CHAPTER - VII

JUDICIAL REVIEW ON SPEAKERS' RULING AGAINST DEFECTANT LEGISLATORS

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CHAPTER - VII

Judicial Review on Speakers' Ruling Against Defectant Legislators

7.1 Role of Speakers in Dealing with Major Defection cases and Judicial Intervention:

Despite several loopholes in the Act to prevent defection, it had generated a sense of confidence that Indian democratic system could flourish with limitation, if not the elimination of political evils, that continued to shatter the very foundation of the democratic set up since independence. It is worthwhile, to recall that the political evil was deplored as the main cause of political instability in a number of States as well as in the Union. But, notwithstanding the Anti-Defection Law some of the Governments, interalia, in Nagaland, Mizoram, Tamil Nadu, Pondicherry, Manipur, Goa and Meghalaya were brought down through defections. There were problems under the Anti-Defection law in several other states as well as in Madhya Pradesh, Gujurat, Bihar, Andhra Pradesh, Kerala, Uttar Pradesh, Punjab, Himachal Pradesh, Haryana and Arunachal Pradesh in spite of the fact that it took 18 years for the Central Government to enact a law to "outlaw" defections. Moreover, the irresponsible manner in which the Speakers and the Governors exercised their powers brought disgrace to their high offices and sometimes led to the brink of open confrontation with the judiciary. However, it was rightly hailed as a sign of "maturity and stability" of Indian political democracy.

Ironically, however, the first defection by an MLA was reported in Kerala, the day the Anti-Defection Law come into force, i.e. on March 1, 1985. Mr. P.C.Thomas was the man who apparently did not care for
it but was the first victim of the Anti-Defection Law. This perhaps signalled that the law which sought to curb defection by legislators was not going to be easily accepted, much less respected.

A combination of circumstances, at some places political mechanisations behind defections at others hasty or 'biased' use of power, by the Speakers in disqualifying MLAs or MPs from the membership of the House has recently created a situation of confrontation between the Supreme Court and State Legislatures; particularly in smaller states in the North-east like Manipur and Meghalaya. It took the unpleasant turn when the Speakers refused to take court orders, as they thought that they had the 'final' power and the courts stood barred by Para Seven of the Anti-Defection Law to interfere in such matters. The Supreme Court, on the other hand, took it as a defiance of its order and issued notices of contempt against the Speakers of some States who, in return threatened to take action for breach of privileges against the judges of the Supreme Court. This has generated interests among the scholars and suspicion among the general public about the functioning of parliamentary Democracy in India. It would, therefore, be expedient to analyse the problems in relation to different cases in different states step by step.

2. Mr. Thomas belonged to the three member Democratic Janata Party led by the Co-operative Minister Mrs. M. Kamalam in the assembly until he joined the Kerala Congress. But, Mr. K.M. Hamza Kunju, ruled that it had all happened on February 28, 1985 just before the Constitution amendment outlawing defection came into force and allowed him to cast his vote in the Speaker's election-The Indian Express, dt. 10.3.85.
3. As it would be impracticable to mention all the cases of defections since 1985 till date, only those cases are taken into consideration in which the legal, political and democratic value systems are involved.
Defections in the States

7.1.1 Goa

Goa is a small and newly created state with a 40 members Assembly. In the year 1990 and thereafter, defection cases in Goa assumed significance because the Speaker, who is supposed to be the judge to decide the cases of defection got himself involved in defection politics and assumed the post of the Chief Minister. The Indian National Congress having a strength of 21 members was ruling the State in the year 1990 with Shri Pratap Singh Rane as their leader. On 24th March, 1990, the then speaker Dr. Luis Proto Barbosa and six other Members of Goa Legislative Assembly namely Mr. Churchill Alemao, Shri Joao Baptist Gonsalves, Shri Somanath Zuarker, Shri Luis Alex Cardozo, Miss Ferrel Freda Furtado and Shri Mauvin Godinho submitted a letter signed by them to the then president of Goa Pradesh Congress Committee Mr. Eduardo Faleiro (in his absence) at his office at Panaji, tendering their resignation from the primary membership of the party i.e. Indian National Congress4 whose resignation was accepted on the next day. On the same day i.e. on 24.3.1990, Dr. Barbosa and six other Members addressed a letter signed by all seven members to the Governor of Goa, stating therein that they had withdrawn their support to Shri Pratap Singh Rane as their leader of the House and formed a new party with Dr. Barbosa as their president.5

Dr. Luis Proto Barbosa was the Speaker of Legislative Assembly of Goa from 22nd January, 1990 to 4th April, 1990. Dr. Barbosa's resignation of primary membership of the party i.e. Indian National Congress and subsequently forming a new party along with six others

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4. Goa Legislative Assembly, bulletin part-II No.113, para-4.
took place during his speakership. Moreover, after the collapse of Rane's Ministry, through Churchill Alemao stayed CM for 2 months, he assumes the post of Chief Ministership and included, among others, one independent member named Dr. Carmo Rafael Pegado in his Ministry. Also in the election to the office of the speaker two Maharashtrawadi Gomantak Party (MGP) namely Sri Sanjay Bandekar and Shri Ratnakar M. Chopdekar of his Ministry abstained from voting despite partywhips. Hence four petitions were filed before the then Speaker to disqualify them under the Tenth Schedule. But, as one of those petitions was against the then Speaker, it was disposed of by Dr. Kashinath G. Jalmi, Member of the Legislative Assembly of Goa, elected as a Member as per provisio to para 6(1) of the Tenth Schedule of the constitution given under para 5 of the Tenth Schedule of the Constitution of India.

In his decision dated Dec. 14, 1990 which forms part of the Goa Assembly proceedings and which had been challenged before the Supreme Court by Dr. Luis Barbosa, Mr. Jalmi in his 34 page judgement had held, "the Anti-defection Law disqualifies a legislator who 'has voluntarily given up the membership' of his political party. Mere numbers do not remove this disqualification. One third of the members are no less liable if they abandon membership simultaneously. They are exempted only if they quit the Legislative Party 'as a result of split' in the party outside. Proof of this wider split is essential to the application of the exemption clause. The Speaker of the Kerala Assembly, Mr. Varkala Radhakrishna rightly pointed out on Nov.8 that the practice of condoning defection if the defection group has one third strength of the legislature party is against democracy."

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5. Ibid, para 4 & 5
6. Ibid, para-27
Basing himself on this definition of a split he has pointed out that a split is different from a conspiracy since a split is open. In a split, disagreement over policy or leadership are ventilated openly in the party and leaders of the conflicting sides part company.\(^7\)

Mr. Jalmi had ruled, "If there is a split proper, then it does not cease to be so because the party leaders 'expel' some of the splitters in order to disqualify the rest. Nor does the Speaker's characterisation of the expellers as 'unattached' prevent them from forming a group of their own or joining a Government."\(^8\)

Dr. Kashinath Jhalmi, conceded to the contention of the petitioner that Dr. Barbosa had incurred disqualification from being member of the House, also because he and other members signing the resignation letter dated 24.3.90 have not contended therein that there was any split in the Congress Party and that there was any faction arisen out of such split. Further para 5 of the schedule permits the Speaker of any State Assembly to voluntarily give up the membership of the party to which he belongs but it specifically bars him from joining such political party or from joining any other political party, while he continues to hold the office of Speaker.\(^9\) But, tendering his resignation after two months of his assuming the office of the Speaker and without mentioning the reason that he was resigning from the Congress party so as to keep him away form the party pressure while discharging his role as a Speaker and that to joining the Goan People's Party, the then Speaker had violated the provisions of the tenth schedule and therefore Dr. Jhalmi declared that Dr. Luis Preto Barbasa had become

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7. Mahajan Krishnan: *Goa Speaker Case Claim of JD Split Questioned*, The Hindustan Times, dt. 11.01.91
8. Ibid
subject to disqualification under Para 5 of the Tenth Schedule to the constitution of India.

This decision was delivered on 14.12.90 despite the fact that on Aug. 7, 1990, the Supreme Court ordered status-quo to be maintained pending the hearing of the petition. In his ruling, Jhalmi had held that no High Court or the Supreme Court has jurisdiction over the decision of the Speaker or the decision of the person elected by the House to decide on the disqualification of members of the House under the Anti-Defection Law. Mr. Jalmi had held that courts do not have jurisdiction even over the disqualification of a member of a House on the grounds enumerated in Article 191(1) of the Constitution. These grounds are: holding of an office of profit under the Government; declaration by a competent court that the member is of unsound mind; that the member is an undischarged insolvent; the member has become a foreign citizen or is disqualified under any law made by Parliament. Mr. Jalmi laid down that the "Power of judicial review by the Supreme Court or the High Court is confined to the question of constitutionality of the statutes and it does not cover in its preview the power to review the orders of constitutional functionaries or other authority under the statutes."

However, Dr. Barbosa appealed against the order to the Panaji bench of the Bombay High Court which summarily dismissed his petition on Dec. 18, 1990. Accordingly an appeal was filed in the Supreme Court contending that Mr. Jalmi committed contempt of Court by deciding the issue in spite of the courts order of August 7 last year and Mr. Jalmi's interpretation of what is a split was entirely wrong.11

10. Supra f.n.. 7
11. Surprising Turn in Disqualification Plea, The Hindustan Times, dt. 9.1.91
Accordingly the Supreme Court on Feb. 15, 1991 stayed the disqualification of the former Goa Chief Minister Dr. Barbosa as a member of the State Assembly.\textsuperscript{12}

7.1.2 However, another petition which was filed by Shri Domnick Fernandes, MLA and others before the Goa Speaker against six above named members of the Goa Legislative Assembly was dismissed for non compliance with the mandatory provisions of the rules by the then Speaker Sri Surendra V. Sirsat on 13th Dec., 1990 and therefore they retained their membership. It was contended that the requirement of the rule 6(6) and (7) of the Members of Goa, Daman and Diu Legislative Assembly (Disqualification on ground of Defection) Rules, 1986 under the Tenth Schedule, in as much as the petitioners have not done the following:-

1. The petition is required to be signed by the petitioner and verified by him. Since the present petition is filed by twelve members, the petition had to be signed by all of them and verified by each one of them separately. The petition purports to be verified by Mr. Domnick Fernandes only. This is insufficient in law.

2. The petitioners rely upon a list of documents which was shown on the last page of the petition after the verification clause. The petition should have been accompanied by copies of the documentary evidence mentioned in that list and the annexures should also have been signed by the petitioners and verified by them on the same manner as the petition itself.

Under Rule 7(2) of the Members of Goa, Daman and Diu Legislative Assembly (Disqualification on Ground of Defection) Rules,

\textsuperscript{12} The Telegraph, dt. 16.2.91
1986, a petition has to be summarily dismissed if it does not comply with the requirement of Rule 6\textsuperscript{13} and therefore the then Speaker had dismissed the petition.

7.1.3 By two separate complaints, Shri Ramakant D. Khalap, Member of the Legislative Assembly of the State of Goa and Leader of the Maharashtrawadi Gomantak Party in the Assembly had sought the disqualification of the then MLAs Shri Sanjay V. Bandekar and Shri Ratnakar M. Chopdekar under para 2(1)(a) and 2(1)(b) of the Tenth Schedule of the constitution on grounds that they both abstained from voting in the election of Mr. Bankshe as the Speaker despite the party whip.\textsuperscript{14} By the common judgement dated 13th December, 1990, the then Speaker Sri Surendra V. Sirsat declared the said Member as disqualified from the membership of the Goa Legislative Assembly under Article 191 of the constitution of India and under paragraph 2(1)(a) and 2(1)(b) of the Tenth Schedule of the constitution. Against this order both the said Members filed a writ petition bearing No.321/1990 before the Division Bench of the Bombay High Court, Panaji on 13.12.1990 and secured a stay of the operation of the impugned order on 15.12.1990.\textsuperscript{15}

7.1.4 In the matter of petition filed by Sri Vinayak Naik, MLA against Dr. Carmo Rufael Regado, MLA for disqualification under the Tenth Schedule of the Constitution of India and Rule 8(1)(a) of the Members of Goa Legislative Assembly (Disqualification on grounds of Defection) Rules, 1986, the then Speaker Mr. Surendra V. Sirsat had gave a reasoned decision.

The fact of the case is that Sri Vinayak Naik in his petition alleged that Dr. Pegedo who had been elected as an Independent candidate

\begin{enumerate}
\item Legislative Assembly of the State of Goa, Bulletin Part-II, No.112.
\item The Prajatantra, dt. 16.12.90
\item Legislative Assembly of the State of Goa, Bulletin, Part-II, No. 139
\end{enumerate}
had joined the Congress Party and hence incurred disqualification under the Tenth Schedule.

However, Sri Surendra V. Sirsat, the then Speaker had dismissed the petition on the ground that there was no prohibition for Independent Member to support another party as an Independent Member. In such a case it becomes a coalition and an Independent Member remains Independent. In such a coalition, the Independent Member can also be a Minister. Also when it is a coalition, all the parties to the coalition have to vote together. Therefore, by being a Minister and voting with Congress, Dr. Carmo Pegado can not be said to have become a Member of Congress Party.

7.1.5 It is interesting to note that against order dt. 13th December, 1990, two review petitions were placed before the then Speakers by the affected parties of which one was disposed off by Mr. Surendra V. Sirsat in which he dismissed the petition. But surprisingly, the 2nd one which was disposed off by Mr. Siman P. D'Souza, the then Acting Speaker on 8th March, 1991 had reversed the earlier order of the previous Speaker. It is worthmentioning, however, that the Anti-Defection Law does not contemplate any provision with regard to review of the judgement of the Speaker by himself or his successor. Rather Paragraph 6(1) reads, "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". But, the then Speaker hold, "If the Speaker or such member appointed by the House to look into the disqualification of the Speaker makes an order which is in clear violation of principles of natural justice, it would not certainly be the intention of Parliament to keep such order alive and oust an elected Member
from discharging his duties for want of remedy. So, therefore, I find that the authority which passed such an order can rescind/set aside or review the same. This being the position, in my view, such an order is certainly subject to re-consideration, review, whatever one may call it, by the authority which passed such order". 16

The then Speaker agreed to the views of the victim legislators that the earlier order of disqualification is totally without jurisdiction; that the same has been passed in total violation of the principles of Natural Justice; that the notice issued against them to show cause/offer comments on the said complaint was hardly of two days when, in fact, the Rules of Procedure framed under the Tenth Schedule of the constitution by the House prescribes for a minimum period of seven days to the aggrieved party to offer comments; that apart from it, no reasonable opportunity had been given to them to defend their case; that their requests for time for a personal hearing had been refused and also their request for a further time for personal hearing to adduce evidence had been refused and that hurriedly an adverse order was passed against them. Moreover, the findings are based on material which have not been disclosed to them and that itself amounted to violation of the principles of natural justice, as the previous Speaker had relied on several newspapers showing photos of two MLAs with the Congress (I) MLA and Dr. Luis Proto Barbosa. That apart, the meeting of the 10th December 1990 was aborted for the fact that Dr. Luis Proto Barbasa had resigned prior to the meeting and, in fact, no voting had taken place. That even assuming that they had voted, they had time to seek condonation of their action within 15 days. Besides, those two members had moved the High Court on 13th for cancellation of the Show cause Notice. The file shows that

the Notice of the said petition and Motion has been served on the Office of the Speaker on the 13th and after receipt of the notice, the said order was passed. Hence, the then Speaker found an undue haste in the passing of the said order.

Mr. De'Souza, therefore, hold, that the earlier order was totally without jurisdiction unsustainable and therefore he rescind and/or set aside the said order dated 13.12.90. He had allowed the two petitioners to continue as Members of the Legislative Assembly of Goa State as from the date on which they were elected until date without any break and/or interruption.17 However, the Supreme Court on 31.3.93 held that Speaker, while functioning as a statutory authority has no power to review his decision on defection cases. Such power not inherent under the Schedule.18

Interestingly enough the then Speaker Mr. Simon De'souza on 8th March, 1991 requalified the then Goa Chief Minister Ravi Naik as member of the State Assembly19 by holding that Mr. Naik had constituted a group of seven out of total 18 members of the Maharashtrawadi Gomantak Party and thereby he commanded the support of more than the minimum six members (one third) required under the law.

7.1.6   Earlier Dr. Kashinath Jhalmi, MLA has filed a complaint by an application dated 25.1.1991 seeking the disqualification of the Petitioner Mr. Rabi Nayak under Paragraph 2 (1) (a) of the Tenth Schedule of the Constitution on the allegation that the Petitioner has voluntarily given up the membership of the original Pary as he was elected as a Member of the Goa Assembly, on the Maharashtrawadi

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17. Ibid
18. Reported in the Supreme Court Cases (1993) 2 SSC p- 724, detail of the said Judgement is reproduced at Annexure-I.
19. The Hindustan Times, dt. 9.3.91
Gomantak Party ticket, at the elections and being a Member of the said party, was sworn in as the Chief Minister of Goa.

By order dated 15.2.1991, the Speaker declared the Petitioner disqualified from being the Member of the Goa Legislative Assembly under Article 191(2) of the Constitution of India on the ground of defection set out in para 2 (1) (a) of the Tenth Schedule of the Constitution and held that he ceased to be the Member of the Legislative Assembly with effect from 15.2.1991.

The petitioner challenged the impugned order before the Goa Bench of the Bombay High Court in a writ petition and obtained a stay from the Court of the operation of the impugned order on 18.2.1991. The Petitioner sought the rescission and/or the setting aside of the impugned order by an application dated 4.3.91.

Disapproving the earlier order of the Speaker that the Petitioner did not discharge the burden of proving the split and that under the Rules, no information in Form I as required by Rule 3 and Form-III as required by Rule-4 of the split was given to the petitioner.

However, the then Acting Speaker had held that there is nothing in paragraph 3 or any other provision of the Tenth Schedule taking the effect of a split for failure of its communication to the Speaker and hence Mr. Naik continues to be a Member of the Legislative Assembly at all times from the date of his election without any break. The impugned order was, therefore, held to be of no effect. The Supreme Court also on 9th February 1994 had held that the then Speaker Mr. Surendra Sirsat did violate the mandate under the Tenth Schedule by not recognising the "split" in the Maharashtrawadi

20. Legislative Assembly of the State of Goa, Bulletin Part-II, No.140
Gomantak Party in spite of the Naik group having the requisite one-third of the then legislature party’s strength.

