
ANTI-DEFECTION LAW AND CONSTITUTIONAL MORALITY: RETHINKING THE TENTH SCHEDULE IN LIGHT OF THE MAHARASHTRA CRISIS AND RECURRING DEFECTIONS ACROSS THE STATES

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ABSTRACT

The anti-defection law was written into the Tenth Schedule of the Constitution in 1985 to stop legislators from treating a seat won on one party's ticket as a tradeable asset once the wider electoral mandate behind it had been secured. This article analyzes the extent to which that goal continues to be relevant when measured against the principles of constitutional morality, which the Supreme Court has increasingly referenced since the case of *Manoj Narula v. Union of India* to outline the expected conduct of constitutional officials in the absence of specific legal requirements. It follows the history of the Tenth Schedule's drafting, the judicial interpretation of constitutional morality from the *Naz Foundation* ruling to *Navtej Singh Johar*, and the court precedents on defection that span from *Kihoto Hollohan v. Zachillhu* to *Keisham Meghachandra Singh v. Speaker, Manipur Legislative Assembly*. The *Subhash Desai* ruling, the Maharashtra crisis from 2022 to 2024, and the concurrent divisions within the Nationalist Congress Party, Karnataka, and Madhya Pradesh are then discussed. These examples show how the Schedule's original intent has been undermined by resignations, the two-thirds merger approach, and delays caused by a Speaker dependent on the majority he oversees. The article concludes by pointing out the particular weaknesses that this pattern reveals and repeating the long-standing argument in favour of an impartial adjudicatory body, a legally binding deadline, and statutory regulation of internal party democracy.

Keywords: Anti-defection law, Tenth Schedule, constitutional morality, Speaker's adjudicatory power, Maharashtra political crisis, *Subhash Desai v. Principal Secretary*, party splits and mergers, judicial review, electoral reform.

I. Introduction

Political defection has been a part of Indian parliamentary democracy since its early days, but the extent to which it reached in the late 1960s led to the creation of a phrase that has persisted through every administration: "Aaya Ram, Gaya Ram."¹ The expression owes itself to Gaya Lal, a Haryana legislator who changed his party three times within a single day in 1967, and it captured, more accurately than any statute could, the sense that elected office had become detached from the mandate on which it was won.² The Constitution (Fifty-second Amendment) Act, 1985, which inserted the Tenth Schedule, was Parliament's answer to this problem.³ However, four decades later, that solution still seems inadequate. The Maharashtra crisis of 2022, in which a group led by Eknath Shinde split the Shiv Sena and overthrew Uddhav Thackeray's government, and the events that followed over the next two years have shown that anyone with the numbers and patience to work their way through the adjudicatory framework created by the Tenth Schedule can get around it.⁴ Similar incidents in Karnataka, Madhya Pradesh, Goa, and within Maharashtra itself involving the Nationalist Congress Party indicate that this isn't just a one-off situation limited to a single state or party, but can be rather attributed to the fundamental flaw in the legislation.

This article examines that weakness against the standard of constitutional morality, a phrase the Supreme Court has used with increasing frequency since 2014 to describe the values that ought to inform the conduct of every constitutional functionary, whether or not those values are reduced to a specific rule of law.⁵ The assertion presented here is a modest one. The Tenth Schedule was created to safeguard the will of the electorate and ensure the stability of governments against opportunistic party-switching. However, in its current implementation, primarily managed by a Speaker who relies on the support of the very majority whose actions he is entrusted with evaluating, the law has transformed into a means of legitimizing defections rather than penalizing them. The disparity between the assurances of the Tenth Schedule and the realities it presents essentially highlights a deficiency in constitutional morality. This article studies the origins of the anti-defection law, the judicial interpretation of constitutional

¹ Subhash C. Kashyap, *Anti-Defection Law and Parliamentary Privileges* 41 vol.1 (4th ed, Mohan Law House, 2003).

² Rajni Kothari, *Politics in India* 234 (1970); see also 170th Law Comm'n of India, Report on Reform of the Electoral Laws para 4.1 (1999).

³ The Constitution (Fifty-second Amendment) Act, 1985, Tenth Schedule

⁴ Subhash Desai v. Principal Secretary, Governor of Maharashtra, 2023 INSC 516

⁵ Manoj Narula v. Union of India, (2014) 9 SCC 1 (India); Navtej Singh Johar v. Union of India, 2018, 10 SCC 1

morality, the case law pertaining to defection starting from Kihoto Hollohan, the situation in Maharashtra, and similar instances in other states, and concludes with an evaluation of the shortcomings in the current framework, along with suggested reforms that might deal with these issues. The disparity between the expectations set by the Tenth Schedule and the reality of its outcomes shows a fundamental issue of constitutional morality. This article analyzes the origins of the anti-defection law, the judicial interpretation of constitutional morality, the court precedents relating to defection starting from Kihoto Hollohan, the recent events in Maharashtra, and similar situations in other states, culminating in an evaluation of the shortcomings in the present framework and potential reforms that could address them.

