CHAPTER-IV

THE ANTI-DEFECION LAW, 1985: 
ANALYSIS & INTERPRETATION

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Analysis and Interpretation

4.1 Prelude

Addressing a joint session of the two Houses of Parliament in the high-domed Central Hall of Parliament on January 17, 1985, the then President of India declared that in consonance with the objective of a healthy political system, Government intended to bring forward in that very first session of Parliament after the then Prime Minister Rajiv Gandhi had received his massive mandate, an anti-defection Bill. Major opposition parties and the people at large generally welcomed the proposal in the President's Address. It was regarded as Government's right response to a widely felt need to check the politics of opportunism that had disgraced the country since 1967. It was also evident that the Prime Minister was earnest and sincere about giving the country cleaner politics. The official machinery soon got down to work on the proposed legislation. Parleys and discussions were held with the opposition leaders for the purpose. Government decided to amend the Constitution and not come forward with ordinary legislation so as to leave no scope for any doubt or challenge in a Court of law. Anti-defection law was, therefore, embodied in the Constitution itself.¹

Therefore, it goes to the credit of late Mr. Rajiv Gandhi that a legislation to prevent widespread defection was introduced and subsequently passed by the Parliament in the very first session of his ministry. Moreover it was the first and most probably the only law made by his Government in a very democratic manner i.e. to say

¹. Agarwal Sudarshan, former Secretary-General, Rajya Sabha, Anti Defection Law In India, page.1.
despite a three fourth majority, he had consulted all the Opposition leaders and taken their views into account in formulating such a law. This is evident from the fact that the bill was passed by the Lok Sabha with 418 members voting for it, non against and only one abstention.2

4.1.1 Three days after the President's address, the Congress (I) Government headed by Rajib Gandhi put forward a proposal3 to combat defection.

The proposed bill seeks to make crossing of floor or even expulsion from a party as a fit cause for termination of the membership of the legislature or Parliament of the concerned individual. It is also proposed that an independent member can't joint any party. If he does so, he ipso facto ceases to be a member of the concerned Legislature or Parliament as the case may be. On the same day also, the then Prime Minister Mr. Gandhi held discussions with the leaders of the opposition parties. Mr. Gandhi told in the meeting that the Government was not only keen on introducing the Bill but also on passing it before the end of that session.

However, while extending support to the measure in principle, the opposition group leaders voiced reservations on some of the aspects of the draft Bill circulated amongst themselves for discussion. Both sides agreed that an M.P. or a M.L.A. voluntarily resigning from his party must also quit the House. Difference between the two sides, however, arose on categorising "split" in a party or its "merger" into another party. The opposition groups demanded that changes of party level in such situations should not be categorised as defection and

3. The Governments proposal was published in the Patriot on 20th January, 1985 which is included in this work at the end as Appendix-1.
the provisions for forfeiture of the membership of the House(s) do not apply in such cases.

The major difference was on the proposed provision that a member of Parliament or a State Legislature expelled from his party even for activities outside the legislature should also incur the same penalty. The opposition group leaders argued that such a provision would amount to placing the legislators at the complete mercy of the party President. They suggested that for activities outside the legislature, the member might be expelled from the party but should be allowed to sit as an Independent in the concerned House. Yet another point on which opinion was divided was whether the Presiding Officer of the House should be final authority to decide when a legislator could be declared as a defector and should lie no appeal being allowed against his decision? An alternative suggestion was that the Election Commission should be left to decide the matter. The then Law Minister Mr. A.K. Sen pointed out that it was not a practical suggestion in as much as an appeal would lie against it in the Judiciary, which was being criticised as dragging the action process to months and years. Some opposition group leaders also wondered as to how independent members could be brought within the purview of the legislation. But, the Prime Minister intervened, to say that, it was necessary in all cases to protect the sanctity of the people's mandate. The whole object of the legislation was to consolidate democracy and cleanse the present vitiated atmosphere.

There was also a lot of discussion on the proposed provision that the Anti-Defection Bill would not apply in case of 'splits' and 'mergers' of parties under certain conditions. They are (i) if one-third of the strength of the party in the legislature supporting a split; and (ii) if two-third backing the merger. Several leaders wonders what
would happen if the legislature party concerned did not split in that manner but the outside party organisation did so? Extending the protection to cases of merger was also strongly opposed and opinions were expressed that it should be confined to splits. The meeting remained inconclusive and a second meeting was fixed on Jan 21, 1985.

At the second meeting with the Prime Minister, leaders of the opposition groups agreed to support the bill after some of their suggestions were accepted. The Government had reportedly agreed that expulsion of a legislator from his party only on the ground of defiance of party whip will lead to his removal from membership of the legislature.

The Prime Minister was keen that the defection of legislators as had happened in Andhra Pradesh and Jammu & Kashmir should be covered by the Anti-Defection law though the action was taken outside the House. Opposition leaders argued that these could be curbed by restricting the discretionary power of the State Governors. It was suggested that in case a State Governor receives such a memorandum from members changing loyalty, he should summon the legislature within a few days for a trial of strength on the floor of the House. Action against legislators should be taken on the basis of the voting by members in the House. Mr. Rajiv Gandhi did not commit to any stand on such suggestion but said that the issue would be examined by the Law Ministry while framing the Bill.

4.1.2 The Constitution (Fifty-second) Amendment Bill, 1985 was framed and then introduced in the House of the People i.e. Lok Sabha by the then Law Minister Mr. A.K. Sen on January 24, 1985,

representing as it did the broad consensus amongst the Opposition and Ruling parties on principle and main points. No wonder, it received an all-round acclaim although reservation were expressed on the Bill in respect of some details.

In his introductory speech, the then Law Minister Mr. A.K. Sen said, "In Paragraph-2, sub-paragraph (1). (b), there will be a slight amendment. We are seeking to disqualify persons who disobey the mandate of the party, either by voting contrary to the mandate of the party or by abstaining from voting contrary to the mandate. There may be cases where a man may be ill, or the train may be delayed and he can't come and obey the mandate by voting. In such cases, he can't be regarded as having abstained from voting. So we are trying to add the words 'without prior permission, or subsequent condonation by the political party or authority within a month of such voting or abstention. That will take care of unlawful abstention, where a person is prevented by circumstances beyond his control from coming to the House in time and voting, according to the mandate of his party. With the deletion of this, I think it will possibly not be necessary to go into any bitter controversies over this Bill".5

With regard to the controversy on clause (c) of sub-paragraph (1) of paragraph 6, which sought to disqualify persons, who were expelled by their party for conduct outside the House, the Law Minister said that having regard to the consensus arrived at, not only within the Congress Party but also with a view to accommodating the views of quite a large number of Opposition Parties, including Sri Narayan Choubey's party and the CPM, the Government agreed to bring in, at the appropriate moment, an amendment deleting the said provision.6

5. Extract from the Debates in Lok Sabha on Constitution (52nd) Amendment) Bill, page.52.
6. Ibid
The Bill was then moved for the consideration of the House and after elaborate discussions and analysis it was passed by the Lok Sabha on January 30, 1985 and after being introduced, discussed and passed in the Rajya Sabha in the next day it received the assent of the President on 15th Feb, 1985. The Anti-Defection Law came into force w.e.f. March 1, 1985 with the notification made by the Law Ministry in the Official Gazette.

