
CRITICALLY EVALUATING ANTI-DEFECTION JURISPRUDENCE FROM KIHOTO HOLLOHAN TO MANOJ NARULA: PARTY STABILITY VERSUS REPRESENTATIVE ACCOUNTABILITY IN INDIAN CONSTITUTIONAL LAW

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1. INTRODUCTION

Few legislative interventions have shaped India's parliamentary landscape as decisively as the anti-defection law. By attaching the sanction of disqualification to any vote cast against the party whip, the Tenth Schedule placed collective discipline squarely above individual legislative judgment. That choice demands scrutiny, not because it was wrong to curtail opportunistic floor-crossing, but because the manner in which the law has been designed and applied raises questions that go to the heart of constitutional governance. Three such questions organise this paper: what constitutional values does the law serve, and which does it compromise? How has the Supreme Court refined its operation through successive judgments? And does the current doctrine actually achieve a defensible equilibrium between party stability and representative accountability?

These questions have grown sharper since the 91st Amendment Act (2003),¹ as political actors have discovered increasingly creative routes around the law, engineering mass defections to clear the merger threshold, resigning in coordinated waves to sidestep disqualification altogether, and exploiting the Speaker's structural inability to adjudicate impartially. The Maharashtra crisis of 2022, which simultaneously engaged the Governor, the Speaker, the Election Commission, and a Constitution Bench, made it impossible to pretend that these are marginal or incidental problems. They are built into the architecture.

This paper pursues four aims. First, it traces the doctrinal development from *Kihoto Hollohan v Zachillhu*² through *Manoj Narula v Union of India*³ and the most recent cases. Second, it

¹ Constitution (Ninety-First Amendment) Act 2003.

² *Kihoto Hollohan v Zachillhu* [1992] 1 SCC 309.

³ *Manoj Narula v Union of India* [2014] 9 SCC 1.

examines the Speaker's adjudicatory role and the limited reach of judicial review. Third, it weighs the balance the law has struck, or failed to strike, between governmental stability and legislative independence. Fourth, it tests these doctrinal findings against ten state assembly disqualification decisions from the past decade.

2. THEORETICAL AND LEGISLATIVE FOUNDATIONS

2.1 Parliamentary Democracy and the Representative Function

Parliamentary democracy is not merely a procedural choice under the Indian Constitution, it is a feature of the basic structure that no amendment can destroy. The Supreme Court confirmed as much in *Kesavananda Bharati v State of Kerala*,⁴ and both *Indira Nehru Gandhi v Raj Narain*⁵ and *Minerva Mills v Union of India*⁶ independently recognised free and fair elections and democratic governance itself as basic structural components. Any constitutional provision that touches legislative conduct must therefore be tested against these values, and the Tenth Schedule is no exception.

The case for anti-defection law rests on a straightforward premise: parties are the connective tissue of representative democracy. They aggregate diffuse voter preferences into workable programmes, provide the informational basis for meaningful electoral choice, and underpin governmental accountability. When a voter backs a party candidate, it is reasonable to infer that they are endorsing the platform as much as the person. A legislator who then abandons that platform, particularly in exchange for office, arguably violates the trust that the election was meant to express.

The counter-argument is equally weighty and deserves to be taken seriously rather than brushed aside. Legislative deliberation, the process of argument, persuasion, and amendment, is what distinguishes a parliament from a ratification assembly. If every dissenting vote risks disqualification, whether on a confidence motion or a routine policy bill, there is simply no space for a representative to act on independent judgment or to prioritise constituent interests over party preference. The result is a legislature that endorses rather than scrutinises, and the constitutional principle of separation of powers loses much of its practical force at precisely

⁴*Kesavananda Bharati v State of Kerala* [1973] 4 SCC 225.

⁵*Indira Nehru Gandhi v Raj Narain* [1975] Supp SCC 1.

⁶*Minerva Mills v Union of India* [1980] 3 SCC 625.

the point where it matters most. This is a real cost, and the defenders of anti-defection law have rarely engaged with it honestly.

