LEGITIMIZING DEFECTION: HOW THE MERGER CLAUSE UNDERMINES INDIA'S ANTI-DEFECTION REGIME

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ABSTRACT

The Anti-Defection Law was introduced through the Tenth Schedule of the Constitution of India by the 52nd Constitutional Amendment, 1985 to tackle the growing problem of political defections of the ministers and to ensure stable governance. When the Constitution originally came into force, it did not specifically address the role of political parties or the issue of defection. However, with time as frequent party-switching began to disrupt democratic functioning and weakened public confidence, the need for legal regulation became utmost important. The Tenth Schedule therefore was enacted to bring discipline among legislators. Despite this, the exception provided under Paragraph 4 of the 10th Schedule, which deals with mergers, has increasingly become a point of concern. Instead of allowing real and genuine party changes, it is often used to justify large-scale defections. The article discusses the interpretation and implementation of the merger provision in light to the recent political developments pertaining Raghav Chadha and other Members in 2026. It points out the inconsistency in the law where individual defection is punished under the 10th Schedule but collective defection with the support of two-thirds of the legislature party is often protected. It is argued that this gap between legal permissibility and constitutional values has led to the failure of the Anti-Defection Law. The study concludes that there is a clear need for better and more precise laws to prevent misuse and to protect the fairness and trust of the democratic system in India.

1. Introduction

Political parties form the backbone of India's parliamentary system. They play a vital role in formulation of public policies, influencing governance and mobilizing public opinion. Their functioning, particularly when they are in power is often complex due to the framework laid down by constitutional provisions and related laws. However, at the same time, political parties face several challenges, one of the most significant being the issue of defection.

Defection by elected representatives has far-reaching consequences. It not only weakens democratic values but also creates instability within political parties themselves. In many ways, it is a problem that has developed within the political system and continues to affect its credibility. Notably, when the Constitution of India came into force, it did not specifically deal with political parties or the issue of defection. However, as occurrences of frequent party-switching increased and began to disrupt governance, the need for legal regulation became increasingly important.[1]

To address this concern, the Constitution (Fifty-second Amendment) Act, 1985 introduced the Tenth Schedule which laid down the legal framework to deal with defections.[2] While Paragraph 2 of the Tenth Schedule was effective in controlling individual defections but Paragraph 4 created an exception in cases of merger of political parties.[3] Over time, this exception has become a matter of concern. Instead of facilitating real political realignments, it has often been employed in ways to maintain large-scale defections to continue under guise of legal protection. The interpretation of key terms used in Paragraph 4 has further complicated the issue and in some situations has weakened the law's original intent.

2. Political Defections and Political Parties before the 52nd Constitutional Amendment Act, 1985: A Review

In a parliamentary system with a multi-party structure, the formation of government depends on the ability of a political party or a coalition of parties to secure a majority in the lower house. This has often resulted in what is commonly described as the "politics of numbers," where maintaining majority support becomes central to governance. Political parties, therefore, play

[1] M.P. Jain, Indian Constitutional Law (LexisNexis, latest ed.).
[2] INDIA CONST. amend. LII (1985), inserting Tenth Schedule.
[3] INDIA CONST. sched. X, paras 2 & 4.

a crucial role in shaping how the Constitution works.

Interestingly, until 1985, the Constitution of India did not explicitly recognise political parties. This silence can be understood from the nature of a constitution itself it primarily establishes the organs of the State and outlines their powers and functions. But the real working of these institutions, however, is largely influenced by political parties operating within the broader framework of constitutional principles. Even when a party holds a majority in the legislature, it remains bound by the Constitution, as every legislator is required to take an oath to uphold and defend it before taking office.[4]

Although there is no specific mention of political parties, it could be argued that freedom of association under Article 19(1)(c) provides for their existence by implication. However, this provision applies to all types of associations in general and does not expressly recognize political parties as a constitutional entity.

The importance of political parties in the functioning of democracy was acknowledged during the Constituent Assembly debates. B. R. Ambedkar observed that the success of constitutional governance would depend not only on institutional design but also on the role played by political parties and the people.[5] He also cautioned that the Constitution's success would ultimately depend on whether political actors place constitutional values above personal or political interests.[6] These observations have proved relevant, particularly in understanding the challenges faced in parliamentary governance.