4.2 The Law

The Constitution 52nd (Amendment) Act, 1985, apart from amending Article 101,102,190 &191 of the Constitution relating to disqualification of members added a new schedule Tenth to the Constitution under the title "provisions as to Disqualification on Ground of Defection". The statement of object and reasons stated therein that the evil of political defections cause a matter of "material concern" and if not combated, it was likely to undermine the very foundations of Indian democracy. The provisions were designed for outlawing defections. It seeks to effect an automatic disqualification of political defectors from membership of either House of Parliament, Legislative Assemblies and Councils.

The Act provides, inter alia, that an elected member of Parliament or a State Legislature shall be liable to disqualification on grounds of defection if he decides to voluntarily relinquish membership of his original party, or abstains from, or votes in the House against the direction of such party. The acts of voting against the whip or abstention, however, will not attract the provisions of Anti-Defection

7. The text of the bill was published in the All India Reporter, vol.72, Dec. 1985 which is reproduced in this work as Appendix-II and the procedure as published in the Dynamics of Indian Government and Politics by Siwach J.R. is reproduced as Appendix-III.
Law if such acts are condoned by the party within 15 days of such happenings.\(^9\)

Anti-Defection law provides that disqualification on the ground of defection shall not apply in cases of 'splits' in and 'mergers' of the Legislature Parties. For this purpose, a 'split' will be deemed to have occurred when a group of members consisting of not less than 'one-third- of the total membership of a legislature party either breaks away from their original party or abstains from voting or vote against the whip issued by the party. Similarly 'merger' will be treated to have taken place if, and only if, not less than 'two thirds' members of a legislature party breaks away from the Original party and decides to merge with another party or acts to function as a separate group in the House.\(^10\)

The Tenth Schedule of the Constitution of India provides some exemption in this regard to certain class of members. For example, a nominated member can't be disqualified on the ground of defection, if he joins any political party within six months of his nomination as a member. Interestingly, an independent member elected to the House has not been provided any such immunity. He will be liable to be disqualified under the law if he decides to join any political party after his election to the House.

Persons who have been elected to the office of Speaker, Deputy Speaker or the Deputy Chairman under the Act, if by reason of their election to such office, they voluntarily give up the membership of the political party to which they belonged immediately before such election and do not, so long as they continue to hold such office thereafter, rejoin that political party, or if they having given up by

\(^10\) Paragraph-3, Tenth Schedule of the Constitution of India.
reason of their election to such office their membership of the political party to which they belonged immediately before such election, rejoin such political party after they cease to hold such office.\textsuperscript{11}

The most important provisions in the Anti-Defection Law are those contained in Paragraph-6 & 7. Paragraph 6 states that all the questions of disqualification under the Act shall be referred to the Speaker/Chairman and their decision shall be final. Proviso to paragraph-6 reads that in case the Speaker/Chairman himself becomes subject to such disqualification, the matter shall be referred to such member of the house as the House may elect in this behalf and his decision shall be final. Another significant point contained in the Tenth Schedule of the Constitution is that all proceedings in relation to disqualification of a member under the schedule shall be deemed to be proceedings in Parliament or State Legislature within the meaning of Article 122 or Article 212 as the case may be. Art 122 provides that the validity of any proceedings in Parliament shall not be questioned in any court of law on the ground of any alleged irregularity of the procedure. Art 212 accords similar immunity in the case of proceedings of the State Legislature.

Paragraph-7 of the Tenth Schedule of the Constitution contains a provision of far-reaching significance as far as the relation between the legislature and the judiciary is concerned. This paragraph bars the jurisdiction of courts in respect of any ruling and order of the speaker/chairman issued in connection with the disqualification of a member of the House under the Act \textsuperscript{12}.

\textsuperscript{11} Paragraph-5, Tenth Schedule of the Constitution of India.
\textsuperscript{12} Singh K.N., Supra f.n. 9.
4.2.1 To sum up, the gist of 10th Schedule is that:

4.2.1.1 An elected Member of Parliament or a State Legislature, who has been elected as a candidate set up by a political party and nominated member of Parliament or a State Legislature who is a member of political party at the time he takes his seat would be disqualified on the ground of defection if he voluntarily relinquishes his membership of such political party or votes or abstains from voting in the House contrary to any direction of such party;

4.2.1.2 An independent member of Parliament or a State Legislature will be disqualified if he joins any political party after his elections;

4.2.1.3 A nominated member of Parliament or a State Legislature who is not a member of a political party at the time of his nomination and who has not become a member of any political party before the expiry of six months from the date on which he takes his seat shall be disqualified if he joins any political party after the expiry of the said period of six months,

4.2.1.4 No disqualification would be incurred where a member claims that he belongs to a group representing a faction arising from a split in a party or merger of a party in another provided that in the event of a split, the group consists of not less than one third of the members of the legislature party and in case of a merger of not less than two-thirds of the members of the legislature party concerned;

4.2.1.5 No disqualification is incurred by a person who has been elected to the office of the speaker or the Deputy Speaker of the House of the people or of the Legislative Assembly of a State or to the office of the Deputy Chairman of the Council of States or the Chairman or the Deputy Chairman of the Legislative Council of a State, if he severes his connection with his political party;
4.2.1.6 The question as to whether a member of a House of Parliament or State Legislature has become subject to disqualification will be determined by the Chairman or the Speaker of the respective House; where the question is with reference to the Chairman or the Speaker himself it will be decided by a member of the concerned House elected by it in that behalf;

4.2.1.7 The Chairman or the Speaker of a House has been empowered to make rules for giving effect to the provisions of the schedule. The rules are required to be laid before the House and are subject to modifications/disapproval by the House;

4.2.1.8 All proceedings in relation to any question as to disqualification of a member of a House under the Schedule will be deemed to be proceedings in Parliament within the meaning of Article 122 or as the case may be, proceedings in the Legislature of a State within the meaning of Article 212; and

4.2.1.9 Notwithstanding anything in the Constitution, no court will have any jurisdiction in respect of any matter connected with the disqualification of a member of a House.

