

Beyond the Speaker's Discretion: Expanding Judicial Review in Disqualifications

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Introduction

In a democracy, the balance of power between the three organs, namely the executive, legislature and judiciary, is like that of a finely tuned instrument, wherein each branch harmonises with the others to uphold the values that sustain the Constitution. The Tenth Schedule of the Indian Constitution, intended to prevent “immoral” defections, has given to the Speaker adjudicatory power to disqualify members from the legislative assembly who betray their party's mandate. However, increased incidents of speaker-led partisan decision-making have highlighted critical vulnerabilities in this structure, raising an important question: What recourse is available when the very authority entrusted to uphold democratic values becomes compromised?

This essay argues that the judiciary needs to expand its role in addressing political defection, not as a complete appropriation of the speaker's discretion but as a constitutional requirement to safeguard against the manipulation of democratic processes. The current framework, which grants near absolute power to the Speaker, has time and again exposed vulnerability to partisan influence and, therefore, fails the core principles of representative democracy.

Evolution of Judicial Review

Paragraph 6 of the Tenth Schedule has conferred the power to the Speaker to decide on membership disqualification on the grounds of defection. However, the schedule lacks clear procedures or timelines for this process, and by declaring the Speaker's decision final, it explicitly limits judicial review. This has naturally raised concerns about the Speaker's impartiality as an adjudicator and the exclusion of judicial oversight.

The case of *Kihoto Hollohan v. Zachillhu* becomes the guiding principle in understanding the judicial approach to defection. In this case, the validity of Paragraph 6, along with other related questions, was examined. The Supreme Court (SC), while affirming the Speaker's adjudicatory authority, emphasized that the Speaker holds a vital role in parliamentary democracy, and thus, no negative presumption should be made against them. The Court also acknowledged that the Speaker's authority is similar to that of a tribunal, and while the finality clause restricts judicial review, it does not entirely exclude it. Judicial scrutiny is, however, only allowed in limited cases where proceedings are clearly tainted by illegality or perversity. Importantly, the Court strictly specified that judicial intervention is *not* permitted at any stage before the Speaker or Chairman reaches a decision, nor are *quia timet* actions allowed.

In the post-Kihoto jurisprudence, courts have taken a complex, sometimes inconsistent approach to defection cases. Two primary approaches can be identified: one of strict non-interference with the speaker's power (strictly following *Kihoto's* reasoning) and the other of selective interference (where circumstances demand interference before the speaker decides on disqualification). The selective intervention approach, in particular, reveals both beneficial and problematic aspects.

On the beneficial side, the SC's interventions in defection cases, particularly in *Rajendra Singh Rana* and *Keisham Meghachandra Singh*, need to be considered. In the case of *Rajendra Singh Rana*, the intervention by the court was beneficial, as it identified a clear jurisdictional error wherein the Speaker had postponed a decision on a disqualification petition while simultaneously recognizing a split in the party. Moreover, given the fact that the Assembly's term was about to end, this intervention prevented potentially disqualified members from continuing to serve illegally. Similarly, the *Keisham Meghachandra Singh* case further advanced these interference principles. In this case, the Court stepped in to make sure that the Speaker did their job properly, which was to decide promptly on whether members should be disqualified, as required by the Tenth Schedule. These cases collectively establish important precedents as to how courts can step in when needed while still respecting other institutional boundaries, demonstrating that courts can act as essential safeguards against the manipulation of anti-defection provisions.

Judicial Safeguards for Democracy

The *Kihoto* judgment has rightly faced significant criticism over time, particularly for upholding the Speaker's authority while limiting the scope of judicial review. For instance, Justice Nariman, in the *Keisham* judgment, raised the question of whether it was practical

to expect the Speaker to deal impartially with disqualification cases when the political environment is essentially one of party loyalty. He stated that only “swift and impartial disqualifications” could adequately strengthen the Tenth Schedule. In his view, this is a goal achievable by transferring this jurisdiction to a relatively neutral authority outside the political sphere.