In the early years after independence, the dominance of the Indian National Congress under Jawaharlal Nehru ensured political stability and the cases of defection were relatively limited. Although some cases occurred at the state level, they were not significant enough to threaten governments. However, the situation changed dramatically after 1967, when defections became more frequent and began to destabilize governments. It is estimated that there were around 500 instances of defection before 1967, but between 1967 and 1969 alone, the number rose sharply to nearly 1875 cases across several states.[7]

Recognizing the seriousness of the issue, a committee was set up by the Lok Sabha in 1967

[4] INDIA CONST. arts. 99, 188, 219; see also INDIA CONST. sched. III.
[5] CONSTITUENT ASSEMBLY DEBATES, VOL. XI, 975 (India).
[6] Id.
[7] H. R. Saviprasad & Vinay Reddy, *The Law on Anti-Defection: An Appraisal*, 11 Student Advocate 116 (1999).

under the chairmanship of Y. B. Chavan to examine the problem of defections. The committee recommended, among other things, that political parties should adopt a code of conduct and that defectors motivated by personal gain should face stricter penalties compared to those acting on ideological grounds.[8] However, these recommendations were not effectively implemented, and the problem continued to grow.

Subsequent attempts to legislate on defection, such as the Constitution (32nd Amendment) Bill,

1973 and later proposals in 1978, did not succeed due to political opposition and other challenges. It was only in 1985, under the leadership of Rajiv Gandhi, that a comprehensive law was finally enacted in the form of the Constitution (Fifty-second Amendment) Act, introducing the Tenth Schedule to address the issue of political defection.

2.2 Overview of the Tenth Schedule

Before examining the issue of mergers under the Tenth Schedule, it is useful to first understand its overall structure and purpose. The Tenth Schedule, often seen as a key tool to address political defections, begins with a set of definitions. Among these, the most important are "legislature party" and "original political party," as they form the basis for understanding how the law operates in practice.[9] While there are other terms defined in the Schedule, such as "House" and "paragraph," they are largely explanatory in nature. The detailed interpretation of the two core terms is taken up in the subsequent sections of this paper.

Paragraph 2 of the Tenth Schedule lays down the primary rule regarding disqualification. It provides that a legislator may be disqualified if they voluntarily give up membership of their political party or act against the directions issued by the party leadership, commonly known as the party whip.[10] The main objective behind this provision was to prevent instability caused by defections, which were often used to bring down governments. However, in practice, this provision goes beyond merely preventing defections. It significantly limits the independence of legislators by requiring them to follow party instructions even in situations that may involve personal judgment or constituency interests.

[8] COMM. ON DEFECTIONS, REPORT OF THE COMMITTEE ON DEFECTIONS (1969) (Chairman: Y. B. Chavan) (India).
[9] INDIA CONST. sched. X, para. 1.
[10] INDIA CONST. sched. X, para. 2(1)(a)–(b).

This aspect of the law has attracted criticism from scholars, who argue that it restricts free speech and debate within the legislature.[11] While it may be justified in situations where the stability of the government is at stake, such as confidence or no-confidence motions, its application in all legislative matters raises concerns about its impact on democratic functioning. Although this issue is important, a detailed discussion of it falls outside the scope of the present study.

Originally, Paragraph 3 of the Tenth Schedule allowed a "split" in a political party as an exception to disqualification under Paragraph 2. However, this provision was later removed by the

Constitution (Ninety-first Amendment) Act, 2003, as it was widely misused to justify defections.[12] In contrast, Paragraph 4 continues to provide an exception in cases of merger, where at least twothirds of the members of a legislature party agree to merge with another political party.[13] This provision remains one of the most debated aspects of the law.

The Schedule also provides certain exemptions. For instance, the Speaker of the Lok Sabha and the Chairman of the Rajya Sabha, as well as their counterparts in state legislatures, are given limited protection in specific circumstances.[14] Decisions regarding disqualification are made under Paragraph 6 by the Speaker or Chairman of the concerned House, and such decisions were initially declared to be final.[15]

However, Paragraph 7, which sought to bar judicial review of these decisions, was struck down by the Supreme Court in *Kihoto Hollohan v. Zachillhu*. The Court held that excluding judicial review would violate the basic structure of the Constitution, particularly the principle of judicial review.[16] Although the lack of ratification under Article 368(2) was also noted, the primary concern was the protection of constitutional principles.

