CHAPTER - 4

ANTI DEFECTION LAW - AN APPRAISAL

I. INTRODUCTION

The idea of bringing in an Anti-Defection law in India had been brewing for so long before it was ultimately enacted in the first two months of the year 1985-the year in which Shri Rajiv Gandhi became the Prime Minister of the country with a massive mandate of his own. All Governments that followed did not have a majority of their own and any proposal for enactment of an Anti Defection law through an amendment of the Constitution by those Governments would presumably have met with the same fate the Woman Reservation Bill and the Jan-Lokpal Bill are currently facing: Thus, if there had been no Rajiv Gandhi and his Government with an unparalleled massive majority, there would not have been any Anti-Defection Law in the country.

Henceforth, at the commencement of the Eighth Lok Sabha to which Shri Rajiv Gandhi’s Government was responsible; his party and Indian National Congress had thumping majority in the Lok Sabha. He was then the president of Indian National Congress. The Government was very much stable and there was not even an iota of doubt in 1985 that the stability would erode in the months and years to come by any chance. His Government promised to the Parliament through Presidential address in January, 1985 about the enactment of an Anti-Defection law in the present Session of the Parliament then, so that nobody chose to defect in the name of a split. On January 17, 1985. Giani Zail Singh, the then President of India informed both Houses of Parliament assembled in the Central Hall of the Parliament about the enactment of the Anti- Defection Law “that the Government are committed to a clean public life” They
intend to initiate wide ranging discussions on electoral reforms with political parties and would welcome their cooperation. In consonance with the objective of a healthy political system, the Government intends to bring forward in this Session of Parliament an Anti Defection Bill."¹

Whereas, several other legislative measures deeply connected to social and economic progress proposed in the Presidential address had to wait, the Anti-Defection Law stole the March. In just a week after the Presidential address, the then Law Minister Shri Ashok Kumar Sen introduced the Constitution (Fifty- second Amendment) Bill, 1985, in Lok Sabha on 24th January, 1985. The parliamentary business was so arranged that Lok Sabha and Rajya Sabha, in succession, passed the Bill on the last two days of January, 1985. Giani Zail Singh, the then President of India, gave his assent to the Bill on 15th February, 1985.

The Union Government thereby, issued a notification for the law to take effect from 1st March, 1985. Thus, just in two months, the Government which commended nearby four-fifths majority in the Lok Sabha, with unquestioned stability, chose to enact the anti-defection law which was otherwise hanging fire since 1967.

While intervening in the debate on the Anti Defection Bill on 30th January, 1985 in Lok Sabha, Shri Rajiv Gandhi explained the hurry:

Shri Speaker, Sir, this Anti defection Bill has been pending for a very long time. I think it was first mentioned almost seven years ago. We have taken it up as one of our first major tasks because we felt that this is an area where public life needs clearing up. As rightly promised during the debate on the presidential

¹ Lok Sabha Debates, 17.01.1985 (Presidential Address). Lok Sabha Secretariat, New Delhi, 1985.
address, our Government has the political will to implement what we promise.²

Shri Jaswant Singh, a Member of Rajya Sabha, while speaking on the Bill on 31st January, 1985 alleged motives of Shri Rajiv Gandhi's hurry in bringing the Bill:

There are voices raised inside this House, in the other House, and also in print, of course, and if it aimed at cleaning public life, why there is such a desperate hurry. There are learned articles which talk about this and say that perhaps the real purpose behind this measure is not entirely unselfish, that the real purpose is perhaps motivated by some inner fear somewhere. Sir, these are comments which are being made in the editorials, that this hurry is on account of some kind of unspecified, unspelt gnawing fear within the ruling party.³

None can deny that Shri Rajiv Gandhi was committed to cleansing public life. It was being aptly remarked by Shri S.S. Gill in his book "The Dynasty" about the personality of the then Prime Minister in the following words:

The known facts about him pointed to a basically well-mannered and decent person, with a keen sense of propriety. It was widely known that he was opposed to the emergency, objected to Sanjay's cremation close to Nehru's Samadhi, managed to expel Dhirendra Brahamchari from his mother's charmed circle, and disapproved of likes of Antulay, Gunda Rao and Bhajan Lal. When he removed K.K.

² Lok Sabha Debates, 30.01.1985 (Anti Defection Law), Lok Sabha secretariat, New Delhi, 1985
Dhawan on assumption of office, a clear message went out that the days of the fixers and manipulators were over.

When one discusses the hurry in the making of the Anti-Defection law, it is imperative to take note of the inner coterie around the Prime Minister in his formative months. While Shri Rajiv Gandhi himself was an implantation of a popular and powerful political family none of the members of his inner coterie had even have tertiary roots in politics. If they had a hand in setting for the Anti-Defection Law the top most priority, they perhaps were doing it without deeper analysis and appreciation of the consequences of the law that would bring about in politics, particularly in the alchemy of the Indian National Congress. A study of the Law's Long-term impact on politics was not undertaken.

Smoked from within and suffocated by the rigid provisions of the Anti defection law which were further compounded by the massive majority, Shri Rajiv Gandhi enjoyed in the Lok Sabha, it was totally impossible for his detractors to muster even 100 members to their side from the Congress Party.

Whereas, in the absence of an Anti-Defection Law the politics was driven by charisma and the number games in the legislatures. The defections did not bring about change in Government but had the effect of ruffling the leader's feathers. Defections in the pre Anti-Defection law era were sharp pointers to the impending danger of downfall of the Governments in question. Instability did not necessarily accompany defections in those days. As splits and mergers took place without being limited by any time frame, the process of culmination of instability caused by defection allowed all sides sufficient time for setting their houses in order. But with the advent of the Anti-Defection Law, individual defections rarely took

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4 The inner coterie comprised of Shri Arun Nehru, Shri Arjun singh, Shri Satish Sharma, Shri Vijay Dhar and Shri Romi Chopra and some other.
place for fear of disqualification. Whereas mass defections were permitted, constitutionally in the form of splits and mergers which had become the order of the day in the post-defection. Law era, bringing Governments to kneel and replacing them with new Governments mostly of opportunists against whom the law was brought on book. As splits and mergers are to be one time affairs under the Anti-Defection Law, they do not take place for fun of sitting in the opposition but solely aimed at dislodging the existing Government with utmost dispatch. Only after that capacity in terms of numbers is acquired through splits and mergers, the parties concerned go for the kill. Thus, every mass defection sanctioned by the Anti -defection law is invariably accompanied by instability against which the law stands.

Whereas, the political history of the country, particularly in smaller states, bears testimony to the fact that the Anti -Defection law has brought more instability than stability. Consider the hindrance that has been caused by the Anti-Defection Law to Government formation in Bihar thereby compelling another election within six months in 2005. With the advent of the Anti-Defection Law the selection of the legislators turning into horses for trading has not changed. Horse trading, however, from retail business before the Anti Defection law, has expanded into a wholesale business after the coming into force of the law, in view of the requirement of bulk number of legislators to defeat the disqualification provisions.

While charisma and other factors which a political leader employed to keep his block together are not quantitatively measurable and the risk and benefits of fleeing the flock are incalculable when Anti Defection law was not in place, in the post-Anti- Defection Law period, the numbers specified in the Anti-Defection Law for escaping the Law are so firmly indicative and quickly quantifiable, that the schemers have to focus on the number and angle material benefits before those who can be lured while it
was hasel to judge the consequences of revolt in a party when Anti-Defection Law was not in force, it has become easy to muster the numbers required under the Law to escape disqualification as well as to replace the Governments through permissible defections. Whether the law was there or not, offer of office, money, etc. worked as allurements both for breaking away to form new groups for alternative government formation as well as for remaining loyal in the flock. During the pre-Anti-Defection days; the defectors, particularly the mass scale defectors, had an uphill task of convincing the public as to the reasons for their defection, while the defectors of the present day will have to only convince the Speakers and Chairmen that too, only about the number they command. The vice of defection and has now become a well regulated practice under the Anti-Defection Law ever since its advent. Ultimately, the Anti-Defection Law has added to the woes it wanted to ameliorate.

However, the biggest tragedy the Anti-Defection Law had caused to the Indian political scenario is that it effectively halted the evolution of a two-party system and in its place brought about the coalition politics the talk of the "third front" strongly stated gaining momentum since the Eighth Lok Sabha. Instead of Indian polity graduating into a two-party system of the puritan version, it has, over the period of the past three decades settled for a system of two coalition fronts through the transitory route of the "third front". Though the slogan of "third Front" refuses to die, it appears it will be difficult to resurrect any "third front" in view of the effective positioning of two coalition fronts based on two intensely polarized ideology and programmes, as distinctively identifiable choices before the electorate.

When the split provision was there in the Anti-Defection Law, the difficulty level of breaking a party within the parameters of the law were directly propositional to the size of the legislature parties, the larger the size, the more difficult the task. However, the first
break of a large legislature party was the most difficult break, the subsequent breaks were easier because of the sizes becoming smaller and smaller. Legislators, who crossed floor within permissible limits of the Anti-Defection Law, were thus not benefitted once, but several times, if they will fully wanted to be the members of the subsequent splits. The legislature parties spilt in near geometric progression using the safety values of the Anti-Defection Law with no concern for public antipathy. Now the split provision has been committed form the Tenth Schedule of the Constitution, this situation to have been remedied. One has to again wait and watch to see the salutary effects of the excision of the spilt provision from the Anti-Defection law on the overall political scenario particularly its effect on the return to a healthy two-party system for ensuring stability in governance.

