CHAPTER - 3

ATTEMPTS TO CURB DEFECTION THROUGH LAW:
POSITION PRIOR TO 1985 AND AFTER

I. INTRODUCTION

Until the Fourth General Elections held in 1967, the Indian National Congress came to power both at the Centre and in majority of the states. But, however, this picture changed when in a number of states no political party secured an absolute majority in the 1967 General Elections and they had to content themselves with forming coalition governments with other parties - not necessarily likeminded. As these were opportunities alliances not based on any common ideology but only based on the sole purpose of clinging to power, these were quite comfortable and encouraged the evil of defection. A number of legislators crossed the floor for monetary considerations and Ministries fell because of such large scale defections and new ministers were formed with the help of defectors. Some of the MLAs even changed sides three or four times during the course of a single day. The after effects of such unabashed and unprincipled defection were being discussed by the whole country and this found an echo in the Parliament also.

Deeply concerned with the increased rate of defections, Shri P. Venkatsubbaiah, a member of Fourth Lok Sabha, moved a resolution in the Lok Sabha on August 11, 1967 for setting up a high level committee consisting of representatives of political parties and Constitutional experts to consider the problems of legislators changing their allegiance from one party to another and their frequent crossing of the floor in all its aspects and recommend to the
Government such measures as are necessary for arresting the alarming rate of unprincipled defection.¹

Whereas at the Presiding Officers conference held on 14th and 15th October 1967, the Presiding Officers left the task of taking steps towards curbing defections to the political parties and the government. However, on December 8, 1967, the Lok Sabha passed a unanimous Resolution² for appointment of high level committee i.e. A committee on defections.

II. RECOMMENDATIONS

(i) Chavan Committee on Defections³

In deference to Private Member's resolution as passed unanimously by the Lok Sabha on December 8, 1967, a Committee of Constitutional Experts, representatives of the political parties and independents was set up by the Union Government in February, 1968 under the Chairmanship of the then Union Home Minister Shri Y.B. Chavan to study defections in India and make recommendations thereon. The other members of the Committee were Shri P. Govinda Menon, the then Union Law Minister; Dr. Ram Subhag Singh, the then Union Minister of Parliamentary Affairs and Communications; Shri P. Venkatesubbaiah, M.P. (Congress); Shri Madhu Limaye, M.P. (SSP); Shri S.N. Dwivedi, M.P. (PSP); Professor N.G. Ranga, M.P. (Swatantra); Shri Bhupesh Gupta, M.P. (CPI); Shri P. Ramamurthy, M.P. (CPM); Professor Balraj Madhok, M.P. (Jan Sangh); Shri K. Anbazhagan, M.P. (DMK); Shri N.C. Chatterjee, M.P. (Progressive Group of Independents; Dr. Karam Singh, M.P. (Independent

¹ Lok Sabha Debates, August 11, 1967.
² Resolution reads: This House is of opinion that a high level Committee consisting of representatives of political parties and constitutional experts be set up immediately by Government to consider the problem of legislators changing their allegiance from one party to another and their frequent crossing of the floor in all its aspects and make recommendation in this regard.
³ Government of India, Ministry of Home Affairs, Committee on Defection, Report, Chairman Y.V. Chavan, New Delhi, 1969.
The Committee held its sittings on March 26, April 18, May 12, July 14, August 8 and September 28, 1968. In its total six meetings, the first was devoted to general discussion on the various aspects of the problem of defections. While at the second and third meetings the members placed their considered views on the basis of papers and notes circulated to them. After the third meeting, the Union Home Minister requested the constitutional experts on the Committee to meet separately to consider the feasibility of several constitutional and legal remedies that has been suggested for checking the practice of political defections. The legal members met in three sessions at Ootacamund on July 5 and 6. The recommendations made by the group were considered by the full Committee at its fourth and fifth meetings on July 14 and August 8. The Committee concluded its report in the sixth meeting held on September 28, 1968. Whereas, the Committee submitted its report to the Government on January 7, 1969. On February 18, 1969, the Report of the Committee was laid on the table of Lok Sabha.

The Committee made several recommendations suggesting ethical, political, constitutional and legislative solution of the problem. The recommendations made by it are given below in brief.  

(A) Ethical

The Committee was of the view that regardless of the legislative and constitutional measures against political defections, a lasting solution to the problem can only come from the adherence by
political parties to a code of conduct or set of conventions that took
into account the fundamental proprieties and decencies that ought to
govern the functioning of democratic institutions."

The Committee, however, felt that although the principle
underlying the suggestion was sound, the manner of giving it a
concrete shape would have to be gone into a greater detail from the
political as well as practical point of view. It was of the view that
there could not be any official initiative except that the Union Home
Minister could perhaps write to all political parties and convene a
meeting of their representatives. It recommended that it should be
left to the political parties themselves to arrive at a code and to
decide on the composition of a committee to observe its
implementation by discussion among themselves.\(^6\)

(B) Political

The committee, \textit{inter-alia}, stated on this aspect as follows:

"India has adopted the Parliamentary system of government,
which is based on the party system. In practice it operates by one of
the parties being assured of a majority support of its members
entering as representatives in the legislatures. Election is primarily a
contest among parties to have their candidates returned by the
electorate from as many constituencies as possible depending on
their organization and resources. For this purpose, parties put up
candidates who are bound to them by the very fact of sponsorship
and by their allegiance is what confers predictability. On the
functioning of representatives bodies, Government formed by parties
cannot be strong and stable. A representative should be deemed to

\(^{6}\) \textit{Supra} n 3, at 7-9.
be bound to the party under whose sponsorship he wins an election.\textsuperscript{7}

(C) Constitutional

Under this heading the Committee’s recommendations were as follows:

1. No person who was not a member of the lower house should be appointed as Prime Minister/Chief Minister.\textsuperscript{8}

2. A defector should be debarred for a period for one year from the appointment to the office of a Minister (including Deputy Minister of Parliamentary Secretary) or Speaker or Deputy Speaker or any post carrying salaries or allowances to be paid from the consolidated fund of a State or from the Funds of Government undertakings in the Public Sector in addition to those to which the defector might be entitled as a legislator or till such time as he resigned his seat and got himself re-elected. The Committee gave the following definition of a defector:

"An elected member of a Legislature who had been allotted the reserved symbol of any political party can be said to have defected, if, after being elected as a member of either House of Parliament or of the Legislative Council or of the Legislative Assembly of a State or Union Territory, he voluntarily renounces allegiance to, or association with such political party, provided his action is not in consequence of a decision of the party concerned."\textsuperscript{9}

3. Since the offer or denial of Ministership play dominant part in political defections and since Article 75 and 164 of the Constitution do not prescribe any limitation on the number of ministers that the Prime Minister/Chief Minister may advise the President/Governor to appoint to the Council of Ministers. So the size of the ministry should be limited and this size should have some relation to the size of Legislature. As there was no agreement on exact size of the Council of Ministers, the committee presented the different points of view as

\textsuperscript{7} Id., at 9-10.
\textsuperscript{8} Ibid.
\textsuperscript{9} Id., at 11.
expressed by members so that they provide useful basis for discussion in Public and Parliament.\textsuperscript{10}

The Committee also discussed two other suggestions. The first one was to vest the Right of Dissolution of a House in the Council of Ministers so as to serve as a potent weapon in the hands of a Prime Minister/Chief Minister for enforcing party discipline, curbing opportunistic transfers of party allegiance and ensuring political stability. The second suggestion was to provide in the law for the Recall of elected representatives.\textsuperscript{11}

The Committee, however, did not make any recommendations on these suggestions because it thought that the first suggestion was not very germane to the problem of defection and that the second suggestion was not advisable or practicable for this country.

**(D) Legislative**

The Lawyers-group in its report to the main committee had advised that it was possible to provide by way of special legislation or amendment of the Representation of the People Act, 1951, disqualification from being a member of the House if any legislator gives up his membership of, or repudiates his allegiance to a political party on whose symbol he might have been elected. But it would not affect him from contesting again and getting elected, if he so wished. It also recommended to provide disqualification for a prescribed period if a legislator defected for any material gain or office of profit. Several members raised objections to the proposal made by the Lawyers-group.\textsuperscript{12}

A suggestion was also made by the Committee to consider registration of political parties in the context of defections but it did not go into the merits of this aspect as it felt its relevance to the problem of defections was marginal. The idea behind making various

\textsuperscript{10} Id., at 12.
\textsuperscript{11} Id., at 14-15.
\textsuperscript{12} Id., at 15-16.
recommendations by the Committee was to make defections unrewarding.\textsuperscript{13}

(ii) **Concern at the Presiding Officer's Conference of 1967:**\textsuperscript{14}

While Shri P. Venkatasubbaiah Resolution in the Fourth Lok Sabha was under consideration, the Parliament's journey in the pursuit of an Anti-Defection Law parked itself for a while at the Presiding Officer's Conference held in New Delhi on October 14 and 15, 1967. The Conference discussed the defections and left the member to be tackled by the political parties and the Government. However, the conference appreciated the distinction between the defections on account of genuine dissent and defections for personal gains. Item wise agenda of the conference put the discussion under the following topic:

The Propriety of Legislators changing their Allegiance from one Party to another and their frequent crossing of the floor and its effect on the growth of parliamentary democracy.

The futility of a legislation tackling the menace of defections was very well articulated by the Chairman of the Legislative Council of Punjab, who initiated the discussion on the topic on October 14, 1967:

Sir, I have given to the matter a careful thought. I think this problem will not be solved by the legislation alone. Some clever tricks to be played to escape from legal penalties. Whatever legal penalties may be imposed, people may find out ways and means to wriggle out of them. I suggest, Sir, that on this question if you could take the lead and all of us could help you in that regard it would be better if we could convene a special conference of leaders of all

\textsuperscript{13} Ibid.