II. The Making of the Tenth Schedule

Defection was not regarded as a separate constitutional issue until the fourth general election in 1967, when a significant increase in the number of legislators switching parties occurred, leading to the collapse of several state governments as a direct consequence.⁶ The Committee on Defections, led by Y.B. Chavan and established in 1967, was the first official organization to examine this issue, followed by numerous legislative efforts over the next twenty years that ultimately failed to resolve it.⁷ It was only with the return of a one-party majority government at the national level in 1984 that the reform gained sufficient support in Parliament. The Rajiv Gandhi government introduced the Fifty-second Amendment Bill within months of taking office, and it was passed by both Houses in January 1985 with very little of the deliberation that a change of this magnitude might have been expected to attract.⁸

The Tenth Schedule disqualifies a member of a legislative body based on two main criteria. Firstly, a member affiliated with a political party can be disqualified if they "voluntarily give up" their membership, a term that the courts have interpreted more extensively than simply a formal resignation.⁹ Secondly, a member may be disqualified if they vote or abstain from voting in the assembly against a directive issued by their party, unless the party permits the action within a fifteen-day period.¹⁰ Independent members face disqualification if they join a party after their election, while nominated members are disqualified if they affiliate with a party

⁶ Kashyap, *supra* note 1, at 39-42

⁷ Report of the Committee on Defections (Y.B. Chavan Chairman) (1969), discussed in 170th Law Comm'n of India, *supra* note 2, para 4.2.

⁸ M.P. Jain, *Indian Constitutional Law* 342 (8th ed. 2018).

⁹ *Ravi S. Naik v. Union of India*, 1994 Supp (2) SCC 641 (India).

¹⁰ India Const. sched. X, para 2(1)(b).

after six months in the assembly.¹¹ The Schedule carved out one significant exception at the outset: paragraph 3 protected a "split" where at least one-third of the legislature party broke away, treating the resulting group as a separate faction rather than a set of defectors.¹² This provision was removed by the Ninety-first Amendment Act, 2003, precisely because it had become the principal instrument through which defections were engineered and then legitimised after the fact; the same amendment substituted a stricter merger provision requiring two-thirds of the legislature party to agree before a merger with another party could be recognised.¹³ The point worth noting for the purposes of this article is that the drafting history of the Tenth Schedule is itself a history of loopholes being closed only after they had already been exploited on a large scale, and, as the discussion of Maharashtra below will show, that pattern has not ended with the 2003 amendment.

Paragraph 6 grants the authority to determine "any question" regarding disqualification under the Schedule to the Speaker or Chairman of the respective House, while paragraph 7, in its initial version, aimed to completely eliminate the possibility of judicial review of that decision.¹⁴ Both aspects were challenged in the case of *Kihoto Hollohan v. Zachillhu*, which is covered in Section V below, and both continue to be fundamental to the challenges that the law still produces.

III. Constitutional Morality: Content and Judicial Career

The phrase "constitutional morality" is not indigenous to the Indian Constitution. B.R. Ambedkar borrowed it from the historian George Grote's account of the Athenian democracy and introduced it into the Constituent Assembly Debates on 4 November 1948, warning that a constitution, however well drafted, would fail if it was not accompanied by a diffused sense among the people and their representatives of what conduct the constitutional scheme required of them.¹⁵ The expression remained mostly stagnant in Indian constitutional law for more than fifty years, appearing from time to time but without thorough discussion, until the Delhi High Court referenced it in *Naz Foundation v. Government of NCT of Delhi* in 2009, asserting that public or social morality should not take precedence over the constitutional protection of

¹¹ India Const. sched. X, paras 2(2)-(3).

¹² The Constitution (Fifty-second Amendment) Act, 1985, Tenth Schedule para 3 (since repealed).

¹³ The Constitution (Ninety-first Amendment) Act, 2003, § 5 (omitting para 3 and amending para 4 of the Tenth Schedule).

¹⁴ India Const. sched. X, paras 6-7.

¹⁵ Constituent Assembly Debates 38 (Nov. 4, 1948) (speech of B.R. Ambedkar).

individual liberty.¹⁶

The Supreme Court gave the doctrine its first considered treatment in *Manoj Narula v. Union of India*, where the Court, dealing with the appointment of legislators facing criminal charges as ministers, held that constitutional morality requires every constitutional functionary "to bow down to the norms of the Constitution and not to act in a manner which would become violative of the rule of law or reflective of action in an arbitrary manner."¹⁷ "Four years later, in *Government of NCT of Delhi v. Union of India*, the Court went further and used the doctrine as an interpretive device, holding that constitutional morality exists to "fill in constitutional silences" and complete the spirit of the document where its text proves inconclusive."¹⁸ In the same year, in *Navtej Singh Johar v. Union of India*, the Court held in explicit terms that constitutional morality must prevail over social or popular morality whenever a conflict occurs between the two, a proposition it had already applied, in substance, in the Sabarimala judgment which was delivered shortly before.¹⁹

