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Guardian or Gatekeeper? The Speaker, the Clock and the Limits of Judicial Review in Anti-Defection Adjudication

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Abstract

The presiding officer appointed by majority vote decides legislative defection disputes, according to the Tenth Schedule. The outcome of such disputes can affect the survival of that majority. The Speaker can err, but it is far more consequential to contradict and delay than to simply err. Thus, the Speaker's power is not consequential only; it is also a late consequential power. From the *Kihoto Hollohan* judgment of the Supreme Court through to that of *Padi Kaushik Reddy*, and regarding the prolonged Telangana proceedings as documented before March 2026, the paper differentiates between four failures which are normally clubbed together under the head of "Speaker bias": the wrong decision, the unfair hearing, the decision held back and the conflicted forum. Each requires a different judicial response. The research lays out a graduated standard for the courts to manage whether the Speaker executes the adjudicatory work, albeit not what result the Speaker comes to, and shows that this standard cannot by itself restore confidence in the forum. This implies that while time limits and reasoned orders can rein in the present arrangement, the root conflict of interest can be obliterated only by constitutional amendment.

Keywords: *Tenth Schedule; anti-defection law; Speaker; judicial review; adjudicatory delay; constitutional remedies.*

I. Introduction

In December 2023, the Telangana Legislative Assembly was elected. By 2024, ten members who won on Bharat Rashtra Samithi tickets transitioned into the orbit of the ruling Congress. The Speaker was petitioned by their former party for disqualification. The petitions were put on hold. On July 31, 2025, the Supreme Court ruled that the Speaker does not have any constitutional immunity from scrutiny while deciding such petitions, and directed him to decide within three months.[1] The deadline passed. In February 2026, the Court warned of contempt and gave the Speaker a final three weeks.[2] On 17 December 2025, the Speaker dismissed disqualification petitions against five of the MLAs.[3]

The sequence of events does not prove the dismissals wrong. That is exactly what makes it educational. By February 2026, more than two years of the Assembly's five-year term had elapsed while the disputes continued. The political arrangement challenged by the petitions had meanwhile become part of the normal life of the House. A later answer to the legal question could therefore have less practical significance because of the passage of time.

This study refers to that power as gate power. A guardian uses the Constitution impartially and renders a decision that remains important. A gatekeeper decides if and when a decision is made. The same office, often on the same file, can perform the two functions. The Tenth Schedule appears to assume the first one and provides little protection against the second.

The argument is developed in three steps. Part III explores why the constitutional design places the adjudicator in a position of structural conflict. Parts IV through VIII outline how the Supreme Court has responded, on a case-by-case basis, to four failures: the wrong decision, the unfair hearing, the absent decision, and the conflicted forum. Parts IX to XI translate that law into a graduated standard for intervention, engage the main objections to judicial oversight and compare the available reforms. The thesis is straightforward to specify. Courts may rightly control whether the Speaker adjudicates; they should seldom control what the Speaker decides. A court's supervision is just a remedy and not a cure, as a decision made under coercion is a different decision than a desired decision.

II. Questions and Method

Three questions guide the inquiry. How does the Tenth Schedule reconcile a legislative site for adjudication with judicial standards of fairness? When does judicial intervention safeguard the Speaker's jurisdiction, and when does it encroach on it? What reform most effectively reconciles the Speaker's political origin with the neutrality which the function requires?

The method is doctrinal. The constitutional text, key Supreme Court rulings, and the reports produced by the Dinesh Goswami Committee and the Law Commission are examined for what they lay down on competence, review, procedure and remedy. The examples used are the recent Telangana and Maharashtra incidents and not a dataset. The article does not purport to measure the frequency with which Speakers act with partiality. Systematic data on filing dates, hearing schedules and outcomes across legislatures is not publicly available at present. The normative test is more restrictive and demanding, namely, a procedure for the resolution of defection disputes which the two sides would accept as proper without knowing which of the two will hold the Speaker's chair. The source cutoff for this article is 28 February 2026; subsequent developments are outside its scope.

