
ANTI-DEFECTION LAW CANNOT BE REDUCED TO A MERE ARITHMETIC EXERCISE: A CONSTITUTIONAL REAPPRAISAL

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ABSTRACT

The anti-defection law under the Tenth Schedule of the Constitution of India is frequently interpreted through the lens of legislative arithmetic, particularly the assumption that the support of two-thirds of a legislature party automatically legitimises defections. This essay challenges that understanding. It argues that the constitutional scheme governing defection is fundamentally concerned with preserving electoral mandates, maintaining party integrity, and ensuring political stability rather than validating shifts in legislative numbers. Drawing upon the text of the Tenth Schedule, its legislative history, and judicial interpretation, the essay highlights the constitutional distinction between a political party and its legislature party. It contends that the merger exception under Paragraph 4 is a narrowly crafted safeguard intended to accommodate genuine organisational realignments of political parties and not factional defections supported by numerical strength within legislatures. The article further argues that treating the two-thirds requirement as a standalone constitutional rule risks reviving the logic of the abolished split provision and undermining the normative foundations of the anti-defection regime.

Keywords: Anti-Defection Law; Tenth Schedule; Political Party; Legislature Party; Merger; Constitutional Law.

Introduction

Recent political controversies have revived an enduring misconception about India's anti-defection law: the belief that defections become constitutionally legitimate whenever two-thirds of a legislature party acts together. Public debate often treats the Tenth Schedule as though it contains a numerical safe harbour under which legislative strength alone determines constitutional validity.¹

This understanding is both textually and conceptually flawed. The anti-defection framework was not enacted to count defectors; it was enacted to preserve the integrity of electoral mandates and to protect representative democracy from opportunistic political realignments. Consequently, the merger exception under Paragraph 4 cannot be understood as a mere arithmetic formula. Rather, it forms part of a broader constitutional structure that places political parties, not legislative factions, at the centre of democratic representation.

This essay argues that contemporary reliance on the two-thirds threshold reflects a shift from a party-centred understanding of the Tenth Schedule to a legislature-centred one. Such a shift is constitutionally problematic because it elevates temporary legislative coalitions over the political organisations through which electoral mandates are conferred. A proper interpretation of Paragraph 4 demonstrates that the merger exception is concerned with organisational transformation of political parties and not merely with numerical strength within legislatures.

The Constitutional Logic of the Anti-Defection Law

The Tenth Schedule was introduced through the Fifty-Second Constitutional Amendment Act², 1985 in response to the destabilising consequences of frequent post-election defections. The Statement of Objects and Reasons accompanying the amendment identified political defection as a serious threat to democratic governance and institutional stability.³

The objective of the anti-defection regime was not merely disciplinary. It sought to preserve the connection between the electorate's choice and the conduct of elected representatives after elections. The underlying assumption was that candidates are elected not solely as individuals

¹ P.D.T. Achary, Anti-Defection Law in India: A Critical Appraisal, *J. Parliam. Info.* (India).

² Constitution (Fifty-Second Amendment) Act, 1985, No. 1 of 1986, Acts of Parliament, 1985 (India).

³ Lok Sabha Debates, Constitution (Fifty-Second Amendment) Bill, 1985 (India, Jan. 30, 1985); Rajya Sabha Debates, Constitution (Fifty-Second Amendment) Bill, 1985 (India, Jan. 31, 1985).

but as representatives of political parties and the programmes they place before voters.

This assumption reflects the realities of modern parliamentary democracy. Political parties formulate manifestos, nominate candidates, mobilise voters, and present coherent programmes of governance before the electorate. Party symbols appear on ballots, election campaigns are organised around party platforms, and voters frequently make choices based upon party affiliation rather than the personal attributes of individual candidates. In a party-based parliamentary system, electoral mandates are therefore mediated through political parties, which serve as the principal vehicles through which democratic preferences are aggregated and expressed.

