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EDITORIAL ANALYSIS

Merger as Defection: On the Hollowing of the Tenth Schedule

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Merger as Defection: On the Hollowing of the Tenth Schedule

 **The Hindu** 20 June 2026 **GS2**

Source: ujyari.com — researched, fact-checked & UPSC-mapped



INTERVIEW ANGLE

"If the merger exception is being misused, should the Tenth Schedule be amended to delete it, or is the deeper problem the Speaker's partisan role?"

Source: [Original editorial](#)  [The Hindu](#)

 **Every fact web-verified against primary sources** (<https://ujyari.com/how-we-verify/>)

WHY THIS MATTERS NOW

The anti-defection law (<https://ujyari.com/terms/anti-defection-law/>), embodied in the Tenth Schedule of the Constitution, was designed to stop legislators from selling their loyalty and toppling governments. Yet a steady stream of cases shows the law being defeated through its own merger exception, with two-thirds defections rebranded as legitimate mergers. Each such episode chips away at the principle that a voter's mandate belongs to the party they elected, not to a faction that switches sides for office.

THE CRUX IN 60 WORDS

The 52nd Amendment of 1985 created the Tenth Schedule to punish defection. The 91st Amendment of 2003 closed the split loophole but left the merger exception untouched. That exception now allows engineered defections to pass as mergers, while a partisan Speaker and delayed adjudication ensure defectors face no timely consequence. The deterrent has become a façade.

THE ISSUE, DECODED

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ELEMENT	WHAT IT IS	WHY IT MATTERS
Tenth Schedule	Anti-defection law (52nd Amendment, 1985)	Disqualifies legislators who defect
Split exception	One-third break-away, now deleted	Removed by 91st Amendment after misuse
Merger exception	Two-thirds merger, still valid	The surviving loophole being exploited
Speaker's role	Sole adjudicator of disqualification	Partisan control undermines neutrality
Kihoto Hollohan (1992)	Upheld law, allowed judicial review (https://ujivari.com/terms/judicial-review/)	Review only after decision, enabling delay

THE ANALYSIS: A LAW DEFEATED BY DESIGN

- 1 The merger exception was the weaker safeguard.** Lawmakers in 2003 recognised the split provision as a menace and deleted it, but left the structurally similar two-thirds merger route open, assuming genuine mergers were rare. Practice proved otherwise.
- 2 Engineering replaces conviction.** A faction that can muster two-thirds of a legislative party can simply declare a merger, immunising defectors. The arithmetic of office, not ideology, drives these moves.
- 3 The Speaker is the choke point.** As the sole adjudicator, a Speaker aligned with the ruling dispensation can decide selectively or delay indefinitely, and judicial review only kicks in after the decision is made.
- 4 Delay is the real weapon.** Because courts cannot intervene before a Speaker decides, a defecting bloc can govern through an entire term while the disqualification petition lingers, defeating the law's purpose without ever breaching its letter.

DATA AND INSTITUTIONS VAULT

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Inserted the Tenth Schedule (anti-defection law).

Deleted the one-third split exception; retained the two-thirds merger exception; capped Council of Ministers at 15 percent of House strength.

Upheld the Tenth Schedule; held the Speaker's decision is subject to judicial review but not before it is made.

Limited the Speaker's power to decide disqualification when a motion for the Speaker's own removal is pending.

THE DEBATE

The argument for retaining the merger exception is that a genuine two-thirds merger reflects the collective will of legislators and protects them from being trapped in a party that has fundamentally changed.

The argument against is that in practice the exception is almost never used for principled mergers and almost always for opportunistic defections that betray the voter's **mandate** (<https://ujivari.com/vocab/mandate/>).

The balanced verdict: the exception itself is defensible in theory, but its current form invites abuse. The remedy lies in tightening the merger test and fixing the adjudication process, not necessarily in deleting the route altogether.

HOW TO THINK ABOUT THIS (TRANSFERABLE SKILL)

When a law fails, ask whether the failure is in its text, its enforcement, or its incentives. The Tenth Schedule's text bans defection, but its enforcement rests with a conflicted adjudicator and its incentives reward delay.