4.2.2 Anti Defection Rules

The Tenth Schedule confers power on the Presiding Officers of respective Houses of Parliament and State Legislatures to frame rules for giving effect to the provisions of that Schedule. Accordingly, the Chairman of the Rajya Sabha and the Speaker of the Lok Sabha took initiative and framed identical draft rules and placed them before the General Purposes Committees of the respective Houses for discussion. The Presiding Officers' conference also considered the rules in October 1985 at Lucknow with a view to secure broad uniformity. Therefore, the Rules were placed on the Table in each House for 30 days as
required by the Tenth Schedule. After the expiry of that period, the Rules came into force on March 13, 1986. The Presiding Officers of State Legislatures also followed suit and framed their own rules more or less on the lines of the rules framed by the Presiding Officers of the two Houses of Parliament.

Briefly stated, the rules lay down that any member may make a written petition to the Chairman/Speaker on the subject of defection of any member after satisfying himself that "there are reasonable grounds" to believe that such a question has arisen. The Chairman/Speaker shall, thereupon, satisfy himself whether the petition complies with the rules and if it does, make copies available to the member and to the leader of his party and then either examine the petition himself or refer it to the Committee of privileges of the House for a preliminary inquiry. The procedure to be allowed by the Chairman/Speaker for determining any question and the procedure to be followed by the Committee of Privileges for making a preliminary inquiry, shall be the same as the procedure applicable for determining any question of breach of privilege of the House by a member. Neither the Presiding Officer nor the Committee shall reach any finding without affording "a reasonable opportunity to such member to represent his case and to be heard in person". The Chairman/Speaker shall come to a decision after receiving the report of the Committee if he refers the petition to the committee or after receiving the comments of the member on the petition, as the case may be. The Chairman's/ Speaker's order determining the case has to be in writing with copies to be delivered to the affected member and his party. The rules specify that every decision declaring a member as disqualified under the Tenth Schedule to the Constitution shall be reported to the House forthwith if it is in session or immediately after the House reassembles if it is not in session. The decision has also to be notified in the official gazette and
forwarded to the Election Commission and the Central Government. If the affected member is the Speaker, the petition has to be addressed to the Secretary General/Secretary of the House who shall place the petition before such member for his decision, as the House may elect. The procedure to be followed in such a case is the same as for any other member. Rules also inter-alia require the Leader of each legislature party to furnish to the Presiding Officer names and other particulars of the members as well as the party constitution or its rules and regulations.13

4.2.3 Extension of the Law

The Constitution (Fifty Second Amendment) Act applies only to Parliament and State Legislatures, except the State of Jammu and Kashmir which, incidentally, as already mentioned, has its own Anti-Defection Law since 1979. This law was replaced in 1987 by a new law in the pattern of 52 Amendment Act. In order that Legislative Assemblies of Union Territories should also be brought under the Anti-Defection Law, a law was enacted in the beginning of the 1985 Budget Session of Parliament, to bring within the compass of the anti-defection law, members of Legislative Assemblies of the Union territories by making the provisions of the Tenth Schedule applicable to them.

The adoption of the Anti-Defection Law was hailed in the Parliament. It was described repeatedly as 'historic' and ushering in a new era in Indian Politics'. The Editor of 'The Tribune' wrote that "this measure of the Government has ushered in a new political climate and culture in the country. It is the most powerful disincentive in the way of legislators becoming auctionable commodities in the political

13. Disqualification on grounds of Defection Rules 1985 is appended at the end of this work as Appendix-IV.
power market. It is apt that the Presiding Officers are made the final arbitrators of any dispute arising from the application of the provisions of the law. Otherwise, defectors would go to courts and use judicial delay to legitimise acts of political opportunism. "

Such measure was held to be significant in so far as it gave constitutional recognition to the existence of a political party. The founding fathers had sought to keep party politics out of the Statute Book with the hope of allowing healthy democratic conventions to evolve in the polity. But, such a hope had been ruthlessly shattered. From this angle, it was observed that it was not credible on the part of the Anti-Defection Law to introduce party factor into the Constitution. However, most of the opposition leaders in the Parliament has strongly protested against the inclusion of such a provision in the Anti-Defection Bill which the Prime Minister had agreed to drop.

In a statement, the opposition leaders said that at their second meeting with Mr. Rajiv Gandhi, it was ultimately agreed that the provision would be amended so as to ensure that a member's expulsion by his party could not attract disqualifications unless the expulsion was because of violation of the party whip. They had formally recorded the agreement arrived at that meeting in a joint letter to the Prime Minister. The opposition leaders said that they were shocked to find that the Bill introduced in the Lok Sabha still contains the provision which they had all opposed and which the Prime Minister himself had agreed to drop. They held that such a provision confers "legitimacy on the Party despotism". It will enable Party causes and party bosses to suppress dissent and throw out dissenters not only from their party but even from Parliament and State Legislatures. Such legal power

vested in party bosses can't but promote autocracy and subvert internal party democracy. In the final text, however, the Government had accepted the first proposal and made it confined only to party whip.  

4.3 Analysis and Interpretation of the law:

Ever since the law came into force, doubts were raised as to the success of the law. It was argued that it is not an 'anti-defection' but an 'anti-dissent' Act because it prohibits free and frank expression of opinions in the House by compelling a member to vote in a particular way, even if he individually disagreed with such measures. Therefore, any law which curbed or took away a member's right to take part freely in the proceedings of the House went against the spirit of participatory democracy. It was argued further that a member is an elected representative of the people and not of a party. Logically, a member's loyalty should be first to his constituents rather than to his party. A member while voting in the House, therefore, should be guided more by the interest of his constituents than anything else. It is, therefore, imperative that the provisions of the Anti-Defection law is required to be critically analysed step by step.

The Tenth Schedule

Provisions as to Disqualification on Grounds of Defection

4.3.1 Paragraph 1 of the Tenth Schedule

Interpretation - In this schedule, unless the context otherwise requires-

a) "House" means either House of Parliament or the Legislative

16. Ibid.
17. Singh K.N., Supra f.n. 9, p.34.
Assembly or, as the case may be, either House of the Legislature of a State;
b) 'Legislature Party' in relation to a member of a House belonging to any political party in accordance with the provisions of Paragraph 2 or Paragraph 3 or, as the case may be, Paragraph 4, means the group consisting of all the members of that House for the time being belonging to that political party in accordance with the said provisions.
c) "Original Political Party" in relation to a member of a House, means the Political Party to which he belongs for the purposes of sub-paragraph (1) of Paragraph 2;
d) "Paragraph" means a paragraph of this Schedule.

4.3.1.1 Comment

Therefore, Paragraph 1 of the Tenth schedule to the constitution contains the interpretation clause and it seeks to define the expressions 'House', 'Legislature Party', 'Original political party' etc. But no attempt has been made to define the expression 'political party'. It is interesting to notice that the term 'original political party' defined in Paragraph 1(c) has been used only five times in the Tenth schedule whereas the expression 'political party' has been used for 30 times in the said schedule and yet it has been left undefined. Defining 'Original political party' without defining 'political party' is like eating without digesting. The Govt presumably realised the mistake and defined the term 'Political Party' in section 2(f) of the Representation of the People Act, 1951 by amending Act 1 of 1989.