Two aspects of this line of authority are significant for the current discussion. First, the Court emphasizes that constitutional morality pertains not only to citizens but also to institutions and officials; it urges a Speaker, a Governor, or a legislator to engage in actions that reflect the essence of the constitutional framework rather than just complying with a permissive rule. The second aspect is that this doctrine has received criticism, which is somewhat valid, for its ambiguous nature. Observers have noted that a standard that can produce contradictory outcomes, even among the same Bench, as seen in the Sabarimala review process, provides limited direction unless it is tied to particular institutional practices.²⁰ That criticism is well taken as a general matter, but it does not weaken the doctrine's usefulness in the narrower context of anti-defection adjudication, where the relevant constitutional value, namely fidelity to the electoral mandate and impartial adjudication by presiding officers, is reasonably well defined by the text and object of the Tenth Schedule itself. It is in this narrower sense that the term is used throughout the rest of this article.

¹⁶ Naz Foundation v. Gov't of NCT of Delhi, 160 (2009) DLT 277 (Delhi HC)

¹⁷ Manoj Narula v. Union of India, (2014) 9 SCC 1, 76, para 76.

¹⁸ Gov't (NCT of Delhi) v. Union of India, (2018) 8 SCC 501, paras 58-63.

¹⁹ Navtej Singh Johar v. Union of India, (2018) 10 SCC 1, paras 123, 132-33; see also Indian Young Lawyers Ass'n v. State of Kerala, (2019) 11 SCC 1.

²⁰ See Anmol Jain, Tryst with the Constitution: The Constitutional Problems with Constitutional Morality, Bar & Bench (2025), <https://www.barandbench.com/columns/tryst-with-the-constitution-the-constitutional-problems-with-constitutional-morality>.

IV. Where the Two Meet: The Constitutional-Morality Deficit in the Tenth Schedule

The Tenth Schedule and the concept of constitutional morality are intertwined on multiple levels. The law's stated purpose was itself a project in constitutional morality: to prevent legislators from treating a seat won on one party's ticket as personal property that could be carried across the floor for a price or a portfolio.²¹ Seen this way, the Tenth Schedule was Parliament's attempt to write a specific rule where an unwritten norm of political conduct had visibly failed.

The difficulty lies in the fact that the Schedule assigns the responsibility of enforcing this rule to the Speaker, whose role is closely related to the majority whose defection he might have to decide upon. Justice J.S. Verma highlighted this conflict as early as in the case of *Kihoto Hollohan*, noting in a separate opinion that a Speaker's term "is reliant on the ongoing backing of the majority in the House," and this trust is at odds with the requirement for impartial adjudication.²² What was, in 1992, a concern of minority importance regarding institutional design has since developed into a significantly more important issue. When a Speaker postpones a decision until a defection has already achieved its desired political impact, or resolves the issue in a way that corresponds to the preferences of the party that appointed him rather than sticking to the content of the Schedule, it is anything but a matter of poor law application; it is effectively being utilized to undermine the very constitutional principles it was meant to preserve. The cases from Maharashtra and Karnataka that are mentioned below should be seen in this light, not only as isolated instances of Speaker misconduct, but as illustrations of a systemic problem that the Tenth Schedule's existing structure is unable to remedy.

A second, connected issue pertains to the electorate. A defection that survives legal review, whether by delays, a favorable split that later becomes a merger finding, or the implicit support from the Election Commission's symbol order, results in a government that no longer reflects the mandate under which it was elected, leaving voters who supported that mandate without an immediate recourse. Constitutional morality, as defined by the Court in the *NCT of Delhi* case, is intended to protect against precisely this disconnect between the Constitution's text along with its underlying principles.²³ The rest of this article aims to demonstrate, using case law and

²¹ *Kihoto Hollohan v. Zachillhu*, 1992 Supp (2) SCC 651, para 15.

²² *Kihoto Hollohan v. Zachillhu*, 1992 Supp (2) SCC 651, para 99 (Verma, J.); see also Kartik Agarwal & Jayesh Kumar Singh, *Office of the Speaker: An Anathema to the Doctrine of Constitutional Trust*, Socio-Legal Rev. Blog (2021).

²³ *Gov't of NCT of Delhi v. Union of India*, (2018) 8 SCC 501, para 61.

recent incidents at the state level, how significant that gap has become in practice.

