



# The Tenth Schedule Loophole: How Mergers Undermine Democratic Mandate

**Mrs. Reecha Parakh**

Research Scholar & Assistant Professor of Law, Govt. State Level P.G. Law College Bhopal  
Email - reechaparakh@gmail.com

**Abstract:** This paper critically examines the merger exemptions granted to legislators of political parties under Paragraph 4 of the Tenth Schedule of the Indian Constitution to examine how they affect the integrity of the democratic mandate. Although Paragraph 4 is designed to legitimise widespread ideological disagreement or agreement within political parties, it has often been used strategically to induce defections while avoiding disqualification. Using theoretical analysis, judicial interpretation and recent political examples including Goa (2019), Rajasthan (2019) and Nagaland (2025), this paper assesses whether such mergers protect or erode voter turnout.

**Key Words:** Tenth Schedule, Defection, Merger, Disqualification, Democracy, Mandate.

## 1. INTRODUCTION

“This provision (Paragraph 4) can and has been misused to permit defection of a group of elected members under the guise of merger, thereby defeating the very purpose of the Tenth Schedule, which is to prevent defection and maintain the sanctity of the electoral mandate.” - Justice Deepak Gupta<sup>1</sup>

In India's parliamentary democracy, voters generally elect candidates based on the political party or their pre-poll alliance, election symbol and pre-poll Manifesto. The democratic mandate is thus collective and political party-based. The Tenth Schedule inserted by the 52nd Constitutional Amendment Act, 1985 was intended to prevent political defection that violates this mandate.<sup>2</sup> Paragraph 4 of the Tenth Schedule allows “mergers” by exempting from disqualification on account of defection those MLAs who join another political party or form a new political party with the support of at least two-thirds of their legislative party. Although this exception was made to allow genuine ideological realignment, the way the Paragraph 4 exemption is currently being used, raises the question whether it is subverting the democratic mandate?

## 2. Review of Literature

- G.C. Malhotra, Anti-Defection Law in India and Commonwealth 4(New Delhi, 11th ed., 2015) - The book describes the origin and development of the Anti-Defection Law. It also gives a detailed description of the defection that took place in the Parliament and the State Legislatures. This book helps to understand committees and commissions recommendations regarding reform of Anti defection Law. The status of defection in various countries of the world is also mentioned in this book.
- Kashyap, Subhash C., and Shaunak Kashyap. “Anti-Defection Law and Parliamentary Privileges”, 4th Edition, Volume 2. New Delhi: Mohan Law House, 2023- The book covers the evolution of anti-defection law in India, the role of the Speaker at present the impact of mergers on the mandate and latest judgements in the same.

**3. Research problem** - The increasing number of merger cases in India are being recognised under Paragraph 4 of the 10th Schedule, thus violating the democratic mandate and defeating the very purpose of the anti-defection law.

**4. Research question** - Does Paragraph 4 of the 10th Schedule destroy the democratic mandate?



**5. Research objective** - The objective of this research paper is to present better Suggestions regarding the balance the democratic mandate and Political dissent in the respect of Merger clause under tenth schedule by studying the cases of mergers that have taken place in various states in India in recent years.

**6. Research hypothesis** - Paragraph 4 of the 10th Schedule destroys the democratic mandate.

**7. Research methodology** - Doctrinal methodology has been used in this research. The research work has been done through primary and secondary data such as Indian Constitution, 10th Schedule Anti-defection Law, magazines, websites, judicial decisions, commission reports etc.

**8. Research Scope and Research Limitation-** In the presented research, the evaluation of the relevance of Paragraph 4 under the Anti-Defection Law is limited to the information available on the internet, study of judicial decisions and study of reports of commissions and committees.