The Anti-Defection Law has its first bite on the Rajiv Gandhi's Government, Subsequently; it gobbled up several governments, many in the states. The law was to put a stop to the "Aya Ram Gaya Ram" (a sarcastic reference in Hindi to unscrupulous defections) politics but, it had pronounced "Ram Nam Sat hai" (a prayer in Hindi to the dead signifying the profound futility of life) on many governments with destabilizing effect.

If we analyze the law in arithmetic terms, it had divided party loyalties to qualify for splits and mergers, multiplied the splits as further as possible to add, bit by bit, to the strength of the ruling parties or of those waiting in the wings to destabilize the Government, with the entire spirit of the law subtracted from it. The Law's performance against the evil of defection has thus been totally bleak and ineffective.

Shri Rajiv Gandhi, speaking in Rajya Sabha on the Bill on 31st January, 1985 devoted the Law to memory of the Mahatma:

\[ Supra \text{n., 3} \]
Shri Chairman Sir, yesterday, the 30th January, we had all gone to Gandhiji's Samadhi to pay our respects and homage. On Gandhiji's Samadhi in very large letters are written what Gandhiji called "Seven Social Steps". The first step is against "politics without principles" and it was only appropriate that we took up this Bill in the Lok Sabha on the same day.

A very fine thought of a very fine Prime Minister:

An assassin's bullets might have laid to rest the body of the Mahatma but not his spirit which is still a guiding force to millions on this planet. On the other hand, those who have abused and hijacked the Anti-Defection Law to serve political ends have thoroughly emptied the law of its moral content. The contribution of the presiding officers and sometimes the courts, to this catastrophe is no less.

While in 2003, the Government of National Democratic Alliance gave a few face lifts to this dispirited Law. In retrospect, one may, with near correctness, theorize, if there has been no Anti-Defection Law, there would have no premature fall of Shri Rajiv Gandhi's Government and the Eighth Lok Sabha. In that case, history would have meandered through a different course, may be with Shri Rajiv Gandhi still alive after all fate is conquerable.

II. ANTI-DEFECTION LAW : A CRITICAL ANALYSIS

The Anti-Defection Law was well conceived with good intention, but it was born in sin and took too long to be born. The motivation and timings behind the conception of the law were not entirely honest or wholly honorable. It was a Bill prepared in haste and rushed through the two Houses at a time when the ruling party had an unprecedented majority in the Lok-Sabha. It was natural for
the leader as the watch-dog of the party interests to want to ensure that his sheep kept together and did not desert the flock. The Anti-Defection Law served the Congress party well in as much as for five years it worked for an admirable deterrent against party dissidents turning defectors and threatening the stability of the Government. There was only one case of defection in which the member was disqualified under the Tenth Schedule during the eighth Lok Sabha. It is significant to note that, those who were eloquent about the basic purpose of the Anti-Defection Law and its objectives of preventing unprincipled acts of defection should not forget this factual background and perspective. It is, also, note-worthy, that the Constitution (Fifty-second Amendment) Act that added the Tenth Schedule to the Constitution was intended as much to prevent individual acts of defection as to protect sizable group defections which may qualify as splits or mergers. We cannot as students of law emphasize only one aspect to the exclusion of the other.

If we look at the debates on the anti-defection law- the Fifty Second Constitution Amendment - it becomes obvious that even the Prime Minister was aware of its many flaws and proposed its acceptance as a beginning with scope for improvements later. He told the Lok Sabha on 30 January, 1985: -

"There are lots 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 short comings in the Bill."

Right from its enactment, the Anti-Defection Law was subjected to severe criticism and many loop holes were pointed out. Fundamental issues in regard to serious lacuna in the law were raised in media on the floors of the Houses of Parliament and in scholarly writings by experts. Several suggestions were put forward for modifications in law. But, perhaps it did not suit the powers that

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7 Supra n. 2
be to bring about the necessary changes or maybe they felt that they were helpless in the matter of amending the Constitution and in seeing the changes through.

Whereas, some of the situations that arose do not seem to have been foreseen by those who drafted the 52nd Amendment for an outlawing defections. Also the fact that certain provisions of the Tenth Schedule were found to be amenable to entirely different interpretations by different Presiding Officers created terrible uncertainty and fluidity in the application of the law and brought to lime light a number of defects.

Thus, the operation of the Anti-defection law over the years has thrown up some complex problems which are closely interlinked with dynamics of the Indian polity. For a better understanding of the working of the Law, the cases under the Anti-Defection Law in Parliament and state Legislatures, and decisions by various Presiding Officers, need to be critically analyzed. the theme wise analysis of case law, highlighting the topical points that arose in different cases together with judicial pronouncements of points of law, is discussed as below:

(i) Voluntarily giving up membership

As per the provision of para 2 (1) (a) of the Tenth Schedule, a member becomes liable to be disqualified from the membership of the Legislature of which he belongs, in the event of his voluntarily giving up the membership of his original political Party.

Incidentally, in the first ever petition for disqualification under the Tenth Schedule in the Lok Sabha, given by Shri K.P. Unnikrishan during the Eighth Lok Sabha in 1987, disqualification of respondents was sought under para 2 (1) (a) of the Tenth Schedule.

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This petition was, however, dismissed by the Speaker, Dr. Bal Ram Jakhar.

The first case in the Lok Sabha where a member was disqualified from the membership of the Lok Sabha, was on the ground of his voluntarily giving up the membership of his original political party in 1987, (Eighth Lok Sabha), a petition was given by a member, Shri Ram Pyare Panika against another member, Shri Lalduhoma for having given up the membership of his original political party viz., Indian National Congress. The main allegations against Shri Lalduhoma were that he had formed a new party viz. Mizoram Congress for peace, which later on amalgamated with the Mizoram National Union Party, and contested the elections of 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 has voluntarily given up the membership of the Indian National Congress. The respondent, however, 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 Committee of Privileges (Eighth Lok Sabha) to which the matter was referred for preliminary inquiry by the Speaker had the occasion to consider the implication of the term 'voluntarily giving up membership'.

In this context, the Committee of Privileges observed as:

The Committee have also considered as to what amounts to voluntarily giving up of membership of a political party by a members. The committee notes that the words used in paragraph 2 (1) (a) of the Tenth Schedule are: 'If he has voluntarily given up his membership of such political party' and not 'if he has

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9 Lalduhoma Case, 1987-88 (Eighth Lok Sabha), Speaker : Dr. Bal Ram Jakhar, decision date ; 24.11.1988.
voluntarily resigned from such political party.' The Committee feels that the use of words 'Voluntarily given up' is very significant. To insist that a letter of resignation to the competent authority, voluntarily tendered would alone disqualify would be placing too narrow an interpretation on the constitutional provision and would in fact negate the very objective which Parliament had in mind while enacting the Constitution (Fifty-second Amendment) Act, 1985 and that such an interpretation would lead to gross circumvention of the provisions of the Tenth Schedule.

The Committee is convinced that it was with a view of obviating such situations that the words 'Voluntarily given up' were used in paragraph 2 (1) (a). As the law does not define the precise manner 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 by the overt act of tendering his resignation but also by his conduct that a member may give up the 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.

In yet another case during the Eighth Lok Sabha, a petition for disqualification was filed by a member, Shri Mohammed Mahfooz Ali Khan, in 1988 against another member, Shri Hardwari Lal10 on the ground that the latter had voluntarily given up the membership of the political party (Lok Dal) to which he belonged. This petition too was referred by the Speaker to the Committee of Privileges for

10 Hardwari Lal Case, 1988 (Eighth Lok Sabha), Speaker : Dr. Bal Ram Jakhar, matter lapsed due to dissolution of the Eighth Lok Sabha
preliminary enquiry. While the matter was still under the consideration of the Committee of Privileges, it lapsed on the dissolution of the Eighth Lok Sabha on 27th November, 1989.

Though the matter lapsed, it would not be out of place to mention briefly the novel plea taken by Shri Hardwari Lal in his written arguments before the Committee which would have entailed a fresh look at the interpretation of the words "voluntarily giving up the membership of a political party". Shri Harwari Lal contended that although 'voluntary' resignation from the membership of the original political party would not entail disqualification of a member if the other provisions of para 3 apply in his case, his separation from Lok Dal (B) was not 'voluntary' in the ordinary sense of the word, as he had to part company with the party under complusive circumstances. Hence, the questions for consideration were whether partying company under "compulsive circumstances" would or should not amount to quitting a political party 'voluntarily'.

The matter regarding interpretation of the term 'voluntarily given up membership' has been engaging the attention of the Presiding Officers of State Assemblies as the judiciary too.

In this context, the case of Sanjay Bandekar and Ratnakar Chopdekar\(^{11}\) in Goa Legislative Assembly is very pertinent. In 1991, on separate petitions being given against Sarvashri Ravi S. Naik, Sanjay Bandekar and Ratnakar Chopdekar, the Speaker, Goa Legislative Assembly declared all the three members as disqualified from the membership of Goa Legislative Assembly on ground of their voluntarily giving up membership of their original political party in terms of para 2 (1) (a) of the Tenth Schedule. In this case, there was no resignation but the members had accompanied an opposition leader for meeting the Governor, and as such, their act was termed as giving up the membership of their party. The writ petitions filed by the members against the order of the Speaker were dismissed by the

\(^{11}\) Ravi S. Naik Case, 1991 (Goa LA), Speaker: Shri Surendra V. Sirsat, decision date : 15.02.1991.
High Court of Bombay. The member then moved the Supreme Court. The Supreme Court in its judgment inter alia observed as follows:

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 party. Even in the absence of a formal resignation from membership an inference can be drawn from the conduct of a member that he has voluntarily given up his membership of the party to which he belongs.