Why Goa was taken as the first case study after the enactment of Anti-Defection Law is evident from the above analysis in which the role of Speaker had become a matter of serious concern. At least in two cases, the disqualification imposed on a member by one Speaker was subsequently rescinded by another. This was clearly against the provision stating that on the disqualification of a member, "his seat shall thereupon become vacant". The removal of the disqualification in such a case would be tantamount to the revival of a dead man. Another Speaker went on passing disqualification orders in the House itself without following the procedure and the law.22

The worst tragedy in Goa was that the State witnessed seven chief ministers in four years i.e. from 9th January, 1990 to 8th April 199423 which spoke itself about the degeneration of democracy and curtailment of the civil liberties of the citizens that acted as a hindrance to the developmental works.

7.1.7 Punjab

While discussions were going around and interpretations were made and refuted by divergent groups about the effectiveness of Anti-Defection Law, there were incidents of defections at most of the States. But, the first major order on defection was delivered by the then Speaker of Punjab Legislative Assembly Mr. Surjit Singh on 4th of August, 1986.24 He expelled 10 MLAs each in two consecutive orders.

The allegation was that Mr. Prakash Singh Badal and his supporters had defied the Akali Dal whip in the election to the Assembly Speaker, Mr. Surjit Singh Minhas resulted by the resignation of Mr. Ravi Indra Singh as Speaker. The disqualified MLAs had challenged the order as well as the Anti-Defection Law in the Punjab and Haryana High Court and got a stay order on the same.

In a majority decision (3-2 majority) a Full Bench of the High Court on 1st of May 1987 upheld the validity of the 52nd constitutional (Amendment) Act i.e. the Anti-Defection Law but unanimously struck down clause Seven of the Act which debars the Court from scrutinising Speakers rulings.25

The Bench unanimously upheld that clause seven of the Act was ultra virus while the minority judges gave a dissenting view on other clauses. The main question which the High Court examined was whether the defiance of the party whip would invite disqualification for the legislature.

The Judges constituting the minority view were of the opinion that the Act was also bad because the power of the whip should only be confined to two things regarding which there was a danger to the existence of the government. Otherwise disobedience of the whip by members could not be made penal.26

The majority view upheld that any disobedience of the whip was penal. In this connection, Mr. Justice Goyal's observation were important. He said," The majority party can't work effectively if its members are allowed to vote with the opposition in prestigious measures while remaining in the Party. What else is a major issue in

25. The full text of the Judgement is reported in AIR, 1987 (Punjab and Haryana 263), detail of the said Judgement is reproduced at Annexure-II.
the House if the Speaker's election is not? In striking down paragraph seven of the 10th Schedule which excludes judicial review of a decision of the Speaker on the question of defection, the High Court has been guided by the constitutional provisions concerning the power of the Supreme Court and High Court. The part of the amendment has not been ratified by at least one half of the State Assemblies as stipulated in Article 368.

However, the majority judges had opined that the August 4, 1986 order of the then Speaker S.S.Minhas was wrong because he had disqualified the MLAs without considering whether the provisions and the Anti - Defection Law dealing with a 'split' applied to them or not. The same night the Speaker had passed a new set of disqualifying orders after "taking into account all the circumstances" stated in the High Court's judgement. The affected MLA had challenged this in the High Court on the ground that no opportunity had been given to them by the Speaker who could not be a judge in his own cause.

The matter assumed further importance when Mr. S.S. Minhas, the then Speaker of Punjab Vidhan Sabha, had lost no time after the High Court's decision upholding the Anti-Defection Law and disqualified 11 MLAs of the United Akali Dal including Mr Prakash Singh Badal who was in jail and threatened other 11 Legislators of the United Akali Dal for disqualification who came in the same category. So they immediately moved to the Supreme Court. The Supreme Court in 7th of May, 1987 admitted the petition of Mr. P.S. Badal and other disqualified MLAs of Punjab and referred it to a constitution Bench.

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29. The other MLAs were Mr. B.S. Bhunder, Mr. Sukhdev Singh Dhindsa, former minister, Raja Narindra Singh, Mr. Gurudev Singh Badal, Mr. Inderjit Singh, Mr. K.S. Wadala, Mr. S.S. Brar, Mr. Sujan Singh, Mr. Talib Singh Sandhu and Mr. Prem Singh Laipura. The Telegraph, 4th May, 1987.
By that time on 5th of May, 1987, the then Speaker also had disqualified other 11 members of the break away Akali Das w.e.f. 2.6.86, the day in which the legislators defied the party whip and voted contrary.

There was jubilation in the ruling Dal camp after the judgement, the overriding concern of its members being that they had secured an independent majority in the House again, and would not need to depend on Congress (I) support.

However, the Constitution Bench comprising the then justices Mr. Sabyasachi Mukharjee, Mr. Ranganath Mishra and Mr. B.C. Ray declined to stay the order of the Speaker and the High Court of Punjab and Haryana but ordered that if the Presidential election was to be held during the pendency of the appeal, the petitioners Mr. Badal and others, would be permitted to cast their votes as if they were not disqualified as members of the Punjab Assembly.30

Moreover, then the Supreme Court transferred to itself from the Punjab High Court, the petition filed by the 21 disqualified MLAs on the ground that the matter involving a similar question has already been referred to a Constitution Bench. Mr. Justice S. Mukharji and Mr. Justice G.L. Oja directed that, in the interest of justice, the members who are disqualified will continue to keep the residential quarters which they have been occupying. They will also continue to keep the telephone facilities at the rate they were enjoying earlier. Further, none of them have to refund any loan for car, home, or any other loan which had been given to them as MLAs. They must however, pay the usual instalments and fulfil the other conditions. They will also be entitled to other facilities and allowances as other MLAs, if the House

is not in session, except the daily allowances for attending the meetings. The judges made it clear that their order will be subject to the final result of the petitions before the constitution Bench. In case the disqualification is upheld, then they will be liable to refund the monetary privileges and other benefits.31

7.1.8 Haryana

On 26 March 1991, the Speaker of the Haryana Vidhan Sabha Mr. H.S. Chatha declared three members - Vasu Sharma, Rao Ram Narain and Azmat Khan all from Janata Dal Party - as having incurred disqualification under Para 2(1)(a) of the Tenth Schedule. Their claim of protection under the split clause was not accepted, as they had not joined Janata Dal (S) on the date of the Split, viz. 6 Nov., 1990, but did so subsequently. The then Speaker interpreted Paragraph No.3 of the Tenth Schedule of the Constitution, especially of the expression "from the time of such Split" would show that the split is a one time-event.32 He fully endorsed the interpretation of the Lok Sabha Speaker in the matter of Petition filed by Shri Sukhdev Paswan against Shri V.C. Sukla and six other MPs wherein he had categorically held that the split had to be only one time affair. As even a cursory reading of Tenth Schedule would show and hold that the split in Janata Dal Legislature Party in Hariyana Vidhan Sabha took place on 6.11.1990 and since these three members had joined subsequently, this could be considered as a second split but as they did not constitute one-third of the members, they were not entitled to protection and hence disqualified.33

32. Para 6(c) of the Judgement of the Speaker as notified by the Haryana Vidhan Sabha Secretariat Notification No. Ch. 47/90/29, dt. 26.3.1991
33. Page-7, Para-1, I bid.
Earlier, on 6th November, the Speaker, when duly informed of the formation of a distinct group of Janata Dal (S) Party consisting of 41 members, had recognised it under the Tenth Schedule and the Rules, as they were more than one-third of the then strength of the Janata Dal in the Vidhan Sabha.

7.1.9 In another case, on 10 April, 1992, the Speaker, Haryana Vidhan Sabha, dismissed the petition against a BJP member, Shri K.L. Sharma, on the ground of defection from BJP and joining the congress. The facts were that Shri Sharma had earlier broken away from BJP and formed a separate party BJP (K). His claim of a split in BJP was recognised by the Speaker. Subsequently, he made a claim for the merger of his BJP (K) in the Congress. Merger was accepted by the Congress and also recognised by the Speaker.34

7.1.10 Tamil Nadu

Mr. V. Thamizhmani, MLA belonging to the AIADMK (Janaki) had complained to the Speaker on January 11, 1988 that seven former Ministers including former acting Chief Minister V.R. Nedunchezhiyan, Panruti S. Ramachandran and K. Rajaram, belonging to the AIADMK (Jayalalitha) had attracted disqualification of the membership of the House under the 52nd Amendment Act.35

Those former ministers had failed to turn up before the Speaker to explain their stand on the complaint by Mr. Thamizhamoni even at the last chance given to them till 1 PM of January 21. But, they claimed that they continued to be members of the AIADMK and part of the 131 members of that party.

35. The Indian Express, dt. 24.1.88
Therefore on 28 January, 1988, the Speaker by separate orders declared them disqualified on the ground that they had constituted themselves into a separate group under Selvi Jayalalitha and Thiru Nadunchezhiyan and that it amounted to their voluntarily giving up the membership of the AIADMK.36

However on 16th March, 1988, the Supreme Court, while disposing of the petitions of the disqualified members ruled that the former acting Chief Minister, Mr. V.R. Neduncheihiyan, and 27 other disqualified legislators of the Tamil Nadu Assembly belonging to the Jayalalitha group would be entitled to contest the next election to the state Assembly.37

The clarification was issued by a division bench comprising the then Justice Ranganath Mishra and Justice M.M. Dutt. However, the Court did not went into the question raised by the petitioners, as the Assembly had since been dissolved.

7.1.11 Rajstan

In Rajastan, there were 55 MLAs for the Janata Dal in the Vidhan Sabha in 1990. 26 Janata Dal MLA had voted in favour of Mr. Bairon Singh Shekhawat when the Chief Minister sought the vote of confidence from the Vidhan Sabha on Nov., 8 following withdrawal of support by the Janata Jal and they preferred to defy the Janata Dal whip to vote against the confidence motion sought by the Chief Minister.38

But, when the process of deserting the Janata Dal began, its leader Mr. Nathi Singh expelled five MLAs and sought disqualification of 21 MLA's. However, the then Speaker of the Rajasthan Legislative

36. Supra f.n.. 34, p- 21.
37. The Telegraph, dt. 18.3.88
38. The Hindustan Times, dt. 13.1.91
Assembly Mr. Hari Shankar Bhabhra rejected petitions seeking disqualification of 21 members of the Janata Dal for allegedly defying the whip of their party in the voting on a motion of confidence in the Council of Ministers on 8 November, 1990. In view of the fact of a split in the Janata Dal at the national level in October - November, 1990, the Speaker accepted the claim of the members in the matter of the split.

7.1.12 Uttar Pradesh

On 26 November, 1990, the Speaker of the Vidhan Sabha acting under the Tenth Schedule to the Constitution and the Rules made thereunder, accorded recognition to the fact that a split had taken place in the UP Janata Dal Legislative Party and as a result two factions had arisen one under the leadership of Mulayam Singh Yadav with 120 members and the other under the leadership of Revati Raman Singh with 86 members. Five members whose names appeared in both the lists were called by the Speaker to appear in person. The two who expressed faith in the leadership of Mulayam Singh were accepted as members of that faction. For the other three, the Speaker said, a decision would be taken after talking to them. Simultaneously, the Speaker decided to rescind his earlier decision of 12 November, 1990 declaring 31 members as unattached since he noted that a split in the party had taken place before 12 November, 1990. Also, the complaints about disobedience of the whip by members petitions for disqualifying members, intimations regarding expulsion of members from the party etc. were also dismissed in the light of the decision in the matter of the split.39

39. Supra f.n. 34, p- 23
7.1.13 Again, another split in the Janata Dal Legislature Party was recognised by the Speaker when on 25 June, 1991 Shri Kailash Nath Singh Yadav was elected leader of the legislature party and on 25 November, 1991, he was reported to have removed from the leadership at a party meeting held under the Presidentship of Revati Raman Singh. On 26 November, 1991, Shri Kailash Nath Singh, still claiming to be leader of the Party, submitted to the Speaker a list of 14 members expelled by him from the Party. The Speaker, however, recognised the split - JD (A) with 35 members headed by Shri Kailash Nath Singh and JD (B) with 56 members headed by Shri Revati Raman Singh. The latter was recognised as leader of the Opposition.40

7.1.14 The North-Eastern States

The political development in the three North-eastern States of Nagaland, Meghalaya and Manipur have focussed attention on the efficacy of the Act. Freckle Political loyalties, the multiplicity of regional parties and the small size of the State Assemblies in these States have united to prevent the provisions of the Act. Governed often by fragile Coalitions, most of these states have witnessed the bizarre government toppling, often with subtle encouragement, if not the active connivance of, the Central Government. Heavily dependent upon Central Funding, most of these states have shown a tendency to align with the party ruling at the centre. Of course, the MLAs easy political loyalties and a defective Anti-Defection Law that can be manipulated at, will be obliging Speakers who have made floor crossing fairly easy in these states. The developments in the three states also set the Judiciary on a collusion with the legislature.

7.1.15 Two developments relating to the varying application of the Act in Nagaland provides a study in contrast. When the Jamir government

40. Ibid p-24
was tottering in May, 1990 due to defections engineered by K.L. Chishi of the Naga People's Council (NPC), the congress had made a last ditch attempt to scuttle the move. Chishi had obtained signatures of 12 Congress MLAs (the Congress strength in the House was 36).41

Since the group constituted one-third of the strength, it should not have attracted any penal provision of the Act. However, in an attempt to scuttle the split, the congress "expelled" two MLAs and declared that since the rest did not constitute one-third of the Party's strength, they ought to be disqualified.

With a 'friendly' Speaker, it was not a difficult task to accomplish. However, the Governor put his foot down and asked the Speaker to 'reconsider' the ruling. Meanwhile, the Governor invited Chishi to form a Government and Jamir's government was dislodged.

The Governor, however, took a completely different stand a few months later though the circumstances were identical. A similar situation took shape in Dec., 1990. The Chishi government has been toppled by Vamuzo with the help of Jamir and Jamir was attempting to topple the Vamuzo Ministry. A dozen MLA of the Naga People's Council declared that they had split the party and would support a Congress led coalition. In a swift move, Vamuzo "expelled" two of them from the party and declared that the other 10 had "defected". Vamuzo then asked the then Speaker to disqualify them which he promptly did. There was no intervention by the Governor as had done a few months previously.

The disqualification of the 10 NPC Legislators and subsequently that of five MLAs belonging to the Congress, had been challenged in

the courts. It was on the eve of the decision on their petition by the Supreme Court, that the Vamuzo cabinet recommended the dissolution of the House and the Governor asked him to continue as caretaker Chief Minister till the next elections. However, Vamuzo was paid back in the same coin when the Centre imposed President's rule and did not allow him to continue even as a caretaker Chief Minister till the polls.  

7.1.16 In Meghalaya, the provision of the Act have been circumvented with impurity. No party, has ever own a clear majority in the 60 member Assembly ever since the inception of the State. During the 1988 Assembly elections, the Congress own 22 seats while the other seats were divided among half dozen regional parties.

A Congress Government, led by Purna Sangma, was sworn in after a split in the largest regional party, the Hill People's Union (HPU), caused by B.B. Lyngdoh. Subsequently, however, Lyngdoh pulled the carpet from below the Sangma Ministry and formed a coalition government in association with other regional parties.

It was Meghalaya that had witnessed the strange spectacle of the Speaker, P.R. Kyandiah, being elected the leader of the congress Legislature Party. He had to give up the post after facing a lot of criticism but he remained in the limelight after he disqualified five MLAs. The Supreme Court asked the Speaker to count the votes of four disqualified MLAs. The Speaker declined to do so and conveyed to the Governor that the Government had lost its majority.  

On 8th October, 1991, Meghalaya plunged into a constitutional crisis with supporter of the then Chief Minister, Mr. B.P. Lyngdoh and
the then Speaker Mr. P.R. Kyndiah, voting each other out in dramatic circumstances.

Mr. Lyngdoh's 19 month-old United Parliamentary Party lost a vote of confidence with the Speaker's casting vote during a special session of the state Assembly called after the disqualification of five MLAs by the Speaker under the defection Law. Soon after the vote, the Speaker adjourned the House *sine die*.

The members of the ruling party, who were visibly aggrieved defied the Speaker's verdict and continued the proceedings of the House, selecting Mr. Robert Kharshing as Chairman.

The Chief Government whip, Mr. M. Mykhim, moved a resolution under clause (c) of Article 179 of the Constitution for removal of Speaker which was passed by voice vote. Mr. Kharsingh then adjourned the House *sine die* once again.44

The Supreme Court then on 10.10.91 ordered the then Meghalaya Governor Madhukar Dighe to take into account the votes of four disqualified ministers in deciding whether the B.B. Lyngdoh ministry had lost its majority in the Assembly.45 It led to the imposition of President's rule and the subsequent invitation to the Congress to form the Government.

7.1.17 The Anti-Defection Act has also been moulded by politicians in Manipur too. No party had in the recent past, attained absolute majority in the 60 member Assembly. In the 1984 polls, the Congress party could not attain a majority of its own but effected defections to form the government. That was before the Anti-Defection Act came

44. The Telegraph, dt. 9th Oct., 1991
45. The Sun Times, dt. 10.10.91
into being. The next election, in 1989, saw Congress winning 26 seats which was once again short of an absolute majority.

Six non-Congress parties joined hands to form the United Legislature Front (ULF) Coalition. The strength of the coalition partners ranged between one to eleven seats. The composition of the coalition and the ambition of Congress Leaders was bound to put the Anti-Defection Act to the Ultimate test.

The ULF leader, Mr. R.K. Ranbir Singh, in an attempt to upstage an attempt by a former minister Tompak Singh sought the help of Tompak Singh's rivals in the Congress and seven rebels were declared "unattached" following an application from the PCC Chief.

Seven others, who were part of the 'Conspiracy' to topple the Ranbir Singh Government, were summarily disqualified by the Speaker. Subsequently, three other MLAs were also 'disqualified'. They all moved the Courts and the Supreme Court quashed the disqualifications but the Speaker avoided compliance. The President's rule was then imposed while the case was still pending before the Supreme Court.

The detail of the incident in Manipur is as follows.

