a jurisdictional illegality, it is amenable to judicial review and liable to be set aside. - *Rajendra Singh Rana Vs. Swami Prasad Maurya.*

**Violation of Principle of Natural Justice**

While applying the principles of natural justice, it must be borne in mind that they are not immutable but flexible and they are not caste in a rigid mould and cannot be put in a legal strait-jacket. Whether the requirements of natural justice have been complied with or not has to be considered in the context of the facts and circumstances of a particular case. - *Ravi S. Naik Vs. Union of India.*

**Violation of Rules famed under the Tenth Schedule**

In *Ravi S. Naik Vs Union of India & Ors.* one of the issue considered by the Apex Court was whether judicial review by courts extends to rules

---

293 *Supra Note 78*
294 *Supra Note 76*
295 *Supra Note 116*
296 *Ibid*
famed under the Tenth Schedule of the Constitution. The Supreme Court rejected the contention of the petitioner that, violation of the Disqualification Rules amounts to violation of the constitutional mandates, and went on to hold that the Disqualification Rules have been framed to regulate the procedure that is to be followed by the Speaker for exercising the power conferred on him under sub-paragraph (1) of paragraph 6 of the Tenth Schedule to the Constitution. The Disqualification Rules are, therefore, procedural in nature and any violation of the same would amount to an irregularity in procedure which is immune from judicial scrutiny.

It was further observed that the field of judicial review in respect of the orders passed by the Speaker under paragraph 6(1) as construed by this court in *Kihoto Hollohan’s case*[^78] is confined to breaches of the constitutional mandates, mala fides, non-compliance with rules of Natural Justice and perversity. The court was of the view that, since the Disqualification Rules have been framed by the Speaker in exercise of the power conferred under paragraph 8 of the Tenth Schedule they have a status subordinate to the Constitution and cannot be equated with the provisions of the Constitution. They cannot, therefore, be regarded as constitutional mandates and any violation of the Disqualification Rules does not afford a ground for judicial review of the order of the Speaker in

[^78]: Supra Note 78
view of the finality clause contained in sub-paragraph (1) of paragraph 6 of the Tenth Schedule.

The Disqualification Rules framed under Paragraph 8 of the Tenth Schedule are procedural in nature, and any violation of the same would amount to an irregularity in procedure, which is immune from judicial scrutiny in view of sub-paragraph (2) of Paragraph 6. - *Ravi S. Naik Vs. Union of India.*\(^{298}\)

It is not every violation of every rule, which would call upon or require the court to strike down the order of a Tribunal like that of Speaker. Whether the order is to be struck down on the ground of violation of a Rule, depends on a host of circumstances, such as the nature and significance of the Rule the conduct of the Writ-petitioners, and prejudice caused to them etc. Having regard to all the circumstances, it is viewed that the final order of the Speaker is not liable to be quashed on this ground alone i.e. violation of Rule 7 of the Members of Nagaland Legislative Assembly (Disqualification on the ground of Defection) Rules, 1986. - *Zachilhu Khusantho Vs. State of Nagaland.*\(^{299}\)

Validity of the proceedings inside the legislature of a state cannot be called in question on the allegation that the procedure laid down by the law had not been strictly followed. No court can go into those question which

\(^{298}\) Supra Note 116
\(^{299}\) Supra Note 102
are within the special jurisdiction of the legislature itself, which has the power to conduct its own business. - *M.S.M Sharma Vs. Dr. Shri Krishna Sinha*.\(^{300}\)

**Entertainment of delayed Writ Petition**

Where an order of review was passed under the Tenth Schedule by the Speaker of the State Legislative Assembly reviewing the earlier order of disqualification against the Chief Minister and two other Ministers on the ground of defection, a writ – petition filed by a member of the Assembly questioning the Speaker’s power of review, almost ten months after the date of the impugned order, was not liable to be dismissed merely on the ground of laches, particularly when the alleged usurpation of the public offices including that of the Chief Minister continued. - *Dr. Kashinath G. Jalmi Vs. The Speaker, Legislative Assembly of Goa*.\(^{301}\)