V. The Judiciary's Long Engagement with Defection

The constitutional validity of the Tenth Schedule was tested within seven years of its enactment in *Kihoto Hollohan v. Zachillhu*.²⁴ A five-judge Bench, by a majority of three to two, upheld the substantive provisions of the Schedule, holding that curbing "unprincipled" defection did not offend the freedom of speech of individual legislators, since that freedom does not extend to a right to defy the party on whose ticket a member was elected.²⁵ The same majority, however, invalidated paragraph 7, which had attempted to eliminate judicial review of the Speaker's decision, arguing that this constituted a modification of the jurisdiction of the High Courts and the Supreme Court as outlined in Articles 226, 227, and 136, and could not be enacted without approval from the state legislatures as required by the proviso to Article 368(2).²⁶ The Court then ruled that the Speaker, in dealing with a disqualification petition, operates as a tribunal, making his decision subject to judicial review, but only on the limited grounds applicable to any tribunal, such as mala fides, perversity, or breach of natural justice, rather than on the substance of the decision itself.²⁷ It is this pair of holding and validity, coupled with limited review, that has structured almost every subsequent defection dispute.

The concept of "voluntarily relinquishing membership" was clarified in the case of *Ravi S. Naik v. Union of India*, where the Court determined that this term is not limited to an official resignation and can be interpreted on the grounds based on a legislator's behaviour. Thus, a member who engages in actions that are inconsistent with ongoing affiliation to their party may be considered to have forfeited it, even if they do not explicitly state it.²⁸ In the case of *G. Viswanathan v. Hon'ble Speaker, Tamil Nadu Legislative Assembly*, the court elaborated on the principle that when a member is expelled from their original political party, they are still regarded as a part of that party for the purposes of the Tenth Schedule.²⁹ Therefore, joining a different party and claiming that they were not required to follow the former party's rules at the time of their new affiliation will not prevent a member from being disqualified. The same reasoning was applied to split claims in *Rajendra Singh Rana v. Swami Prasad Maurya*, which

²⁴ *Kihoto Hollohan v. Zachillhu*, 1992 Supp (2) SCC 651.

²⁵ *Id.* paras 40-45.

²⁶ *Id.* paras- 99-102.

²⁷ *Id.* paras- 109-111.

²⁸ *Ravi S. Naik v. Union of India*, 1994 Supp (2) SCC 641, para 37.

²⁹ *G. Viswanathan v. Hon'ble Speaker, T.N. Legis. Assembly*, (1996) 2 SCC 353, paras 16-18.

held that the Speaker's failure to disqualify the defecting members amounted to an error correctable in judicial review when the purported split under the since-repealed paragraph 3 was not genuine and that the Court could itself declare disqualification when the facts did not permit any other conclusion.³⁰

The case of *Nabam Rebia and Bamang Felix v. Deputy Speaker*, which resulted from the political unrest in Arunachal Pradesh in 2016, made the problem of the Speaker's vulnerability to political influence more clear. The Court ruled that a Speaker who is facing a motion for their own removal cannot make decisions on disqualification petitions concerning the very members whose votes are necessary for that motion, as allowing such action would enable the Speaker to secure his position by disqualifying those members who are attempting to vote him out before they have the chance to do so.³¹ The judgment protected the House's right to test the Speaker's own support before he adjudicates on the fate of individual members, but, as the Maharashtra litigation discussed in the next Section shows, it also created a procedural sequencing problem that has since been contested before the Court itself.

Two subsequent rulings are directly related to the delays that have become the primary concern regarding the implementation of the Tenth Schedule. In the case of *Keisham Meghachandra Singh v. Speaker, Manipur Legislative Assembly*, the Court addressed a situation involving a Manipur Speaker who had postponed disqualification petitions for more than two and a half years. The Court determined that a Speaker should typically resolve such petitions within three months unless there are exceptional circumstances and instructed the Speaker in that instance to make a decision within four weeks.³² The Bench went even further and noted, in a manner that has been referenced in later cases, that Parliament "may want to seriously consider" replacing the Speaker with a permanent tribunal led by a retired judge to ensure that defection disputes are resolved "both promptly and fairly."³³ In the case of *Shrimanth Balasaheb Patil v. Speaker, Karnataka Legislative Assembly*, which was decided in the same year, the Court affirmed the disqualification of seventeen legislators from Karnataka whose resignations the Speaker had chosen not to process prior to a confidence vote. However, the Court nullified that part of the Speaker's ruling which prohibited those legislators from running for elections for

³⁰ Rajendra Singh Rana v. Swami Prasad Maurya, AIR 2007 SC 1305, paras 33-36.

³¹ Nabam Rebia & Bamang Felix v. Deputy Speaker, Arunachal Pradesh Legis. Assembly, (2016) 8 SCC 1, para 179.

³² Keisham Meghachandra Singh v. Speaker, Manipur Legis. Assembly, 2020 INSC 65, paras 4-5, 34.