## 9. Paragraph 4 of the Tenth Schedule

Disqualification on ground of defection not to apply in case of merger.-

(1) A member of a House shall not be disqualified under sub-Paragraph (1) of Paragraph 2 if his original political party merges with another political party and he claims that he and the other members of his original political party -

(a) have become members of such other political party or of a new political party formed by such merger, as the case may be; or

(b) have not accepted the merger and have decided to function as a separate group,

and, from the time of such merger, such other political party or new political party or group, as the case may be, shall be deemed to be the political party of which he is a member for the purposes of sub-Paragraph (1) of Paragraph 2 and his original political party for the purposes of this sub-Paragraph.

(2) For the purposes of sub-Paragraph (1) of this Paragraph, the original political party of a member of a House shall be deemed to have merged if at least two-thirds of the members of the legislative party concerned have agreed to such merger.<sup>3</sup>

### 9.1 First Interpretation

The exemption under the Tenth Schedule relating to merger is available only when the original political party merges with another political party i.e. there should be consent of the original political party and at least two-thirds of the members of the legislative party must be agreed for such merger. This interpretation can be supported by the decision of the Supreme Court in *Rajendra Rana v Swami Prasad Maurya*<sup>4</sup> (decision of a five-judge bench). The main question in this case was related to Paragraph 3 which deals with split in a political party but the provision of Paragraph 3 was similar to Paragraph 4, the only difference being that consent of one-third of the MLAs was required and in Paragraph 4 consent of two-thirds of the MLAs is required. In *Rajendra Rana* case, the Court held that a group comprising one-third of the members who broke away from the 'legislative party' cannot take the defence under Paragraph 3 unless it is established that there has been a split at the national level in their original political party.

### 9.2 Second Interpretation

The second interpretation of Paragraph 4 is that where Paragraph 4(1) and Paragraph 4(2) are read separately, only the consent of two-thirds of the members of the 'legislature party' is required if the state unit of a national party merges with another party and there is no requirement for merger of such political party at national level or consent of the national leader for state level merger. Till 2005, 81 cases of such mergers have been admitted.<sup>5</sup> Here is certain recent examples of this kind of interpretation used for merger validation-

- **Merger of Rajasthan BSP MLAs with Congress (2019)** - Six BSP MLAs who won the 2018 Rajasthan Assembly elections on a Bahujan Samajwadi Party (BSP) ticket, claimed in September 2019 under Paragraph



4 of the 10th Schedule to validate their “merger” with the Congress. The BSP (National Organisation) objected and argued that there was no organisational merger but only a move of the legislative party. The Speaker accepted the “merger”.<sup>6</sup> Key decision in the case of Bahujan Samaj Party vs. Speaker, Rajasthan Legislative Assembly and others<sup>7</sup>- The Speaker cannot decide independently on Paragraph 4 (merger) without a disqualification motion under Para 6 of the 10th Schedule. Paragraph 4 is only a defence in disqualification proceedings.