Moreover, the relief claimed by the petitioner M.L.A.s in their writ petitions before the High Court, being in the nature of a class-action, and seeking no relief personal to them, the writ petition should not have been dismissed by the High Court merely on the ground of laches. - *Dr. Kashinath G. Jalmi Vs. The Speaker, Legislative Assembly of Goa*.\(^{302}\)

Exercise of discretion by the Court even where the application is delayed is to be governed by the objective of promoting public interest and

\(^{300}\) *Supra Note 282*  
\(^{301}\) *Supra Note 86*  
\(^{302}\) *Ibid*
good administration, and on that basis it cannot be said that discretion should not be exercised in favour of interference by way of a Writ-petition under Article 226, where it is absolutely necessary to prevent continuance of usurpation of public office or perpetuation of an illegality, as in the present case. - Dr. Kashinath G. Jalmi Vs. The Speaker, Legislative Assembly of Goa.  

**Whether the Speaker is bound by the direction of a Court**

In *Manilal Singh Vs Dr. H.Borobabu Singh* determining the question of disqualification a different situation arose, when the Supreme Court quashed the Manipur Speaker Mr. Borbabu’s decision of disqualifying seven legislators but the Speakers refused to be bound by the Supreme Court’s decision. The crisis was somewhat resolved when the centre at the instance of the Supreme Court virtually arrested the Speaker, Mr. Borbabu Singh and produced him before the Supreme Court and the Supreme Court dropped the Contempt proceedings against him.

In *Ravi S. Naik Vs Union of India & Ors* one of the issue was as to whether the Speaker of a House is bound by the direction of a Court. The Apex Court observed that, in the absence of an authoritative pronouncement by this Court the stay order passed by the High Court could not be ignored by the Speaker on the view that his order could not be

---

303 *Ibid*
304 *Supra Note 262*
305 *Supra Note 116*
a subject-matter of court proceedings and his decision was final. It is settled law that an order, even though interim in nature, is binding till it is set aside by a competent court and it cannot be ignored on the ground that the Court which passed the order had no jurisdiction to pass the same.

The Court further went to hold that the Speaker was bound by the stay-order passed by the High Court on 14th December, 1990 and any action taken by him in disregard of the said stay order would be a nullity. In the instant case, the Speaker’s order dated 15th February, 1991 treating Bandekar and Chopdekar as disqualified members in total disregard of the High Courts stay order dated 14th December, 1990 was, therefore, held to be null and void.

**Interim stay against the Speaker’s order of Disqualification – Effect of:**

The effect of the stay of operation of the order of disqualification dated December 13, 1990 in respect of two M.L.As of M.G. Party viz. Bandekar and Chopdekar was that with effect from December 14, 1990 the declaration that they are were disqualified from being the members of Goa Legislative Assembly under the Speaker’s order dated December 13, 1990 was not operative, and on 24th December, 1990 i.e. on the date of the
alleged split, it could not be said that they were not members of Goa Legislative Assembly. -Ravi S.Naik Vs. Union of India.\textsuperscript{306}

The action of the Speaker in ignoring the stay-order passed by the High Court, while passing his order dated 15th February, 1991 cannot be condoned on the plea that in the absence of decision of the Supreme Court declaring Paragraph 7 as invalid, it was open for the Speaker to proceed on his own interpretation of paragraphs 6 and 7 of the Tenth Schedule and ignore the stay-order passed by the High Court. -Ravi S. Naik Vs. Union of India.\textsuperscript{307}

