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SC Notice on Plea to Bar Disqualified Legislators

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Why in News

The **Supreme Court** has asked the **Centre** and the **Election Commission of India (EC)** to respond to a plea to **debar legislators, disqualified under the Tenth Schedule, from contesting byelections** during the **rest of the tenure of the House**.

Key Points

- **Background:**

The plea comes in the backdrop of recent political events in several States such as **Manipur, Madhya Pradesh, Karnataka** in which Members of Legislative Assemblies resign, followed by the collapse of the **incumbent government**. They surface again as **Ministers in the new government** formed by a rival political party.

- **Arguments made by the Petitioner:**

- The plea said that once a member of the House incurs **disqualification** under the tenth Schedule, **he or she cannot be permitted to contest again during the term** for which he was elected (considering **Article 172** of the Constitution).
- If a seat **falls vacant due to disqualification** then that particular disqualified member of the House has to incur disability under **Article 191 (1)(e)** of the Constitution and be **debarred from being chosen again during the term for which he/she was elected**.

- **Related Constitutional Provisions:**

- **Para 2 of the Xth Schedule:**

- It says defecting legislators “**disqualified for being a member of the House.**”

- **Article 172:**

- It **makes a membership of a House coterminous with the term of 5 years of the House.**

- **Article 191(1) (e):**

- A person **shall be disqualified** for being a member of the **Legislative Assembly or Legislative Council** of a State if he is so disqualified under the **Tenth Schedule.**

- **Tenth Schedule:**

- The Tenth Schedule was inserted in the Constitution in 1985 by the **52nd Amendment Act**.
- It lays down the process by which **legislators may be disqualified on grounds of defection** by the **Presiding Officer** of a legislature.
- The law applies to both **Parliament and state assemblies**.
- **Disqualification:**
 - **If a member of a House belonging to a political party:**
 - Voluntarily gives up the membership of his political party, or
 - Votes or abstains from voting in such House **contrary to any direction** issued by his **political party** without obtaining **prior permission** of such party and such act has not been condoned by the party within **15 days**.
 - If an **independent candidate** joins a political party after the election.
 - If a **nominated member** joins a party six months after he becomes a member of the legislature.
- **Exceptions under the Law:**
 - If a member goes out of his party as a result of a **merger of the party with another party**. A merger takes place when **two-thirds of the members of the party** have agreed to such merger.
 - If a member, after being elected as the **presiding officer** of the House, voluntarily gives up the membership of his party or rejoins it after he ceases to hold that office.
- **Decision of the Presiding Officer is Subject to Judicial Review:**

In the *Kihoto Hollohan case* (1993), the Supreme Court declared that while deciding a question under the 10th Schedule, the presiding officer should **function as a tribunal**.

Hence, his/her decision (like that of any other tribunal) was **subject to judicial review on the grounds of mala fides, perversity, etc.**
- **Time limit within which the Presiding Officer decides:**
 - There is **no time limit as per the law** within which the Presiding Officers should decide on a plea for disqualification.
 - The courts also can intervene **only after the officer has made a decision**, and so the only option for the petitioner is to wait until the decision is made.
 - There have been several cases where the Courts have expressed concern about the unnecessary delay in deciding such petitions.

The SC in a recent judgement held that unless there are “**exceptional circumstances**”, disqualification petitions under the Tenth Schedule should be **decided by Speakers within three months**.

Source:TH