The Supreme Court relied on the copies of newspapers which carried the photographs of those two members when they were going with the opposition leader to meet the Governor. One meeting with the Governor in the company of opposition or other parties' MLAs was treated to be sufficient evidence as having given up the membership of the party and, therefore, they were disqualified.

In yet another case G. Viswanathan v. Speaker, Tamil Nadu Legislative Assembly and Azhagu Thirunavakkarasu v. Speaker, Tamil Nadu Legislative Assembly, the Supreme Court in their judgment dated 25th January, 1996 inter alia observed that:

The act of voluntarily given up the membership of the political party may be either expressed or implied.

During the twelfth Lok Sabha, a petition was given by Shri K. Yerrannaidu, MP and leader of the Telugu Desam Party (TDP) in the Lok Sabha against Shri S. Vijayarama Raju, MP on the ground of his having voluntarily given up the membership of his original political

13 1996 (2) SCC 353: AIR 1996 SC 1096
14 1996 (2) SCC 353
paty viz., Telugu Desham Party. Shri Yerrannadiu in his petition contended that Shri Vijayarama Raju had publicity announced his support for the Congress while continuing to remain in TDP in support of his contentions he enclosed with his petition relevant press clippings and copies of statement issued by Shri Raju indicating his support for Indian National Congress. Shri Yerrannaidu contended that from the action, conduct and declaration of Shri Raju, the inference was clear that he had voluntarily given up his membership of TDP, thereby attracting provisions of para (2) (I) (a) of the Tenth Schedule.

The petition however became in-fructuous with the dissolution of the Twelfth LOK Sabha on 26th April, 1999.

During the Thirteenth Lok Sabha, Shri Rupchand Pal, MP and Chief Whip of the CPI (M) in the LOK Sabha gave petition under the Tenth Schedule against Prof. R.R. Pramnik MP for having voluntarily given up the membership of his original political parity viz, CPI (M). The main contention of the petitioner was that the conduct, actions, contentions and statements of the respondent indicated that he had voluntarily given up the membership of his original political party viz. CPI (M). Placing reliance upon observations made by the Committee of Privileges & (Eighth Lok Sabha) in Lalduhoma case and the Supreme Court's Judgment in Ravi Naik case, it was contended by the petitioner that if it could be established from a member's conduct, overt or covert, that he no longer considered himself to be a member of the party of that he had abandoned the party, the same could be termed as his voluntarily giving up the membership of his political party entailing disqualifications under the provision of para 2 (I) (a) of the Tenth Schedule.

The Speaker in exercise of his powers under para 7 (4) of the Anti-defection Rules referred the petition of Committee of Privileges (Thirteenth Lok Sabha) for Preliminary Enquiry and Report. While
the petition was under consideration of the Committee of Privileges, the Thirteenth Lok Sabha was dissolved on 6th February, 2004.

The Committee of Presiding Officer's of Legislative Bodies in India\(^{15}\) in their Report on 'Review of the Anti-defection Law' presented at the 66th conference of Presiding Officers of the Legislative Bodies in India held in Mumbai on 5th February, 2003, dwelt upon the term 'voluntarily giving up membership' in the light of observations made by the Supreme Court in Ravi Naik case and observed as under:-

The Core term 'defection', has not been defined either in the Tenth Schedule or the Rules made thereunder. The Committee note that various ingenious methods of defections may be resorted to by members. Some such instances which have come to the notice of the Committee were:

(a) Members openly working against the party interests, while being within the party;
(b) Members joining the Council of Ministers of some other political formations; and
(c) Members speaking out against the policies of its original political party or voicing support to policies of another political party, without resigning from the membership of their original political parties.

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

\(^{15}\) Proceedings of the Sixty Sixth Conferences of Presiding Officers held at Mumbai on 5\(^{th}\) February, 2003. Lok Sabha Secretariat, New Delhi.
(ii) **Violation of Party Whip**

As per the provisions of para 2 (1) (b) of the Tenth Schedule; 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 of such political party, person or authority, within fifteen days from the date of such voting or abstention.

By and large there has not been any controversy or difference of opinion with regard to the provision under para 2 (1) (b) of the Tenth Schedule. Nevertheless it would be of interest to note that the aspect of true import of the term 'direction/whip' as used in para 2 (1) (b) of the Tenth Schedule was examined by Courts and other institutions. In 1987 when the Anti-defection Law was still in an emerging stage in *Prakash Singh Badal and Others v. Union of India and Others*, the question whether para 2 (1) (b) of the Tenth Schedule to the Constitution was violative of the Constitution, came up for consideration. On the question whether para 2 (1) (b) of the Tenth Schedule is violative of the provisions of Article 105 of the Constitution, the High Court, as per their majority opinion held that:

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16 Whip: Dictionary meaning. Webster’s Dictionary defines whip as “a members of a legislative body appointed by his political party to act as a liaison between the Leaders and the other members of the party primarily to enforce party discipline and to secure the attendance of party members at important sessions especially voting.” See Webster’s Third New International Dictionary of the English Language (unabridged), USA, 1968, p.204. The Oxford Companion of Law says: “In 18th Century the word “Whip” was borrowed, abbreviated and applied to those members of both Government and Opposition parties whose duty is to ensure the attendance of their members for divisions and other necessary occasions. The Government and Opposition Chief Whips arrange the business and negotiate when time is sought for the discussion of some special business.” See David M. Walker, *The Oxford Companion of Law*, Oxford, 1980, pp.1297-98. In its Literal Dictionary Connotation “the word “whip” means a lash with a stock or handle used for punishing a person for an offence or in driving a house-driven carriage for thrashing or beating the horse to urge it to move forward faster. As a verb “to whip” similarly means to lash a person or animal or to strike by a whip. The word is believed to have and its origin in the terminology developed in hunting where the hunter’s employee responsible for managing the hounds and keeping them in their places is called the whipper-in.” See Subhash C. Kashyap, “Party Whips, Parliamentary Privilege and Anti-Defection Law”, the *Journal of Parliamentary Information*, Vol. XXXIV, No. 2, June 1988, p.153.

17 AIR 1987 P & H 263
So far as the right of a member under Article 105 is concerned, it is not an absolute one and has been made subject to the provisions of the Constitution and the rules and standing order regulating the procedure of 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 provision, such as the 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 provision of para 2 (1) (b) would be destructive of the democratic set-up, the basic feature of our Constitution.

The Supreme Court had the occasion to dwell upon the aspect of the interpretation of provisions of para 2 (1) (b) of the Tenth Schedule in the *Kihota Hollohon v. Zachilhu & Others.* The Supreme Court in this case 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 Court further held that:*

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 (1) (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 integral policy and programme of the political party on the basis of which it approached the electorate.

Way back in 1990, even before the Supreme Court's judgment in *Kihota Hollohan's Case*, the Committee on Electoral Reforms under the Chairmanship of the then Union Law Minister, Shri Dinesh Goswami submitted a report on 'Electoral Reforms' on 4th May, 1990,

WHEREIN THE COMMITTEE RECOMMENDED THAT DISQUALIFICATION PROVISIONS SHOULD BE MADE SPECIFICALLY LIMITED TO CASES OF (A) VOLUNTARILY GIVING UP BY AN ELECTED MEMBER OF HIS MEMBERSHIP OF THE POLITICAL PARTY TO WHICH THE MEMBER BELONGS; AND (B) VOTING OR ABSTENTION FROM VOTING BY A MEMBER CONTRARY TO HIS PARTY DIRECTION OR WHIP ONLY IN RESPECT OF MOTION FOR VOTE OF CONFIDENCE OR A MOTION AMOUNTING TO NO-CONFIDENCE OR MONEY BILL OR MOTION ON VOTE OF THANKS TO THE PRESIDENT'S ADDRESS AND THAT THE DEPUTY SPEAKER OF THE HOUSE OF THE PEOPLE OR THE LEGISLATIVE ASSEMBLY OF A STATE THE DEPUTY CHAIRMAN OF COUNCIL OF STATES OR LEGISLATIVE COUNCIL OF STATE OR A PERSON OCCUPYING THE CHAIR FOR THE TIME BEING IN THE ABSENCE OF ANY ELECTED PRESIDING OFFICER, AS THE CASE MAY BE, SHOULD NOT INCUR DISQUALIFICATION IF HE Chooses TO ABSTAIN FROM VOTING CONTRARY TO HIS PARTY DIRECTION OR WHIP.

The Law Commission of India under the Chairmanship of Justice B.P. Jeevan Reddy, in their 170th Report on 'Reform of the Electoral Law's' submitted to the Government of India in May, 1999,

Dwelt on the aspect of desirability of issuing the whip in specific situations only and observed:-

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So far as the issuance of the whip is concerned, it is not governed by any law. Neither the Rules framed under the Tenth Schedule nor the Rules of Procedure and Conduct of Business in the Lok Sabha Council of States provide for or regulate the issuance of whip. It appears to be a matter within the discretion and judgment of each political party. In such a situation, we can only point out the desirability aspect and nothing more. 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. Such a course would safeguard both the party discipline and the freedom of speech and expression of the members.

(iii) Spilt and Merger

The main ground of criticism regarding splits, which has been omitted from the Tenth Schedule, and mergers is that while individual defection is punished, collective defection in terms of splits and mergers was allowed.