Justice Nariman’s concerns are not merely theoretical. Charith Reddy has done a comprehensive analysis showing that Speakers have, time and again, demonstrated explicit partisanship. Several instances show that incongruous situations have arisen due to the adjudicatory role of the speaker. For example, in Telangana, the Speaker delayed action on a clear defection case for six months. In Balachandra v. Yeddyurappa, the Speaker appeared to favour a member of Parliament overtly. In the 1990s, the then Speaker of the Uttar Pradesh Assembly and a Bhartiya Janata Party (BJP) member failed to act on the defection of 15 Bahujan Samaj Party MLAs, allowing the BJP to survive a floor test. Such cases highlight the widespread misuse of the Speaker’s discretion, with loopholes often exploited to benefit the ruling party. This misuse points not only to gaps in the law but also to structural deficiencies in the role of the Speaker.

Now, when the entire process of deciding disqualification petitions has become a “mockery” of constitutional principles, and the Speaker’s powers are often used to benefit the ruling party, we encounter two important questions: how can we prevent the Tenth Schedule from becoming meaningless, and who should introduce these necessary changes?

The answer to these questions could be straightforward—a constitutional amendment (answer to *how*) to the Schedule by the legislature (answer to *who*). However, since Speakers and political parties have consistently exploited the Schedule’s loopholes for their own advantage, legislators are unlikely to amend provisions that currently serve their interests. Therefore, this complicates the answer to our question. I argue that this deadlock necessitates judicial intervention. Courts should move beyond the limited scope of judicial review established in the *Kihoto* judgment and adopt substantive judicial review. This expanded approach would allow courts to examine not only the Speaker’s actions but also their concerning inactions. For instance, the courts can question unreasonable delays or investigate why obvious cases of disqualification remain unaddressed. By further examining the fundamental objectives of the Schedule and the true motivations of the speaker behind disqualification decisions, courts can develop reasoned judgments.

Now, the question arises: what is the justification behind such intervention? The reasoning behind my proposed solution can be better understood by tackling a counter-argument. It may be argued that the Tenth Schedule is descriptively adequate and explicitly limits judicial jurisdiction while vesting disqualification powers exclusively with the Speaker. Therefore, any attempt at substantive judicial review would violate the basic structure doctrine of separation of powers. While this counter-argument is seemingly compelling, it misses the larger constitutional context that is there at play.

In the present situation, there is a conflict between two basic features of the constitution, which are the separation of powers (as claimed by the counter-argument) and democratic governance (as aimed by substantive judicial review). As explained by Raju Ramachandran, whenever an issue involving a basic feature of the constitution arises, the court aims to protect it against everything else. However, when two basic features are themselves in clash, the court examines which feature's compromise would cause greater constitutional harm.

I believe that the current constitutional crisis demands prioritizing substantive judicial review over rigid institutional boundaries (separation of powers). The Tenth Schedule was enacted to strengthen democracy by preventing political defections that cause destabilization. However, its current application, marked by partisan Speakers and manipulated procedures, actively undermines this democratic purpose. This distortion creates a fundamental problem: the very mechanism designed to protect democracy is being used to subvert it.

In such circumstances, adherence to strict separation of powers would, in effect, sanction the erosion of democratic principles. The judiciary's constitutional obligation to protect democracy must therefore take precedence. Here, substantive judicial review becomes not merely an option but a constitutional necessity, a crucial check against the misuse of the Schedule's provisions. This approach recognizes that when institutional mechanisms fail their democratic purpose, the judiciary must step in to preserve the Constitution's fundamental democratic character, even if this means temporarily departing from traditional separation of powers boundaries.

In support of this view, the SC has clarified that judicial review is essential not merely as a procedural function but as a safeguard for constitutional values. By preventing "constitutional transgression by any organ of the state," judicial review allows the judiciary to act as a guardian of the Constitution, intervening when necessary to protect democratic values. This perspective frames the separation of powers not as a rigid barrier but as a flexible connection, empowering the judiciary to uphold the constitutional order when democratic principles are at risk.

However, the judiciary must proceed cautiously, being mindful of not committing the mistakes it did in the past. The Nabam Rebia case serves as an example of this challenge, where the Court's well-intentioned restriction on Speakers' powers during removal motions inadvertently created a new loophole, allowing members facing disqualification to file strategic removal motions as a delay tactic.

Conclusion

In this essay, I demonstrated that the Tenth schedule, enacted to prevent political defections, has gradually been exploited to serve partisan purposes. While judicial review has been traditionally limited, the current situation demands an aggressive approach. Substantive judicial intervention, therefore, emerges not as an optional strategy but as a

constitutional imperative. By carefully developing principled approaches to reviewing defection proceedings, the judiciary can play a crucial role in safeguarding democratic principles.

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