III. A Judge Elected by One Side

The Tenth Schedule is a ground of disqualification for members of Parliament and State legislatures under Articles 102(2) and 191(2). Paragraph 2(1)(a) of the Tenth Schedule says that a member shall be disqualified if he has voluntarily given up the membership of the political party on whose ticket he was elected. Furthermore, paragraph 2(1)(b) disqualifies one who votes or abstains from voting contrary to the direction of the political party without the prior permission of the party unless the party condones the action of the member within 15 days.[4]

[1] Padi Kaushik Reddy v. State of Telangana, 2025 INSC 912 (judgment dated July 31, 2025); https://api.sci.gov.in/supremecourt/2025/2745/2745_2025_1_1501_62743_Judgement_31-Jul-2025.pdf.

[2] Padi Kaushik Reddy v. State of Telangana, SLP (C) Nos. 2353-2354/2025, hearing of Feb. 6, 2026, as reported in "Decide Remaining Disqualification Petitions In Three Weeks Or Face Contempt: Supreme Court Warns Telangana Speaker", LiveLaw (Feb. 6, 2026).

[3] "Telangana Speaker Dismisses Disqualification Petitions Against Five MLAs", ETV Bharat (Dec. 17, 2025).

[4] The Constitution of India, arts. 102(2), 191(2) and Tenth Schedule, para. 2(1); https://www.indiacode.nic.in/bitstream/123456789/19632/1/the_constitution_of_india.pdf.

The scheme was introduced by the 52nd Amendment. In 2003, the Ninety-first Amendment repealed the "split" exception regarding the breakaway of one-third of a legislature party and added Article 361B to bar a disqualified member from holding a remunerative political post till re-elected. Only the merger exception in para 4, which needs the agreement of two-thirds of the legislature party, survives.[5]

Paragraph 6 assigns all disputed questions of disqualification to the Chairman or Speaker. The Schedule has one significant exception: as regards the presiding officer's own disqualification, this is determined by a member elected for that purpose by the House.[6]

The drafters recognized that a person cannot judge a case in which he is personally interested. What they did not make allowance for is the far more common case where the presiding officer is not interested personally but politically: where the outcome determines whether the majority that elected him survives.

The design flaw that this paper examines is this one. It doesn't rely on any presumption that Speakers are dishonest. Many Speakers have decided defection cases against their party's interest. The challenge is the anatomy. Through a vote of the House, the holder obtains the office; his party identity usually remains, and tenure depends on the continued confidence of a majority.

When a defection petition imperils that majority, the Speaker is asked to be indifferent to an outcome that may curtail his own term in the chair. Justice J. S. Verma, dissenting in *Kihoto Hollohan*, made precisely this point: the Speaker's continuance in office will depend on the will of the majority, and so he cannot be the independent adjudicator that any rule of law requires.[7] The majority of the Bench did not agree. Its view is the law. Nonetheless, the dissent pinpointed the pressure point that every subsequent case has had to navigate.

IV. Kihoto Hollohan: Finality Is Not Immunity

Kihoto Hollohan v. Zachillhu forms the basis of modern law. The Court upheld paragraph 6 and the declaration that the decision of the Speaker is "final" but it treated the Speaker when deciding a defection petition as a tribunal exercising judicial power. The Court struck down paragraph 7, which sought to oust the jurisdiction of all courts, because the amendment had not been ratified by the States as Article 368(2) requires. Judicial review therefore survives, confined to jurisdictional errors.[8]

The judgment has two characteristics which shape the rest. The term "tribunal" denotes function, not location. A ruling on whether a member has suffered a constitutional disqualification is an adjudication even if made within the legislature. Moreover, the ordinary protection of Articles 122 and 212 for internal parliamentary proceedings does not render it immune from review for illegality. According to Paragraph 6(2), legal proceedings cannot be challenged due to irregularities in procedure. However, failure to exercise jurisdiction and denial of a hearing are not irregularities.[9]