Finally, Paragraph 8 empowers Parliament and state legislatures to make rules for implementing the provisions of the Tenth Schedule.[17] Despite its intended purpose of

[11] Paras Diwan, *Aya Ram Gaya Ram: The Politics of Defection*, 21 J. INDIAN L. INST. 304 (1979).
[12] INDIA CONST. amend. XCI (2003).
[13] INDIA CONST. sched. X, para. 4.
[14] INDIA CONST. sched. X, para. 5.
[15] INDIA CONST. sched. X, para. 6.
[16] *Kihoto Hollohan v. Zachillhu*, 1992 Supp (2) S.C.C. 651 (India).
[17] INDIA CONST. sched. X, para. 8.

promoting stability and discipline, the Tenth Schedule has often been criticized for creating new challenges, including interpretative ambiguities and potential misuse, which continue to affect its effectiveness.

3. Drafting Defects in the Tenth Schedule

The 10th Schedule is often drafted in a manner similar to ordinary legislation but given its constitutional significance, the precision of its language becomes especially important. At the heart of the Schedule are certain key definitions, particularly "legislature party" and "original political party," which play a central role in determining how the law operates.[18]

Paragraph 1(b) defines a "legislature party" as the group consisting of all members of a House who belong to a particular political party at a given time.[19] Similarly, Paragraph 1(c) defines the "original political party" as the political party to which a member belongs for the purposes of Paragraph 2(1).[20] These definitions are crucial because they directly affect how provisions relating to disqualification and merger are understood and applied.

A significant issue arises from the use of the word "means" in these definitions. In legal drafting, the term "means" is generally understood to indicate a complete and exhaustive definition. In other words, when a provision uses "means" it leaves little room for interpretation and courts are expected to apply the definition strictly as it is written.[21] The Supreme Court has repeatedly held that such definitions are restrictive in nature and do not permit expansion or modification through judicial interpretation.[22]

However, when these principles are applied to the definitions in the Tenth Schedule, certain problems become evident. Despite being framed as exhaustive, the definitions of "legislature party" and "original political party" lack clarity and precision. They do not fully address practical complexities of how political parties function especially in situations involving mergers or internal disagreements. This creates uncertainty particularly when these terms are used in connection with Paragraph 4 which deals with merger of political parties.

[18] INDIA CONST. sched. X, para. 1.
[19] INDIA CONST. sched. X, para. 1(b).
[20] INDIA CONST. sched. X, para. 1(c).
[21] G. P. SINGH, *PRINCIPLES OF STATUTORY INTERPRETATION* 198 (14th ed. 2016).
[22] *Kasilingam v. PSG Coll. of Tech.*, A.I.R. 1995 S.C. 1395 (India); *Commercial Taxation Officer v. Rajasthan Taxchem Ltd.*, (2007) 3 S.C.C. 124 (India); *Indra Sharma v. V.K.V. Sharma*, (2013) 15 S.C.C. 755 (India).

The lack of clarity in these definitions has led to interpretative challenges. Since courts are expected to treat such definitions as complete, they have limited flexibility to adapt them to evolving political realities. As a result, ambiguities in drafting can lead to conflicting interpretations and, in some cases, outcomes that may not align with the original purpose of the law.

This becomes especially problematic in the context of mergers, where the interaction between "legislature party" and "original political party" is central to determining whether a defection is protected or penalized. The drafting gaps in these definitions, therefore, do not remain merely technical issues; they directly affect the functioning of the Anti-Defection Law. In this way, the Tenth Schedule, instead of providing clarity, has at times contributed to further confusion, making its application more difficult in practice.

3.2 Direct Connection between Paragraph 1's Definitions and Paragraph 4's Merger

Paragraph 4 of Tenth Schedule provides protection to legislators from disqualification in cases where their political party merges with another political party. However, this protection is subject to certain conditions. Clause (2) of Paragraph 4 clearly states that such a merger must be supported by at least two-thirds of the members of the *legislature party*, that is, the elected representatives of that party in a legislative body.[23]

At the same time, Clause (1) of Paragraph 4 refers to the merger of the *"original political party."* As defined under Paragraph 1(c), the "original political party" refers to the party to which a legislator belongs.[24] This term is significantly broader than the term "legislature party" because it includes not only elected representatives but also the wider organizational structure of the party, including its leadership and members outside the legislature. In practice, it is quite common for party leaders to exercise control over party decisions without necessarily being members of the legislature. This explains why the law uses the term "original political party" rather than limiting itself only to elected representatives.