However, the 1989 amendment to the Representation of the People Act sought to define "political party" as an association or a
body of individual citizens of India registered with the Election Commission as a political party under Section 29-A. This definition is however again for the limited purpose of registration of parties with the Election Commission in connection with the elections. It does not apply to 'political parties' under the Anti-Defection Law. It can't for example, cover cases of 'split' and 'merger' whereunder the resultant faction/group or party is to be deemed to be 'political party' and 'original political party'.

Direction 120 of the Directions by the Speaker provides for recognising a Parliament Party or group. To be recognised as a party, the minimum number required is one-tenth of the membership and for a group it should be atleast 30. But, after the Anti-Defection Law, every member of the House who is not elected as an independent or nominated, belongs to his party even if he be the only member of his party, i.e. irrespective of the number of its members in the House, every party that is represented in the House comes to automatically get constitutional recognition as a party. Thus, there is some contradiction between the constitutional provisions and the Speakers' directions.18

The expression 'defection' is the pivot around which the entire scheme of the Tenth Schedule clusters and yet the said expression has not been defined.

The use of the words "in accordance with the provisions of paragraph 2, paragraph 3 or paragraph 4" occurring in paragraph 1 (b) is also not very happy. The meaning of these words has to be understood with reference to the preceding words "a member of the

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House belonging to any political party". Does it mean that a member can belong to any political party only in circumstances specified in paras 2, 3 and 4 of the said schedule? The conclusion is irresistible that the expression "in accordance with" occurring in para 1(b) does not convey the real object of the draftsman.

The expression "belongs to" or "belonging to" used in paragraph 1(b), 1(c) and elsewhere in the schedule is also not proper. To describe an honourable member of the House as a "belonging" of a political party does not appear to be just.

In order to invoke the provisions of the Tenth Schedule, the Presiding Officer must first ascertain the political affiliation of each member. The most important document on which reliance can be placed for this purpose is the certificate of Election issued by the Returning Officer. It has been noticed that in some cases, the Returning Officer omits to mention the name of the political party by which the winning candidate was actually set up. In one case, the Returning Officer described a member to have been "set up by the Communist Party but supported by the Congress Party". Instances are not wanting when due to late arrivals of symbols, candidates set up by political parties are described as Independents. It is not clear as to how the party affiliation of such members is to be decided or ascertained.19

Lastly, the two most important terms used in the Tenth Schedule are 'split' and 'merger' also lack proper definition.

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4.3.2 **Paragraph 2 of the Tenth Schedule**

**Disqualification on ground of defection:**

1) Subject to the provisions of Paragraph 3, 4 and 5, a member of a House belonging to any political party shall be disqualified for being a member of the House -

a) if he has voluntarily given up the membership of such political party; or

b) if he votes or abstains from voting in such House contrary to any direction issued by the political party to which he belongs or by any person or authority authorised by it in this behalf, without obtaining, in either case, the prior permission of such political party, person or authority, and such voting or abstention has not been condoned by such political party, person or authority within fifteen days from the date of such voting or abstention.

Explanation:- For the purpose of this sub-paragraph -

a) an elected member of a House shall be deemed to belong to the political party, if any, by which he was set up as a candidate for election as such member;

b) a nominated member of a House shall -

(i) where he is a member of any political party on the date of his nomination as such member, be deemed to belong to such political party;

(ii) in any other case, be deemed to belong to the political party of which he becomes, or as the case may be, first becomes, a member before the expiry of six months from the date on
which he takes his seat after complying with the requirements of Articles 99 or, as the case may be, Article 188.

2) An elected member of a House who has been elected as such otherwise than as a candidate set up by any political party shall be disqualified for being a member of the House if he joins any political party after such election.

3) A nominated member of a House shall be disqualified for being a member of the House if he joins any political party after the expiry of six months from the date on which he takes his seat after complying with the requirements of Article 99 or, as the case may be, Article 188.

4) Notwithstanding anything contained in the foregoing provisions of this paragraph, a person who, on the commencement of the Constitution (Fifty-Second Amendment) Act, 1985, is a member of a House (whether elected or nominated as such) shall:

i) where he was a member of a political party immediately before such commencement, be deemed, for the purpose of sub-paragraph (1) of this paragraph, to have been elected as a member of such House as a candidate set up by such political party;

ii) in any other case, be deemed to be an elected member of the House who has been elected as such otherwise than as a candidate set up by any political party for the purpose of sub-paragraph (2) of this paragraph or, as the case may be, be deemed to be a nominated member of the House for the purpose of sub-paragraph (3) of this paragraph.
4.3.2.1 Comment

Therefore, the law for the purpose of defection classified members as follows:

4.3.2.1.1 Individual members -

a) he who resigns from the party,

b) he who joins another party,

c) he who is thrown out of the party but not a defector.

4.3.2.1.2 Groups of members -

a) those who split the party,

b) those who remain as a group even after their party merges with another party,

4.3.2.1.3 Individual members -

a) who violates party mandate with the prior permission of the party.

b) who violates the party mandate without the prior permission of the party,

c) who violates the mandate of the party without permission but obtains condonation from the party within fifteen days from such violation,

d) non-party member after nomination and after six months joining a political party.

Thus many classes of members emerge under the law amongst whom some are affected by the law and others are unaffected by the
law. Is this classification for applicability and non-applicability of the law reasonable? Is it not violative of Article 14 of the Constitution?

The law must answer the test of reasonable classification. The classification becomes reasonable if it bears nexus with the object of the law. The object of the anti-defection law are detailed earlier. How does an individual defection fulfils the object of the law while group defection is permissible. Is the object of the law to prevent only individual defections? The object of the law is to cleanse the public life and secure the stability of parliamentary democracy. Adequate answer may not be available to support the classification made in dividing line between those which are defections and those which are not defections. The guidelines are neither clear nor bear any nexus with the object of the Act.20

Mr. V.J. Rao, the then Advocate General of Government of Sikkim questioned, "Is this law full proof without any scope for defection"? He pointed out, "A glaring omission in the law is about the persons who are expelled from the party. It may be stated here that the law enjoins a disqualification if someone gives up his membership of the party. But, it does not disqualify a person who is expelled or thrown out of the party by the party. This is not only a serious omission but also leads to the unreasonableness of the law which in otherwords called arbitrary and violative of Article 14 of the Constitution of India.21

If an elected member of the House belonging to any political party does not voluntarily give up his membership of his political party, but is expelled by the leader of the Legislature Party for his anti-party activities or otherwise, he is required by the speaker to sit as an

Independent Member. Thus, there are two categories of Independent members: one who does not belong to any political party and the other who actually elected as a member of a political party but because of expulsion from such party, is made to sit as an independent member under the orders of the Speaker. Independent belonging to the former category can not join any political party but the independents belonging to the later category be allowed to join the original political party after expulsion orders are withdrawn.

