

To address this trend, an anti-defection law was brought in 1985 through the 52nd Constitutional Amendment Act. Its constitutional validity was questioned in the *Kihoto Hollohan vs Zachillu and Others* case, 1992 on the grounds that the law is violative of the fundamental principles of Parliamentary democracy and is destructive of the freedom of speech, right to dissent and freedom of conscience. The apex court upheld the constitutional validity of the law, marking an important milestone in India's parliamentary democracy.

**Significance of the judgment:**

- It establishes the fact that **contstraining unprincipled and unscrupulous political defections** is in the larger interest of the nation and is a **reasonable restriction** to the freedom of speech.
- The judgment explains the **pivotal position of the Speaker** in Parliamentary democracy and calls him the guardian of the rights and privileges of the House, justifying the powers conferred to him under the tenth schedule.
- It asserts that the **Speaker acts as a tribunal** under the 10<sup>th</sup> Schedule whose judgment is final and even the scope of judicial review against an order of a Speaker or Chairman in anti-defection proceedings would be confined to jurisdictional errors only i.e. if its infirmities are based on a violation of constitutional mandate, mala fides, non-compliance with rules of natural justice and perversity.
- It also limits the **interlocutory interference of the courts** only in cases where interlocutory disqualification or suspension may have grave, immediate and irreversible repercussions and consequences.

However, the law has been violated in its letter and spirit numerous times. Most recently, in the 2019 state elections in Karnataka, 10 out of 11 defectors who won their by-elections were offered cabinet positions. It is thus imperative to follow the principles put forth by this judgment to check such unprincipled and opportunistic manner of power grabbing by political parties and their leaders.

**10. Examine the challenges associated with the implementation of the Panchayats (Extension to the Scheduled Areas) Act, 1996 and suggest measures to ensure its implementation in both letter and spirit. (150 words) 10**

**Approach:**

- Introduce with the purpose of the Panchayats (Extension to the Scheduled Areas) Act.
- Mention the challenges associated with the implementation of the Act.
- Highlight the ways to ensure its success as well.
- Conclude briefly.

**Answer:**

The Panchayats (Extension to the Scheduled Areas) or PESA Act, 1996 extends the provisions of Part IX of the Indian Constitution to the Fifth Schedule areas of the country. It not only accepts the validity of "customary law, social and religious practices, and traditional management practices of community resources", but also directs the state government not to make any law, which is inconsistent with these.

**Challenges associated with the implementation of the PESA Act, 1996 include:**

- Implementation of the law has been severely hampered by the reluctance of most State Governments to make laws and rules that conform to the spirit of the law.
- The State Governments have argued that the power of Gram Sabhas can extend only to forest located within the revenue boundaries of a village. This provision has severely diluted the Act as reserved forest in most States is not located within a revenue boundary of a village.
- The **wordings of some sections of the PESA Act** have been interpreted against the spirit of the Act. For example, the States in many cases have taken advantage of the flexible provision of '**Gram Sabha or Panchayats at the appropriate level**' in PESA and used the discretion in favour of Panchayats, which goes against the basic tenets of PESA.