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IN THE SUPREME COURT OF INDIA
[Civil Original Jurisdiction]

Writ Petition (PIL) (C) No. _____ of 2026
(Under Article 32 of the Constitution of India)

IN THE MATTER OF:
KAPIL SIBAL

...Petitioner

Versus

UNION OF INDIA

WRIT PETITION UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA, IN THE NATURE OF A PUBLIC INTEREST LITIGATION, SEEKING A DECLARATION THAT PARA 4 OF THE TENTH SCHEDULE TO THE CONSTITUTION DOES NOT IMPLY THAT 2/3RD OF THE LEGISLATIVE PARTY CAN AVOID DISQUALIFICATION BY ANY “DEEMED MERGER” WHEN THE MAJORITY OF THE POLITICAL PARTY HAS NOT MERGED OR MADE ANY ATTEMPTS TO MERGE WITH ANOTHER POLITICAL PARTY. THIS IS IN VIOLATION OF ARTICLES 14, 19 AND 21 OF THE CONSTITUTION OF INDIA.

To

The Hon’ble Chief Justice of India

And his Lordship's Companion Justices of the
Hon'ble Supreme Court of India,

This humble petition of the Petitioner

MOST RESPECTFULLY SHOWETH:

1. This public interest litigation is filed under Article 32 of the Constitution of India, seeking a declaration that Para 4 of the Tenth Schedule to the Constitution does not imply that 2/3rd of the legislative party can avoid disqualification by any "deemed merger" when the majority of the political party has not merged or made any attempts to merge with another political party. This interpretation allows legislators or groups of legislators to switch from the political party upon whose symbol they have been elected, and become members of a different, existing political party without the disqualification that is prescribed for defectors under the Tenth Schedule.

DESCRIPTION OF PARTIES

2. The Petitioner is a senior advocate who has practiced before this Court since 1973. He has been a Parliamentarian elected to the Lok Sabha and the Rajya Sabha affiliated with the INC. He is currently an independent member of the Rajya Sabha. He is filing this Petition in the interest of preserving and protecting the democratic system in this country.

The necessary details of the petitioner who is approaching this Hon'ble Court are as follows:

i.	Name	Kapil Sibal
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ii.	Father's Name	Late Shri Hira Lal Sibal
iii.	Address	
iv.	Occupation	Advocate
v.	Annual Income	
vi.	Email	_____
vii.	Mobile No.	
viii.	PAN Number	
ix.	Aadhar No.	
x.	That the petitioner does not have any personal interest, gain or motive or any other oblique reason in filing the accompanying petition in Public Interest.	
xi.	The petitioner is neither involved in any civil, criminal or revenue litigation nor has any legal nexus with the issue involved in the accompanying petition in public interest.	
xii.	The petitioner has not moved any concerned government authority for the relief(s) sought in the present petition.	

BACKGROUND AND MAINTAINABILITY

3. This Petition has been preferred praying that this Hon'ble Court reads down Para 4 of the Tenth Schedule of the Constitution to avoid an interpretation that is in serious violation of the basic structure of the Constitution insofar as it has enabled in practice a

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political culture of encouraging wholesale defections, unprincipled breaking up of political parties and horse trading that leads to overturning the democratic mandate by illegitimate means. This is destructive of democratic accountability and integrity and has made a mockery of the purpose of the remainder of the Tenth Schedule- it has become clear over time that this interpretation makes sure that the exception has eaten the rule. As an enabler of large-scale corruption and the perversion of the rule of law, the interpretation must be held to be incorrect.

4. This Petition is maintainable under Article 32 for the following reasons:

- 4.1 The prayers seek for judicial protection of the Basic Structure of the Constitution by the reading down of a provision that permits large scale defections that seriously impair elections and the integrity of representative party based democracy, which is part of the Basic Structure of the Constitution.

- 4.2 The Tenth Schedule has been manifestly unsuccessful in its bid to end defections and protect electoral integrity due to the exceptions in the Tenth Schedule that have eaten the rule in its entirety. In the last decade or so alone there has been a cascade of political defections that have been engineered in legislative assemblies across the country and even in Parliament. The menace is only increasing in scale and scope. State governments in Goa, Arunachal Pradesh, Karnataka, Andhra Pradesh, Madhya Pradesh, and Maharashtra have been toppled or stopped from being formed due to large scale defections from members who were elected on one party's symbol but immediately after election or a short duration after shift parties and are richly rewarded for the same by

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the new dispensation. In the last few years, the BSP, Congress, Shiv Sena, the NCP, and others have all been split or merged in assemblies or in Parliament to alter, by shenanigans, the will of the people as expressed in free elections.