When disqualification proceedings were pending before the Speaker

In Speaker Haryana Vidhan Sabha Vs Kuldip Bishnoi & Ors\textsuperscript{308} the appeals are being decided in the background of the complaint made to the effect that interim orders have been passed by the High Court in purported exercise of its powers to judicial review under Articles 226 and 227 of the Constitution, when the disqualification proceedings were pending before the Speaker. In that regard, the Hon’ble Apex Court viewed that since the decision of the Speaker on a petition under paragraph 4 of the Tenth Schedule concerns only a question of merger on which the Speaker is not entitled to adjudicate, the High Court could not

\begin{footnotesize}
\begin{enumerate}
\item[\textsuperscript{306}] Supra Note 116
\item[\textsuperscript{307}] Ibid
\item[\textsuperscript{308}] Supra Note 274
\end{enumerate}
\end{footnotesize}
have assumed jurisdiction under its powers of review before a decision was taken by the Speaker under paragraph 6 of the Tenth Schedule to the Constitution. It is in fact in a proceeding under paragraph 6 that the Speaker assumes jurisdiction to pass a quasi-judicial order which is within the scope of the writ jurisdiction of the High Court. Therefore, restraining the Speaker from taking any decision under paragraph 6 of the Tenth Schedule is, beyond the jurisdiction of the High Court, since the Constitution itself has vested the Speaker with the power to take a decision under paragraph 6 and care has also been taken to indicate that such decision of the Speaker would be final. It is only after a final decision is taken by the Speaker under paragraph 6 of the Tenth Schedule to the Constitution that the jurisdiction of the High Court under Article 226 of the Constitution can be invoked.

Non-awarding of costs – Relevant considerations for –

The motive or conduct of the members in the given situation can be relevant only for denying them the costs, even if their writ-petition and the claim therein succeed. - Dr. Kashinath G. Jalmi Vs. The Speaker, Legislative Assembly of Goa.\textsuperscript{309}

Irregularity in procedure – Effect of:

\textsuperscript{309}Supra Note 86
As long as irregularity of procedure does not amount to violation of an essential principles of natural justice, it cannot be used as a ground to challenge the validity of the said disqualification- proceedings taken up by the Speaker. - *Zachilhu Khusantho Vs. State of Nagaland*.\(^{310}\)

When a certain procedure is required by the Disqualification Rules to be adopted for giving effect to the provisions of the Constitution, the non-adoption of the procedure cannot be side-lined altogether as a mere procedure and of no consequence. – *Mayawati Vs. Markandeya Chand*.\(^{311}\)

Where the two M.L.A.s expelled by their Party President and later declared “unattached” by the Speaker did not challenge the order of expulsion or the order of the Speaker declaring them unattached, the writ petitioners other than those two M.L.A.s are not entitled to challenge the same collaterally in these proceedings under Article 226. – *Banjak Phoom Vs. Thenucho*.\(^{312}\)

A plea not taken before the Speaker cannot be taken before the High Court in a writ proceeding. When the omission as regards verification of Annexures to the petition seeking disqualification of certain M.L.A.s was not pleaded before the Speaker, nor was noticed by the Speaker, and nor even noticed in the writ petition as no ground in this respect was taken in the writ petition, it was held that the order of the Speaker not to be

---

\(^{310}\) Supra Note 102
\(^{311}\) Supra Note 89
\(^{312}\) Supra Note 80
interfered with under Article 226 on the ground of alleged omission of verification of the Annexures to the petition of disqualification. - Zachilhu Khusantho Vs. State of Nagaland.\textsuperscript{313}

**Unreasonableness – meaning of**

It is frequently used as a general description of the things that must not be done. For instance a person entrusted with a discretion must direct himself properly in a law. He must call his own attention to the matters which he is bound to consider. He must exclude from his consideration matters which are irrelevant to the case that he has to consider. If he does not obey these rules, he may truly be said, and often is said, to be acting unreasonably. – *Associated Provincial Picture Houses Ltd. Vs. Wednesbury Corporation*\textsuperscript{314}

It applies to a decision which is so outrageous in its defence of logic or accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it.\textsuperscript{315}

To arrive at a decision on reasonableness, the court or the authority has to find out if any relevant factors have been left out or any irrelevant factors have been taken into account. A decision to be reasonable should be within the four corners of the law, and not one which no sensible person

\textsuperscript{313} Supra Note 102
\textsuperscript{314} (1974) 2 All 680
\textsuperscript{315} CCSU vs Minister for Civil Service, (1984) 3 All ER 935
could have reasonably arrived at, having regard to the above principle, and should be a bonafide one. - *Union of India Vs. G. Ganayutham.*

