

ANTI-DEFECTION LAWS IN INDIA: A CRITICAL ANALYSIS OF THE TENTH SCHEDULE

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UNIT I

INTRODUCTION

1.1 The Westminster Roots of Indian Parliamentary Democracy

When India became independent it did not create an entirely new parliamentary system. Instead, it adopted the British Westminster model.¹ Important features such as collective ministerial responsibility, the party whip, and the principle that a government remains in office only while it enjoys the confidence of the lower House were borrowed from Britain.² At first this appeared to be a suitable constitutional framework.

However, the British model operated under political conditions that were very different from those in India. In the United Kingdom party discipline developed through long-standing political traditions. Members of Parliament generally remained loyal to their parties because of established conventions and electoral accountability. These practices were not enforced by law because they had become part of the political culture. India did not have the same political environment. The country had numerous political parties, strong regional interests, and frequent coalition governments. Party loyalty could not be taken for granted. As a result the informal discipline that supported the Westminster system in Britain was largely absent in India.

To address this challenge India adopted a different approach. Instead of relying on political convention it gave constitutional status to party discipline through the anti-defection law.³ The weakness of the borrowed model became clear during the 1960s and 1970s. Politicians frequently changed parties for political advantage. These repeated defections became popularly known as the *Aaya Ram Gaya Ram* phenomenon.⁴ Legislators often left their parties during

¹ M.P. Jain, *Indian Constitutional Law* 957–962 (8th ed., LexisNexis 2018).

² D.D. Basu, *Introduction to the Constitution of India* 179–183 (26th ed., LexisNexis 2022).

³ The Constitution (Fifty-Second Amendment) Act, 1985.

⁴ Subhash C. Kashyap, *Our Constitution* 168–171 (National Book Trust, 5th ed. 2019).

their term or joined rival political groups. They sometimes formed new alliances without facing any legal consequences. This weakened political stability. State governments collapsed frequently while the credibility of the central government also suffered. The principle of parliamentary accountability gradually lost its strength.

These developments showed that the Westminster model required modification to suit Indian conditions. India had many regional parties and diverse political interests. For much of its post-independence history no single party enjoyed overwhelming dominance. The parliamentary system therefore needed constitutional safeguards to ensure political stability in a large federal democracy.⁵

Rise of Party Switching and the "Aaya Ram Gaya Ram" Phenomenon

The turning point in India's defection crisis came in 1967 in Haryana. A legislator named Gaya Lal changed political parties three times in a single day. Although unusual at the time the incident reflected a growing political trend. It soon became famous as the *Aaya Ram Gaya Ram* phenomenon. After this incident party switching became common across the country. Legislators frequently left their parties to obtain ministerial positions or other political benefits. Since there was no constitutional penalty defections continued without restriction.

The consequences were most visible in the states. Governments often collapsed because legislators crossed over to rival parties. This period also witnessed the rise of "horse-trading." The expression referred to the practice of securing legislative support through inducements or political bargaining. Similar instability also affected the central government. Public confidence in the political system declined steadily. Voters elected candidates under the banner of particular political parties. Many of these representatives later abandoned those parties for personal or political gain. Newspapers widely reported such incidents which increased public dissatisfaction. Many citizens questioned the value of their vote if elected representatives could easily change political allegiance.

Public dissatisfaction eventually created strong pressure for legal reform. Political leaders recognised that repeated defections were weakening democratic governance. This demand for stability ultimately led to the enactment of the 52nd Constitutional Amendment Act in 1985.⁶

⁵ Granville Austin, *Working a Democratic Constitution: The Indian Experience* 268–274 (Oxford University Press 1999).

⁶ Statement of Objects and Reasons, Constitution (Fifty-Second Amendment) Bill, 1985.

Legislative History: The 32nd, 48th, and 52nd Constitutional Amendment Bills

The anti-defection law was introduced only after several unsuccessful attempts. The first effort came in 1973 through the 32nd Constitutional Amendment Bill.⁷ The Bill did not become law. A second attempt was made through the 48th Constitutional Amendment Bill.⁸ This proposal also failed to secure approval.

The issue was finally resolved in 1985 when the Rajiv Gandhi Government introduced the 52nd Constitutional Amendment Bill. The Bill received overwhelming support in Parliament. Almost every political party had experienced the effects of defection. This created broad political agreement on the need for reform. Parliament also debated several important questions. Members discussed what should amount to defection, what penalties should apply, and who should decide cases of disqualification. Some members favoured strict rules while others argued that legislators should retain the freedom to express independent opinions. These discussions resulted in a balanced compromise through the introduction of the Tenth Schedule.⁹

The amendment reflected the view that governmental stability deserved greater constitutional protection than unrestricted freedom to change political parties. It also responded to growing public concern over horse-trading and political opportunism. The 52nd Constitutional Amendment Act came into force on 1 March 1985 (having received the assent of the President on 15 February 1985) and inserted the Tenth Schedule into the Constitution.¹⁰

Enactment of the Tenth Schedule through the 52nd Constitutional Amendment, 1985

The 52nd Constitutional Amendment inserted the Tenth Schedule into the Constitution. It established a comprehensive legal framework for the disqualification of legislators on the ground of defection. The law applied uniformly to Parliament as well as all State Legislatures.

The amendment was widely regarded as a significant constitutional reform. Its primary objective was to ensure stable governments and strengthen party discipline. The Statement of Objects and Reasons clearly stated that elected representatives should remain loyal to the political party under whose banner they were elected.¹¹ The law also sought to prevent practices such as horse-trading, politically motivated defections, and the creation of artificial legislative majorities. The political circumstances of 1985 also contributed to the success of the

⁷ Lok Sabha Secretariat, *The Constitution (Thirty-Second Amendment) Bill, 1973*.

⁸ Lok Sabha Secretariat, *The Constitution (Forty-Eighth Amendment) Bill*.

⁹ Constitution of India, Tenth Schedule (inserted by the Constitution (Fifty-Second Amendment) Act, 1985).

¹⁰ Gazette of India, Extraordinary, Part II, Sec. 1, The Constitution (Fifty-Second Amendment) Act, 1985 (Jan. 9, 1985).

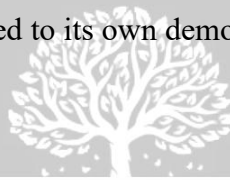
¹¹ Statement of Objects and Reasons, Constitution (Fifty-Second Amendment) Bill, 1985.

amendment. Rajiv Gandhi had secured a massive electoral mandate after the 1984 general election following the assassination of Prime Minister Indira Gandhi. His government possessed a strong parliamentary majority which enabled it to pass important constitutional reforms with little opposition. This political support combined with years of public dissatisfaction made the enactment of the anti-defection law possible.

The Tenth Schedule established three principal grounds for disqualification:

- Voluntarily giving up membership of a political party.
- Voting against the party whip without prior permission.
- Joining a political party after being elected as an independent member.

These provisions replaced a legal system in which defection had no constitutional consequences. Before 1985 legislators could change political parties without any legal restriction. After the enactment of the Tenth Schedule party discipline became a constitutional requirement. India therefore transformed what had remained a political convention in Britain into a binding constitutional rule suited to its own democratic conditions.¹²



UNIT II

ANTI-DEFECTION LAWS

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2.1 Historical Background

Political Instability Preceding the 52nd Amendment

Between 1967 and 1985, due to defections there were fall of numerous governments particularly in Indian states. The phenomenon reached its peak during the Janata Party government at the Centre from 1977 to 1979, and in several opposition-ruled states.¹³ During this period, more than 20 state governments collapsed due to large scale defections. In Haryana, alone nine different governments were formed between 1967 and 1985 because of legislators kept changing parties. The Janata Party coalition at the national level lasted only 28 months before internal splits and defections brought it down.¹⁴

¹² H.M. Seervai, *Constitutional Law of India* Vol. 3, 2990–3002 (4th ed., Universal Law Publishing).

¹³ Granville Austin, *Working a Democratic Constitution: The Indian Experience* 268–275 (Oxford University Press 1999).

¹⁴ Subhash C. Kashyap, *Our Parliament* 192–196 (National Book Trust, 2015).

Statistical data shows the intensity of the problem like from 1967 to 1971 alone, approximately 142 Members of Parliament and 1,969 Members of Legislative Assemblies changed their party affiliation, with the pace of defection continuing at scale through the following decade. Some legislators changed parties, multiple times during a single term. This pattern weakened citizen's trust and faith in democracy. Voters felt that their vote was meaningless as the representatives they elected were free to change parties after the election without any hesitation or guilt. The media coverage of these defections made politicians appear as opportunists who cared more about power than ideology or public service. Trust in parliamentary democracy dropped as people saw governments falling not because of poor performance but because of bought majority through defections.

It is instructive to compare the scale of pre-1985 defection with the pattern of defection that has emerged since. The Tenth Schedule has proved considerably more effective at deterring the solitary, opportunistic defector of the Gaya Lal variety than at preventing the large-scale, leadership-directed defection that its framers most feared. In the years since 2019, state governments in Karnataka, Madhya Pradesh and Maharashtra have each fallen following the coordinated, mass resignation or realignment of substantial blocs of legislators, engineered in a manner that avoided formal disqualification altogether by exploiting the interval between resignation and any Speaker's ruling on a pending disqualification petition. [Footnote: Chakshu Roy, 'The Anti-Defection Law Continues to Damage Indian Democracy' (PRS Legislative Research, 10 April 2023).] This asymmetry, whereby individual dissent is punished with unusual severity while orchestrated group defection continues to succeed through procedural devices that the Schedule does not adequately anticipate, is a recurring theme to which this paper returns in Unit III.

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Objects and Reasons of the Constitution (52nd Amendment) Act, 1985

The Statement of Objects and Reasons declared that Political defections had become a serious national concern.¹⁵ It elaborated that floor-crossing needed to be stopped to protect the democratic system. The document stressed the need to respect the will of voters who elected a candidate based on a specific party platform. It argued that defections broke the voter's decision because elected representatives changed their party after winning.

The aim of the statute was to ensure stability of the government. The statement said that frequent government falls due to defections affected policy work and harmed public welfare. It also aimed to protect political parties by stopping members and candidates from changing sides for personal gain. The law made party discipline a constitutional rule instead of leaving

¹⁵ Statement of Objects and Reasons, Constitution (Fifty-Second Amendment) Bill, 1985.

it to party rules.¹⁶ It was believed that only legal action could stop horse-trading. The amendment was designed to balance the need for stability with the right of legislators to express dissent through proper party channels.

Scope of the Law: Party Members and Independent Legislators

The Tenth Schedule applies to members of political parties, and to independent members who join a political party after their election.¹⁷ An independent member cannot join any party once they take their seat. If they do join a party they may face automatic disqualification. For party members, the schedule covers those if they leave their party on their own or vote against the party's direction without permission.

The law does not apply to nominated members in the same manner. They can join a political party within six months of their nomination. If they join a party after this six-month period, they may be disqualified. This rule exists because nominated members are not elected on a party platform and are given time to decide their political choice.

The 91st Amendment Act of 2003, made the rules stricter by removing the rule that allowed one-third of members to split.¹⁸ Before 2003, one-third of a party's members could split and form a new group without facing any disqualification or penalty. This exemption was misused as parties often created fake splits to protect members who defected. The 91st Amendment, deleted this provision completely. The same amendment introduced stricter provisions for mergers. Now, a merger requires two-thirds of a party's members to agree to merge with another party. This higher threshold makes it harder to use the merger exception as a way to escape disqualification. The personal scope of disqualification provisions now covers all elected members without the earlier split loophole.

2.2 Functioning of the Act

Role of the Speaker/Chairman as the Adjudicating Authority

Under Paragraph 6 of the Tenth Schedule, the Speaker in Legislative Assemblies or the Chairman in Rajya Sabha and Legislative Councils is the only authority that decides disqualification cases.¹⁹ The Speaker decides whether a member has defected and if

¹⁶ The Constitution (Fifty-Second Amendment) Act, 1985.

¹⁷ Constitution of India, Tenth Schedule, paras. 2(1) - 2(3).

¹⁸ The Constitution (Ninety-First Amendment) Act, 2003.

¹⁹ Constitution of India, Tenth Schedule, para. 6.

disqualification should apply. And, The Speaker decision is final but it remains subject to judicial review by higher courts. This arrangement gives the Speaker a quasi-judicial role while the Speaker remains a political figure chosen from among members.

The Speaker's quasi-judicial role creates a conflict of interest. The Speaker is part of a political party and depends on its support. When disqualification cases involve opposition members or rival groups within the same party, the Speaker may feel pressure to decide in favour of their own party. This political background weakens the impartiality expected from an adjudicator. Several cases have shown Speakers delaying decisions or making biased decisions that favour their party government.

In *Kihoto Hollohan v. Zachillhu* (1992), the Supreme Court supported the Speaker's role but said decisions must be based on evidence, not political interest.²⁰ The Court also said that judicial review can be used to correct unfair or biased decisions. Even with this protection, the system still depends on the Speaker's willingness to act independently. Many scholars believe that an independent tribunal led by a retired judge would be better than giving this power to a political officeholder.