On 26 July, 1990, the Speaker of the Manipur Vidhan Sabha H. Borababu Singh decided that seven of the Congress (I) members had incurred disqualification as from 24 July, 1990 under the Tenth Schedule for having voluntarily given up the membership of the party. The claim of protection under the split clause could not be recognised as the number was less then one-third of the Congress (I) membership. Earlier, of the 26 Congress (I) members in the House, 14 had written to the Speaker claiming a split. However, seven of them subsequently retraced their steps and said that they continued to be with Congress (I).
The disqualified members moved the Supreme Court challenging the validity of the Anti-Defection Law. The court quashed the disqualification of members in November, 1991, but by then, 7 more had been disqualified. Speaker Borababu refused to be bound by the Supreme Court decision. After a protected battle Borababu sought to defuse the developing ugly situation by agreeing to abide by the Supreme Court decision and to rescind the disqualification. This did not, however, prevent him from disqualifying another batch of 13 MLAs on 24 April 1992 after president’s rule was lifted on 9 April, 1992 and a Congress led coalition government was installed in office under dubious circumstances. It was reported that in a 60 member House, as many as 21 MLA stood disqualified, reducing the effective strength to 39 only. No wonder if under the circumstances the Dorendra Singh Ministry won the vote of confidence on 28 April, 1992.46

7.1.18 Himachal Pradesh

On 2 February, 1991, the Speaker, Himachal Pradesh Vidhan Sabha, ordered under the Tenth Schedule and the Rules that since eight members of the Vidhan Sabha constituted a faction which had arisen as a result of the split in the original Janata Dal and consisted of not less than one-third of the members of the Dal, the faction would be deemed to be a new political party and the eight members would be treated as members of the Janata Dal (S) which would thereafter be their original political party.

Subsequently, on 25 July, 1991, the Speaker recognised another split this time in the Janata Dal(S) with three of its members not being less than one-third of the party members forming the Himachal Congress Vikash Manch.

46. Supra f.n.-34, P. 27-28
Again, as 1st of July, 1992, Janata Dal(S) was further split with two of its members - not being less than one-third of the party members - being recognised by the Speaker as members of the Himachal Vikash Manch.47

7.1.19 Pondicherry

The Speaker of the Pondicherry Legislative Assembly decided on 18 December, 1986 that two members of AIADMK Party - Shri K. Anbalagan and Dr. M.A.S. Subramaniam - had incurred disqualification for having voluntarily given up the membership of their original political party. The Speaker did not accept the claim of a split in the party as he said that in order to constitute a split, the political party must split vertically. From the top to bottom, a closely knit faction must arise and it should result in a group in the Legislature party whose strength was not less than one-third of the Party members. There was no evidence to show that this had happened in the case of AIADMK.

On 20 December, 1990 the Speaker decided that two members - Shri P. Rajavelu and Shri K. Deivanayagam - of the Janata Dal who joined Janata Dal (S) one-and-a-half months after the Party split could not claim the protection of the split clause and must be regarded as having voluntarily given up the membership of their original party and therefore incurred disqualification. However on 26 December, 1990, on a joint petition by the two members, the Speaker reviewed and rescinded his order, upheld the claim of split and declared that the two continued to be members of the Assembly without any interpretation.

47. Supra f.n.. 34, p- 27
On 20 March, 1989 the Speaker of the Karnataka Legislative Assembly decided to accord recognition to the Janata Dal Legislative Party consisting of 111 out of 138 members of the Janata Party. The decision came on a petition filed on 16 February by the Leader of the Opposition, Smt. K.S. Nagarathanamma. Other points on which the Speaker pronounced his decision were as follows:

1. No proceedings under the Tenth Schedule of the constitution can be a matter of discussion in the House.

2. Proceedings on a petition for disqualification on grounds of defection are not in fact proceedings of the House. That is why by a legal fiction introduced in Para 6(2) of the Tenth Schedule, the benefit of Article 212 of the Constitution is extended to the proceedings on such a petition.

3. Only the matters on which the House can take a decision can be raised and discussed in the House. While on a question of privilege the House has the final say, in case of disqualification under the Tenth Schedule, the House can't have any say and the Speaker has been made the sole and final authority.

4. All the proceedings on a petition for disqualification are to be held outside the House. They may be held in the Chamber of the Speaker.

5. It is the duty of the presiding officer to give recognition to parties in the House. The recognition of parties by the Election Commission is for purposes of allocation of election symbols only.

6. The Constitution of India does not recognise any political parties for formation of Government. Article 163 and 164 lay down that the Chief Minister shall be appointed by the Governor and the other Minister shall be appointed on the advice of the Chief Minister.
The Parliament and the Law

7.1.21 After the enactment of Anti-Defection Law, the first case of disqualification of a member of the Lok Sabha was that of a Congress(I) member from Mizoram, Shri Lalduhoma. On 24 November 1988, the Speaker Dr. Bal Ram Jakhar informed the House that on 21 July, 1988, a member named Shri Ram Pyara Panika had filed a petition before him under Paragraph-6 of the members of Lok Sabha (Disqualification on Ground of Defection) Rules, 1985 praying that Shri Lalduhoma, another member be declared to have become subject to disqualification in terms of the provisions of the Tenth Schedule to the constitution. The petition was referred by the Speaker to the Committee of Privileges under rule 7(4) of the aforesaid rules to make a preliminary inquiry and submit the report to him. After the Committee of Privileges had submitted their report to him on 14 Oct., 1988, he gave an opportunity to Shri Lalduhama to present his case in person before him on 15 November, 1988. Taking into account all the facts and circumstances of the case, report of the committee and submission made by Shri Lalduhoma and in accordance with the provisions of the Tenth schedule, the Speaker decided that Shri Lalduhoma had incurred disqualification in terms of paragraph 2(1) a of the said schedule for being a member of Lok Sabha by voluntarily giving up membership of Congress(I), his original political party. Accordingly, Shri Lalduhoma ceased to be a member of Lok Sabha with immediate effect.48

7.1.22 The Congress (S) Legislature Party in the Eighth Lok Sabha initially consisted of four members, viz Sarvashri K.P. Unnikrishnan, Kishora Chandra S. Deo, Sudarshan Das and Sahabarao Patil Dongeonkar. Shri Sharad Power, President of All India Congress (S)

48. Ibid, p-32
and Shri A.G. Kulkarni, a member of Rajya Sabha in their separate letters dated 30 November, 1986 informed the Speaker about the expulsion of Sarvashri K.P. Unnikrishnan and V. Kishore Chandra S. Deo from the primary membership of the Congress(S) Party. After receipt of the above communications, Shri Sarat Chandra Sinha who claimed to have been elected as provisional President of the Congress (S) Party forwarded to the Speaker a copy of the resolution adopted by the Congress Working Committee(S) on 29 November 1986 suspending Sarvashri A.G. Kulkarni and Shri Suresh Kalmadi from the primary membership of the party and revoking the suspension of Sarvashri K.P. Unnikrishnan and Shri V. Kishore Chandra S. Deo. The Speaker after considering the matter decided to treat Sarvashri K.P. Unnikrishnan and Shri V. Kishore Chandra S. Deo as unattached in the House, as the communication regarding their expulsion was received first from Sarvashri A.G. Kulkarni and Sharad Power in their capacity as office bearers of the party. Shri Unnikrishnan, however, challenged the decision of the Speaker contending that the Speaker was not empowered to declare a member elected on a party symbol and who continues to be a member of that party, as unattached member. However, this precedent of declaring as unattached soon became the rule.

49. Shri Sharat Chandra Sinha had informed that the CWC (S) had in its meeting held on 29th November, 1986 revoked the illegal and unconstitutional suspension of Sarvashri K.P. Unnikrishnan and V. Kishore Chandra S. Deo.

50. The Constitution or the Rules of the Lok Sabha does not provide for any such thing as "unattached" member. The term is only used to distinguish such MPs who have been elected on the ticket of a certain political party and therefore distinct from Independent members and now for some reason have left the party and have to be seated in a separate block. But, 'this is done for the sake of Convenience' says Subash Kashyap, and has no significance as far as the Anti-Defection Law is concerned. There is a big difference between doing something to facilitate the working of the House and mischievously declaring a large group "unattached" so that they can't split the party.


51. Supra f.n. 34, p-32

7.1.23 In another case, Shri Gokul Saikia, a member of the AGP party was expelled from that party for complete disregard of the party discipline. The fact of expulsion was communicated to the Speaker by the Leader and Chief Whip of the AGP legislature party. After having the commitments of Shri Gokul Saikia, the Speaker declared him as unattached member.

7.1.24 The real effect of the Anti-Defection Law can be measured when 22 Congress MPs of both the Houses of the Parliament formed the Jan Morcha under the leadership of Mr. V.P. Singh. Even though they claimed the Jan Morcha to be a non-political organisation, still then, dethorning Rajib Gandhi was the most important task before the Morcha Leaders.

"The Anti-Defection Act does not affect us in any way" asserts the Jan Morcha Leaders.53 Infact, it is a painful and troublesome experience for the Congress which had to bear with unpalatable criticism day in and day out, inside and outside parliament because of their reluctance to expell the fallen out members.

An expelled member who does not join any party is unfettered and free but the suspended members create more embarrassment for the ruling party by insisting to exercise their freedom of speech and by running down the government while being in part of the ruling party. It is another matter that such members are not allowed to speak or participate in official business and have to obey the whip issued by the party.

But, in effect, even as whip cracks and lashes, the members go about creating embarrassment for their party. Except Mr. V.P. Singh,

Mr. Arun Nehru, Mr. Arif Mohammad Khan and Mr. V.C. Shukla the four top leaders, the rest of the 18 MPs in the two Houses of Parliament, who were not expelled, have suffered immense embarrassment to the treasury Benches. The veteran G.G. Swell who was suspended from the Congress also joined them.

The Congress whip made a mockery of himself during the no-confidence motion debate in the Lok Sabha during the 8th Lok Sabha by issuing a three line whip to Mr. Ram Dhan and Mr. Raj Kumar Rai who were with the opposition in demanding Rajib Gandhi's resignation, although they could not vote for it by disobeying the whip. A whip was issued asking them to take seat and keep quiet which they disobeyed and challenged on the ground that the whip could be issued only on the matter of voting. The Congress whip was pulled up by Mr. Rajib Gandhi himself on loosing the face in the Parliament.54

This unpleasant experience led to some conjecture that the ruling party was toying with the idea of further amending the Anti-Defection Act to allow more powers for the whip but so far it is a conjecture only. However, the Morcha MPs led by V.P. Singh had to vote for the 59th Amendment Act which they even called as "draconian Law".

7.1.25 When the new Janata Dal was formed with the merger of Janata Party, Lok Dal and the Jan Morcha, everybody was curious about the fate of these Jan-Morcha Leaders. But, the matter remained undecided as Rajib's government was dissolved and the stage was set for the next General Election.

The Ninth Lok Sabha had felt the intensity of defection to the extent that the matter had reached once the flash point. The Minority
Government of V.P. Singh had to collapse because of the withdrawal of supports by BJP following the developments at Ayodhya consequent upon the arrest of its leaders Mr. L.K. Advani, who was holding a 'Rath Yatra' to draw the attention of the general public over the Ram Janma Bhumi issue. While the hung Parliament was about to collapse, the political horse-trading was in full swing to make it alive and the hero was Mr. Chandra Sekhar who was then abetted by the then opposition leader and Congress(I)'s President Mr. Rajib Gandhi. The matter assumed such proportion that the country had to witness two Parliamentary Session and two confidence motions within a month and the Janata Dal who was in power then had to split to give vent to the aspirations of some greedy politicians.

As far as the media-officials were concerned, the Janata Dal officially split on 5th November, 1990 with the dissidents holding their parallel meet on the lawns of Devi Lal's Willington Crescent residence. Only the then Lok Sabha Speaker Rabi Ray, seemed to believe otherwise, because in that very night Mr. Ray sent a notice to 30 MPs, belonging to the newly-formed Janata Dal (S) declaring them "unattached" on the ground that they had been expelled by the President of the Parent party, Mr. S.R. Bommai. With this notice, Mr. Ray had effectively reduced the strength of the dissident group below 47, the magic number required for a legitimate split, according to the provisions of the Tenth Schedule of the Anti-Defection Law.

However, Mr. Rabi Ray's action was severely criticised on the ground that even if the party authorities wished to expel certain members as a disciplinary measure, they were bound to follow certain procedures according to the Dal's Constitution. According to Kamal

55. Goswami Seema; Supra f.n. 50
56. I bid
Morarka, the members should have been served with a show-cause notice, their case referred to the Party Disciplinary Committee, so that they could respond to the allegations levelled against them. If even after that they had been found guilty, they could be expelled. But what Bommai did was completely arbitrary and unreasonable. And by recognising his action Mr. Ray had also committed the same mistake.

The former Secretary-General of the Lok Sabha, Subash C. Kashyap, went further to say that "The split, without a doubt, come first. So how could Mr. Bommai expel, some people who did not belong to his party in the first place. That's like Rajib Gandhi expelling certain members of the Bharatiya Janata Party."57

The Indian Constitution does not confer on the Speaker the right to either recognise a split in a political party or even declare a group of MPs "unattached". The Tenth Schedule, which applies to all such situations, says that the Presiding Officer of the Lok Sabha only comes into the picture when a petition is presented to him by a party asking for the disqualification of a member or more on the ground, that he has disobeyed the party whip.

The Speaker is then obliged to enquire into the matter and ascertain why the member has disobeyed the party directive. If the member claims the parent party has 'split' and he now owes allegiance to the new group, the Speaker has to conduct investigations and find out the actual strength of the group. If it comprises one-third of the membership of the original party, he recognise the group as a separate party. If not, the members against whom the complaint has been made risk disqualification under the Anti-Defection Act. Subash

57. Ibid
Kashyap says. "Expulsion does not concern the Speaker. It is purely a party affair and is not mentioned in the Constitution."58

Constitutional Expert Dr. L.M. Singhvi concedes that, going by the Tenth Schedule alone the Speaker does not have any *locus standi* in recognising a split, unless a petition is made to him. "According to certain subordinate legislation", however, he says, "he has to be informed of a split in a political party. But even in that event there is a 30-day time limit, within which the news must be intimated to the Speaker.

Former Speaker Balaram Jhakar, who has also declared a fair number of people unattached, agreed that Ray's action was a trifle suspect." This was done" he said, "only to hand a Democle's sword over the rest. I would have conducted through enquiries before taking action of any sort. The notice of the Speaker only resulted in a war of nerves.59"

However, Mr. Ray salvaged his reputation, by agreeing to review his decision and then giving the dissidents a period of three weeks to reply to the show-cause notice vis-a-vis their disobeying of the party whip. In the meanwhile, the expelled MPs obtained a stay from the Delhi High Court, of the V.P. Singh's order in which the court also observed that the Lok Sabha Speaker had the jurisdiction to decide the question of disqualification of members.60

The Delhi High Court issued notice directing the Speaker to maintain *status quo* in the matter concerning the alleged disqualification of 37 MPs of Janata Dal(s). This gave rise to a controversy in the legal and academic circle about the Speaker's power

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58. I bid
59. I bid
60. The Indian Express, 13th January, 1991.
to deal with such a situation. The Speaker, despite the Court’s injunction order, did not receive the Court’s notice and discharged his constitutional obligation as a Speaker.61

The matter has also been compounded because of another factor. The Janata Dal(S) members fall in four categories—the 25 who were expelled by Mr. V.P. Singh in the afternoon of Nov.5 and subsequently declared unattached by the Speaker. Thirty others, who voted against the V.P. Singh Government in the confidence vote on Nov.7 defying the party whip, whose disqualifications is being sought by the Janata Dal in the petitions filed before the Speaker. The Seven who voted for the V.P. Singh Ministry on Nov.7 but for Mr. Chandra Sekhar on Nov.16 and Mr. Shakilur Rahamn, with the resignation from Parliament of Mr. G.S. Saini, the category of 30 has been reduced to 29. The Speaker after two and half months has delivered his 26 page ruling62 in which he had recognised the Janata Dal(S) and disqualified 8 MPs including five Ministers of whom two were of Cabinet rank.

The most important question was the time of the split. From the newspaper reports, it was clear that a faction of the Janata Dal Parliamentary Party did not attend the party meeting held in the morning of Nov.5, but they met separately and elected their own leader. All this happened in full view of the media. In the context of these facts, for the Speaker to take a view that the split took place only on Nov.7 during the division or that the time of the split was Nov.6 when Mr. Chandra Sekhar intimated the Speaker about the formation of the new party would have been a highly partisan act. It is true that Mr. Rabi Ray was a member of the Janata Dal, but the dignity and power

62. The Text of Speaker Rabi Ray's ruling is reproduced in Annexure-III at the end of this thesis.
of the Office demanded that its occupant should act in non-partisan manner. That his predecessor often gave ruling which smacked of party split was of no reason as to why Mr. Rabi Ray should follow the same example. So his decision virtually is to admit the fact that the split took place in the morning of Nov.5 and the recognisation of the new party should not be faulted.\(^{63}\)

The next issue was the case of Mr. V.C. Shukla and five others, who voted in compliance with the whip issued by the Janata Dal Parliamentary Party (JDPP) on Nov. 7 1990, at the end of the debate on Mr. V.P. Singh’s confidence motion but in the division of the confidence motion moved by Chandra Sekhar recorded their votes against the directive of JDPP. How should they be dealt with? There was not a shadow of doubt that these members had violated the law and were liable to be disqualified. The Speaker had acted in terms of Paragraph 2(1)(b) of Anti-Defection Law in their case and here again his action was completely in conformity with the letter and spirit of the Constitution.

The third case was that of the lone member Mr. Shakeelure Rehman who voted with his original party i.e. the Janata Dal in both the aforesaid debates (Nov-7 and Nov.16, 1990) and yet joined Chandra Shekhar Ministry soon thereafter. He might not have formally resigned from the Party. But, his action was a clear case of floor crossing and was justly punished under Paragraph 2(1)(a) of the law.

The Lok Sabha Speaker’s decision was absolutely flawless and he should be congratulated on his having risen above faction and personal likes and dislikes. It was bound to enhance the prestige of the Lok Sabha and the Speaker’s office.\(^{64}\)


\(^{64}\) I bid
However, according to Dr. Subash C. Kashyap, "It is true that the then Speaker, Mr. Rabi Ray had in his wisdom ruled that split was a one time affair and not a continuous process. But, obviously he was ill-advised. His legal adviser or draftman or he himself could not foresee the incongruity and untenability of the consequences of any such ruling. Split in a national party can't be in the nature of a guillotine that suddenly falls and in a precise moment divides the party membership into two. Members of a National Party may be spread over the entire country. They are thinking human beings. When differences arise with the Party and a group decides to break away causing a party split, individual members need to have full information about the respective groups, there leadership and points of difference. They certainly are entitled to some time to make up their minds and decide which way to go. Split can't be something sudden at a particular moment or point of time. It is invariably a process."