### 4.6 Speaker’s power to Review previous decision

It is not correct to say the power of review inheres in the Speaker under the Tenth Schedule as a necessary incident of his jurisdiction to decide the question of disqualification; or that such a power existed till 12th November, 1991 when the decision in the case of *Kihoto Hollohon Vs. Zachillhu* was rendered; or at least a limited power of review inheres in the Speaker to correct any palpable error outside the scope of judicial review.-*Dr. Kashinath G.Jalmi Vs. The Speaker, Legislative Assembly of Goa.*

Any need for correction of errors in the Speakers order made under the Tenth Schedule can be met by the availability of judicial review against the same.-*Kihoto Hollohon Vs. Zachillhu.*

The existence of judicial review against the Speakers order of disqualification made under Para 6 is itself a strong indication to the contrary that there can be no inherent power of review in the Speaker in

---

316 (1997) 7 SCC 463  
317 Supra Note 78  
318 Supra note 86  
319 Supra note 78
the Tenth Schedule, by necessary implication.—Dr. Kashinath G. Jalmi Vs. The Speaker, Legislative Assembly of Goa.\(^{320}\)

In Nabam Rebia Vs Deputy Speaker Arunachal Pradesh\(^{321}\) one of the issue was as to whether the Deputy Speaker of the Legislative Assembly of Arunachal Pradesh was entitled to set aside the order of the Speaker of the Legislative Assembly by which the Speaker had disqualified 14 Members of the Legislative Assembly under the Tenth Schedule of the Constitution. It is pertinent to mention here that the Deputy Speaker was himself disqualified from the membership of the Legislative Assembly by the Speaker and he could certainly not have set aside the order passed against him and in respect of which he would be the beneficiary.

Considering the question, the Apex Court further went to observed that, it is now well settled by the decision of this Court in Kihoto Hollohan v. Zachillhu\(^{322}\) that the Speaker while acting under the Tenth Schedule of the Constitution acts as a Tribunal and his decision can be challenged only in a court exercising constitutional jurisdiction. It was held in Kashinath Jalmi v. The Speaker, Legislative Assembly of Goa\(^{323}\) that even the Speaker does not have the power to review the decision taken by him under the Tenth Schedule of the Constitution. Under these circumstances, there is

\(^{320}\) Supra note 86

\(^{321}\) Supra note 235

\(^{322}\) Supra note 78

\(^{323}\) Supra Note 86
absolutely no question of the Deputy Speaker setting aside the order of the Speaker passed under the Tenth Schedule of the Constitution.

4.7 Review

The question of the Speaker’s position as a Tribunal or more precisely on the question as to whether the Speaker meets necessary attributed of a judicial tribunal, the initial doubts and criticism still persist more so in view of the conduct of some of the Speakers in recent times. It was argued before the Apex Court that independent, fair and impartial adjudicatory machinery is an important and essential feature of democracy. The Speaker in the Indian context is the nominee of political parties who is not required to resign their party affiliation after election. Therefore the vesting of the power of adjudication in the Speaker to decide questions of disqualification on the ground of defection is violative of this requirement, which in turn would violate a basic feature of Indian Constitution viz. Parliamentary democracy. In short, what was urged and what is still agitating in the minds of the people is that the Speakers being political personalities and being nominees of political parties do not meet the requirements of an independent judicial tribunal and cannot function as such, notwithstanding the aura of impartiality.
The majority in *Kihoto Hollohan v. Zachillhu*\(^{324}\) rejected this argument on the “high office principle” i.e. it is expected that persons holding such high office, being vested with the power of adjudication, would act fairly and judiciously. The majority rejected the aforesaid ground of challenge and held that the vesting of adjudicatory functions in the Speaker would not by itself vitiate the provision on the ground of likelihood of political biasness.

It is often said that the majority lays down the law but the wisdom lies in the minority view in *Kihoto Hollohan v. Zachillhu*\(^{325}\) was that the Speaker is not an independent adjudicatory authority for adjudicating disputes as contemplated under the Tenth Schedule and therefore the investiture of such adjudicatory power in the Speakers is violative of a basic feature of the Constitution.