2.2 The 'Aaya Ram, Gaya Ram' Phenomenon and Legislative History

The immediate impetus for what eventually became the Tenth Schedule was the extraordinary instability that followed the 1967 general elections. Gaya Lal, a Haryana MLA who crossed the floor three times in a single day, gave the phenomenon its memorable name: *Aaya Ram, Gaya Ram*. The Lok Sabha Record Bureau documented that roughly a third of all MPs elected in 1967 had changed parties at least once by 1971. In the states, the situation was worse still, ministerial ambition made defection almost routine, and governments changed hands with bewildering frequency.

The Chavan Committee Report (1978)⁷ identified the absence of any legal deterrent for politically motivated floor-crossing and recommended a constitutional remedy. The 52nd Amendment (1985)⁸ responded by inserting the Tenth Schedule, which disqualifies legislators who voluntarily relinquish party membership or defy a party whip without prior permission. The 91st Amendment (2003)⁹ then closed the most egregious loopholes by abolishing the one-third split exception and raising the merger threshold to two-thirds of the legislature party. The Dinesh Goswami Committee Report (1990)¹⁰ had by then conducted a thorough review of the Schedule and proposed a range of modifications, the large majority of which remain unimplemented to this day, a telling commentary on Parliament's appetite for genuine reform.

2.3 Structural Tensions in the Constitutional Architecture

The Tenth Schedule as enacted carries four structural tensions that have generated persistent legal difficulties. The first is its all-or-nothing design: disqualification is the only sanction available, regardless of how marginal or contextually explicable the departure from the party line might be. There is no graduated response, no room for censure short of losing one's seat, and no mechanism for distinguishing a principled dissent from a purely mercenary defection.

The second and most consequential tension is institutional. The Speaker, a majority-party

⁷Chavan Committee on Defections, *Report* (Government of India 1978).

⁸Constitution (Fifty-Second Amendment) Act 1985, inserting the Tenth Schedule to the Constitution of India 1950.

⁹Constitution (Ninety-First Amendment) Act 2003 (n 1).

¹⁰Committee on Electoral Reforms (Dinesh Goswami Committee), *Report* (Government of India 1990).

officer who retains party membership and whose removal requires the support of the very legislators whose conduct is under review, is constituted as the sole adjudicator of disqualification. No amount of exhortation to impartiality can remedy this structural conflict of interest. The third tension is the absence of any statutory deadline on the disposal of petitions, which allows a Speaker minded to protect the ruling party's majority to delay proceedings indefinitely without formal legal sanction. The fourth is a jurisdictional overlap that became acute in Maharashtra: when rival factions both claim to represent the 'legislature party' before the Speaker, while simultaneously fighting over the 'real' party identity before the Election Commission under the Symbols Order, the two proceedings inevitably conflict, with no constitutional mechanism to resolve the priority question.

3. JURISPRUDENTIAL EVOLUTION

3.1 Kihoto Hollohan v Zachillhu (1992): The Foundational Judgment

3.1.1 Background and Questions Referred

The constitutional validity of the Tenth Schedule was challenged almost immediately after its insertion, with petitions originating in the Gauhati High Court that eventually reached a five-judge Constitution Bench of the Supreme Court. The principal grounds of challenge were that the Schedule: (i) violated the basic structure of the Constitution by undermining parliamentary democracy and the freedom of speech guaranteed by Articles 19(1)(a) and 105(1); (ii) amounted to an impermissible delegation of legislative power to private political organisations; (iii) was inconsistent with the principle of free and fair elections; and (iv) was procedurally invalid because Paragraph 7, which ousted judicial review, affected the powers of the High Courts within the meaning of the proviso to Article 368(2) and had accordingly required, but not obtained, ratification by the state legislatures.

3.1.2 The Majority Judgment: Constitutional Validity and Judicial Finality

The majority, comprising Venkatachaliah, Shetty, and Jeevan Reddy JJ., with Agrawal J. concurring on validity, upheld the Tenth Schedule subject to the excision of Paragraph 7. The majority's reasoning navigated several distinct doctrinal questions.

On the basic structure challenge, the Court held that a law designed to prevent opportunistic defections, and thereby to preserve parliamentary democracy against the kind of destabilisation

the Tenth Schedule was enacted to address, could not itself be said to violate parliamentary democracy as a basic structural value. The majority drew a broad distinction between the legitimate imposition of party discipline in the interest of governmental stability and any broader suppression of legislative freedom, but stopped short of formalising this distinction into an operational limit on the Schedule's scope.