Reform must target the binding constraint. Here the binding constraint is the combination of an exploitable exception and a partisan, slow adjudicator, so fixing only one will not work.

DIAGRAM-IN-WORDS

Two-thirds faction -> Declares merger -> Speaker delays decision -> Court reviews only after -> Term ends -> Defection succeeds

THE WAY FORWARD

- 1 **Tighten the merger test** to require a genuine, verifiable merger of organisations, not just a numerical bloc of legislators.

- 2 **Shift adjudication to an independent tribunal** or an Election Commission body, removing the Speaker's conflict of interest.
- 3 **Impose a strict statutory** (<https://ujyari.com/vocab/statutory/>) **timeline**, for example three months, for deciding disqualification petitions.
- 4 **Allow earlier judicial review** in cases of inordinate delay to prevent the term-long limbo.
- 5 **Consider deleting or recasting the merger exception** if abuse persists despite procedural fixes.

THE TAKEAWAY BOX

A flagship example of how a well-intentioned law can be subverted through structural loopholes and partisan enforcement.

“The deterrent has become a façade.”

Tenth Schedule, 52nd Amendment (1985), 91st Amendment (2003), Kihoto Hollohan, Nabam Rebia, two-thirds merger exception.

The Speaker's dual role as a party member and a neutral adjudicator raises a classic conflict-of-interest problem in public office.

Connects to past questions on the anti-defection law and the role of the Speaker.

Parliamentary democracy, role of presiding officers, electoral reforms, and constitutional amendments.

Sources: *The Hindu* (<https://www.thehindu.com/opinion/editorial/>), *PRS Legislative Research* (<https://prsindia.org/>)

Source: Merger as Defection: On the Hollowing of the Tenth Schedule — Ujyari.com | Free UPSC & State PCS Editorial Analysis

KEY ARGUMENTS AT A GLANCE

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The two-thirds merger exception in the Tenth Schedule is now routinely used to dress up engineered defections as mergers, hollowing out the anti-defection law.


SUPPORTING

- The 91st Amendment of 2003 deleted the one-third split exception but retained the merger route, leaving a usable loophole.
- The Speaker, often aligned with the ruling party, controls adjudication and timelines, weakening neutral enforcement.
- Courts in *Kihoto Hollohan* upheld the law but limited judicial review to post-decision scrutiny, allowing delay to defeat its purpose.


COUNTER

A genuine merger reflecting members will is a legitimate democratic act, and removing the exception could trap dissenting legislators in parties that no longer represent them.


WAY FORWARD

Tighten the merger test, shift adjudication to an independent tribunal, and impose strict timelines to prevent strategic delay.


MAINS ANSWER FRAMEWORK

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QUESTION

'The anti-defection law was meant to ensure stability, but its merger exception has become a loophole. Critically examine the working of the Tenth Schedule and suggest reforms. (250 words)'

INTRODUCTION

The Tenth Schedule was inserted by the 52nd Amendment in 1985 to curb the menace of political defection. Four decades on, its merger exception has become the very instrument of the malaise it sought to cure.

BODY

The original law allowed two escape routes: a split by one-third of a legislative party and a merger by two-thirds. The 91st Amendment in 2003 deleted the split provision after rampant misuse, but kept the merger exception intact.

Today, factions engineer the defection of two-thirds of a party and present it as a merger, immunising defectors from disqualification. The structural weakness is compounded by the Speaker's role as adjudicator.

In *Kihoto Hollohan* the Supreme Court upheld the law and made the Speaker's decision subject to judicial review, but only after it is made, so deliberate delay can keep a defecting bloc in power for years. The *Nabam* *Rebia* line of cases further muddled the Speaker's authority when a removal motion is pending. The cumulative effect is that the law deters individual defection while licensing wholesale defection disguised as merger.

CONCLUSION

The anti-defection law cannot survive as a deterrent if its largest loophole remains open. Reforming the merger test, depoliticising adjudication, and enforcing timelines are essential to restore its original purpose.


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