Although the anti-defection exception for party splits was deleted in 2003, the deemed merger provision in Para 4(2) has enabled the same result as the split. In fact, this is worse than splits because it allows the members to dictate terms to avoid disqualification without any decision on the merger by any authority that meaningfully represents the *political* party.

This abuse is writ large over the political landscape. Merging with a party without any legislators worsens the abuse. It is obvious that it is merely a stratagem to avoid disqualification because joining the party against whom legislators contested vociferously cannot be justified to their constituents. It would reduce the political cost to merge with a ghost party, essentially take it over and then align closely with the government, against whom they just concluded an election contest. Such a stratagem would only serve to increase the attractiveness of Para 4 as a loophole.

4.3 Defections and horse trading have long been recognised as a danger to the integrity of the democratic system. The Tenth Schedule was enacted to protect the basic structure and was upheld by this Court for the same reason. The judgments of this Court in **SR Bommai** [(1994) 3 SCC 1], **Kihoto Hollohan** [1992 Supp (2) SCC 651], **Kuldip Nayar** [(2006) 7 SCC 1] and **Rameshwar Prasad v. Union of India** [(2006) 2 SCC 1] each deal with the dangers of opportunistic defections to the democratic process and the need for a neutral and efficient adjudication of disputes. An incorrect

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interpretation of Para 4 has demonstrably made the mischief Schedule Ten was designed to solve worse.

4.4 The current splits/ mergers in political parties are in fact worse than the splits that took place prior to 1985 and have seriously degraded the democratic system. Defections of up to 2/3rd of the legislative strength of a party in a house immunise such defections from disqualification. In case of parties with a small number of legislators or in states with smaller houses, this is easier to engineer. Most unfortunately, the fears of the dissent in **Kihoto Hollohon** about partisan conduct from the speaker, have been prescient and the majority hope for neutral adjudication now appears misplaced- This court has consistently upbraided speakers who have not decided the disqualification in time or have rendered decisions that were manifestly incorrect requiring correction by this Court. The Petitioner submits that the root of this political mischief is Para 4 of the Tenth Schedule.

4.5 The judgement in **Kihoto Hollohon** does not stand in the way of the present petition. First, the Petition argues in favor of the anti defection law and seeks the striking of an exception and thus supports the main holding in **Kihoto Hollohon**. Second, the exception in para 4 dealing with mergers (along with splits) was only discussed in the judgement as part of the Tenth Schedule to highlight the internal inconsistency of the law, which was rejected as the Court, per majority, found the presumption of the legislature was valid. Third, splits in parties have already been deleted to protect the integrity of the law thereby reducing the efficacy of the discussion in the judgement. Fourthly unlike in 1992, the court has a well recorded and widely acknowledged history before it to show how Para 4 has made the problem the Tenth Schedule was

designed to protect even worse. Fifthly, the majority had acknowledged, as does this Petitioner, that anti defection law is complex but the law was upheld on the basis of supporting “legislative determination through experimental constitutional processes”, as the majority judgement stated in Para 32. As such, now that the results of this experiment are clear, this petition deals with the actual effect and not the presumptions that the court dealt with in **Kihoto Hollohan**. Sixthly, the law of basic structure has evolved since the judgement and the law must be considered in the light of the judgements in *IR Coelho*, *Rameshwar Prasad* and above all in *Raja Ram Pal*’s case, in addition to the abuse of Para 4 identified in a plethora of judgements such as **Kuldeep Bishnoi’s case** [(2015) 12 SCC 381], **Subhash Desai v. Principal Secretary** [(2024) 2 SCC 719] and others. Seventhly, the current challenge as an “applied” challenge which is distinct from a facial challenge. In **Kihoto Hollohon**, the Tenth Schedule was challenged and was upheld on the basis of legislative assumptions that led to its enactment, which the court held were not arbitrary. This current challenge is based on how para 4 of the Tenth Schedule has been applied (and abused) showing the invalidity of such assumptions.

4.6 This is a matter of grave constitutional importance that merits the immediate attention of this Court.

5. Briefly put the facts of the case are as below:

5.1 The Constitution was adopted in 1950 after the Constituent Assembly, after much learned debate and discussion, found that the Westminster style representative democracy was the most suitable form of government for India. The system is based on elections for the election of representatives. Representatives or

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legislators are mostly members of political parties. They fight elections on the symbol of such a party, using their resources, fighting on their manifesto and most importantly present themselves as members of political parties to the electorate. In the initial years of the republic, political defections were rarer, mostly individual focussed and seldom aimed at toppling governments. Apart from the high standards of the founding fathers, the electoral dominance of the Congress would have also made such shenanigans pointless.