Moreover, Paragraph -2 would rule out any elected member set up by a political party being at any stage regarded as anything but as a member of that party. If he defects, he is disqualified. His membership can continue with a changed party label only in case of merger or split under paras 3&4. There is thus no provision for a party member being labelled as unattached etc. under any circumstance.

Sub-para(2) of Paragraph 2 of the Tenth Schedule deals with an independent member who has not been set up by a political party. Under this sub - para, an independent member will be disqualified if he joins any political party after his election as a member of the legislature. But under sub - para (3) of Paragraph 2 of the said schedule, a nominated member is allowed to join a political party within six months of his nomination as a member. An independent member's freedom to join a party is fettered although he is master of himself and owes his election to no political party. On the contrary, the ruling party picks and chooses persons for nomination and in a way puts them under obligation. Such members are therefore, likely to join the ruling party. Both those provisions are vitiated by an inbuilt irrationality and bias and are therefore violative of Article 14.<sup>22</sup>

Therefore, the provisions of the Tenth Schedule are a bit biased towards the Independent Members as compared to the nominated ones because nominated members are allowed six month's time to join any political party, similar treatment should have been meted out to the Independent members as well. In fact, the Tenth Schedule nowhere refers to the "Independent Members". It is by inference that the readers are made to construct that para 2(2) really refers to the Independents. According to paragraph 2(2), an independent member cannot join any political party. What is forgotten is that a political party does not necessarily mean a legislature party. If it is so, then does it mean that an Independent Member can join a Legislature Party?

Calculation of six month's period under paragraph 2(3) of the Tenth Schedule may also create problem. Suppose an Anglo-Indian is nominated by the Governor as a member of the Assembly on March 1, 1989. Since the House was not in session, the nominated member took his oath under article 188 in the Speaker's chamber on March 8, 1989. Thereafter, the Assembly is summoned to meet on March 18, 1989, and from the said date, the Nominated Member is supposed to sit in the House. It is not clear whether the period of six months shall be counted from March 1, 1989 or from March 8 or March 18, 1989.23

The implementation of para 2(1)(b) also may create some practical problems. For example, there are three modes of voting in the House, namely -(a) voting by voice, (b) voting by show of hands; and (c) voting by lobby division. In some of the Houses, the automatic vote recording machines have also been installed. Now, in the case of voting by lobby division, records are clear as to whether or not a

particular member has cast his vote, and if so, whether he has voted for or against a motion. But, in the other modes of voting, it is difficult to ascertain whether the member concerned has violated the provisions of para 2 (1) (b) of the Tenth schedule.

The provisions of para 2(1)(b) of the tenth schedule comes in to play when a member votes or abstains from voting contrary to any direction issued by the political party to which he belongs. Now, suppose two conflicting directions are issued by the political party on a single issue and the member follows one and ignores the other, what should the poor speaker do in such case? In U.P.Assembly, Sri Rajendra Singh was expelled by the Lok Dal Legislature party in 1986. Sri Singh later on produced a photocopy of the letter ostensibly signed by the national president of his party which showed that the disciplinary proceedings against him have been dropped. Under the circumstances, it would be better if the words "direction issued by the political party" are made more clear and candid.24

The entire scheme of para 2(1) (b) is open to all sorts of disputes and controversies. It lacks workable certainty. For example, the member who is sought to be disqualified on the ground of improper voting may plead that in fact no direction regarding voting was issued by the political party or that any such direction was never served on him or that any such direction was never in the aforesaid para has not expired or that the alleged lapse on his part has been orally condoned and so on.

It is not clear as to what would be the mode and manner of the condonation. The period of 'fifteen days' is also capable of creating mischief. It may also be used to discriminate one member against the

other. In one case, the lapse can be condoned within fifteen days while in other case, the condonation may take place after the statutory period. If a petition seeking disqualification of an offending member is moved soon after the controversial voting, it is not clear whether the Speaker should wait for a period of 15 days before he proceeds to take action on the petition. Whether the leader of the Legislature Party informs the Speaker a month after the controversial voting that the action of the concerned member was condoned within 15 days from the date of voting, whether or not the case against the erring member has to be dropped. All these questions remain unanswered.

Moreover, Serious doubts have been expressed whether this disqualification provision does not militate against the basic freedom of association, opinion and expression - including the freedom of changing association, opinion etc. guaranteed under the Fundamental Rights chapter of the Constitution. Also the most fundamental privilege of members guaranteed under Articles 105 and 195 of the Constitution namely that freedom of speech and expression in the Houses of a Legislatures stands curtailed. Limiting the freedom of choice or binding the vote of legislature may amount to tampering with the fundamentals of the Constitution and democratic polity.

Article 19(1) guaranteed freedom of association but the law prohibited a member to join a political party after his election on the ticket of one party. Sub-clause (4) of Article 19 permits reasonable restrictions for the enjoyment of the right in the interests of the sovereignty and integrity of India or Public Order or morality. The expression morality does not take into account the political morality. The validity of such law needs to be decided against the background of a valuable right of association. Disqualification is incurred if a person violates the mandate of the party in voting. This is a restriction on
freedom of speech and expression on the right in the interest of the sovereignty and integrity of India, the security of the State, friendly relations with foreign states, public order, decency, morality or in relation to contempt of court, defamation or incitement to an offence.

A question comes, are the restrictions reasonable? Voting in a legislature is in no way connected with public order, decency or morality. Are these restrictions on voting or abstaining from voting valid against the background of such fundamental right? Can a citizen be deprived of these rights upon being elected to the legislature? The answer must be in the negative.25

Defiance of party direction is not punished by unseating the member concerned in countries like U.K., Canada, Australia and New Zealand where Parliamentary democracy similar to India prevails. Dissent is not considered defection because a dissenting member or one who does not comply with particular party directive has neither changed sides, nor crossed the floor, he continues to be a member of his party.

A question has been raised, if votes are not allowed to be altered by arguments and speeches, what is the use of the forum of Parliament? Also, if to ensure compliance by the members all that is to be done is issuance of a whip, what happens to the quintessence of parliamentary democracy which is the continuous and day to day answerability of the Government enforced through the doctrine of ministerial responsibility?

