

# Political Defections in India: An Analysis of The Tenth Schedule

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*Abstract- Political defection, the act of an elected legislator leaving the party on whose name they were elected and joining another opposing political organisation, represents one of the most corrosive challenges to stable parliamentary democracy in India. To address this malaise, the Indian Parliament enacted the Constitution (52nd Amendment) Act, 1985, inserting the 10th Schedule into the Constitution of India. Popularly known as the Anti-Defection Law, this schedule made the grounds for disqualification of elected members from Parliament and legislatures of the states, who switch political allegiances in violation of the mandate given by the electorate. This research paper traces the historical genesis of defection in Indian politics, examines landmark judicial pronouncements that have shaped its interpretation, and critically evaluates recurring attempts to circumvent the law through the merger exception. Special attention is devoted to the April 2026 episode in which AAP's 7 Rajya Sabha MPs, including prominent leaders from Punjab, declared a merger with the Bharatiya Janata Party, reigniting a nationwide debate on whether the constitutional safeguard remains adequate in its current form.*

## I. INTRODUCTION

Parliamentary democracy rests on the foundational premise that elected representatives carry the aspirations of their constituents and are accountable to the political platforms on which they were chosen. When a legislator, having secured a mandate under the banner of one party, switches loyalty to a rival formation, the democratic compact between voter and representative is fundamentally breached. The elected member owes their position to the party label and the manifesto that attracted voters, not exclusively to their individual personality.

India's experience with political defection has been both extensive and deeply damaging. From the early decades of independence, legislators have switched parties for ministerial berths, personal enrichment, or to destabilise governments, leading to political

instability at both state and central level. Constitution, as originally framed, contained no provision to discipline such behaviour, leaving the political field wide open to manipulation.

The introduction of the Tenth Schedule in 1985 represented Parliament's response to a decades-old crisis. While the law has curbed the most blatant forms of floor-crossing, enterprising political actors have repeatedly discovered escape routes within its text, most notably the merger exception under Paragraph 4. The 2026 defection of seven AAP Rajya Sabha MPs to the BJP stands as the most recent and legally contentious example of this continuing institutional tension.

## II. HISTORICAL CONTEXT: THE 'AYA RAM GYA RAM' ERA

The phenomenon of political defection in India is intimate from one of the most colourful episodes in the country's parliamentary history. In the year of 1967, Gaya Lal, a legislator from Haryana defected from one party to another no fewer than three times within the span of around 15 days. This extraordinary display of political fickleness gave rise to the now-legendary phrase 'Aaya Ram, Gaya Ram', a phrase that entered the Indian political lexicon as a byword for unprincipled legislative floor-crossing.

The elections of 1967 proved to be a watershed moment in this regard. The Congress party, which had enjoyed overwhelming majorities since independence, suffered significant setbacks in several states. The resulting hung assemblies created fertile conditions for defection, as parties competed to cobble together majorities through the recruitment of legislators willing to change sides. Between 1967 and 1971, nearly 3,000 defections were recorded in state assemblies across the country. Forty-six governments, many of them extremely short-lived, changed hands

due to defection-driven realignments during this period.

The consequences for governance were severe. Legislators began openly auctioning their support to the highest bidder, and political parties became elaborate machinery for distributing patronage rather than vehicles for programmatic governance. The sanctity of the electoral mandate was eroded almost beyond recognition.

In response to these developments, Parliament's attention was drawn to the problem repeatedly through the 1970s and early 1980s. A committee led by Y.B. Chavan examined this issue and recommended constitutional intervention. Successive governments considered legislation, but it was only under Rajiv Gandhi's government in 1985 that decisive action was taken, resulting in the enactment of the 52<sup>nd</sup> Constitutional Amendment and the insertion of the 10<sup>th</sup> Schedule.

### III. JUDICIAL INTERPRETATION: LANDMARK CASES

#### 3.1 Kihoto Hollohan v. Zachillhu (1992)

The constitutional validity of 10th Schedule was challenged before the Supreme Court shortly after its enactment. In *Kihoto Hollohan v. Zachillhu* (1992), a five-judge constitutional bench affirms legitimacy of the Anti defection law by a majority of three to two. The Court recognised that political parties are crucial to the functioning of parliamentary democracy and disciplining the legislators who flaw from parties in which they were elected is a legitimate constitutional objective.