The Supreme Court recognised this principle in *Kihoto Hollohan v. Zachillhu*⁴, observing that political parties occupy a central position within the electoral process. A candidate elected on a party platform derives legitimacy from the mandate associated with that platform. Defection therefore raises concerns not merely of organisational loyalty but of democratic accountability.

Viewed from this perspective, the anti-defection law is fundamentally designed to safeguard the integrity of the electoral mandate. Exceptions to disqualification must therefore be interpreted narrowly and consistently with that objective.

Political Party versus Legislature Party

The most significant conceptual distinction within the Tenth Schedule, and one that is frequently overlooked in contemporary debates, is the distinction between a political party and a legislature party.

Paragraph 4 refers expressly to the merger of the "original political party."⁵ This choice of language is constitutionally significant. A political party is an electoral and organisational entity that formulates policy, mobilises voters, nominates candidates, and participates in democratic competition. It derives legitimacy from its relationship with the electorate and

⁴ *Kihoto Hollohan v. Zachillhu*, 1992 Supp. (2) S.C.C. 651 (India).

⁵ INDIA CONST. sched. 10, ¶ 4(1) (a)–(b).

Para 4(1) A member shall not be disqualified where his original political party merges with another political party and he claims that either:

(a) he and other members have become members of the merged party (or a new party formed by the merger); or
(b) he has not accepted the merger and has opted to function as a separate group.

exists independently of legislative institutions.

A legislature party, by contrast, consists only of elected members belonging to that political party within a legislative chamber. It is a parliamentary grouping rather than an autonomous political organisation.

This distinction is not merely semantic. It reflects the constitutional understanding that electoral mandates belong to political parties as organisational entities and not to temporary legislative formations. If legislative strength alone could determine party identity, a faction commanding numerical superiority within a House could effectively appropriate the identity of the political party itself. Such an outcome would invert the constitutional relationship between voters, political parties, and legislatures.

The architecture of the Tenth Schedule therefore rests upon the primacy of the political party as the repository of the electoral mandate, while the legislature party remains its institutional manifestation within the legislature.

Judicial Recognition of Party Primacy

Judicial interpretation has consistently reinforced this constitutional hierarchy.

In *Subhash Desai v. Principal Secretary, Governor of Maharashtra*⁶, the Supreme Court rejected the proposition that legislative majority alone determines the identity of a political party. The Court emphasised that an elected member is deemed to belong to the political party that sponsored his or her candidature. The decision reaffirmed that the political party continues to retain constitutional significance independent of shifting legislative alignments.

The significance of *Subhash Desai* extends beyond the immediate political controversy before the Court. The Constitution Bench's reasoning directly addresses the relationship between political parties and legislative factions under the Tenth Schedule.⁷ By refusing to equate numerical dominance within the legislature with control over the political party, the Court rejected the proposition that a legislative majority can independently determine constitutional identity.⁸ If a legislature party commanding numerical superiority could redefine the political

⁶ *Subhash Desai v. Principal Secretary to Governor of Maharashtra*, (2023) 8 S.C.C. 1 (India).

⁷ *Id.* at ¶¶ 177–81, 203–05; see also *G. Viswanathan v. Speaker, Tamil Nadu Legislative Assembly*, (1996) 2 S.C.C. 353 (India), ¶¶ 10–14.

⁸ *Speaker, Haryana Vidhan Sabha v. Kuldeep Bishnoi*, (2012) 13 S.C.C. 99 (India).

party itself, the distinction repeatedly maintained throughout the Tenth Schedule between the "original political party" and the "legislature party" would become constitutionally redundant. The judgment therefore reinforces a foundational premise of the anti-defection framework: political legitimacy flows from the political party that secured the electoral mandate and not from temporary legislative alignments formed after elections.