On freedom of speech, the majority held that Article 19(1)(a) is simply not the governing provision for legislative speech by members of Parliament or state legislatures, Articles 105 and 194 occupy that field. The freedom those Articles guarantee is not unconstrained; it is the freedom to speak and vote as a legislator within the framework of the constitutional order, and the Tenth Schedule forms part of that order. The circularity of this reasoning has attracted persistent scholarly criticism, but no subsequent bench has disturbed it.

The most consequential holding concerned the Speaker's adjudicatory status. The majority held that the Speaker, when deciding disqualification petitions, functions as a tribunal within the meaning of Article 136, and is therefore subject to supervisory jurisdiction under Articles 226 and 227. Paragraph 7's blanket ouster of this jurisdiction brought it within the class of provisions that 'affect' the powers of the Supreme Court and High Courts for the purposes of Article 368(2)'s proviso, triggering the state ratification requirement. Since that ratification had never been sought, Paragraph 7 was struck down as unconstitutional.

3.1.3 The Minority Judgment: A More Structural Challenge

Justice Verma, writing jointly with Justice Sharma, approached the validity question from a more structural perspective. His judgment is significant for articulating a richer conception of parliamentary democracy as a basic structural component, one that encompasses not merely the existence of elected assemblies but the conditions of genuine deliberation and representative autonomy that make those assemblies meaningful. He questioned whether a law whose whip provision extended beyond confidence and financial matters could be reconciled with the deliberative foundations of parliamentary governance. These reservations, expressed in 1992, have proven remarkably prescient in light of the developments that have followed.

3.1.4 Doctrinal Innovations and Their Long-Term Consequences

Three doctrinal contributions of the case bear emphasis. First, the Court held that the 'finality'

conferred by Paragraph 6(1) is merely statutory, not constitutional, and does not foreclose judicial review on grounds of jurisdictional error, mala fides, violation of constitutional mandate, or breach of natural justice. This constrained formulation has been the principal, and arguably insufficient, vehicle for judicial supervision of the Speaker's adjudicatory function.

Second, the majority generally disfavoured pre-decision judicial intervention in disqualification proceedings, treating such applications as premature. While defensible in principle, this position has in practice allowed Speakers to proceed improperly without any immediate corrective being available to the affected legislators.

Third, the Court's emphasis on natural justice, the right to a hearing and an unbiased decision-maker, has provided the normative basis for subsequent challenges to partisan adjudication, even though it has not, of itself, succeeded in curing the institutional problem those challenges reflect.

3.2 Post-Kihoto Refinements (1992–2014)

*Ravi S Naik v Union of India*¹¹ established that 'voluntarily giving up membership' under Paragraph 2(1)(a)¹² does not require a formal resignation. Conduct plainly inconsistent with continued party membership, including public expressions of support for a rival party, can be sufficient. Courts have since applied this principle broadly, extending the law's reach well beyond cases involving explicit party switches.

*G Viswanathan v Speaker, Tamil Nadu Legislative Assembly*¹³ introduced a complication that has never been satisfactorily resolved: expulsion from a party, being an involuntary act, does not trigger disqualification. An expelled member therefore retains Tenth Schedule protection, while a member who voluntarily departs does not. The logical asymmetry, penalising the person who chooses to leave while protecting the person the party chose to remove, has been widely noted and remains unaddressed.

*Rajendra Singh Rana v Swami Prasad Maurya*¹⁴ squarely confronted the delay problem. The Court held that prolonged inaction on a disqualification petition constituted a jurisdictional

¹¹*Ravi S Naik v Union of India* [1994] Supp (2) SCC 641.

¹²Constitution of India 1950, Tenth Schedule, para 2(1)(a).

¹³*G Viswanathan v Speaker, Tamil Nadu Legislative Assembly* [1996] 2 SCC 353.

¹⁴*Rajendra Singh Rana v Swami Prasad Maurya* [2007] 4 SCC 270.

error amenable to mandamus, and that a government which continued in office on the strength of legislators facing pending petitions was constitutionally compromised. The case established a timeliness obligation, but only within the specific factual matrix before the Court. Without a general statutory rule, the gap it identified was quickly exploited again.