One of the most perceived misuses of the provisions of splits and mergers pertains to engineering of splits to facilitate mergers. Experience has shown that in large particles, it is very difficult to garner support of two-thirds of the members required for a merger. The splinter groups, therefore, often resorted to the tactics of first engineering a split in the legislature party on the strength of only one-third of its members. Later on, they merged the splinter group en bloc with another party. Thus, in net effect, a merger took place on the strength of merely one-third of the members of a legislature party.
Several institutions such as Committee of Presiding Officers of Legislative Bodies in India to review the *Anti-Defection Law*,\(^{21}\) the *Law Commission of India*\(^{22}\) and the *National Commission to Review the Working of the Constitution*\(^{23}\) 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 provisions of splits and mergers from the Tenth Schedule.

In State Legislatures, in a number of decisions involving splits, various interesting facts have come up regarding interpretation of provisions relating there to. In the case of Thangnanlien Kipgen in *Manipur Legislative Assembly*,\(^{24}\) the question as to who can lawfully claim a splits within the ambit of para 3 of the Tenth Schedule came up. On this, the Speaker observed that the Legislature Party of a political party is formed by the elected member(s) of that political party. A split can be claimed under para 3 of the Tenth Schedule only by such member(s) of the House belonging to a political party. A member of the House as referred to under various provisions of the Tenth Schedule would mean and be construed to be member who had already become a member of the House after subscribing the oath or affirmation in the form set out for the purpose. Thus, an elected member cannot become a member of the House before taking such oath.

Another point that was raised in the above case was whether the outgoing Speaker of dissolved Assembly, who was also defeated in the election to the next Assembly, could accord recognition to a split claimed by the elected members of the new Assembly. Incidentally, notification for constitution of the Seventh Manipur

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\(^{22}\) *Supra.*, n, 19


\(^{24}\) Thangminlien Kipgen case, 2002 (Manipur Legislative Assembly), Speaker : Dr. S. Dhanjoy, decision date: 18.11.2000.
Legislative Assembly and dissolution of the Sixth Assembly were issued on 1st March, 2000. On 4th March, 2000, the respondent, Shri Thangminten Kipgen claimed a split in the Nationalist Congress Party (NCP). Interestingly, the intimation regarding the above split was forwarded to the Speaker of the outgoing Sixth Assembly who took cognizance of the split vide his order dated 6th March, 2000. Later, when the competence of the outgoing Speaker in deciding the petition was challenged vide disqualification petition dated 19th June, 2000, the Speaker of the Seventh Assembly responded to this point in negative. He opined that the outgoing Speaker had no legislative or parliamentary authority under the Constitution of India in respect of the new House. He further added that since the outgoing Speaker had ceased to be the authority, he had no jurisdiction or competence to accord recognition to the split claimed by the members of the new House.

In the Ngullie and Chubatemjen Case (1998) in Nagaland, 12 MLAs including two unattached MLAs claimed a split in the Indian National Congress and requested the Speaker to recognize the breakaway group, i.e. Congress (Regional). The Speaker, however, disallowed the split stating that since the breakaway Group, excluding two expelled members, did not command strength of one-third members of the original party, the split was invalid. Accordingly, he disqualified the ten members who had claimed split. Later, however, the disqualified members submitted representations pointing out that the Speaker had erroneously issued their disqualification orders which needed to be revoked. The speaker, after examination of the representations revoked the orders, stating that the orders, stating that the orders treating the two members, Shri T.A. Ngullie and Shri Chubatemjen, as unattached and disqualifying the ten remaining members were invalid ab initio as the communication regarding split in the congress (I) Party was received earlier than the letters of expulsion of the two members. Besides, the

25 Ngullie and Chubatemjen Case, 1999 (Nagaland Legislative Assembly)
procedure for disqualifying the ten members, as laid down in Rule 7 (3) (a) & (b) of the Members of Nagaland Legislative Assembly (Disqualification on Ground of Defection) Rules, 1986, which are mandatory, was not followed.

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 member. Consequently, now it is not that easy to garner support of the two-third members as required under the provisions of para 4 of the Tenth Schedule.

(iv) Expulsions and Status of Unattached Members

Before coming into force of the Constitution (Fifty-Second Amendment) Act, 1985, and the rules framed thereunder, it was an established practice in Lok Sabha that if a member of a political party was expelled from his party, he was treated as unattached in the House. The Constitution (Fifty-second Amendment) Act, 1985 and the rules framed thereunder do not make provision for a situation arising out a member's expulsion from his political party for his activities outside the House. The Act and the rules do not stipulate the existence of an unattached member. The question whether the Speaker is empowered to declare a member who has been expelled from his party as unattached came up for determination during the Eighth Lok Sabha in Shri K.P. Unnikrishnan oltodhnan MP's case. Shri KP Unnikrishanan, MP who had been declared unattached by the Speaker, Dr. Bal Ram Jakhar, consequent upon his expulsion from Congress (S), questioned the Speaker's authority to declare members elected on a party ticket/symbol as unattached. On Shri Unnikrishnan's request, the opinion of the Attorney-General for India was obtained on the point,
who opined that neither the Tenth Schedule to the Constitution nor the rules framed thereunder provide for the existence of an unattached member. However, the Speaker has to see whether the provisions of directions 120 and 121 of the Directions by the Speaker are attracted in such cases, and if not, Speaker may treat them as unattached. A similar approach was adopted during the Ninth Lok Sabha when the Speaker Shri Rabi Ray, declared 25 members expelled from the Janata Dal, as unattached. (For details see Annexure-III).

During the Tenth Lok Sabha, however, the Speaker, Shri Shivraj V. Patil, in his decision in the Janata Dal case adopted a different approach and observed as under:—

In the past, in some cases, when the Members were expelled, they were called unattached, to distinguish them from the party members as well as from the independent Members. The word 'Unattached ' is not used anywhere in the Tenth Schedule or any part of the Constitution of India or any other relevant laws or the Rules of Procedure followed in the Parliament.

In this context, it would be pertinent to note the following observations made by the Supreme Court of India in G. Viswanathan v. Speaker, Tamil Nadu Legislative Assembly and Azhagu Thirunavakkarasu v. Speaker, Tamil Nadu Legislative Assembly cases:

Even if such a member is thrown out or expelled from the party, for the purposes of Tenth Schedule he will not cease to be a member of the political party that had set him up as a candidate for the election. He will continue

\[26\] June, 1993 (See also annexure III for details)
\[27\] AIR 1996 SC 1060

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to belong to that political party even if he is treated as unattached.

The consequences of expulsions are loaded with many difficult situations for the expelled member. For instance, a member may be expelled from the political party for various reasons other than voting against party directive in the House or for joining any other party. As long as there are provisions in the constitutions of political parties regarding expulsions etc., members would continue to be expelled from their parties for anti-party activities. Such expulsions do not entail disqualification but create a category of members which does not fit in the scheme of the Tenth Schedule. The present position vis-a-vis such members is that while in some Legislatures such members are treated as unattached, in others, including in Lok Sabha, such members continue to belong to the same party even after expulsion and are bound by its whips etc.

However, the inability of an expelled member in finding adequate time for participating in debates of the House and in being nominated to the Committees, consequent upon his expulsion, tend to deprive his constituents of their right of being represented properly in the House. An expulsion of a member from his political party in a way affects the members constituents whom he represents in the Legislator. It was in this context that the Committee of Presiding Officers of Legislative Bodies in India on the need to review the Anti-defection Law under the Chairmanship of Shri Hashim Abdul Halim, Speaker, West Bengal Legislatives Assembly, in their Report presented to the 66th Conference of Presiding officer at Mumbai on 5th February, 2003 had inter alia recommended the Government to bring forward a constitutional amendment to amend the Tenth Schedule envisaging that while an expelled member should not be subject to victimization by the political party which expelled him, at the same time, certain fetters should be imposed
upon him such as prohibition on his joining any legislature party in
the House, political party outside the House or holding any
ministerial position or any other office in the Government etc. It had
further recommended that consequences of expulsion from the
political party should, therefore, be clearly laid down in the Tenth
Schedule, so as to define the status, rights and obligations of
expelled members in the House. The Constitution (Ninety-First
Amendment) Act, 2003 however, did not address this aspect.

(v) Interpretation of the Term 'Political Party' in
Deciding Case under the Tenth Schedule

Another issue that has frequently come up for deliberations is
about interpretation of the term 'political party' for deciding matters
concerning defections. In Assam, the Speaker, while delivering
decision in the case of Santi Ranjan Dasgupta and others (1988),
observed that as stipulated in the Election Symbol (Reservation and
Allotment) Order, 1968, a political party for the purpose of defection
is the one, which is recognized by the Election Commission of India
and therefore recognized for the purpose of election. In the case of
the respondents, however, it was clear that their Group was not a
political party having powers to merge with another party. It could,
therefore, not be claimed that a political party [i.e. the United
Minorities Front (Santi Ranjan Dasgupta] had merged with another
political party (i.e. the Indian National Congress). The Speaker,
therefore, held that the respondents incurred disqualification in
terms of para 2(1)(a) of the Tenth Schedule to the Constitution.
Accordingly, he allowed the petition and disqualified the respondents
from the membership of the Assembly. Similarly, in another case, the
Speaker disallowed a petition against Shri Sahidul Alam Chaudhury
and 14 other MLAs28 for having joined Asom Gana Parishad (AGP)
legislature Party. The Speaker in this case held that since the AGP
was not a political party at the time of its joining by the respondents,

28 Sahidul Alam Chaudhary and Other Case, 1986 (Assam LA), Speaker : Shri Pulakesh Barua,
decision date : 01.04.1986
provision of para 2 (2) of the Tenth Schedule did not apply in that case.