Two Grounds of Disqualification: Voluntary Renunciation and Voting Against Party Whip

Paragraph 2(1)(a) deals with members who voluntarily leave their political party. This can happen not only through a formal resignation but also through their actions and conduct. The Supreme Court in *Ravi Naik v. Union of India* (1994), clarified that a member can be treated as having left the party through their actions.²¹ This may include joining another party, making public statements against their party, or attending meetings of a rival group. The main question is whether the member's conduct shows that they no longer wish to remain in their original party.

Paragraph 2(1)(b) says a member can be disqualified if they vote or do not vote against the party's direction. This direction is known as the party whip. A member can be disqualified if they vote against it or do not vote as directed without getting permission from the party beforehand. If permission is taken in advance, disqualification does not apply. The party must also issue the direction in writing and the member must have received it before the voting takes place. Court cases show how these rules work in practice. In *Rajendra Singh Rana v Swami Prasad Maurya* (2007), the Court held that actively supporting a rival group without formally

²⁰ *Kihoto Hollohan v. Zachillhu*, 1992 Supp (2) SCC 651.

²¹ *Ravi S. Naik v. Union of India*, 1994 Supp (2) SCC 641.

resigning can be treated as leaving the original party under Paragraph 2(1)(a).²² In numerous Speaker rulings applying Paragraph 2(1)(b) directly, voting against the party whip without prior permission has been held to lead to disqualification. In practice, Paragraph 2(1)(b) is used more often because voting records provide clear evidence. Paragraph 2(1)(a) requires more interpretation because a member's conduct can be disputed.²³

Safety Measures for Government and Opposition Stability

The law includes safeguards to maintain stability in both the government and the opposition. Paragraph 4, states that at least two-thirds of a party's members must agree to merge with another party to avoid disqualification. This high requirement prevents small groups from using a merger to avoid the anti-defection law.²⁴

The law also protects members who leave their party but do not join another party. Such members are generally not disqualified under the Tenth Schedule because they have not joined a rival party. However, later interpretations limited this protection. In some cases, Speakers have held that leaving a party and then supporting another government amounts to giving up membership of the original party. This interpretation reduces the protection provided by the safeguard.

The rule that the Speaker cannot be removed in the middle of certain proceedings helps keep the decision-making process stable. Once a disqualification petition is filed, the Speaker must decide the case before any challenge to their own position is considered. This prevents political pressure from removing the Speaker while an important case is still pending.

These safeguards have not been completely successful. The two-thirds merger rule has sometimes been used by large parties to take in defecting groups without any punishment. Many governments have stayed in power by merging with smaller groups instead of facing disqualification. The protection given to members who resign has also become weaker because of strict interpretations of the law. The protection given to the Speaker during proceedings exists in theory, but Speakers still face political pressure to make quick decisions in favour of the government. Overall, these safeguards exist, but their effectiveness depends on the decisions of the Speaker and the courts.

²² *Rajendra Singh Rana v Swami Prasad Maurya* (2007) 4 SCC 270.

²³ See Speaker's rulings applying Paragraph 2(1)(b) of the Tenth Schedule generally.

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

Misuse by Party Leaders for Internal Control

Critics say the law is used by party leaders to force discipline even on issues of conscience or policy disagreement that are not related to government survival. The fear of disqualification has reduced free discussion within political parties. Members fear that if they express disagreement on any issue, they may be accused of leaving the party or voting against the party whip. This has reduced internal democracy within political parties.

"Cases of alleged misuse are seen in different political parties. In Maharashtra, during the Shiv Sena split in 2022, cross-petitions for disqualification were filed by both the Shinde and Thackeray factions, and the Speaker took over eighteen months to rule, ultimately rejecting every petition and disqualifying no member of either faction while recognising the Shinde faction as the "real" Shiv Sena.²⁵ The decision was later challenged in the Supreme Court, which questioned the timing and possible political reasons behind the ruling. In Punjab, Congress members faced threats of disqualification when they opposed the party's stand on water rights laws. The leadership used the party whip to force members to follow the party line, even on issues that did not affect government stability.

In Kerala, the Left Democratic Front used the anti-defection law to stop members from criticising budget allocations. Members who questioned the party's budget decisions were warned about disqualification under Paragraph 2(1)(b). In Uttar Pradesh, the BJP leadership threatened disqualification against members who demanded dilution of certain agricultural policies. These cases show how the whip system is used not only for voting on government survival but also to control policy positions and internal dissent. In the case of Raghav Chadha, a Rajya Sabha MP, his suspension was challenged over allegations related to procedural violations in proposing members to a select committee. The matter highlighted concerns about the use of parliamentary rules in a politically sensitive manner and raised questions about fairness in enforcing disciplinary action

A further, well-documented illustration concerns the State of Goa. In 2022, eight members of the Indian National Congress in the Goa Legislative Assembly defected to the Bharatiya Janata Party, then the ruling party in the State. Disqualification petitions were filed against all eight, but the Speaker of the Goa Legislative Assembly, Ramesh Tawadkar, dismissed every petition, holding that the defecting members had validly merged with the BJP legislature party. [Footnote: 'Evaluating India's Anti-Defection Law: Challenges and Pathways to Reform' (2024) IJLSSS.] Critics of the ruling pointed out that the merger exception, intended by the Ninety-first Amendment to apply only to a genuine organisational fusion at the level of the political party, was once again being used to legitimate what was, in substance, an individually

²⁵ *Subhash Desai v. Principal Secretary, Governor of Maharashtra*, (2023) 8 SCC 1.

engineered switch of allegiance timed to coincide with a change of government. The Goa episode, following closely upon comparable controversies in Karnataka and Madhya Pradesh, illustrates the durability of precisely the mischief that the Ninety-first Amendment was intended to close, and lends empirical weight to the criticism, developed further in Unit III of this paper, that Speakers routinely construe the disqualification provisions in a manner favourable to the party or coalition upon whose continued support their own tenure in office depends.

The problem of misuse is built into the system. The law allows party leaders to issue directions on any issue, and the threat of disqualification forces members to follow them. This has turned the anti-defection law from a tool for stability into a means of controlling party members. In *Kihoto Hollohan*, the Supreme Court acknowledged this issue but did not limit the scope of party directions. Without reforms, the law will continue to suppress genuine dissent within political parties.

2.3 Purpose of Anti-Defection Laws

Defection as Sabotage of Electoral Mandates

"The anti-defection law is based on the idea that when voters choose a candidate with a party symbol, they also support that party's policies and leaders. They are not just choosing a person, but also a party and its ideas. So, changing parties after the election goes against the people's mandate. When a member switches to another party, they go against the choice voters made based on the original party's policies.

This idea supports the law because it treats the voters' mandate as binding on elected representatives. The law assumes that the party symbol represents more than just the identity of a candidate. It represents a promise to the party's manifesto and leadership. A member who defects breaks this promise and violates the trust of voters who elected them on that basis. In *Kihoto Hollohan v. Zachillhu* (1992), the Supreme Court accepted this idea and said that the anti-defection law protects the voters' will from being weakened by political changes after elections. This idea also supports the principle of collective responsibility in a parliamentary system.²⁶ Voters expect the elected party to work together and carry out its promised policies. When members defect, they disturb this collective responsibility and can create government instability. The anti-defection law helps ensure that the winning party can govern without internal disruption from members who switch sides for personal gain

²⁶ *Kihoto Hollohan v. Zachillhu*, 1992 Supp (2) SCC 651.

Horse-Trading and Monetary Inducements

Defections have often been linked with allegations of large-scale bribery, distribution of ministerial posts, and other incentives. Politicians who defect are often given money, positions, or other benefits in return for switching sides. This practice is called horse-trading because it treats legislators like goods that can be bought and sold. The anti-defection law aims to stop this corruption by making defection a punishable offence.

The cash-for-votes scandal and several sting operations have shown the link between defection and corruption. In 2008, a sting operation revealed MPs from different parties taking money to vote in a certain way during a parliamentary trust vote.²⁷ This incident showed that defections are not always about ideology, but often about money. The scandal led to the removal of the MPs involved and strengthened the demand for stricter anti-defection rules.

Other reported cases include the 1997 Rao government crisis in Andhra Pradesh, where several TDP members defected after being offered ministerial posts and money. In 2017, Goa also saw Congress members switching to the BJP amid allegations of financial incentives and promises of cabinet positions. These cases show that horse-trading is still a serious issue even after the anti-defection law. The law has reduced open defections, but corruption still continues in indirect ways, such as promises of future jobs or business benefits.

The July 2008 confidence motion, occasioned by the withdrawal of support from the Communist Party of India (Marxist) over the Indo-US civil nuclear agreement, offers a further illustration of the law's limits. Twenty-one Members of Parliament defied the whips issued by their respective parties during that vote, yet because a vote of confidence or no-confidence falls within the narrow category of motions that the Tenth Schedule itself was designed to police most strictly, several of the MPs whose votes were allegedly procured through cash payments still faced no disqualification proceedings, since the cash-for-votes controversy was pursued, if at all, as a matter of criminal and parliamentary privilege law rather than under the Tenth Schedule. [Footnote: PRS Legislative Research, 'Anti-Defection Law: Intent and Impact' (PRS Legislative Research).] The episode illustrates a structural gap identified throughout this paper: the anti-defection law disqualifies a member for the bare act of voting against the party whip, but it possesses no mechanism of its own for establishing, let alone penalising, the underlying inducement that may have produced that vote, leaving that task to separate and often less effective legal processes.

²⁷ Second Administrative Reforms Commission, *Ethics in Governance*, Fourth Report (2007).

The Cash for Query Incident (2005) as Illustrative Context

In 2005, a news channel sting operation allegedly showed MPs taking money to ask questions in Parliament. It revealed that some legislators were ready to use their position for personal financial gain. Although not a direct case of defection, it showed the wider problem of money influencing legislative behaviour and weakening party control.

The Cash-for-Query scandal showed that the problem was not only defections but also corruption in all parliamentary work. MPs were found taking money to ask questions, raise issues, or support certain positions. This harmed the dignity of Parliament and showed how weak party discipline allowed members to act for money. Several MPs caught in the sting operation were expelled.²⁸

The scandal led to new discussions on moral standards in Parliament and the need for better accountability. It showed that the anti-defection law alone cannot stop all corruption in Parliament. It also showed that party leaders cannot always control members when outside money is offered. This supports the idea that the law was needed not only to stop defections but also to maintain basic ethical standards in Parliament. It became part of a larger effort to reduce corruption and money power in politics.

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UNIT III

CRITICISM OF THE EXISTING ANTI-DEFECTION LEGISLATION

3.1 The Theoretical Foundations of Anti-Defection Law and Their Inherent Tensions

The Tenth Schedule to the Constitution of India, inserted by the Constitution (Fifty-Second Amendment) Act,

1985, was introduced against the backdrop of acute political instability that had characterised Indian parliamentary democracy throughout the late 1960s and 1970s. The phenomenon of *aaya ram gaya ram* legislators crossing the floor with mercenary abandon prompted Parliament to devise a constitutional mechanism to enforce party discipline and thereby impart stability to governments.²⁹ However, in attempting to cure the pathology of unprincipled

²⁸ Report of the Inquiry Committee on Cash-for-Query, Lok Sabha Secretariat (2005).

²⁹ The phrase 'aaya ram gaya ram' derives from the political career of Gaya Lal, a legislator in the Haryana Legislative Assembly who switched parties multiple times on a single day in 1967. See Subhash C Kashyap, *Anti-Defection Law and Parliamentary Privileges* (2nd edn, Universal Law Publishing 2003) 3-5.

defection, the Tenth Schedule has introduced a pathology of equal constitutional gravity: the systematic suppression of legislative independence and the reduction of elected representatives to instruments of party command. The tension between the legitimate governmental interest in political stability and the fundamental constitutional principles of representative democracy, legislative freedom of speech, and the deliberative function of Parliament constitutes the central problematic of anti-defection law.

The constitutional architecture of the Tenth Schedule rests on a binary distinction between permissible and impermissible legislative behaviour. Paragraph 2(1)(a) disqualifies a member who voluntarily gives up membership of a political party; Paragraph 2(1)(b) disqualifies a member who votes or abstains from voting in the House contrary to any direction issued by his political party or by any person authorised by it, without obtaining prior permission of the party and without such vote or abstention being condoned within fifteen days.³⁰ The logical structure of these provisions reveals an unstated premise: that a legislator's mandate is derived exclusively from the party rather than from the constituency electorate. This premise, however, sits in considerable constitutional tension with the Burkean conception of representation that underpins the theory of parliamentary democracy, under which an elected member, while maintaining connection with constituents, exercises independent judgement on matters of public policy.³¹ The Constitution nowhere provides that a member's parliamentary voice is the exclusive property of his political party.