The judgment made two particularly significant determinations. First, it struck down Paragraph 7 of the Tenth Schedule, which sought to exclude jurisdiction of courts from reviewing the decision of Speaker under the Schedule. The justice ruled that this exclusion violated the basic structure of the Constitution by removing judicial oversight of a quasi-judicial function. Second, the Court concluded that while the Speaker's decisions are subject to judicial review, such review is limited to situations involving patent illegality, violation of constitutional mandates,

or perversity. The ordinary appellate path available in other quasi-judicial matters is not available.

#### 3.2 Ravi S. Naik v. Union of India (1994)

In this matter, the Supreme Court significantly wide the scope of the first ground of disqualification under Paragraph 2. The Court held that the expression 'voluntarily gives up the from a political party' must be construed broadly. Formal leaving from a party is not the only way a member can found to have voluntarily relinquished membership. If a member's conduct, taken in context, clearly indicates an intention to give up membership, such as by publicly opposing the party's fundamental positions or by actively participating in a rival party's activities, the disqualification provision will be attracted, even absent a formal resignation letter.

#### 3.3 Rajendra Singh Rana v. Swami Prasad Maurya (2007)

This case arose from the fractured political situation in Uttar Pradesh. The Supreme Curt concludes that a Speaker who fails in deciding a disqualification petition despite the passage of a reasonable period of time can be compelled by judicial intervention to act on the petition. The judgment sought to address the chronic problem of the Speaker sitting on disqualification petitions indefinitely and effectively allowing defectors to continue functioning as members of the legislature without facing any legal consequences.

#### 3.4 Subhash Desai v. Principal Secretary (2023)

The Maharashtra political crisis of 2022 generated one of the most complex and far-reaching Supreme Court judgments on the Tenth Schedule in recent years. In the Subhash Desai case, arising from the defection of a substantial faction of Shiv Sena MLAs led by Eknath Shinde, a five-judge constitution bench examined multiple questions including the legitimate scope of the Speaker's powers, the relationship between disqualification proceedings and a change in government, and the constitutional permissibility of the Speaker deciding disqualification petitions filed against members who belong to the political faction that installed the Speaker in office.

The Court's observations in this case have a direct bearing on the AAP-BJP merger controversy of 2026.

The bench emphasised that the merger exception under Paragraph 4 contemplates an organisational merger at the level of the political party and that a mere agreement among legislators does not constitute a

merger in the constitutional sense. These observations, though technically obiter in the Shiv Sena context, have been widely cited as persuasive authority by critics of the AAP-BJP merger.

#### IV. CASE STUDY TABLE: KEY DEFECTION EPISODES IN INDIA

Year / State	Event	Constitutional Outcome
1967 – Haryana	Gaya Lal defects three times in a fortnight; 'Aaya Ram, Gaya Ram'	No legal mechanism existed; defections unchecked
1967–71 (Multiple States)	~3,000 defections; 46 governments change hands	Prompted political and legislative debate on reform
1985 – Parliament	52nd Constitutional Amendment inserts Tenth Schedule	Anti-Defection Law comes into force
1992 – Supreme Court	Kihoto Hollohan v. Zachillhu	Tenth Schedule upheld; Para 7 struck down; judicial review preserved
2003 – Parliament	91st Amendment deletes split exception (Para 3)	Split route for defection abolished; merger threshold raised
2022 – Maharashtra	Shiv Sena split; Eknath Shinde faction joins BJP	ECI recognises Shinde faction; SC condemns Speaker's inaction
2022 – Goa	8 of 11 Congress MLAs declare merger with BJP	Speaker upholds merger; Bombay HC (Goa Bench) endorses; SLP pending in SC
April 2026 – Parliament	7 of 10 AAP Rajya Sabha MPs declare merger with BJP	RS Chairman approves; AAP files disqualification petition; legal battle ongoing

#### V. CASE STUDY: THE AAP–BJP MERGER IN THE RAJYA SABHA (APRIL 2026)

##### 5.1 Background and Events

On 24 April 2026, seven of the ten Rajya Sabha Members of Parliament belonging to the Aam Aadmi Party made a dramatic political announcement: they were leaving the AAP and declaring a merger of their legislature party faction with the Bharatiya Janata Party. The seven MPs were Raghav Chadha, Ashok Kumar Mittal, Sandeep Pathak, Harbhajan Singh, Rajinder Gupta, Swati Maliwal, and Vikramjit Singh Sahney. Of these, six represented Punjab, where the AAP had won a landmark assembly majority in 2022.