(vi) Power of the Speaker to Decide Disqualification Matter *suo motu*

Under the Tenth Schedule to the Constitution of India, the Presiding Officers have not been empowered to decide the disqualification matter *suo motu*. Paragraph 6 (1) of the Tenth Schedule states as under:

> 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.

In *Lotha and Others Case* (1990) in Nagaland, the Speaker disallowed the claim of split in the Nationalist Congress Party. The Speaker's decision was interesting in the sense that even though there was no petition for disqualification before him, he disqualified the claimants of split. Here, it is interesting to note that the High Court of Andhra Pradesh also observed in the case of C. Ramachandra Raddy's case that rules do not "inhibit in any manner the jurisdiction of the Speaker to entertain a reference on the basis of information that he may have from any source other than by way of petition by a member of the House".

The question whether Speaker can act *suo motu* or he can act only when a petition for disqualification is filed, was raised before the Guwahati High Court in *Banjak Phom and Others v. The Nucho and Others*.29 The Court observed as under:

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29 (Civil Rule Nos. 110 to 119 of 1991 decided on 27.1.1992. 189
"There is nothing in paragraph 6 or any of the other provisions in Tenth Schedule to limit the jurisdiction of the Speaker to decide a question of disqualification only on a petition filed by a Member of the House. There is nothing in these provisions to indicate that Speaker cannot act *suo motu* if the conditions requisite for disqualification come to his notice by some process or the other.

To hold otherwise would, we are afraid, amount to reading something into Tenth Schedule which is not here and would also amount to frustrating the very object of 52nd Amendment. The object is to preserve democratic structure of the legislature and safeguard political morality in legislators. If motion by a member of the House is pre-requisite for an order of disqualification being passed by the Speaker, all that is necessary is that there should be a gentleman's agreement between the Members not to complain to the Speaker about any members incurring disqualification. Such a narrow interpretation of the provisions of paragraph 6 of the Tenth Schedule cannot be accepted.

The Guwahati High Court's observations suffer from following flaws:

(1) An authority (Speaker or Chairman) vested with the powers of adjudication under the Tenth Schedule will find it difficult to proceed against a member when there is none to lead or tender evidence against the respondent; Speaker or Chairman who belong to political parties, if take upon themselves the task of disqualifying members, there is no accepted principle
of jurisprudence where the judge himself will be leading evidence against the respondent, if others, particularly other members, do not co-operate in the inquiry.

(2) Rule 6 (1) of the anti-defection rules, which reads as under, effectively bars the Speaker from acting *suo motu*:

No reference of any question as to whether a member has become subject to disqualification under the Tenth Schedule shall be made except by a petition in relation to such member made in accordance with the provisions of this rule.

Beside above, there is no hard and fast rule, particularly in view of the word "person" used in paragraph 2 (1) (b) of the schedule, that a whip of a political party has to be a member of a Legislature. If a non-member functions as a whip of a political party, then, when he has the right to inform the Chairman or Speaker under Rule 3 (6) of the Anti-Defection Rules that the violation of the whip by a member has not been condoned, he, as of now, does not have the right to initiate a petition for disqualification against the member concerned since he is a non-member. Such situations can be avoided, if the Anti-Defection Rules are reframed within the intent of paragraph 6 (1) of the Tenth Schedule thereby conferring right to initiate a petition for disqualification on ground of defection to every citizen of this country.

(vii) When Legislature is under Suspension, Speaker's Power to Decide Cases

An interesting point that came up for decision during the deliberation in *Selkai Hrangchal and Krishana Singh case* 30 in Manipur was whether the Speaker would have any jurisdiction and

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30 *Selkai Hrangchal and Krishna Singh Case*, 1992 (Manipur Legislative Assembly)
power to decide defection matters under the Tenth Schedule when the State Legislature is placed under suspended animation due to the imposition of President's Rule under Article 356 of the Constitution. On this, the Speaker observed as under:

The President's Proclamation dated 7th January, 1992 placing the State legislature under suspended animation has not mentioned anything about the Tenth Schedule and the power and jurisdiction of the Speaker thereunder. As pointed out by the Supreme Court in the operative part of its order dated 12th November 1991 in a bunch of cases relating to the Tenth Schedule, the Speaker acts as a tribunal in quasi-judicial case and not as a part of the State Legislature while exercising his power under the Tenth Schedule. I hold accordingly that the said proclamation under Article 356 of the Constitution does not have the effect of ousting the speaker from exercising his power under the Tenth Schedule.

(viii) Whether Petition Given under Tenth Schedule can be Withdrawn?

_in Lehinson Sangma's Case_ in Meghalaya, the issue for consideration was whether the petitions given under the provisions of the Tenth Schedule can be withdrawn. The Speaker observed as under:

It is necessary to see the legal position regarding the withdrawal of complaint under the Tenth Schedule to the Constitution of India, before pronouncing decision

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32 Lehinson Sangma Case, 1988-89 (Meghalaya LA), Speaker: Shri P.G. Marbaniang, decision date: 22.08.1989.
which was reserved due to withdrawal of the complaint by the original political party. There is no provision of withdrawal of a complaint under the Tenth Schedule to the Constitution of India. Therefore, the natural inference would be that withdrawal of a complaint could not be entertained under the Scheme of the Tenth Schedule to the Constitution of India. At best it can be taken as constructive condonation as envisaged under paragraph 2(1)(b) of the Schedule. If it is taken as constructive condonation, a withdrawal can be entertained but only within the prescribed limit of 15 days. After the prescribed limit of 15 days, the Speaker’s hands are tied to entertain any such withdrawal under the Scheme of the Tenth Schedule and doing so would be acting against the Constitution of India. The legal position being this, a duty and responsibility is cast upon me to pronounce my decision on merit.

(ix) Applicability of Anti-Defection Law in the Event of Non-framing of Rules:

An interesting issue arose in Punjab Legislative Assembly as to whether in the absence of Rules being framed by the Assembly, the Anti-Defection Law would be applicable. This point came up prominently in the Bharatiya Janata Party (Punjab) Case (1993)\(^3\) in which two member of Bharatiya Janata Party claimed a split in the party and formation of a new party, called Bharatiya Janata Party (Punjab). The Speaker observed that in view of established norms and precedents and also the Supreme Court’s rulings that in the

\(^3\) Bharatiya Janata Party (Punjab) Case, 1993 (Punjab LA), Deputy Speaker, officiating as the Speaker: Sardar Harccharan Singh Ajnala, decision date: 05.07.1993.
absence of Rules of Procedure, authorities are required to follow a procedure which is fair and just in accordance with the principles of natural justice, the Speaker is not precluded from proceedings in the matter.

(x) Right of Dissent vis-à-vis Anti Defection Law

Ever since the law came into force, doubts were raised as to the success of the laws. It was argued that it is not an anti-defection but an anti dissent Act because it prohibited free and frank expression of opinions in the House by compelling a member to note in a particular way, even if he individually disagreed with such measures. Therefore, any law which curbed or took away a member's right to take part freely in the proceedings of the House went against the spirit of democracy. It was further to say that a member is an elected representative of the people and not of a party logically a member loyalty should be first to his constituents rather than to his party. A member while voting in the House, therefore, should be guided more in the interest of his constituents rather than anything else.34

However, one of the grievances against the Anti-defection Law that the natural right of democratic dissent, which, needless to say, is not in consonance with the liberal spirit of democratic polity. The issue figured prominently in the Wadala & Others Case (1987)35 in Punjab. On the question of validity of the Constitution (Fifty-Second Amendment) Act, 1985, on the ground that the Act takes away the freedom of speech of a member of a legislature and is violative of the fundamental rights, the Punjab and Haryana High court36 held

35 Wadala and other case, 1986 (Punjab LA).Speaker; Sheri Surjit Singh Minhas, decision date:01.05.1987
36 Prakash Singh Badal v. Union of India, AIR 1987 P&H 263
the provisions of the Act valid except paragraph 7 of the Tenth Schedule.

(xi) Taking Cognizance of Disqualification Petition

In Behra's Case\(^37\) which arose in the Orissa Legislative Assembly, the issue was whether the Speaker should take cognizance of a petition addressed to the Secretary, Secretariat of the Orissa Legislative Assembly. Deciding the issue, the Speaker observed that though the petition was addressed to the Secretary, Orissa Legislative Assembly, the same was duly placed before him and he had taken Cognizance of the matter and the objection had no merit.

In another case, a procedural issue that emerged in the Karnataka Legislative Assembly was whether an issue under the Anti-defection Law could be raised in the House. In the Janata Dal Case, 1989\(^38\) in Karnataka, three members who originally belonged to Janata Legislature Party claimed a split in the party, and formation of a new party i.e. Janata Dal Party. The Leader of the party also requested the Speaker to recognize the party and allow it to merge with Lok Dal to form Janata Dal Party. The new party and its merger were recognized by the Speaker. A petition for disqualification was submitted by a member against these members. Subsequently, the matter was also raised in the House. On this, the Speaker in his Ruling given on 20\(^{th}\) March, 1989, observed that in the case of disqualification of a member under the Tenth Schedule to the Constitution, the House cannot have any say and the Speaker is made the sole and final authority to decide the issue.

\(^{37}\) Bhajaman Behra Case, 1989 (Orissa LA); Speaker; Sheri Prasan Kumar Dash, decision date; 15.09. 1989.