Parliament is required to exercise its power in certain matters which are quasi-judicial in nature, e.g. under Article 61 (relating to the impeachment of the President of India), Article 124(4) (relating

25. Supra f.n. 20.
to removal of Supreme Court Judges), Article 148(1) (relating to removal of Comptroller and Auditor General), Article 217(1)(b) (relating to removal of a Judge of a High Court) and Article 324(5) (relating to removal of the Chief Election Commissioner). The proceeding in Parliament of such quasi-judicial nature may be influenced by the issue of a party directive under Para 2 of the Fifty-second Amendment Act which is against the rule of natural justice.26

4.3.3 Paragraph 3 of the Tenth Schedule

Disqualification on ground of defection not to apply in case of split:

Where a member of a House makes a claim that he and any other members of his legislature party constitute the group representing a faction which has arisen as a result of a split in his original political party and such group consists of not less than one-third of the members of such legislature party -

a) he shall not be disqualified under sub-paragraph(1) of Paragraph 2 on the ground -

i) that he has voluntarily given up his membership of his original political party; or

ii) that he has voted or abstained from voting in such House contrary to any direction issued by such party or by any person or authority authorised by it in that behalf without obtaining the prior permission of such party, person or authority and such voting or abstention has not been condoned by such party, person or authority within fifteen days from the date of such voting or abstention; and

b) From the time of such split, such faction shall be deemed to be the political party to which he belongs for the purpose of sub-paragraph (1) of paragraph 2 and to be his original political party for the purpose of this paragraph.

4.3.3.1 Comment

This Paragraph which deals with the split in the Legislature Party is not happily worded. Sub-paras (a) and (b) of Paragraph 3 contains repetition from the proceeding paragraph and the same could not have been avoided.

While Para 2 contains the general provision for disqualification on grounds of defection, Para 3 is in the nature of proviso to Para 2 in as much as it provides that no disqualification, would be incurred where a member claims that he belongs to a group representing a faction arising from a split in a party if the group consists of not less than one third of the member of the legislature party concerned. In other words, according to the requirements of this paragraph, a split in the legislature party is recognisable only when at least one of the factions must have the minimum strength equal to one-third of the members of the original legislature party. Thus the claim to form a new group or faction should be made by all the members of the said group or faction, and not by one of them alone. In this background, the opening words of the paragraph (namely, where a member of a House makes a claim) makes an unintelligent reading. The words 'group' and 'faction' have both been used to convey the same idea, and this should have been avoided.

The same provision, it seems can be interpreted in two different ways. One interpretation may be that a split in the original political party of a member is a condition precedent for the speaker to recognise
a split in the legislature party. If that be the correct constitutional position, the speaker has to certify himself that a split in the original political party of a member has actually taken place before recognising the split in the legislature party. But another, feasible interpretation may be that it is not the job of the speaker under the Tenth Schedule of the Constitution to decide whether a split in the original political party has taken place or not. All that the Speaker is required to do is to ascertain whether the group (member and his companions) consists of not less than that one-third of the member of the legislature party. If this requirement is met, the Speaker is bound to hold that the member concerned shall not be disqualified.27

Going through the provisions of this paragraph, there can also be other valid interpretations. One interpretation has been that once such a claim is made the only concern of the speaker is to see whether the group consists of not less than one-third of the legislature party members and if that condition is satisfied, no member belonging to that group will be subject to disqualification. Under this interpretation, it is argued that since the word used is only 'claims' and the speaker is concerned only with the House and the legislature parties, it is not his function to enquire into what happens in the political party outside. It is not for him to pronounce upon whether or not there has been a valid split in the party outside.28

Therefore, the scheme underlying Paragraph 3 of the Tenth Schedule requires three essentials - namely (a) that there should be a split in the legislature party; (b) that one of the members of the group or faction arising out of the split must make a claim, and (c)

that such claim should be acceptable to the Speaker. All these events may not be simultaneous, and therefore, the use of the words from the time of such split occurring in paragraph 3(b) of the schedule is not proper. The deeming clause should be operative not from the time of the split, but from the date of Speaker's order approving the split.\textsuperscript{29}

The other possible interpretation that has been put-forward is that in order to provide a defecting member the protection of para-3, Speaker will also have to determine whether there has been a split in the political party outside, and whether the member belongs to the group which represents the faction arising as a result of the split. In case this interpretation is accepted, the most crucial words are 'arisen as a result of'. These words make it crystal clear that the arising of a group in the legislature party as a result of the split in the original political party outside is a process and can't be a sudden event taking place at a particular or precise point of time. 'Arise' necessarily involves the concept of growing, of ascending gradually.\textsuperscript{30}

Split in a national party itself can't be in the nature of a guillotine that abruptly falls and in a moment divides the party members all over the country into two. Members are thinking human beings who need some time to decide which way to go. There is no mention in para 3 of duration within which a faction must arise from the split or when the members representing the faction must make a claim that they constitute a group.\textsuperscript{31}

There is no concept in Para 3 or elsewhere in the Tenth Schedule of a 'Split' in the legislature party as such. 'Split' in Para 3 refers to a

\textsuperscript{29} Sukla B.C., Supra f.n. 23, p.98.
\textsuperscript{30} Kashyap Subash C., Supra f.n.22, p.103.
\textsuperscript{31} Ibid.
split in the original Political party only. What happens in the legislature party is only the rise of groups representing the factions resulting from the split outside. Also, for the split in the original political party, there is no requirement of numbers. One-third or the like breaking away or splitting the party.

The most significant words used in Para 3 may be analysed as follows:

i) 'Where a member makes a claim'

ii) of 'the group representing a faction'

iii) 'which has arisen'

iv) 'as a result of a split'

v) 'in his original political party' and

vi) 'such group consists of not less than one third members of the party'

vii) he shall not be disqualified.

In any case that comes up before the Speaker/Chairman seeking non-disqualification under the protection of Para 3, therefore, the factors that have to be considered are as follows:

a) whether such a 'claim' has been made,

b) whether there is such a group

c) whether the group represents a faction of the original political party.

d) whether the faction has 'arisen' 'as a result of a split'.

e) whether it is not less than one-third of the legislature party members.
A question that has often been raised is whether it was fair to make a distinction between defection by individuals and defection by groups merely because the latter might follow or might for the sake of convenience be called split of a party or merger of parties particularly when motivations behind split and merger or group defections may not often be very different from those for defections? Whether an individual defector should be punished while defectors in a group could go scot free under the grab of a party split?

Para 3 recognised the political phenomenon of splits in parties, but it has laid down that disqualification on ground of defection shall not apply to a member only if he and other members of the party constitute a group representing a faction arising as a result of the split in the original political party and such group consists of not less than one-third of the members of legislature party. There is no nexus between numbers and the fact of a split. The split is a complex phenomenon. It may occur because of differences over policy and programmes, original principles, functioning and alignment of social forces within a political party etc. Elements of personality and temperamental incompatibility may also not be wholly absent.

There is nothing sacrosanct about the figure one-third. It has been argued that Paragraph 3 of the Tenth Schedule relating to splits is, therefore, not based on any rational or intelligible differentia, violates the principle of equality and the basic constitutional structure.  