Kihoto made review post-decisional. Courts generally do not interfere before a decision is made by the Speaker and there is no scope for *quia timet* actions to pre-empt an unfavourable order. The only exception relates to immediate, severe and irreversible harm from disqualification or suspension of a member.[10] This option exhibited assurance that the Speaker would come to a conclusion and said nothing about what should occur if he did not do so. Over the next three decades, this silence would emerge as the major issue. The process of reconsideration of a decision is likely to occur. In the absence of a decision, the review has no matter to work on, making finality a shield but not a sword.

V. Proof, Process and the Reasoned Order

Before delay is examined, it is worth asking what a properly made decision looks like, because the quality of the primary order largely determines how much review must intrude.

In the case of *Ravi S. Naik v. Union of India*, it was held that "voluntarily giving up membership" is wider than a formal resignation and can be inferred from conduct.[11] The case of *G. Viswanathan v. Speaker, Tamil Nadu Legislative Assembly* is significant in showing that an expelled member still belongs to his

[5] The Constitution (Fifty-second Amendment) Act, 1985; the Constitution (Ninety-first Amendment) Act, 2003, ss. 5 and 6; the Constitution of India, art. 361B and Tenth Schedule, para. 4.
[6] The Constitution of India, Tenth Schedule, para. 6(1), proviso.
[7] Kihoto Hollohan v. Zachillhu, 1992 Supp (2) SCC 651 (Verma J., dissenting).
[8] Id., paras. 109-111 (majority).
[9] The Constitution of India, arts. 122(1), 212(1) and Tenth Schedule, para. 6(2); Kihoto Hollohan, supra note 7, paras. 95-100.
[10] Kihoto Hollohan, supra note 7, para. 110.
[11] Ravi S. Naik v. Union of India, 1994 Supp (2) SCC 641, para. 11.

parent party for the Schedule, so that joining another party amounts to voluntarily giving up of membership.[12] The Schedule cannot be defeated by formalities because of these rulings. They also make reasoning more important. When an exclusion is able to rest on something inferential, the tribunal must identify the conduct that it is relying upon, test the genuineness of the evidence, and explain why it shows disavowal of the party and not just dissent within it.

The reported Telangana dismissals of December 2025 illustrate why this is important. The Speaker dismissed five petitions for lack of sufficient evidence of defection.[13] Whether those conclusions survive review is a question for the courts, and so this paper takes no view on it. The methodological problem is clearly present. If an order requires formal documentary proof of a change of party, it applies a test narrower than that adopted by *Ravi S. Naik*. If it considers separate acts in isolation, it may miss what the acts show in combination. A reviewing court can assess those questions only when the order reveals its rationale.

Natural justice does not require every petition to have a civil trial. A member must be aware of the case against them and be provided a reasonable opportunity to respond before an inference is made against them. *Jagjit Singh v. State of Haryana* confirmed that the hearing must be meaningful but need not be in any particular form.[14] On the other hand, the losing party is often responsible for adjournment delays. If the winning party is entitled to a remedy, the losing party's opposition should not delay that unless it appears dilatory or the ability to give effective relief is compromised. A justified adjournment must outline what remains to be done and its necessity.

Reason and restraint travel together like a horse and cart. A Speaker who identifies the actual ground invoked, resolves the facts in dispute and answers the defence gives the court an intelligible record. The record can be reviewed without retrial. A Speaker who does not act in any of these ways invites precisely the intrusive scrutiny that *Kihoto* wished to avoid.

VI. The Clock as a Jurisdictional Fact

Delay is the fault that the initial framework did not foresee, and the case law has developed in four steps.