\(^{38}\) Janata Dal Case, 1989 (Karanataka LA), Speaker; Sheri B.G.Banakar, decision date; 16. 02. 1989
(xii) Speaker's Discretion to Grant Time for Submission of Replies by the Respondents

In the case of *Shishir Kumar Kotwal*\(^{39}\) in Maharashtra Legislative Assembly, one of the important procedural issues that emerged during the course of oral hearing relating to the discretionary powers of the Speaker in granting time for submission of replies by the respondents. The main contention of the respondents was that under the concept of Rule of Law, the Speaker was also bound to abide by the rules framed by him. On the other hand, quoting from important Court cases namely, *Kihota Hollohan v. Zachilli*\(^{40}\), *Ravi S. Naik v. Union of India*\(^{41}\), etc., the Speaker held that the rules framed to curb the menace of defection the directory rather than mandatory. This apart, the rules framed in the Assembly under Anti-defection Law provide sufficient space to the Speaker to use discretion in procedural matters relating to grant of time, for submission of replies. Accordingly, the Speaker declined permission to the respondents regarding extension of time for filing replies. However, in the case of *Narayan Pawar*\(^{42}\) in Maharashtra Legislative Assembly, an entirely opposite view was taken by the Speaker who while allowing a petition for having voluntarily given up membership of the original party by the respondent opined that the spirit behind the law is more important than the form.

(xiii) Judicial Review of Speaker's Decision

Regarding competence of the Speaker to review his decision, the Supreme Court in the *Dr. Kashinath Jhalmi v. Speaker and Others Case*\(^{43}\), observed that the Speaker has no power of review under the Tenth Schedule, and an order of disqualification made by him under para 6 is subject to correction only by judicial review.

\(^{39}\) *Shishir Kumar Vasantrao Kotwal Case*, 2002 (Maharasahtra LA), Speaker; Shri Arunal Govardhandas, decision date: 05. 06. 2002

\(^{40}\) AIR 1993, SC 412

\(^{41}\) AIR 1994 SC 1558

\(^{42}\) *Narayan Pawar & others Case*, 2002 (Maharashtra LA), Speaker; Shri Arunal Govardhandas, decision date: 04. 06. 2002

\(^{43}\) AIR 1993(3) SC. 594.
Accordingly, the alleged defects in the instant case would require examination by judicial review in the Writ Petitions filed in the High court by the affected MLAs. In other words the Court while asserting its right to judicial review, has skirted the issue of judicial review being a part of the basic structure of the Constitution.

(xiv) Reference of Disqualification Petition to Committee of Privileges

As regards the role of the Committee of Privileges in deciding matters concerning defections, an interesting point that appeared for consideration in the *Balakrishan Pillai Case* (1989) in Kerala was whether the Speaker himself was competent to determine a questions about the disqualification of a member without referring the matter to the Privileges Committee. On this, the Speaker *inter alia* observed that as per the provisions of para 6(1) of the Tenth schedule. The Speaker of the House was competent authority to decide the question of disqualification. The said provisions were so clear that there could be no scope for any doubt about authority or competence of the Speaker to decide the matter. The Speaker further observed that as per Rule 7(4), the Speaker can either proceed to decide the matter himself or refer the matter to the Committee of Privileges for a preliminary enquiry for a getting a report only if he is satisfied that it is necessary and expedient to make such a reference. The reference contemplated in Rule 7 (4) to the Privileges Committee is only in certain limited cases and that too only to hold a preliminary enquiry and to file report before the Speaker. The word 'preliminary enquiry' necessarily contemplates a further enquiry by the Speaker. Hence, there cannot be much weight in the plea that the Speaker has to refer all cases of defections to the Privileges Committee.

Conversely, the Andhra Pradesh High Court in the case of C. Ramachandra Rddy found fault with the Rule providing for

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*Balakrishan Pillai case, 1989-90 (Kerala LA), Speaker; Shri Varkala Radhakrishan, decision date; 15.01.1990*
reference of a disqualification petition to the Committee of Privileges of the House for making a preliminary inquiry on the ground that paragraph 6 of the Schedule which is the repository of the Speaker's powers does not contain any such provision either for consultation or for appointment of a Committee for any option to advise the Speaker. This observation of the Andhra Pradesh High Court has thrown up a new perspective which is at variance with the well established view that the Presiding Officer can refer a petition to the Committee of Privileges for making a preliminary inquiry and submitting a report to him.

Similarly, in the case of Mangal Parag (1991)\(^ {45} \) in Madhya Pradesh on Respondents' request that their case be referred to the Committee of Privileges the Speaker declined to accede to their request stating that Rule 7(4) of the Members of Madhya Pradesh Legislative Assembly (Disqualification on ground of Defection) Rules, 1986 endowed him with discretionary powers in that regard.

(xv) Representation of a Petition by Another in the Hearings of a Case

In Sikkim, in the Chamla Tshering and Others Case (1994)\(^ {46} \), the Speaker had decide whether a member filing a petition under the Tenth Schedule can be represented by any other person. In the instant case, the petitioner did not appear for personal hearing before the Speaker. Instead, an ex-MLA, authorized by the petitioner, represented him. On this, the Speaker observed, I do not think that a member filing a petition under the Tenth Schedule can be represented by any other person in the hearing fixed by the Speaker. However I do not think that it is necessary to decide this point in the present case as it can be decided in some other appropriate petition in future.

\(^ {45} \) Mangal Parag & others case, 1991 (Madhya Pradesh LA), Speaker: Shri Brijmohan Mishra, decision date: 01.05.1991

\(^ {46} \) Chamla Tshering and others case” 1994 (Sikkim L.A), speaker: Dorgee, Tshering Bhutia, decision date: 22.07.1994
(xvi) Interim Orders

The first and only passive reference to Speakers'/Chairmen's power to pass interim orders on petitions for disqualification under the Tenth Schedule can be found in the Supreme Court judgment in *Kihota Hollohon v. Zachillu* case that "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 *qua 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 consequences.

The interference of courts with Speakers'/Chairmen’s orders under the Tenth Schedule on grounds of violations of Constitutional mandates, *mala fide*, perversities and noncompliance with rules of natural justice, etc., will arise not only with respect to their final orders but also with respect to their interim/interlocutory orders having grave effect on the membership of the affected members. Till the judgment in *Kihota Hollohon case* delivered in November 1991 (operative one) and February 1992 (detailed one), no Speaker or Chairman appeared to have passed any interim/interlocutory order under the Tenth Schedule.

Interim Orders have not only been passed by the Speakers and Chairmen but even Courts have passed such Interim Orders in regard to disqualification cases on ground of defection.

Speaker Shri P.R. Kyndiah of the Meghalaya Legislative Assembly was the earliest to pass an Interim Order under the Tenth Schedule. A petition was filed against five independent members of the Meghalaya Legislative Assembly for disqualification on the
ground that they had joined political parties. It was alleged in the petition that Dr. Donkupar Roy, Mrs. Miriam D. Shira and Shri Simon Siangshai, independent members had joined the political party, namely, HSPDP (DL). It was also alleged that Shri Monindra Agitok and Shri Chamberlin Marak, independent members, had joined HPU (BC), another political party.

The petition was filed on August 5, 1991. The Speaker passed the following interim order on August 7, 1991:

The voting rights within the Assembly of the following independent members, that is, (1) Dr. Donkupar Roy (2) Mrs. Miriam D. Shira (3) Shri Simon Siangshai (4) Shri Monindra Agitok and (5) Shri Chamberlin Marak shall remain suspended with effect from the 7th August, 1991 till final disposal of the case.

The power of the Speaker to pass the interim order was contested by several members. Members further protested that the procedure ordained in the Anti-Defection Rules was not followed for passing the interim order. Speaker, while alluding to these protests, in his final order dated August 17, 1991, which confirmed his interim order on the five independents, observed that "so far the power of Speaker regarding giving an interim order is concerned, it flows from paragraph 6 of the Tenth Schedule itself, by virtue of which full power of giving decision under the Tenth Schedule in the matter of disqualification is vested in the Speaker. Where a final power is vested in an authority, it cannot be said that it is excluded of interim powers because final powers can only be inclusive of interim powers and any legal proposition contrary to that, in my humble opinion is not a sound legal proposition. So far following the procedure under the Tenth Schedule to the Constitution of India read with Members of Meghalaya Legislative Assembly (Disqualification on Ground of

48 Donkupar roy Siangshai and others Case, 1991 (Meghalaya LA), Speaker: Shri P.r. Kyndiah, Decision date: 17.08.1991
Defection Rules, 1988 is concerned, I am of the firm opinion that final orders under paragraph 6 of the Tenth Schedule to the Constitution of India can only be given after following these procedures. But an interim order has to be passed on prima facie perception of the ease by the Speaker on available facts and material. Even in court proceedings, interim, orders do not wait completion of pleadings and they are passed sometimes even ex parte. However, considering the sentiment expressed by Hon'ble members, I feel a duty is cast upon me to give a final decision in the matter at the earliest."

Again in Meghalaya, a petition for disqualification on ground of defection was filed on June 25, 1998 by Shri H.S. Lyngdoh, MLA, against Mrs. Maysalim War, MLA, a member of the HSPDP party, on the ground that she had voluntarily given up the membership of the original party and formed the HSPDP (M) which merged with the UMPF coalition led by Shri. D.D. Lapang. On the same day of filing the petition, the Speaker Shri E.K. Mawlong of the Meghalaya Legislative Assembly passed an Interim order in the following words.49

For the time being, I have no option but to pass this interim order by placing Mrs. Maysalim War under suspension and also her voting right till a final order is issued by me.