The Dinesh Goswami Committee Report of 1990, constituted to review the working of the Tenth Schedule after its first five years of operation, itself acknowledged that the anti-defection law had gone beyond the mischief it was designed to remedy and had begun to impair the conditions necessary for healthy parliamentary democracy.³² The Committee recommended confining the disqualification provision to cases of voluntary resignation from a political party, and expressly recommended the removal of the clause penalising votes against the party whip a recommendation that was never implemented and which successive governments have allowed to remain dormant. The National Commission to Review the Working of the Constitution, chaired by Justice M.N. Venkatachaliah, echoed similar concerns in 2002, while

³⁰ Constitution of India, Tenth Schedule, para 2(1)(a) and 2(1)(b), as inserted by the Constitution (Fifty-Second Amendment) Act, 1985.

³¹ Edmund Burke, 'Speech to the Electors of Bristol' (1774) in Paul Langford (ed), *The Writings and Speeches of Edmund Burke*, Volume III (Clarendon Press 1996) 69. For the application of Burkean theory to Indian constitutional law, see PK Tripathi, 'Parliamentary Privileges and Constitutional Status of Political Parties in India' (1969) 11 *Journal of the Indian Law Institute* 1.

³² Government of India, Report of the Committee on Electoral Reforms (Dinesh Goswami Committee Report, 1990) paras 4.2-4.9. The Committee recommended that disqualification should attach only to cases of voluntary resignation from party membership, and not to cases of voting against party direction.

stopping short of recommending the wholesale abolition of the whip-compliance clause.³³ The persistence of the broader disqualification provision despite these authoritative recommendations reveals the structural incentive that governing parties possess to retain instruments of legislative control, irrespective of their compatibility with constitutional principles.

3.2 Legislators as Voting Automats: The Suppression of Dissent and the Transformation of Parliament

The most fundamental criticism of the Tenth Schedule concerns its effect upon the quality of parliamentary deliberation. The threat of disqualification for any vote contrary to party direction has the practical consequence of converting the Houses of Parliament into ratification chambers for decisions already taken by party leadership outside Parliament's walls. When a legislator knows that dissent from the party line, however conscientiously motivated and however well-supported by argument, will result in the loss of his seat in the House, rational choice theory alone predicts that he will suppress public expression of disagreement.³⁴ The Tenth Schedule thereby produces a chilling effect on legislative speech that operates far more effectively than any formal restriction on the content of legislative expression.

This tension engages Article 105(2) of the Constitution in a manner that the courts have thus far inadequately resolved. Article 105(2) provides that no Member of Parliament shall be liable to any proceedings in any court in respect of anything said or any vote given by him in Parliament or any committee thereof.³⁵ The parliamentary privilege enshrined in Article 105(2) mirrored for State Legislatures in Article 194(2) is not merely a personal privilege of individual legislators but is a structural guarantee of the institutional independence of the legislature. It reflects the foundational constitutional recognition that a parliament in which members cannot speak and vote freely is not a parliament in the meaningful constitutional sense.

³³ National Commission to Review the Working of the Constitution (NCRWC), Report (2002) vol 1, para 4.15.1-4.15.4. The Commission chaired by Justice MN Venkatachaliah observed that the anti-defection law had not achieved its purpose of political stability but had in several respects impaired the health of parliamentary democracy.

³⁴ HM Seervai, *Constitutional Law of India* (4th edn, Universal Law Publishing 2013) vol 3, 2968-2970. Seervai is critical of the breadth of the disqualification provision and argues that its chilling effect on legislative independence represents a structural constitutional deformity.

³⁵ Constitution of India, art 105(2): 'No member of Parliament shall be liable to any proceedings in any court in respect of anything said or any vote given by him in Parliament or any committee thereof, and no person shall be so liable in respect of the publication by or under the authority of either House of Parliament of any report, paper, votes or proceedings.'

The Supreme Court in *Kihoto Hollohan v Zachillhu* suggested that the Tenth Schedule and Article 105 operate in different legal registers: the Schedule concerns political party obligations rather than parliamentary proceedings, and the disqualification is a constitutional consequence rather than a legal proceeding in court.³⁶ This reasoning, however, elevates form over substance. The practical effect of Paragraph 2(1)(b) is precisely to render meaningless the guarantee of Article 105(2) in respect of votes given contrary to party direction. A member who votes his conscience against the party whip may not face proceedings in court, but he faces something considerably more severe: the permanent loss of his membership of the House. If the purpose of Article 105(2) is to insulate parliamentary voting from external sanction, it is difficult to sustain the proposition that the most severe sanction available – expulsion from Parliament itself – falls entirely outside the purview of that guarantee. The constitutional argument that Article 105(2) was intended to protect legislators from exactly the kind of political consequences that the Tenth Schedule imposes remains, in the submission of this paper, insufficiently answered by the Court's reasoning in *Kihoto*.

Professor M.P. Singh has argued that the anti-defection law converts India's parliamentary system into a form of governance by party oligarchy, where the locus of legislative decision-making is transferred from the floor of Parliament to the party high command.³⁷ This observation finds resonance in the empirical reality of Indian parliamentary practice. The phenomenon of block-voting under party whip, where hundreds of legislators cast identical votes without any meaningful debate, has become the norm rather than the exception. Parliamentary committees, which in Westminster parliamentary tradition serve as sites of genuine cross-party deliberation and scrutiny of executive action, function in Indian practice under the shadow of party discipline, with members reluctant to adopt positions that might embarrass their parties. The anti-defection law has thereby eroded the deliberative infrastructure upon which the constitutional design of parliamentary democracy depends.

It is also important to note that the constitutional text of Article 75(3) stipulates that the Council of Ministers shall be collectively responsible to the House of the People. The concept of collective ministerial responsibility to Parliament necessarily presupposes that Parliament, as the body to which responsibility is owed, exercises genuine supervisory authority over the executive.³⁸ If members of the ruling party are constitutionally precluded from voting against

³⁶ *Kihoto Hollohan v Zachillhu* (1992) Supp 2 SCC 651, 736-740 (Venkatachaliah, K Jayachandra Reddy and Agrawal JJ for the majority). The Court distinguished between disqualification as a constitutional consequence and legal proceedings in court within the meaning of art 105(2).

³⁷ MP Singh, 'The Crisis of Political Authority in India: Multi-Party Politics and Coalition Governments' (2002) 35 *Asian Survey* 1085, 1091.

³⁸ Constitution of India, art 75(3): 'The Council of Ministers shall be collectively responsible to the House of the People.' See also Soli Sorabjee and Lalit Bhasin (eds), *Sarkar's Law of Evidence* (LexisNexis 2020) for general treatment of constitutional accountability provisions.

the government on any matter covered by a party whip which, in practice, includes virtually every significant vote then the constitutional principle of ministerial responsibility is reduced to an abstraction. The executive's accountability to Parliament operates only in the most formal sense when the legislature that is supposed to hold it to account is simultaneously bound, under pain of disqualification, to support it on every vote. This is not parliamentary accountability; it is its structural negation.

3.3 The Speaker's Institutional Bias and the Problem of Conflict of Interest

The second major institutional defect of the Tenth Schedule lies in the designation of the Speaker of the House, or the Chairman of the Upper House, as the authority competent to decide petitions for disqualification under the Schedule. Paragraph 6(1) of the Tenth Schedule vests original jurisdiction over disqualification questions in the Speaker or Chairman, whose decision is, subject to judicial review in limited circumstances established by the Supreme Court in *Kihoto Hollohan*, final.³⁹ This constitutional choice has been subjected to sustained and compelling criticism on grounds of structural bias, institutional capture, and violation of the basic constitutional principle that no person shall be a judge in his own cause.

The fundamental difficulty is that the Speaker in India, unlike his counterpart in the United Kingdom House of Commons, is not a genuinely non-partisan presiding officer. In the Indian parliamentary tradition, the Speaker is elected by majority vote and almost invariably belongs to the ruling party or the dominant coalition partner. The Speaker's continued incumbency in office is, as a practical matter, dependent upon the continued support of the parliamentary majority that elected him.⁴⁰ The notion that such an officer can adjudicate with impartiality upon petitions seeking to disqualify members who have defected from, or voted against, the very majority that sustains the Speaker's own position is constitutionally and institutionally implausible. The conflict of interest is structural, not merely contingent.

The Law Commission of India in its 170th Report, submitted in 1999, recommended that disqualification petitions under the Tenth Schedule should be decided by the President or the Governor acting on the advice of the Election Commission of India, on the model of the

³⁹ Constitution of India, Tenth Schedule, para 6(1): 'If any question arises as to whether a member of a House has become subject to disqualification under this Schedule, the question shall be referred for the decision of the Chairman or, as the case may be, the Speaker of such House and his decision shall be final.

⁴⁰ See Granville Austin, *Working a Democratic Constitution: A History of the Indian Experience* (OUP 1999) 402-404. Austin notes that the Speaker's institutional dependence upon the ruling majority is a persistent feature of the Indian parliamentary tradition that distinguishes it from the Westminster model of genuine non-partisan presiding.

disqualification provisions under Articles 102(1) and 191(1).⁴¹ The Election Commission, as a constitutional body insulated by Articles 324 and 325 from executive interference, provides substantially greater institutional guarantees of impartiality. This recommendation was endorsed in broad terms by the National Commission to Review the Working of the Constitution in 2002.⁴² Yet Parliament has consistently declined to act upon it a failure of constitutional reform that is itself explicable by the structural incentive of parliamentary majorities to retain the power to direct disqualification proceedings through a Speaker who remains politically dependent upon them.

The historical record furnishes a striking early illustration of this structural difficulty, one that predates by decades the controversies discussed later in this unit. Barely two years after the Tenth Schedule came into force, a succession dispute convulsed the All India Anna Dravida Munnetra Kazhagam in Tamil Nadu following the death of Chief Minister M.G. Ramachandran in December 1987. The Speaker of the Tamil Nadu Legislative Assembly, who was aligned with one faction of the divided party, summarily disqualified twenty-seven rival members of the legislative assembly in the course of a confidence vote on the floor of the House, thereby determining the very outcome of the vote through the disqualification power that the Tenth Schedule had entrusted to him. [Footnote: 'The Anti-Defection Law That Does Not Aid Stability' (PRS Legislative Research).] Coming so soon after the enactment of the Schedule, the episode demonstrated with unusual clarity that the conflict of interest inherent in the Speaker's dual role as party functionary and disqualification adjudicator was not a theoretical possibility canvassed only by academic critics, but an immediate and practical vulnerability of the constitutional design, capable of being exploited to decide the very question of which party commanded a majority in the House.

The Rajya Sabha Select Committee on the Constitution (Seventy-Seventh Amendment) Bill, 1999, and subsequent parliamentary discussions, have reflected an awareness of this institutional difficulty without generating the political will to address it.⁴³ The result is a disqualification mechanism that is constitutionally deficient in its design. The Supreme Court in *Nabam Rebia v Deputy Speaker* held that a Speaker against whom a notice of removal has been given cannot decide disqualification petitions during the pendency of such notice a partial, case-specific remedy that does not address the deeper structural problem.⁴⁴ Even where

⁴¹ Law Commission of India, 170th Report on Reform of the Electoral Laws (1999) para 2.12.1-2.12.5. The Commission recommended that the President or Governor, acting on the advice of the Election Commission, should decide disqualification petitions under the Tenth Schedule.

⁴² NCRWC Report (n 5) para 4.15.3.

⁴³ Rajya Sabha Select Committee on the Constitution (Seventy-Seventh Amendment) Bill, 1999, Report (2000). See also Subhash C Kashyap (n 1) 145-149.

⁴⁴ *Nabam Rebia v Deputy Speaker*, Arunachal Pradesh Legislative Assembly (2016) 8 SCC 1, 105-108 (Kehar CJ for the Constitution Bench).

no removal notice exists, the Speaker who adjudicates upon a petition filed by his own party against a member who has defied that party's whip occupies a position of manifest conflict of interest.

The procedural consequences of this institutional defect are severe. Speakers have, in numerous documented instances, delayed the disposal of disqualification petitions for periods extending to years, thereby allowing governments that depend upon defecting members for their majority to survive in office while the question of those members' qualification remains technically undecided. The Supreme Court in *Rajendra Singh Rana v Swami Prasad Maurya* held that inaction by a Speaker in deciding a disqualification petition is itself open to judicial review.⁴⁵ However, the Court's intervention in such cases has been sporadic and the absence of any statutory or constitutional timeline for the disposal of disqualification petitions means that the Speaker retains substantial de facto discretion over the pace at which political inconvenient proceedings are resolved.

3.4 The Absence of Statutory Timelines and the Weaponisation of Procedural Delay

A critical structural lacuna in the Tenth Schedule one that has been exploited in virtually every major defection controversy of the post-1985 period is the complete absence of any specified timeline within which the Speaker must decide a disqualification petition. The Schedule is silent on the question of procedural timelines, and no statutory rules made under Paragraph 8 of the Schedule have prescribed binding deadlines.⁴⁶ This silence is not constitutionally neutral; it is a deficiency of fundamental significance, because the absence of a timeline transforms the disqualification jurisdiction from a mechanism of constitutional enforcement into an instrument of political manipulation.