Similarly, in *G. Viswanathan v. Speaker, Tamil Nadu Legislative Assembly*⁹, the Supreme Court held that expulsion from a political party does not, by itself, terminate a member's constitutional affiliation with the political party on whose ticket he was elected. The Court reasoned that, for purposes of the Tenth Schedule, the relevant political identity of an elected representative continues to be determined by the party that sponsored his election. Consequently, an expelled member who joins another political party may still incur disqualification on the ground of defection. The decision underscores the centrality of the original political party within the anti-defection framework and reinforces the proposition that party identity cannot be altered solely by subsequent political developments within the legislature.¹⁰ For the purposes of the Tenth Schedule, the relevant inquiry remains whether the member has voluntarily abandoned the political party or falls within a recognised constitutional exception.

These decisions reflect a consistent judicial theme: the anti-defection framework is organised around party identity rather than legislative arithmetic. Legislative majorities may possess political significance, but they do not independently determine constitutional legitimacy under the Tenth Schedule.

Why the Two-Thirds Rule Is Misunderstood

The widespread assumption that support from two-thirds of a legislature party automatically protects defectors stems from a misreading of Paragraph 4.

Admittedly, Paragraph 4 incorporates a numerical threshold and therefore does not treat legislative support as constitutionally irrelevant. The presence of the two-thirds requirement demonstrates that the Constitution attaches significance to the extent of support within the legislature party. Yet the provision does not elevate numbers into an independent source of

⁹ *G. Viswanathan v. Speaker, Tamil Nadu Legislative Assembly*, (1996) 2 S.C.C. 353 (India).

¹⁰ *Id.* at ¶¶ 10–14.

constitutional legitimacy. The threshold operates as a condition attached to a merger and not as a standalone exemption from disqualification.

The text of Paragraph 4 is particularly significant in this regard. Paragraph 4(1) grants protection from disqualification where a member's "original political party merges with another political party." Paragraph 4(2), in turn, provides that such merger shall be deemed to have taken place if, and only if, not less than two-thirds of the members of the legislature party concerned have agreed to such merger. The phrase "such merger" is constitutionally important because it links the deeming provision in Paragraph 4(2) to the merger contemplated in Paragraph 4(1).¹¹ Read as a whole, the provision continues to be framed around the concept of a merger of the original political party rather than a mere numerical realignment within the legislature. The two-thirds requirement undoubtedly serves as the constitutional test for invoking the exception, but it does not alter the fact that the language of Paragraph 4 remains anchored in the idea of party merger. This textual structure supports an interpretation that treats legislative agreement as operating within the framework of a merger rather than viewing legislative numbers as an entirely autonomous source of constitutional legitimacy.

To be sure, the Constitution does not prescribe detailed procedural mechanisms through which merger of political parties must be established. Nevertheless, the structure of Paragraph 4 is best understood as presupposing an organisational merger of political parties rather than treating legislative support alone as constitutionally decisive. The two-thirds requirement operates as a condition governing recognition of legislators who accept that merger; it does not transform legislative agreement into an independent source of constitutional legitimacy.

The constitutional question is therefore not simply whether two-thirds of legislators support a faction. The relevant question is whether the original political party has undergone an authentic organisational transformation. Legislative support may constitute evidence of such a transformation, but it cannot by itself conclusively establish it.

The distinction is crucial. Equating merger with numerical strength transforms a constitutional exception into an arithmetic formula and collapses the difference between organisational

¹¹ INDIA CONST. sched. 10, ¶ 4(1)–(2); *Subhash Desai v. Principal Sec'y to Governor of Maharashtra*, (2023) 8 S.C.C. 1, ¶¶ 177–81, 203–05 (India); *G. Viswanathan v. Speaker, Tamil Nadu Legislative Assembly*, (1996) 2 S.C.C. 353 (India).

realignment and legislative defection.

Practical Difficulties and Constitutional Principle

It may be argued that contemporary political disputes often make it difficult to identify the "real" political party. Rival factions frequently claim control over party organisations, symbols, and leadership structures, producing uncertainty about which faction represents the original political party for constitutional purposes.