³³ Id. para 35.

the remaining period of the Assembly, as the Tenth Schedule does not provide for such a restriction.³⁴ The Bench openly acknowledged the core issue while noting that Speakers throughout the nation have, on multiple occasions, permitted unrelated political elements to influence the timing and substance of their decisions.³⁵

VI. Maharashtra: A Case Study in Constitutional Improvisation

The Maharashtra crisis began on 21 June 2022, when Eknath Shinde and a group of Shiv Sena legislators left Mumbai for Surat and then Guwahati, and two days later wrote to the Deputy Speaker, asserting that they no longer supported him and calling for his removal.³⁶ The Deputy Speaker reacted not by dealing with that notice but by issuing disqualification notices to Shinde and sixteen other lawmakers for defection.³⁷ Uddhav Thackeray stepped down as Chief Minister on June 29, 2022, prior to the floor test mandated by the Governor. On June 30, 2022, Shinde was sworn in as Chief Minister with the backing of the Bharatiya Janata Party.³⁸ The aftermath involved legal battles on multiple fronts simultaneously: in the Supreme Court regarding the legitimacy of the Governor's actions and the notices of disqualification from the Deputy Speaker, in the Election Commission of India to determine which faction had the right to the Shiv Sena's name and its bow-and-arrow symbol, and, subsequently, in front of the newly elected Speaker, Rahul Narwekar, concerning the disqualification petitions that each faction had submitted against one another.

The Supreme Court's judgment of 11 May 2023 in *Subhash Desai v. Principal Secretary, Governor of Maharashtra* addressed several of these questions together.³⁹ Since Thackeray had resigned prior to the floor test, the Court ruled that he could not be reinstated as Chief Minister and that there was, in its words, no government for the Court to restore.⁴⁰ At the same time, the Court ruled that the Governor, Bhagat Singh Koshyari, should not have intervened in what was, at that point, an internal political party dispute and that the Governor had erred in calling for a floor test based on an intra-party dispute rather than any observable loss of majority support for the government in the House.⁴¹ In response to the sequencing issue raised by Nabam

³⁴ Shrimanth Balasaheb Patil v. Speaker, Karnataka Legis. Assembly, (2020) 2 SCC 595, paras 154, 176.

³⁵ Id. para 154.

³⁶ Subhash Desai v. Principal Secretary, Governor of Maharashtra, 2023 INSC 516, Part A (Factual Background).

³⁷ Id.

³⁸ Id.

³⁹ Subhash Desai v. Principal Secretary, Governor of Maharashtra, 2023 INSC 516.

⁴⁰ Id. Part L (Conclusion).

⁴¹ Id. paras 143-153.

Rebia, the Court chose not to bring that precedent before a larger Bench, stating that a notice for the removal of the Speaker does not automatically halt all House proceedings, but pointed out that a Speaker is unable to decide on disqualification petitions while a motion for his removal is under consideration, as this would enable him to undermine the vote that determines his right to continue acting.⁴² The Court further held that the Speaker, and not the Election Commission, is the authority under the Tenth Schedule empowered to decide disqualification, and that the Election Commission's decision on the party symbol, taken under its own statutory jurisdiction over election symbols, does not bind or pre-determine the Speaker's independent inquiry into disqualification.⁴³ The judgment closed by directing the newly elected Speaker, Narwekar, to decide the pending disqualification petitions "within a reasonable time," without fixing a specific date.⁴⁴

That open-ended direction proved consequential. Nine months later, in September 2023, the Thackeray faction moved the Supreme Court again, this time complaining that the Speaker was deliberately delaying the petitions; the Court issued notice and eventually directed Narwekar to furnish a timeline and to decide by 10 January 2024.⁴⁵ On that date, some eighteen months after the split occurred and well after the Shinde government had entrenched itself in office and after the Election Commission had already allotted the Shiv Sena name and symbol to the Shinde faction in February 2023, the Speaker ruled that the Shinde faction constituted the "real" Shiv Sena, holding that Thackeray had no power to expel any member since the party constitution recognised no post corresponding to the one he claimed to have exercised, and declined to disqualify either set of legislators.⁴⁶ The Thackeray faction, and separately the Ajit Pawar-related dispute within the Nationalist Congress Party discussed below, again approached the Supreme Court against the Speaker's ruling, and that challenge remained pending well beyond the state Assembly elections of November 2024, by which point the practical question the Tenth Schedule had been enacted to answer, namely whether the government of the day commanded a mandate unaffected by defection, had long since been

⁴² Id. paras 97-105.

⁴³ Id. paras 156-159.

⁴⁴ Id. Part L.

⁴⁵ Shiv Sena (UBT) v. State of Maharashtra, Writ Petition (Civil), Supreme Court of India, order dated 18 Sept. 2023; see Deccan Herald, *MLA Disqualification Proceedings to be Neither Delayed nor Hastened: Speaker Rahul Narwekar* (Sept. 15, 2023).