5.2 In the 1967 election. When Congress lost several state governments, defections for reasons of engineering governments emerged as a concept. On December 8, 1967, the Lok Sabha had passed an unanimous Resolution stating:

“[A] high-level Committee consisting of representatives of political parties and constitutional experts be set up immediately by government to consider the problem of legislators changing their allegiance from one party to another and their frequent crossing of the floor in all its aspects and make recommendations in this regard.”

5.3 The “Committee on Defections” in its report dated January 7, 1969, inter alia, observed:

“Following the Fourth General Election, in the short period between March 1967 and February 1968, the Indian political scene was characterised by numerous instances of change of party allegiance by legislators in several States. Compared to roughly 542 cases in the entire period between the First and Fourth General Election, at least 438 defections occurred in these 12 months alone. Among

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Independents, 157 out of a total of 376 elected joined various parties in this period. That the lure of office played a dominant part in decisions of legislators to defect was obvious from the fact that out of 210 defecting legislators of the States of Bihar, Haryana, Madhya Pradesh, Punjab, Rajasthan, Uttar Pradesh and West Bengal, 116 were included in the Council of Ministers which they helped to bring into being by defections. The other disturbing features of this phenomenon were: multiple acts of defections by the same person or set of persons (Haryana affording a conspicuous example); few resignations of the membership of the legislature or explanations by individual defectors, indifference on the part of defectors to political proprieties, constituency preference or public opinion; and the belief held by the people and expressed in the press that corruption and bribery were behind some of these defections.”

5.4 Keeping in view the recommendations of the Committee on Defections, the Constitution (Thirty-second Amendment) Bill, 1973 was introduced in the Lok Sabha on May 16, 1973. It provided for disqualifying a Member from continuing as a Member of either House of Parliament or the State Legislature on his voluntarily giving up his membership of the political party by which he was set up as a candidate at such election or of which he became a Member after such election, or on his voting or abstaining from voting in such House contrary to any direction issued by such political party or by any person or authority authorised by it in this behalf without obtaining prior permission of such party, person or authority. The said Bill, however, lapsed

on account of dissolution of the House. Thereafter, the Constitution (Forty-eighth Amendment) Bill, 1979 was introduced in the Lok Sabha which also contained similar provisions for disqualification on the ground of defection. This Bill also lapsed and it was followed by the Bill which was enacted into the Constitution (Fifty-second Amendment) Act, 1985.

5.5 The Tenth Schedule was enacted pursuant to the Fifty Second Amendment in 1985. It provided for disqualification of members who defected in para 2. Para 3 provided for an exception in case of a party split. Para 4 provided for an exception for mergers while Para 5 provided for an exception for speakers. Para 6 referred disqualification proceedings to the authority of the speaker. Para 7 barred courts from taking cognizance of Tenth Schedule offences.

5.6 The Constitutional validity of the Tenth Schedule was challenged in **Kihoto Hollohon**. The bar on the courts taking cognizance was struck down in the light of Keshav Singh's case (Presidential Reference of 1964) but the remaining provisions were upheld by a 3:2 majority.

5.7 In 2003, by Constitutional amendment Para 3 which provided for an exception to disqualification in case of split of a political party was deleted from the Tenth Schedule. Thus "mergers" in Para 4 were the only exception that exempted large groups of legislators from disqualification in case of defections.

5.8 Political parties have cynically used the "merger" exception to tamper with the election results resulting in various state governments being toppled. This Court in various judgments, such as **SR Bommai** [(1994) 3 SCC 1], **Rameshwar Prasad** [(2006) 2 SCC 1] and others, has come

down heavily on Governors and speakers of legislative houses when they have interfered in government formation or toppling in exercise of their powers. The basis of all of this action is defection of legislators from the party under whose symbol they have been elected. Such defections have happened with the lure of ministership, political office, power as well as allegedly bribes.

5.9 Since the judgement in Kihoto Hollohan, the use and abuse of Para 4(2) can be understood from the table below:

Year	House	Original party	Party joined	Numbers	Para 4(2) invoked ?	Outcome on disqualification	Judicial status
2009	Rajasthan Legislative Assembly	BSP	Congress	6/6 MLAs (100%)	Yes	Speaker recognized merger; no disqualification	High Court did not decide merits; issue resurfaced before Supreme Court in 2020 without a conclusive ruling.
2016	Telangana Legislative Assembly	TDP	TRS (now BRS)	12/15 MLAs (80%)	Yes	Speaker recognized merger; no disqualification	Recognition remained; no authoritative SC ruling on Para 4 interpretation.
2019	Rajya Sabha	TDP	BJP	4/6 MPs (66.7%)	Yes	Chairman recognized merger; no	No court judgment settling legality;