These practical difficulties are real. However, they do not justify abandoning the distinction between political parties and legislature parties that the Constitution itself maintains. Constitutional interpretation cannot permit legislative majorities to determine party identity merely because organisational disputes are complex or politically contentious. To do so would allow the practical problem of determining party identity to dissolve the very distinction upon which the Tenth Schedule is built.

The existence of difficult cases therefore strengthens rather than weakens the need to preserve the constitutional primacy of the political party. Questions concerning party identity may require institutional determination through mechanisms recognised by law, but they cannot be resolved simply by counting legislators within a House.

The Significance of the Ninety-First Amendment

The original anti-defection framework contained Paragraph 3, which exempted defections involving at least one-third of the members of a legislature party.¹² Experience demonstrated that this provision encouraged engineered splits and facilitated precisely the instability the law

¹² INDIA CONST. sched. 10, ¶ 3 (omitted by the Constitution (Ninety-First Amendment) Act, 2003).

3. Split in original political party.—

Where a member of a House makes a claim that he and any other members of his legislature party constitute the group representing a faction which has arisen as a result of a split in his original political party and such group consists of not less than one-third of the members of such legislature party—

(a) he shall not be disqualified under sub-paragraph (1) of paragraph 2 on the ground—

(i) that he has voluntarily given up his membership of his original political party; or

(ii) that he has voted or abstained from voting in such House contrary to any direction issued by such political party or by any person or authority authorised by it in that behalf, without obtaining the prior permission of such political party, person or authority and such voting or abstention has not been condoned by such political party, person or authority within fifteen days from the date of such voting or abstention; and

(b) from the time of such split, such faction shall be deemed to be the political party to which he belongs for the purposes of sub-paragraph (1) of paragraph 2 and to be his original political party for the purposes of this paragraph.

was intended to prevent.

Recognising these consequences, Parliament enacted the Ninety-First Constitutional Amendment in 2003¹³ and removed the split provision altogether. This amendment reflected a conscious rejection of numerical thresholds as independent sources of constitutional legitimacy.

The deletion of Paragraph 3 reflected a deliberate constitutional judgment that legislative numbers alone cannot furnish sufficient justification for exempting defectors from disqualification. Parliament concluded that numerical strength, by itself, was an unreliable indicator of political legitimacy and had become a vehicle for engineered defections.

This legislative choice is highly relevant to the interpretation of Paragraph 4. If the merger provision is understood as creating constitutional protection whenever two-thirds of legislators act together, the constitutional system effectively recreates, in substance if not in form, the very logic that the Ninety-First Amendment sought to eliminate. Such an interpretation would allow numerical strength to perform the same legitimising function that the split provision once served, thereby undermining the purpose of its repeal.

Conclusion

The anti-defection law is frequently presented as though it operates through fixed numerical thresholds. Yet the constitutional architecture of the Tenth Schedule reveals a more nuanced framework. Its central concern is not the number of legislators supporting a faction but the preservation of electoral mandates through the institutional integrity of political parties.

The distinction between a political party and a legislature party lies at the heart of this framework. The Constitution recognises political parties as the principal vehicles through which democratic mandates are obtained and exercised. Consequently, the merger exception under Paragraph 4 cannot be reduced to a question of legislative arithmetic.

The crucial constitutional inquiry is therefore not how many legislators have crossed over, but whether the political party that received the electoral mandate has undergone a genuine organisational transformation recognised by the constitutional scheme. The two-thirds

¹³ INDIA CONST. art. 75, cl. 1A (as amended by The Constitution (Ninety-First Amendment) Act, 2003).

requirement contained in Paragraph 4 cannot be detached from that larger inquiry and treated as a self-sufficient rule of legitimacy. To do so would shift the anti-defection law from a framework designed to protect electoral mandates into one that merely validates successful factionalism.

The coherence of the Tenth Schedule depends upon preserving the distinction between legislative strength and constitutional legitimacy—a distinction that lies at the heart of representative democracy and the party-based character of India's parliamentary system.