Raghav Chadha, speaking at a press conference on the day of the announcement, cited what he described as a toxic internal environment within the AAP and concerns about governance in Punjab as his reasons for the move. He pointed out that the seven defecting MPs constituted two-thirds of AAP's total Rajya Sabha contingent of ten, arguing that this satisfied the numerical threshold in Paragraph 4 of the Tenth Schedule and therefore exempted them from disqualification.

##### 5.2 Approval by the Rajya Sabha Chairman

Within three days of the announcement, the Chairman of Rajya Sabha, Vice President C.P. Radhakrishnan, formally approve their the merger application. The

Rajya Sabha Secretariat issued an official notification, and the records of the Upper House were updated to reflect the seven MPs as members of the BJP's legislature party. The approval raised BJP's numerical strength in Rajya Sabha to 113.

The approval was granted even as the AAP, through its Rajya Sabha MP Sanjay Singh, submitted a disqualification petition against the seven MPs. Singh contended that the merger was unconstitutional under the Tenth Schedule and urged the Chairman to hear the matter expeditiously.

### 5.3 The Constitutional Controversy

The AAP-BJP merger immediately attracted sharp criticism from constitutional scholars, legal practitioners, and opposition politicians. The controversy centred on the interpretation of Paragraph 4 and whether the defection of seven MPs constituted a legitimate 'merger of parties' within the definition of the 10th Schedule.

#### 5.3.1 The Defectors' Argument

Seven MPs and their supporters argued that they had complied with the letter of Paragraph 4 by achieving the two-thirds threshold. Since seven of AAP's ten Rajya Sabha MPs had agreed to merger and the constitutional condition was met, and the disqualification provisions in Paragraph 2 were inapplicable. They drew an analogy with the Goa case of 2022, in which a similar legislature-party-level merger of Congress MLAs with the BJP had been upheld by the Bombay High Court's Goa Bench.

#### 5.3.2 Arguments Against Constitutionality

Critics advanced a powerful counter-argument rooted in the text and spirit of the Tenth Schedule. Senior advocate Kapil Sibal, retained by the AAP to advise on the matter, argued that the merger exception in 4th Paragraph expressly requires a merger at level of the original political party. He maintained that the merger must first occur between AAP and BJP as political parties, after which at least 2/3 of the members of legislature party may agree to it. The sequence cannot be reversed: a group of legislators cannot declare a merger and expect the Tenth Schedule to treat it as a genuine party merger.

Former Lok Sabha Secretary General P.D.T. Achary reinforced this view, noting that the provision was unambiguous: the merger must be between political parties, not between legislature party blocs. He distinguished the case from the Shiv Sena situation, where there had been an actual split in the party organisation that was later adjudicated by the Election Commission.

The Bar & Bench legal platform also pointed out that the 91st Amendment's deletion of the split exception carried an important implicit signal: Parliament had deliberately narrowed the escape routes from disqualification. Allowing a bloc of legislators to call their defection a merger, in the absence of any organisational merger at the party level, was equivalent to reintroducing the split exception through a judicial or quasi-judicial backdoor.

#### 5.4 Significance for Punjab

The political consequences of the defection extend well beyond the Rajya Sabha chamber. Six of the seven defecting MPs were elected from Punjab, where the AAP governs with a commanding assembly majority. Punjab is scheduled to go to the polls in 2027, and the defection is widely seen as an attempt by the BJP to fracture the AAP's political base in the state, establish a foothold in a region where it has historically struggled, and provide a national platform to prominent AAP figures who could serve as BJP faces in the Punjab campaign.

AAP responded by framing the defection as a betrayal of Punjab and its voters. Chief Minister Bhagwant Mann sought an appointment with the President of India to formally raise the constitutional issues arising from the merger. At the street level, protests were reported across several Punjab districts against the defecting MPs, with demonstrators characterising the move as a calculated abdication of the mandate given by the people of Punjab.

#### 5.5 Pending Legal Proceedings

As of the time of writing, the AAP's disqualification petition before the Rajya Sabha Chairman remains pending. Legal experts observe that even if the Chairman declines to disqualify the seven MPs, the AAP is entitled under its supervisory jurisdiction to approach Supreme Court, once a final decision has

been rendered. The case is likely to be consolidated with, or at minimum informed by, the Supreme Court forthcoming decision in the Goa's Congress MLAs' case (SLP(c) 5256/25), which poses virtually identical questions on the constitutional legitimacy of a legislature-party-level merger.