\textsuperscript{14} Proceedings of the Presiding Officer's Conference held in New Delhi on 14\textsuperscript{th} & 15\textsuperscript{th} October, 1967, Lok Sabha Secretariat, New Delhi, 1967.
political parties to consider his matter with special reference to the question of political stability in the states and the country as a whole. When I say that I do not refer to the role of any particular party, I want the question to be considered from the point of view of general political stability of the country. If the matter is considered in that context, some voluminous public opinion is bound to be created against this evil practice. Some remedy may even be found out. It should ultimately lie, in my view, in some form of an agreement between various political parties leading to some rigid conventions which may be incorporated in Rules of Business of various Houses. Unless they decide to forego any advantage from defections, it will not be desirable to resort to Legislation, in the first instance.

The Speaker, West Bengal Legislative Assembly, lamented the futility of even resolution of the Presiding Officer’s Conference in this behalf:

If we cannot pass any objective resolution, we know that it may not be binding because Speakers are not allowed to change or they have got no business to change the Constitution. If we only express our resentment and condemnation and if that is not followed up by any suggestion that will not help us. So let us in this way resolve that we condemn it and we only desire that those in authority should take suitable steps to prevent it in any way they like.

The Conference appreciated the distinction between the defections on account of genuine dissent and defection for personal gains. Therefore, the Conference did not pass any resolution but placed on record their unhappiness over the frequent incident of floor-crossing.
III. CONSTITUTION (THIRTY-SECOND AMENDMENT) BILL, 1973

After considering the report of the above mentioned Committee the Government introduced on 16th May, 1973 the Constitution (Thirty-Second Amendment) Bill, 1973 in the Lok Sabha. The Bill (inter-alia, provided that the Prime Minister/Chief Minister who is not a member of the House of the People/Legislative Assembly shall acquire its membership within six months of assumption of that office.

It was proposed to insert the following clause to Article 102 of the Constitution:

(2) A person shall be disqualified for continuing as a member of either-House of Parliament;

(a) If he, having been elected as such member; voluntarily gives up his membership of the political party by which he was set up as a candidate in such election or of which he became a member after such election; or

(b) If he votes or abstains from voting in such House contrary to any direction issued by such political party or by any person or authority authorized by it in this behalf without obtaining prior permission of such party, person or authority.

(c) Notwithstanding anything in Clause (2), a member of either House of Parliament shall not be disqualified under sub-clause (a) of Clause (2) on the ground that he has voluntarily given up his membership of any political party if he has given up his membership of such political party by reason of a split therein.

(d) Notwithstanding anything in Clause (2) where there has been a split in any political party (referred to in this clause as the "original political party" and any group of members thereof has been registered under any law or any rule regulation, order or notification having the force of law with respect to matter relating to, or in connection with elections to either House of

---

Parliament as a separate political party (referred to in this clause as the "new political party"), then a member of either House of Parliament who belonged to the original political party and who became a member of the new political party shall not be disqualified under sub-clause (b) of clause (2) on the ground that he, at any time after the registration of the new political party, he voted or abstained from voting contrary to any direction of the original political party or any person or authority authorized by it for the purposes of that sub-clause. Similar amendment was also sought to be made to Article 191 of the Constitution.

The above Bill, however, lapsed with the dissolution of the House of the People on the 18th January, 1977.

IV. THE CONSTITUTION (FORTY-EIGHTH AMENDMENT) BILL, 1978

The matter was once again considered by the Janta Party Government, headed by Shri Morarji Desai, in 1978. A Committee was comprised which was headed by Choudhary Charan Singh, the then Union Home Minister and Shri Shanti Bhushan, one of its member and the then Law Minister gave notice of the next legislative proposal on curbing defection in Lok Sabha which was listed for introduction in the Lok Sabha on August 28, 1978. This was known as Constitution (Forty-Eighth Amendment) Bill, 1978. This Bill proposed to specify defection as a disqualification. Under Articles 102 and 191 of the Constitution. A new schedule to be called the Tenth Schedule was also proposed to be inserted in the Constitution to make detailed provisions as to disqualification on ground of defection. One of these provisions, however, provided that the disqualification on ground of defection should not apply in case of a split in the political parties. It was also provided that the Election Commission may by order provide for registration of political parties for the purpose of this schedule and the Presiding Officer of a House should likewise provide for the same purpose. The relevant

---

16 Sought to be introduced in the Lok Sabha on 28th August, 1978, but could not be introduced.
provisions sought to be included in the Tenth Schedule in this connection which reads as follows:

"3 - Disqualification on ground of defection not to apply in case of a split.

A member of a House shall not be disqualified under paragraph 2 if he gives up his membership of his original party and becomes a member of a new political party formed as a result of a split in his original political party but from the time he becomes a member of such new political party –

(a) He shall be deemed to belong to such new political party for the purposes of paragraph 2; and

(b) Such new political party shall be deemed to be his original political party for the purposes of this paragraph;

Provided that:

(i) not less than twenty-five per cent of the members of the Legislative Party concerned, or where the strength of such Legislature Party is less than twenty, not less than five members of such party, are members of the new political party; and

(ii) the new political party has been recognized by the Chairman or, as the case may be, the Speaker of such House or registered with the Election Commission under this schedule.

Power to Make Orders:

(1) The Chairman, or, as the case may be, the Speaker, of a House may, by one or more orders, provide for the recognition of political parties for the purposes of this schedule, the maintenance of registers or other records as to the political parties, if any, to which different members of the House belong and for such other matters as he may deem necessary for the discharge of his functions under this schedule.

(2) The Election Commission may by one or more orders, provide for the registration of political parties for the purposes of this
schedule, the maintenance or other records as to the political parties, if any, to which different members of various houses belong and for such other matters as may appear to it to be necessary for the purposes of this schedule."

Whereas, Dr. P.C. Chander the then Minister for Education sought to move the motion for leave to introduce the Bill on behalf of Shri Shanti Bhushan. Several members took exception to the substitution and severely objected to certain statements made in the objects and reasons of the Bill which read as under:

There has been wide spread concern over the problem of political defections. Government had made known its resolve to bring forward suitable legislation to curb defections. The problem cuts across all parties. It has been examined in consultation with the leaders of political parties.

Members desired to move the privilege motions against the Law Minister since they alleged that no proper consultations with the political parties were held as mentioned in the State of Objects and Reasons of the Bill. They also alleged that the promise of circulating the draft of the Bill to them was broken.

In view of the stiff opposition, at the introductory stage by both ruling party and the opposition members, Dr. P.C. Chander informed the House that under the circumstances, he did not like to move the motion for leave to introduce the Bill. The House, thus, lost one more opportunity to enact the anti-defection laws.17

(V) ELECTION COMMISSION'S RECOMMENDATIONS

The Election Commission in its Report on the "Mid-term General Election in India 1968-69" had expressed its anguish at the unethical practice of defection which adversely affected the stability of the Governments and has sought suitable amendments in the law. It had said:

"The Fourth General Elections of 1967 brought in its trail a wind of swift changes in the political atmosphere of this country. That wind is still blowing sometimes with the velocity of a storm and at other times at lower speed. Perhaps in a developing democracy as ours is, that is not quite unexpected and may even be regarded as the teething trouble of a healthy growing child. When the results of the Fourth General Elections of 1967 were declared. It was found that the Indian National Congress which had till then been the dominant political party throughout India had lost its majority in a number of State Legislative Assemblies and its majority in the House of the People had also drastically dwindled. This not only resulted in the formation of non-Congress Governments in a number of State Assemblies but forgot the election promises and pledges held out to the electorate at the time of election by and on behalf of the parties by whom they were sponsored and started defecting in large numbers in quick succession from their respective parties. The elected representatives forgot that defection and re-defection from one party to another is not paying in the long run, and more often than not it acts as a boomerang hitting the person by whom it is resorted to. The moral consequences of defection and floor-crossing are sometimes far-reaching and serious”.

In 1977, Commission made a specific recommendation that defection of legislators from one political party to another should be prohibited by providing that such defection shall result in vacation of the seat held by the legislator concerned in Parliament or the State Legislatures, as the case may be. Commission also wanted that
some other disqualification should also result from such defection. The Commission thought that no amendment to the Constitution would be necessary to achieve the above objective as was sought to be provided in the Constitution (Amendment) Bills introduced in 1973 and 1978. The purpose could be achieved by a suitable amendment to the Representation of People's Act, 1951, in the part relating to the qualifications of a person to be chosen as, or for being a Member of Parliament or State Legislatures. In that event the declaration made by the candidate in his nomination paper will be of assistance in the determination of the question of defection of member from the political party after he has been elected on the ticket of that political party. As in the case of other disqualification referred to in Articles 102 and 191 of the Constitution, the disqualification on grounds of defection could also be referred to the Election Commission for tendering opinion to the President or the Governor as the case may be, and the President or the Governor shall act on such opinion tendered by the Election Commission.

(VI) THE CONSTITUTION (FIFTY-SECOND AMENDMENT) ACT, 1985/THE ENACTMENT OF ANTI DEFECTION LAW: THE BEGINNING OF NEW ERA:

If historiographers are called to choose a dateline that distinctly segmented free India's political history into two noticeable areas they would certainly not miss the year 1985, the year 1985 that saw the ascension to power of a young man with no great experience in politics with an unimaginable majority in Lok Sabha and also the year that saw the anointment of the last Government that commended such a majority of its own. However, the year would also be distinctly remembered by constitutional pandits for the single reason that, though not in need, the Government which had such a comfortable majority gave birth to the Anti-Defection Law for cleansing politics of the malaise of defections.

Immediately after the general elections held in December, 1984, the Congress Government headed by Shri Rajiv Gandhi was elected to power in the election to the Lok Sabha. In its election
manifesto the party had promised to bring forward legislation on electoral reforms. Fulfilling this promise the President of India in his address to both the Houses of Parliament assembled together on 17th January, 1985 that the Government intended to introduce in that session a Bill to outlaw defections. In fulfilment of that assurance, the Government introduced the Constitution (Fifty-Second Amendment) Bill, 1985 in the Lok Sabha on January 24, 1985. The Statement of Objects and Reasons appended to the Bill stated:

The evil of political defections has been a matter of national concern. If it is not combated, it is likely to undermine the very foundation of our democracy and the principles which sustain it. With this object, an assurance was given in the address by the President to Parliament that the Government intended to introduce in the current session of Parliament an Anti-Defection Bill. The Bill is meant for outlawing defections and fulfilling the above assurance.