First came the case of *Rajendra Singh Rana* v. *Swami Prasad Maurya*. In Uttar Pradesh, the Speaker acknowledged a purported division in a legislature party but left pending the petitions to disqualify the very members who made the claim. The Court ruled that the Speaker did not properly use the authority granted by the Constitution when he acknowledged the split without ruling on the disqualification petitions. The matter was not remitted by the Court because the Assembly's term was about to expire; it decided the matter and declared the members disqualified.[15] It was established in the 2007 case of *Rana* that the manner in which an authority decides questions may also be a jurisdictional error.

Keisham Meghachandra Singh v. Speaker, Manipur Legislative Assembly was the name of the second case. Petitions against a member who had become a minister had remained pending for years. The Court stated that the Speaker will have to take a decision within a reasonable period which should not normally exceed three months from the date of filing unless there are special circumstances. Further, the Court directed that a decision be taken within the next four weeks.[16] When this failed to yield a decision, the Court relied on Article 142 to restrain the minister from entry into the Assembly until further orders.[17] *Keisham* likewise made an open invitation to Parliament to consider replacing the Speaker with a permanent tribunal.

The third relates to the Maharashtra saga which culminated in *Subhash Desai v. Principal Secretary, Governor of Maharashtra*. The Constitution Bench ruled in May 2023 that petitions filed in mid-2022 should be decided within a reasonable period. Further intervention was required to fix a timetable. The Speaker eventually decided on 10 January 2024, recognising the Shinde group as the real Shiv Sena. He also refused to disqualify members of either faction.

[12] G. Viswanathan v. Speaker, Tamil Nadu Legislative Assembly, (1996) 2 SCC 353.
[13] ETV Bharat, supra note 3.
[14] Jagjit Singh v. State of Haryana, (2006) 11 SCC 1; see also Ravi S. Naik, supra note 11, paras. 20-22.
[15] Rajendra Singh Rana v. Swami Prasad Maurya, (2007) 4 SCC 270.
[16] Keisham Meghachandra Singh v. Speaker, Manipur Legislative Assembly, (2020) 2 SCC 617, paras. 30-31 (judgment dated Jan. 21, 2020); https://api.sci.gov.in/supremecourt/2019/27562/27562_2019_4_1501_19772_Judgement_21-Jan-2020.pdf.
[17] Keisham Meghachandra Singh v. Speaker, Manipur Legislative Assembly, order dated Mar. 18, 2020.

The government which the petitions questioned had been in power for some eighteen months.[18]

Padi Kaushik Reddy is the fourth. The Court resoundingly rejected the claim that, the Speaker being a constitutional office holder, his inaction is beyond the review of the Court. Further, it directed him to decide within three months and observed that no member should be allowed to protract the proceedings.[19] What followed was the sequence in Telangana described in the introduction.

Together, these case studies clearly support a distinction between performance control and outcome control. Performance control requires the competent authority to hear and decide accordingly. The outcome control solely depends on which party loses and which one receives the seat. The Court took the second step in *Rana*, which is the only such case, because remand had become futile in this case. The others limit themselves to the first. That self-control is good. But the sequences from Maharashtra and Telangana reveal its limitation. A decision may be produced through performance control; it cannot produce confidence in a decision. When a long-delayed decision favours the adjudicator's side, the public cannot easily tell whether the delay served the result or merely preceded it. The observation does not prove bias in any particular instance. This basically says that the present forum cannot dispel the suspicion, which is a different and in some ways graver problem.

The timeframes established in these instances should not be confused. The standard three-month period set by *Keisham* represents what is usually considered reasonable. When the three-month period designated by *Keisham* expires, it does not cause a petition to lapse and it does not transfer jurisdiction to the Court. The four weeks given in *Keisham* and the three months given in *Padi Kaushik Reddy* were particular directions in particular records. These entities have a single thing in common: a principle. An authority claiming exclusivity of its jurisdiction cannot plead not to perform the function for which it claims exclusivity. On this view, time is not a procedural detail of the duty to adjudicate but part of its content. An order passed after the dispute has lost its practical significance is, in the case of the petitioner, very much the same as no order at all.