						disqualification	important parliamentary precedent.
2019	Goa Legislative Assembly	Congress	BJP	10/15 MLAs (66.7%)	Yes	Speaker recognized merger; no disqualification	Recognition challenged; litigation followed but no definitive Supreme Court interpretation of Para 4.
2019	Telangana Legislative Assembly	Congress	TRS	12/19 MLAs (63%)	Attempted	Speaker recognized merger despite being below two-thirds by the original strength; decision highly controversial	Matter litigated; constitutional issues remain debated.
2021	Andhra Pradesh Legislative Council	TDP	YSR Congress	4/6 MLCs (66.7%)	Yes	Chairman recognized merger; no disqualification	Challenged before Andhra Pradesh High Court; no final SC ruling.
2022–23	Maharashtra Legislative Assembly	Shiv Sena	Shinde faction (later allied with BJP)	40/55+ MLAs	Argued by Shinde faction, but not as a classic merger	Ultimately not decided under Paragraph 4 ; dispute turned on which faction was the "real" Shiv Sena	Supreme Court and Speaker proceedings focused on party identity rather than merger.

2026	Rajya Sabha	AAP	BJP	7/10 MPs (70%)	Yes	Chairman recognized merger; no disqualification	Constitutional challenge pending; directly raises whether merger of the original political party is also required.
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These examples, widely discussed in the news and resulting in a slew of judgements, have caused damage to the basic structure of our Constitution by direct interference with the mandate of the people. Some recent examples make the scope of the problem clearer

Rajasthan BSP MLA merging with Congress (2009)

On 4 April 2009, all six BSP MLAs in the Rajasthan Legislative Assembly (100% of the BSP legislature party) adopted a resolution declaring that the BSP Legislature Party had merged with the Congress Legislature Party and submitted the resolution and affidavits to Speaker Deependra Singh Shekhawat seeking recognition under the merger exception in Paragraph 4 of the Tenth Schedule; on 9 April 2009, the Speaker accepted the request and recognized them as Congress MLAs, thereby protecting them from disqualification. The MLAs' legal justification rested on Paragraph 4(2), contending that because the entire BSP legislature party—well above the required two-thirds threshold—had agreed to the merger, a deemed merger had occurred for purposes of the anti-defection law. The BSP and other challengers argued that this was constitutionally impermissible because the original Bahujan

Samaj Party had never merged with the Congress, and that Paragraph 4(1) requires a merger of the original political party before the deeming fiction in Paragraph 4(2) can operate. The Speaker's decision was challenged before the Rajasthan High Court, but the court declined to interfere on the merits, allowing the recognition to stand, and the issue later resurfaced before the Supreme Court during the 2020 Rajasthan political crisis. Consequently, the Rajasthan BSP case remains one of the earliest and most influential precedents in which a presiding officer accepted the view that the agreement of at least two-thirds of a legislature party was sufficient to invoke the merger exception despite the continued existence of the original political party, a constitutional question that has yet to be conclusively settled by the Supreme Court.

Congress MLA merger in Goa (2019)

On 10 July 2019, 10 of the 15 Congress MLAs in the Goa Legislative Assembly (exactly the two-thirds required under the Tenth Schedule) adopted a resolution declaring that the Congress Legislature Party had merged with the BJP Legislature Party and submitted it to Speaker Rajesh Patnekar, seeking protection from disqualification under the merger exception in Paragraph 4 of the Tenth Schedule. The Speaker recognized the merger the same day, treating the ten MLAs as BJP legislators and holding that the numerical requirement in Paragraph 4(2) had been satisfied, thereby shielding them from disqualification. The Congress challenged the decision before the Bombay High Court (Goa Bench), arguing that Paragraph 4 requires a merger of the original political party and that the Indian National Congress had never merged with the BJP, while the MLAs contended that the

agreement of at least two-thirds of the legislature party created a deemed merger sufficient to attract Paragraph 4. In 2022, the Bombay High Court upheld the Speaker's decision, holding that the requirements of Paragraph 4 had been met and rejecting the disqualification challenge. The issues raised in the matter are pending adjudication before this Hon'ble Court.