Paragraph 3 comes into play only when there is a split in the original political party and such split is reflected in the legislature party as well. But, where the rift in the legislature party does not

32. Ibid, p.104
affect the political party at the national level or where the case is vice-versa, the said para has no application. The paragraph is further silent in respect of those cases where one of the factions arising out of the split in the political party consists of less than one-third of the members of the legislature party. For example, suppose a particular political party has 60 members in its legislature party, after a split in the said party, only 45 members thereof decide to form a separate group or faction. The moot point is whether the remaining 15 members of the legislature party who constitute less than one-third of the total membership shall be disqualified on the ground that they have voluntarily given up the membership of their original political party? Paragraph 3 does not provide any answer to such a problem.33

4.3.4 **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 where his original political party merges with another political party and he claims that he and any other members of his original political party -

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

   b) have not accepted the merger and opted 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

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33. Sukla B.C., Supra f.n. 23, p.98.
political party to which he belongs for the purposes of sub-paragraph(1) or paragraph 2 and to be his original political party for the purposes of this sub-paragraph.

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, and only if, not less than two-thirds of the members of the legislature party concerned have agreed to such merger.

4.3.4.1 Comment

Paragraph 4 is anti-thesis of Paragraph 3 of the Tenth Schedule. While the former paragraph provides for exemption from defection in cases of split, the later paragraph exempts the cases of merger of two political parties. In order to be a valid split, one of the factions formed out of split must have the minimum strength of one-third of the members whereas in case of merger, at least two third of the members of the merging parties must have opted in favour of the merger.

The drafting of Paragraph 4 appears to be better as compared to the proceeding para. However, it does not specify the treatment which should be meted out to the members who have not accepted the merger in accordance with paragraph 4 (1) (b) of the Tenth Schedule.34

Para 4 deals with the merger of an original political party with another and for a merger to be deemed to have taken place in the political parties, "not less than two third of the members of the legislature party concerned must have agreed to such merger". In the

34. Sukla B.C., Supra f.n. 23, p.99.
case of split, the development takes place entirely outside the House. It is not dependent on any action by the members of the legislature party concerned. In fact, the recognition of a group of one-third members as not being subject to disqualification depends upon its representing a faction resulting from the split outside. In case of merger, however, under Para 4 (2), it is clear that no merger of a political party in another can be deemed to have taken place unless at least two-third of the members of the legislature party concerned have already agreed. Thus, the merger of political party outside becomes dependent on the agreement of two-third majority in its legislative wing, for purposes of the Tenth Schedule.35

4.3.5 Paragraph 5 of the Tenth Schedule

Exemption:

Notwithstanding anything contained in this Schedule, a person who has been elected to the office of the Speaker or the Deputy Speaker of the House of the People or the Deputy Chairman of the Council of States or the Chairman or the Deputy Chairman of the Legislative Council of a State or the Speaker or the Deputy Speaker of the Legislative Assembly of a State, shall not be disqualified under this Schedule:

a) if he, by reason of his election to such office, voluntarily gives up the membership of the political party to which he belonged immediately before such election and does not, so long as he continues to hold such office thereafter, rejoin that political party or become a member of another political party; or

35. Kashyap Subash C., Supra f.n.22, p.110.
b) if he, having given up by reason of his election to such office his membership of the political party to which he belonged immediately before such election, rejoins such political party after he ceases to hold such office.

4.3.5.1 Comment

This paragraph grants exemption to the Presiding Officers of both the Houses, who by reason of their election to the high offices, give up the membership of the political parties to which they belonged immediately before such election and who, after ceasing to hold such offices, rejoin their original political parties. But there are four lacunae in this paragraph. Firstly, the provisions of clause (a) of the said paragraph is more involved as compared to clause (b) thereof. Secondly, Paragraph 5 (a) seems to suggest that if a member of the House, on being elected as Speaker, Deputy Speaker etc. voluntarily gives up the membership of the party to which he belonged, and during the continuance of his office, rejoins the same political party, then he would be incurring disqualification under the Tenth Schedule. The words "does not, as long as he continues to hold such office rejoins that political party" confirm the above suggestions. This does not appear to be the intention of the defection law.

In the third place, it may be stated that no time limit has been fixed for the outgoing Speaker to rejoin his original political party after he ceases to hold the office of Speaker. This situation might be exploited by the former Presiding Officer who may prefer to continue his independent status for a longer time than required without incurring any disqualification.

The last lacuna may relate to a case where the Speaker, on his election, gives up the membership of his political party and after
sometime thereafter, he resigns from the office of the Speaker. Now, he wants to rejoin the political party to which he originally belonged. But, the said political party may not then exist. The identity of the Speaker's original political party might have acquired a new character because of split or merger. In such a case, Paragraph 5, as it stands today, may not provide any benefit or exemption to the Speaker.  

4.3.6 Paragraph 6 of the Tenth Schedule

Decision on questions as to disqualification on ground of defection:-

1) If any question arises as to whether a member of a House has become subject to disqualification under this Schedule, the question shall be referred for the decision of the Chairman or, as the case may be, the Speaker of Such House and his decision shall be final:

Provided that where the question which has arisen is as to whether the Chairman or the Speaker of a House has become subject to such disqualification, the question shall be referred for the decision of such member of the House as the House may elect in this behalf and his decision shall be final.

2) All proceedings under sub-paragraph(1) of this paragraph in relation to any question as to disqualification of a member of a House under this Schedule shall be deemed to be proceedings in Parliament within the meaning of Article 122, or as the case may be, proceedings in the Legislature of a State within the meaning of Article 212.

36. Sukla B.C., Supra f.n.23, p.101
4.3.6.1 **Comment**

According to this paragraph, the power to decide the question of disqualification of any member under the Tenth Schedule vests in the Speaker. The Office of the Speaker is of great authority, dignity and prestige and he has unnecessarily been dragged into political controversies. But, the speaker should be above din and disputes of disqualification.

Moreover, the Vice-President of India is ex-officio Chairman of the Council of States. The question whether the Chairman of the Council of States comes within the perview of disqualification under Tenth Schedule of the Constitution requires further examination. Article 67 of the Constitution provides that the Vice-President shall hold the office for a term of five years. The procedure for his removal from the office has also been laid down. As per Article 67(b), he may be removed from his office by a resolution of the Council of States passed by a majority of all the members of the Council and agreed to by the House of the People. If the Chairman of the Council of States, who is always the Vice-President of India, if disqualified under Paragraph 6 of the proviso to the Tenth Schedule, there will be a conflict between Art.67 and Paragraph 6. This is an anomalous provision and requires rectification.

It might be argued that the Tenth Schedule of the Constitution deals with the defection of elected members of Parliament and the State Legislature are covered by Article 102 and 191. This can be countered. The Vice-President of India also holds an elected office

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37. Paragraph 6, proviso says, “The Chairman or the Speaker of the house -- and Paragraph 1(a) defines the ‘House’ as either House of the Parliament ...: Hence Chairman of the Council of States is covered by Paragraph-6, proviso.
and there is no bar of his belonging to a political party. His position as the Presiding Officer of the House of Elders is similar to the Presiding Officer of the House of People. The voting powers of the Chairman of the Council of States and the Speaker of the House of the People are also similar. Both, the Chairman and the Speaker do not vote in the first instance. Under Article 100 they are empowered with casting votes. It may therefore be appropriate if the word 'Chairman' is replaced by the word 'Deputy Chairman' in the proviso of Paragraph 6 of the Tenth Schedule of the Constitution. This will remove the possible conflict between Article 67 and the Tenth Schedule.39

4.3.7 Paragraph 7 of the Tenth Schedule

Bar of Jurisdiction of Courts:

Notwithstanding anything in this Constitution no court shall have any jurisdiction in respect of any matter connected with the disqualification of a member of a House under this schedule.