Two additional points follow. First, the rule of three months should remain legitimate and effective. For this jurisdiction, political sensitivity is the ordinary condition, not an exceptional circumstance; a backlog cannot be a justification on its own. Extensions should only be granted based on identified reasons and an updated timetable. Next, the passage of time serves as evidence of something not right but it is not proof concerning what caused the fault or defect. A court asked to intervene must look into the chronology of the filing, service, pleadings and hearings, and the conduct of both sides before deciding on the form of intervention.

VII. Party, Faction and the Removal Notice

Disputes over defection are not so much about one or two individuals crossing the floor as a contest about which is the party. *Subhash Desai* spoke on that directly. The whip and leader of a legislature party must be appointed by the political party and not by the group that commands a numerical majority in the House, and the Speaker must identify the legally relevant source of the party authority.[20] A group that has been accused of abandoning the party otherwise could define the party line by which its own conduct is judged. The Court also maintained a separation between the functions of the Speaker under the Tenth Schedule and that of the Election Commission under the Symbols Order, so that a later decision on the party symbol does not necessarily decide whether earlier conduct incurred disqualification.

A notice of removal presents an even more acute conflict. In *Nabam Rebia v. Deputy Speaker* case under Article 179(c), it was held that a Speaker against whom a notice of removal has been given should not decide disqualification petitions pending disposal of the notice.[21] The rationale is clear: a Speaker who disqualifies members while his removal motion is pending can change the electorate which will decide his fate. The threat in the opposite direction is equally obvious: any respondent may freeze the proceedings simply by sponsoring a removal notice.

Subhash Desai referred *Nabam Rebia* to a larger Bench, and pending that reference the Court laid down the interim position: the Speaker may decide an objection to his jurisdiction, furthermore he will consider whether the removal motion is genuine or a device to ward off adjudication, and finally he will

[18] Subhash Desai v. Principal Secretary, Governor of Maharashtra, (2024) 2 SCC 719; 2023 INSC 516 (judgment dated May 11, 2023); "Eknath Shinde group is real Shiv Sena, rules Maharashtra Speaker", Scroll.in (Jan. 10, 2024).

[19] Padi Kaushik Reddy, supra note 1.

[20] Subhash Desai, supra note 18, paras. 113-114 and 155-156.

[21] Nabam Rebia and Bamang Felix v. Deputy Speaker, Arunachal Pradesh Legislative Assembly, (2016) 8 SCC 1.

decide whether to adjourn, which will be subject to judicial review.[22] This is a reasonable answer but it is one which is uncomfortable because it makes the presiding officer the first judge of an objection which is related to his own survival in office. Judicial review does not extinguish the conflict; it reduces its intensity but adds an additional layer of litigation before the base petition.

VIII. The Limits of the Speaker's Own Remedies

The Speaker is bound by the constraint on intervention in the same way as courts. In *Shrimanth Balasaheb Patil v. Speaker, Karnataka Legislative Assembly*, the Speaker disqualified 17 members and declared them ineligible to contest elections for the rest of the term of the Assembly. The Court upheld the disqualifications and held that a resignation does not obliterate the legal consequences of prior conduct. Furthermore, it struck down the prohibition against contesting as neither the Constitution nor the Schedule authorises it.[23]

This principle extends beyond Karnataka. The constitutional judge must impose the legal consequences even when the political actor appears to exploit a gap in the law. Disappointment with opportunistic behaviour does not give rise to a power to impose an unarticulated penalty. The cure for a gap is amendment, as the 91st Amendment showed by closing the split exception and adding Article 361B. In this sense, *Patil* is the mirror image of *Rana*: one case shows a court declining deference when deference would defeat the Constitution; the other shows an adjudicator punished for exceeding it.