3.3 Manoj Narula v Union of India (2014): Constitutional Morality and Its Implications

3.3.1 The Petition and the Question Presented

The petition in *Manoj Narula v Union of India*¹⁵ challenged the constitutional propriety of appointing persons with criminal antecedents to the Union Council of Ministers, and sought judicial directions restraining such appointments. The question was whether the Constitution imposed any fitness criteria on the Prime Minister's power of appointment that the Court could enforce.

3.3.2 The Court's Reasoning: Separation of Powers and Constitutional Morality

A five-judge Constitution Bench, by a majority of 4:1, declined the relief sought but delivered a significant advisory opinion. Speaking through Dipak Misra J., the majority held that ministerial appointment is a matter committed by the Constitution to the Prime Minister's discretion and that the Court could not judicially impose substantive criteria beyond those the Constitution itself prescribed.

The majority nonetheless articulated 'constitutional morality' as a normative standard for the exercise of political power, not legally enforceable in the strict sense, but constitutionally grounded and capable of informing both judicial exposition and public accountability. The appointment of persons facing serious criminal charges to ministerial office was, on the Court's analysis, constitutionally immoral, even if no formal legal prohibition applied.

3.3.3 Implications for Anti-Defection Jurisprudence

The principle articulated in *Manoj Narula* carries three distinct implications for anti-defection law. First, constitutional morality provides normative support for the critique of partisan adjudication by the Speaker: a Speaker who deploys adjudicatory power in the service of the

¹⁵*Manoj Narula v Union of India* (n 3).

ruling party's majority, rather than the Schedule's stated purpose, is behaving in a manner that is constitutionally immoral even if no specific legal rule is technically violated.

Second, the majority's reluctance to impose judicially enforceable criteria on a political decision embedded in the constitutional text reinforces the lesson that structural deficiencies in democratic governance require legislative remediation, not indefinite judicial substitution. The same logic points toward independent tribunal reform rather than progressively expanding judicial review of the Speaker's decisions.

Third, the minority judgment by Chelameswar J. grounded its analysis in the voter's interest in being represented by legislators and ministers of basic integrity. This focus on representative accountability as a constitutional value independent of formal structural requirements has direct bearing on the anti-defection debate: if the legislator's primary constitutional duty runs to constituents rather than to party, the law's systematic prioritisation of party loyalty over constituency representation requires a justification that the current jurisprudence has not adequately supplied.

3.4 Recent Developments (2016–2025)

*Nabam Rebia v Deputy Speaker*¹⁶ established unanimously that a Speaker who is personally facing a removal notice cannot adjudicate disqualification petitions against other legislators. The principle is the ancient rule against being a judge in one's own cause: a Speaker who requires the ruling majority to defeat his own removal has a personal stake in perpetuating that majority, and cannot adjudicate impartially on petitions whose outcome affects its composition. In practice, however, the decision had the perverse consequence of creating a readily available freezing mechanism: legislators now routinely file removal notices against the Speaker as a tactical device to suspend pending disqualification proceedings. The correctness of *Nabam Rebia* was referred to a seven-judge bench in *Subhash Desai*,¹⁷ reflecting judicial recognition that piecemeal solution is inadequate.

*Keisham Meghachandra Singh v Speaker, Manipur Legislative Assembly*¹⁸ arose from a disqualification petition that had languished undecided for nearly five years. Nariman J.

¹⁶*Nabam Rebia v Deputy Speaker, Arunachal Pradesh Legislative Assembly* [2016] 8 SCC 1.

¹⁷*Subhash Desai v Principal Secretary, Governor of Maharashtra* [2023] SCCOnLine SC 1398.

¹⁸*Keisham Meghachandra Singh v Speaker, Manipur Legislative Assembly* [2020] 2 SCR 132.

directed disposal within four weeks and, going beyond the immediate remedy, recommended that Parliament establish a permanent independent tribunal to hear anti-defection cases. The observation that the existing arrangement had 'grave limitations' was the Court's most explicit acknowledgement to date that the Speaker-adjudicator problem is not an accident of particular Speakers behaving badly, but a structural flaw in the design.