The minority through Justice Verma stated that democracy is a part of the basic structure of our Constitution and Rule of Law and free and fair elections are basic feature of Democracy. One of the postulates of free and fair elections is provision for resolution of election disputes as also adjudication of disputes relating to subsequent disqualifications by an independent authority. In the democratic pattern adopted in our Constitution not only the resolution of election dispute is entrusted to a

\(^{324}\)Supra Note 78
\(^{325}\)Ibid
judicial tribunal but also the decision on question as the disqualification of members under Art. 103 and 192 is by the President/ Governor in accordance with the opinion of the Election Commission. Therefore, the Constitutional scheme for decision on questions as to disqualification of members after being duly elected, contemplates adjudication of such disputes by and independent authority outside the House viz. President / Governor in accordance with the opinion of the Election Commission, all of whom are high Constitutional functionaries with security of tenure independent of the will of the House.

The minority in *Kihoto Hollohan v. Zachillhu*[^326] was of the opinion that all disqualifications of members according to the constitutional scheme are meant to be decided by an independent authority outside the House such as the President / Governor, in accordance with the opinion of another similar independent constitutional functionary, the Election Commission of India, who enjoys the security of tenure of a Supreme Court Judge with the same terms and conditions of office. Thus, for the purpose of entrusting the decision on the question of disqualification of a member, the Constitutional scheme envisages an independent authority outside the House and not within it, which may be dependent on the pleasure of the majority in the House for its tenure.

[^326]: Supra Note 78
The minority view also stated – “The Speaker is an authority within the House and his tenure is dependent on the will of the majority therein, and therefore likelihood of suspicion of bias could not be ruled out. The question as to disqualification of a member has adjudicatory disposition and, therefore, requires the decision to be reduced in consonance with the scheme for adjudication of disputes. Rule of law has in it firmly entrenched natural justice, of which, Rule against Bias is a necessary concomitant. Basic postulates of Rule against Bias are – (i) Nemo Judex in Causa Sua – a Judge is disqualified from determining any case in which he may be, or may fairly be suspected to be, biased, and (ii) it is of fundamental importance that justice should not only be done but, should manifestly and undoubtedly be seen to be done.

This, according to the minority, appears to be the underlying principle adopted by the framers of the constitution is not designating the Speaker as the authority to decide election disputes and questions as to disqualification of members under Articles 103, 192 and 329 and opting for an independent authority outside the House. The framers of the constitution had in this manner kept the office of the Speaker away from this controversy. There is nothing unusual in this scheme in view of the fact that the final authority for removal of a Judge of the Supreme Court and High Court is outside the judiciary, in the parliament under Article 124(4). On the same principle, the authority to decide the question of
disqualification of a member of Legislature is outside the House as envisaged by Article 103 and 192.

In the Tenth Schedule, the Speaker is made not only the sole but the final arbiter of such disputes with no provision for any appeal or revision against the Speaker’s decision to any independent outside authority. This departure in the Tenth Schedule, according to the minority is a reverse trend and violates a basic feature of the Constitution since the Speaker cannot be treated as an authority for being entrusted with this function by the basic postulates of the Constitution, notwithstanding the great dignity attaching to that office with the attribute of impartiality.

Let us look at the two views keeping in mind the present state of affairs and the recent conduct of some of the Speaker’s; it would be apparent that the majority were for off the mark in their assessment of the Speaker’s impartiality. The majority had looked onto the Speaker’s adjudicatory powers from a historical and theoretical angle and answered the question accordingly. They had not taken into account the all pervasive decadence which is eroding our political system cutting across political parties and encompassing all, including the Speakers. Politics no longer is what it used to be in the earlier days, during the period when the Constitution was framed and immediately thereafter. Towering personalities well versed in Parliamentary practices and procedures and legalism, which used to adorn
the Speaker’s chair, are becoming rarer and rarer, this is particularly true in the case of the States.