IX. A Graduated Standard for Intervention

The decisions discussed earlier can be organized under one standard. The underlying concept is that the failure's nature must dictate the response's nature, and that the requirement of each step on the ladder of intrusiveness is an explanation as to why the step below would not work.

Table 1. A graduated standard for judicial intervention in Tenth Schedule cases

Failure	Typical example	What the court asks	Ordinary remedy	Exceptional remedy
Erroneous decision	Inference from conduct misapplied or ignored	Constitutional violation, mala fides or perversity (Kihoto)	Quash and remit for a fresh decision	Court decides only where remand is futile (Rana)
Unfair hearing	Adverse material not disclosed to the member	Was a meaningful opportunity denied, causing real prejudice?	Remit with directions on disclosure and hearing	None ordinarily needed
Withheld decision	Notices not issued for months after filing	Is the delay beyond the ordinary three-month norm, and is it explained?	Timetable and decision within a fixed period (Keisham; Padi Kaushik Reddy)	Interim restraint under Art. 142 (Keisham, 2020); direct decision (Rana)
Conflicted forum	Removal notice pending against the Speaker	Is the objection genuine or evasive? (Subhash Desai interim rule)	Review of the Speaker’s ruling on whether to adjourn	Larger-Bench resolution of Nabam Rebia; amendment
Excess of power	Bar on contesting elections for the rest of the term	Is the consequence authorised by the Constitution?	Sever the unauthorised penalty (Patil)	Not applicable

Should emphasis be given to the three points of application? First, a challenge to inaction shouldn't require proof of partisan motive. The question is whether a legally adequate process is moving, and to the authority that controls the docket will fall the burden of explanation for periods of inactivity. Moreover, the standard remedy for delays is establishing a timetable rather than altering a decision. The directions for completing the service, fixing the hearing and deciding by a particular date safeguard both the member's right to be heard and the freedom of the Speaker to arrive at whatever result he lawfully can. Third, the court resorting to direct adjudication is exceptional. The case of *Rana* demonstrates the circumstances under which direct adjudication can be justified, such as when various conditions are met. Still, the Court must explain why every lesser remedy would fail.

The standard also places obligations on courts. A decision directive with a three-month wait doesn't

[22] Subhash Desai, supra note 18, paras. 70-72.

[23] Shrimanth Balasaheb Patil v. Speaker, Karnataka Legislative Assembly, (2020) 2 SCC 595 (judgment dated Nov. 13, 2019).

get much done if the challenge to that decision is years later. If pleadings are focused, the record complete and the decisive question identified as early as possible, speedier review can take place without the court being made a manager of the House.

X. Three Objections

The first objection is that litigation that is politically urgent will decide events in the House before the issue has been properly tried. Prohibiting an individual from voting changes the effective voting strength of the House just as much as disqualification will. Due to the strong objection against casual interim orders, the standard confines them to the narrow exception laid out in *Kihoto*. It lacks substantial force against an order which merely directs the competent authority to hold the already constitutionally envisaged hearing.

The second objection raises a democratic legitimacy objection because the Speaker is elected by representatives, while no judge or tribunal member is. However, the function in question does not include making policy. It impacts specific members of the House rather than the House as a whole; electoral legitimacy is not the relevant qualification for such a task. The Constitution of India does provide for similar matters in Articles 103 and 192 to the President and Governor on the advice of the Election Commission, and not to the House.

The third objection is that deadlines cause decision-making that is often associated with hasty behaviour. Disregarding the amount of evidence could cause a risk with the timetable. It supports reasoned extensions and case management at an early stage. An open-ended process is not invariably fairer than one that is time-limited. The incompleteness of information creates a burden. It is a burden on the member whose status is in doubt, the petitioner whose complaint is unheard and the electorate whose representative may be sitting unlawfully. Also, Article 142 does not make the Court a general supervisor of politics. A remedy must still arise from some specific legal injury, and an order correcting an adjudicatory failure should not silently determine who ought to govern.