The Bill seeks to amend the Constitution provide that an elected Member of Parliament or a State Legislature, who has been elected as a candidate set up by a political party and a nominated member of Parliament or a State Legislature, who is a member of a political party at the time he takes his seat or who becomes a member of a political party within six months after he takes his seat would be disqualified on the ground of defection if he voluntarily relinquishes his membership of such political party or votes or abstains from voting in such House contrary to any direction of such party or is expelled from such party. An independent Member of Parliament or a State Legislature shall also be disqualified if he joins any political party after his election. A nominated Member of Parliament or a State Legislature who is not a member of a political party at the time of his nomination and who has not become a member of any political party before the expiry of six months from the date on which he takes his seat shall be disqualified if he joins any political party after the expiry of the said period of six months.

Lok Sabha Debates, 17.01.1985, Lok Sabha Secretariat, New Delhi, 1985.
The Constitution (Fifty-Second Amendment) Bill, 1985.
The Bill also makes suitable provisions with respect to splits in, and mergers of, political parties. A special provision has been included in the Bill to enable a person who has been elected as a presiding officer of a House to sever his connections with his political party. The question as to whether a member of House of Parliament or State Legislature has become subject to the proposed disqualification will be determined by the presiding officer himself; whether the question is with reference to the presiding officer himself, it will be decided by a member of the House elected by the House in that behalf.

*The Bill seeks to achieve the above objects:*

In order to bring about a national consensus on the Bill, the Prime Minister held prolonged consultations with the leaders of opposition groups. The Government acceded to the demand of dropping a controversial clause from the Bill relating to disqualification of a member on his expulsion from his political party for his conduct outside the House. Intervening in the debates, the Prime Minister Rajiv Gandhi said that the Bill was only “first step towards cleaning up public life” and that the Government would initiate other reforms in consultation with the opposition.

The Bill was passed by the Lok Sabha on 30th January, 1985 and Rajya Sabha on 31st January, 1985. It received the assent of the President on 15th February, 1985. The Act came into force with effect from 1st March, 1985 after issue of the necessary notification in the Official Gazette.

The Constitution (Fifty-second Amendment) Act, 1985 amended Articles 101, 102, 190 and 191 of the Constitution regarding vacation of seats and disqualification from membership of Parliament and the State Legislature and added a new Schedule (Tenth Schedule) to the Constitution setting out certain provisions as to disqualification on ground of defection.

---

The theme wise analysis of the Constitution (Fifty-second Amendment) Act, 1985 (Anti-Defection Law) is given as below:

(i) **Nature and Scope of Anti-Defection Law**

The Tenth Schedule cannot be read or construed independent of Articles 102 and 191 of the Constitution of India and the object of those Articles.\(^\text{23}\)

Article 102(2): A person shall be disqualified for being a member of either House of Parliament if he is so disqualified under the Tenth Schedule. Article 102(2), before it was amended by the Constitution (Fifty-Second Amendment) Act, 1985, provided for a person being disqualified for being chosen as, and for being, a Member of Parliament on grounds of holding of office of profit, being of unsound mind or an un-discharged insolvent or not being a citizen of India or being otherwise disqualified by or under other Law.

Thus, from the above it is crystal clear that there was no nexus between the vices, infirmities, incapacities, defects, conflict of duty and corrupt election practices and the subject matter of the Tenth Schedule. Nothing in the original Article 102 had anything to do with what a Member did inside the House as a Member. However, the provision of clause (1)(c) of Article 102 referring to any disqualification 'by or under any Law made by Parliament' would appear to be wide enough to include the Constitutional Amendment Act passed by the Parliament. Article 102 (2) inserted by the Constitution (Fifty-second Amendment) Act would, therefore, seem to be unexceptionable.

**Article 191 (2):** A person shall be disqualified for being a Member of the Legislative Assembly or Legislative Council of a State if he is so disqualified under the Tenth Schedule.

Article 191 (2) corresponds to Article 102 (2) and makes similar provisions with reference to disqualification of a member of a


115
State Legislature under the Tenth Schedule i.e. on grounds of defection from one's party.

Tenth Schedule – Provisions as to disqualification on grounds of defection:

1. Interpretation – In this Schedule, unless the context otherwise require:-
   
   (a) “House” means either House of Parliament or the Legislative Assembly or, as the case may be, either House of Legislature of a State;
   
   (b) “Legislature Party” in relation to a member of a House belonging to any political party in accordance with the provisions of paragraph 2 or paragraph 4 or, as the case may be, paragraph 4, means the group consisting of all the members of that House for the time being belonging to that political party in accordance with the said provision;
   
   (c) “Original Political Party”, in relation to a member of a House, means the political party to which he belongs for the purposes of sub-paragraph (1) of paragraph 2;
   
   (d) ‘Paragraph’ means a paragraph of this Schedule.

This definition clause suffers from a serious lacuna inasmuch as it defines “legislature party” and “original political party” but fails to define the “political party”. This was particularly important as by the Constitution (Fifty-second Amendment) Act, 1985, the concept of political parties was finding a mention in the Constitution of India for the first time. With this the political parties were coming to have a constitutional recognition. The Election Commission recognized political parties but it was only for the purposes of allocation of election symbols.

In 1989, amendment to the Representation of People Act, 1951 sought to define “political party” as an association or body of individual citizens of India registered with the Election Commission as a political party under Section 29 A. This definition is, however, again for the limited purpose of registration of parties with the Election Commission in connection with the elections. It does not
apply to 'political parties' under the Anti Defection Law. It cannot, for example, cover cases to 'split' and 'merger' where under the resultant faction/group or party is to be deemed to be 'political party' and 'original political party'.

The other two most important terms used in the Tenth Schedule are 'split' and 'merger'. Surprisingly those have also not been defined in the definition clause or elsewhere.

The other two most important terms used in the Tenth Schedule are 'split' and 'merger'. Surprisingly those have also not been defined in the definition clause or elsewhere.

Most of the problems in the proper implementation and interpretation of the Tenth Schedule have been caused due to the ambiguity of the terms 'political party', 'split' and 'merger'.

**Scope of Para 1:**

The provisions of Tenth Schedule are salutary and are intended to strengthen the fabric of Indian Parliamentary democracy by curbing unprincipled and unethical political defections. The Anti-Defection Law seeks to recognize the practical need to place the proprieties of political and personal conduct, whose awkward erosion and grotesque manifestations have been the base of the times, above certain theoretical assumptions which in reality have fallen into a morass of personal and political degradation.  

Apart from that the Constitution had not expressly referred to the existence of political parties, by the amendments made to it by the Constitution (Fifty-Second Amendment) Act, 1985, there is now a clear recognition of the political parties by the Constitution. The Tenth Schedule to the Constitution, which is added by the above amending Act, acknowledges the existence of political parties and sets out the circumstances where a Member of Parliament or of the State Legislature would be deemed to have defected from the

---

political party and would thereby be disqualified for being a member of the House concerned.\footnote{25}

The question of disqualification of Member on the ground of defection and the Speaker's order thereon rendered under the Tenth Schedule are not based on the result of an election, which can be challenged only by an election petition in accordance with the provisions of Representation of the People Act, 1951.\footnote{26}

Tenth Schedule to the Constitution is applicable to the transaction of business inside the House of Legislature. The anti-defection activity outside the House is not penalized in any manner by the Tenth Schedule.\footnote{27}

2. **Disqualification on Ground of Defection** - (1) Subject to the provisions of paragraphs 1, 4 and 5, a member of House belonging to any political party shall be disqualified for being a member of the House, --

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

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

*Explanation - For the purposes of this sub-paragraph -*

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


(b) a nominated member of a House shall -

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

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

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

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

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

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

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

*Under Para 2 of the Tenth Schedule*

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

ii) The independent Member of the Parliament or a State Legislature will be disqualified if he joins any political party after his election;

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

iv) Subject to the provisions of Para 3, 4 and 5 i.e. except in the case of a party split or merger of parties or in the case
of Speaker or Deputy Speaker, every 'elected Member of a House shall be deemed to belong to the political party, if any, by which he was set up as a candidate for election as such member'.

Voluntarily giving up membership of party [Para 2 (1) (a)]:

Para 2(1) (a) of the Tenth Schedule provides that a Member becomes liable to be disqualified from the membership of the Legislature to which he belongs, if he voluntarily gives up membership of his political party.

In Rajya Sabha, only four petitions for disqualification have so far been filed seeking members' disqualification under Para 2(i) (a) of the Tenth Schedule. Those petitions were allowed and consequently the said four Members were disqualified from the membership of the Rajya Sabha.\(^{28}\)

In the first ever petition, for disqualification under Tenth Schedule in the Lok Sabha, given by Shri K.P. Unnikrishanan, M.P. in 1987 seeking disqualification of the respondents under Para 2 (i) (a) of the Tenth Schedule. This petition was, however, dismissed by the Speaker, Dr. Bal Ram Jakhar.\(^{29}\)

The first ever case in the Lok Sabha where a Member was disqualified from the membership of the Lok Sabha was on the ground of his voluntarily given up membership of his political party when in 1987, a petition was filed by Shri Ram Pyare Panika, M.P.

\(^{28}\) i) Mufti Mohammad Sayeed Case, 1989 (Rajya Sabha Secretariat), Chairman: Dr. Shankar Dayal Sharma, Decision date 28.07.1989.


\(^{28}\) iii) Jai Narain Prasad Nishad Case, 2005 (Rajya Sabha Secretariat), Chairman: Shrim Mohammad Hamid Ansari, decision date : 26.03.2008.

\(^{28}\) iv) Iqam Singh Case, 2007 (Rajya Sabha Secretariat), Chairman: Shri Mohammad Hamid Ansari, decision date: 04.07.2008.