⁴⁶ Order of the Speaker, Maharashtra Legislative Assembly, on Disqualification Petitions under the Tenth Schedule (Jan. 10, 2024); The Tribune, *Uddhav Faction Moves SC Against Speaker's Order Declaring Shinde Group 'Real Shiv Sena'* (Jan. 15, 2024).

overtaken by events on the ground.⁴⁷

The Nationalist Congress Party experienced a similar circumstance. Ajit Pawar formed an alliance with the Shinde-Fadnavis government in July 2023 after leading the majority of the party's lawmakers away from the NCP, which was led by Sharad Pawar. Shortly after the break, Pawar was appointed Deputy Chief Minister. This series of events was very similar to the split that occurred within the Shiv Sena the year before, including a subsequent disagreement before the Election Commission over the NCP's name and clock symbol, as well as disqualification petitions that went unanswered for a long time while the defecting faction continued to hold ministerial positions.⁴⁸

Two aspects of the Maharashtra incident strongly support the argument made in this article. Firstly, the order in which the Election Commission acknowledged the Shinde faction as the legitimate Shiv Sena before the Speaker even began addressing the disqualification petitions indicated that by the time the Speaker delivered his decision, the political and organizational landscape he was evaluating had already been altered by another constitutional body applying a different legal criterion. This criterion focused on which faction held a majority within the party's organizational and legislative branches according to the Election Symbols (Reservation and Allotment) Order of 1968, rather than on which individuals had defected in accordance with the definitions given in the Tenth Schedule.⁴⁹ Secondly, the eighteen-month gap between the split and the Speaker's ruling, despite the Supreme Court's own repeated emphasis, from *Keisham Meghachandra* onward, that such petitions should ordinarily be decided within three months, demonstrates that a directive from the Court to decide "within a reasonable time" is, without a hard statutory deadline and an institution independent of the House's own majority, an insufficient protection against exactly the kind of delay the Tenth Schedule was meant to foreclose.

VII. Other States: A Recurring Pattern

Maharashtra is the most closely watched instance of this pattern, but it is not the only one. The

⁴⁷ Sunil Prabhu v. Rahul Narwekar, Speaker, Maharashtra Legis. Assembly, Special Leave Petition pending before the Supreme Court of India (filed Jan. 2024).

⁴⁸ See generally Election Commission of India, Order on Petitions Relating to the Nationalist Congress Party (Feb. 2024).

⁴⁹ Election Symbols (Reservation and Allotment) Order, 1968, para 15; *Subhash Desai v. Principal Secretary, Governor of Maharashtra*, 2023 INSC 516, paras 156-159 (India).

events in Karnataka in July 2019, addressed by the Supreme Court in *Shrimanth Balasaheb Patil*, followed a similar trajectory: members from the Congress and the Janata Dal (Secular) resigned prior to a confidence vote facing the coalition government led by H.D. Kumaraswamy. The Speaker was accused of postponing action on both the resignations and the opposing disqualification petitions until the trust vote was lost, leading to the downfall of the coalition government before the seventeen legislators in question were ultimately disqualified.⁵⁰ In March 2020, in Madhya Pradesh, twenty-two legislators aligned with Jyotiraditya Scindia left the Congress party in quick succession, leading to a minority status for the Kamal Nath government before any disqualification process could even commence, since resignation does not necessitate any adjudication by the Speaker, aside from a brief inquiry into whether it was voluntary.⁵¹ Goa provides an even clearer example of the merger loophole that persists after the 2003 amendment: there have been instances since 2019 where a group of two-thirds of legislators from an opposition party has joined the ruling party, obtaining official recognition as a valid merger, which the Tenth Schedule explicitly allows if the two-thirds requirement is fulfilled, regardless of the electorate's initial choice between the two parties involved.⁵²

What connects these instances is not a specific flaw in the text of the Tenth Schedule but rather the various lawful or semi-lawful methods it allows concerning the core prohibition: mass resignations, which circumvent the Schedule entirely; the two-thirds merger, which the Schedule explicitly permits; and delays in adjudication, which the Schedule does not address since it does not establish any time limit for the Speaker to make a decision. Each method competently facilitates the transition of a government from the coalition that the electorate supported to a different coalition, without the concerned member being legally deemed to have defected.

VIII. Gaps in the Present Framework

Four gaps in the current framework can be identified from the discussion above. The first, and most commonly discussed, is the identity of the adjudicator. A Speaker is elected by the majority in the House and, in practice, relies on the goodwill of that majority to remain in position; Justice Verma's caution in *Kihoto Hollohan* that this dependence undercuts the

⁵⁰ *Shrimanth Balasaheb Patil v. Speaker, Karnataka Legis. Assembly*, (2020) 2 SCC 595, paras 1-20.

⁵¹ *Shivraj Singh Chouhan v. Speaker, Madhya Pradesh Legis. Assembly*, (2020) 17 SCC 1.

⁵² 170th Law Comm'n of India, *supra* note 2, para 4.10; PRS Legislative Research, *Vital Stats: The Anti-Defection Law* (2022).