The use of the word "original" before "political party" serves a specific purpose. It helps in identifying the actual political party that is entering into a merger with another party. At the same time, the law does not require that all members of the legislature party must agree to such

[23] INDIA CONST. sched. X, para. 4(2).
[24] INDIA CONST. sched. X, para. 1(c).

a merger; instead, the consent of two-thirds of the members is considered sufficient.[25] However, when Clause (1) and Clause (2) are read together, a clear tension emerges. While Clause (1) suggests that the merger must take place at the level of the political party, Clause (2) makes the validity of such merger dependent on the numerical strength of legislators. This creates an apparent contradiction and raises doubts about the true intention behind the provision.

The issue becomes even more complex when Paragraph 2(1)(b) of the Tenth Schedule is taken into account. This provision states that a legislator may be disqualified if they act against the directions issued by the political party, commonly known as the party whip.[26] Importantly, such directions may be issued by party leaders who are not part of the legislature. This indicates that the authority of the political party extends beyond the legislature party and that legislators are expected to follow the decisions of the party leadership.

When Paragraph 2 and Paragraph 4 are read together, a clear conflict arises. On one hand, legislators are required to follow party directions, failing which they may face disqualification. On the other hand, they are given the power to approve a merger based on their numerical strength, even if such a decision goes against the wishes of the party leadership. This creates a situation where what is punishable under one provision may be protected under another.[27]

To resolve such inconsistencies, courts often rely on established principles of statutory interpretation. The literal rule suggests that the plain meaning of the words should be followed.[28] However, if such an interpretation leads to unreasonable or contradictory outcomes, the golden rule of interpretation allows courts to adopt a meaning that avoids absurdity and promotes the overall purpose of the law.[29] In the context of the Tenth Schedule, applying a purely literal interpretation may defeat the objective of preventing defections, as it would allow legislators to bypass party discipline through the merger provision.

The purpose of the Anti-Defection Law is to maintain political stability and uphold the integrity of the democratic process. If legislators are allowed to ignore party directives and still claim protection under Paragraph 4, it weakens both party discipline and the intent of the law. At the

[25] Id.
[26] INDIA CONST. sched. X, para. 2(1)(b).
[27] See *Kihoto Hollohan v. Zachillhu*, 1992 Supp (2) S.C.C. 651 (India).
[28] G. P. SINGH, *PRINCIPLES OF STATUTORY INTERPRETATION* (14th ed. 2016).
[29] Id.

same time, completely ignoring the role of the legislature party would also undermine the democratic role of elected representatives. Therefore, a balanced interpretation is necessary.

The concept of "legislature party" appears to have been introduced keeping in mind India's federal structure, where political dynamics operate at both national and state levels. However, it is important to recognize that a legislature party cannot exist independently of a political party. The political party is the broader entity, while the legislature party is only a part of it.[30] The Tenth Schedule, by recognizing both, attempts to balance organizational authority with legislative autonomy, but in doing so, it has created interpretative challenges.

In conclusion, the relationship between the "original political party" and the "legislature party" lies at the core of the merger provision under Paragraph 4. The lack of clarity in their interaction has opened the door for misuse, allowing defections to be justified under the guise of merger. A clearer and more consistent interpretation, supported by legislative reform, if necessary, is essential to ensure that the law effectively serves its intended purpose.

Case Study: Application of the Merger Provision in Contemporary Practice

Recent political discussions have highlighted the possibility of a situation where prominent leaders such as Raghav Chadha, along with a substantial number of members from the Aam Aadmi Party, could collectively shift allegiance to another party such as the Bharatiya Janata Party. Even though such a development has not been formally established, it reflects a pattern visible in Indian politics where large groups of legislators change political alignment together. Under the framework of the Tenth Schedule, particularly Paragraph 4, such collective action if supported by at least two-thirds of the legislature party would be treated as a valid "merger" and would not attract disqualification. This creates a clear inconsistency within the law: while an individual legislator switching parties would be disqualified under Paragraph 2, the same act, when carried out collectively, is legally protected. The situation highlights a deeper structural flaw in the anti-defection regime, where the emphasis on numerical strength allows what is essentially defection in substance to be legitimized in form, thereby undermining the original objective of preserving party discipline and democratic stability.