\(^{29}\) Sudarshan Das and Sahebrao Patil Dongaonkar Case, 1987 (Eighth Lok Sabha), Speaker: Dr. Bal Ram Jakhar, decision date: 09.09.1987.
against Shri Lalduhoma for having given up the membership of his original political party namely the Indian National Congress. The main allegations against Shri Lalduhoma were that he had founded a new party namely Mizoram Congress for Peace and contested the election to the Mizoram Legislative Assembly in 1987, as an independent candidate set up by the Mizoram National Union Party against the official candidate of Indian National Congress. It was contended that the respondent’s acts and conduct implied that he had voluntarily given up membership of the Indian National Congress. The respondent took a plea that he had never resigned from the party and even after his expulsion from the party he had been paying subscription for the membership of the party. The Speaker referred the matter to the Committee of Privileges for preliminary inquiry and report. In the matter, the Committee observed:

The Committee are convinced that it was with a view to obviating such situation that the words ‘voluntarily given up, were used in Para 2(i)(a). As the law does not define the precise meaning in which the membership is to be given up, the words have to be interpreted according to the spirit in which they have been used in the Act. The intention of the Law makers is quite clear that it is not only the overt act of tendering his resignation but also by his conduct that a member may give up his membership of his political party. The Committee is of the view that if a member by his conduct makes it manifestly clear that he is not bound by the party discipline and is prepared even to wreck it by his conduct; he should be prepared to pay the price of losing his seat and seeking re-election.

---

30 Lalduhoma Case, 1987-88 (Eighth Lok Sabha), Speaker, Dr. Bal Ram Jakhar, decision date: 24.11.1988.
In this context, the Supreme Court in the case of *Ravi S. Naik v. Sanjay Bandekar*\(^1\) observed as under:

The words ‘voluntarily given up his membership’ are not synonymous with ‘resignation’ and have a wider connotation. A person may voluntarily give up his membership of a political party even though he has not tendered his resignation from the membership of that political party. Even in the absence of a formal resignation from the membership, an inference can be drawn from the conduct of a Member that he has voluntarily given up his membership of the political party to which he belongs.

The Supreme Court relied on the copies of newspapers which carried the photographs of those members when they were going with the opposition leader to meet the Governor. It was treated to be sufficient evidence as having given up the membership of the party and therefore they were disqualified.

In *G. Viswanathan v. Speaker, Tamil Nadu Legislative Assembly, Madras & Another,*\(^2\) the Supreme Court observed that “the act of voluntarily giving up the membership of the political party may be ‘either express or implied’.”

The Committee of Presiding Officers of the Legislative Bodies in India in their Report on Review of the Anti Defection Law\(^3\) recommended that:

\(^{1}\) AIR 1994 SC 2042.

\(^{2}\) 1996 (2) SCC 393.

Viewing the situation in totality, the Committee opined that the term 'voluntarily giving up of membership' be comprehensively defined in the Tenth Schedule, taking care of various connotation of the word.

**Scope of Para 2(1)(a):**

The deeming fiction in explanation (a) in para 2(1) of Tenth Schedule must be given full effect, for; otherwise the expelled member would escape the rigour of law which was intended to curb the evil of defections.\(^34\)

Paragraph 2(1) read with the Explanation clearly points out that an elected member shall continue to belong to that political party by which he was set up as a candidate for election as such member. This is so, notwithstanding that he was thrown out or expelled from that party.\(^35\)

The action of a political party *qua* its member has no significance and cannot encroach on the fiction of law under the Tenth Schedule.

Two conditions are *sine qua non* for avoiding the disqualification when any member of the House voluntarily gives up membership of his original political party. First is that the member concerned should have made a claim that the split in the original political party has arisen resulting in the constitution of a group in its Legislative Party representing a faction thereof. Second is that such

---


group should consist of not less than one-third of the members of such Legislature Party.\textsuperscript{36}

The provisions of Paragraph 2(1)(a) of the Tenth Schedule do not violate any rights or freedom of elected members of Parliament or State Legislatures under Article 105 or Article 194 of the Constitution, and is thus constitutionally valid.\textsuperscript{37}

**Violation of Party whip/direction under Para 2(1)(b):**

Para 2 (1) (b) of the Tenth Schedule provides that a Member is liable to be disqualified if he votes or abstains from voting in the House contrary to any direction issued by the political party to which he belongs or by any person or authority authorized by it in this behalf, without obtaining prior permission of such political party, person or authority and such voting or abstention has not been condoned by such political party, person or authority, within 15 days from the date of such voting or abstention.

In Rajya Sabha, there has not been any instance where a Member's disqualification was sought under Para 2(1)(b) of the Tenth Schedule. Nevertheless in *Parkash Singh Badal v. Union of India and Others*,\textsuperscript{38} the question whether Para 2 (1) (b) of the Tenth Schedule to the Constitution was violative of the provisions of Article 105 of the Constitution, came up for consideration of the Punjab and Haryana High Court. As per the majority opinion, the High Court held:

So far as the right of Members under Article 105 is concerned, it is not an absolute one and has been

\textsuperscript{37} AIR 1987 P & H. 263.
\textsuperscript{38} AIR 1993 SC 412.
made subject to the provisions of the Constitution and the Rules and Standing Orders regulating the procedure in Parliament. The framers of the Constitution, therefore, never intended to confer any absolute right of freedom of speech on a Member of the Parliament and the same can be regulated or curtailed by making any constitutional provisions, such as Fifty-second Amendment. The provision of Para 2 (1) (b) cannot, therefore, be termed as violative of the provisions of Article 105 of the Constitution. It cannot be said that the provisions of Para 2 (1) (b) would be destructive of the democratic set up, the basic feature of our Constitution.

The Supreme Court also in *Kihota Hollohon v. Zachilhu & Others*[^39] had the occasion to dwell upon the aspect of the interpretation of provisions of Para 2 (1) (b) of the Tenth Schedule and held that the words 'any direction' in Para 2 (1)(b) require to be construed harmoniously with other provisions and appropriately confined to the objects and purposes of the Tenth Schedule.

The Law Commission of India in their one hundred seventieth Report on 'Reform of the Electoral Laws', dwelt on the aspect of desirability of issuing whip in specific situations only under para 3, 4, 6 and observed as under:

> It is undoubtedly desirable that whip is issued only when the voting in the House affects the continuance of the Government and not on each and every occasion. It would safeguard both party discipline and the freedom of speech and expression of the Members.

Scope of Para 2(l)(b):

The Tenth Schedule itself does not prohibit any member of a Legislature from violating the direction/whip issued by a political party to legislators belonging to that political party. All that paragraph 2(l)(b) of the Tenth Schedule prescribes is that when such a direction/whip issued by that political party is violated by a legislator either without the prior permission of the political party or without such violation having not been condoned subsequently by the political party, the legislator incurs disqualification for continuing as a member of the House.40

The disqualification imposed by Paragraph 2(l) (b) must be so construed as not to unduly encroach on the freedom of speech of a member, which would be possible if the paragraph 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.41

To abstain from voting when required by party to vote is to suggest a degree of unreliability, to vote against party is disloyalty, to join with others in abstention or voting with the other side snacks of conspiracy. The Supreme Court held that clause (b) of sub-para (l) of Paragraph 2 of the Tenth Schedule gives effect to this principle and sentiment by imposing a disqualification on a Member who votes or abstains from voting contrary to "any direction" issued by the political party.42

The provision as contained in paragraph 2 (1)(b) of the Tenth Schedule, however, recognizes two exceptions - one, when the

40 Yitachu v. Union of India and Others, AIR 2008 Gau. 103 (Spl. Bench).
41 Supra n., 24.
42 Ibid.
Member abstains from the political party with prior permission to vote or abstains from voting, and the other, when the Member has voted without abstaining such permission but his action has been condoned by the political party within fifteen days of its violation. This provision itself accommodates the possibility that there may be occasions when a Member may vote or abstain from voting contrary to the direction of the party to which he belongs.  

Scope of Para 2(2):

The embargo as contained in para 2(2) of the Tenth Schedule prohibiting an independent member from joining any political party after his election as an independent member is elected by the people’s popular mandate on the basis of voters' sole conviction that he would function as non-partyman to demonstrate the fact that they are averse to the political parties due to varied reasons. Should this independent elected member be allowed to join a political party, it will amount to betraying the trust and confidence reposed upon him by his electorate from the particular constituency, and allowing the same would adversely affect the democratic set up.

Para 2(2) of the Tenth Schedule is neither discriminatory nor violating of the basic structure of the Constitution of India.

Difference between Giving Outside Support’ to and ‘Joining a Political Party

Whereas, the outside support by an independent elected member is not the same thing as joining any political party after election. To find out whether an independent member has extended only outside support, or in fact has joined a political party, materials

---

43 Ibid.
45 Ibid.
available and also the conduct of the member are to be examined by the Speaker.\(^{46}\)

**Defection of an Independent MLA – What does outside Support Implies**

To determine whether an independent member has joined a political party, the test is not whether he has fulfilled the formalities for joining a political party but that whether he has given up his independent character on which he was elected by the electorate. A mere outside support would not lead to an implication of a member joining a political party.\(^{47}\)

**Alleged Defection by an Independent Member – Considerations for Decision:**

The substance and spirit of law as well as the conduct of the member together with the material available are the guiding factors to decide whether an elected independent member has joined or not a political party after his election. It would not be a valid plea for a person who may have often joined a political party to contend that he has not filled up the requisite membership form necessary to join a political party or has not paid requisite fee for such membership. The completion of such formalities would be inconsequential if the facts otherwise show that the independent member has joined a political party.

3. **Disqualification on Ground of Defection not to Apply in Case of Split**\(^{48}\)

Where a member of a House makes a claim that he and any other member of his Legislature party constitute the group


\(^{47}\) Ibid.

\(^{48}\) Omitted by the Constitution (Ninety-first Amendment) Act, 2003, w.e.f. 01.03.2004.
representing a faction which has arisen as a result of the split in his original political party and such group consists of not less than one-third of the members of such Legislature party -

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

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

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

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

While Para 2 contains the general provision for disqualification on grounds of defection, Para 3 is in the nature of a proviso to Para 2 inasmuch it provides that no disqualification would be incurred where a Member claims that he belongs to a group representing a faction arising from a split in a party if the group consists of not less than one-third of the Members of the Legislature party concerned.
Right from the inception of the enactment of the Constitution (Fifty-Second Amendment) Act, 1985, Para 3 (Split Provision) was subjected to severe criticism on the ground that Anti Defection Law prohibited individual defections but permitted party splits. While it prohibited 'retail' trading of legislators, but allowed 'wholesale' defections. The split provision in the original Law had assumed menacing proportions and was used by unscrupulous legislators to wreck havoc on the parliamentary apparatus, particularly in the States. Norms and established conventions are thrown to the winds as a small number of politicians make or break Governments or help minority dispensations stay in power.