THE HISTORY OF THE ANTI-DEFECTION LAW IN INDIA

6. The practice of political defections is almost as old as the Republic. It reached its peak in the late-1960s, where crossing the floor and “horse-trading” became extremely common, to the point where legislators were known to cross the floor twice in a single day (this was colloquially known as “*aya ram, gaya ram politics*.”)
7. Legislative attempts to address political defections, which began in the 1960s, culminated in the introduction of the 10th Schedule to the Indian Constitution, in 1985. In essence, the 10th Schedule provided that:
 - a. If a member voted against the party whip, or voluntarily relinquished the membership of their political party, they would be subject to disqualification from the House;
 - b. The two exceptions to this were a “split” and a “merger” (defined as 2/3 or more of a party choosing to “merge” with another party).
 - c. Disqualification proceedings were to be adjudicated by the Speaker of the House, acting as quasi-judicial tribunal.

8. The constitutional validity of the 10th Schedule was challenged before this Hon'ble Court in **Kihoto Hollohan vs Zachillhu**, primarily on the grounds that it violated the basic structure, and prevented legislators from exercising their individual conscience. In **Kihoto Hollohan**, a Constitution Bench of the Supreme Court upheld the 10th Schedule (other than paragraph 7, which excluded judicial review), *inter alia*, on the ground that legislators were predominantly elected by virtue of their association with, and membership of, a *political party*, and without the ability to enforce party discipline, the party system itself could not last.
9. Despite the introduction of the 10th Schedule, it was found that the practice of political defections had not ceased. In particular, the “split” exception was used to engineer mass defections from political parties, and defeat the purposes of the 10th Schedule.
10. Accordingly, in 2005, through a constitutional amendment, paragraph 3 of the 10th Schedule was deleted, and the concept of the “split” was removed. However, the provisions for “merger” remained.
11. In the years since 2005, it has been observed that on many occasions, the provisions for “merger” are now weaponised to accomplish what was earlier accomplished through splits: that is, the engineering of mass defections and the wholesale breaking of political parties, in order to get around the rigours of the Tenth Schedule.

THE PRINCIPLES OF PARLIAMENTARY DEMOCRACY

12. It is well-established that parliamentary democracy is a basic feature of the Indian Constitution.

13. During the Constituent Assembly Debates, the framers of the Constitution, after significant debate, chose parliamentary democracy over alternative models like Presidential or semi-Presidential democracy.
14. At the heart of the model of parliamentary democracy is a relationship of accountability between the executive and the legislature. The executive is responsible and answerable to the legislature. This accountability takes place through the legislature's powers of law-making, of debate and deliberation, and of oversight over the executive's functioning.
15. It is obvious that for parliamentary democracy to be effective, there must exist a multi-party system where parties of the opposition regularly scrutinise, debate, and oversee the decisions of the political executive.
16. Furthermore, parliamentary democracy is constituency-based: constituencies elect legislators to *represent* them in the legislature. Predominantly, candidates for election stand, contest, and solicit votes in the name of a political party; thus, as noted in **Kihoto Hollohan**, a representative in the parliamentary system plays a dual role: they represent the interests of their constituents in the House, but also, they are members of the House *qua* members of political parties, on whose platforms they have been elected to the House.

THE ROLE OF THE POLITICAL PARTY

17. It is therefore clear that the political party is a vital and indispensable component of parliamentary democracy.

18. Political parties perform at least three critical functions within parliamentary democracy.
19. *First*, they serve as vehicles that can aggregate and refine the political preferences of the citizenry. Political parties put out manifestoes before elections, which serve as statements of their ideological orientation, and the policy goals they will seek to accomplish, should they be voted into office. These manifestoes aggregate a range of political preferences and beliefs held by citizens, into a coherent form.
20. *Secondly*, political parties in a multi-party democracy ensure *representation* of a range of opinion. While law-making is the preserve of the majority and often initiated by the executive, the functions of Parliament - ensuring public debate, scrutiny, and oversight of the executive - are designed to provide space for a diverse set of views, as filtered through legislators. This is vital for the flourishing of parliamentary democracy.
21. And *third*, political parties ensure that in every election, citizens themselves are provided with a set of distinct ideological and policy-based prescriptions to choose between. Political parties thus ensure that the element of *choice* in parliamentary democracy is effective.
22. It is therefore clear that the *internal coherence* of political parties is a *sine qua non* for parliamentary democracy. A legal framework that facilitates - or enables - mass defections is inconsistent with the fundamentals of parliamentary democracy. Furthermore, since political parties present the ideological platform that voters select and endorse through their vote, defection *from one political party*

to another is fundamentally inconsistent with the basic rationale for voting in a parliamentary democracy.