It may be mentioned here that before this ruling of the Speaker, the Court vacated the order of injunction and the High Court had clarified that the Speaker had full authority and jurisdiction in giving his ruling on the petition filed against these members. This all happened and took a momentum when the Union of India filed an affidavit before the Court through the Attorney General, in which there were averments admitting the power of the Court to deal with the matter regarding disqualification of a member of the Parliament under Anti-Defection Law which requires judicial scrutiny. Subsequently, of course, in view of such affidavit filed by the Government, there was uproar in the Parliament and all were unanimous in their opinion including the opposition that it was unfortunate that the Government had filed such an affidavit on the issue, which was tilted the preeminent position of the Speaker in the Parliament. This, however, prompted the then Prime Minister Mr. Chandra Sekhar as well as the Congress

(I) President Mr. Rajib Gandhi to assure the members of the Parliament that no stone would be left unturned which would affect the dignity and the position of the Speaker while dealing with matter concerning disqualification issue of 37 Janata (S) members. The Prime Minister also told the House that he had asked the Attorney General to file an amended affidavit before the Delhi High Court.66

After the ruling of the Speaker, there was again a dramatic development in the political scenario. Inspite of the fact that 8 members including 5 ministers have been declared as disqualified members and they have been earlier expelled from the Party by the Janata Dal High Command, which has been confirmed by the Speaker by his verdict. The Prime Minister did not accept the resignation of 5 Ministers and asked them to continue in the office by invoking the Provisions of Art. 75(5) of the constitution of India, on the ground that even if a person is not a member of the Lok Sabha, he can continue as a Minister for a period of six months. It may be mentioned here that from the ruling of the Speaker, whose text has been published in the Times of India on January 13th 1991, it was clear that after the 8 members were disqualified, they ceased to be members of the Parliament and this orders of disqualification would be with immediate effect. Now the question arises whether such a step by the then Prime Minister could set a healthy tradition in a Parliamentary democracy? Whether continuance of the 5 member in the office and to function as Ministers were legally and constitutionally valid; even after they had been found disqualified as Primary Members of the Parliament, in the light of this development, right from the time of their expulsion by the party High command leading to their order of disqualification, by the ruling of the Speaker was a debatable question and needed an indepth study. However, owing to the public opinion, the five ministers had to resign after the direction given by the then Prime Ministers subsequently.

66. Das Hrudaya Ballav; Supra f.n. 62
7.2 Judicial Interpretation of the Anti-Defection Law:

While Speaker after Speaker have been abusing the power under the Anti-Defection Law with one Speaker had become the Chief Minister and another had put his brother-in-law there, one has to find the remedy in the courts against Speaker's order disqualifying MPs and MLAs on the ground of defection.

The decisions of the Speaker's on disqualification had been challenged in different High Courts as well as in the Supreme Court (SC). The Punjab High Court even declared Paragraph 7 as invalid in one of its judgements on this law.\(^67\) The matter relating to disqualification on the ground of defection of some members of the Nagaland Legislative Assembly\(^68\) under the Tenth Schedule inserted by the Constitution (Fifty-Second Amendment) Act, 1985, was assailed along with some other similar matters in relation to several Legislative Assemblies including those of Manipur, Meghalaya, Madhya Pradesh, Gujurat and Goa, since all of them involved the decision of certain constitutional questions relating to the constitutional validity of Para 7 of the Tenth Schedule and consequently the validity of the Constitution Fifty Second (Amendment) Act, 1985 itself. As a result, the Supreme Court constituted a five-member constitution Bench with Shri M.N. Venkachaliah J., Shri K. Jayachandra Reddy J., Shri S.C. Agarwal J, Shri J.S. Verma J. and Shri Lalit Mohan Sharma J. as its member to consider the bunch of petitions relating to defection.

7.2.1 The Supreme Court in November 12, 1991, upheld the validity of the Anti-Defection Law but maintained that the Speaker's order under the Law was open to judicial review. But, two of the five judges on the Constitution Bench namely Shri Lalit Mohan Sharma J. and Shri J.S. Verma J. declared the law as unconstitutional on the

\(^{67}\) The entire judgement was discussed earlier in the beginning of this chapter.

\(^{68}\) Shri Kihota Hollohan Vs. Shri Zachillhu and others, Transfer Petition (Civil) No.40 of 1991,(1992)1 SCC 309, the entire judgement is reproduced at the end of this thesis as Annexure-IV.
ground that the amendment had not been ratified by at least one half of the State Legislatures, which was mandatory under Art - 362(2) of the Constitution. However, the majority said that despite Paragraph 7 of the 10th Schedule which bars Judicial review, the amendment was not unconstitutional.69

"Paragraph 7 contains a provision which is independent of and stands apart from, the 10th Schedule's main provisions which are intended to provide a remedy for the evil of unprincipled and unethical political defections and, therefore, is a surveable part. But, the remaining provisions of the 10th Schedule, the judges said, could stand independently of Paragraph 7 and were complete themselves, workable and not truncated"70 the majority observed.

Significantly, the majority judgement said, "Paragraph 7 of the 10th Schedule, in terms and in effect brings about a change in Articles 136, 226 and 227 of the Constitution and therefore, the amendment would require to be ratified in accordance with Art-368(2) of the Constitution".71

"The provisions are salutary and are intended to strengthen the fabric of Indian Parliamentary democracy by curbing the unprincipled and unethical political defections",72 the majority judgement opined.

While rejecting the contention that, the entire 10th Schedule even with the expulsion of Paragraph 7, was violative of the basic structure of the Constitution, the three judges held that the Speakers (or Chairman of Upper House) acts as "tribunal" and their decisions in a defection case were open to judicial review. The majority judgement affirmed that the Speaker's order was open to Judicial Review if it

69. In connection with this case, the final decision was reported in AIR 1993 SC 412 and SCC Page-651.
70. The Competition Master, January, 1992, p. 428
71. I bid
72. I bid
involves allegations of malafide, non-compliance of rules of natural justice and perversity.\textsuperscript{73}

As regards the judgement, two important points can be noticed as far as the relation between the legislature and judiciary is concerned. First, a part of the 52nd Constitution Amendment was held valid as the legislature did not follow the procedure of amending the Constitution contained in Art-368. Secondly, the decision of the Speaker/Chairman under the Tenth schedule was amenable to judicial review and they act as a 'tribunal' while deciding the cases on the ground of defection. It may be interesting to note that the Court restricted the scope of judicial review by proclaiming that it would not cover any stage prior to the making of a decision by the Speaker/Chairman. The only exception for making an interim order would be in cases of interlocutory disqualifications or suspensions which may have grave, immediate and irreversible repercussions and consequences.

The judges rejected the contention that the investiture of adjudicatory functions on the Speakers or Chairman would by itself vitiate the provisions on the ground of likely political bias. The Court said, "The Chairman or Speakers hold a pivotal position in the scheme of Parliamentary democracy and are guardians of the rights and privileges of the House. They are expected to and do take far reaching decisions in the functioning of parliamentary democracy. Vestiture of power to adjudicate questions under 10th Schedule in such Constitutional functionarises which should not be considered exceptionable".\textsuperscript{74}

The noticeable feature of the majority opinion is that the Court has left open the question whether Parliament's decision to debar the judicial review in Anti-Defection cases is unconstitutional or not. In

\textsuperscript{73} I bid
\textsuperscript{74} Singh K.N.: Anti-Defection Law and Judicial Review, p. 36.
other words, the Court, while asserting its right to judicial review, has
struck the issue of judicial review being a part of the basic structure
of the Constitution. It appears that having struck down the part
affecting the Court's right to judicial scrutiny on the ground of non-
ratification, the Court has put off the consideration of the basic
structure issue to some future day.75

The decision of the S C evoked mixed response in different
quarters. Welcoming the SC's judgement, the farmer Union Law
Minister and Samajwadi Janata Dal Leader, Dr. Subramaniam Swamy
said, "The Court has been constructive in incorporating into the law
what the government itself should have done at the time of the
enactment of the Legislation. Speaker's decision should be subjected
to judicial review". He further said, the Court struck down the
legislation as it could have led to chaos with alter confusion over the
fate of those who have been disqualified by presiding officers in the
past. He ultimately agreed that the SC has wisely refrained from that
course.76

However, the then Madhya Pradesh Law Minister, Mr. Babulal Gaur,
felt that it is not fair to cast aspirations on the impartiality of the
institute of Speakers of Legislatures. According to him, most
Speakers usually show more indulgence towards the opposition that
to the treasury benches, although they ordinarily belong to the ruling
party.77

According to Madhu Limaye, the majority judgement gives the
impression of action in the nature of self-protection. It has not fully
gone into the serious issue of defiance of the whip on grounds of
conscience or for the reason that a governmental measure is violative
of the election manifesto of the party on whose ticket he or she has

75. Ibid
been elected. Nor has the court pronounced on the violation of the principle of equality in the matters of differential treatment to independent and nominated members. The court would have been compelled to decide this point if the Lok Sabha Speaker has taken action against Mr. V.P. Singh who had demonstratively violated the Tenth Schedule after his victory in the Allahabad by-election by joining the Janata Dal.73

The majority has correctly said that the protection granted to proceedings in legislatures is confined to "Irregularity" and not "illegality". This is in accordance with the opinion given by the then Chief Justice Gajendra Gadakar in the Presidential reference in Keshav Singh Case.79

The minority judgement appears to be bolder and comprehensive. The sharp division creates a doubt in the mind of the people about the finality of the decision. It will have to go to a Larger Bench sooner or later as it threatened an all-out confrontation between the judiciary and the Legislature.80

The Supreme Court on 18th February, 1992 again ruled that a member of Parliament or the State Legislature can be disqualified for defying a whip of a political party only on two counts i.e. on motion of confidence or no-confidence and when the matter relates to the programme and policies of the party.81 It would be appropriate if whip is so worded that the member concerned has fore-knowledge of the consequences flowing from his conduct in voting or abstaining from voting contrary to such a direction.

Mr. Justice Venkata Chaliah, Mr. Justice K. Jayachandra Reddy and Mr. Justice S.C. Agarwal who constitute the majority said that,

79. Keshav Singh Vs. Speaker (AIR 1965 SC 745)
80. Limaye Madhu, Supra f.n. 63.
the disqualification imposed by Paragraph 2(1)(b) of the Tenth Schedule of the Constitution must be so construed as not to duly impinge on the freedom of speech of a member. This would be possible if the Paragraph 2(1)(b) is confined in its scope by keeping in view the object underlying the amendments contained in the Tenth schedule, namely to curb the evil or mischief of political defections motivated by the lure of office or other similar consideration.⁸²

It was observed that, the voting or abstinence from voting by a member against the direction by the political party on such a motion would amount to disapproval of the programme on the basis of which he went before the electorate and got himself elected and such voting or abstinence would amount to a breach of the trust reposed in him by the electorate.⁸³

The dissenting detailed judgement was delivered by Mr. Justice J.S. Verma who declared the entire Anti-Defection Law as 'unconstitutional' in the absence of ratification of the basic feature of the constitution.

Mr. Justice Verma and Mr. Justice Sharma said that all disqualifications of members according to the constitutional scheme were meant to be decided by an independent authority outside the House such as the President/Governor, in accordance with the opinion of another similar independent constitutional functionary, the Election Commission of India, who enjoys the security of tenure as a judge of Supreme Court enjoys with the same terms and conditions of office.

Thus, for the purpose of disqualification of a member, the Constitutional scheme envisaged an independent authority outside the House and not within it, which may be dependent on the pleasure of the majority in the House for its tenure. The Speakers office is undoubtedly high and has considerable aura with the attribute of

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⁸². Ibid ⁸³. Ibid
impartiality. This aura of the office was even greater when the Constitution was framed and yet the framers of the Constitution did not choose to vest the authority of adjudicating disputes as to disqualification of members to the Speaker, and provision was made in Art. 103 and Art. 192 for decision of such disputes by the President/Governor in accordance with the Opinion of the Election Commission.\(^84\)

**7.3 Some More Important Cases:**

*Of Parliament*

**7.3.1 Janata Dal Group Defection**

The only defection issue which was said to be judicious and free from any short of judicial interference was the one which involved the twenty MPs including Mr. Ajit Singh. The fact of the case was simple. Twenty of the 59 members of the Janata Dal appeared before the then Speaker, Mr. Shivraj Patil, physically, in one group, at the same time and claimed both orally and in writing that a split has taken place in their party and that they belonged to the break away group; even though eight of these members had been expelled earlier by the Janata Dal leadership in two separate spells.\(^85\) Most sensibly and unlike his predecessor, Mr. Shivraj Patil had not declared them "unattached".\(^86\)

He had only allotted them separate seats in the House. They were continued to be shown as among the 59 Janata Dal members in all official Lok Sabha records. Obviously, the then Speaker realised that it could be otherwise. They were elected on Janata Dal ticket and the Anti-Defection Law did not recognise expulsion of elected members by party leadership. But, even if they were declared "unattached", that would have been for the very limited purpose of allocation of seats in the House for purposes of the Constitution and

\(^84\) Ibid
\(^85\) Kashyap Subash C., Supra f.n. 65.
\(^86\) Ibid.
the Anti-Defection Law in its 10th Schedule, they would have contained to be Janata Dal members irrespective of any 'expulsion' or "unattached" declarations. The only way their party labels could change or get modified was through 'split' or 'merger'.

Since, all the 20 members who appeared before the Speaker and claimed a split were for him and in the eyes of the law and the constitution, members of the Janata Dal, and since in a party with a total membership of 59, they were not less than one-third, the Speaker could not disqualify them and had to recognise the split. However, the learned Speaker, instead of pronouncing a clear and prompt judgement and settling the issue in one-go, decided to do it in stages, to go slow and to move extra cautiously. By an interim order, without deciding the main issue, he allotted separate seats in the House to the group of 20 members.

It must be argued that the present case is very different from the one faced by Mr. Rabi Ray. Then, it was clearly a case of eight members joining the break away chandra Sekhar Group. They were not there in the original list. In the earlier case, all the 20 members constituted more than one-third and appeared in one lot. There is no question of a split or driplates Even though the entire process started in January and ended in August does not detract it from its "one-time" character. What happened earlier was that the expulsion, the separate seating arrangement, etc. had no relevance under the Anti-Defection Law. Whether the split was considered a one-time affair occurring at a particular point of time or a process spread over a few days, the point was not at all relevant in the subsequent proceedings in as much as in either case it would be a clear case of split. It was not as if some members had left the party on an earlier date and

87. Ibid
88. Ibid
90. Supra f.n. 65
others decided to leave it later and join the break-away group. Since, not less than one-third Janata Dal members appeared before the Speaker at a particular point of time and claimed split, the Speaker had no option but to recognise the split and reject the petitions for the disqualification of 20 Janata Dal Members and the Speaker had done the same. The matter ended with the Election Commission's interim recognition of the Ajit Singh faction.91

However, while the then Speaker Mr. Patil was holding open hearing in the case, the then Chief Election Commissioner, in a swift move, recognised the Janata Dal faction headed by Shri Ajit Singh as a national party under the title the Janata Dal (A).92 The other faction headed by Shri Bommai was recognised as Janata Dal(B).93 Separate symbols were assigned to both.

7.3.2 The Third Major Group Defection from Janata

On 28 July, 1993 the 20 member Janata Dal(A) in Lok sabha was further broken up with seven of its members asking the then Speaker for recognition as a separate group. The seven included Ram Laxman Singh Yadav, Ghulam Mohammad Khan, Ram Saran Yadav, Roshan Lal, Govind Chandra Munda, Anadi Charan Das and Abhaya Pratap Singh. These seven defied the J.D.(A) whip and voted against the opposition motion expressing No-Confidence in the Congress Government. There was considerable confusion in regard to the vote of late Mr. Munda who was alleged to have initially abstained from voting on the No-confidence motion but was later pressurised by some Ministers and others in the lobby to change his vote to one against the motion by using the correction slip given to him by another member.

92. The Samaj, dt.13.11.92.
93. The Sun Times, dt.14.11.92
Then on 2nd August, 1993, all the seven members of the group with Ram Lakhan Singh Yadav at the head formally joined the Congress Government.

The fact of the case were that Janata Dal (A) comprised of 20 members, four of its members stood disqualified by the order of the Speaker, the order of disqualification was, however, stayed by the Supreme Court pending its decision in the matter. Janata Dal decided to support the no-confidence motion against the then Rao Government and a three line whip was issued to all its 20 members to support the motion; the voting on the crucial motion showed that seven of the Janata Dal (A) members had disobeyed the directive of their party and voted against the motion and did not submit explanation to the party when asked for. Janata Dal (A) filed petitions before the then Speaker seeking their disqualification and before any action was taken they were honourably admitted to the Congress Party and one of them rewarded with ministership.