Several institutions such as the Committee of Presiding Officers of Legislative Bodies in India to review the Anti Defection Law, the Law Commission of India and the National Commission to Review the Working of the Constitution in their respective Reports considered the lacunae with regard to splits and mergers. By and large, the view had been to do away with the provision of splits and mergers from the Tenth Schedule.

Keeping in view the severe criticism and the recommendations by various Institutions, the Constitution (Ninety-first Amendment) Act, 2003 has omitted the provisions regarding splits (Para 3) from the Tenth Schedule, which has effectively put an end to the unhealthy practice of engineering split for facilitating backdoor merger with another party on the basis of one-third Members of a legislature party instead of the required two-third members. Consequently, it is now not that easy to garner support of two-third members required under provisions of Para 4 of the Tenth Schedule.

49 Committee of Presiding Officers of Legislative Bodies to Review the Anti Defection Law, Report on Review of the Anti Defection Law, Chairman: Hashim Abdul Halim (New Delhi: Lok Sabha Secretariat), 2003.
(4) **Disqualification on Ground of Defection not to apply in Case of Merger** –

(1) A member of a House shall not be disqualified under sub-para (1) of Para 2, where his original political party merges with another political party and he claims that he and any other members of his original political party –

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

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

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

(2) For the purposes of sub-para (1) of this Para, the merger of the original political party or 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.

Para 4 of the Tenth Schedule is analogous to Para 3 and the analysis applies to para 3 also except that Para 4 deals with the merger of original political party and for merger to be deemed to have taken place in the political parties, “not less than two-third of the members of the legislature party concerned must have agreed to such merger”. Thus, in case of merger, under para 4 (2), it is clear that no merger of a political party in another can be deemed to have taken place unless two-third of the members of the legislature party concerned have already agreed.
Scope of Para 4:

The expression ‘merger’ has neither been defined in this Paragraph nor in Paragraph 1. Paragraph 4, like Paragraph 3, qualifies Paragraph 2 and may be read as a Proviso to Paragraph 2. Though the expression ‘merger’ has not been defined in express terms, still the Paragraph prescribed the occasion when merger of two original political parties can take place. A situation may appear where a decision of two-third members of the Legislature party i.e. Legislative wing of a political party is to merge with another political party, even though original parties themselves might not have agreed outside the House. It is not clear whether two-thirds of MPs/MLAs of both the political parties should agree or what will happen when two-third of a Legislature Party already agreed to merge with another Legislature Party inside the House, but the Political parties outside the House could not formalize, or required time, or one of them did not ultimately agree. Such confusion is going to manifest more and more in near future. The Paragraph has used different expressions like ‘original political party’ and ‘another political party’ in the same line. Another political party may not necessarily mean another original political party. The confusion may be conveniently exploited in a given situation.

Paragraph 4 does not expressly provide for any direct nexus between the original political party and the Speaker. In so far as the Legislative Assembly is concerned, the corresponding legislature party represents the original political party and hence the requirement of agreement of two-thirds of the members.\(^{52}\)

There may be different eventualities in respect of merger of a party. If a political party decided to merge with another political

party, and the legislature party also abided by the decision and the members of the legislature party claimed to have become members of the political party into which their party merged, there would be no difficulty in holding the merger to have taken place under sub-para (1) of para 4 of the Schedule. If the political party took a decision to merge but the legislature party or at least two-third of the MLAs of the party did not agree to such merger, the political party cannot be deemed to have merged. But what will happen when the political party itself claims to have taken no decision for merger, but the legislature party or not less than two-thirds of its members agree to merge?

When not less than two-thirds of the members of a legislature party have agreed to a merger, the question whether their original political party should also be deemed to have so merged may be pertinent. In the instant case, if the merger is held to have taken place, the four MLAs will not be visited with any disqualification; otherwise, they may be so visited.

Paragraph 1(b) in referring to the Legislative Party in relation to a member of a House belonging to any political party refers to the provisions of Paragraphs 2, 3 or 4, as the case may be, to mean the group consisting of all members of that House for the time being belonging to that political party in accordance with the said provisions, namely, paragraphs 2, 3 or 4, as the case may be.

Merger of Two Political Parties:

A political party does not only comprise of its leaders but also all those people who constitute its membership. Therefore, a mere understanding between the leaders of two political parties does not

---

53 Ibid.
54 Ibid.
55 Supra n., 34.
result in a merger unless the cadres of the two political parties also merge with each other.\textsuperscript{56}

Expression having agreed to such merger:

The expression having agreed to such merger occurring in Paragraph 4(2) implies that the merger is to take place first at the party-level, to which two-thirds of the members of the legislature party concerned are also required to agree, for such merger to be effective in so far as they are concerned.\textsuperscript{57}

(5) \textbf{Exemption} – Notwithstanding anything contained in this Schedule, a person who has been elected to the office of the Speaker or the Deputy Speaker of the House of the People or the Deputy Chairman of the Council of States or the Chairman or the Deputy Chairman of the Legislative Council of a State or the Speaker or the Deputy Speaker of the Legislative Assembly of a State, shall not be disqualified under this Schedule, --

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

(b) if he, having given up by reason of his election to such office his membership of the political party to which he belonged immediately before such election, rejoins such political party after he ceases to hold such office.

\textsuperscript{56} All Party Hill Leaders Conference, Shillong v. Capt. W.A. Sangma, AIR 1977 SC 2155.
\textsuperscript{57} \textit{Supra} n., 52.
Paragraph 5 of the Tenth Schedule provides that a member of a political party having been elected as an Officer of the House, shall not be so disqualified under Paragraph 5, if –

(a) By reason of his election to such office, voluntarily gives up the membership of his party and does not rejoin that party or other party so long as he holds that office; or

(b) He rejoins his original party after he ceases to hold such office.

Scope of Para 5:

Explaining the scope of Para 5, the Supreme Court in *Luis Proto Barbosa v. Union of India*, ruled that the exemption under this Para would be available where the Speaker in view of the high office of the Speaker on a question of propriety and to sustain the image impartiality of that office, resigned from the membership of the political party to which he might have belonged prior to his election as Speaker.

The Court further said that the exemption could not be available where the Speaker defected from the party to which he belonged and resigned from the office of Speaker thereafter.

In *Kihota Hollohon v. Zachilhu*, the Supreme Court, by a majority of 3 to 2, upheld the constitutional validity of this paragraph. The Court said that “provisions are salutary and are intended to strengthen the fabric of Indian parliamentary democracy by curbing unprincipled and unethical political defections.” The provisions have been held not violative of the basic structure of the Constitution or

---

58 The Team Officer of the House for the purpose, includes the Speaker, the Deputy Speaker of the Lok Sabha as also of the Legislative Assembly of a State and the Deputy Chairman of Rajya Sabha as also the Chairman and Deputy Chairman of the Legislative Council of a State.


60 AIR 1993 SC 412.
any rights or freedoms under Articles 19, 25, 105 and 194 of the Constitution of India.

6. **Decision on Questions as to Disqualification on Ground of Defection:**

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

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

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

**Scope of Para 6:**

The provision under Paragraph 6(1) of the Tenth Schedule do not have the effect of excluding the jurisdiction of the High Court under Article 226 or of the Supreme Court under Article 136 of the Constitution, and, therefore, the paragraph did not require ratification under proviso to Article 368 (2) of the Constitution.61

---

The question as to whether a Member of a House of Parliament or State Legislature has become subject to disqualification will be determined by the Chairman or the Speaker of the respective House; where the question is with reference to the Chairman or the Speaker himself, it will be decided by a Member of the concerned House elected by it in that behalf.

The Supreme Court in *Kihota Hollohan v. Zachilhu,*\(^{62}\) ruled that the Speaker/Chairman, while exercising powers and discharging functions under the Tenth Schedule, would be acting as Tribunal adjudicating rights and obligations under this Schedule and their decisions in that capacity would be amendable to judicial review. The power to resolve such disputes vested in the Speaker or Chairman, is a judicial power not immuned from judicial scrutiny under Articles 122 and 212.

It was further explained that the proceedings of disqualifications would, in fact, not be before the House, but only before the Speaker/Chairman, as a specially designated authority and his decision would not be the decision of the House, nor it would be subject to the approval by the House. There would, therefore, be no immunity under Articles 122 and 212 from judicial scrutiny of the decision of the Speaker/Chairman exercising power under Para 6(1).

In *Kashinath G. Jalmi v. The Speaker, Goa Legislative Assembly & Others,*\(^{63}\) the Supreme Court held that the Speaker while functioning under the Tenth Schedule had no power to review his decision on the question of disqualification, which question would be subject to correction only by judicial review.

The use of the word *final qua* any order passed by any authority under a provision of the Constitution or other statutes has

---

\(^{62}\) *AIR* 1993 SC 412.

\(^{63}\) *AIR* 1993 SC 1873.
always been understood to imply that no appeal, revision or review lies against that order and not that it overrides the power of judicial review, either of the High Court or of the Supreme Court under Article 226 or Article 136 of the Constitution, as the case may be.  

7. **Bar of Jurisdiction of Courts**

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

Paragraph 7 of the Tenth Schedule provided that – no court shall have any jurisdiction in respect of any matter connected with the disqualification of a member of a House under this Schedule.

In *Kihota Hollohon v. Zachilhu*, the Supreme Court declared Para 7 unconstitutional and invalid in so far as it affected the jurisdiction of the Supreme Court and the High Courts under Articles 136, 226 and 227 of the Constitution, requiring ratification by State Legislatures in accordance with the Proviso to Clause (2) of Article 368, which procedure was not followed while enacting the provisions of Para 7.