Subhash Desai v Principal Secretary, Governor of Maharashtra (2023), the constitutional fallout from the 2022 Shiv Sena crisis, produced the most complex anti-defection fact-pattern since *Kihoto Hollohan* itself. The Constitution Bench reaffirmed the Speaker's exclusive jurisdiction over disqualification petitions; found that the Governor had acted improperly in directing a floor test on inadequate grounds; drew a formal distinction between the Speaker's authority to identify the 'legitimate legislature party' for Tenth Schedule purposes and the Election Commission's authority to identify the 'real party' under the Symbols Order; and referred *Nabam Rebia* to a larger bench. The judgment is as notable for what it left unresolved as for what it decided: the Court acknowledged the law's structural failures without providing any structural remedy for them.

4. THE SPEAKER'S POWERS, JUDICIAL REVIEW, AND THEIR LIMITS

The Speaker occupies two roles whose demands are fundamentally incompatible. As the presiding officer of the House, the Speaker's tenure and authority depend on the continued confidence of the ruling party majority. As the sole adjudicator under the Tenth Schedule, the Speaker is required to rule impartially on petitions whose outcome will typically have a direct effect on the political fortunes of that same majority. The decision to act quickly, to delay, or to do nothing is exclusively the Speaker's to make, and it is made without any time constraint, without any obligation to provide written reasons, and without any immediate possibility of judicial correction.

*Kihoto Hollohan*¹⁹ established that the Speaker in this capacity functions as a tribunal subject to the supervisory jurisdiction of the High Courts and Supreme Court. The scope of that review, however, is deliberately confined: courts may intervene for jurisdictional error, mala fides, violation of constitutional mandate, and breach of natural justice, but they may not substitute their own assessment of the factual merits. In practice, this leaves the Speaker's core judgments,

¹⁹*Kihoto Hollohan v Zachillhu* (n 2).

whether a defection occurred, whether it was 'voluntary,' whether a claimed merger is genuine, effectively beyond routine judicial scrutiny.

The 'wait for the decision' principle adds a further layer of insulation. Where the Speaker has not yet acted, courts have generally been reluctant to intervene, even where the conduct of the proceedings has been plainly improper. The partial erosion of this principle in cases like *Sachin Pilot (2020)*²⁰ has generated doctrinal uncertainty without resolving the underlying difficulty. Most fundamentally, the absence of any obligation to give reasons means that partisan adjudication, the core problem the entire case law has been orbiting, escapes meaningful accountability both before the courts and before the public.

5. MINI-STUDY: STATE ASSEMBLY DISQUALIFICATION DECISIONS (2015–2025)

The ten decisions below, selected for geographic diversity and variation in political context, illustrate the systematic distance between doctrinal aspiration and institutional reality. They are presented in tabular form to facilitate comparison.

Sr. No.	State & Year	Key Facts	Legal Issue	Speaker's Decision	Judicial Review	Outcome
1	Telangana (2024–25)	BRS MLAs joined INC post-election; disqualification petitions filed	Delay; Speaker's constitutional duty to act	Notices issued but unresolved for over seven months	Supreme Court condemned delay; directed disposal within three months	Proceedings still ongoing
2	Karnataka (2019)	17 INC/JD(S) MLAs resigned en masse, bringing down the government	Whether resignation constituted disqualification; proportionality	Speaker disqualified MLAs for the remainder of the term	Supreme Court upheld disqualification but reduced the period	MLAs re-contested and won as BJP candidates
3	Maharashtra (2022)	Shiv Sena split; rival factions claimed the Speaker and ECI	Identity of 'legislature party'; tactical use of Nabam Rebia	Speaker recognised Shinde faction; petitions allowed to stall	Supreme Court directed expeditious disposal; referred Nabam Rebia	ECI recognised Shinde faction; disqualification unresolved

²⁰*Sachin Pilot v Speaker, Rajasthan Legislative Assembly* (Rajasthan High Court, DB Civil Writ Petition No 7971/2020, decided 24 July 2020).