Interestingly when those petition remained pending for decision, some become infructuous and got withdrawn as the honourable petitioners themselves also defected to the Congress in another group defection and claimed protection of the merger clause.94

7.3.3 The Fourth Major Group Defection from Janata

On 30th December, 1993, 10 of the 13 Janata Dal (A) M.Ps. led by Ajit Singh himself defected to the Congress rising the strength of the Congress Party to 267 (including the then Speaker) in an effective House of 528 with 16 vacancies. Thus, the Congress acquired a slender majority. The members who finally made it possible were Ajit Singh, Satpal Singh Yadav, Surya Narain Yadav, Harpal Panwar, Rajnath Sonkar Shastri, Arjun Yadav, Ram Nihare Raj, Ram Badan, Shiv Sharan Verma and Ram Avodh. With more than two-third members joining in the

94. Supra f.n. 34, Page.xxvii.
move, it was described as a merger for purposes of the Anti-Defection Law.

7.3.4 The Fifth Major Group Defection from Janata

On 21 June, 1994 the Janata Dal(B) underwent a major split with 14 of its 34 members in Lok Sabha raising the banner of revolt against the leadership- particularly of the Ram Vilas Paswan - Sharad Yadav- Laloo Prasad Yadav. This was the fifth break-up in the Janata Dal family. The group claimed to be the real Janata Dal. On 28th June, the break-away group elected George Fernandes as the leader of their 'real' Janata Dal even as Bommai said that all the 14 rebel M.Ps. stood expelled from the Janata Dal (B). Chandrajit Yadav and Syed Shahabuddin were elected as the leader and Deputy leader of the new parliamentary party. The latest Janata Dal break-up fifth of its kind - was thus made complete and irreversible. The new Janata Dal was given the name Janata Dal (G). On 18 July, 1994, Janata Dal(G) was reported to have been recognised by the Lok Sabha Speaker as a separate group in the House and assigned a block of 14 seats.95

Of State Legislatures

7.3.5 Manipur

One of the most controversial and confrontational cases on Anti-Defection Law was witnessed in the Manipur Legislative Assembly. The issue had taken such a proportion that at last the then Speaker Mr. H. Borababu Singh had to appear before the Supreme Court in a Contempt of Court proceeding amidst tight security and tendered a written apology which was considered to be historic in the sense that he was the first sitting Speaker of an Assembly to give personal appearance before the Court. The history of the case dates back to 1992 when about 15 MLAs disqualified under the Anti-Defection Law by the Speaker, Mr. H. Borababu Singh, filed writ petitions in the

95. Ibid.
Supreme Court against the action of the Speaker. The Court had directed that the 15 MLAs whose appeals against their disqualification under the Tenth Schedule have either been decided or pending must be allowed to enter the Assembly, participate in the proceedings and cast their votes in the confidence motion of the then Chief Minister Mr. K. Debendra Singh. The Speaker had defied the Court’s order on the plea that he had not received any directives from the Court. Then the Supreme Court had initiated a contempt of Court proceeding against the Speaker and also directed that the disqualified MLAs should get the salaries and other benefits as were applicable for a sitting MLA. The then Secretary of the Assembly followed the directives of the Court. However, the then Speaker Mr. Singh suspended the Secretary for defying his order because, as to him, the Secretary had violated the principle of delegation of authority which requires that the subordinate should follow the directives of his immediate superior instead of other officials, upon which the then Secretary Mr. Maniala Singh moved to the Supreme Court challenging the action of the then Speaker. The Court directed the Speaker to rehabilitate the Secretary and pay his salary, which the Speaker also defied. The Court again initiated Contempt of Court proceedings against the then Speaker but the Speaker took one plea or the other and did not appear before the Constitution Bench which was hearing the appeal against him. The main contention of the Speaker was that he enjoys immunity from the Court proceedings according to Article 212 of the Constitution of India. The Speaker avoided six times to appear before the Court. But, when the Court had directed the Union Home Ministry on 5th of Feb., 1993 to ensure the then Speaker’s presence by applying minimum force, if required, and when all the appeals by the then Speaker were turned down and his attempt to escape to an unknown place failed, the then Speaker presented himself before the Supreme Court on 23rd March, 199396 and the Court absolved him from the contempt charges.

96. The Speaker had reportedly said that his appearance before the Court was not voluntary, The News, All India Radio, 23rd March, 1993 at 9 P.M.
The Speaker was never right so also the Court's insistence on his personal appearance was not a good sign. The Speaker's appearance in the Court has mercifully put an end to an unseemingly confrontation between him and the judiciary. Commenting on this issue eminent legal expert Madhu Limaye said, "The Supreme Court only asserts itself while dealing with lower rank officials and smaller states such as Manipur, Meghalaya or Tamil Nadu but never summoned a Secretary General or member of the Lok Sabha or the Rajya Sabha".97

In another interesting development the same Speaker of Manipur Mr. H. Borobabu Singh also dismissed 23 MLAs who supported the Congress Government headed by Mr. Rishang Keishing in 1994 on the allegation that those legislators had brandished knives and pistols, threatened the Speaker and assaulted the Secretary of the Assembly.

With the expulsion of 23 pro Keishing MLAs, the Speaker had reduced the Chief Minister's support and recommended his dismissal as he had lost the confidence vote.

However, the said expulsion order was stayed by the Guwahati High Court on December 21, 199498 for which the then Speaker Mr Singh moved to the Supreme Court. The apex Court also on 9th January 1995 dismissed Manipur Speaker Mr. H. Borobabu Singh's petition for disqualification of 23 legislators for their violent act as it refrained from passing its ruling on the right of the House to take action for acts committed outside.99

7.3.6 Goa

On 31st March 1993, the Supreme Court ruled that the then Chief Minister Ravi S. Naik and two of his Cabinet colleagues Ratnakar M. Chopdekar and Sanjay Bandekar stood disqualified under the Anti-Defection Law by the orders of the then Speaker Surendra V. Sirsat on

15 February, 1991, that the revocation of the disqualification orders by then Acting Speaker Simon Peter D'Souza on March 7 and 8, 1991 was null and void because even the then Speaker himself did not have the power to review his own disqualification order, and that an appeal against the Speaker's decision could be filed in the High Court.

Meanwhile, in view of the Supreme Court judgement, the Governor asked the then Chief Minister Ravi Naik not to take any major or policy decision till he was cleared by the High Court. On 14 May, 1993, the Goa Bench of the Bombay High Court also upheld the disqualification of Naik and the other two Ministers. The Court felt that the Chief Minister had failed to adduce evidence to prove a split in the MGP. Soon thereafter, the Governor was reported to have asked Naik to resign.

In an Assembly of 40, the Congress(I) had only 20 members including the Speaker. Following the Court decision of 14 May, the Governor dismissed the two Ministers who stood disqualified from membership. Naik resigned on 17 May.

On 19 May, 1993 on an appeal by Naik and two Ministers, the Supreme Court ordered a partial stay of the operation of the High Court judgement of 14 May. Naik could not remain Chief Minister or Minister but he could continue as a Member till the appeal was finally disposed off.

On February 9, 1994, the three year long see-saw legal battle ended with the Supreme Court finally quashed the disqualification of Naik and upheld his continued membership of the Assembly with all bars to his becoming a Minister or Chief Minister removed.

In another development, on 14 June, the Goa Bench of the Bombay High Court admitted a petition for the disqualification of four Congress ministers.

On 15 June, 1993, a citizen Atmaram Parab filed a petition in the Bombay High Court, Goa Bench for the disqualification of six MLAs of
the Goan People's Party. It was argued that a petition had been filed with the Speaker in January 1992 but even though 17 months had passed, no decision has been taken by the Speaker. All those six MLAs had been defected from the Congress in March 1990 with the then Speaker. Dr. Barbosa to form the Goan People's Party. Five of these six MLAs were readmitted to the Congress in May 1993.

Similarly, on 1st April, 5 Ministers of Chief Minister Dr. Wilfred De Souza's Cabinet in Goa sent letters of resignation to the Congress President, Shri Narasimha Rao. The next day, on 2 April, in a surprise development and in a bizarre exercise of powers by Governor Bhanu Pratap Singh, the De Souza Ministry was dismissed and Rabi Naik was installed as Chief Minister and the other four were also included in the Council of Ministers. The question of the unprecedented misuse of powers by then Governor was reportedly discussed between the then President and the then Prime Minister for an hour. In a day of fast moving developments, the then Governor Bhanu Pratap Singh was asked to resign. He submitted his letter of resignation on 3 April 1994. The then President accepted it.

Shri Ravi Naik was persuaded to resign. He sent his resignation on 4 April 1994. The Congress Legislature Party in Goa met to elect its new leader but decided to leave the decision to the Congress President. Shri Rao decided in favour of reinstating De Souza. The latter was sworn in on 8 April, 1994.

7.3.7 Sikkim

18 of the 31 ruling Sikkim Sangram Parishad members in a House of 32 revolted against their leader and the then Chief Minister, Nar Bahadur Bhandari. They elected Sanchaman Limboo, former Health Minister as their leader. The lone opposition (Sikkim Democratic Front) member also pledged his support to Limboo. The rebels included 7 members of the Bhandari Cabinet and the then Speaker himself.
On 7 May, 1993 the rebels all stationed in New Delhi, expelled Bhandari from SSP while the then Chief Minister in Gangtok sacked the 18 party rebels. The split was complete.

The then Governor asked Bhandari to prove his strength on the floor of the House by 17 May. Bhandari lost with the rebel SSP(S) led by Limboo getting 16 votes and Bhandari 14. The next day, on 18 May Limboo was sworn in as the new Chief Minister along with eight other Ministers. The Governor asked him to prove his majority on the floor of the House which he did on 6 June. The Ministry was later expanded to 13.

In swift moving development, on 17 June, the one-month old Limboo Ministry was faced with a serious crisis when 12 of the 32 legislators under Bhandari’s leadership resigned their membership of the Assembly. Two Ministers and another MLA also resigned. The lone Sikkim Democratic Front member, Pawan Kumar Chemling and his close associate another MLA, T.M. Rai submitted their resignations taking the tally of resignation to 17.

On 27 June, the then Chief Minister Limboo formally announced the merger of his SSP(S) with Congress (I). He named his 12 member Council of Ministers as the Congress Government. The position in the middle of July 1994 was that with the resignation of 17 members, the effective strength of the 32 member House was reduced to 15 only and with four ministers also having resigned, the strength of the 13 member Council of Ministers had come down to 9 only. Chief Minister had the support of 14 members. The former Chief Minister Bhandari and the SDF member Chemling were doing their best to build pressure for the imposition of President’s Rule. While all this was happening, some petitions seeking disqualification of some defecting members including Ministers were pending with the Speaker. Also a petition was filed in the Sikkim High Court against the Speaker having taken too long to deliver his decisions.
On 22 July 1994, the Speaker announced his decision on the petitions pending before him. He upheld the split in the party and therefore found that the members petitioned against could not be disqualified. The Speaker accepted the contention of two members that they were forcibly detained at the residence of the then Chief Minister and could not therefore join the Limboo group earlier.100

7.3.8 Andhra Pradesh

In 1995, Andhra Pradesh witnessed a strange battle for power among the family members of Late N.T. Rama Rao (NTR), the then Chief Minister.

On June 18 1995, NTR threatened Chandrababu Naidu, his son-in-law and the then Finance Minister under his Chief Ministership with the dissolution of the Assembly if they do not stop maligning Laxmi Parvati, the second wife of NTR and criticising his policies behind his back. Then on 16th August, NTR suspends eight MLAs from the party and warns two junior Ministers for their 'anti-Party' activities. On the other-hand, Naidu camp intensified its campaign against Laxmi Parvathi and on 25th August, Naidu's emissaries call on the then Governor at 7.30 A.M. with the TDLP resolution signed by 144 MLAs.101

Being panic, NTR called an emergency meeting of the Cabinet in which twentyone ministers turn up with 5 abstentions. NTR then called on the then Governor with a cabinet resolution asking for the dissolution of the Assembly. On 27th August the then Governor asked NTR to seek a confidence vote by 31st August 1995.102 On the day of confidence vote, NTR fallen sick and sent his resignation from the hospital which enabled Chandrababu Naidu to become the Chief Minister.

After winning the confidence motion Mr. Naidu slapped show cause notice on 17th Sept., 1995 on 28 MLA's loyal to his predecessor,

100. Supra f.n. 34, page. XXX.
102. Ibid
Mr. Rama Rao, demanding why action should not be taken against them for defying the whip on September 7 when he was seeking a confidence vote on the floor of the House. They stalled the proceedings and were suspended which Mr. Naidu said was deliberate to escape the whip. The MLAs also challenged the same in the Andhra Pradesh High Court. The Division Bench comprising the then Chief Justice Mr. P.S. Mishra and Mr. Sudershan Reddy, J. on 18th Sept., 1995 directed the then Speaker of Andhra Pradesh Legislative Assembly, Mr. Yanamala Ramakrishnudu not to take action against those legislators for disqualification under the Anti-Defection Law.¹⁰³

But, the battle continued. The defection of D. Venkateshwar Rao MP, along with 16 MLAs on 14.10.95 to the N.T.Rama Rao camp was being viewed by political observers as part of a bid by NTR to gain a symbolic advantage over Chief Minister N. Chandrababu Naidu.¹⁰⁴ As a counter measure, Mr. Naidu also was successful in making a split of 13 Telugu Desam Party MLAs of Laxmi Parbati (After NTR's death) to his ruling party on May 20th, 1986.¹⁰⁵ The matter was set at rest after the complete elimination of Laxmi Parbati from politics.

7.3.9 Haryana

In a very unprecedented way, the then Haryana Assembly Speaker Sri Ishwar Singh had ruled that an unattached legislator does not attract the provisions of the Anti-Defection Act if he joins any political party.¹⁰⁶

The Speaker gave the ruling on petitions filed by Haryana Vikas Party Legislators Karan Singh Dalal and Chattar Singh Chauhan against Dr. Om Prakash Sharma, who had joined the congress after he was declared unattached by the Speaker following his expulsion from the HVP for alleged anti-party activities.

¹⁰⁴. The Sunday Times, dt. 15.10.95.
¹⁰⁵. The Hindustan Times, 21 May, 1996.
They had sought his disqualification from the membership of the house under the anti-defection law.

The Speaker, in his ruling in the preceding week observed that Dr Sharma was expelled from the VHP for six years and as such he ceased to be a member of that party. He was declared as an unattached member of the Assembly and as a sequel to this he could not be considered an independent member as envisaged under the provisions of Tenth Schedule of the constitution.

The Speaker maintained that since Dr. Sharma did not voluntarily give up membership of the VHP, the provisions of para two of the Tenth Schedule were not applicable in his case.107

On 6.8.97, in another case also, the Full Bench of the Punjab and Haryana High Court directed the then Speaker Mr. Chattarpal Singh Chauhan to dispose off the petitions seeking disqualification of two "unattached MLAs namely Mr. Charan Das Shorewal and Mr. Vinod Marriya who were expelled by the Samata Legislature Party and subsequently joined the government as ministers as the then Speaker was sitting over the matter for over 4 months.108

7.3.10 Rajasthan

The way in which a petition under the Anti-defection Law against eight Ministers in the Bhairon Singh Shekhawat Cabinet has been bogged in the then Speaker’s chambers for over 15 months, would make one wonder about the efficacy of the law itself.

The Ministers, two of them of Cabinet rank, four state and two Deputy Ministers were all elected to the Assembly in December 1993 as independents. But, all of them were inducted into the 30 member Ministry immediately by Mr. Shekhawat. However, it was only on April

107. Ibid.
4, 1994, that an opposition legislator, Mr. Jagdeep Dhankar thought of challenging this under the Tenth Schedule of the constitutions.

The course of the case took since then reveals serious shortcomings in the law. Even as the Ministers continued in office, first they took the technical plea that the petition was not maintainable as it was a joint petition against all of them. However, the preliminary objection was struck down by the then Speaker who directed them in May'94 to file their replies.

The eight ministers were Mr. Gangaram Choudhury, Mr. Sujan Singh Yadav, Mr. Rohitsaw Sharma, Mrs. Narendra Kunwar, Mr. Gyan Singh, Ms Shashi Dutta, Mr. Gurjant Singh and Mr. Mangala Ram. But before the Ministers filed their replies, Mr. Harishankar Bhabhra, the then Speaker, himself was inducted into the cabinet as Deputy Chief Minister in October, 1994.

The eight Ministers then took the plea that the then Deputy Speaker Shantilal Chaplot was not competent to hear the case. Mr. Chaplot took several months to give a ruling on the issue, and shortly before he was elected Speaker during the last budget session, directed the Ministers to file their replies.

Finally on 24th Oct., 1998, just before a month left for the 10th Vidhan Sabha constituted in 1993 to complete its five-year term, the then Rajasthan Assembly Speaker Sri Samarth Lal Meena dismissed all the five petitions charging 11 members of the 10th Vidhan Sabha including these eight ministers with defection. He ruled that Mr. Dhankar failed to establish that these eight legislators had joined the ruling BJP after winning the elections as independent candidates. He observed that a member did not attract a disqualification under Section 2(2) of the 10th Schedule by just becoming a member of the Council of Ministers.

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111. The Indian Express, 9th July, 1995.
The other petitions in which the disqualification of three members Sri Briraj Singh, Nasra Khan, Punja Lal of Janata Dal and Sukh Lal Sencha of Congress were filed were dismissed by the Speaker for want of proof of voluntary giving up the membership of their respective parties.

In another case, 14 independent MLAs, including two from the BJP, joined the Congress on 31st August, 1998 although that did not spell a trouble for the BJP's Bhairon Singh Shekhawat Government as because the Assembly was not in session nor was likely to meet before the November State Elections. However among those 14 MLAs, two were from BJP namely Gopi Chand Guljar and Moti Lal Kharera who were expelled by the BJP but not from the legislature party. The matter had not generated such heat as the State Election was forthcoming then.

7.3.11 Bihar

In the year 1998 the Speaker's inaction has reduced the Anti-Defection Law in Bihar to a farce, with legislators jumping sides with impunity.

Examples are numerous. In June 1998, the newly elected Samata Party State President Raghunath Jha, who was still technically a member of the Rashtriya Janata Dal Legislature Party had resigned from the RJD in January after he was denied the ticket to contest the Lok Sabha polls.

Even though he was heading the Samata Party, he would have to abide by RJD's whip to save his membership of the House. That means he would have to go against the whip of a party he heads.

Talking of whips, the case of Mr. Maheshwar Prasad Yadav was equally interesting. He crossed over to the RJD in May, 98 from the

Janata Dal while he was still the Chief Whip of the JDLP. Needless to say, he would have to still obey the new JDLP Chief Whip's order to retain membership of the Assembly.

Another illuminating case was that of Mr. Ashok Singh who hopped to RJD from Samata Party while technically still being a JD legislator. Mr. Singh had remained with the Janata Dal at the time of the split in the party and formation of the RJD. He contested the Lok Sabha polls from Samastipur as a JD MLA on a Samata ticket and then defected to the RJD while technically he was still a member of the JDLP.

Yet another case was that of Mr. Gulam Sarwar who was president of the JD Parliamentary Board till May, 1998 when he defected to the RJD.

Considering that Mr. Sarwar was a former Assembly Speaker, his defection had made a mockery of the Anti-Defection Law in Bihar.

Further examples are all the more ridiculous. In May 1998, JD state President Ramai Ram led a pack of eight MLAs into the RJD fold, caring two hoots for the Anti-Defection Law.

The icing on the cake is the example of Mr. Raghavendra Prasad Singh, who as a member of JDLP joined the Rabri Devi Cabinet as a Minister of Sugarcane. Technically, he was still a JD-MLA bound by the whip of the party.