Holding the provision of Para 7 severable from the rest of the provisions, the Supreme Court upheld the constitutional validity of the Tenth Schedule minus Para-7.

Thus, after the above decision, the High Courts and the Supreme Court will come into picture only after the Speaker or the

---


65 *AIR 1992 SC 412.*
Chairman of a House of any Legislature has passed interim or final orders under the Tenth Schedule.

8. **Rules**

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

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

(b) the report which the leader of a Legislature party in relation to a member referred to in clause (b) of sub-para (1) of Para 2 in respect of such member, the time within which and the authority to whom such report shall be furnished;

(c) the reports which a political party shall furnish with regard to admission to such political party of any member of the House and the officer of the House to whom such reports shall be furnished; and

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

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

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

Paragraph 8 of the Tenth Schedule empowers the Chairman or the Speaker of the House to make Rules for giving effect to the provisions of this Schedule. The Rules so framed were required to be laid before the House and were subject to modification/disapproval by the House.

The Members of Lok Sabha (Disqualification on Ground of Defection) Rules, 1985 were duly made and laid on the Table of the House on 16th December, 1985. Lok Sabha having made no change, these Rules came into force with effect from 18th March, 1986. Houses of State Legislatures have made their own Rules as has the Rajya Sabha. These are all largely on the lines of the Lok Sabha Rules.

Under the Rules, for a member to be disqualified on the ground of defection, a formal petition in relation to the member has to be instituted before the Speaker and every such petition has to be verified in the manner laid down in the Code of Civil Procedure, 1908. A petition against a member required to be instituted is to be addressed to the Speaker and in the case of the Speaker, it is to be

---

addressed to the Secretary General. Any petition alleging disqualification by any member has to be forwarded to the concerned member, and if such petition is not made by the leader thereof, to him for his comments. The Speaker may decide the case after considering the comments on his own, or send it to the Privileges Committee for a report to be presented before him after a preliminary inquiry. The procedure for determining the question should be more or less the same as adopted by the Privileges Committee for determining a breach of privilege of the House by a member. No member can be subject to disqualification unless he is given reasonable opportunity to represent his case and to be heard in person.

Thus, the Tenth Schedule to the Constitution which contains the law relating to defection was expected to check party-hopping or floor-crossing by elected representatives for ulterior considerations and personal benefits, but it has failed to contain the menace. It is said to be faulty to the core and has become totally outdated in view of the increasing complexities of the polity and the poor quality of the persons manning it.

Even though the Anti-defection Law acted as deterrent to habitual defectors, it suffered from serious shortcomings. Since its enactment in 1985, it became evident that the Anti-Defection Law has not fully achieved the objective for which it was brought. The defections continued to happen.

The law prohibited individual defections but permitted and condoned party split. While it prohibited 'retail' trading of legislators, it allowed 'wholesale' defections. This lacunae in the original law had assumed menacing proportions and was used by unscrupulous legislators to wreck havoc on the parliamentary apparatus,

---

67 Para 3 of the Tenth Schedule to the Constitution of India.
particularly in the States. Norms and established conventions are thrown to the winds as a small number of politicians make or break Governments or help minority dispensations stay in power. Even after the passing of the law in 1985, the Governments of Nagaland, Mizoram, Tamil Nadu, Pondicheri, Manipur, Goa and Meghalaya fell on account of floor crossing, and the States of Madhya Pradesh, Gujarat, Bihar, Andhra Pradesh, Kerala, Uttar Pradesh, Punjab, Himachal Pradesh, Haryana and Arunachal Pradesh did not escape defections.

The Anti-Defection Law was well conceived, with good intention, but it was born in sin and took long time to be born. It was a Bill prepared in haste and rushed through the two Houses of Parliament at a time when the ruling party had an unprecedented majority in the Lok Sabha. It was natural for the leader to watch the interests of the party by ensuring that his sheep are kept together and flock as such is not abandoned by anyone.

If we look at the debates on the Anti Defection Law – the Fifty-second Constitution Amendment - it become obvious that even Shri Rajiv Gandhi was aware of its many flaws and proposed its acceptance as a beginning with scope for improvements later. He told the Lok Sabha on 30th January, 1985:

There are a lot of areas in this Bill which are grey. We are covering new ground which may not be covered anywhere else in the world. So there will be shortcomings in the Bill.  

Right from the time of its enactment, the Anti Defection Law was subjected to severe criticism and many loopholes were pointed out. Fundamental issues in regard to serious lacunae in the Law were raised in the media, on the floor of the Houses of Parliament

---

68 Lok Sabha Debates, 30.01.1985, Lok Sabha Secretariat, New Delhi.
and in scholarly writings by experts. The shortcomings in the Law resulted in varied interpretation of its provisions by the Presiding Officers. The decisions of the Presiding Officers were challenged and the constitutional validity of the Tenth Schedule questioned in different High Courts. Thus, a need for removing lacunae and shortcomings of the Law felt almost immediately after it came into force.

Various suggestions have been made at various quarters for removing the shortcomings in the Anti Defection Law. The first suggestion in this direction came from the Dinesh Goswami Committee on Electoral Reforms in 1990 which recommended certain amendments in the Tenth Schedule. The matter was discussed in various legislative fora such as in the Conference of the Standing Committee of All India Presiding Officers' held on 20th January, 1992. Meeting of the Speaker of Tenth Lok Sabha with the Leaders of Parties/Groups in the Lok Sabha held on 5th February, 1992, Meeting of the Standing Committee of All India Presiding Officers' Conference held on 10th February, 1992, Emergent All India Presiding Officers' Conference held on 11th February, 1992 at New Delhi, the All India Presiding Officer's Conference held in Gandhi Nagar on 29th and 30th May, 1992 and 62nd Conference of Presiding Officers of Legislative Bodies in India under the Chairmanship Shri G.M.C. Balayogi, the then Speaker,
The Presiding Officers deliberated on the "need to review the Tenth Schedule to the Constitution".

Besides, the Halim Committee on Harmonious Relations, Law Commission of India under the Chairmanship of Justice B.P. Jeevan Reddy on Reform of Electoral Laws, Election Commission's suggestions, Halim Committee on Anti Defection Law, the National Commission to Review the Working of the Constitution under the Chairmanship of Justice M.N. Venkatachaliah and the Department Related Parliamentary Standing Committee on Home Affairs on the Constitution (Ninety-Seventh Amendment) Bill, 2003 recommended certain amendments in the Anti Defection Law.

(ii) The Constitution (Ninety-First Amendment) Act, 2003:

The Parliament has passed the Constitution (Ninety-seventh Amendment) Bill, 2003 incorporating the suggestions made by the Department-related Parliamentary Standing Committee on Home Affairs on 16th December, 2003 by the Lok Sabha and on 18th December, 2003 by the Rajya Sabha. The said Constitution Amendment received the assent of the President as the Constitution (Ninety-first Amendment) Act, 2003. The Act inter-alia provides for:

---

75 Proceedings of the 62nd Conference of Presiding Officers of Legislative Bodies in India under the Chairmanship of Shri G.M.C. Baalayogi, the Speaker of 11th Lok Sabha, Lok Sabha Secretariat, New Delhi, 1992.

76 Committee of Presiding Officers on Measures to Promote Harmonious Relations between the Legislature and the Judiciary, Report, Chairman: Hashim Abdul Halim (New Delhi : Lok Sabha Secretariat), 1994.


78 The Booklet entitled "Electoral Reforms (Views and Proposals)" sent to the Government of India in July, 1998 by the Election Commission of India.

79 Committee of Presiding Officers of Legislative Bodies to review the Anti Defection Law, Report on Review of the Anti Defection Law, Chairman: Hashim Abdul Halim (New Delhi : Lok Sabha Secretariat), 2003.


81 Rajya Sabha, Department Related Parliamentary Standing Committee on Home Affairs, One Hundred Fourth Report on the Constitution (Ninety-Seventh Amendment) Bill, 2003; Chairman: Shri Pranab Mukherjee (New Delhi, Rajya Sabha Secretariat), 2003.

82 Inserted vide Constitution (Ninety-seventh Amendment) Bill, 2003 (w.e.f 01.03.2004).


i) the omission of Para 3 of the Tenth Schedule to the Constitution so as to bring split of political parties within the purview of disqualification based on defection and made consequential charges in para 1 and 2;

ii) the insertion of Clause (1) in Article 75 and 164 providing that the size of Council of Ministers including the Prime Minister in the Union Government and including the Chief Minister in a State Government shall not exceed 15% of the total number of Members of the Lok Sabha and State Legislative Assembly respectively;

Provided that the number of Ministers, including the Chief Minister, in a State shall not be less than 12; and

iii) the insertion of a new Clause 1B in Articles 75 and 164 and Article 361B after Article 361A, providing that a person disqualified under the Anti Defection Law shall not be appointed as a Minister nor hold any remunerative political post for the duration of the period commencing from the date of his disqualification where he contests any election to either House of Parliament/State Legislature before the expiry of such period till the date on which he is declared elected whichever is earlier.

Thus, the Constitution (Ninety-first Amendment) Act, 2003, which has omitted the provisions regarding split from the Tenth Schedule, has effectively put an end to the unhealthy practice of engineering split for facilitating backdoor merger with another party on the strength of one-third members of a legislature party, instead of the required two-third members. Consequently, now it is not that
easy to garner support of two-third members as required under the provisions of para 4 of the Tenth Schedule.

(iii) Constitutional Validity of Anti Defection Law

The Constitution (Fifty-second Amendment) Act, 1985 which has since popularly come to be known as the Anti-Defection Law, has been the subject matter of a controversy from the very beginning. It has been questioned on several grounds viz. that it is violative of the basic structure of the Constitution, that it is beyond the competence of Parliament and that it gives preference to expediency over principles. Even before the Anti-Defection Law was passed by Parliament, serious doubts were expressed in regard to its constitutionality and advisability. Also, it was apprehended that legislative measures alone would not be an effective remedy against the malady of defections. Thus, treatises on the politics of defection published in 1969 and 1974\(^{85}\) pointed out a number of politico-constitutional and legal grounds on which an Anti-Defection Law could be questioned.