23. GROUND

- A. BECAUSE Paragraph 4 of the Tenth Schedule ought not to be interpreted in a way that immunises, legitimises, and facilitates the practice of mass defections, which is antithetical to the principles of parliamentary democracy, representation, and the rule of law, each of which is a basic feature of the Constitution.
- B. BECAUSE Para 4(1) and (2) ought to be read harmoniously and in keeping with the true purpose and intent of the Tenth Schedule. The requirement of law is that a majority of a political party **and** $\frac{2}{3}$ of its legislative party members must agree to the merger. Agreement of $\frac{2}{3}$ of the legislative party membership is a necessary but not sufficient condition for the use of Para 4 to avoid disqualification.
- C. BECAUSE Para 4 cannot be read to mean that the requirement of the merger of the political party to avoid disqualification is reduced merely to the merger of the legislative party, which is contrary to the words and the intent of the Tenth Schedule.
- D. BECAUSE any other interpretation of Para 4 would be contrary to the basic structure of the Constitution and would allow an exception to eat the rule of the Tenth Schedule.
- E. BECAUSE allowing only a majority of the elected members to determine the fate of the political party is unfair, contrary to most party constitutions and against the basic concept of

accountability in political parties. Elected representatives are an important part of a political party but cannot be confused with the entirety of the party.

- F. BECAUSE this Hon'ble Court has clearly recognised the distinction between a political party and a legislative party and this distinction is of paramount importance in interpreting Para 4 of the Tenth Schedule.
- G. BECAUSE the “mergers” sought to be insulated from Tenth Schedule disqualifications are mergers of whole parties not legislative parties in particular chambers. Any other interpretation would make redundant the deletion of splits by Constitutional amendment in 2003. For purposes of Para 4, the party must merge as a whole or not at all.
- H. BECAUSE merger of parties cannot be assumed when their independent existence is a fact. Any presumption of law that deems that the Congress and BJP have merged, or the TDP and YSR Congress have merged is an absurdity that cannot be allowed to stand.
- I. **BECAUSE** the only authority with jurisdiction to determine the fact of merger of a political party is the Election Commission under Paragraph 15 of the Election Symbols (Reservation and Allotment) Order, 1968. The authority of the Speaker under Schedule X is limited to the issue of disqualification of members. To the extent this disqualification can be stopped due to reliance upon Para 4, the Speaker is obliged to deal with the issue of merger. However, unless it is agreed between both the merging political parties that a merger has taken place, the Speaker

does not have the authority to determine the fact of the merger of a political party as a whole — the only authority capable of doing so is the Election Commission. Even otherwise, the Speaker ought not to decide the issue of merger only on account of Para 4(2), which provides a necessary but not sufficient precondition for the merger of a political party by way of a legal fiction. No determination about the merger of any political party can take place without an inquiry by the Election Commission based on consideration of all relevant factors to establish such merger — such as the mechanisms prescribed under the party constitution, meetings held where proposals to merger have been discussed, any vote taken by party members, and such other evidence as may be relevant. In this regard, the test laid down by this Court in *Sadiq Ali v. Election Commission of India* (1972) 4 SCC 664 for splits applies *a fortiori* for mergers as well.

- J. BECAUSE Para 4 requires merger of the Political Party not merely the Legislative Party. The Legislative Party is a subset of the political party and not substitutable for the same. No interpretation can be preferred that renders the distinction between the two to be redundant. A legislative party is a faction of the party and cannot have a veto over the right of the political party to have defectors disqualified.
- K. BECAUSE the *vehicle* of representation and the *channel* of popular aspiration in a parliamentary democracy is the *political party*. Political parties play the indispensable role of constituting the bridge between citizens and the State, aggregating, refining, and platforming the ideological and policy preferences of citizens, and entrenching the checks and

balances within the House upon the political executive. To perform these functions, the *integrity* and *internal coherence* of political parties must be safeguarded within the Constitution. Reading Paragraph 4 of the 10th Schedule undermines that integrity and coherence, and therefore violates the basic structure of the Constitution.

- L. BECAUSE the centrality of political parties to the democratic scheme within the Constitution was affirmed by this Hon'ble Court in **Kihoto Hollohan vs Zachillhu**, when the constitutionality of the 10th Schedule, as a whole was challenged. This Hon'ble Court, in upholding the anti-defection law as a matter of principle, made it clear that, predominantly, representatives stand, and are elected on, the symbol of a *political party*; consequently, a representative in Parliament has a duty both to their constituents *and to the political party that was responsible for their candidature*. This Hon'ble Court's decision to uphold the anti-defection law was, in the final analysis, grounded upon the need for maintaining the coherence and viability of *political parties*, both of which would be under threat through defections.
- M. BECAUSE, as far as the provisions on mergers and splits went, although these were not directly challenged on the grounds set out in the present petition, a contention was raised in **Kihoto Hollohan** that the seeming distinction between "individual defection" (subject to disqualification) and the defection of two-thirds or more of the party (immunised through the splits and mergers provisions) was arbitrary. In repelling the arbitrariness challenge, this Hon'ble Court drew a distinction between unprincipled individual defections and