The piecemeal defection from JD has reduced the Anti-Defection Law to a big farce in the state, where Speaker Deo Narain Yadav had conveniently turned a "blind eye to" clamour by the JD leaders to initiate action against the "turncoats".

When Mr. Raghuvendra Prasad Singh had defected from JD, he was the first of the 29 JD MLAs to cross sides. Still, the Speaker did not bring his action under the purview of the Anti-Defection Law. The Speaker apparently gave the JD defectors a chance to reach the magic
figure of 10 so that they could claim immunity from the Anti-Defection Law. So far, by 23.6.98, 13 of the 29 member of JDLP had defected.115

The then Speaker had acted as tool of the ruling party. He had destroyed the concept of the Anti-Defection Law.

7.3.12 Tamil Nadu

Three former ministers, expelled from the AIADMK, face disqualification proceedings under the Anti-Defection Law. Mr. Rajaram, Mr. G. Viswanathan and Mr. Alagu Thiruna-Vakkarasu were declared unattached members of the Tamil Nadu Assembly following their expulsion from the AIADMK some time ago.116

Mr. Rajaram was served with a notice on 21.3.94 seeking his disqualification under the law on the basis of the representation by Mr. V.K. Chinnaswamy of AIADMK and was asked to reply within seven days.

The three former ministers had earlier sent a joint letter to the then Speaker, Mr. Sedapatti Muttiah seeking his sanction to function as a legislative group which was turned down.

However, Mr. Sedapatti R. Muthiah again served notices on dt. 7.3.95117 Mr. G. Viswanathen and Mr. Azhagu Thirunavakkarasu, who were earlier expelled from the ruling AIADMK by its leader and the then Chief Minister Ms. Jayalalitha, for action under the Anti-Defection Law on the basis of two petitions from the then MLAs of AIADMK Mr. Samariam-ul Aasia118 and Mr. A. Subhrathinam as the two former Ministers joined the Marumalarchi DMK led by Mr. V. Gopalswamy on March 1, 1995.119

115. Ibid
116. The Times of India, dt. 22.3.94
117. The Statesman, dt. 8.3.95
118. In The Hindustan Times, dt. 21.3.95 the name of the Petitioner has been published as such where as in the Statesman dt. 21.3.95 it was published as Ms Mariaul-Assia.
119. Supra f.n., 117
On dt.20.4.95, the then Speaker Mr. Sedapatti Muthiah disqualified these two former Ministers under the Law and declared vacant the Arcot and Orthanadu Assembly seats respectively. The disqualified ex-ministers got an *ex parte* stay order granted by Shivraj Patil, J from the Tamil Nadu High Court against the Speaker's order which was subsequently vacated by the interlocutory order passed by the then vacation judge Mr. Justice S.S. Subramani.

This order gave rise to writ appeals from Mr. Viswanathan and Mr. Thirunavarukkarasu and a bench, comprising Mr. Justice S.M. Ali Mohammed and Mr. Justice Jayasimha Babu, once again stayed Mr. Muthiah's order, thereby enabling the members to represent their constituencies in the House.

While the legal battle was on, the whole issue as of now can be reduced to a single constitutional question. Whether an unattached member will fall within the ambit of the Tenth Schedule, better known as the Anti-Defection Law?

The dispute is over the peculiar status of members expelled from a party. On the one hand, they are treated as "unattached" meaning thereby that they do not sit alongwith their erstwhile party colleagues, but for the purpose of law against floor-crossing, according to the Speaker's ruling, they would continue to be treated as members of the party on whose ticket they were elected.

As this verdict is under appeal, this may not be the final statement of the law, but it has touched off a debate on the exact status of "unattached members" - a term not used in the Tenth Schedule but utilized by the Presiding officers as a convenient one, mainly for the purpose of making seating arrangements in the House.

120. The Times of India, dt. 21.4.95.
121. The Indian Express, dt. 27.4.95
122. The Statesman, dt. 16.6.95
123. Ibid
7.3.13 Gujarat

The centre had to impose President's rule in Gujurat following "defections" during September, 1996. Amidst scenes of unprecedented violence in the Assembly, the ruling BJP had managed to 'win' confidence vote after suspending the entire opposition from the house on Wednesday i.e. on 18.9.96. The government's decision to rush through the formality of winning the confidence vote had unleashed violence in the legislature and outside.124

However, sources in the Union Cabinet said the assembly was kept under suspended animation only to give a "cooling-off period" to politicians and their supporters fighting for power in Gandhinagar. But, in sharp contrast the Mahagujurat Janata Party (MJP)’s strength had swelled to 53 in the 181 member House after the defection of 10 more BJP MLAs and its leader Chief Minister Shankarsingh Vaghela had a smooth selling who was to move a confidence motion in the special assembly session because as many as 15 independents and the 45 member Congress Legislature Party had already extended "unconditional" support to the Vaghela ministry.

With the BJP MLAs' defections, the BJP which had enjoyed a two-third majority in the House only one-and-a-half-years ago, had been left with half of its original strength.125 It could not pose any serious threat to the Vaghela ministry on the floor of the house. More importantly, with the swelling of its numbers, the election of the MJP candidate Gummansingh Waghela for the Speakers post was confirmed.

7.3.14 Uttar Pradesh (UP)

UP occupied the centre stage in the defection Bazar since 1993 and continued to remain so till the end of 1998. With the election in the state drawing near, a season of defection continued as political parties had lunched a hectic drive to woo leaders from rival camps.

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124. The Times of India, dt. 20.9.96
125. The Times of India, dt. 29.10.96
So the leaders have also looked upon the state of affair from a positive manner. To them the changing over from one party to the other shows that the people are opting for a change and a party which can provide stability. The then UP State Assembly Speaker Keshari Nath Tripathy said, "This is a sign of political awareness".¹²⁶ He even went to the extent of saying that there should be a ban on the Anti-Defection Law in the interest of healthy politics. However, the net result of the election gave a hung Assembly and with much adjustments, Mulayam Singh Yadav's Samajwadi Party assumes power with a coalition partner, the Bahujan Samaj Party.

With a minority members, the Samajwadi Party (SP) was always desperate to take more members to its side so as to consolidate its position in the House. It even allowed the Communist Party (CPI) members of the Legislative Council to join the S.P resulting an end of the CPI's presence in the State.

The State Secretary of the CPI and MLA from Milkipur in Faizabad Morasen Yadav opted for the SP, and veteran CPI leader Ram Chandra Baksh Singh crossed the floor in the UP Legislative Council to join the S.P. The then Speaker of the Assembly and the Chairman of the Legislative Council had formally recognised the change in the parties by the two veteran communists.¹²⁷

The Janata Dal Legislature Party (JDLP) had split for the fourth time in a year on 23 Jun 1994 when seven party MLA's formally joined the Samajwadi Party. The Seven MLAs were Mr. Ashok Kumar Singh Chandel, Mr. Vijay Singh, Mr. Madan Gopal Verma, Mr. Rakesh Suchan, Mr. Virendra Mohan Singh, Mr. Samampat Singh and Mr. Vishwanath.¹²⁸ The then Speaker of the State Assembly Mr. Dhani Ram Verma also formally announced the acceptance of the Janata Dal legislators into the Samajwadi Party fold on 24 June, 1994. With

¹²⁶. The Pioneer, New Delhi, dt. 13.09.1993
¹²⁷. The Hindustan Times, dt. 5.3.94
¹²⁸. The National Herald, dt. 25.6.94
the split, the strength of the 17-member Janata Dal had been reduced to 10 while that of Samajwadi Party had gone up to 127 in the lower house of the state legislature.\textsuperscript{129}

The Janata Dal in UP split for the third time in three months on 29th June, 1994 with four of its Assembly members joining the Congress and reducing the JD's strength to 6.\textsuperscript{130}

The BSP all along accused the SP of engineering defections so as to ensure that at least 50 of the BSP cross over so that the government survived even if Kanshi Ram (BSP Chief) withdrew his support. The then BSP legislature Party leader, Mr. Ram Laxman Verma claimed that he had concrete evidence that PWD minister, Beni Prasad Verma had tried to persuade Masood Ahmed on 16th June, 1994 to leave BSP with his supporters and join the Samajwadi Party. A BSP legislator, Barkhoo Ram Verma was a witness to the incident.\textsuperscript{131} However, the BSP leader Mayabati who used to say that the new entrants either to SP or BSP would not be accommodated in the Council of Ministers as a matter of policy decision as according to her defections lacking ideological base could not last for ever" and "those who have joined the SP during those days could quit the party with the same speed with which they have sought an entry"\textsuperscript{132} threatened to withdraw support to the then Chief Minister Mulayam Singh Yadav "if his men did not stop meddling with BSP's internal affairs"\textsuperscript{133} sounded like the declaration of war. Even the BSP decided to hold the anti-defection rally on 10th July, 1994.

The cold war between the BSP and SP culminated into a fierce political battle when the Bahujan Samaj Party (BSP) pulled out of the alliance in UP, reducing Mulayam Singh Yadav's government to a minority. The then Governor Mr. Motilal Vora dismissed Mulayam,

\begin{itemize}
  \item \textsuperscript{129} Ibid
  \item \textsuperscript{130} The Patriot, dt. 30.6.94
  \item \textsuperscript{131} The Indian Express, dt. 26.6.94
  \item \textsuperscript{132} The Hindustan Times, dt. 9.3.94
  \item \textsuperscript{133} Supra f.n. 131
\end{itemize}
appointed Mayabati as the Chief Minister after she claimed the support of the BJP and asked her to prove her strength on the floor of the House on 20th June, 1995. The BJP moved a motion of no-confidence against the then Speaker Dhani Ram Verma fearing that he could play a partisan role during the confidence vote. Verma belongs to the Samajwadi Party (SP) and his loyalties to Mulayam Singh Yadav were well known. The then Governor Motilal Vora also sent a message to Dhani Ram Verma asking him to take up the no-confidence motion against him before he transacted any business of the House.

However, when Verma set the agenda for the brief Assembly session, he refused to include the no-confidence motion against him and instead dissolved the 10 member panel of presiding officers appointing two SP members in their place.

Finally when the House met on the morning of 19th June, 1995, Verma walked in and read out a message stating the dismissal of Mulayam, the election of Mayabati and the Governor's dictum on the no-confidence motion against him were "unconstitutional" and adjourned the House indefinitely.

Was Governor Vora within his right to dismiss the Mulayam Singh Yadav Government? And, what is to be done if the Speaker of a House keeps adjourning the Assembly to prevent a vote of no-confidence against him from being taken up.

Janeswar Mishra, the then SP Rajya Sabha member says that the Governor should have allowed Mulayam to take a vote of confidence in the Assembly. But the BJP's spokesperson Smt. Sushama Swaraj thinks otherwise.

She opined that the BSP had withdrawn support, the Congress had withdrawn support and there was no doubt that Mulayam was left

in a minority position and therefore the action of the Governor was perfectly legitimate.

Moreover, the former Secretary-General of the Lok Sabha Mr. Subash Kashyap said, "How could Mulayam be allowed to take a vote of confidence under those conditions. Look at the record of his government, the way Mayawati was gheraoed. It was clear to the Governor and others that it would not be possible to remove him through strictly normal procedure on the floor of the House. He would be resorted to horse-trading, black malling and kidnapping those opposed to him."  

7.3.15 Second Phase

The worst ever defection game and the intensely partisan role of the then Speaker Mr. Keshari Nath Tripathy was witnessed by the state of Uttar Pradesh, when after the election, the coalition govt. between the BJP and BSP failed in U.P. as the transfer of power of the Chief Minister from Ms. Mayawati to Mr. Kalyan Singh could not materialise and the then Governor Mr. Ramesh Bhandari had given Mr. Kalyan Singh only 36 hours to prove his majority by 21.10.1997. Mr. Kalyan Singh could able to prove his majority by enticing away 22 MLAs from Congress Party and 12 MLAs from BSP besides other independent MLAs amidst fierce battle and violence in the floor of the house which Mr. Pramod Tiwary of the Congress Legislature Party (CLP) said that Mr. Kalyan Singh's Government proved its majority on the floor of the House as he "managed to smuggle in some non-MLAs during counting".

But, the controversial ruling by the then UP Assembly Speaker Mr. Kesrinath Tripathy, regarding the status of the defected BSP MLAs who had left the parent group to join the Kalyan Singh Government runs counter to the spirit and the law on defections. It is hard to

135. Ibid
dispel the impression that the then UP Speaker had indulged in legal hair-splitting in order to bailout those legislators.

The allegation against the 12 defected legislators were putforth before the Speaker through 24 petitions filled by Mrs. Mayawati and Shri R.K. Choudhary in which it was stated that the number of BSP members elected in the UP legislative Assembly on the 'elephant' symbol of the BSP was 67, that a session of the Assembly was convened for 21.10.1997 to consider the motion of confidence moved by the Bharatiya Janata Party Chief Minister, Shri Kalyan Singh expressing confidence in his Council of Ministers, that on 20.10.97 Mrs. Mayawati, leader of the BSP legislature Party had issued the whip to its members to be present in the session and to vote against the confidence motion. However, the Speaker had dismissed the petition on the technical ground that Ms. Mayawati was admittedly the leader of BSP then but she was not duly authorised by the BSP to issue whip in compliance to the Paragraph 2(1) (b) of the Anti-Defection Law. The then Speaker held "provisions which are penal in nature or which constitute restrictions on fundamental rights, are to be constructed and complied with, strictly when a penalty is prescribed, the conditions under which the penalty is to be imposed have to be fully proved beyond doubt. If the penalty is the resultant effect of violating any command, and if there are certain requirements for giving such a command, the requirements must be complied with. Non-compliance with the requirement will vitiate the command and its violation, as such, will not invite the penalty."  

Strictly speaking, his ruling was fair to this extent only. However, to Mr. Ahtesham Qureshy, "By holding that Mayabati did not have the authority to issue the whip, the Speaker has usurped the power which the Anti-Defection Law did not give him." But his contention that

138. Qureshy Ahtesham: Partisan Role Published in the Pioneer, dt. 28.3.98
there was a "split within the split" does not appear reasonable. His acceptance of the affidavit of Choudhary Narendra Singh that after the split on 21.10.97, when the confidence motion on Kalyan Singh Govt. was voted, 26 MLAs of BSP splitted and formed Janatantrik Bahujan Samajwadi Party (JBSP) and again after another split on 15.1.98 only 13 persons remained in JBSP and without summoning the other splitted 8 members to verify the same nakedly expresses his partisan character. However, the Speaker's ruling which was passed on 23.3.98 on the petition of 24.10.97 casts a reasonable doubt on his role as the 5 months time has facilitated those MLAs to legitimised their claims.

In the meantime, the then Governor Mr. Ramesh Bhandari had dismissed the Kalyan Singh's government and a new Government under the leadership of Shri Jagdambika Pal, who defected from the Congress, was sworn in in extreme haste without recourse to floor test but on dt. 23.2.98, the Allahabad High Court had ordered for stay and Status quo ante immediately proceeding the Governor's decision during the pendency of the writ application.

The effect of the High Court Order, which as not been stayed is that the Kalyan Singh ministry was restored.

Jagdambika Pal appealed to the Supreme Court, which by its order of February 24 had directed a special session of the House to be summoned on Feb.26 to determine which of the rival claimants commands majority. Mr. Singh ultimately won it.

The Supreme Court's order has the merit of pragmatism. It upholds the principle enunciated in the Bommai judgement namely that it is the House where democracy is in action.

On the other side, Ms. Mayawati also moved to the Allahabad High Court seeking its directions to U.P. Assembly Speaker for speedy

139. The Times of India, dt. 25.2.1998
disposal of her petition relating to disqualification of 13 members of the Legislative Assembly who had voted for Chief Minister Kalyan Singh's trust vote. Without any specific direction from the Allahabad High Court she again moved to the Supreme Court on 9th January 1998. But the Supreme Court's Division Bench comprising Justice S.C. Agrawal and Justice A.P. Mishra while declining to pass any direction to the Speaker requested the Allahabad High Court to dispose of Ms. Mayawati's petition expeditiously. However after the Speaker's ruling, when the 3 judge bench of the Supreme Court was moved, it held that the trends relating to anti-defection law were very disturbing. But ultimately when there was a split verdict by the three-judge bench, the then Chief Justice M.M. Punchhi referred the case arising out of the petition by BSP leader to the Constitution Bench in Oct. 1998 as Justice K.T. Thomas and Justice M. Srinivasan gave diametrically opposite verdicts.

Justice Thomas considered the Speaker's order to be "perverse, preposterous and revolting to judicial conscience", Mr. Justice Srinivasan uphold the opposite point of view that even if the Speaker's decision was perverse, the case should be referred back to the Speaker for a fresh decision. Mr. Justice Srinivasan raised a pertinent point when he said that the apex court can't "substitute itself in place of the speaker". Like Art.356, the Anti-Defection Law too has become the bathwater which has dissolved the body. It needs to be thrown away.

The expression of diametrically opposite opinions by two judges of the Supreme Court in the U.P. BSP MLAs "defection case had added strength to the Law Commission's proposal for scrapping the Anti-Defection law. All that the Act has achieved so far has been to check "individual theft" of legislators while promoting "Collective docoity".

140. The Observer, dt. 18.11.97
141. The Hindustan Times, dt. 10.1.98
142. The Times of India, dt. 26.8.98
143. The Pioneer, dt. 18.10.98
144. The Hindustan Times, dt. 13.10.98
In Orissa, the issue of defection cases never occupied centre stage since the inception of the Anti-Defection Law because excepting the case of Janata Dal Leader Sri Bhajaman Behera, there was never any controversy arisen with regard to the Speaker's ruling and for which the incident of defections in Orissa since 1985 has been dealt in a single part in this chapter.

After the enactment of Anti-Defection Law i.e. after 1st of March, 1985 one independent MLA from Ramgiri Constituency would have invited the tentacles of the Defection Law but he escaped the same by not joining the Congress Party which was in Government but by supporting the party.145

In the year 1988 also the BJP in Orissa had received a severe jolt when its lone member in the State Assembly, Mr. Prasanna Kumar Pattanaik, quit the party to join the Janata.146

Confirming the switchover, the State Janata Party general secretary, Mr. Srikanta Jena, MLA, said here on Saturday that Mr. Patnaik's joining the Janata Party would not attract the provisions of the Anti-Defection Law because he was the BJP's only member in the House.

However, the disqualification issue of Sri Bhajaman Behera has raised a controversy with regard to the power of the Speaker and the role of the Judiciary.