4.3.7.1 Comment

This paragraph enjoins that the question of disqualification of a member under the Tenth Schedule and other matters connected therewith shall not be justiciable before a court of law and that the courts shall have no jurisdiction to decide such matters.

The provision debarring the jurisdiction of courts from the cases decided by the Speaker/Chairman has proved to be the most controversial one. It was feared that Speakers being political persons cannot be expected to keep themselves aloof from political consideration, while deciding the cases under the Anti-Defection Law. In India, Speakers generally do not formally sever their political

39. Ibid.
connection, after being elected to that post. Ironically they have to depend upon a party to get them elected during the next time as they are not elected unopposed by the people as is the practice in Britain. It is perhaps, natural, therefore, that their decisions get influenced by their political loyalties.  

Considering the sensitivity of Parliament about its own powers especially in relation to Courts, it is understandable as to why the issue of disqualification has been made non-justiciable. Perhaps for that reason the move for right to appeal before the Courts has been considered inappropriate.

Paragraph 7 of the Tenth Schedule of the Constitution bars the jurisdiction of Courts in respect of any matter connected with the disqualification of a member of a House. All questions are to be decided by the Chairman or the Speaker of the House concerned and such a decision shall be final. In this law which bars judicial review valid. Clause (4) of Article 13 even does not apply to Anti-Defection as it is no more a part of Part (iii) of the Constitution. Hence, it is subject to the decision of the Kesavananda's case. The following features have been considered by different Judges to be "basic features of the Constitution."

i) Judicial Review: 

ii) Independence of Judiciary:

40. Singh K.N., Supra f.n.9,p.33-34
41. Sikri S.L., Supra f.n.8,p.33
42. Now repealed.
43. b. Para 12 Chandrachud J. in Para 46, Bhagawati. SP Gupta V.Union of India, AIR 1982 Sc 149, Union of India V.Sheth, AIR 1977 Sc 2328.
iii) Federal System: 43c

iv) Secularism: 43d

v) Parliamentary System : 43e

Thus Judicial review and rule of law are the basic features of the Constitution. This law may be opposed to the basic features of the Constitution and hence beyond the amending power of the Parliament.44

4.3.8 Paragraph 8 of the Tenth Schedule

Rules:

1) Subject to the provisions of sub-paragraph 2 of this paragraph, the Chairman or the Speaker of a House may make rules for giving effect to the provisions of this Schedule, and in particular and without prejudice to the generality of the foregoing, such rules may provide for -

a) the maintenance of registers or other records as to the Political parties, if any, to which different members of the House belong;

b) the report which the leader of a legislature party in relation to a member of a House shall furnish with regard to any condonation of the nature referred to in clause (b) of sub-paragraph 2 in respect of such member, the time within which and the authority to whom such report shall be furnished;

43. c. Sikri C.J. 1603 Keshavananda Shebat J. and Grover J.
44. Rao V.J., Supra f.n. 20 p-131-132.
c) The report which a political party shall furnish with regard to such political party of any members of the House and the Officer of the House to whom such report shall be furnished; and

d) the procedure for deciding any question referred to in sub-paragraph (1) of Paragraph 6 including the procedure for any inquiry which may be made for the purpose of deciding such question.

2) The rules made by the Chairman or the Speaker of a House under sub-paragraph (1) of this paragraph shall be laid as soon as may be after they are made before the House for a total period of thirty days which may be compromised in one session or two or more successive sessions and shall take effect upon the expiry of the said period of thirty days unless they are sooner approved with or without modifications or disapproved by the House and where they are so approved, they shall take effect on such approval in the form in which they were laid or in such modified form, as the case may be, and where they are so disapproved, they shall be of no effect.

3) The Chairman or the Speaker of a House may without prejudice to the provisions of Article 105 or, as the case may be, Article 194, and to any other power which he may have under this Constitution direct that any wilful contravention by any person of the rules made under this paragraph may be dealt with in the same manner as a breach of privilege of the House.

4.3.8.1 Comment

The Chairman or the Speaker of the House has been empowered to make rules for giving effect to the provisions of the Schedule. The rules as framed by the Speaker & Chairman which were identical nature
and were laid before the House and effectuated without any modification/disapproval by the House. 45

Even if a member has committed an act of defection, the Speaker has no power to initiate action under the Tenth Schedule suo moto. He has to wait for a petition in accordance with the Members (Disqualification on Grounds of Defection) Rules, 1985. Paragraph 6 of the Tenth Schedule does not specify the person who is competent to file the petition for disqualifying the erring member. It simply provides that "If any question arises as to whether a member has become subject to disqualification, the question shall be referred for the decision of the Chairman or the Speaker". Rule 6 (2) of the Members of Lok Sabha (Disqualification on Ground of Defection) Rules, 1985, however lays down that a petition seeking disqualification of a member can be made by "any other member". The relevant rules made by the UP Speaker make a departure and provide that such a petition can be filed by "any person".

No time limit has been fixed under the Tenth Schedule or the rules made thereunder within which a petition seeking disqualification of a member is to be filed. These provisions further fail to provide a time limit within which the Chairman or the Speaker should decide the petition. The Speaker's office is essentially a political one, and he may prefer to keep the matter pending indefinitely. The procedure of inquiry in cases of defection may be lugubrious and if the acts of defection are committed towards the fag end of the legislature's tenure, the chances of filing a petition and its expeditious disposal are reduced to the minimum. 46

45. The Rules as made by Parliament is reproduce at the end of this thesis as Appendix-III.
46. Sukla B.C., Supra f.n. 23, p.103.
4.3.9 Other anomalies

It is not clear whether Independent members can be allowed to form a separate group and if so, whether the Speaker would be justified in granting recognition to the said group. If the Speaker grants recognition to this group of Independent legislators, then the next question would arise whether the said group can join or merge with any political party.

Blanket exemption given to the 'splits' and 'mergers' may lead to abuses and absurdities. The rigour of incurring disqualification on the ground of defection may cleverly be circumvented by staging splits and mergers in quick succession.

Of course, this law gave political parties explicit recognition in the Constitution and is necessarily a healthy development. But, it appears to impinge on some of the freedoms enshrined in Article 19 because such type of provision could arguably be misused at future date to exalt one party above the rest. That apart, it puts party bossism on a pedestal and sanctions tyranny of the party in the name of party discipline.47

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