The constitutional stakes of delay in disqualification proceedings are qualitatively different from those involved in ordinary civil litigation, where delay, while undesirable, does not itself alter the substantive rights of the parties. In the context of anti-defection law, delay systematically advantages one political actor over another. A government that depends upon the support of members whose disqualification is pending benefits from the Speaker's inaction, because those members continue to count in its favour for purposes of confidence votes, floor

⁴⁵ *Rajendra Singh Rana v Swami Prasad Maurya* (2007) 4 SCC 270, 289-293 (SB Sinha and Markandey Katju JJ). The Court held that the Speaker's inaction over a period of months was itself reviewable on the ground that the duty to decide is not discharged by silence.

⁴⁶ The Tenth Schedule, para 8, empowers the Presiding Officer to make rules for giving effect to the provisions of the Schedule, but no such rules have prescribed binding timelines for the disposal of disqualification petitions in any State or at the central level. See Election Commission of India, Handbook on Anti-Defection Law (2014) 34.

tests, and budgetary voting.⁴⁷ The disqualified-in-substance but not-yet-disqualified-in-form legislator is a paradoxical constitutional figure created by the Tenth Schedule's procedural incompleteness, and his continued participation in legislative voting distorts the democratic process.

The Karnataka political crisis of 2019, which gave rise to the proceedings in *Shrimanth Balasaheb Patil v Speaker, Karnataka Legislative Assembly*, illustrated the consequences of this lacuna with clarity.⁴⁸ Seventeen members of the legislative assembly tendered their resignations from membership of the House; the Speaker, rather than proceeding promptly to decide the antecedent question of disqualification, allowed the situation to remain in suspension for a period during which the political and constitutional stakes were acute. The Supreme Court's intervention in terms of directing a floor test and, ultimately, addressing the disqualification question was necessitated precisely by the Speaker's failure to act within a reasonable period. The Court's articulation of

a reasonableness standard for Speaker delay, while valuable as a matter of precedent, does not substitute for the clear statutory timelines that the constitutional text should, and does not, provide.

A constitutional amendment to insert a specific timeline the Law Commission has suggested a period of three months from the filing of a petition would substantially reduce the scope for politically motivated delay.⁴⁹ Such a timeline would also reduce the incentive for governments to use the Speaker's jurisdiction as a protective mechanism for coalition members whose loyalty has been purchased by means that may themselves violate constitutional norms. The failure to implement this reform is symptomatic of the broader pattern in which the beneficiaries of a structurally defective constitutional provision possess neither the interest nor the inclination to reform it.

3.5 The Ninety-First Constitutional Amendment and the Compulsion of Coalition Arithmetic

The Constitution (Ninety-First Amendment) Act, 2003, effected a significant modification to the anti-defection regime by amending Article 75 to provide that the total number of Ministers,

⁴⁷ Prashant Bhushan, 'Anti-defection Law: Speaker as Judge in His Own Cause' (2019) 54 Economic and Political Weekly 10, 12.

⁴⁸ *Shrimanth Balasaheb Patil v Speaker, Karnataka Legislative Assembly* (2020) 2 SCC 595 (Constitution Bench, Ramana J).

⁴⁹ Law Commission of India, 255th Report on Electoral Reforms (2015) para 8.3.2. The Commission reiterated the recommendation for a threemonth timeline for the disposal of disqualification petitions.

including the Prime Minister, in the Council of Ministers shall not exceed fifteen percent of the total strength of the House of the People, and that a member of either House of Parliament belonging to any political party who is disqualified under the Tenth Schedule shall also be disqualified to be appointed as a Minister.⁵⁰ The Amendment simultaneously amended Article 164 and the Tenth Schedule itself to abolish the exception previously available for splits in a political party the infamous one-third split rule that had been exploited to legitimate calculated defections disguised as internal party divisions.

The abolition of the split exception through the Ninety-First Amendment was, in principle, a welcome tightening of the anti-defection regime against its most obvious avenue of circumvention. The original Paragraph 3 of the Tenth Schedule, which exempted from disqualification members constituting not less than two-thirds of the legislature party who claimed to have constituted a faction of an original political party, had become the principal mechanism through which orchestrated defections were legalised. The requirement that a merger, rather than merely a split, could provide protection from disqualification along with the insistence that such merger must involve at least two-thirds of the legislature party represented a stricter standard.⁵¹ However, even this reformed regime has proved susceptible to manipulation through what may be described as the wholesale merger strategy, whereby an entire legislature party is merged with another party by the direction of the national party leadership, without any reference to the individual consent of legislators.

The combined effect of the Tenth Schedule and the Ninety-First Amendment upon coalition politics in India has been paradoxical. On the one hand, the regime reduces the ability of individual legislators to switch sides for personal gain. On the other hand, it concentrates enormous power in the hands of national party leaders, who can engineer mass mergers and split-offs at will while individual legislators bound by anti-defection rules are left with no legal recourse other than to follow the direction of their parliamentary party leadership or face disqualification.⁵² This asymmetry of power between party leaders and rank-and-file legislators represents a structural feature of the constitutional regime that receives insufficient critical attention. The Tenth Schedule, as amended, is not merely an anti-defection mechanism; it is a mechanism for the consolidation of oligarchic power within political parties.

⁵⁰ Constitution of India, art 75(1A) and (1B), as inserted by the Constitution (Ninety-First Amendment) Act, 2003. See also art 164(1A) for the corresponding provision applicable to State Councils of Ministers.

⁵¹ See BD Dua, 'The Ninety-First Amendment and the Anti-Defection Law: A Critical Assessment' (2004) 39 Economic and Political Weekly 1231, 1234.

⁵² Yogendra Yadav, 'Party System and Electoral Politics in the Indian States, 1952-2002: From Hegemony to Multi-Party Competition' in Peter Ronald deSouza and E Sridharan (eds), *India's Political Parties* (Sage 2006) 73, 88-90.

3.6 The Sachin Pilot Controversy and the Constitutional Right to Political Dissent

The Sachin Pilot controversy of 2020 brought into sharp focus the constitutional question of whether intra-party dissent as distinguished from an actual defection to a rival party is covered by the disqualification provisions of the Tenth Schedule. In July 2020, Sachin Pilot, the Deputy Chief Minister of Rajasthan, along with eighteen other members of the Rajasthan Legislative Assembly belonging to the Indian National Congress, publicly challenged the leadership of Chief Minister Ashok Gehlot and effectively absented themselves from party meetings convened on party direction.⁵³ The Speaker of the Rajasthan Legislative Assembly issued disqualification notices to Pilot and the other members on the ground that their conduct amounted to voluntarily giving up membership of the Congress party within the meaning of Paragraph 2(1)(a) of the Tenth Schedule.

The Rajasthan High Court, in proceedings under Article 226, granted interim stay against the disqualification notices, with the Division Bench holding, in terms consonant with the constitutional principle of freedom of expression, that a mere expression of dissent from the party leadership even if public and vigorous does not per se amount to voluntary relinquishment of party membership.⁵⁴ The Court's reasoning drew upon the important distinction between a legislator who publicly disagrees with his party's positions while continuing to recognise the party's authority and a legislator who, by overt act, actually resigns from or abandons the party. The former is an exercise of a constitutional right; the latter triggers the disqualification mechanism. This distinction, while analytically sound, had not previously been articulated with clarity in the context of the Tenth Schedule, and the Pilot case represents a significant moment of constitutional clarification.

The deeper constitutional question posed by the Pilot controversy relates to whether the Tenth Schedule is compatible with the constitutional guarantee of freedom of expression under Article 19(1)(a), as read in the light of the internal democratic norms that Article 19(1)(c)'s guarantee of freedom to form associations necessarily implies. If a political party is a voluntary association and it must be, given Article 19(1)(c) then membership of a political party cannot constitutionally be conditioned upon the forfeiture of the member's right to public expression of dissent from party positions.⁵⁵ A constitutional provision that converts the exercise of the

⁵³ For the factual background of the Sachin Pilot controversy, see 'Rajasthan Political Crisis: Timeline of Events' (The Hindu, 17 July 2020). See also Siddharth Luthra, 'The Rajasthan Crisis and the Limits of Anti-Defection Law' (2020) Bar & Bench Constitutional Law Review 1.

⁵⁴ Sachin Pilot v Rajasthan Legislative Assembly Speaker, DB Civil Writ Petition No 7654/2020 (Rajasthan High Court, Division Bench) (interim order, 21 July 2020). The High Court held that merely writing to the party expressing dissatisfaction with the leadership is not tantamount to voluntarily giving up party membership.

⁵⁵ Constitution of India, art 19(1)(a) (freedom of speech and expression) and art 19(1)(c) (freedom to form associations or unions). For the argument that anti-defection law engages fundamental rights, see Upendra Baxi, *The Future of Human Rights* (3rd edn, OUP 2008) 189.

fundamental right to political expression into a ground for disqualification from legislative office cannot be insulated from constitutional scrutiny merely by virtue of being contained in a Schedule to the Constitution.

The Constituent Assembly's debates on the powers and privileges of Parliament reveal that the framers were deeply concerned with preserving the independence of legislators within the constitutional design of parliamentary democracy.⁵⁶ There is no evidence in the Constituent Assembly debates that the framers contemplated that legislators' freedom of political expression could be made subject to party direction as a condition of retaining legislative office. The introduction of the Tenth Schedule in 1985 by constitutional amendment cannot retroactively be treated as consistent with the original constitutional design when its effects are so deeply at variance with the constitutional values that animate the framework of parliamentary democracy. The argument from constitutional morality a concept developed in recent Supreme Court jurisprudence would suggest that the Tenth Schedule, in its current form, imposes constraints upon political expression that are inconsistent with the moral foundations of the constitutional order.

3.7 Anti-Defection Law and the Decline of Deliberative Democracy

The concept of deliberative democracy, as articulated in the political philosophy of Jürgen Habermas and elaborated by constitutional theorists such as Cass Sunstein, posits that legitimate democratic governance derives not merely from majority preferences but from the process of public reason-giving through which those preferences are formed and refined.⁵⁷ A parliament that functions as a genuine deliberative institution where arguments are genuinely made, genuinely heard, and capable of genuinely changing votes produces outcomes whose democratic legitimacy is qualitatively different from those produced by a parliament in which voting outcomes are determined before the debate begins by party directional instructions. The Tenth Schedule has systematically undermined the deliberative function of Indian Parliament by converting legislative debate into performative exercise.

This argument from deliberative democracy has direct constitutional relevance. Article 79 of the Constitution establishes Parliament as consisting of the President and the two Houses an institutional arrangement that presupposes a Parliament capable of genuinely deliberating. The

⁵⁶ Constituent Assembly Debates, vol VIII, 16 May 1949 (B R Ambedkar introducing the draft articles on Parliament): 'Members of Parliament are representatives of the people, not delegates of political parties, and their primary constitutional duty is to the people who elected them, not to the party machinery.'

⁵⁷ Jürgen Habermas, *Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy* (Polity Press 1996) 107-131. For application to constitutional theory, see Cass Sunstein, *Designing Democracy: What Constitutions Do* (OUP 2001) 6-10.

constitutional provisions governing legislative procedure the requirement of three readings of bills, the referral to select committees, the provisions for debates and divisions reflect a constitutional commitment to the deliberative process as the legitimate mechanism of legislative production.⁵⁸ If the anti-defection regime effectively predetermines legislative outcomes, these procedural constitutional requirements are satisfied in form but emptied of substantive content.

It is instructive to compare the Indian approach with those of other constitutional democracies that have grappled with the problem of legislative floor-crossing. South Africa's Constitution, adopted in 1996, initially prohibited floor-crossing but subsequently (through Constitutional Amendments Act 18 of 2002) created a regulated floor-crossing window a design that sought to balance the interest in political stability against the interest in genuine representation.⁵⁹ Canada and Australia, systems of parliamentary democracy with broadly comparable institutional designs to India, have not adopted constitutional anti-defection provisions, relying instead on political convention and party discipline to maintain parliamentary cohesion. The comparative experience suggests that constitutional prohibition of floor-crossing is not a necessary feature of parliamentary democracy; it is a design choice with significant costs to legislative independence.

The fundamental constitutional objection to the Tenth Schedule, properly formulated, is not that political parties should have no role in the legislative process parties are the indispensable organisational vehicles of modern democracy, and their legitimate interest in parliamentary discipline deserves constitutional recognition. Rather, the objection is that the Schedule, in its current form, gives constitutional force to an absolute claim of party authority over legislative voting that admits no exception for conscientious objection, no exception for matters involving constitutional rights, and no exception for situations in which the party's direction is itself ethically or constitutionally problematic.⁶⁰ A constitutional regime that renders a legislator's conscience constitutionally irrelevant except in cases of motion of confidence or no-

⁵⁸ Constitution of India, arts 107-111 (procedure for legislation in Parliament), including the requirement of three readings of Bills (art 107), the reference to select committees (art 108), and the requirement of Presidential assent (art 111).

⁵⁹ Constitution of the Republic of South Africa 1996, s 47; Constitution of the Republic of South Africa Second Amendment Act 21 of 2002 (floorcrossing window). For comparative analysis, see Christina Murray and Richard Stacey, 'Floor-Crossing, Party Cohesion and the Effectiveness of Radical Party Discipline' (2008) 1 Constitutional Court Review (South Africa) 55.

