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EDITORIAL ANALYSIS

# Rajya Sabha Defections and Constitutional Questions: Misreading the Tenth Schedule's Merger Exception

THE HINDU

27 May 2026 · POLITY · GS2

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# Rajya Sabha Defections and Constitutional Questions: Misreading the Tenth Schedule's Merger Exception

 The Hindu 27 May 2026 GS2



The Hindu

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## INTERVIEW ANGLE

*"If 7 of 10 AAP Rajya Sabha MPs can declare a "merger" with the BJP and escape disqualification under the Tenth Schedule, is the anti-defection law dead in practice — and is the Speaker/Chairman really the right neutral arbiter?"*

## THE HINDU

| Op-Ed | May 27, 2026

On  
**APRIL 24, 2026**

, 7 of 10 Aam Aadmi Party (AAP) Rajya Sabha MPs announced a merger of their **legislative-party group** with the **BJP**, invoking the “**two-thirds merger**” **exception** under the **Tenth Schedule** of the Constitution. The editorial argues that this is a misreading: the exception requires the **original political party** itself to merge — not just its parliamentary faction. It calls for **Supreme Court clarification** and **Election Commission scrutiny** to prevent the Tenth Schedule from being weaponised for engineered defections.

## THE ARGUMENT IN ONE LINE

The Tenth Schedule’s Paragraph 4 protects only **bona-fide party-to-party mergers** approved by the original political party; a legislative-faction-only “merger” without the original party dissolving or merging is a defection in disguise — and the Speaker/Chairman has a constitutional duty to disqualify, not legitimise, such moves.

## THE TENTH SCHEDULE — QUICK RECAP

ELEMENT	DETAIL
Inserted by	<b>52nd Constitutional Amendment Act, 1985</b>
Updated by	<b>91st Constitutional Amendment Act, 2003</b> (removed the “split exception” — one-third defection no longer permitted)
Disqualification triggers	(a) Voluntarily giving up party membership; (b) Voting/abstaining against party direction without prior permission; (c) Independent member joining a party; (d) Nominated member joining a party after 6 months
Adjudicating authority	<b>Speaker (Lok Sabha) / Chairman (Rajya Sabha)</b>
Judicial review	<b>Yes</b> — <i>Kihoto Hollohan</i> (1992) held the Speaker’s decision is subject to judicial review on constitutional grounds, but cannot be interfered with mid-process
The merger exception	<b>Paragraph 4</b> — disqualification does not apply if <b>two-thirds</b> of the <b>original political party</b> members agree to a merger

## THE KEY MISREADING

The 91st Amendment (2003) tightened the law by removing the “**split**” defence (one-third defection used to be protected; now eliminated). What remained is the **merger** defence — but with a crucial precondition.

WHAT THE TENTH SCHEDULE ACTUALLY REQUIRES	WHAT THE AAP-BJP CASE ALLEGEDLY DOES
The <b>original political party</b> must merge with another party	Only the <b>legislative party (the 7 MPs)</b> moves
Two-thirds of the <b>original political party’s</b> elected members must agree (the language is ambiguous and litigated, but the spirit is clear)	The party’s central leadership (Arvind Kejriwal et al.) is reportedly opposed; only the RS faction is acting
The merger must be a genuine organisational event, not a tactical floor-arrangement	The AAP organisation continues to function independently

The editorial’s central claim: a **legislative-faction-only merger** is not what Paragraph 4 protects.

## WHAT THE COURTS HAVE SAID

CASE	YEAR	HOLDING
<b>Kihoto Hollohan v. Zachillhu</b>	<b>1992</b>	Tenth Schedule constitutionally valid; Speaker's decision subject to judicial review (but not premature interference)
<b>Ravi S. Naik v. Union of India</b>	<b>1994</b>	"Voluntarily giving up membership" includes conduct (not just formal resignation)
<b>G. Viswanathan v. Hon'ble Speaker</b>	<b>1996</b>	Member expelled from party still bound by anti-defection law
<b>Rajendra Singh Rana v. Swami Prasad Maurya</b>	<b>2007</b>	Speaker cannot indefinitely delay disqualification decision
<b>Keisham Meghachandra Singh v. Speaker (Manipur)</b>	<b>2020</b>	Speaker should ordinarily decide within <b>3 months</b> ; Parliament may consider transferring this power to an independent tribunal
<b>Subhash Desai v. Maharashtra Governor (Shiv Sena case)</b>	<b>2023</b>	Election symbol decision by ECI is administrative; Speaker must apply original-party-list test for anti-defection

The *Subhash Desai* (Shiv Sena) and the more recent *Eknath Shinde* line are directly relevant: courts have insisted that the **identification of the "original political party"** is the threshold question for any merger/split claim.