Mr. Bhajaman Behera, who was elected on a Congress(I) ticket before joining the Jan Morcha and subsequently the Janata Dal,147 was sought to be disqualified by the then Congress(I) Chief Whip, Mr. Satyabhusan Sahu on 29.3.89148 who petitioned to the Secretary of

145. The Sambad, dt. 30.5.85
146. The Indian Express, dt. 21.2.98
147. The Statesman, 20.9.89
148. The Prajatantra, dt. 8.7.89
the Legislative Assembly. The petition was placed before the then Speaker Mr. P.K. Dash and Mr. Behera was served with a notice by the then Secretary Mr. B. Patra on 5.4.89. Mr. Behera moved to the High Court challenging the Chief Whips decision and the legality of the Tenth Schedule of the Constitution. His another petition was also referred to the Committee of Privilege, Orissa Legislative Assembly on 20.4.89 and another objection on dt.21.6.89. His main contention before the Court and the Committee was that Rule 6 of the members of Orissa Legislative Assembly (Disqualification on the Ground of Defection) Rules, 1987 is applicable when the petition is addressed to the Speaker but it is not maintainable if the said petition is addressed to the Secretary.

Mr. Bhajaman Behera also prayed in the High Court to stay the proceedings initiated by the Speaker stated to be fixed on July 8th, 1989. However, the Division Bench consisting of Justice L.Rath and Justice A. Pasayat without passing any formal order orally indicated to the Additional Govt. Advocate, who was present in the court that mutuality of respect should be maintained in view of the pendency of the writ application. However, owing to the intricacies of the petition which also involves the constitutionality of the said Anti-Defection Law the division bench referred on 13.7.89 the said writ petition of Mr. Behera to the full bench. Interestingly enough the full bench which comprised of the then Chief Justice Justice Harilal Agarwal, Justice G.B. Patnaik and Justice Lingaraj Rath after hearing the matter on 26.7.89 had made an observation that the petition was quite premature as the matter had not been decided by the Speaker.

However, the then Speaker Mr. P.K. Dash had disqualified Sri Behera under para 2(1)(a) and (b) and declared his constituency Talcher (SC) 122 as vacant vide Orissa Assembly notification dt.15.9.89

149. The Orissa Gazette Extraordinary, dt. 27.9.89
150. Ibid
151. The Indian Express, dt. 1.7.89
152. The Samaj, dt. 15.7.89
153. The Sambad, dt.28.7.89
and the matter ended there though Sri Behera was contemplating to move to the Court once again.

In another case Shri Ashok Das, the then MLA filed a petition on 19.11.94, before the then Speaker Yudhishthir Das, praying that Shri Kumar Behera, MLA was subjected to disqualification as per provision contained in Paragraph 2(1)(a) which having been admitted by the then Janata Dal Legislature party Sri Biju Patnaik vide his letter No.65 PS/CM dt.2.11.94 and by Shri Kumar Behera in writing on 1.12.94 that he had resigned from the primary membership of Janata Dal on 16.11.94, acted upon by the then Speaker Y.Das and Shri Behera was disqualified vide order dt. 1.12.94 bearing No.21647.154

But, when Jangyeswar Baboo, the then MLA filed a petition before the same Speaker against Sri Rabindra Kumar Mallick, MLA under Para 2(2) of the Tenth Schedule to the Constitution for joining in Congress Party by filing nomination paper for the post of O.P.C.C. member, the then Speaker having going through the reply of Shri Mallick and after examined the report of the Committee of Privileges, dismissed the petition as he felt the same to be not in order under Paragraph 2(2) of the Tenth Schedule.155

There were also defections of Janata Dal's Orissa MP inside the Rajya Sabha on 17.3.1998156 to the Biju Janata Dal. The Janata Dal's woes appear to be unending when five MPS of Orissa informed the then Chairman of Rajya Sabha about the split and approved by him were Sarbashree Dillip Ray, Rashbihari Barik, Bhagawan Majhi, Narendra Pradhan and Mrs Ila Panda.

The Janata Dal had 13 members in the Rajya Sabha and after the defection, the party was left with only 8 members. While the

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154. The notification bearing no. 21647, dated 1st December 1994 published by the Secretariat of the Orissa Legislative Assembly.
156. The Hindustan Times, dt. 18.3.98
National Vice-president of Janata Dal Bapu Kaldate termed, the split as the result of the horse-trading indulged in by the BJP, Mr. Nabin Pattanaik of Biju Jantata Dal levelled it as a great achievement for his party.

Recently there was also a split in the Biju Janata Dal Parliamentary Party in the month of November, 2002 but it had not generated much controversy as the Lok Sabha Speaker Mr. Manohar Joshi formally recognised the split and recognised Sri Prasanna Acharya as the new leader of B.J.D. Parliamentary Party.

7.4 **Speaker's Concern and Attempt made at Different Quarters to make an Effective Anti-Defection Law**:

7.4.1 With the Speakers' erratic rulings and the approaching of Judiciary by the defected legislators quite often, speculations were high in different quarters that it would lead to a constitutional crises resulting from the conflicts between the legislature and the Judiciary. But, in what constitutes a sober and mature response to a thick situation, presiding officers of legislative bodies in the country had agreed in principle to honour judicial verdicts in Anti-Defection case and end the conflict between the two on the application of this controversial law.

The then Lok Sabha Speaker, Mr. Shivraj Patil, who presided over the meeting of the standing committee of the conference of Presiding Officers at New Delhi on the 3rd week of January, 1992 had steered the discussions and explained the implications of the verdict of the Supreme Court. The general consensus among the Presiding Officers is that judicial verdicts should be respected so long as the Anti-Defection Law remains in its present form and the infirmity pointed out by the Supreme Court i.e. the failure to secure ratification by half of the State legislatures remains uncorrected.

157. The M.P. Cronicles, Bhopal, dt. 19.3.98.
159. Ibid
The Presiding Officers wondered whether it is possible to create a Court of appeal within the legislature in order to prevent every aggrieved MLA and MP from rushing to the Courts. The Lok Sabha Speaker also initiated a move to secure the opinion of political parties on the working of the Anti-Defection Law and on the steps that need to be taken to prevent conflict between institutions without in anyway compromising the independence of legislative bodies.

Since the verdict of the Punjab and Haryana High Court till date, numerous attempts were made to rectify the Anti-Defection Law. An amendment to this Law was announced on 11th Sept, 1990 at a seminar on "electoral reforms" organised by the Madras Bar Association\textsuperscript{160} which was supposed to be placed before the Parliament in the winter session. But, it failed to take off.

7.4.2 In August 25, 1992 the Union Government had announced that it was ready with an amendment to the Anti-Defection Law on the lines recommended by the Speaker's Conference held on Feb, 1992.\textsuperscript{161}

Such an amendment would also be in harmony with the Supreme Court order in the Meghalaya Case when the apex Court had held that the Speaker, while exercising his Powers under the Anti-Defection Law, acted as a tribunal and his order was thus subject to Judicial review.

One of the formulas suggested for providing a forum of appeal of review against the order of the Speaker was that a committee, comprising the President, the Vice-President and the Lok Sabha Speaker to be set-up to hear such appeals, so far as Parliament was concerned. A similar forum with the Governor and the Presiding Officer/ officers of State Legislature could be set-up in the states for similar

\begin{footnotesize}
\textsuperscript{160} The Indian Express, 12th Sept., 1990
\textsuperscript{161} Qureshy Astesham, \textit{Anti-Defection Law To Be Amended}, The Hindustan Times, 26th Aug., 1992.
\end{footnotesize}
purposes, with the provision that the Presiding Officer against who's order the appeal was to be heard could not participate in the proceedings.\footnote{162}

While the then President Mr. Venkatraman was reported to have agreed with the proposal, it was felt in the Law Ministry that some aggrieved legislators might still go in appeal against such a decision of the appellate forum in the Supreme Court. It would be embarrassing for the President to become a party to such a possible controversy, but Mr. Venkatraman had overruled those objections and had reportedly held the view that under the constitution, all decisions taken by the President enjoyed immunity from Court hearing or judicial interference.\footnote{163}

An alternative suggestions was that a committee of judges, with the Chief Justice as the Presiding Officer, be set up to here such appeals against the order of the Speaker.\footnote{162} The Chief Justice was also appraised of the proposal. Several rounds of consultations, in the recent past, were held between the Law Minister and the Lok Sabha Speaker on the Subject, following the recommendations of the Speaker's Conference. The Law Minister has also consulted the leaders of various political parties in Parliament on the question of amendments of the Law. However, those proposals failed to find a final conclusion.

7.4.3 By and then, there were also call from various quarters to amend the Anti-Defection Law to make it more effective. One of such calls was made by the then Lok Sabha Speaker, Mr. Shivraj Patil on May 1995.\footnote{164} In a surprise move also, which was not on the agenda of the BJP's national Executive, BJP leader and former Prime Minister Atal Behari Vajpayee in June, 1996 demanded that the entire Anti-Defection Law should be reviewed.\footnote{165} He even suggested that an all-party meeting be convened to discuss the various aspects of the

162. Ibid
163. Ibid
165. The Times of India, dt. 23.6.1996
anti-defection law that allows for splits, mergers, break up and wholesale defections from one party to another. There were also contradictory views like that of one expressed by the then Madhya Pradesh Assembly Speaker Mr. Srinibas Tiwari who suggested in Oct, 1996 for repealing the Anti-Defection Act as the first step to end political uncertainty after elections. Mr. Tiwari, a legislator since 1952 said that legislators should be given the freedom to choose their government. They should not be bound to their party as if they were bonded labourers of the party leaders, he felt. Citing the JMM MP's case, he said the Anti-Defection Law had proved ineffective. The elected MPs and MLAs should have freedom to speak and work according to their conscience. Even in the United Kingdom, the elected MPs had freedom to defy the party whip. In the age of political instability and coalition governments, the Anti-Defection Act has to be revoked.

7.4.4 However, the Halim Committee of Presiding Officers has pointed out that the operation of the Anti-Defection Law has revealed several lacunae and deficiencies and suggested that the Lok Sabha Speaker be authorised to take up the matter with the President, the Vice-President and any other authority to decide the proper procedure that may be adopted for such cases. The Committee headed by Mr. Hashim Abdul Halim, the then West Bengal Assembly Speaker suggested ways to reduce conflict between the judiciary and the legislature and promote harmonious relations between the two wings.

The committee explores the possibility of entrusting the power to decide cases under the law to a judicial body without involving the Chairman/Speaker of the House and opined that although such an arrangement may have several obvious advances, it may create new areas of conflict.

166. The Statesman, dt. 23.6.96
167. The Times of India, 18.10.1996
168. The Tribune, Chandigarh, 15.10.1996.
In the following year, the Speakers from various legislatures in the country as well as the Lok Sabha had sought a review of the Tenth Schedule of the constitution which relates to defections, and have sought a legal ban on defection altogether.

The then Chairman of the Expert Committee on Ethics of the Lok Sabha, P. Upendra, who participated at the All-India Conference of Presiding Officers, felt that the Anti-Defection Act had many loopholes. The Speakers Conference at the end of the deliberations on fifty years of Parliamentary democracy in India and discipline and decorum in the House finally passed an unanimous resolution seeking the imposition of a legal ban on defections altogether.\(^{169}\)

The United Front Government had shown its keenness to convene an all-party meeting to reconsider the Anti-Defection Law and the then Gujral Government was considering to move an amendment to that effect in the winter session of Parliament which commenced on 19th of November, 1997\(^{170}\) for which it also called an all party meeting on November 10, 1997 to discuss the amendment proposals. A proposal to limit the size of the ministries in the State to one-tenth of the strength of an unicameral legislature and 12 percent to 15 percent of a bicameral legislature had also been mooted by the Law Ministry.\(^{171}\) It also proposed to redefine the term split to make it mean more than half of a legislature party instead of the present one third.\(^{172}\) However in the all party meet, amendment proposal to defection law was deferred as some parties like the BJP and the left had argued that such an important amendment should not be done in haste. It was felt that a debate should first be undertaken on the broad parameters of the amendments, since there was little agreement on what the nature of changes should be.\(^{173}\)

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169. The Hindustan Times, dt. 25.10.97
170. The National Herald, dt. 2.11.97
171. The Pioneer, New Delhi, dt. 4.11.97
172. The Indian Express, dt. 5.11.97
173. The Times of India, dt. 5.11.97
A Parliamentary Committee has recommended a threadbare review of the decade-old Anti-Defection Law so that the Government can take concrete measures for amending the law and removing its lacunae.

In its report on ethics, standards in public life, privileges and facilities to MPs, the Lok Sabha Committee of Privileges said the Anti-Defection Law, as it stood at present, may be discussed threadbare by the Presiding Officers of the legislative bodies.¹⁷⁴

The Government should take concrete measures for suitably amending the law, it suggested.

The panel identified three controversial areas relating to the application of the law—time from which a split becomes operative, effecting splits for facilitating mergers and absence of provision of certain eventualities such as expulsions of members from political parties.

In an era of hung Parliament and Assemblies, coalition and minority Governments, there were more occasions when Presiding Officers were called upon to decide cases under the Anti-Defection Law. Under these circumstances, the need for removing various lacunae and suitably amending the tenth schedule has become more pronounced, it said.¹⁷⁵

7.4.6 There were also suggestions from the Experts like politician Vasant Sathe, former Chief Election Commissioner T.N. Seshan and constitutional expert A.G. Noorani that a review of the role of Speaker in deciding defection disputes and criteria of split in a party are urgently required. "The record of Speakers only supports the contention that disputes related to defection should be decided by the Election Commission (EC), says eminent constitutional expert A.G. Noorani".¹⁷⁶

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¹⁷⁴. The Pioneer, New Delhi, dt. 10.11.97
¹⁷⁵. The Observer, New Delhi, dt. 6.4.98
¹⁷⁶. I bid
However, the Janata Dal had welcomed the Election Commission's recommendation for shifting the authority of deciding on defections under the Anti-Defection Law from the Speaker to the President or Governors.177

7.4.7 While politicians of different hues have begun talking about the reforms, Justice B.P. Jeevan Reddy's Law Commission was quietly working on vital legal changes to tackle defections. Its conclusions could possibly help in preventing 'Aya Rams' and 'Gaya Rams' and others equally endowed with flexible conscience from deciding the fate of governments at the Centre and in the states.

It was apprehended that the Law Commission might prefer making an MP or an MLA wanting to switch loyalties simply vacate his or her seat and seek a fresh mandate. It is considering to divert the Speaker of the responsibility to disqualify defecting MPs or MLAs and asking the President (in the case of an MP) or the Governor (in the case of an MLA) to do the job. The President and the Governor would have to act on the advice of the Election Commission. Justice Jeevan Reddy and his team are also reportedly deliberating other solutions for the problems thrown up by defectors' tendency to change political parties again and again and indulge in their favourite game without attracting disqualifications and losing the seat in the House. With the developing situation in the country, the Law Commission had to speed up sending its recommendations so that the amending legislation can be enacted in time to prevent defectors from deciding when the country should go to the polls.178

However, on the contrary, the Law Commission had suggested for scraping of the Anti-Defection Act so that those elected on a particular party's ticket can not defect until the House is dissolved.179

177. The Observer, New Delhi, dt. 11.5.98
178. The Indian Express, New Delhi, 19.6.98
179. Dua H.K.- Malady of Defections Published in the Hindustan Times, New Delhi, dt. 11.09.98
The then Speaker of Lok Sabha Late G.M.C. Balayogi stressed on 22.9.98 the need to review the Anti-Defection Law. Inaugurating the 62nd All India Conference of Presiding Officers of the Legislative Bodies at New Delhi, he said that it had become essential due to the coalition politics in the country. Saying that certain lacunae and ambiguities about the law make interpretation of the law difficult, Balayogi added, controversies had arisen in the matter and manner of verifying splits in original political parties, time from which splits had become effective, conclusiveness of splits, engineered splits, voluntary withdrawal of memberships, consequences of expulsions of members of political parties. The then Speaker of the Himachal Pradesh Vidhan Sabha, Mr. Gulab Singh Thaker also echoed the views of the Lok Sabha Speaker. Speaking at the All India Conference of Presiding Officers at New Delhi he said that there was no set procedure laid down in the Act to dispose of complains falling under the preview of the Anti-Defection Law. He said that there was need to codify the detailed procedure in this regard. Mr. Balayogi also suggested that a committee would be formed to monitor the pros and cons of the Anti-Defection Bill.

On the other side, addressing a seminar on electoral reforms, organised jointly by the Law Commission of India and the Bar Council of India in January 1999, the former Lok Sabha Speaker Shivraj Patil had sought to involve the judiciary in political anti-defection cases and the power to disqualify elected members of legislatures and Parliament under the Anti-Defection Law be taken away from the Speaker as is the practice at present.

As nothing concrete had come out and no government could meet the demand of the time by introducing necessary changes into the

180. The Indian Express, New Delhi, dt. 19.09.98
181. The National Herald, New Delhi, dt. 23.09.98
182. The Tribune, Chandigarh, dt. 23.09.98
183. The M.P. Chronicles, Bhopal, dt. 26.9.98
184. The Observer, New Delhi, dt. 25.1.99
Arti-Defection Law in order to make it sound, the newly installed Vajpayee Government had made Defection a point of reference amongst five other important points and appointed a National Commission to review the Constitution under the Chairmanship of Justice Venkatechalia which after through review had made the following recommendations.

7.4.9 Constitution Review Committee's Recommendations

7.4.9.1 Defections

The question of defections has now haunted the Indian polity for over three decades. This was sought to be eliminated by the Tenth Schedule but all that has happened is that while individual defections have become rare, *en bloc* defections are permitted, promoted and amply rewarded. Despite the Tenth Schedule, or because of it, countless defections have taken place without incurring any disqualification. In fact, on an average more defections per year took place after the Anti-Defection Law as laid down in the Tenth Schedule came into force than ever earlier. What has been even more disconcerting is that some of the Speakers have tended to act in a partisan manner and without a proper appreciation—deliberate or otherwise—of the provisions of the Tenth Schedule. Almost everyone dealing with this subject agrees that defections flout people's mandate and cannot and should not be permitted, neither singly nor in a group. The fact is that most candidates get elected on the basis of the party that has given them a ticket. Defections allow these candidates to theoretically go to the pole opposite of their party, which is not the basis on which people elected them. Simply because there is no accountability *vis-a-vis* the people, such a practice continues unabated. Defections encourage corruption at the highest levels. Defectors usually are rewarded with political positions and other such perquisites so openly that it really makes a mockery of our democracy.
The Commission recommends that the provisions of the Tenth Schedule of the Constitution should be amended specifically to provide that all persons defecting—whether individually or in groups—from the party or the alliance of parties, on whose ticket they had been elected, must resign from their parliamentary or assembly seats and must contest fresh elections. In other words, they should lose their membership and the protection under the provision of split, etc. should be scrapped. The defectors should also be debarred to hold any public office of a minister or any other remunerative political post for at least the duration of the remaining term of the existing legislature or until, the next fresh elections whichever is earlier. The vote cast by a defector to topple a government should be treated as invalid. The Commission further recommends that the power to decide on questions as to disqualification on ground of defection should vest in the Election Commission instead of in the Chairman or Speaker of the House concerned.