Paragraph 7 of the Tenth Schedule which bars the jurisdiction of the courts was struck down as being *ultra vires* of the Constitution by the High Court of Punjab and Haryana and an appeal against this order was preferred by the Government in the Supreme Court. Several writ petitions challenging the validity and constitutionality of the 1985 enactment were also filed in the Supreme Court and various High Courts. The Supreme Court on the request of the Government withdrew and transferred to itself all the writ petitions pending before various High Courts as it was felt by the Government that substantial questions of law were involved in them.

The Constitutional validity, paragraph 7 of the Tenth Schedule came under fire in *Prakash Singh Badal & Others v. Union of India & Others*,\(^{86}\) in the Punjab and Haryana High Court. Entertaining the Civil Writ Petition No. 3435 of 1986 which was disposed off by the Court on May 1, 1987 by a five judge Bench, the Court addressed the issue of Constitutional validity of paragraph 7 by an integrated approach of interpreting paragraph 6 and 7.

The Punjab and Haryana High Court clarified that the finality of the orders of the Speakers and Chairmen of the Legislative Houses under the Tenth Schedule to the Constitution is subject to judicial review, but not subject to appeal, revision or review.

Holding paragraph 7 of the Tenth Schedule to the Constitution which ousted the jurisdiction of all Courts as *ultra vires* the Constitution, the Punjab and Haryana High Court declared as under:

> In the present case, an additional disqualification has been provided and the jurisdiction to decide any question relating to this matter has been vested in the Speaker whose decision has been made final by enacting para 7. The Speaker is seized of the matter when a question is raised that a member has incurred the disqualification under the Tenth Schedule. He is, therefore, required to give a decision on a disputed question involving a very valuable right of an elected member of the Lok Sabha or the Vidhan Sabha. Obviously, the decision of the Speaker would be amendable to the jurisdiction of judicial review of the High Courts and the Supreme Court but for the provision contained in para 7 in view of the decision

---

\(^{86}\) AIR 1987 P & H 263.
of the Supreme Court in *Jyoti Prakash's case*\(^{87}\) wherein it was held that the President acting under Article 217(3) performs a judicial function of grave importance under the scheme of the Constitution. The conclusion is, therefore, irresistible that by enacting para 7, the powers of the Supreme Court and the High Court under Articles 136 and 226 respectively have been directly affected and taken away so far as the disqualification of a member of the Lok Sabha or the Vidhan Sabha under the Tenth Schedule is concerned. [para 13]

As the amendment contained in para 7 of the Tenth Schedule was got ratified by one half of the states in terms of the proviso to clause (2) of Article 368, the same is held to be *ultra vires* and unconstitutional (para 14).

While declaring paragraph 7 of the Tenth Schedule as *ultra vires* the Constitution on ground of non-ratification of the Bill, the Punjab and Haryana High Court rejected the contention advanced by Counsel Shri D.D. Thakur. Shri D.D. Thakur, the learned Counsel took the stand that paragraph 7 is incapable of ousting the judicial review of the courts which is fundamental to the Constitution. He submitted that the word “jurisdiction” as held by the Supreme Court in *Ujjam Bai v. State of Uttar Pradesh*\(^{88}\) meant the authority to decide and, as such, the bar contained in paragraph 7 only related to primary decision and not its review by the High Court or the Supreme Court. He further submitted that the words “any matter” would not include the order of the Speaker. The Court rejected the contention in the following words:

\(^{87}\) AIR 1971 SC 1093 (Supra).
\(^{88}\) AIR 1962 SC 1621.
If the intention was not to exclude the jurisdiction of the High Court and the Supreme Court under Article 226 or Article 136, there was no necessity to incorporate the *non obstante* clause, that is, 'notwithstanding anything contained in this Constitution', in this para. Under the Constitution, it is only the High Court and the Supreme Court which have the jurisdiction to issue writs and review the decisions of the Courts and Tribunals subordinate to them. Obviously, the incorporation of the *non obstante* clause, therefore, was meant to exclude the jurisdiction of the High Court and the Supreme Court and if that is so, the word "matter" has to be necessarily understood to include as well the order of the Speaker passed under para 6. There is, thus, no escape from the conclusion that para 7 has the effect of excluding the jurisdiction of the Supreme Court as well as the High Court under Article 136 and 226 in respect of any matter connected with the disqualification of a member of a House under the Tenth Schedule.

By the above observations, the Punjab and Haryana High Court has clearly indicated that the Speakers and the Chairman, while functioning as judicial bodies under the Tenth Schedule, are just like other courts and tribunals, subordinate to High Courts and Supreme Court having fundamental powers to judicial review.

In this very case, the consequential effect of quashing paragraph 7 as unconstitutional was also examined by the Punjab and Haryana High Court. In response to a submission made by Shri Shanti Bhushan for striking down the whole Act as a consequence to
holding paragraph 7 as unconstitutional, the Punjab and Haryana High Court declared as under:

The question which still remains to be determined is as to what would be the effect of para 7 having been declared unconstitutional on the remaining provisions of the Fifty-second Amendment Act. Shri Shanti Bhushan, the learned counsel for the petitioners, argued that the said para being an integral part of the Amendment Act, the whole Act has to be struck down. The answer to the question, however, does not depend on the fact whether the provision struck down is an integral part of the amendment Act or not. What is to be seen is as to whether the remaining provisions of the Tenth Schedule are in no way dependent on para 7. The purpose of the said provision is to lay down an additional disqualification and the authority to determine the question if any member has incurred the disqualification or not is named in para 6. Even if the provisions of para 7 are omitted, it would not affect the working of the other provisions of the Tenth Schedule and the only effect would be that the order of the Speaker would become amendable to the jurisdiction of the Supreme Court and the High Courts under Article 136 and 226. Therefore, the whole of the Amendment Act would not be liable to be struck down because of para 7 having been declared unconstitutional.

In *Kihota Hollohon v. Zachilhu and Others*, the Supreme Court found that there were legal infirmities in the passage of the Anti-Defection Law inasmuch as the Constitution Amendment Bill

---

had not been ratified by the requisite number of State Assemblies before being presented for the President's assent. Also, the Speakers' function under the Tenth Schedule called for a judicial determination of issues under the law. The process of determining the question of disqualification could not be considered part of the proceedings of the House and as such not amenable to judicial review. The Supreme Court struck down para 7 of the Schedule barring the jurisdiction of Courts and declared that while operating under the Anti-Defection Law, the Speaker was in the position of a tribunal and therefore, his decisions like those of all tribunals were subject to judicial review.

In regard to the various contentions raised and urged at the hearing, the Supreme Court held as follows:

(1) That the paragraph 2 of the Tenth Schedule to the Constitution is valid, its provisions do not suffer from the vice of subverting democratic rights of elected members of Parliament and the legislatures of the States. It does not violate their freedom of speech, freedom of vote and conscience as contained.

The provisions of Paragraph 2 do not violate any rights or freedom under Articles 105 and 194 of the Constitution.

The provisions are salutary and are intended to strengthen the fabric of Indian Parliamentary democracy by curbing unprincipled and unethical political defections.

The contention that the provisions of the Tenth Schedule, even with the exclusion of Paragraph 7, violate the basic structure of the Constitution is that they affect the democratic rights of elected members and, therefore, of the
principles of Parliamentary democracy, is unsound and is rejected.

(2) That having regard to the background and evolution of the principles underlying the Constitution (52nd Amendment) Act, 1985, insofar as it seeks to introduce the Tenth Schedule in the Constitution of India, the provisions of Paragraph 7 of the Tenth Schedule of the Constitution in terms and in effect bring about a change in the operation and effect of Articles 136, 226 and 227 of the Constitution of India, and, therefore, the amendment would require to be ratified in accordance with the proviso to clause (2) of Article 368 of the Constitution of India.

(3) That Paragraph 7 of the Tenth Schedule contains a provision which is independent of, and stands apart from, the main provisions of the Tenth Schedule which are intended to provide a remedy for the evil of unprincipled and unethical political defections and, therefore, is a severable part. The remaining provisions of the Tenth Schedule can and do stand independently of Paragraph 7 and are complete in themselves, workable and are not truncated by the decision on Paragraph 7.

(4) That Paragraph 6(1) of the Tenth Schedule, to the extent it seeks to impart finality to the decision of the Speakers/Chairmen is valid. But the concept of statutory finality embodied in Paragraph 6(1) does not detract from or abrogate judicial review under Articles 136, 226 and 227 of the Constitution insofar as infirmities based on violations of constitutional mandates, mala fides, non-
compliance with the Rules of Natural Justice and perversity, are concerned.

That the deeming provision in Paragraph 6(2) of the Tenth Schedule attracts immunity analogous to that in Articles 122(I) and 212(I) of the Constitution as understood and explained in Keshav Singh's case\textsuperscript{90} to protect the validity of proceedings from mere irregularities of procedure. The deeming provision, having regard to the words "be deemed to be proceedings in Parliament" or "proceedings in the legislature of a State" confines the scope of the fiction accordingly.

The Speakers/Chairmen while exercising powers and discharging functions under the Tenth Schedule act as Tribunal adjudicating rights and obligations under the Tenth Schedule and their decisions in that capacity are amenable to judicial review.

However, having regard to the constitutional scheme in the Tenth schedule, judicial review should not cover any stage prior to the making of a decision by the Speakers/Chairmen. Having regard to the constitutional intendment and the status of the repository of the adjudicatory power, no quia timet actions are permissible, the only exception for any interlocutory interference being cases of interlocutory disqualifications or suspensions which may have grave, immediate and irreversible repercussions and consequence.

\textsuperscript{90} Spl. Ref. No. 1, (1965) 1 SCR 413.
(5) It would be unfair to the high traditions of that great office to say that the investiture in it of this jurisdiction would be vitiated for violation of a basic feature of democracy. It is inappropriate to express distrust in the high office of the Speaker, merely because some of the Speakers are alleged, or even found, to have discharged their functions not in keeping with the great traditions of that high office.