genuine ideological dissent. While Petitioner does not contest the validity of the distinction, it is respectfully submitted that in **Kihoto Hollohan**, the argument was not made - and thus not adjudicated - that *ideological dissent does not equate to switching to a rival political party*. It is respectfully submitted that while “genuine ideological dissent” may justify a legislator leaving their party (for which provisions in the 10th Schedule exist), it can by no means be credibly argued that *switching* between political parties - especially those that occupy opposite ends of the House - amounts to an expression of “genuine ideological dissent.”

- N. BECAUSE, on the contrary, if a legislator has been elected on the ticket and the ideological platform of a specific political party, then the entire purpose of the legislator being to *represent the platform that the citizens have voted them in to represent* is defeated; this strikes at the heart of a core principle of representative democracy.
- O. BECAUSE, likewise, the facilitation of mass defections undermines the internal coherence and even the existence of political parties, and thus undermines the basic structure.
- P. BECAUSE this logic was recognised by Parliament itself when, in 2005, it deleted the “split” provision from the 10th Schedule. This deletion was undertaken especially in recognition of the practice of mass defections that had been going on in order to defeat the provisions of the 10th Schedule.
- Q. BECAUSE, after the deletion of the “split” provision, the 10th Schedule is at war with itself: while it does not recognise

or immunise a two-thirds legislative party majority that *merely* splits from the original party, it does recognise and immunise a situation where that two-thirds *joins* another party, and switches the symbol that it bears allegiance to. This is a patently absurd state of affairs, where leaving the party *simpliciter* will attract the anti-defection law, but *joining another political party will not*.

- R. BECAUSE, it is respectfully submitted that after the deletion of the “split” provision, the entire logic that the 10th Schedule must protect “genuine ideological dissent” - measured by the numerical threshold of 2/3rds - is no longer tenable.
- S. BECAUSE while legislators are entitled - and indeed, should be able - to articulate ideological dissent with their political party, *within the context of party-based parliamentary democracy*, where candidates stand - and are elected - *on the ideological platforms* of their parties - the only normatively acceptable way in which this dissent may be articulated is through relinquishment of one’s seat in the legislature, and then re-contesting the said seat on the ideological platform that the candidate in question wishes to espouse.
- T. BECAUSE it is respectfully submitted that this is the guiding principle of the 10th Schedule, as was noted by this Hon’ble Court in **Kihoto Hollohan**; the deletion of the “split” provision has robbed paragraph 4 of any coherent countervailing logic.
- U. BECAUSE the 10th Schedule identified a serious rule-of-law problem: the engineering of defections using incentives such as money or ministerial posts, and threats such as blackmail.

After attempting to address the problem, however, the same 10th Schedule provided loopholes that would simply bring it back in another form; it is evident that one of those loopholes was the merger provision.

- V. BECAUSE it is respectfully submitted that not only does the 10th Schedule operate to the detriment of political parties, it operates *asymmetrically*. For example, in the context of a state, it will be the ruling party that will be able to offer incentives such as ministerial posts; similarly, it will be the ruling party that has control over the state investigative agencies. The merger exception, therefore, serves to further entrench ruling parties, and further denude opposition parties of their presence in the House. This has the effect of demolishing the checks and balances that are at the heart of parliamentary democracy.
- W. BECAUSE this also has a federal dimension: the ruling party at the centre commands vast resources, and also controls central investigative agencies. Loopholes within the Tenth Schedule operate asymmetrically in that they allow the ruling party at the centre - whichever party that might be - to intervene and distort party composition in state legislatures, through the engineering of mass defections.
- X. BECAUSE these are not hypothetical scenarios, but have - and continue to - happen; this Hon'ble Court may take judicial notice of the same.
- Y. BECAUSE, during the Constituent Assembly Debates, the Constituent Assembly explicitly rejected provisions that would have vested *direct* control over legislators within their

constituents, such as instruments of instruction or the right to recall. There is, therefore, no method - *until the next election* - through which citizens can hold legislators responsible for defeating their mandate. The Constituent Assembly believed that any such check would have to be *institutional* in nature, coming from within the established institutions of representative and parliamentary democracy. The 10th Schedule provides the mechanism for such a check.