⁶⁰ Rajeev Dhavan, 'Why Parliamentary Debate Matters: Anti-Defection Law and the Quality of Indian Democracy' (1989) 24 Economic and Political Weekly 1543, 1548.

30 Constitution of India, arts 122(1) and 212(1), which provide respectively that the validity of any proceedings in Parliament and in a Legislature of a State shall not be called in question on the ground of any alleged irregularity of procedure.

confidence, as proposed by the Dinesh Goswami Committee is a regime that has sacrificed deliberative democracy on the altar of political stability.

3.8 Analytical Conclusions: Anti-Defection Law and Constitutional Governance

The criticisms surveyed in this unit converge upon a single structural diagnosis: the Tenth Schedule, as presently framed and administered, has produced a form of constitutional dissonance in which the formal structures of parliamentary democracy coexist with substantive conditions inimical to the values that justify those structures. A parliament whose members cannot vote their conscience, whose deliberations are predetermined by external party direction, and whose disqualification proceedings are adjudicated by an institutionally conflicted presiding officer is a parliament that satisfies the constitutional form of Article 79 while violating the constitutional spirit of Articles 105, 194, and the deliberative premises of representative government.

The reforms that would address these deficiencies the restriction of disqualification to cases of formal resignation from or voting for a rival party, the transfer of adjudicatory jurisdiction to the Election Commission, and the prescription of binding timelines for the disposal of disqualification petitions are well-established in the recommendations of expert bodies. The political will to implement them has been consistently absent because the governing majorities that would need to enact them have a structural interest in the existing regime. This is perhaps the most fundamental criticism of the anti-defection law: it is a provision whose beneficiaries are constitutionally inclined to resist its reform, creating a structural barrier to the correction of its constitutional deficiencies. The task of constitutional correction therefore falls, in the first instance, to the judiciary a theme to which the next unit is directed.

UNIT IV

JUDICIAL PRONOUNCEMENTS ON ANTI-DEFECTION LAWS

4.1 Introduction: The Judiciary and the Tenth Schedule

The judicial history of the Tenth Schedule is a history of incremental constitutional clarification achieved through a series of landmark pronouncements by the Supreme Court of India. The constitutional questions raised by the Schedule concerning the justiciability of disqualification decisions, the scope of the Speaker's authority, the relationship between anti-defection law and

the basic structure of the Constitution, and the procedural obligations of the adjudicating authority have generated a rich and evolving body of constitutional jurisprudence that has shaped, and been shaped by, the political crises of post-1985 Indian democracy. The trajectory of this jurisprudence reveals a court engaged in the difficult task of enforcing constitutional norms against a political backdrop of recurring systemic abuse, while simultaneously respecting the constitutional boundaries of its own supervisory jurisdiction.

The foundational constitutional difficulty in reviewing Speaker's decisions under the Tenth Schedule arises from the interaction of multiple constitutional provisions. Paragraph 6(1) of the Tenth Schedule designates the Speaker or Chairman as the deciding authority and, through the original unamended text, purported to make such decisions final. Articles 122 and 212 of the Constitution provide that courts shall not inquire into the proceedings of Parliament or the State Legislature, and that the validity of any proceedings in Parliament shall not be called in question on the ground of any alleged irregularity of procedure.⁶¹ Against these provisions stood the Supreme Court's supervisory jurisdiction under Article 32 and the High Courts' jurisdiction under Article 226, as well as the appellate jurisdiction available under Article 136 all of which are themselves constitutional provisions of the highest authority. The resolution of this multi-directional constitutional tension required the Supreme Court to engage in constitutional balancing of considerable sophistication.

4.2 *Kihoto Hollohan v Zachillhu*: The Foundational Constitutional Settlement

The Supreme Court's decision in *Kihoto Hollohan v Zachillhu* delivered by a five-judge Constitution Bench in 1992 represents the foundational judicial settlement of the constitutional questions raised by the Tenth Schedule and remains the leading authority on the subject.⁶² The proceedings arose from a challenge to the constitutional validity of the Tenth Schedule itself, with petitioners contending, *inter alia*, that the Schedule violated the basic structure of the Constitution by abridging the freedom of speech of legislators, by impairing the democratic foundations of parliamentary governance, and by vesting adjudicatory authority in an institutionally biased Speaker whose decisions were made judicially unreviewable by the original text of the Schedule.

The Constitution Bench, by a majority of three to two, upheld the constitutional validity of the Tenth Schedule as a whole, holding that it did not damage the basic structure of the

⁶¹ *Kihoto Hollohan v Zachillhu* (1992) Supp 2 SCC 651 (Constitution Bench: Venkatachaliah, Sharma, Verma, K Jayachandra Reddy and Agrawal JJ; Sharma and Verma JJ dissenting jointly).

⁶² *ibid* 729-735 (K Jayachandra Reddy J for the majority): 'The Tenth Schedule does not damage or destroy the democratic fabric of the Constitution. It is a legitimate regulation of the rights of members of a legislature arising from their membership of and allegiance to political parties.'

Constitution.⁶³ However, the majority struck down Paragraph 7 of the Schedule, which had provided that no court shall have any jurisdiction in respect of any matter connected with the disqualification of a member of a House. The majority held that Paragraph 7, insofar as it sought to exclude judicial review by the High Courts under Article 226 and the Supreme Court under Articles 32 and 136, was unconstitutional as violating the basic structure doctrine, since the power of judicial review constitutes an inviolable element of the constitutional design. The practical effect of the invalidation of Paragraph 7 was to restore the jurisdiction of the superior courts to review Speaker's decisions on disqualification, albeit with significant limitations upon the scope and timing of such review.

The majority's reasoning on the basic structure question involved the proposition that the Tenth Schedule, far from damaging the basic structure of the Constitution, actually reinforces and protects democratic governance by preventing the destabilisation of governments through unprincipled defections.⁶⁴ The majority, comprising Venkatachaliah, K. Jayachandra Reddy and Agrawal JJ, held that the anti-defection law serves the constitutional value of stability in parliamentary democracy, which is itself a foundational constitutional value. This reasoning, however, generated a powerful dissent from Justice J.S. Verma (joined by Sharma J), who argued that the freedom of conscience of individual legislators is a more fundamental constitutional value than the interest in governmental stability and that the Schedule, by subordinating the former to the latter, does indeed damage a basic feature of the Constitution.

Justice Verma's dissent in *Kihoto Hollohan* deserves particular attention for its penetrating analysis of the relationship between anti-defection law and the constitutional concept of representation. His Lordship observed that in a parliamentary democracy, the elected representative has a dual source of authority: the party that sponsors him as a candidate, and the electorate that confers upon him the mandate to represent the constituency.⁶⁵ The Tenth Schedule, in Justice Verma's analysis, wrongly treats the party's authority as absolute and the legislator's independent judgement as constitutionally irrelevant. This analysis resonates with the constitutional text of Article 84, which specifies the qualifications for membership of Parliament in terms of individual citizenship, age, and legal capacity not in terms of party affiliation thereby suggesting that the constitutional conception of the legislator is of an individual constitutional actor, not a party delegate.

⁶³ *ibid* 763-778 (JS Verma J, dissenting): 'In my view, the Tenth Schedule, to the extent it deprives a member of his right to vote according to his conscience and equates such an act of conscience with defection, goes to the root of parliamentary democracy and damages its basic structure.'

⁶⁴ *ibid* 741-745: The Court held that judicial review under arts 32 and 226 is available against Speaker's decisions under the Tenth Schedule but should ordinarily operate only after the Speaker's final decision, not by way of interlocutory intervention.

⁶⁵ *Ravi S Naik v Union of India* (1994) Supp 2 SCC 641 (SB Majmudar and S Mohan JJ).

On the question of judicial review, the majority in *Kihoto Hollohan* held that the Speaker's decision is not immune from judicial scrutiny but that courts should exercise restraint in reviewing such decisions, intervening only where there is shown to be a patent illegality, manifest error, or a violation of constitutional mandates, and that judicial review should ordinarily be confined to the post-decisional stage rather than available as an interlocutory remedy against a decision under deliberation.⁶⁶ This doctrine of restrained review has produced significant practical difficulties: the interlocutory exclusion of judicial intervention has meant that speakers have been able to take or refrain from taking decisions under conditions of considerable political pressure without immediate judicial correction, with consequences for constitutional governance that the Court's own subsequent jurisprudence has been called upon to address.

4.3 Ravi S Naik v Union of India: The Voluntariness Threshold and Inferential Defection

The Supreme Court in *Ravi S Naik v Union of India* (1994) decided by a three-judge Bench addressed the question of what constitutes voluntary giving up of party membership within the meaning of Paragraph 2(1)(a) of the Tenth Schedule.⁶⁷ The petitioner, a member of the Goa Legislative Assembly, had been disqualified by the Speaker on the ground that his conduct in supporting a rival government including his presence at meetings convened by a competing political faction and his written communication indicating willingness to support an alternative Chief Minister amounted to voluntary relinquishment of membership of his original party. The petitioner contested that he had not formally tendered a letter of resignation from the party and that, in the absence of such formal act, he could not be said to have voluntarily given up membership.

The Supreme Court rejected this narrow formal argument, holding that the expression 'voluntarily gives up his membership of a political party' in Paragraph 2(1)(a) is not confined to cases of formal written resignation but extends to cases where a member's conduct, taken as a whole, provides an inference that he has abandoned his party membership.⁶⁸ The Court observed that the legal concept of voluntary relinquishment of membership must be understood

⁶⁶ *ibid* 657-660. The Court held that the phrase voluntarily gives up his membership of a political party has a wider connotation, and that even without a formal resignation from membership, an inference can be drawn from the conduct of a member that he has voluntarily given up his membership of the political party to which he belongs.

⁶⁷ See SP Sathe, 'Anti-Defection Law: The Ravi Naik Expansion and Its Constitutional Implications' (1995) 37 *Journal of the Indian Law Institute* 1, 8-12.

⁶⁸ *G Vishwanathan v Speaker, Tamil Nadu Legislative Assembly* (1996) 2 SCC 353 (AM Ahmadi CJ, SA Bharucha and GN Ray JJ).

in light of the purpose of the Tenth Schedule which is to address the mischief of unprincipled defection in all its forms and that a purely formalistic approach would allow the mischief to be perpetuated through the simple device of maintaining formal party membership while acting in every material respect as an opponent of the party.

The significance of *Ravi S Naik* lies in the doctrine of inferential defection that it establishes. By holding that conduct short of formal resignation may constitute voluntary giving up of membership, the Court expanded the scope of the disqualification provision in a manner that necessarily engaged the tension between anti-defection law and the right of political expression.⁶⁹ If mere conduct attendance at meetings, statements to the press, communication with rival political factions can constitute a deemed giving up of party membership, then the line between permissible political dissent and disqualifying defection becomes extremely difficult to draw with constitutional precision. The doctrine of inferential defection, while addressing a genuine mischief, creates a legal landscape in which the chilling effect upon legitimate political expression is substantially amplified, because legislators cannot know with certainty whether a particular act of public dissent will be construed as crossing the threshold into deemed relinquishment.

4.4 *G Vishwanathan v Speaker, Tamil Nadu Legislative Assembly: Merger, Party Identity, and the Boundaries of Paragraph 4*

The question of what constitutes a merger within the meaning of Paragraph 4 of the Tenth Schedule the exception that exempts from disqualification members who merge with another party pursuant to a genuine merger of political parties came before the Supreme Court in *G Vishwanathan v Speaker, Tamil Nadu Legislative Assembly* (1996).⁷⁰ The case arose from the political circumstances attending the Tamil Nadu Legislative Assembly, where the All India Anna Dravida Munnetra Kazhagam split and members claimed the protection of the merger exception. The Speaker held that there was no valid merger and disqualified the members; the members challenged this decision before the Supreme Court.

The Court in *G Vishwanathan* held that the merger exception in Paragraph 4 requires a genuine merger of the original political party with another party, and not merely the merger of the legislature party that is, the group of members of that party in a particular House with another party.⁷¹ The Court insisted that the merger must have taken place at the level of the party as a

⁶⁹ *ibid* 368-372. The Court held that the word 'merger' in para 4 of the Tenth Schedule refers to a merger of the original political party itself, not merely the merger of the legislature party within that House.

⁷⁰ Statement of Objects and Reasons, Constitution (Fifty-Second Amendment) Bill, 1985, reprinted in (1985) PLD Central Statutes 234.

⁷¹ *Rajendra Singh Rana v Swami Prasad Maurya* (2007) 4 SCC 270.

whole, involving the national or state-level organisational entity, and not merely a legislative grouping. This interpretation was constitutionally significant because it narrowed the merger exception to cases of genuine organisational fusion and excluded from its protection the kind of legislative floor-crossing that is dressed up as a party merger but in reality represents the defection of a legislative faction without any corresponding change in the party's broader organisational structure.