- **Merger of Congress MLAs into BJP in Goa (2019 and 2022)** - Speaker mechanically applied two-thirds merger test without ensuring consent of original party (Congress). 10 out of 15 Congress MLAs of Goa Assembly joined Bharatiya Janata Party (BJP) in July, 2019 and claimed to validate the merger under Paragraph 4 of the Tenth Schedule. Congress argued that there was no merger of the “original political party (Congress). On September 14, 2022, 8 Congress MLAs joined BJP. Speaker Ramesh Tawadkar dismissed the disqualification petitions against them and accepted the merger. In Goa, merger resulted in change of Government.<sup>8</sup> The case of Girish Chodankar vs. Speaker of Goa State Assembly and others<sup>9</sup> was filed in March, 2025 by former Goa State Congress President Girish Chodankar. The decision on the question of necessity of consent of the original political party for recognition of merger under Paragraph 4 is pending in the Supreme Court.
- **Merger of Congress MLAs into Telangana Rashtra Samithi (TRS) in Telangana (2019)** - On June 6, 2019, 12 out of 18 Congress MLAs of Telangana Assembly wrote a letter to the Speaker demanding merger of Congress Legislative Party into TRS. Congress (Organization) protested that no national/state level party merger had taken place. The Speaker accepted the merger and here too the merger resulted in change of Government.<sup>10</sup>
- **Merger case in Nagaland, 2021 and 2025** - On 02 July 2021, 21 out of 25 NPF MLAs joined the ruling NDPP<sup>11</sup> and on 31 May 2025, all 7 NCP MLAs in the Nagaland Assembly joined the ruling NDPP, giving the NDPP a clear majority. The state unit of the NCP later objected, saying the parent political party was not in agreement. The Speaker recognised both mergers under Paragraph 4.<sup>12</sup>
- **Merger of Congress MLAs into People's Party of Arunachal (PPA) in Arunachal Pradesh in 2016-** After the Supreme Court reinstated the Congress government in September 2016, Pema Khandu joined the People's Party of Arunachal (PPA) along with 43 Congress MLAs. The Congress leadership claimed that the grouping lacked the consent of the original political party and was unconstitutional. The Speaker accepted the merger on the basis of the fulfilment of two-thirds strength of the legislative party under Para 4. The Congress called the merger “illegal” and sought court action in the case of Padi Richo vs. Speaker, Arunachal Pradesh Legislative Assembly and others. The Congress claims that the party has not given any consent to the legislative party regarding the merger. The matter is yet to be decided.<sup>13</sup>
- **In Meghalaya Congress MLAs merge with TMC, 2021** – On November 24, 2021, 12 out of 17 Congress MLAs of Meghalaya Legislative Assembly merged with Trinamool Congress (TMC). The Speaker accepted the merger as the 12 MLAs were more than two-thirds of the Congress Legislative Party. No disqualification proceedings were initiated against the MLAs. In the case of Ampareen Lyngdoh vs. Speaker, Meghalaya Legislative Assembly, W.P. No. 10 SH/2022, Meghalaya High Court, Congress argued that the original political party had not merged with the TMC. The 12 MLAs cannot claim exemption under Paragraph 4 merely by joining another party.<sup>14</sup>
- **Jharkhand Vikas Morcha (Prajanatrik) (JVM(P)) MLAs merge with BJP, 2019** - In February 2019, Jharkhand Assembly Speaker Dinesh Oraon upheld the merger of six JVM(P) MLAs into BJP and concluded that the action was in conformity with the anti-defection provisions of the 10th Schedule as more than two-thirds of the MLAs of the legislative party had come together.<sup>15</sup>
- **Merger of Janata Dal United (JD(U)) MLAs into BJP in Manipur, 2022** - 5 out of 6 JD(U) MLAs joined BJP. Manipur Assembly Speaker accepted the merger under Paragraph 4 of the 10th Schedule.<sup>16</sup>
- **Merger of Sikkim Democratic Front (SDF) MLAs into BJP in Sikkim, 2019** - 10 out of 13 SDF MLAs joined BJP. Speaker recognised their merger, and held that the merger met the criteria of Paragraph 4 of the 10th Schedule.<sup>17</sup>
- **Merger of Congress MLAs into All India Trimool Congress (AITC) in Tripura in 2016** - 6 out of 10 Congress MLAs joined AITC. Speaker considered the total strength of his legislative party at that time to be 6 due to earlier resignations and expulsions of Congress MLAs. Hence Speaker found the 2/3 test satisfied and recognised it as a merger.<sup>18</sup>



## 10. Judicial Suggestions and comments

“The merger and split exceptions are likely to be misused by shrewd legislators to circumvent the law. The principle of political morality should prevail, not arithmetic.” - Justice B.P. Jeevan Reddy, *Kihoto Holohan v. Zachillhu*<sup>19</sup>

“It is clear that merger provisions cannot be a cover for organised defection. If these continue to be used to frustrate the will of the voters, Parliament may have to reconsider the clause.” - Justice D.Y. Chandrachud (Chief Justice), *Subhash Desai v. Principal Secretary to the Maharashtra Legislative Assembly*<sup>20</sup>