[30] See *Kasilingam v. PSG Coll. of Tech.*, A.I.R. 1995 S.C. 1395 (India); *Indra Sharma v. V.K.V. Sharma*, (2013) 15 S.C.C. 755 (India).

3.3 Judicial Interpretation of Paragraph 4

The interpretation of Paragraph 4 of the Tenth Schedule has been shaped largely through judicial decisions, which have attempted to balance the objective of preventing defections with the practical realities of political functioning. Courts have, at times, adopted a restrictive reading of the provision, allowing mergers at the level of the state unit of a national party even in the absence of a formal merger at the national level, and sometimes even in situations where such actions appear to go against the broader party leadership. This approach has often resulted from reading Clauses (1) and (2) of Paragraph 4 separately rather than as a cohesive whole.

A closer reading of these clauses reveals that two possible interpretations emerge.

3.3.1 First Interpretation

When reading Clauses (1) and (2) combined, keeping the objective of the Anti-Defection Law in mind, it suggests that a valid merger at the state level must be preceded by a merger of the original political party at the national level. This interpretation aligns with the purpose of the Tenth Schedule, which is to prevent defections and maintain party discipline. Even though India follows a federal structure, a state unit of a national party cannot be treated as completely independent from the parent organisation. Therefore, allowing a state unit to merge independently would weaken the authority of the original political party and defeat the purpose of the law.

In W.K. Singh v. Speaker, Manipur Legislative Assembly, the Gauhati High Court took this view into consideration. The question was whether members of a legislature party (a state unit of a national party) could merge with another party at the state level without a corresponding merger at the national level.[31] The Court observed that the phrase "have agreed to such merger" under Paragraph 4(2) implies that the merger should first take place at the level of the original political party. Only thereafter can it operate at the state level, provided that two-thirds of the members of the legislature party agree to it.

The Court further clarified that even if a merger takes place at the national level, it does not automatically bind the state unit; the consent of two-thirds of the legislators at the state level is still necessary. This interpretation respects both party structure and federal principles.

[31] *W.K. Singh v. Speaker, Manipur Legislative Assembly*, (1986) 2 Gau. L.R. 91 (India).

Importantly, the Court rejected the idea that a state unit could independently merge without a corresponding merger of the original political party, as such an interpretation would go against the purpose of the Tenth Schedule.

However, this decision predates the landmark ruling in *Kihoto Hollohan v. Zachillhu*, which significantly reshaped the understanding of the Tenth Schedule, particularly regarding judicial review and the powers of the Speaker.[32]

Support for this interpretation can also be drawn from Supreme Court decisions dealing with the earlier provision on "split" under Paragraph 3 (now repealed). In *Rajendra Rana v. Swami Prasad Maurya*, the Court held that a claim of split by legislators would not be valid unless it was first established that a split had occurred in the original political party outside the legislature.[33] Similarly, in *Jagjit Singh v. State of Haryana*, the Court rejected the view that state-level developments could be completely disconnected from the structure of the original political party.[34]

Although these cases dealt with "split" rather than "merger," the reasoning remains relevant because both provisions operate on similar principles.

3.3.2 Second Interpretation

An alternative interpretation emerges when Clauses (1) and (2) of Paragraph 4 are read in isolation. According to this view, a merger at the state level can be considered valid solely on the basis of the support of two-thirds of the members of the legislature party, without requiring any merger at the national level or approval from the central party leadership. This interpretation places emphasis on the phrase "if and only if" used in Clause (2), thereby prioritizing the numerical strength of legislators over the organizational structure of the political party.