(6) The expression ‘any direction’ occurring in Para 2(l)(b) of the Tenth Schedule requires to be construed harmoniously with the other provisions and appropriately confined to the objects and purposes of the Tenth Schedule. Those objects and purposes define and limit the contours of its meaning. The assignment of a limited meaning is not to read it down to promote its constitutionality but because such a construction is a harmonious construction in the context. There is no justification to give the words wider meaning.

The disqualification imposed by Paragraph 2(l)(b) must be so construed as not to unduly impinge on the freedom of speech of a member. This would be possible if Paragraph 2(l)(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 considerations. For this purpose, the direction given by the political party to a member belonging to it, the violation of which may entail disqualification under Paragraph 2(l)(b), would have to be limited to a vote on motion of confidence or no confidence in the Government or where the motion under consideration relates to a matter which was an internal policy and
programme of the political party on the basis of which it approached the electorate.

(7) The meaning to be given to "split" must necessarily be examined in a case in which the question arises in the context of its particular facts. No hypothetical predications can or need be made.

Keeping in view the consequences of disqualification, i.e. termination of the membership of a House, it would be appropriate that the direction or Whip which results in such disqualification under Paragraph 2(l)(b) is so worked as to clearly indicate that voting or abstaining from voting contrary to the said direction would result in incurring the disqualification under Paragraph 2(l)(b) of the Tenth Schedule so that the member concerned has fore-knowledge of the consequences flowing from his conduct to voting or abstaining from noting contrary to such a direction.

(iv) Anti-Defection Law in Jammu and Kashmir

It is significant that even before the enactment of the Constitution (Fifty-Second Amendment) Act, 1985, the Jammu and Kashmir Legislature had passed a Bill amending the Jammu and Kashmir Representation of the people Act 1957, with a view to disqualifying a political defector from being a member of either House of Jammu and Kashmir State Legislature. The Bill passed by both Houses of the Legislature became law with effect from 29th September, 1979. The Act, inter alia provided for disqualification of a member in Legislative Assembly/Council:

(a) If he, having been elected as such member, voluntarily gives up his membership of the political party by which he
was set up as a candidate in such election or of which he became a member after such election, or;

(b) If he votes or abstains from voting in such House contrary to any direction or Whip issued by such political party or by any person authorized by it in this behalf, without obtaining prior permission of such party or person.

After the Constitution (Fifty-Second Amendment) Act, 1985, the Seventh Schedule has since been added to the Constitution of Jammu & Kashmir in the year 1987 which is popularly known as Anti-defection Law. It is also relevant to mention that even after election of split provision from the Tenth Schedule after enactment of the Constitution (Ninety-First Amendment) Act, 2003 the provision relating to split continues to exist in the Anti-Defection Law of Jammu & Kashmir.

It is significant to mention that in case of Jammu & Kashmir if any question arises as to whether a member of the House has become subject to disqualification under the provisions of the Anti-Defection Law, the question shall be referred for the decision of the Leader of the Legislative Party to which such member belongs and his decision shall be final. In case, however, where the question which has arisen relates to a member belonging to a political party which has not elected any leader of its Legislature Party, the question shall be referred for the decision of the Speaker, or the Chairman, as the case may be, and his decision shall be final.

However, if the question which has arisen relates to a member not belonging to any political party, the question shall be referred for the decision of the Speaker or the Chairman, as the case may be, and his decision shall be final.
It is enlivened to note that no defection, party split or merger took place in the Jammu & Kashmir Legislative Council during 1993-2001 or during 2002-2007. Nevertheless during 2008-2009 three members of the Legislative Council of Jammu & Kashmir were disqualified from the membership on ground of defection under the Jammu & Kashmir State Constitution. The Jammu & Kashmir Assembly remained dissolved during 1993-96 but later during 1996-2001 or 2002-2009 also no case was reported.91

VII. SUM UP

As is evident from the Constituent Assembly Debates, Constitutional morality was a deep concern of Dr. B.R. Ambedkar who set a great stone by it. After referring to Grote, the great historian, Dr. Ambedkar stated that "by the Constitutional morality meant a paramount reverence for the forms of the Constitution, enforcing obedience to authority, acting under and with a habit of open speech, of action subject only to legal control." In his concluding address in the Constituent Assembly Dr. Rajendra Prasad was at pains to stress the vital importance of the character. He prominently warned that, "if the people who are elected are capable and men of character and integrity, they would be able to make the best even of a defective Constitution. If they are lacking in these, the Constitution cannot help the country." It would have been unthinkable to Prasad, Ambedkar and other founding fathers that things would come to such a pass that the Constitution of India would need an amendment to curb, in the words of the State of Objects and Reasons to the Constitution (Fifty-Second Amendment) Bill, 1985 "the evil of political defection has been a matter of national concern. If it is not combated, it is likely to undermine the very foundation of our democracy and the principles which sustain it."

91 Subhash C. Kashyap, Anti-Defection Law and Parliamentary Privileges (Third Edition); New Delhi, 3011, p.18.
The painful fact is that today constitutional morality has become irrelevant. Corruption is the pervasive force in our political life, and its worst demonstration is the scene of Shameless defections. In essence defection is disloyalty, abandonment of duty or principle. The defector is not disloyal to the party on whose ticket he or she has been elected but also commits a breach of faith with the electorate whose votes were secured on the basis of his or her electoral affiliation and promises. But the scale and frequency of defection in India, even after the Anti-Defection Law come into being, are terrible.

The Tenth Schedule was hailed as remedy for the evils of defection. Unfortunately it has turned out to be a flop. In fact, the remedy has proven to be worse than the disease and in more ways than one it has encouraged horse-trading and the accompanying corrupt practices.

One of the main shortcomings of the Tenth Schedule is the distinction that has been made between defections by individuals and those by groups on the basis of numbers. It seems odd that an individual defector should be penalized by disqualification while a group of defectors can escape the net under the pretext of merger.

Another lacuna in the Tenth Schedule is that under its provisions an independent member is disqualified if he joins any political party after his election. But a nominated member is allowed to join a political party within six months of his nomination as a member. An independent member’s freedom to join a political party is restricted although he is master of himself and owes his election to no political party. On the contrary, the ruling party picks and chooses persons for nomination and in a way puts them under

---

92 It was also apprehended just after the passing of the Bill/Act on February 3, 1985 in the Times of India.
obligation. Such members are therefore, likely to join the ruling party.\textsuperscript{94}

Unfortunately, there has been no authoritative judicial guidance about the true interpretation of provisions relating to splits and mergers, the correct meaning of the expressions “legislative party”, “political party”, “Original Political Party”, “expulsion”, “Unattached Member”, consequently, there is confusion and uncertainty in the working of these provisions.

Another loophole lies in the absence of any provision about the position of a member who has been expelled by the party. A question which often arises is whether the Speaker can adjudicate upon the validity of the expulsion or does he has to accept the fact of expulsion as intimated to him by the political party of which the expellee was a member and leave him to appropriate remedies in the ordinary civil courts of Law. The Speaker should not entangle himself in question of party discipline and its breach, the legality of the procedure adopted by the party in expelling the member and other related issues. In order to implement the expulsion of a member in the absence of an injunction or an order from a civil Court staying the operation; it would be both unwise and unconstitutional for the Speaker in view of the existing provisions of the Tenth Schedule to adjudicate upon the legality of the expulsion.

Another very important loophole in the Anti-defection law is that though the Anti-defection law was made with the utmost speed, it has no provision for speedy adjudication of questions of disqualification on ground of defection despite the intent of Parliament to vest the presiding officers with the powers of adjudication of questions under the law was to have speedier decisions. Some of the Speakers/Presiding Officer’s have allowed questions of disqualification on ground of defection raised by members to lapse with the dissolution of the Lower House.

\textsuperscript{94} Ibid.
This would show how those trusted with the power to adjudicate under the Tenth Schedule have blunted the efficacy of the Law and frustrated the noble objective thereof. In the absence of a time frame, the Law of limitation should not apply to petitions for disqualification filed under the Tenth Schedule or Writ petitions filed before the Courts for judicial review of the decisions of the Presiding Officers.

The main reason why the Tenth Schedule has failed to deliver the goods is that Speakers who have to discharge important judicial functions of determining whether a member has incurred disqualification have, barring very few exceptions, failed to live up to the high traditions of their high and august office. Unfortunately, they regard themselves as the spokesmen or the split men of the political party which has been responsible for their election. A majority of the incumbents of this office lack both judicial experience and temperament. Many orders of the Speakers which has been challenged before the court of law reveal that they lack fairness and objectivity, exhibit a high degree of partnership and a total lack of understanding of the true meaning and purpose of the Tenth Schedule.

Disqualification of a member entails serious political consequences to him and it is essential that whatever may be the authority to determine the question of disqualification the Speaker or the President or the Election Commission - it is essential that an appeal be provided to the Supreme Court of India.

Whereas, the reforms of the Anti-Defection Law are thought provoking and most urgent and commendable is that a defector should not be appointed as a Minister or to any public office of material benefit or influence; without seeking fresh election. Anyone voluntarily changing his party affiliation after being elected on a particular party ticket must automatically and immediately lose his
seat in the legislature. There should be no exceptions and no provisions. In addition to that the provision providing for disqualification on the basis of Corruption provided for in the Representation of People's Act, 1951 should ideally be incorporated into the Tenth Schedule.

It is, thus, concluded that there can be no perfect or infallible deterrent for the kind of political defections that are rooted in political irresponsibility and opportunism that create instability, besides bringing the functioning of the democratic institutions into disrepute. The best legislative or constitutional devices cannot succeed without a corresponding recognition on the part of political parties of the imperative necessity for a basic political morality and the observance by them of certain properties and decencies of public life, and their obligations mutually to me another and in the last analysis to the citizens of this country. The problem requires to be attacked simultaneously on the political, educational and ethical plans so that by an intensive political education both of the elite and the masses, a full consciousness of the values of democratic way of life is created. Hence, it is evident that the Anti-defection Law is thus dynamic and there is always a scope for its reform in accordance to the changing needs of the time. It has also been amended in response to the changing needs of the time. The efficacy of the law comes to the fore only if it is tested and tried. Therefore, scope for improvement is always there.