The Court's reasoning in *G Vishwanathan* was consistent with the legislative intent of the Tenth Schedule as articulated in the Statement of Objects and Reasons of the Constitution (Fifty-Second Amendment) Bill, 1985, which identified the mass purchase of legislators for the purpose of toppling governments as the primary mischief sought to be addressed.⁷² However, the decision also raised questions about the constitutionality of the merger exception as interpreted: if national party leadership can direct the merger of a legislature party with a rival party thereby engineering a change in the legislative arithmetic of a State Assembly from the direction of the national party headquarters the regime may actually concentrate power in party leaders in ways that are inconsistent with the autonomy of State legislatures. This dimension of the Tenth Schedule's operation upon federal constitutional principles has received insufficient judicial attention.

4.5 Rajendra Singh Rana v Swami Prasad Maurya: Judicial Review of Speaker's Inaction

The Supreme Court's decision in *Rajendra Singh Rana v Swami Prasad Maurya* (2007) addressed a question that *Kihoto Hollohan* had left open: whether the Speaker's inaction his deliberate failure to decide a disqualification petition is itself amenable to judicial review.⁷³ The facts arose from the Uttar Pradesh Legislative Assembly, where a petition for disqualification had been filed and the Speaker had declined to take any decision upon it for a period of months during which the political situation in the Assembly remained volatile and the decision would have had direct consequences for the survival of the state government.

The Supreme Court held, in a decision of considerable constitutional importance, that while the Speaker's decision on the merits of a disqualification petition is entitled to the restrained judicial review established by *Kihoto Hollohan*, the Speaker's failure to decide at all is not protected by the same principle of deference.⁷⁴ The Court's reasoning was grounded in the principle that a constitutional or statutory authority vested with a duty to decide cannot discharge that duty by

⁷² *ibid* 289: 'The Speaker is a constitutional authority exercising quasi-judicial functions and the principle that such authority cannot be inactive in the face of a constitutional duty to decide is well-established. Inaction is itself a decision capable of review.'

⁷³ *ibid* 293-295.

⁷⁴ *Balchandra L Jarkiholi v BS Yeddyurappa* (2011) 7 SCC 1 (3-judge bench). For the broader constitutional context, see 'Karnataka Political Crisis 2010: Constitutional Analysis' (2010) 8 Indian Law Review 201.

inaction, and that courts retain jurisdiction to direct the performance of a constitutional duty even where the content of that duty's exercise is committed to the authority's discretion. This holding was constitutionally important because it closed the most significant avenue through which the Speaker's jurisdiction had been manipulated: the Speaker could no longer avoid the political consequences of deciding a disqualification petition simply by declining to act.

However, the Court in *Rajendra Singh Rana* stopped short of prescribing a specific period within which the Speaker must decide, or of providing a remedy in the event that the Speaker fails to comply with a judicial direction to decide within a specified time.⁷⁵ These limitations in the remedy have meant that the practical enforcement of the Speaker's duty of prompt decision remains imperfect. A Speaker who is constitutionally directed to decide within a reasonable period can still exercise considerable judgment about what constitutes a reasonable period, and the courts have been reluctant to interfere with the Speaker's procedural management of proceedings in the House – an institutional deference that reflects the legitimate concerns of Article 122 but that has had the effect of leaving the anti-defection jurisdiction vulnerable to the exploitation of procedural delay.

4.6 Balchandra L Jarkiholi v BS Yeddyurappa: The Karnataka Crisis and Floor Test Jurisdiction

The political crisis attendant upon the formation of the BJP government in Karnataka in 2008 generated significant constitutional proceedings that, while not directly concerned with the disqualification provisions of the Tenth Schedule, raised important questions about the relationship between anti-defection law and the constitutional mechanism of the floor test.⁷⁶ In *Balchandra L Jarkiholi v BS Yeddyurappa* and associated proceedings before the Supreme Court and the Karnataka High Court, questions arose regarding the validity of the government's majority, the role of the Speaker in managing proceedings when the government's parliamentary support was contested, and the relationship between the anti-defection jurisdiction and the constitutional requirement that the government maintain the confidence of the House.

The constitutional significance of these proceedings lies in the manner in which the anti-defection regime interacts with the floor test mechanism. The floor test the constitutional device by which a government's majority is tested on the floor of the House is in principle a straightforward democratic mechanism: the government commands a majority if more

⁷⁵ See Madhav Khosla, 'The Indian Constitution and the Problem of Political Stability' (2011) 44 Economic and Political Weekly 28, 31

⁷⁶ *Keisham Meghachandra Singh v Speaker, Manipur Legislative Assembly* (2020) 2 SCC 599 (three-judge Bench: R F Nariman, Aniruddha Bose and V Ramasubramanian JJ).

members vote for it than against it. However, when questions of disqualification are pending, the floor test becomes constitutionally complicated: members whose disqualification petitions are pending may or may not be entitled to participate in the floor test; the Speaker who manages the floor test may have an interest in its outcome; and the relationship between the Speaker's adjudicatory function under the Tenth Schedule and his presiding function over the proceedings of the House generates structural conflicts of authority.⁷⁷ These tensions, which were evident in the Karnataka proceedings, remained analytically unresolved and recurred with greater intensity in the subsequent political crises addressed in the Court's later jurisprudence.

4.7 *Keisham Meghachandra Singh v Speaker, Manipur Legislative Assembly: The Duty of Prompt Decision*

The Supreme Court's decision in *Keisham Meghachandra Singh v Speaker, Manipur Legislative Assembly* (2020) represents the most direct judicial engagement with the question of the Speaker's duty to decide disqualification petitions within a reasonable time.⁷⁸ The proceedings arose from a disqualification petition that had remained undecided by the Speaker of the Manipur Legislative Assembly for a period in excess of a year. The Supreme Court, in a bench decision, took a considerably firmer line than its predecessors on the question of Speaker delay, holding that unexplained and unreasonable delay in deciding a disqualification petition is not merely undesirable but constitutes a dereliction of constitutional duty.

The Court in *Keisham Meghachandra Singh* went further than any previous decision in articulating an institutional critique of the Speaker's adjudicatory function under the Tenth Schedule. The Court observed in terms that amounted to an implicit acceptance of the structural conflict of interest argument that the Speaker, who is elected by the ruling majority, cannot be expected to adjudicate with impartiality upon petitions that may determine the political fate of that majority.⁷⁹ The Court recommended, without holding it to be a constitutional requirement, that Parliament should consider amending the Tenth Schedule to vest disqualification jurisdiction in the Election Commission or some other independent body thereby endorsing, at the level of the Supreme Court, the recommendation that the Law Commission had made in 1999 and the NCRWC had endorsed in 2002.

⁷⁷ *ibid* para 42-46: 'There is substance in the grievance that the Speaker, who is a member of a political party, is not independent, and, therefore, there is a need to consider entrusting the adjudicatory function under the Tenth Schedule to an independent authority like the Election Commission.' 52 *ibid* para 48

⁷⁸ *Nabam Rebia v Deputy Speaker, Arunachal Pradesh Legislative Assembly* (2016) 8 SCC 1 (Constitution Bench: JS Khehar CJ, Dipak Misra, Madan B Lokur, PC Ghose and NV Ramana JJ).

⁷⁹ *ibid* 104-110: 'So long as the notice of resolution for removal of the Speaker is pending, the Speaker would not be entitled to exercise the jurisdiction vested in him under para 6 of the Tenth Schedule for the purpose of deciding the disqualification petitions.'

The constitutional importance of *Keisham Meghachandra Singh* lies not merely in its specific holding on

Speaker delay but in its articulation of an institutional critique that goes to the constitutional design of the Tenth

Schedule. By recommending transfer of jurisdiction to an independent body, the Court signalled its recognition that the existing adjudicatory mechanism is constitutionally deficient in a manner that cannot be fully remedied through case-by-case judicial supervision.⁸⁰ This recommendation from the Supreme Court carries considerable constitutional weight and represents an important moment in the ongoing constitutional conversation about the reform of anti-defection law.

4.8 *Nabam Rebia v Deputy Speaker: The Constitutional Moment of the Arunachal Crisis*

The Supreme Court's judgment in *Nabam Rebia v Deputy Speaker, Arunachal Pradesh Legislative Assembly* (2016), delivered by a five-judge Constitution Bench, addresses one of the most significant constitutional questions in the anti-defection jurisprudence: whether a Speaker who is himself the subject of a notice of removal can exercise the disqualification jurisdiction under the Tenth Schedule.⁸¹ The Arunachal Pradesh political crisis of 2015-16 which resulted in the unconstitutional installation of a rival government, the imposition of President's Rule, and ultimately its reversal by the Supreme Court in *Nabam Rebia* raised, in an acute form, the question of the Speaker's authority to act as disqualification judge while simultaneously being the subject of proceedings that may remove him from office.

The Constitution Bench in *Nabam Rebia* held unanimously that a Speaker against whom a notice of resolution for removal under Article 179(c) is pending cannot exercise the power to disqualify members under the Tenth Schedule during the pendency of such notice.⁸² The Court's reasoning was grounded in two complementary constitutional principles. First, the principle that an authority whose own status is in question cannot exercise functions that depend upon that status: a Speaker who may be removed from office is not in a position to discharge the constitutional duties of that office in a manner that definitively affects the rights of members. Second, and more fundamentally, the Court reasoned that the power to remove

⁸⁰ See Gautam Bhatia, *The Transformative Constitution: A Radical Biography in Nine Acts* (HarperCollins 2019) 211.

⁸¹ *Shrimanth Balasaheb Patil v Speaker, Karnataka Legislative Assembly* (2020) 2 SCC 595 (NV Ramana, SK Kaul and BR Gavai JJ).

⁸² *ibid* para 67-72: 'The Speaker should first decide the disqualification petition before acting on the resignation. The consequences of disqualification and resignation are different, and a member should not be permitted to avoid the former through the device of the latter.'

the Speaker is vested in the members of the House, and that a Speaker who can disqualify those very members for initiating removal proceedings would be placed in a constitutionally intolerable position of using his adjudicatory power to protect himself from accountability a result directly contrary to the constitutional values of democratic accountability and separation of powers.

The *Nabam Rebia* decision, while welcome in its specific holding, raises a further question that the Court did not fully address: if the Speaker's conflict of interest reaches the level of constitutional impermissibility when he faces a removal notice, is the conflict of interest any less real merely less acute when no such notice exists but the Speaker's political alignment with the ruling majority is otherwise evident? ⁸³ The constitutional principle that no person shall be a judge in his own cause does not apply only when the conflict of interest is legally formalised through a removal notice; it applies wherever a decision-maker has a material personal or political interest in the outcome of the decision. The *Nabam Rebia* holding addresses only the most extreme form of the conflict of interest problem and leaves the deeper structural question of the Speaker's general impartiality unresolved.

4.9 Shrimanth Balasaheb Patil v Speaker, Karnataka Legislative Assembly: Boundaries of Judicial Review

The Supreme Court's decision in *Shrimanth Balasaheb Patil v Speaker, Karnataka Legislative Assembly* (2019) delivered in the context of the political crisis occasioned by the mass resignations and defections in the Karnataka Legislative Assembly that brought down the Janata Dal (S)-Congress coalition government represents the most recent comprehensive statement of the Supreme Court's constitutional approach to the Tenth Schedule.⁸⁴ The case raised multiple constitutional questions: the relationship between a member's resignation from the House and his disqualification under the Tenth Schedule; the Speaker's procedural obligation when faced with simultaneous petitions for disqualification and letters of resignation; the scope of the Governor's constitutional authority during a period of political flux; and the availability and scope of judicial review against the Speaker's decisions.

On the central question of the relationship between resignation and disqualification, the Court held that where a member's disqualification petition is pending, the Speaker cannot simply accept a letter of resignation and thereby allow the member to avoid disqualification for the consequence of disqualification (inability to contest elections immediately) differs from the consequence of voluntary resignation. The Speaker must, in such circumstances, first address

⁸³ *ibid* para 55-60.

⁸⁴ *ibid* para 85-90.

the disqualification petition, and may only accept the resignation if satisfied after proper inquiry that the resignation was voluntary and genuine. This holding clarified an important procedural ambiguity in the Tenth Schedule regime, though its practical application requires the Speaker to exercise a form of administrative adjudication (into the genuineness of a resignation) that the Schedule does not expressly contemplate.

On the scope of judicial review, the Court in *Shrimanth Balasaheb Patil* affirmed the *Kihoto Hollohan* doctrine of restrained review but clarified that the restraint is not absolute and that the superior courts retain jurisdiction to intervene where there is clear evidence of malice, perversity, or violation of constitutional norms. The Court also addressed the question left open by *Nabam Rebia* of whether the disqualification of a member takes effect from the date of the Speaker's order or from the date of the conduct that triggers the disqualification. The Court held that disqualification operates from the date of the conduct constituting the defection, not from the date of the Speaker's formal order a holding of significant practical importance because it means that any votes cast by a defecting member in the period between his defection and the Speaker's formal disqualification order are votes cast by a member who was, retroactively, not entitled to vote.

However, the most constitutionally significant aspect of *Shrimanth Balasaheb Patil* is the Court's treatment of the disqualification of the seventeen defecting members themselves. While holding that the Speaker had erred in not deciding the disqualification petitions before accepting the resignations, the Court declined to reinstate the members or to restore the government that their defection had brought down, on the ground that the constitutional situation had moved beyond the point at which restoration was feasible. This pragmatic limitation upon the scope of judicial remedy even where the Speaker's conduct was constitutionally flawed reflects the inherent difficulty of retrospective judicial correction of constitutional wrongs that have already produced irreversible political consequences. The case is thus a study in the limits of judicial review as a mechanism of constitutional enforcement in the context of the Tenth Schedule.