7.4.9.2 Oversized Council of Ministers

The practice of having oversized Council of Ministers must be prohibited by law. A ceiling on the number of Ministers in any State or the Union government be fixed at the maximum of 10% of the total strength of the popular house of the legislature. In this connection, reference is also invited to clause 4 of article 239AA of the Constitution, which limits the size of the Council of Ministers to not more than 10% of the total number of members in the Legislative Assembly of the National Capital Territory of Delhi.

Also, the practice of creating a number of political offices with the position, perks and privileges of a minister should also be discouraged and at all events their number should be limited to 2 percent of the total strength of the lower house.
7.4.9.3 Problems of Instability

The last few decades have seen a great deal of political instability in India. During ten years, there were seven governments at the Union level. Being minority governments, these were unable to provide stable administration and stable policies. The reasons are not far to find. We adopted the Westminster model of FPTP system of elections but forgot that it works mainly in communion with a two party system or a limited number of parties. The political system and the politicization of caste and communal identities have proved to be very divisive of society and disruptive of the national ethos. It has become increasingly difficult to get a workable majority to form a government and make a success of coalition arrangements.

This has had very negative repercussions on the quality of governance because to cobble up a workable majority to form government, compromises had to be made and ideology or notions of quality of governance sometimes might have taken a back seat. The consequences are severe. Law and order suffers because control mechanisms break down or become very loose. It becomes difficult to take strong measures to curb corruption and provide clean and quality governance. In the end, it is the citizen who is the victim of all the misgovernance.

Out of 1900 independent candidates who contested the general election in 1998, only 6 (0.65%) succeeded, 885 (47%) lost their deposits. Likewise out of the 10635 candidates, who contested the 1996 Lok-Sabha elections, only 9 (0.08%) won and 10,603 (99.7%) lost their deposits. It is also known that most of these so-called independent candidates are in fact dummy candidates or defectors from their parties on being denied party tickets. These candidates only vitiate the sanctity of the electoral process and involve waste of resources. This was carried to ridiculous limits when a Lok Sabha constituency in Andhra Pradesh (Nalgonda, in 1996) had 480 contestants. Similarly there have been assembly constituencies reaching over 1000 candidates.
The Commission recommends that independent candidates be discouraged and only those who have a track record of having won any local election or who are nominated by at least twenty elected members of Panchayats, Municipalities or other local bodies spread out in majority of electoral districts in their constituency should be allowed to contest for Assembly or Parliament.

In order to check the proliferation of the number of independent candidates and the malpractices that enter into the election process because of the influx of the independent candidates, the existing security deposits in respect of independent candidates may be doubled. Further, it should be doubled progressively every year for those independents who fail to win and still keep contesting elections. If any independent candidate has failed to get at least five percent of the total number of votes cast in his constituency, he/she should not be allowed to contest as independent candidate for the same office again at least for 6 years.

An independent candidate who loses election three times consecutively for the same office as such candidate should be permanently debarred from contesting election to that office.

The minimum number of valid votes polled should be increased to 25% from the current 16.67% as a condition for the deposit not being forfeited. This would further reduce the number of non-serious candidates.

In the considered view of the Commission, it should be possible without any constitutional amendment to provide for the election of the Leader of the House (Lok Sabha/State Assembly) along with the election of the Speaker and in like manner under the Rules of Procedure. The person so elected may be appointed the Prime Minister/Chief Minister.\textsuperscript{185}

\textsuperscript{185} The entire report of the Constitution Review Committee as cited above is taken from Internet.
7.5 Redefining the Role of Speaker under the Anti-Defection Law, 1985

Theoretically, as per the provisions of the Indian Constitution, the office of the Speaker is the most impartial and dignified one. The theory of "once a Speaker, always the Speaker" is not applicable in India and as he owes his membership of House to the Party affiliation, it is just unthinkable to make the Speaker free from bias and to act impartially while making him the sole arbitrator to decide the fate of defectant legislators. But, before going to the detail, it is highly imperative to have a quick look at the Anti-Defection Law itself, the texts of which remained unentincingly porous despite the national attention it draws between 1968 and 1985.

By the Constitution 52nd Amendment Act of 1985, Tenth Schedule was introduced to the Constitution making provisions for disqualification of members of Parliament and State Legislatures on the ground of defection. It is intended to prevent defection of members from one political party to another with a view to throw out the ruling party from power and therefore a member voluntary resigning his own party or joining another party or voting against his party whip is subjected to disqualification. But the disqualification is not applicable in a case where there is 'Split' in the political party and a faction consisting of not less than one-third of the members of the Legislature party has arisen as a result of such split. So also disqualification is not applicable when there is a 'merger' of two-third of the members of Legislature party with another political party or when a new party is formed on account of such merger. The Speaker is the final authority to decide the issue as to whether member of the House has become subject to disqualification under the Tenth Schedule of the Constitution. The decision of the Speaker cannot be challenged before any authority or a Court of law. The House has no say in the matter. The proceedings on petition under Rule 6 of the Rules of procedure are not in fact the

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185. The Article written by me and published by The All India Reporter, Nov., 1999 is reproduced here under the above heading.
proceedings of the House. This is why a legal fiction introduced in Para 6(2) of the Tenth Schedule of the Constitution, thereby extending the benefit of Art.122 and Art.212 of the Constitution to the proceedings on a petition filed under Rule 6 for disqualification of a member, which states that such proceedings shall not be called in question in any Court of law on the ground of any alleged "irregularity" of the procedure.

Under this background as the Anti-Defection Law stands it is highly imperative that a clear cut boundary is to be framed within which the Speaker or Presiding Officer is to operate so as to make him impartial and judicious and while doing so the following considerations are to be taken into account.

7.5.2 The first and foremost duty of the Presiding Officer is to recognise the 'purpose' for which the Anti-Defection Law is made and when it is meant to curb and control the floor crossing by the Legislators for considerations otherwise than purely ideological or moral differences, the Speaker has to take utmost care in preventing those considerations arising out of money, muscle, high political office, ministerial berths and the like. Of course it is admitted that in India, ideology hardly matters in forming political parties and the Anti-Defection Law is completely silent about the floor crossing arising out of ideological differences. However, it would not be entirely unreasonable and unethical for the Speaker to imitate foreign Precedents if available even remotely. For example, all British Prime Ministers in the last forty-five years except Clement Attlee and Edward Heath have been dissenters. Likewise the defection of Mr. Lambsdorff brought down the coalition Government of Mr. Helmut Schmidt in West Germany in October, 1985. But, neither the Britishers nor Mr. Lambsdorff or any other member of his group changed sides in order to fill their pockets with money. Their defections were rather promoted by principle and political ideologies. In fact, all important British politicians have been dissenters. Among the dissenters were Winston
Churchill, Anthony Eden, Harold Macmillan, Harold Wilson, Jimmy Collaghn, Margaret Thacher, Aneurin Bevan, Michel Foot, R.H.S. Crossman, Marry Shinwell, Philip Neol-Baker, Neil Kinnock, Leopard Amerly Duff, Cooper Branden Backen and Enoch Powel. The first six rose to be Prime Ministers. Actually, what is meant to be suggested here is that even though the language of law does not speak anything about ideology, the Speaker while deciding defection cases as judge, can go beyond the written words and apply the principle of the "intension of the legislators".

7.5.3 The second important consideration before the Speaker is to wait for the petition to be filed before him by the leader of the party or by any other member and not to act *suo moto* as the rules of procedure allows the leader of the party to condone the act of their party members in the Parliament or the State Legislature as the case may be and it is therefore Mr. V.P. Singh was not disqualified after the Allahabad by-election when he joined the Janata Dal as no one had petitioned the Speaker about the same. So, the Presiding Officer should not act *suo moto* against the express provision of law.

7.5.4 Thirdly, the Rule provides 30 days time to the parties to provide to the Speaker necessary information about their members. The time can be extended by the Speaker for such further period (without any limit) as he may agree. Again after a petition is received, a lengthy procedure of references, of giving time without any outer limit etc., is laid down for considering it. Also, he may send it to the privileges committee for a preliminary inquiry as per the Rules which may keep the same pending indefinitely, may be even for the entire lifetime of the House as happened in one case during the 8th Lok Sabha even though the Constitution specifically charged the Presiding Officer himself with the responsibility of taking a decision in the matter presumably to ensure expeditious decision. As such, the dilatory procedure under the Rules which completely defeats the purpose of the law must and should always be avoided by the Speaker.
7.5.5 It has now become a usual practice that, if a member is expelled by the party or if a group breaks away from the original political party, on the receipt of a petition, the Speaker immediately declares him or the group as "unattached" so as to distinguish them from the party members as well as from the independent members as it was a long practice before the enactment of Anti-Defection Law. But it is unfortunate that while dealing with the Anti-Defection Law and in deciding cases thereunder, the Speakers have been wrongly practising those conventions which are precipitated by Mr. Balaram Jhaker who declared K.P. Unikrishnan and Kishore Chandra Deo of the Congress, as "unattached" despite the fact that the Anti-Defection Law neither speaks anything about the "expulsion from the political party" nor about the term "unattached". Moreover Mr. Thenuchu, the then Speaker of Nagaland Legislative Assembly declared two MLAs named Mr. Sedam Khaming and Mr. H.V. Sakhrie of Nagaland People's Council (NPC) as unattached with effect from 13-12-1990 who were expelled from the NPC for anti-party activities by the then Party President Sri Vizol who also petitioned the Speaker in order to reduce the split of 12 members to 10 thereby reducing the number from the magic 1/3rd. Even the then Lok Sabha Speaker, on receipt of a letter from Mr. Vishwanath Pratap Singh, the then Leader of Janata Dal in Parliament declared 25 members of Lok Sabha belonging to Janata Dal in Parliament, as "Unattached" as they were expelled by Mr. Singh for anti-party activities and allotted them separate seats. But, if an elected member can be expelled by the party and declared 'Unattached' by the Speaker, it stands to reason that he becomes free from the bondage of party whip and party affiliation to the political party on the symbol of which he was elected to the House and if so, it should be permissible for him to join another political party or form a new party in which case the very purpose of Anti-Defection Law is defeated and therefore it is the duty of the Speaker to avoid such practice.

7.5.6 In the constitutional practice, the Presiding Officers of the Parliament occupy predominant position over the Presiding Officers
of State Legislatures. So, it would not be entirely unreasonable for the Speakers of State Legislative Assemblies to follow the decisions taken by the Presiding Officers of the Parliament while deciding cases under the Anti-Defection Law. This would possibly eliminate the confusion created by several conflicting decisions made by the Speakers of different Assemblies. For instance, in many cases, the disqualification imposed on a member by one Speaker was subsequently rescinded by another as happened in Goa. By an order dated 7.3.1991, the then Acting Speaker of Goa Legislative Assembly, Mr. Simon Peter Desoza held that the order dated 13.12.1990 passed by his predecessor Mr. Surendra V. Sirsat stood rescinded or set aside. The two members namely Mr. Ratnakar Chopdekar and Mr. Sanjay Bandekar for all purposes stood qualified and continued to be the members of the House since inception of the elections until the date of the order. In another order also, while reviewing his own order, the then Speaker of the Pondicherry Legislative Assembly Mr. G. Palaniraja on Dec. 26, 1990 ruled that two MLAs namely Mr. Thiru P. Rajavelu and Thiru K. Deivnayagam who were disqualified by his order No.11670/90-L.A. (Legn) dt. 20.12.1990, was revoked as invalid (ab-initio) that the status-quo ante to the impugned order dt.20.12.1990 is restored thereby allowing those two MLAs to continue to act as members of the Pondicherry Legislative Assembly and deemed to be so without any interruption. But, this was clearly against the provision stating that on the disqualification of a member, "his seat shall thereupon become vacant" and therefore the removal of the disqualification in such cases would tantamount to the revival of a dead man which is clearly beyond the power of the Speaker and he should be very conscious of that.

7.5.7 While dealing with the main provision of the Anti-Defection Law enshrined in Para 2 of the said law, the Speaker has to observe (a) firstly whether the member of the House was voluntarily given up the membership of his party with due intimation to the Speaker or he has been expelled by his party. In the later case Para 2 is not applicable
; secondly (b) whether without any prior permission, he votes or abstains from voting contrary to the direction of his political party and whether such act was condoned by such political party within fifteen days of such voting or abstention and if the answer is in affirmative, he is not subject to disqualification. But, if condonation was not done, the Speaker has to see (i) whether the direction was written or verbal; (ii) whether the written direction was in the nature of whip; (iii) whether the person issuing the whip is authorised by the party to do so; (iv) whether the whip was so worded as to clearly indicate that voting or abstaining from voting contrary to the said direction would result in incurring the disqualification under paragraph 2(1)(b) of the Tenth Schedule so that the member concerned has fore-knowledge of the consequences flowing from his conduct in voting or abstaining from voting contrary to such a direction, (as directed by the Supreme Court) and finally (v) whether the whip was properly communicated to the concerned member. Deviation of any of these guidelines can enable the Speaker in not disqualifying a member on the ground of technical defects and also on benefit of doubt. The Speaker should also take adequate care to follow the rulings of the Supreme Court dated 18.2.1992, that a member of Parliament or the State Legislature can be disqualified for defying a whip of his political party only on two counts—that is on motion of confidence or no-confidence and when the matter relates to the programme and policies of the party in order to avoid any sort of conflict with the judiciary otherwise his decision may be struck down on the ground that the same decision of the Speaker is violative of fundamental right guaranted under Art.19 of the Constitution which overrides the Anti-Defection Law.

7.5.8 Then comes the two most controversial terms "split" and "merger". These two are the most used and abused terms in the Anti-Defection Law and they are instrumental in defeating the very purpose of the said law. In this context, the role of the Speaker is very crucial
also. As the Anti-Defection Law in its present form stands, the role of the Speaker is to look into the followings:

7.5.8.1 Whether there is a claim before the Speaker by any of the members or a group of the Legislature party that there is a split in the original political party to which he is a member with the symbol on which he had contested the election and become the member of that House or not. It must be borne in mind that there should be a split in the original political party as it is a condition precedent to the 'split' in the legislature party. So, it would not be impracticable for the Speaker to look beyond the House and rely upon genuine electronic media (like AIR) and trusted Press Report (like PTI, Associate Press etc.) despite the fact that almost all the Presiding Officers, since the inception of Anti-Defection Law, have since held that the Speaker can take cognizance of the fact of split in the 'party' in the 'House' and not outside. But if the Speaker choose to decide as to whether the original political party had split outside the legislature irrespective of the number, it will be easy for them to decide cases under Anti-Defection Law and the judiciary will virtually agree to their decision as it had upheld para 3 of the law dealing with 'split'.

7.5.8.3 Whether the split in the legislature party arising out of the split in the original political party is at least 1/3rd of the total strength of that party in that House or not and in so determining, the Speaker should take a referendum among the legislative members of the concerned political party on a pre-intimated date as to whether, they want to part with the original political party or stay with the same. This will possibly avoid the most technical question as to whether split is a "one time affair" occurring at a particular point of time or a "continuous process" spread over few days and in going for a referendum it would not violate the provisions of the Anti-Defection Law or the rules of procedure because the law provides that the Speaker is the final authority to decide disputes with regard to the Anti-Defection Law whose decision shall be final and can't be called in
question and the Rule is silent about the *modus operandi* that is to be adopted by the Speaker in determining 'split'.

7.5.9 Whether the words in para 3 "at the time of split" literally mean that 'split' can occur in a particular point of time or disension of ideology and morals could only take time in precipitating a 'split' is a dubious question as almost all the Speakers except very few like Mr. Shivraj Patil have declared through their decisions that split is a 'one time affair' as per the wording of the Anti-Defection Law. This matter needs interpretation by the Court of law which could be made through a Presidential reference to the Supreme Court if the Presiding Officers Annual Conference resolved to do so and abide by the decision and till such time, the Speakers of all the legislatures should agree with the former Secretary General of Lok Sabha, Dr. Subash C. Kashyap who said," 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 groups. Members are thinking human beings who need some time to decide which way to go. There is no mention in para 3 of the 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".

But in case of "merger" the condition is different. 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 third of the members of the legislature party concerned have agreed to such merger. Since, they have to agree in a group of absolute majority, merger needs to be a one-time affair and it can't be a continuous or phase-wise phenomenon.

7.5.1 And finally the Speaker decides in what capacity? Whether he decides cases under Anti-Defection Law as the Presiding Officer of the House and therefore all proceedings in relation to disqualification of a member under the Tenth Schedule shall be deemed to be proceedings in Parliament or State Legislature within the meaning of
Art.122 and Art.212 of the Constitution as the case may be, in which case the same shall not be questioned in any Court of law on the ground of any alleged "irregularity" of the procedure or else he (the Speaker) acts as a "Tribunal" and his decisions in defection cases were open to judicial review as the protection granted to proceedings in legislatures is confined to "irregularity" and not "illegality" is a doubtful question. Moreover, whether the Speaker is the final authority to decide disputes regarding defection laws or as the majority judgement of the Supreme Court affirmed, the Speaker's order is open to judicial review if involves allegation of *malafide*, non-compliance of rules of natural justice and perversity is very difficult to say. But, so long as the Anti-Defection Law is not being ratified by at least half of the State Legislatures as required by the Constitution so as to bar judicial scrutiny and the technical defects are removed; it would be wise for the Speakers to make their decisions open for judicial scrutiny as they have by themselves agreed to abide by the judicial verdicts in the conference of Presiding Officers at New Delhi in 3rd week of January, 1992 under the Chairmanship of the then Lok Sabha Speaker Mr. Shivraj Patil.

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