**PIL filed by Meenakshi Menon**<sup>21</sup> - This PIL was filed by Meenakshi Menon, founder-trustee of the NGO Vanashakti, in the Bombay High Court in August, 2023. It seeks to strike down Paragraph 4 of the Tenth Schedule, which contains the provision for recognition of mergers, as unconstitutional as it violates the basic structure of the Constitution by allowing mass defections. The petitioner argues that the merger by two-thirds of MLAs after the election is a betrayal of the mandate and undermines democratic values. The petition states - “Defections in the form of splits and mergers under Paragraph 4 of the Tenth Schedule... are further alienating the general public from the electoral process in which thousands of crores of taxpayers' money is spent without any accountability.” The case is still pending in court.

**Legislative Attempt (The Constitution Amendment Bill, 2022)** - Recently, Rajya Sabha MP Raghav Chadha reintroduced the Bill in the House which proposed to make the following amendment in Paragraph 4(2) of the Tenth Schedule –

“Paragraph 4(2) for the purposes of sub-paragraph (1) of this paragraph, the merger of the original political party of a member of a House shall be deemed to have taken place if at least three-fourths of the members of the legislature party concerned have agreed to such merger.”<sup>22</sup>

**Reports of Commissions and Committees** - 170th Report of the Law Commission, 1999<sup>23</sup>, Report of the National Commission to Review the Working of the Constitution, 2002<sup>24</sup>, Report of the 66th Conference of Presiding Officers of Legislative Bodies, 2003<sup>25</sup>, 61st Report of the Standing Parliamentary Committee on Anti-Defection Law, 2013<sup>26</sup> and 255th Report of the Law Commission, 2015<sup>27</sup> recommended abolition of the exemptions relating to Paragraph 4 merger in the Tenth Schedule.

**Merger exemption in case of defection in different countries** – In Ghana, if a political party merges, which is supported by the constitution or coalition government at the national level of which the original political party is a part, it will not in any way affect the membership of a member of parliament.<sup>28</sup>

Schedule 6A added to the Constitution of South Africa by amendment of 2002 provides for a window period, this window period is open from 1 September to 15 September 2 years after the election and from 1 September to 15 September 4 years after the election. During the said period, the membership of a member is not terminated in case of (1) “change in party membership”, (2) “merger between parties”, (3) “split of parties, and (4) split and merger of parties”, provided the political party from which he stood and won the election has at least 10 percent representation in the legislature. This provision regarding the window period was again deleted by amendment in 2009. As a result, now there is no exemption for those who defect in South Africa. There is no provision for exemption for merger anywhere in other countries of the world.<sup>29</sup>

**Why the merger clause (paragraph 4) was placed in the Tenth Schedule** - The parliamentary debate on the 52nd Constitutional Amendment Bill, 1985 shows the intent of the merger clause - “There may be genuine ideological differences. The anti-defection law should not hinder political development.”<sup>30</sup> The reason for placing Paragraph 4 in the Tenth Schedule was to recognize genuine disagreements within a political party. Its purpose was to allow re-alignment on the basis of trust, not opportunism under the guise of legality. In support of paragraph 4, the then Law Minister, Ashok Kumar Sen said in the House: “Its (paragraph 4) purpose is to ensure legitimate political mergers. If there is broad consensus among the members of a political party to join another political party, it is political re-alignment, not defection.”<sup>31</sup>

**11. Conclusion and Suggestions** - “After observing for 18 years how splits were used by larger parties to destabilise smaller parties and how the protection under Paragraph 3 (now deleted) was abused, Parliament deleted it... Paragraph





4 may also meet the same fate, since experience shows that it is now used as a device to legitimise mass defections.” – Justice R.F. Nariman, *Kesham Meghchandra Singh v. Speaker, Manipur Legislative Assembly*<sup>32</sup>