- Z. BECAUSE, it is respectfully submitted that the absence of instruments of instruction or a right to recall strengthens the case for a complete prohibition of defections, whether it is individual defection, a so-called “split,” or a so-called “merger.” In fact, **Kihoto Hollohan** specifically affirms this in Para 49 of the judgement which reads:

“49. Indeed, in a sense an anti-defection law is a statutory variant of its moral principle and justification underlying the power of recall. What might justify a provision for recall would justify a provision for disqualification for defection. Unprincipled defection is a political and social evil. It is perceived as such by the legislature. People, apparently, have grown distrustful of the emotive political exultations that such floor-crossings belong to the sacred area of freedom of conscience, or of the right to dissent or of intellectual freedom. The anti-defection law seeks to recognise the practical need to place the proprieties of political and personal conduct — whose awkward erosion and grotesque manifestations have been the bane of the times — above certain theoretical assumptions which in reality have fallen into a morass of personal and political

degradation. We should, we think, defer to this legislative wisdom and perception. The choices in constitutional adjudications quite clearly indicate the need for such deference. “Let the end be legitimate, let it be within the scope of the Constitution and all means which are appropriate, which are adopted to that end” are constitutional. [*Katzenbach v. Morgan*, 384 US 641 : 16 L Ed 2d 828 (1966)]

- AA. BECAUSE the merger provision ensures that political parties with wealth or with control over the levers of State are in a position to “break” political parties that do not have either; this skews the level-playing field of democracy, and entrenches incumbents to an unconstitutional degree.
- BB. BECAUSE the mechanism to resolve electoral disputes involving disqualification relating to Para 4 has been unable to check the abuse of Para 4, which requires court intervention, which delays the process and causes further uncertainty. These judgements, and the abuses they highlight are sufficient ground to strike down Para 4. In this regard, the Petitioner relies upon *Rajendra Singh Rana v. Swami Prasad Maurya*, (2007) 4 SCC 270; *Speaker, Haryana Vidhan Sabha v. Kuldeep Bishnoi*, (2015) 12 SCC 381; and *Subhash Desai v. Principal Secretary*, (2024) 2 SCC 719, as well as the Bombay High court judgement of *Girish Chodankar v. Speaker*, (2023) 3 Bom CR 481: 2023 SCC Online Bom. 979.
- CC. BECAUSE if the gambit of legislators to join a dormant and unknown third party, which is unrepresented in a legislature, succeeds, the ability of the Tenth Schedule to act as any

restraint on political horse trading will stop as the last remaining reed of hope- political shame in joining the principal opposition party- will fall away.

DD. BECAUSE Para 4 is susceptible to another even more damaging reading. If 2/3rd of the members of a legislative party are allowed merge with another party which is dormant, they can claim before the Election Commission that their original party has split and that they are entitled to the symbols for the same in their new political outfit. If under Para 15 of the Symbols Order such a permission is granted, the faction will be able to mislead the voters of the original political party. Such mechanisms break faith with the principles of parliamentary democracy and cannot be allowed to stand.

24. The Petitioner has not filed any such similar petition challenging the impugned legal provision in this Hon'ble Court or in any other court.
25. The cause of action is continuing in nature, given that legislators are presently and actively invoking the deemed merger clause, and elections continue to be held across states with the threat of post-election defections looming over electoral results, defeating the people's mandate and causing them an irreparable injury to the future of a representative democracy, rendering the present petition to be of grave constitutional urgency.
26. The annexures appended to the petition are the true copies of their respective originals.

PRAYER

In the above premises, this Hon'ble Court may be pleased to issue appropriate declarations, writs, orders and directions as set out below:

- a) Issue a mandamus declaring that (A) Paragraph 4 applies only if one political party merges with another political party or two political parties merge to form a new political party, and (B) Any interpretation inconsistent with the plain language of Paragraphs 4(1) and 4(2) allowing for a deemed merger of the

legislative party in terms thereof in the absence of the merger political parties as contemplated in Paragraph 4 (1), would be contrary to the basic structure of the Constitution of India and against all norms of representative democracy, and (C) if such deemed mergers are allowed under Paragraph 4(2) in the absence of the merger of the political party as contemplated in Paragraph 4 (1) would amount to breach of fundamental principles underlying representative democracy and contrary to the verdict of the electorate, and (D) there is no implied merger under Paragraph 4(2) that allows 2/3rd of legislative party members alone to determine whether a party has merged or not.

- b) Pass any other writ, order or direction as this Hon'ble Court deems fit in the interests of justice and in the facts and circumstances of this case.

AND FOR THIS ACT OF KINDNESS, THE PETITIONER SHALL,
AS IN DUTY BOUND, EVER PRAY

Drawn on: 19.07.2026
Filed on: 19.07.2026
New Delhi

Filed by