Speaker's ability to act as an impartial tribunal has been reiterated by the Court itself in *Shrimanth Balasaheb Patil* and has not, in the years since, been addressed by any changes in legislation.⁵³

The second gap is the lack of a defined statutory time frame for resolving disqualification petitions. The Tenth Schedule does not address this issue, and while the three-month guideline proposed in *Keisham Meghachandra Singh* has been frequently reiterated, it is still merely a judicial recommendation rather than a mandatory rule, which can only be enforced through the lengthy process of filing a new writ petition each time a Speaker exceeds this timeframe, as demonstrated by the Maharashtra litigation from 2023 to 2024.⁵⁴

The third gap pertains to the relationship between the Tenth Schedule and the Election Symbols (Reservation and Allotment) Order, 1968. The Election Commission's investigation into which faction of a party has the right to its name and symbol is based on the criterion of majority support within the party's organizational and legislative branches, a criterion that has no direct link to the Tenth Schedule's criterion regarding individual members' defections.⁵⁵ In cases like that of Maharashtra, when the Commission makes its ruling before the Speaker does, its conclusion inevitably influences the political and evidentiary context in which subsequent disqualification petitions are adjudicated, despite the fact that the two processes are, in legal terms, completely separate from one another.

The fourth is the absence of any regulation of internal party democracy. The 170th Report of the Law Commission of India observed as far back as 1999 that a political party cannot reasonably be expected to be authoritarian in its internal functioning and democratic in the wider polity, and recommended statutory norms for internal party elections and decision making as a complement to the Tenth Schedule.⁵⁶ That recommendation has not been enacted, and its absence means that disputes over who legitimately leads a party, of the kind that arose in both the Shiv Sena and the NCP, are left to be settled after the fact by the Election Commission and the courts rather than being resolved through a documented internal process

⁵³ *Kihoto Hollohan v. Zachillhu*, 1992 Supp (2) SCC 651, para 99 (Verma, J.); *Shrimanth Balasaheb Patil v. Speaker, Karnataka Legis. Assembly*, (2020) 2 SCC 595, para 154.

⁵⁴ *Keisham Meghachandra Singh v. Speaker, Manipur Legis. Assembly*, 2020 INSC 65, para 34.

⁵⁵ Election Symbols (Reservation and Allotment) Order, 1968, para 15; *Sadiq Ali v. Election Comm'n of India*, (1972) 4 SCC 664.

⁵⁶ 170th Law Comm'n of India, *supra* note 2, paras 3.1-3.4.

at the time they arise.

IX. Suggestions and the Way Forward

Many of the reforms discussed below are not novel; they have been suggested by the Dinesh Goswami Committee in 1990, the Election Commission of India, as well as the 170th and 255th Reports of the Law Commission, and even by the Supreme Court in the case of *Keisham Meghachandra Singh*, with none of these recommendations having been implemented.⁵⁷ The following is an effort to present these reforms in the specific context of the Maharashtra experience rather than to introduce anything fundamentally new.

The most significant reform would involve transferring the adjudicatory role from the Speaker to an entity that is truly independent of the House's makeup. The 255th Report of the Law Commission suggested that the President or the Governor should determine disqualification issues based on the binding advice of the Election Commission, similar to the approach already utilized for post-election disqualification matters under Articles 103 and 192 of the Constitution.⁵⁸ The Supreme Court's proposal in *Keisham Meghachandra Singh* for a permanent tribunal led by either a retired Supreme Court judge or a retired Chief Justice of a High Court accomplishes the same goal using a different institutional framework. This approach would also have the added benefit of establishing a specialized body of precedents concerning defection issues, rather than requiring each Speaker to interpret the law independently.⁵⁹ Either model would require a constitutional amendment to paragraph 6 of the Tenth Schedule, and that amendment is, on the evidence of the past twenty-five years, unlikely to be moved by any party while it is in a position to benefit from the present arrangement; the reform is therefore better understood as a standing recommendation for the day political consensus allows it, rather than as a proposal likely to be adopted in the near term.

A second reform that does not require any changes to the constitution would be to establish a statutory time limit for resolving disqualification petitions, implemented as a regular law under Parliament's authority to manage issues related to the Tenth Schedule. This could include a default rule stating that any petition that remains unresolved beyond a fixed timeframe, such

⁵⁷ Report of the Committee on Electoral Reforms (Dinesh Goswami Chairman) (1990); 170th Law Comm'n of India, *supra* note 2; 255th Law Comm'n of India, Report on Electoral Reforms (2015); *Keisham Meghachandra Singh v. Speaker, Manipur Legis. Assembly*, 2020 INSC 65.

⁵⁸ 255th Law Comm'n of India, *supra* note 57, ch. V.