There is sufficient force in the reasoning given by the minority in Kihoto Hollohan v. Zachillhu\textsuperscript{327} that investiture of the power of adjudication in the Speaker is violative of the Principle of natural Justice and the Speakers being political personalities can not be expected to discharge the duties and functions of judicial tribunal. Speakers are seen acting in a partisan manner which is more often than not reflected in their functioning as a tribunal. In some cases politicians use the provisions of the Tenth Schedule to settle political differences and attempt to disqualify their opponents from being members of the House. In such cases, it is seen that the Speakers willy-nilly become a part of such political manoeuvres and act in a partition manner.

For instance in Balchandra L. Jarkiholi and Ors. v. B.S. Yeddyurappa\textsuperscript{328} the Supreme Court of India observed that the Speaker failed to take into consideration rules of evidence while acting on the disqualification petition filed by B.S. Yeddyurappa, leader of the B.J.P. legislature party, and to have acted in haste and in violation of the principles of natural justice. The Court said that the Speaker acted in ‘hot haste’ while disposing off the disqualification petition, even though there

\textsuperscript{327} Supra Note 78
\textsuperscript{328} Supra note 263
was no conceivable reason for the Speaker of the Karnataka Legislative Assembly to have taken up the matter in such hurry.

In *Jagjit Singh v. State of Haryana*\(^{329}\) the Hon’ble Supreme Court of India speaking about the office of Speaker observed that, in our constitutional scheme, the Speaker of the House enjoys a pivotal position. Without disregard to the high office of the Speaker in the country and only going by some events of the recent past, various questions have been raised about the confidence in the matter of impartiality and neutrality on some issues having political overtones which are decided by the Speaker in his capacity as a Tribunal under the Tenth Schedule to the Constitution of India.

Addressing at the symposium on ‘Anti-Defection Law – Need for Review’, during the Conference of Presiding Officers of Legislative Bodies in Chandigarh on 23\(^{rd}\) September 2008, former Lok Sabha Speaker observed that the jurisdiction and authority to deal with matters of defection as provided in the Tenth Schedule need not continue to be exercised by the Presiding Officers and the power should be conferred on some other authority like a special Tribunal comprised of people well versed in law or on an authority like the Election Commission.

\(^{329}\) *Supra note 133*
In *Pema Khandu & Ors Vs The Speaker*\(^{330}\) Arunachal Pradesh Legislative Assembly & Ors, the Gauhati High Court observed the existing system of conferring power upon the Speaker to decide the question of disqualification on the ground of defection has left much to be desired, can hardly result in a fair and just decision because its violate the principle of natural justice. The Speaker is likely to be elected with the support of the ruling party and may not be free from bias. The Court further went to observe that the time has now come for the Parliament to seriously think of amending paragraph 6 of the Tenth Schedule to the Constitution to remove the adjudicatory power from the Speaker under the Tenth Schedule and entrust it to an independent body to ensure impartial and effective decision.

Even if we look into the historical background of the Anti-Defection Law it is found that the Constitution (32\(^{nd}\) Amendment) Bill 1973 and the Constitution (48\(^{th}\) Amendment) Bill 1978 had no provisions for decision making by the President and Governor of the concerned States in relation to questions of disqualification on the ground of defection. But the Constitution (52\(^{nd}\) Amendment) Act 1985 conferred the decision making power on question of defection on the Speaker/Chairman of the House.

The role of the Speaker as a adjudicatory authority has also been called in question on the ground that some Speakers have tended to act in a

\(^{330}\) WP (C) No. 09/2016
partisan manner and without proper appreciation deliberately or otherwise of the provisions of the Tenth Schedule. The Speaker of the Legislature is a political creature and therefore, he is not impartial. Most of the times he takes a view which is in the interest of the party to which he belongs. Suggestions have, therefore, been made that the Tenth Schedule to the Constitution should be amended and the power to decide alleged question of disqualification on the ground of defection should be conferred on the President and the Governor of the State, who shall act on the advice of the Election Commission which is an autonomous, non-political, non-partisan body.\textsuperscript{331}