At present mergers of political parties are exempted from Paragraph 4 in that the merger of the original political party is deemed to have taken place only if at least two-thirds of the members of the legislative party agree to it. This provision was made as an exception to defection in order to protect ideological differences within a political party or ideological consensus between two or more political parties. But today Paragraph 4(2) is being interpreted narrowly where in various states, mergers are being recognised under Para 4 only with the consent of two-thirds of the members of the legislative party without the consent of the original political party at the national and state level. Mergers were recognised under such narrow interpretation in Rajasthan, Goa, Manipur, Telangana, Meghalaya, Nagaland, Tripura, Arunachal Pradesh, Jharkhand and Sikkim. In the north-eastern states, the merger clause was made a game where in almost every term, defection was legitimised by using the merger clause, resulting in gross violation of the mandate of the people. If the intention of the lawmakers was not to give consent to the original political party in the merger, then why did they use the word original political party in Paragraph 4(1). This was supported by Justice D.Y. Chandrachud (Chief Justice), in the case of *Subhash Desai vs. Principal Secretary of Maharashtra Legislative Assembly*, has held that

"The two-thirds provision under Paragraph 4 cannot be applied unless the original political party itself merges... a legislative party cannot pretend to merge to obtain immunity."<sup>33</sup>

In view of the misuse of the merger clause, various commissions and committees have recommended the removal of Paragraph 4. No country in the world has given exemption to the merger of political parties like India. However, merger is recognized in the Constitution of Ghana, but only when such merger is at the national level of the original political party. If we look at the legislative effort in India, a proposal to make the merger exemption stringent by replacing consent by at least three-fourths of the members of the legislative party in place of two-thirds in Paragraph 4(2) was put in the House through the Constitution Amendment Bill, 2022, which could not be passed.<sup>34</sup>

**Suggestion-** In view of the increasing misuse of the merger clause in recent cases, the merger in the name of ideological differences in the political party or ideological agreement between two or more political parties in the Tenth Schedule cannot be exempted for the full term of the government. If such a provision is continued, the existence of democratic mandate will end. Therefore, to maintain the existence of mandate, there is a need to validate the split and merger of political parties for a limited period so that a balance can be made between the mandate and the recognition of ideological disagreement of the political party. The following amendments are made in the Tenth Schedule of the Indian Constitution-

The following provision is inserted in paragraph 2 of the Tenth Schedule-

Para 2(1)(c)- “Subject to the provisions of paragraph 4, split or merger of any political party shall amount to defection.”

Para 4 is Substituted with the following provision-

(1) No member of a House shall be disqualified under sub-paragraph (1) of paragraph 2 if at least three-fourths of the members of his legislative party have, within six months before the expiry of the term of the House-

(a) become members of such other political party or, as the case may be, a new political party formed by such merger; or

(b) they have not accepted the merger and have decided to function as a separate group,

and from the time of such merger, such other political party or new political party or group, as the case may be, shall be deemed to be the original political party of which he is a member for the purposes of sub-paragraph (1) of paragraph 2.

## REFERENCES

1. *Keisham Meghachandra Singh v. Speaker, Manipur Legislative Assembly* (2020) 4 SCC 629, Paragraph 93.
2. Statement of Objects and Reasons, Constitution (52nd Amendment) Act, 1985
3. Tenth Schedule of Indian Constitution, paragraph 4