Sr. No.	State & Year	Key Facts	Legal Issue	Speaker's Decision	Judicial Review	Outcome
		simultaneously			to larger bench	
4	Goa (2019)	10 Congress MLAs claimed merger with BJP	Validity of merger; adequacy of Speaker's inquiry	Speaker accepted merger; no disqualification initiated	High Court dismissed challenge	MLAs retained seats; merger exception openly exploited
5	Madhya Pradesh (2020)	22 Congress MLAs (Scindia group) resigned en masse, toppling the Kamal Nath government	Coordinated resignation as circumvention of disqualification	Resignations accepted; no disqualification proceedings initiated	Supreme Court ordered floor test	MLAs re-elected as BJP candidates; law wholly circumvented
6	Rajasthan (2020)	Congress MLAs aligned with Pilot absented; show-cause notices issued	Pre-decision judicial review; scope of the whip	Notices issued; proceedings commenced	High Court stayed proceedings; Supreme Court declined to interfere	Political settlement reached; no disqualification
7	Jharkhand (2015–16)	JVM MLAs claimed merger with BJP	Merger validity; adequacy of Speaker's inquiry	Speaker upheld merger	High Court dismissed challenge	MLAs retained seats
8	Manipur (2017–20)	Congress MLA joined BJP coalition; petition filed and ignored for five years	Five-year delay; judicial remedy for inaction	Speaker failed to act for five years	Supreme Court directed decision within four weeks; leading authority on delay	MLA eventually disqualified
9	Uttarakhand (2016)	Congress MLAs issued notices for supporting opposition motion	Pre-decision intervention; scope of 'voluntary' action	Notices issued; proceedings commenced	High Court declined pre-decision intervention (Kihoto)	Political settlement; no final disqualification
10	Tripura (2018)	Congress MLA crossed to BJP; formal complaint filed	Substantive disqualification on clear facts	Speaker disqualified the MLA	No judicial challenge mounted	Effective enforcement, rare successful application of the law

Several patterns emerge from this. Delay, weaponised, strategic, or simply the product of institutional indifference, features in the majority of the cases. The merger exception has been exploited in a way that makes a mockery of the two-thirds threshold (Goa, 2019). Coordinated mass resignation has been used to achieve the political objectives of defection while technically escaping disqualification (Madhya Pradesh, 2020). Genuine enforcement, as in Tripura (2018), is the exception rather than the rule, and it occurs only when the facts are undisputed and the Speaker has no political reason to delay. The Maharashtra episode encapsulates the full range of pathologies in a single factual matrix.

6. CRITICAL ASSESSMENT AND REFORM PROPOSALS

6.1 The Balance: An Assessment

There is a version of the anti-defection law that works as designed. In clear, uncomplicated cases, a straightforward crossing of the floor, a Speaker with no partisan reason to delay, no factional dispute about who the party is, the law does what it was enacted to do, and does it reasonably well. The difficulty is that organised political manipulation rarely presents itself in uncomplicated cases. Engineered mergers, coordinated mass resignations, and deliberate adjudicatory delay have all been deployed to route defection through technically lawful channels while defeating the law's substantive purpose. The law does not prevent defection; it shapes the tactics through which defection is pursued.

There is also a deeper failure of scope. As currently framed and judicially interpreted, the whip applies across the full range of legislative votes, not merely those that bear directly on governmental stability. A legislator who breaks with the party on surveillance law, environmental policy, or education reform faces exactly the same risk of disqualification as one who votes against a confidence motion. This cannot be justified on the terms that most strongly support the anti-defection law. The arguments from electoral mandate and governmental stability have real force in the context of confidence votes; they have essentially no force in relation to ordinary policy legislation, where the democratic case for genuine legislative deliberation is at its strongest. Parliament is effectively reduced to endorsing executive decisions on the widest range of policy matters, and the separation of powers is hollowed out at precisely the point where it should be most functional.

The Speaker-adjudicator problem is, on any honest assessment, structural and not incidental. It

cannot be fixed through judicial supervision case-by-case, as the entire body of post-*Kihoto* case law demonstrates. The Law Commission, the National Commission to Review the Working of the Constitution, and the Supreme Court itself have repeatedly recommended independent tribunals. Parliament has not moved. The reason is transparent: party leaders who control Parliament benefit from a Speaker who can deploy adjudicatory power in their interest, and they are being asked to voluntarily surrender that benefit. This is perhaps the central institutional pathology of the anti-defection regime, and it is one for which the courts have no adequate remedy.