## WHY THIS EDITORIAL NOW

### The April 24, 2026 Announcement

- **AAP Rajya Sabha strength:** 10 members.
- **The "merger" group:** 7 MPs (claim: two-thirds of the legislative faction).
- **BJP move:** accepted the merger; Rajya Sabha Chairman to adjudicate disqualification petitions.
- **Constitutional friction:** AAP central leadership disowned the merger; ECI dragged in to clarify "original party" identity.

## The Pattern, Not the Event

YEAR	EPISODE	OUTCOME
2017	Goa, Manipur — Congress legislators “joining” BJP	Most retained seats; anti-defection ineffective
2019	Karnataka — JDS-Congress floor-test collapse	17 MLAs resigned, re-elected on BJP ticket
2020	Madhya Pradesh — Scindia-led “merger” of Congress MLAs into BJP	Government changed; legal challenges petered out
2022	Maharashtra — Shinde faction “split” from Shiv Sena	ECI granted Shiv Sena symbol to Shinde; SC’s <i>Subhash Desai</i> added constraints
2025	Bihar — multiple smaller realignments under pressure	Speaker decisions delayed
<b>2026</b>	<b>AAP RS faction “merger” with BJP</b>	Under adjudication

The editorial reads these as a single pattern: **Paragraph 4 is being treated as a defection-laundering instrument.**

### WHAT THE EDITORIAL DEMANDS

DEMAND	RATIONALE
<b>SC clarification</b> on whether legislative-party-only mergers qualify	Settle the recurring question definitively
<b>ECI scrutiny</b> of “original political party” identity in real time	Prevent symbol/identity arbitrage
<b>Time-bound Speaker/Chairman decisions</b> (per <i>Keisham Meghachandra</i> )	End indefinite delays that effectively neuter the law
<b>Independent tribunal proposal</b>	Transfer adjudication from politically-elected presiding officers to a neutral body

### WIDER SIGNIFICANCE

- **Federalism + executive overreach** — defections used to engineer state-government changes erode federal balance.

- **Voter mandate dilution** — voters elect representatives on a party platform; mid-term realignments betray that mandate.
- **Legislature vs Executive** — defections weaken the legislature’s ability to hold the executive accountable.
- **Anti-defection law’s original goals** (Rajiv Gandhi era, 1985) — political stability, party discipline — are increasingly subordinated to short-term realignment politics.

## COUNTER-ARGUMENTS

COUNTER	SUBSTANCE
Free speech / conscience	Some defections reflect genuine ideological shifts; rigid anti-defection law muzzles dissent within parties
Whip excess	Anti-defection law strengthens party high commands and weakens individual legislators
Speaker neutrality	Critics argue the Speaker is structurally partisan; the case for an independent tribunal is strong
Merger ambiguity	The Tenth Schedule itself is ambiguous on “original political party” — judicial clarification is overdue

## WAY FORWARD

- **Constitutional amendment to define “original political party”** with reference to ECI registration.
- **Independent Anti-Defection Tribunal** with retired SC/HC judges — recommended by NCRWC (2002) and *Keisham Meghachandra* (2020).
- **Statutory time limit** (3 months) for Speaker decisions.
- **Limit the merger exception** to cases where the **organisational party itself merges**, recorded with the ECI.
- **Whip reform** — restrict the anti-defection whip’s reach to confidence motions and money bills only, freeing legislators on other votes (Dinesh Goswami Committee 1990; Halim Committee 2013).

## UPSC RELEVANCE

### GS Paper 2 — Polity & Governance:

- Indian Constitution — Schedules.
- Parliament and State legislatures — structure, functioning, conduct of business.

- Separation of powers between various organs.
- Salient features of the Representation of People's Act.

### Analytical hooks for Mains:

- Tenth Schedule's effectiveness — assess.
- Whether anti-defection adjudication should be transferred from Speaker to an independent tribunal.
- Federalism and the political-economy of defections.

### FACTS CORNER

Tenth Schedule inserted: 52nd Constitutional Amendment Act, 1985.

Strengthened: 91st Constitutional Amendment Act, 2003 (removed split exception).

Surviving exception: Paragraph 4 — two-thirds merger of the original political party.

Adjudication: Speaker (LS) / Chairman (RS) — subject to judicial review (*Kihoto Hollohan*, 1992).

Recommended time limit on Speaker decisions: 3 months (*Keisham Meghachandra*, 2020).

AAP–BJP RS “merger” announcement date: April 24, 2026 (7 of 10 AAP RS MPs).

NCRWC (Justice Venkatachaliah Commission), 2002 recommended an independent tribunal.

Dinesh Goswami Committee (1990) recommended limiting the whip's reach.

Subhash Desai v. Maharashtra Governor (2023) — Shiv Sena case; clarified Speaker must apply original-party-list test.

*Editorial source: The Hindu, May 27, 2026 | Cross-link: Daily SC SIR verdict, May 27, 2026*

Source: Rajya Sabha Defections and Constitutional Questions: Misreading the Tenth Schedule's Merger Exception — Ujyari.com | Free UPSC & State PCS Editorial Analysis

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