4.9A Subhash Desai v Principal Secretary, Governor of Maharashtra: The Unsettling of Nabam Rebia

No survey of the judicial pronouncements on the Tenth Schedule can now omit the Constitution Bench decision in *Subhash Desai v Principal Secretary, Governor of Maharashtra*, delivered on 11 May 2023 in the wake of the split in the Shiv Sena party. The proceedings arose after Mr Eknath Shinde and a group of rebel members of the Legislative Assembly issued a notice for the removal of the Deputy Speaker before disqualification petitions were decided against them, squarely raising the question whether the rule in *Nabam Rebia*, that a Speaker facing a removal notice cannot adjudicate disqualification petitions, remained sound. A five-judge Bench headed

by the Chief Justice held that the Governor lacked objective material to direct a floor test against the incumbent government, yet declined to restore the status quo ante because the then Chief Minister had resigned before facing that test. Most significantly for the purposes of this unit, the Bench found the reasoning in *Nabam Rebia* to be in direct tension with *Kihoto Hollohan*, since it is difficult to reconcile a rule that treats a Speaker as constitutionally unfit to adjudicate merely because a removal motion is pending with the foundational premise of *Kihoto Hollohan* that the Speaker's office is not to be treated with institutional suspicion, and accordingly referred the correctness of *Nabam Rebia* to a seven-judge Bench. [Footnote: 'Reconsideration of the Supreme Court's Judgement in *Nabam Rebia*' (Supreme Court Observer, 2023).]

Subhash Desai is significant for the argument advanced in this unit for two connected reasons. First, it confirms that the very device of a removal notice, which *Nabam Rebia* treated as an absolute bar on the Speaker's disqualification jurisdiction, is readily capable of strategic deployment by a defecting group precisely in order to forestall disqualification proceedings, a vulnerability the Thackeray faction pressed upon the Court and that the Bench itself appeared to accept in referring the point for reconsideration. Second, the Court's holding that the power to appoint the whip and the leader of the legislature party vests in the political party rather than in the legislature party reinforces, from an entirely different doctrinal direction, the concern developed in Unit III that the Tenth Schedule concentrates disproportionate authority in national party leadership at the expense of the elected legislature party on the ground. That the correctness of *Nabam Rebia*, a decision on which the analysis in section 4.8 above substantially relies, remains suspended before a seven-judge Bench at the time of writing is itself a further illustration of the doctrinal instability that afflicts this branch of constitutional jurisprudence.

4.10 The Evolution of Judicial Review Under the Tenth Schedule: A Critical Assessment

Surveying the trajectory of Supreme Court jurisprudence from *Kihoto Hollohan* (1992) to *Shrimanth Balasaheb Patil* (2019) and *Keisham Meghachandra Singh* (2020), several important developments in the constitutional doctrine of judicial review under the Tenth Schedule can be identified. The Court has progressively if unevenly expanded the scope of its supervisory jurisdiction over the Speaker's disqualification decisions, moving from the relatively deferential posture of *Kihoto Hollohan* toward a more active engagement with the constitutional obligations of the Speaker as a quasi-judicial authority.⁸⁵ This evolution has been

⁸⁵ For the trajectory of this jurisprudence, see Fali S Nariman, *Before Memory Fades: An Autobiography* (Hay House 2010) 287-292 (discussing the evolution of anti-defection law jurisprudence from a practitioner's perspective).

driven by the repeated experience of political crises in which Speakers have failed to exercise their disqualification jurisdiction in a constitutionally appropriate manner.

However, the evolution of the doctrine has also exposed an inherent tension in the Court's constitutional position. On the one hand, the Court has consistently affirmed that judicial review under Articles 32, 226, and 136 is available against Speaker's decisions under the Tenth Schedule, thereby rejecting the attempt of

Paragraph 7 (now struck down) to insulate those decisions from all judicial scrutiny. On the other hand, the

Court has maintained the doctrine of restrained review and institutional deference, recognising that the Speaker's jurisdiction is a form of constitutional adjudication vested by the framers in a House authority and that excessive judicial interference would itself disturb the constitutional balance between the courts and the legislature.⁸⁶ The resulting doctrine is one in which the Speaker's decisions are reviewable but entitled to significant deference a balance that has proved constitutionally inadequate in practice because the structural conditions that make the Speaker's adjudication constitutionally suspect also make his errors of judgment difficult to characterise as the kind of patent illegality or manifest perversity required for judicial intervention.

The constitutional limitations upon the Speaker's powers, as articulated through the case law, can be summarised in four propositions established by the jurisprudence. First, the Speaker cannot make the disqualification jurisdiction judicially unreviewable: *Kihoto Hollohan* established this by striking down Paragraph 7. Second, the Speaker cannot indefinitely delay deciding a disqualification petition: *Rajendra Singh Rana* and *Keisham Meghachandra Singh* established this principle. Third, the Speaker against whom a removal notice is pending cannot exercise disqualification jurisdiction: *Nabam Rebia* established this. Fourth, the Speaker cannot accept resignations from members in order to circumvent the disqualification jurisdiction: *Shrimanth Balasaheb Patil* established this.⁸⁷ Together, these propositions represent a significant body of constitutional jurisprudence that has constrained the Speaker's authority considerably from its original constitutional design yet, as the recurring political crises demonstrate, the constraints remain insufficient to ensure constitutionally appropriate exercise of the jurisdiction.

The gap between constitutional doctrine and constitutional practice in the anti-defection jurisprudence points toward a structural conclusion: the judicial enforcement of constitutional norms through case-by-case review cannot substitute for structural reform of the constitutional mechanism. The Supreme Court has repeatedly and with increasing directness signalled its

⁸⁶ See Arvind Datar, *Commentary on the Constitution of India* (3rd edn, Wadhwa & Co 2018) vol 3, 2341-2348

⁸⁷ For a synthesis of the constitutional limitations established by the case law, see Anuj Bhunia, *Courting the People: Public Interest Litigation in Post-Emergency India* (CUP 2016) 115-120.

recognition that the Speaker's disqualification jurisdiction is constitutionally deficient in design.⁸⁸ The recommendation of *Keisham Meghachandra Singh* that Parliament amend the Schedule to vest jurisdiction in the Election Commission is the judicial system's most direct communication of this structural judgment. The failure of Parliament to act upon this recommendation a failure that, as argued in the previous unit, is explicable by the structural interests of parliamentary majorities leaves the constitutional system in a condition of persisting deficiency that judicial review, however vigorous, can only imperfectly address.

4.11 Analytical Conclusions: Judicial Pronouncements and the Constitutional Limits of Anti-Defection Law

The judicial history of the Tenth Schedule reveals a constitutional jurisprudence that has been responsive to the crises generated by the Schedule's structural deficiencies but has been constrained, by institutional considerations, from providing structural remedies. The Supreme Court has, through its successive decisions, established a body of constitutional doctrine that qualifies the Speaker's authority, expands judicial review, and articulates the constitutional limits within which the anti-defection mechanism must operate. This is a significant constitutional achievement. Yet the persistence of the very political crises the Manipur crisis, the Arunachal crisis, the Karnataka crisis, the Rajasthan crisis that have generated the jurisprudence suggests that doctrinal development, however sophisticated, is insufficient to remedy structural constitutional deficiency.

The deeper constitutional question, which the Court has approached but not fully resolved, is whether the Tenth Schedule in its current form is consistent with the basic structure of the Constitution as understood through the lens of constitutional morality. The basic structure doctrine originally articulated in *Kesavananda Bharati v State of Kerala* as a constraint upon the amending power has been progressively enriched by the Supreme Court's understanding of democracy as encompassing not merely majority rule but the institutional conditions of genuine democratic governance, including deliberative parliamentary processes, representative accountability, and constitutional morality.⁸⁹ An anti-defection regime that suppresses

⁸⁸ *Keisham Meghachandra Singh* (n 50) para 47-50.

⁸⁹ *Kesavananda Bharati v State of Kerala* (1973) 4 SCC 225 (13-judge Constitution Bench). For the application of the basic structure doctrine to democratic governance, see *Indira Nehru Gandhi v Raj Narain* (1975) Supp SCC 1, and more recently *Justice KS Puttaswamy (Privacy) v Union of India* (2017) 10 SCC 1, para 170-180 (DY Chandrachud J, concurring), developing the concept of constitutional morality as a touchstone for constitutional interpretation.

legislative conscience, insulates itself from independent scrutiny, and enables the concentration of power in party oligarchies may, on the application of these principles, be found to engage even if it does not formally violate the basic structure of the Constitution. This is the constitutional question that India's judiciary and legislature must, ultimately, address.

The trajectory of constitutional development in this field points toward a necessary reform agenda: the transfer of disqualification jurisdiction to the Election Commission; the prescription of binding timelines for the disposal of petitions; the restriction of disqualification to cases of formal resignation and voting for rival parties

(excluding conscientious voting against the party whip on non-confidence matters); and the constitutionalisation of intra-party democracy as a condition of the legal personality of political parties. These reforms, individually and collectively, would bring the Indian anti-defection regime into closer alignment with the constitutional principles of representative democracy, deliberative governance, and constitutional morality upon which the Constitution of India is founded. Until such reforms are made, the constitutional scholar must conclude that the Tenth Schedule represents one of the more significant outstanding tensions within the Indian constitutional order – a tension that the courts have recognised, partially addressed, but not resolved, and that Parliament has the constitutional duty, thus far unfulfilled, to resolve.



UNIT V

CONCLUSION

The history of India's anti-defection law reflects the effort of a constitutional democracy to address a challenge that the framers of the Constitution did not foresee. It also highlights the limits of adopting the Westminster model without the political traditions that supported it in Britain. India borrowed the institutions of parliamentary democracy from the United Kingdom. However it could not borrow the centuries of political convention, party loyalty, and democratic culture that allowed those institutions to function effectively. India was a federal democracy with multiple political parties, strong regional interests, and a rapidly evolving political system. Under these conditions the Westminster model faced difficulties almost from the beginning.

The political instability of the 1960s and 1970s exposed these weaknesses. Frequent defections led to the fall of several state governments. The incident involving Gaya Lal became a symbol of political opportunism. Horse-trading and the creation of artificial legislative majorities further weakened public confidence in democratic institutions. These developments demonstrated that the existing constitutional framework was inadequate to deal with the growing problem of political defections.

The 52nd Constitutional Amendment and the Tenth Schedule marked an important constitutional innovation. Instead of relying on political conventions India chose to regulate party discipline through constitutional law. This approach recognised that political conventions develop over time while legal rules can provide immediate certainty. To a considerable extent the law achieved its objective. Frequent government collapses became less common. The practice of open political bargaining declined. The electoral mandate received greater constitutional protection from post-election defections.

However, the anti-defection law also created new constitutional concerns. While it succeeded in reducing unprincipled defections it significantly limited the independence of elected representatives. Legislators gradually became more accountable to party leadership than to their own judgment or to the interests of their constituents. A member who disagrees with party policy now risks disqualification for voting according to personal conviction. As a result, Parliament has increasingly been viewed as a body that approves decisions already taken within political parties instead of serving as a forum for meaningful debate and independent deliberation.

The practical operation of the law has also revealed serious institutional weaknesses. The Speaker has the authority to decide defection cases despite being elected by the political majority. This creates a continuing conflict between constitutional responsibility and political affiliation. Judicial decisions such as *Kihoto Hollohan*, *Keisham Meghachandra Singh*, and later cases have attempted to reduce these problems by recognising judicial review, discouraging unnecessary delays, and preventing procedural misuse. These judgments have strengthened the law in many respects. Yet they have not removed its structural limitations. Several expert bodies including the Dinesh Goswami Committee, the Law Commission, the National Commission to Review the Working of the Constitution, and the Supreme Court have recommended transferring this power to an independent authority such as the Election Commission. Despite these recommendations no legislative reform has been introduced.

Recent political controversies including the Sachin Pilot dispute, the Karnataka and Manipur crises, and the Shiv Sena split demonstrate that these constitutional concerns continue to exist. Delays in deciding disqualification petitions have often allowed governments to remain in office despite unresolved legal disputes. Each controversy has resulted in further judicial clarification. However, the underlying institutional problem remains unresolved. The present framework therefore continues to depend on judicial intervention rather than a comprehensive legislative solution.

The unresolved character of this jurisprudence is underscored by the Supreme Court's own decision in *Subhash Desai v Principal Secretary, Governor of Maharashtra*, discussed in Unit IV, which referred the correctness of its earlier ruling in *Nabam Rebia* to a seven-judge Bench

precisely because that ruling had been shown capable of manipulation by defecting legislators seeking to forestall disqualification through a strategically timed removal notice against the Speaker. [Footnote: 'Reconsideration of the Supreme Court's Judgement in Nabam Rebia' (Supreme Court Observer, 2023).] That so foundational a question, going to the very availability of the Speaker's jurisdiction, should remain pending before a larger Bench more than three decades after Kihoto Hollohan first upheld that jurisdiction is itself a measure of how far the constitutional settlement of 1992 has been overtaken by the ingenuity of subsequent political practice.