The earlier Speaker Shri PR. Kyndiah suspended only the voting rights of the independent members with no suspension from membership. But Speaker Shri E.K. Mawlong suspended the membership of the member concerned and also her voting right. It is not clear why the Speaker, who suspended a member's membership (whether such powers are available with the Speaker under the law is a debatable point), went ahead and suspended the voting right

49 Maysalin War Case, 1998 (Meghalaya LA), Speaker: Shri E.K. Mawlong, decision date: 17.12.1998
also. Suspension from membership automatically suspends one's right to sit and vote in the House. The petitioner wanted to withdraw the petition and Speaker Shri E.W. Mawlong allowed the withdrawal and on December 17, 1998 rescinded the interim order Thus, Mrs. Maysalim War became a full-fledged member of the Meghalaya Legislative Assembly. lassic example of a very judicious interim order was passed by Mr. Kiyanilie Peseyie the Speaker of the Tenth Nagaland Legislative Assembly when a prayer for interim relief was made by petitioners seeking disqualification of two MLAs of the Tenth Nagaland Legislative Assembly pending final orders of the Speaker. The petitions were filed on December 7, 2004. As the issues rose in the petitions required deeper examination which would take long time, the Speaker, on December 15, 2004. Without affecting the rights and Privileges of the respondents concerned, namely. Shri Z.Obed and Shri Vatsu Meru. MLAs passed the following interim orders:

Without prejudice to their rights to claim protection from (ii) disqualification under paragraph 4 of the Tenth Schedule to the Constitution, any vote recorded by Shri Z.Obed and Shri Vatsu Meru, Members of the Tenth Legislative Assembly, in the Nagaland Legislative Assembly contrary to any direction issued by the Nagaland Peoples Front or by any person or authority authorized by it in this behalf, shall not be counted for declaration of the result of a voting or division in the House.

The Speaker did not decide the petitions for a long time and with the coming into force of the revised Anti-defection Rules in the Nagaland Legislative Assembly, the petitions lapsed.

The interim order passed by Shri P.R. Kyndiah, as aforesaid, gravely affected the voting rights of the members concerned and, however, was justified since the Speaker quickly confirmed his
interim order by a final order. When the Speaker was to decide the question expeditiously, there was no occasion for him to pass interim orders. Any interim order which affects the membership and voting right of a member should be passed only after giving a personal hearing to the member concerned subject to confirmation by a final order passed after due procedure envisaged in the law and the rules. Any other undamaging interim order may, however, be passed without hearing the member concerned, if the order does not interfere with his membership or voting right.

Suspension of membership and suspension of voting rights of a member are aspects of disqualification, if not exactly disqualification. While disqualification brings a permanent disability for being a member of a Legislature, suspension from membership brings about temporarily the same effect. Therefore, Speaker Shri P.R. Kyndiah's explanation that he had to follow due procedure ordained in the Anti-defection Law and Rules only in regard to making of the final orders and interim orders of grave consequences can be passed without affording an opportunity to the member affected, does not hold much water. The relevant provision in Rule 7(7) of the Anti-defection Rules generally followed by all Legislatures, including the Meghalaya Legislative Assembly, according to which "neither the Speaker nor the Committee shall come to any finding that a member has become subject to disqualification under the Tenth Schedule without affording a reasonable opportunity to such member to represent his case and to be heard in person".

Speaker Shri P.R. Kyndiah appears to have been disproved by the above provision. Even the Committee of Privileges, which only makes a preliminary inquiry, whose report is only in the nature of recommendation, ought to afford reasonable opportunity to the respondent especially when disqualification is sought to be imposed on the respondent. Committee of Privileges does not make any final
order under the law. Yet, it has to follow the principles of natural justice. Thus, when the Speaker makes an interim order in the nature of transactional disqualification though it is not technically a final order, he has to afford a reasonable opportunity of hearing the respondent without which the principles of natural justice would stand flouted.

However, in the case of the interim order passed by the Speaker of Nagaland Legislative Assembly, as the interim order was in the nature of requiring the parties concerned to observe *status quo* with ample protection to the rights and privileges of the respondents under the Anti-defection Law, even without affording an opportunity of the respondents being heard, it can stand on the sound principles of natural justice. The Speaker himself superscribed his interim orders with the following:

After careful study of the petitions, the replies of the respondent and the comments of the Leader of the Legislature Party, I am of the view that the parties to the petitions, must not alter the *status quo* in the situation except as permitted by the Constitution and the connected statutes. I, therefore, in exercise of my powers under the Tenth Schedule and the Rules made thereunder pass the interim order.

The Speaker of the Nagaland Legislative Assembly had not passed the interim order immediately with the receipt of petitions. He passed the interim order after receiving the Replies and comments of the parties concerned and after carefully studying them. Contrast this with the interim order passed by the Meghalaya Legislative Assembly Speaker Shri E.K. Mawlong on the same day on which he received the petition for disqualification.

The first known interim order in the matter of disqualification of a member of a Legislature on ground of defection issued by a Court
was that of the Supreme Court pronounced on August 1, 1991, in Special Leave Application (civil) no. 11742 of 1991 against the order of Speaker Shri H.T. Mulani of the Gujarat Legislative Assembly disqualifying Shri Jaspal Singh, member of the Gujarat Legislative Assembly for violation of whip. The order of the Speaker was passed on June 25, 1991 against Shri Jaspal Singh on a petition filed by Shri Dinsha Patil, MLA and Minister of Parliamentary Affairs of Gujarat. The interim order was passed by the Supreme Court on an interlocutory application for an ex parte stay order against the order of the Speaker. The Supreme Court on August 1, 1991 passed the following interim order:

That pending hearing and final disposal by this court of the application mentioned above for stay after notice, the Petitioner herein shall be entitled to enjoy all the perks as a member of the House without the right to participate in the proceedings of the Legislature and in case the Petition fails. He shall be liable to refund all the money which he would have drawn by virtue of this court's aforementioned order.

The Supreme Court, by such an interim order, has liberally equated an honorable member of a Legislative Assembly to the position of a mere Government servant. Unlike a Government servant, who is substantially concerned with his pay and perks, pay and perks are less worthy entitlements to a legislator than his right to represent his people in the legislature with his right to speak and vote. At least for the sake of Constitutional principles, it should be appreciated that people have not elected a member to the Legislative Assembly for receiving perks without effectively representing them in the Assembly through his freedom of speech and vote in the House. The Supreme Court was not deciding an

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50 Jaspal Singh Case, 1990 (Gujrat LA), Speaker: Shri Himatlal Mulani, decision date: 05.06.1990
51 Jaspal Singh v. Speaker, Gujarat Legislative Assembly and other, Special Leave Application (Civil) No. 11742 of 1991, Interim Orders passed by Hon'ble Supreme Court on August 1, 1991
election petition. It was a matter relating to the order of a Speaker on a sitting member in relation to a petition for disqualification on ground of defection. Either he is a member with full freedom of speech and vote, or, his seat in the House is rendered vacant. The Supreme Court should have upheld the Speaker's order or for, valid reasons, should have struck down his order. Instead, from August 1, 1991, till May 8, 1995, the Supreme Court kept the Special Leave Application pending with it, causing inordinate delay. The member was reduced to a vegetable for this duration and the constituents never got the constitutionally assured opportunity of electing another representative in his place. If the Supreme Court did not have time and resources to expeditiously decide the Special Leave Application against the Speaker's order, it could have passed an interim order to the effect that, until disposal of the special leave application, without prejudice to his rights and privileges under the Anti-defection Law, his vote, if recorded contrary to the direction issued by the party to which he belonged immediately before the dispute, shall not be counted in any division on the floor of the House- an interim order just like the interim order passed by the Speaker of the Nagaland Legislative Assembly. All ends of justice would have been met in that case.

A similar interim order was passed by the Supreme Court in writ appeals against the dismissal of writ petitions by the Mumbai High Court filed by respondents against the orders of the Speaker of the Maharashtra Legislative Assembly in petitions for disqualification on ground of defection. The Speaker's orders disqualified on ground of defection Shri Narayan Pawar, Shri Narsingh Patil, Shri Shivaji Naik and Shri Shririshkumar Vasantrao Kotwal, MLAs in June 2002. The aggrieved MLAs challenged the orders of the Speaker in Mumbai High Court. The writ petitions were dismissed by Mumbai High Court. The respondents went in writ

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52 Narayan pawar and Other case, 2002 (Maharashtra), Speaker: Shri Arujlal Govardhandas, decision date: 04.06.2002
appeals to the Supreme Court. The Supreme Court passed an interim order to the effect that the respondents would not be entitled to speak or vote but can attend the House.

The Supreme Court improve upon its interim order in the cases of three MLAs of the Haryana Legislative Assembly, namely, Shri Karan Dalal\(^3\), Shri Jagit Singh Sangwan\(^4\) and Rajinder Singh Bisla\(^5\) who were disqualified by the Speaker Shri Satbir Singh Kadian of the Haryana Legislative Assembly in June 2004, on ground of defection. All the aggrieved members challenged Speaker's orders and passed interim orders allowing all of them to attend the sittings of the House without the right to vote. Thus, this is an improvement on the interim orders passed by the Supreme Court in earlier cases which restricted both the right to speech and vote of the appellant members in the legislature.

(xvii) Speaker's Powers and Law Relating to Contempt of Court

The then Speaker Dr. H. Borobabu Singh of Manipur was a man of enormous courage of conviction. He believed that even in the Ant-Defection matters, he was the ultimate authority and the Courts had no powers to give him directives. He refused to implement the Supreme Court’s order in matters relating to implementation of the Tenth Schedule since the Supreme Court had ruled that Chairmen and Speaker’s decisions under the Tenth Schedule were amenable to judicial review.