Kapil Sibal cautioned that defection cases in India's legal system routinely take years to reach finality, and that by the time a definitive judgment is pronounced, the political landscape may have changed beyond recognition, reducing the practical value of any legal remedy. This observation underscores the need for systemic reform rather than reliance on case-by-case litigation.

## VI. CRITICAL EVALUATION OF THE TENTH SCHEDULE

### 6.1 Successes

The 10th Schedule has unquestionably reduced frequency and brazenness of the floor-crossing that characterised the 1967-1971 era. Legislators can no longer switch parties on a whim without risking their seats in the legislature. The law has provided a degree of stability to coalition governments, making it more difficult for motivated outside actors to engineer the collapse of a government by purchasing the loyalty of individual members.

The 91st Amendment's deletion of the split exception further tightened the law. The prohibition on a defecting member holding a ministerial post was a meaningful step towards removing the most immediate financial incentive for defection.

### 6.2 Weaknesses and Abuses

Despite these achievements, the Tenth Schedule faces fundamental structural weaknesses. The most significant is the consigning the adjudicatory authority in the Speaker, a position that is itself political in nature. In practice, Speakers have routinely delayed or avoided deciding disqualification petitions when the defectors belong to the party that supports their own continuation in office. This institutional conflict of interest has been repeatedly highlighted by the Supreme Court but has not been constitutionally resolved.

The merger exception, as demonstrated by the Goa Congress case and the AAP-BJP Rajya Sabha case, remains a significant gap in the law. By achieving a two-thirds numerical threshold within a legislature party, a group of defectors can clothe what is substantively a defection in the legal garb of a merger, without requiring any actual organisational merger at the party level. The interpretation of Paragraph 4 adopted by some presiding officers effectively resurrects the split exception that Parliament deliberately abolished in 2003.

There is also a growing concern about the chilling effect of the anti-defection law on legislative independence. By mandating strict adherence to party directions on every vote, the law may prevent individual legislators from exercising genuine conscience votes on important issues and may concentrate excessive power in party leaderships, reducing Parliament to a rubber-stamp body rather than a genuine deliberative forum.

### 6.3 Reform Proposals

Several reform proposals have been advanced by constitutional experts, parliamentary committees, and judicial observations over the years:

- Transfer of adjudicatory authority to an independent tribunal, the Election Commission of India, or the Supreme Court itself rather than Speaker. This reform would address the most fundamental conflict-of-interest problem in the current structure.
- Strict timelines for deciding disqualification petitions, enforceable by judicial intervention if exceeded. The indefinite pendency of petitions effectively provides a shield for defectors.
- A restatement of Paragraph 4 to make explicit that only an organisational merger at the political party level, registered with the Election Commission, will satisfy the merger exception. This would close the legislature-party-level merger loophole.
- Limiting the anti-defection law to confidence votes and money bills, rather than every vote in the legislature, to restore a degree of legislative independence on non-critical matters.

## VII. CONCLUSION

The Tenth Schedule represents a landmark constitutional intervention in the architecture of Indian parliamentary democracy. By imposing legal consequences for political defection, it sought to protect the integrity of the electoral mandate and ensure that governments enjoy a degree of stability rooted in genuine legislative support rather than manufactured majorities assembled through the purchase of individual legislators.

However, as the April 2026 defection of seven AAP Rajya Sabha MPs to the BJP starkly illustrates, the law remains vulnerable to sophisticated circumvention. The merger exception in Paragraph 4 has become the preferred legal vehicle for organising what are, in substance, defections. The episode draws attention to a deeper structural problem: the lack of a genuinely independent adjudicatory mechanism has meant that the law's enforcement is hostage to the political interests of the presiding officer who decides disqualification petitions.

The AAP-BJP merger case is awaiting final resolution by the Supreme Court. Whichever way the Court decides, the episode has served as a powerful reminder that constitutional safeguards are only as robust as the institutional frameworks that implement them. Strengthening the Tenth Schedule, through clear textual amendments on the merger exception and the creation of an independent adjudicatory body, is an imperative for the health of India's parliamentary democracy.

Ultimately, democracy is built not solely on constitutional texts but on the ethical culture of political parties and their elected representatives. Anti-defection law can constrain the most egregious behaviour but cannot substitute for the political conscience that voters have every right to expect from those who seek to represent them.

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