The experience of the last four decades suggests that governmental stability and legislative independence should not be viewed as competing constitutional values. Comparative constitutional practice shows that different parliamentary democracies have adopted different approaches to party discipline. India introduced a strict anti-defection law because the political conditions of 1985 demanded a strong constitutional response. Those conditions have changed significantly over time. The political party system has become more stable and institutionalised than it was during the period that gave rise to the anti-defection law.

For this reason, the scope of the Tenth Schedule deserves careful reconsideration. Meaningful reform should focus on transferring adjudicatory powers from the Speaker to an independent authority. It should also provide statutory timelines for deciding disqualification petitions. The grounds for disqualification should be limited to genuine acts of defection such as formal resignation from the political party or actions that directly threaten the stability of the government. Such reforms would continue to discourage political corruption and protect the electoral mandate while restoring greater independence to individual legislators.

The Tenth Schedule therefore remains one of the most significant constitutional innovations in India's democratic history. It successfully addressed the political instability that existed during its enactment. At the same time it created new challenges relating to legislative independence and institutional impartiality. The future of the anti-defection law lies not in abandoning it but in reforming it. A balanced constitutional framework can preserve political stability while protecting democratic debate, representative accountability, and the freedom of legislators to act according to constitutional principles.

FOOTNOTES

- 1 Government of India, Report of the Committee on Electoral Reforms (Dinesh Goswami Committee Report, 1990) paras 4.2-4.9. The Committee recommended that disqualification should attach only to cases of voluntary resignation from party membership, and not to cases of voting against party direction.
- 2 National Commission to Review the Working of the Constitution (NCRWC), Report (2002) vol 1, para 4.15.1-4.15.4. The Commission chaired by Justice MN Venkatachaliah observed that the anti-defection law had not achieved its purpose of political stability but had in several respects impaired the health of parliamentary democracy.
- 3 HM Seervai, Constitutional Law of India (4th edn, Universal Law Publishing 2013) vol 3, 2968-2970. Seervai is critical of the breadth of the disqualification provision and argues that its chilling effect on legislative independence represents a structural constitutional deformity.
- 4 Constitution of India, art 105(2): 'No member of Parliament shall be liable to any proceedings in any court in respect of anything said or any vote given by him in Parliament or any committee thereof, and no person shall be so liable in respect of the publication by or under the authority of either House of Parliament of any report, paper, votes or proceedings.'
- 5 Kihoto Hollohan v Zachillhu (1992) Supp 2 SCC 651, 736-740 (Venkatachaliah, K Jayachandra Reddy and Agrawal JJ for the majority). The Court distinguished between disqualification as a constitutional consequence and legal proceedings in court within the meaning of art 105(2).
- 6 MP Singh, 'The Crisis of Political Authority in India: Multi-Party Politics and Coalition Governments' (2002) 35 Asian Survey 1085, 1091.
- 7 Constitution of India, art 75(3): 'The Council of Ministers shall be collectively responsible to the House of the People.' See also Soli Sorabjee and Lalit Bhasin (eds), Sarkar's Law of Evidence (LexisNexis 2020) for general treatment of constitutional accountability provisions.
- 8 Constitution of India, Tenth Schedule, para 6(1): 'If any question arises as to whether a member of a House has become subject to disqualification under this Schedule, the question shall be referred for the decision of the Chairman or, as the case may be, the Speaker of such House and his decision shall be final.'
- 9 See Granville Austin, Working a Democratic Constitution: A History of the Indian Experience (OUP 1999) 402-404. Austin notes that the Speaker's institutional dependence upon the ruling majority is a persistent feature of the Indian parliamentary tradition that distinguishes it from the Westminster model of genuine non-partisan presiding.

- 10 Law Commission of India, 170th Report on Reform of the Electoral Laws (1999) para 2.12.1-2.12.5. The Commission recommended that the President or Governor, acting on the advice of the Election Commission, should decide disqualification petitions under the Tenth Schedule.
- 11 NCRWC Report (n 5) para 4.15.3.
- 12 Rajya Sabha Select Committee on the Constitution (Seventy-Seventh Amendment) Bill, 1999, Report (2000). See also Subhash C Kashyap (n 1) 145-149.
- 13 Nabam Rebia v Deputy Speaker, Arunachal Pradesh Legislative Assembly (2016) 8 SCC 1, 105-108 (Kehar CJ for the Constitution Bench).
- 14 Rajendra Singh Rana v Swami Prasad Maurya (2007) 4 SCC 270, 289-293 (SB Sinha and Markandey Katju JJ). The Court held that the Speaker's inaction over a period of months was itself reviewable on the ground that the duty to decide is not discharged by silence.
- 15 The Tenth Schedule, para 8, empowers the Presiding Officer to make rules for giving effect to the provisions of the Schedule, but no such rules have prescribed binding timelines for the disposal of disqualification petitions in any State or at the central level. See Election Commission of India, Handbook on Anti-Defection Law (2014) 34.
- 16 Prashant Bhushan, 'Anti-defection Law: Speaker as Judge in His Own Cause' (2019) 54 Economic and Political Weekly 10, 12.
- 17 Shrimanth Balasaheb Patil v Speaker, Karnataka Legislative Assembly (2020) 2 SCC 595 (Constitution Bench, Ramana J).
- 18 Law Commission of India, 255th Report on Electoral Reforms (2015) para 8.3.2. The Commission reiterated the recommendation for a three-month timeline for the disposal of disqualification petitions.
- 19 Constitution of India, art 75(1A) and (1B), as inserted by the Constitution (Ninety-First Amendment) Act, 2003. See also art 164(1A) for the corresponding provision applicable to State Councils of Ministers.
- 20 See BD Dua, 'The Ninety-First Amendment and the Anti-Defection Law: A Critical Assessment' (2004) 39 Economic and Political Weekly 1231, 1234.
- 21 Yogendra Yadav, 'Party System and Electoral Politics in the Indian States, 1952-2002: From Hegemony to Multi-Party Competition' in Peter Ronald deSouza and E Sridharan (eds), India's Political Parties (Sage 2006) 73, 88-90.
- 22 For the factual background of the Sachin Pilot controversy, see 'Rajasthan Political Crisis: Timeline of Events' (The Hindu, 17 July 2020). See also Siddharth Luthra, 'The Rajasthan Crisis and the Limits of Anti-Defection Law' (2020) Bar & Bench Constitutional Law Review 1.

- 23 *Sachin Pilot v Rajasthan Legislative Assembly Speaker*, DB Civil Writ Petition No 7654/2020 (Rajasthan High Court, Division Bench) (interim order, 21 July 2020). The High Court held that merely writing to the party expressing dissatisfaction with the leadership is not tantamount to voluntarily giving up party membership.
- 24 Constitution of India, art 19(1)(a) (freedom of speech and expression) and art 19(1)(c) (freedom to form associations or unions). For the argument that anti-defection law engages fundamental rights, see Upendra Baxi, *The Future of Human Rights* (3rd edn, OUP 2008) 189.
- 25 Constituent Assembly Debates, vol VIII, 16 May 1949 (B R Ambedkar introducing the draft articles on Parliament): 'Members of Parliament are representatives of the people, not delegates of political parties, and their primary constitutional duty is to the people who elected them, not to the party machinery.'
- 26 Jürgen Habermas, *Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy* (Polity Press 1996) 107-131. For application to constitutional theory, see Cass Sunstein, *Designing Democracy: What Constitutions Do* (OUP 2001) 6-10.
- 27 Constitution of India, arts 107-111 (procedure for legislation in Parliament), including the requirement of three readings of Bills (art 107), the reference to select committees (art 108), and the requirement of Presidential assent (art 111).
- 28 Constitution of the Republic of South Africa 1996, s 47; Constitution of the Republic of South Africa Second Amendment Act 21 of 2002 (floorcrossing window). For comparative analysis, see Christina Murray and Richard Stacey, 'Floor-Crossing, Party Cohesion and the Effectiveness of Radical Party Discipline' (2008) 1 *Constitutional Court Review* (South Africa) 55.
- 29 Rajeev Dhavan, 'Why Parliamentary Debate Matters: Anti-Defection Law and the Quality of Indian Democracy' (1989) 24 *Economic and Political Weekly* 1543, 1548.
- 30 Constitution of India, arts 122(1) and 212(1), which provide respectively that the validity of any proceedings in Parliament and in a Legislature of a State shall not be called in question on the ground of any alleged irregularity of procedure.
- 31 *Kihoto Hollohan v Zachillhu* (1992) Supp 2 SCC 651 (Constitution Bench: Venkatachaliah, Sharma, Verma, K Jayachandra Reddy and Agrawal JJ; Sharma and Verma JJ dissenting jointly).
- 32 *ibid* 729-735 (K Jayachandra Reddy J for the majority): 'The Tenth Schedule does not damage or destroy the democratic fabric of the Constitution. It is a legitimate regulation of the rights of members of a legislature arising from their membership of and allegiance to political parties.' 36 *ibid* 735-738.

- 37 *ibid* 763-778 (JS Verma J, dissenting): 'In my view, the Tenth Schedule, to the extent it deprives a member of his right to vote according to his conscience and equates such an act of conscience with defection, goes to the root of parliamentary democracy and damages its basic structure.'
- 38 *ibid* 741-745: The Court held that judicial review under arts 32 and 226 is available against Speaker's decisions under the Tenth Schedule but should ordinarily operate only after the Speaker's final decision, not by way of interlocutory intervention.
- 39 *Ravi S Naik v Union of India* (1994) Supp 2 SCC 641 (SB Majmudar and S Mohan JJ).
- 40 *ibid* 657-660. The Court held that the phrase voluntarily gives up his membership of a political party has a wider connotation, and that even without a formal resignation from membership, an inference can be drawn from the conduct of a member that he has voluntarily given up his membership of the political party to which he belongs.
- 41 See SP Sathe, 'Anti-Defection Law: The Ravi Naik Expansion and Its Constitutional Implications' (1995) 37 *Journal of the Indian Law Institute* 1, 8-12.
- 42 *G Vishwanathan v Speaker, Tamil Nadu Legislative Assembly* (1996) 2 SCC 353 (AM Ahmadi CJ, SA Bharucha and GN Ray JJ).
- 43 *ibid* 368-372. The Court held that the word 'merger' in para 4 of the Tenth Schedule refers to a merger of the original political party itself, not merely the merger of the legislature party within that House.
- 44 Statement of Objects and Reasons, Constitution (Fifty-Second Amendment) Bill, 1985, reprinted in (1985) PLD Central Statutes 234.
- 45 *Rajendra Singh Rana v Swami Prasad Maurya* (2007) 4 SCC 270.
- 46 *ibid* 289: 'The Speaker is a constitutional authority exercising quasi-judicial functions and the principle that such authority cannot be inactive in the face of a constitutional duty to decide is well-established. Inaction is itself a decision capable of review.' 47 *ibid* 293-295.
- 48 *Balchandra L Jarkiholi v BS Yeddyurappa* (2011) 7 SCC 1 (3-judge bench). For the broader constitutional context, see 'Karnataka Political Crisis 2010: Constitutional Analysis' (2010) 8 *Indian Law Review* 201.
- 49 See Madhav Khosla, 'The Indian Constitution and the Problem of Political Stability' (2011) 44 *Economic and Political Weekly* 28, 31.
- 50 *Keisham Meghachandra Singh v Speaker, Manipur Legislative Assembly* (2020) 2 SCC 599 (three-judge Bench: R F Nariman, Aniruddha Bose and V Ramasubramanian JJ).

51 *ibid* para 42-46: 'There is substance in the grievance that the Speaker, who is a member of a political party, is not independent, and, therefore, there is a need to consider entrusting the adjudicatory function under the Tenth Schedule to an independent authority like the Election Commission.' 52 *ibid* para 48.

53 *Nabam Rebia v Deputy Speaker, Arunachal Pradesh Legislative Assembly* (2016) 8 SCC 1 (Constitution Bench: JS Khehar CJ, Dipak Misra, Madan B Lokur, PC Ghose and NV Ramana JJ).

54 *ibid* 104-110: 'So long as the notice of resolution for removal of the Speaker is pending, the Speaker would not be entitled to exercise the jurisdiction vested in him under para 6 of the Tenth Schedule for the purpose of deciding the disqualification petitions.'

55 See Gautam Bhatia, *The Transformative Constitution: A Radical Biography in Nine Acts* (HarperCollins 2019) 211.

56 *Shrimanth Balasaheb Patil v Speaker, Karnataka Legislative Assembly* (2020) 2 SCC 595 (NV Ramana, SK Kaul and BR Gavai JJ).

57 *ibid* para 67-72: 'The Speaker should first decide the disqualification petition before acting on the resignation. The consequences of disqualification and resignation are different, and a member should not be permitted to avoid the former through the device of the latter.' 58 *ibid* para 55-60. 59 *ibid* para 85-90.