4. (2007) 4 SCC 270
5. G.C. Malhotra, Anti-Defection Law in India and Commonwealth XI (Lok Sabha Secretariat, Metropolitan Book Co. Pvt. Ltd., 2005)
6. Available at <https://indianexpress.com/article/india/bsp-legislators-merger-with-cong-rajasthan-high-court-refuses-to-disqualify-mlas-6568483/?> (Last visited on, 28 July, 2025)
7. Civil petition no. 8056/2020 and 8004/2020, Rajasthan High Court . 24<sup>th</sup> August 2020 Available at <https://indiankanoon.org/doc/145956210/> (Last visited on, 28 July, 2025)
8. Available at <https://indianexpress.com/article/india/8-go-mlas-who-jumped-ship-from-congress-to-bjp-in-2022-get-relief-from-speaker-9649270/?> (Last visited on 8 July, 2025)
9. SLP(C) No. 29303/2024 (along with Diary No. 55376/2024) and SLP (5305/2022) Available at <https://www.navhindtimes.in/2025/03/08/goanews/defection-case-sc-notice-to-speaker-eight-legislators/?> (Last visited on 8 July, 2025)
10. Available at <https://timesofindia.indiatimes.com/india/12-congress-mlas-join-trs-in-telangana-speaker-recognises-merger/articleshow/69680344.cms?> (Last visited on 28 July, 2025)
11. Available at <https://timesofindia.indiatimes.com/india/21-of-25-npf-mlas-join-nagaland-cm-party/articleshow/91194773.cms?> (Last visited on 28 July, 2025)
12. Available at <https://timesofindia.indiatimes.com/city/guwahati/nagaland-speaker-approves-ncp-mlas-merger-with-ndpp/articleshow/121553773.cms> (Last visited on 8 July, 2025)
- 13 Available at <https://www.firstpost.com/politics/congress-loses-43-mlas-to-ppa-in-arunachal-pradesh-blames-bjp-for-fiasco-3007648.html?> (Last visited on 28, July, 2025)
14. Available at <https://highlandpost.com/verdict-out-merger-of-12-mlas-with-trinamool-valid/?> (Last Visited on 28 July, 2025)
15. Available at <https://www.hindustantimes.com/lok-sabha-elections/babulal-marandi-pradeep-yadav-move-hc-against-speaker-s-decision-of-mla-merger/story-NXe6gbsK4DbN6kYeq9BXxK.html?> (Last visited on 28 July, 2025)
16. Available at <https://www.livemint.com/politics/news/5-of-6-mlas-from-nitish-kumar-s-jd-u-join-bjp-in-manipur-11662162274164.html> (Last visited on 28 July, 2025)
17. Available at <https://timesofindia.indiatimes.com/india/10-sdf-mlas-join-bjp-in-sikkim/articleshow/70656617.cms?> (Last visited on 29, July, 2025)
18. Available at <https://www.telegraphindia.com/india/party-switch-valid-speaker/cid/1494822?> (Last visited on 29, July, 2025)
19. AIR1992 SC 412
20. AIR 2023 SC 2406
21. Available at <https://www.hindustantimes.com/cities/mumbai-news/group-defections-a-betrayal-of-voters-pil-in-hc-101693249004379.html?> (Last visited on 30 July, 2025)
22. The Constitution (Amendment) Bill, 2022, Bill No. 53/2022
23. Law Commission, 170th Report on Reforms of Electoral Laws, May, 1999, p. 45-49
24. Government of India, "National Commission to Review the Working of the Constitution Reports", Volume 1 (Ministry of Law, Justice and Company Affairs Department of Legal Affairs, Chapter 4), 2002
25. G.C. Amphora, Anti-Defection Law in India and Commonwealth' pp. 994-995 (New Delhi, 11th ed., 2015)
26. Department-related Parliamentary Standing Committee on Personal, Public Grievances, Law and Justice in its 61st Report on "Electoral Reforms-Code of Conduct for Political Parties and Anti-Defection Law", presented to the Rajya Sabha on 26th August, 2013
27. Law Commission of India, 255 Report on "Electoral Reforms" submitted in March, 2015, p. 218
28. Constitution of Ghana, Article 97(1) (g)
29. Constitution of South Africa, Article 47 and Schedule 6A
30. Parliamentary Standing Committee, 1985
31. Look Sabha Debates, January 24, 1985, Column No. 47, Volume 128
32. (2020) 2 SCC 617
33. AIR 2023 SC 2406
34. The Constitution (Amendment) Bill, 2022, Bill No. 53/2022