In practice, this interpretation has gained wider acceptance. Several instances of political realignment have taken place on this basis. For example, in 2019, a group of legislators from the Indian National Congress in Goa joined the Bharatiya Janata Party after meeting the two-

[32] *Kihoto Hollohan v. Zachillhu*, 1992 Supp (2) S.C.C. 651 (India).
[33] *Rajendra Singh Rana v. Swami Prasad Maurya*, (2007) 4 S.C.C. 270 (India).
[34] *Jagjit Singh v. State of Haryana*, (2006) 11 S.C.C. 1 (India).

thirds requirement.[35] Similar developments occurred in Telangana in 2018, where members of the Congress legislature party merged with the Telangana Rashtra Samithi, and in Rajasthan, where legislators from the Bahujan Samaj Party joined the Congress.[36] In these cases, no corresponding merger took place at the national level.

Judicial responses to such situations have often been limited due to the scope of review laid down in *Kihoto Hollohan*. Courts have generally held that decisions of the Speaker can be challenged only on limited grounds such as mala fide intent, violation of constitutional provisions, or breach of natural justice.[37] As a result, courts have been reluctant to intervene in the initial stages of such disputes, thereby allowing these state-level mergers to hold.

This trend indicates that in most cases, the second interpretation has become the dominant interpretation. However, it raises serious questions about the effectiveness of the Anti-Defection Law. Permitting state-level mergers without conforming to the original political party opens up room for strategic defections under the cover of legality.

Such instances have increased in recent years highlighting the widening gap between the intention of the Tenth Schedule and its implementation. As a result, the judicial interpretation of Paragraph 4 continues to be a contentious and evolving area with far-reaching implications for democratic stability and party discipline.

4. Conclusion and Recommendations

The acceptance of the second interpretation of Paragraph 4 which requires that state-level mergers are only confirmed on the basis of the numerical strength of legislators poses a significant obstacle to the Anti-Defection Law's goals. It allows defections to occur under the cover of legality, weakening the party discipline and threatening the democratic stability. This trend requires urgent correction, either by a constitutional amendment or a judicial interpretation by the Supreme Court fulfilling the required objective.

There is also a need to revisit the interpretation as established in *Kihoto Hollohan v. Zachillhu*. While the judgment upheld the role of the Speaker in deciding disqualification matters, it did not completely exclude judicial review. However, High Courts have often taken a restrictive

[35] See reporting in The Hindu (2019) on Goa political developments.
[36] See reporting in The Indian Express (2018–2019) on Telangana and Rajasthan legislative mergers.
[37] *Kihoto Hollohan v. Zachillhu*, supra note 2.

view, making an assumption that judicial intervention is not allowed before the Speaker gives a final decision under Paragraph 6. This approach needs reconsideration. Courts should be open to examine cases at an earlier stage, where there are clear allegations of mala fide intention, violation of constitutional principles, or breach of natural justice.

The Law Commission of India in its 170th Report published in 1999 had already highlighted the limitations of the merger provision and recommended the deletion of Paragraph 4 altogether.[38] It suggested that political realignments, should take place after the dissolution of the Lok Sabha or State Legislative Assemblies, thereby respecting the mandate of the electorate. This recommendation remains relevant and deserves serious reconsideration[39].

Recent developments which also includes the controversy involving Raghav Chadha, further emphasizes the need to reconsider the functioning of the Anti-Defection Law. Although that episode arose in the context of parliamentary procedure and privilege, it highlighted broader concerns about the relationship between party authority and legislative independence. It shows how intra-party dynamics and procedural moves within the legislature can lead to accountability, fairness, and the limits of party control.

These developments point to the need for some reforms. First, the merger provision in paragraph 4 should either be abolished or substantially amended to prevent abuses. Second, clearer guidelines should be laid down on the role of party leadership and the degree to which legislators are bound by party directions, especially in matters other than confidence. Third, the scope of judicial review should be clarified to ensure timely intervention in cases of abuse of power. Lastly, a better balance between upholding party discipline and defending the democratic function of elected officials must be struck.

As long as Paragraph 4 exists as it is today, courts have a bigger role in interpretation of the 10th Schedule in a manner with which it aligns with the original purpose of the Tenth Schedule. Ultimately, the objective of the Anti-Defection Law is not merely to regulate political behaviour but to strengthen the democratic functioning of legislatures in India. Any interpretation or reform, therefore, must be guided by this larger constitutional goal.

[38] LAW COMM'N OF INDIA, *170TH REPORT ON REFORM OF THE ELECTORAL LAWS* (1999).
[39] Id.