⁵⁹ *Keisham Meghachandra Singh v. Speaker, Manipur Legis. Assembly*, 2020 INSC 65, para 35.

as ninety days, would automatically be referred to the High Court for a decision. This change would turn the Court's repeated but non-binding recommendations in *Keisham Meghachandra Singh* and *Subhash Desai* into a binding rule, rather than forcing each impacted individual to pursue litigation over delay as a new cause for action.⁶⁰

A third and narrower reform would coordinate the Election Commission's proceedings under the Symbols Order with the Speaker's proceedings under the Tenth Schedule, for instance by requiring the Commission to await, or at least record, the Speaker's findings on defection before ruling on which faction is entitled to a party's name and symbol, so that one process does not pre-empt the evidentiary and political weight of the other, as happened in Maharashtra.⁶¹

A fourth reform, focusing on the limitations of party whips rather than the identity of the adjudicator, would restrict the obligatory nature of a party whip to votes that truly impact the stability of a government, such as confidence or no-confidence motions, financial bills, or similar motions, allowing members the freedom to vote based on their own judgment or the interests of their constituents on other legislative matters. This was suggested in the 170th Law Commission Report and would tackle a separate yet related critique of the Tenth Schedule, namely that it has been utilized to reinforce party discipline on issues unrelated to governmental stability, the specific problem the Schedule was aimed to prevent.⁶²

Finally, a statutory framework for internal party democracy, requiring parties to maintain a documented organisational structure, hold periodic internal elections, and record decisions of the kind Thackeray was found, in the *Narwekar* ruling, not to have documented when he purported to remove Shinde and his supporters from the party, would reduce the scope for exactly the kind of retrospective dispute over legitimate leadership that occupied the Election Commission and the Speaker for the better part of two years in the *Shiv Sena* matter.⁶³ The 170th Law Commission Report and, more recently, the 255th Report have both recommended provisions to this effect, and their implementation would strengthen the evidentiary record available to whichever body eventually decides a defection dispute, whatever that body's final

⁶⁰ *Id.*; *Subhash Desai v. Principal Secretary, Governor of Maharashtra*, 2023 INSC 516.

⁶¹ See Election Symbols (Reservation and Allotment) Order, 1968, para 15.

⁶² 170th Law Comm'n of India, *supra* note 2, paras 3.5-3.9.

⁶³ Order of the Speaker, Maharashtra Legislative Assembly, on Disqualification Petitions under the Tenth Schedule (Jan. 10, 2024).

composition turns out to be.⁶⁴

None of these measures would render defection impossible, nor should that be the aim, since a rule that prevented a legislator from ever leaving their party, regardless of the party's actions, would merely replace one constitutional flaw with another and come close to making elected officials permanent captives of party leadership.⁶⁵ The goal of reform is more limited: to guarantee that when defection occurs, it is judged by an impartial body within a timeframe that does not itself determine the political issue the judgment is intended to resolve, and based on a factual record that is not already influenced by a differently structured authority applying a separate legal standard. When evaluated in relation to that specific goal, the Maharashtra experience demonstrates how much progress the present framework still needs to make.

X. Conclusion

The Tenth Schedule was created to prevent a legislator from viewing their seat as a commodity to be traded once the wider mandate it represented had been attained. According to the wording of the Schedule, defection remains an offense; however, as shown by Maharashtra and previous states, defection on a significant scale, executed at the right time and carried out through resignation, a merger, or a prolonged adjudicatory process, poses very little risk for those who choose to engage in it. Kihoto Hollohan upheld judicial review as a mechanism to oversee this process, and subsequent rulings, including those in Ravi S. Naik, Keisham Meghachandra Singh, and Subhash Desai, have gradually expanded the criteria on which this review can be conducted.

What none of these rulings could provide, since it falls outside the judiciary's authority, is an institutional redesign that would eliminate the temptation for delays and biased rulings from the outset. That redesign, which includes an independent adjudicatory body, a mandatory time limit, a streamlined connection between the Election Commission's authority over symbols and the Speaker's power concerning disqualifications, along with some statutory discipline regarding how political parties manage their internal operations, remains unchanged since the Dinesh Goswami Committee first suggested components of it in 1990: it has been recommended, not contested in principle by any political factions that have ended up on the

⁶⁴ 170th Law Comm'n of India, *supra* note 2; 255th Law Comm'n of India, *supra* note 57.

⁶⁵ Kihoto Hollohan v. Zachillhu, 1992 Supp (2) SCC 651, para 15 (distinguishing principled dissent from unprincipled defection).

losing side of a defection, and it remains unenacted.⁶⁶

Constitutional morality, according to the Supreme Court's explanation, serves to bridge the divide between what the constitutional text allows and what the constitutional framework intended to accomplish. Unless Parliament addresses the gap in the Tenth Schedule directly, it will remain the responsibility of courts to attempt to fill it, albeit inconsistently and in response to political circumstances, as they can resolve disputes but are unable to stop similar ones from arising subsequently.

⁶⁶ Gov't of NCT of Delhi v. Union of India, (2018) 8 SCC 501, para 61.

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