XI. Reform: Moving the Gate

Procedural reform can immediately be initiated without amendment. The Houses must adopt rules stating that there will be a public docket of every defection petition which records filing, service, date of hearing and reasons for every adjournment; directions for an early order to frame the issue and fix a presumptive schedule; and a reasoned order must be passed within the three-month norm. Having such measures would make lack of activity visible, the first condition of correcting it. They must assess the timeliness and reasoning of the decisions, not the number of disqualifications.

The procedure, however, cannot eliminate the structural conflict described in Part III. This means that the decision needs to be moved outside the House. There are two models proposed. In 1990, the Dinesh Goswami Committee and the Law Commission in its 255th report of 2015 recommended that the President or the Governor decide on the binding advice of the Election Commission in the manner as in the case of other disqualifications under Article 103 and Article 192.[24] *Keisham* and *Padi Kaushik Reddy* have suggested a permanent independent tribunal.[25] Table 2 compares the options against common criteria.

[24] Report of the Committee on Electoral Reforms (Dinesh Goswami Committee), Ministry of Law and Justice (1990); Law Commission of India, Report No. 255, Electoral Reforms (2015), paras. 5.20-5.22.

[25] Keisham Meghachandra Singh, supra note 16, para. 30; Padi Kaushik Reddy, supra note 1.

Table 2. Three models for deciding defection disputes

Criterion	Speaker with procedural rules	President or Governor on Election Commission advice	Independent tribunal
Needs amendment?	No; rules under para. 8	Yes; para. 6	Yes; para. 6 and enabling law
Distance from the House majority	None; conflict remains	High, if the Commission is independent	Depends on appointment and tenure
Likely speed	Better with a public docket and deadlines	Depends on dedicated adjudication capacity	Potentially high with a standing bench
Constitutional precedent	Present arrangement	Arts. 103 and 192	Specialist tribunals generally
Main risk	Compelled decisions that are still distrusted	Workload; doubts about the Commission's independence	An extra layer of litigation; executive control of appointments

Ultimately, the Election Commission model has the stronger constitutional backing since it is an extension of an existing mechanism rather than a new institution. The Commission will need a dedicated adjudication wing that can hear evidence and give a decision within a fixed period. Regardless of which model is chosen, there are three essential features. The executive should not influence appointment and tenure. Decisions must be reasoned and published. Furthermore, the transitional provisions ought to assign pending petitions, finished proof and current interim orders, so that the modification intended to abolish delay does not itself create a phase in which no authority can decide.

Reform which is substantive also deserves attention. If binding whips were limited to confidence motions, money bills and similar voting, it would add some deliberative freedom to members while maintaining the core purpose of stabilising governments as in the Schedule. This change would need careful definition and amendment of the Constitution. However, it is a different matter from the choice of adjudicator and should not be allowed to delay it.

XII. Conclusion

The Speaker's jurisdiction under the Tenth Schedule is constitutionally valid, judicial and reviewable only to a limited extent. Confusing these three propositions explains a lot of the litigation of the last three decades; they answer three different questions. Constitutional validity settles who decides. The judicial character determines the process of the decision-making. A limited review determines what a court can amend. None of them allows the judge to refuse to decide.

Courts have found a workable answer to the gatekeeper problem. Judges now regard the mere passage of time as a facet of their duty to adjudicate. They can force the decision while not forcing its content. This is a real achievement and the graduated standard proposed here is designed to make it predictable. But Telangana's petitions reveal its limits. A court can force the door open but not the person who stands at the door. As long as the adjudicator owes his position to one of the parties before him, there will be a question regarding every delayed decision in that party's favour which the law cannot answer.

In order to judge a guardian, judges must refer only to the decisions given by the guardian. A gatekeeper is judged by the decisions it withholds. The Constitution asked the Speaker to be the first. The past thirty years of litigation posit that the office cannot reliably avoid becoming the second, so that the honest response is to move the jurisdiction, not to keep supervising it.

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