6.2 Proposals for Reform

Independent Anti-Defection Tribunal. The Speaker's adjudicatory function should be transferred to an independent tribunal composed of retired Supreme Court and High Court judges with security of tenure and financial independence from the executive. The constitutional basis for such a tribunal exists under Article 323B²¹ or by direct amendment to the Tenth Schedule. Procedural rules should require notice within fourteen days of a petition, completion of pleadings within thirty days, a decision within three months, and an appeal to a division bench of the Supreme Court within thirty days.

Narrowing the Whip's Scope. Disqualification should be reserved for votes that bear directly on governmental survival: confidence motions, no-confidence motions, and financial bills. Policy votes, private members' bills, and committee proceedings should fall outside the whip's reach entirely. This reform was proposed by the Dinesh Goswami Committee (1990)²² and has been reiterated in successive Law Commission reports.²³ It would preserve the law's legitimate purpose while restoring the space for deliberation on matters where it genuinely counts.

Statutory Timelines. Pending establishment of an independent tribunal, the Tenth Schedule should be amended to impose a three-month disposal requirement. If the Speaker fails to comply within a further two-week period, the petition should transfer by operation of law to the relevant High Court with full merits jurisdiction. The transfer mechanism is essential: without automatic consequences for non-compliance, a deadline without teeth will simply be

²¹Constitution of India 1950, art 323B.

²²Committee on Electoral Reforms (n 10).

²³Law Commission of India, *170th Report on Reform of Electoral Laws* (1999); Law Commission of India, *255th Report on Electoral Reforms* (2015).

ignored.

Tightening the Merger Exception. Paragraph 4²⁴ should be amended to require formal party consolidation at the national or state level, not merely within the legislature party, along with independent verification that the requisite two-thirds consented without compulsion or inducement. A mandatory cooling-off period should prohibit any merged legislator from accepting ministerial appointment for a fixed period, severing the connection between defection and immediate personal reward that drives organised floor-crossing.

Mandatory Reasons and Transparency. Whether under the current system or a reformed one, detailed written reasons must be required and published within a fixed period following every decision. A reasons requirement would serve dual purposes: it would expand the scope of meaningful judicial review beyond what is currently possible, and it would create a record of public accountability that partisan adjudication currently entirely escapes.

7. CONCLUSION

Surveying the anti-defection law across its full doctrinal arc, from *Kihoto Hollohan* to *Padi Kaushik Reddy*, one is struck not by a consistent body of principle being faithfully applied, but by a law in persistent tension with its own declared purposes. It was designed to protect electoral mandates and democratic stability. In practice, it suppresses legitimate conscientious dissent while enabling precisely the organised defection it was meant to prevent. The individual legislator who votes against the whip on a matter of genuine principle loses their seat; the well-resourced political operator who engineers a mass resignation or manufactures a merger retains theirs. The law is most effective precisely where it is least needed, and most porous where the threat to democratic integrity is greatest.

Through a progression of increasingly direct judgments, the Supreme Court has identified the structural root of the problem and pointed consistently toward independent adjudication as the remedy. The judicial language has grown sharper with each case, from the 'grave limitations' of *Keisham Meghachandra Singh* to 'fraud on democracy' in *Padi Kaushik Reddy*, but Parliament has not responded. The Court has reached, or is close to, the limit of what judicial supervision can achieve within the existing institutional framework.

²⁴Constitution of India 1950, Tenth Schedule, para 4.

Prioritising party stability over representative accountability is not unconstitutional in itself, it is a choice that modern democracies make in different ways and to different degrees. But it is a choice that requires justification, and the current jurisprudence provides very little of it for the law's present scope. An anti-defection regime fitted with an independent adjudicatory body, a narrowed whip tied to governmental survival rather than all policy votes, enforceable timelines, and a transparency requirement in the form of mandatory written reasons would far better serve the constitutional values the Tenth Schedule was originally enacted to protect. That reform requires political will that the parties in power have no structural incentive to supply. And so the anti-defection law continues to embody what is perhaps the defining irony of Indian constitutional governance: a court system with the institutional integrity to identify the problem clearly, and a legislature with neither the incentive nor the inclination to fix it.