

The background of the journal cover features a collection of professional items: a pair of black leather brogue shoes in the top left, a black leather bag in the top right, an open notebook with a silver pen on the left, and a black leather watch with a silver face on the right. All items are set against a light-colored wooden surface.

INTERNATIONAL LAW
JOURNAL

**WHITE BLACK
LEGAL LAW
JOURNAL**
**ISSN: 2581-
8503**

Peer - Reviewed & Refereed Journal

The Law Journal strives to provide a platform for discussion of International as well as National Developments in the Field of Law.

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ABOUT US

WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provided dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

ANALYSING THE NABAM REBIA AND RELATED JUDGEMENT TO FIND OUT WHETHER THE SPEAKER CAN DISQUALIFY MEMBERS WHEN A MOTION FOR REMOVAL IS PENDING AGAINST HIMSELF

AUTHORED BY - RISHIT

According to the *Nabam Rebia*¹ judgement, when a notice of resolution for the Speaker's removal is proposed, the Speaker cannot continue functioning in the assembly which includes functioning as a tribunal for the purposes of the Tenth Schedule.²

The court's take on this dilemma was as follows:

*When a resolution for removal of the speaker is pending, it would only be justified that the Speaker first demonstrates the authority to continue in his position, by winning the majority's support in the Legislature. If the Speaker is allowed to act as a Tribunal for the purposes of the Tenth Schedule, while a resolution for his own removal is pending, it would not be fair.*³

The court's position here is based on what would be the right position to take ethically and in sink with natural justice both of which will be adversely affected if the Speaker is allowed to have his way. It could lead to the speaker altering the House's composition to maintain the political status quo in their favour in order to survive the resolution by disqualifying those in favour of his removal. It could lead to a leader without a majority in the House continuing as the CM.

Interpreting the words "all the then members of the Assembly" in Article 179(c)⁴, the court held:

¹ *Nabam Rebia And Bamang Felix v Deputy Speaker* [2017] 13 SCC 332

² INDIA CONST. SCHEDULE X

³ **Rohan Srivastava**, 'Guest Post: Disqualifications and the Role of the Speaker in the Maharashtra Political Crisis' (*Indian Constitutional Law and Philosophy*, 20 February 2023) <https://indconlawphil.wordpress.com/2023/02/20/guest-post-disqualifications-and-the-role-of-the-speaker-in-the-maharashtra-political-crisis/> accessed 24 June 2023

⁴ INDIA CONST. art. 179(c)

... the words “passed by a majority of all the then members of the Assembly”, prevents the Speaker from deciding over disqualifications under the Tenth Schedule, as it would nullify the purpose of “all the then members”. The words “all the then members” are meant to express definiteness. Changes in the composition via disqualification while the resolution for the Speaker’s or Deputy Speaker’s removal is pending, would not be in sink with Article 179(c) which requires all “the then members” to collectively decide if the Speaker has the right to continue to hold the office.⁵

In the Court’s opinion, this limitation on the Speaker’s authority allows Article 179(c)⁶ and the tenth schedule to remain in their separate domains without any overlap.

If the Speaker is able to prove his majority against the resolution for removal from office, he can adjudicate upon the disqualification petitions. The same cannot be altered by judicial review. A disqualified MLA does not have the right to participate in the motion against the Speaker under Article 179(c).⁷

While it is not essential for the Speaker to be an elected MP, its essential for them to possess the qualifications required to be a MP as per the Constitution that’s why it is important to ensure that the Speaker who can disqualify MLAs, themselves enjoy the confidence of the Assembly at the first place.

If the proposal that the Speaker should be allowed to enjoy unhindered powers till motion put is accepted, the consequence will be violation of the principal of natural justice that no one should be a judge in their own case. If the speaker is allowed to disqualify, there are major chances of partiality. It is important to take this possibility into consideration as the Speaker’s impartiality can’t be assumed by virtue of him holding a Constitutional office because its well-known that what transpires in our Assemblies isn’t so Constitutionally ideal for us to have such assumptions.

⁵ **Rohan Srivastava**, ‘Guest Post: Disqualifications and the Role of the Speaker in the Maharashtra Political Crisis’ (*Indian Constitutional Law and Philosophy*, 20 February 2023) <https://indconlawphil.wordpress.com/2023/02/20/guest-post-disqualifications-and-the-role-of-the-speaker-in-the-maharashtra-political-crisis/> accessed 24 June 2023

⁶ INDIA CONST. art. 179(c)

⁷ **Rohan Srivastava**, ‘Guest Post: Disqualifications and the Role of the Speaker in the Maharashtra Political Crisis’ (*Indian Constitutional Law and Philosophy*, 20 February 2023) <https://indconlawphil.wordpress.com/2023/02/20/guest-post-disqualifications-and-the-role-of-the-speaker-in-the-maharashtra-political-crisis/> accessed 24 June 2023

If this country is to progress then its judiciary and legislature can't function on the basis of apprehensions and negative precedents. A provision of the Constitution can't just be done away with by virtue of the apprehension that it is being or might get misused. For instance, if at a certain point in our history, the provision with regard to emergency was misused, can we do away with the provision altogether? No because we know that there can arise such situations where it might genuinely be needed.

Having said that, it can't be denied that there exists a problematic and paradoxical relation between the role of the speaker in the Tenth Schedule⁸ to that provided for in the constitution, both being at odds with each other. The reason behind it is that the Tenth Schedule **incorporated** in 1985 did not consider the nature of the office of the Speaker according to the Constitution while providing him with an adjudicatory role. This is because the office of the Speaker in India is not the unbiased, apolitical figure in India the Tenth Schedule requires and assumes it to be. They are still the member of a political party after getting appointed, and expecting the absence of any bias would only be wishful thinking. Such bias is regularly seen in action all over the country.

In this regard, the situation can be reformed if the honourable Supreme Court's recommendations in the case of *Keisham Meghachandra Singh vs. the Hon'ble Speaker Manipur Legislative Assembly*⁹ to bring amendments in the Constitution with regard to the Speaker's role as a quasi-judicial authority under the Tenth Schedule while they continue to hold the membership of a particular political party. The Hon'ble Supreme Court suggested that this role should rather be given to an independent tribunal to be headed by a retired Supreme Court Judge or a retired Chief Justice of a High Court at both the Centre and the States level to decide over disqualification in order to ensure fairness and swiftness in decisions.¹⁰ The court also kept the scope open for any other independent mechanism.

Such reforms are essential to ensure the healthy and smooth functioning of our law-making bodies and the same require strong incentive and action from the government's side and from all the sitting MPs and MLAs of the country.

⁸ INDIA CONST. SCHEDULE X

⁹ *Keisham Meghachandra Singh v. the Hon'ble Speaker Manipur Legislative Assembly* [2020] 2 S.C.R. 132

¹⁰ INDIA CONST. SCHEDULE X