\(^3\) Karan Singh Dalal Case, 2003 (Haryana L.A), Speaker: Shri Satbir Sing Kadian, decision date: 25.06.2004

\(^4\) Jagjit Singh Sangwan Case, 2003 (Haryana L.A), Speaker: Shri Satbir Singh Kadian, decision date: 25.06.2004

\(^5\) Rajinder Singh Bisla Case, 2004 (Haryana L.A), Speaker: Shri Satbir Singh Kadian, decision date: 25.06.2004
The then Secretary of the Manipur Legislative Assembly Shri I. Manilal Singh was perhaps bolder than the Speaker himself but for a right cause. He obeyed the Court's orders and implemented them. Irked by the legitimate action of the Secretary, Speaker Dr. H. Borobabu Sing unleashed a series of retaliation against the Secretary. Shri. I. Manilal Singh brought action against the Speaker before the Supreme Court for contempt. Holding the Speaker as contemnor of Court, the Supreme Court on February 5, 1993, in its order, summed up the facts, as under:

(i) This Court has held that the Speaker while deciding the question of disqualification of a Member of the Legislative Assembly under the Tenth Schedule to the Constitution acts as a statutory, in which capacity the Speaker's decision is subject to judicial review by the High Court and this Court. Pursuant thereto, certain orders were made by this Court in proceedings arising out of the order of disqualification of certain members, made by the contemnor, Dr. H. Borobabu Singh who holds the office of Speaker of the Manipur Legislative Assembly. In spite of the clear decision of this Court that an order made under the Tenth Schedule by the Speaker relating to the disqualification of a Member of the Legislative Assembly is subject to judicial review and the Speaker while making an order under the Tenth Schedule acts merely as a statutory authority amenable to the Court's jurisdiction in that capacity, the contemnor continued to resist the implementation of such orders made by this Court. The petitioner, Shri I. Manilal Singh was then the contemnor, Dr. H. Borobabu Singh, got annoyed with

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56 I. Manilal Singh v. Dr. H. Borobabu Singh and Another; 1994 Supp (1) Supreme Court Cases 718: 194
him for his attempt to secure obedience and implementation of this Court's orders and, therefore, as an act of reprisal, the contemnor has made an order of his compulsory retirement. The petitioner, Shri I. Manilal Singh, therefore, challenged the order of his compulsory retirement made by the contemnor inter alia on the ground that it was mala fide being an act of reprisal by the contemnor for the petitioner's obedience of this Court's orders. This Court stay the operation of the impugned order of compulsory retirement of the petitioner, Shri I. Manilal Singh as well as the order of this suspension passed by the contemnor. The petitioner then complained that in spite of this Court's order, the contemnor was not permitting him to function as the Secretary of the Manipur Legislative Assembly and was also not paying him his salary and other dues; and that another person had been appointed by the contemnor to function as the Secretary.

(ii) On July 22, 1992, this Court made an order reiterating that the petitioner, Shri I. Manilal Singh shall be allowed to function as the Secretary of the Manipur Legislative Assembly without delay and that all concerned will enable him to so function and some further directions were also given.

(iii) On August 4, 1992 another order was made by this Court as a result of the grievance made by the petitioner, Shri I. Manilal Singh that in spite of the order of this Court, he was neither allowed to function as the Secretary of the Legislative Assembly nor had he been paid his salary, etc. In that order, this Court further directed the Chief Secretary of the State of
Manipur to ensure that the direction given for payment of dues to the petitioner was promptly obeyed.

(iv) When the matter was again taken up on August 25, 1992, the petitioner, Shri I. Manilal Singh stated that another order had been made on August 19, 1992 declaring that the petitioner is to retire from service of August 31, 1992 as Joint Secretary which was in disobedience of this Court's order, and was further act of reprisal against him by the contemnor. Accordingly, in the order dated 25.08. 1992, this Court after recording that this action appears to be prima facie in violation ion of this Court's order, stayed the operation of the order dated August 19, 1992. The order after mentioning the statement made by the learned counsel for the Chief Secretary, Shri H. V. Goswami, Expressed this Court's concern at the apathy exhibited towards obedience of the mandate of Article 144 of the Constitution.

Angered by the repeated defiance of Dr. H. Borobabu Singh, the Supreme Court ordered the Union Government to produce him before the Court on March 23, 1993.

Finally, on March 23, 1993 Dr. H. Borobabu Singh personally appeared before the Supreme Court consequent to which the contempt proceedings were dropped.

*Besides*, the above issues some other ancillary issues also came up in the decided cases which are briefly mentioned as under:

In the case of *Luis Alex Cardozo and Others* in Goa Legislative Assembly, the speaker held that split being one-time
affair, and subsequent expulsion/disqualification of a member of the
split away Group cannot be made a ground for disqualification of
the remaining member. In the same case, the Speaker held that
reconsideration of a petition for the same cause of action cannot be
considered again. On the contrary, in two separate cases, viz. *Ravi
Naik & Others (Sanjay Bandekar/ Ratnakar Chopdekar) Case*\(^5\),
the earlier orders of the Speaker were reviewed and set aside by
the Acting Speaker. Besides, the Speaker opined that submission of
the petition after almost two years of the occurrence of the cause of
action was contrary to the doctrine of reasonableness of time, as
reflected in the Supreme Court's decision in the *Dhartipakar Madan
Lal Aggarwal v. Rajiv Gandhi Case*\(^6\). He accordingly disallowed
the petition. Exemption of the Speaker from the rigors of Para 5 of
the Tenth Schedule has also been variously interpreted. For
instance in the case of *Luis Proto Barbosa* (1990)\(^6\) in Goa, it was
contended that the respondent, who was acting as the Speaker at
the time of submission of the petition, by his act of tendering
resignation from the Indian National Congress, incurred
disqualification under Para 2 of the Tenth Schedule. As the
respondent was the Speaker of the House, another member, Shri
Kashinath Jhalmi, MLA, was elected in terms of Para 6(1) of the
Tenth Schedule to the Constitution to decide the petition. During
personal hearing, it was contended that the respondent's
resignation from the INC did not amount to violation of Para 2
because in the capacity of the Speaker, he was exempted under
Para 5 of the Tenth Schedule. Shri Jhalmi, however, overruled this
contention stating that the respondent should have made it known at
the time of tendering his resignation. The respondent was finally
disqualified.

\(^5\) *Ravi S. Naik Case*, 1991 (Goa LA), Speaker: Shri Surendra V. Sirsat, decision date:
15.02.1991

\(^6\) AIR 1987 SC 1577

\(^6\) *Luis Proto Barbosa Case*, 1990 (Goa LA), Speaker: Dr. Kashinath Jhalmi, decision date:
13.12.1990
As may be seen, the operation of the Anti-defection Law has thrown up a lot of complexities. The provisions of the Law have been understood and interpreted in different ways by different Presiding Officers while deciding cases under the Anti-defection Law. Some of the decisions of the Presiding Officers have been challenged in Courts of Law. In some cases, the Courts allowed the writ petitions challenging decision of Presiding Officers, while in some others the Courts upheld the decision. The implementation of the Anti-defection Law as understood through decisions of Presiding Officers and judgments by Courts of Law in some cases has brought to fore new perspectives vis-a-vis interpretation of various provisions of the Law. The endeavour of this theme-wise analytical study has been to facilitate comprehension of operation of the Law since its inception.

III. SUM UP

The major use of the Anti Defection Law was put to, in the course of its operation for just more than two and half decades, was to create as many split away groups as possible in Legislature, Particularly in small Legislatures, and particularly from small parties. The split away groups were treated as political parties for the purpose of the Anti-Defection Law. The emergence of such groups with not even a majority of the Legislators supporting the split has slowly ushered politics into a coalition era, which has now come to stay. Now the split provision has been removed from the Ante Defection Law, the provision which requires two-thirds of legislators in each legislature party to claim merger for non-application of disqualification provisions of Anti Defection Law, will be used only by very small legislature will be a difficult exercise.

Big and medium legislature parties will never be able to use the merger provision in view of their large sizes. For gaining numbers, the big medium legislature parties will prey on the smaller legislature parties and this phenomenon, will hopefully, in the long
run, bring an end to the coalition era with two major parties gobbling up between them the smaller legislature parties. In such a situation of the merger provision almost not being used by big and medium parties, what remains in the law is the draconian provision for disqualification of members for voluntarily giving up membership of the political party and for violating the whip.

The Anti Defection Law’s requirements of quantity for protection against disqualification were, and are, heavily skewed against a simple majority, that being the fundamental principle of democracy. In the split provision, the law had one extreme of allowing dissent when the legislators commanded just 33% (one-thirds) of the strength of the legislature parties which was less than the simple majority by 18%, a substantial quantum. In the merger provision that is still in the law, has another extreme of allowing it only when the legislators command 67% (two-thirds) of strength of the legislature parities which is more then the simple majority by 17% again a substantial quantum. The principal if simple majority had been and continues to be the casualty between these two extremes. Apart from this, unlike split, merger is not driven by dissent but by desire. There is thus in the Tenth Schedule, as amended by the Constitution (Ninety-First Amendment) Act, 2003, only provisions for punishment for defection and no provision for a safety-valve to release democratic dissent by as simple majority.

The Tenth Schedule, whatever the Supreme Court may say, is an assault on the freedom of legislators to speak and vote in the House. The reasoning given by the courts for reasonable restrictions on their right to speak and vote in the House is not convincing. Indeed fetters on the freedom of legislators to speak and vote in the House will come to direct conflict with Articles 75(3) and 164(2) of the constitution which require the council of ministers to be collectively responsible to the legislatures. If the legislatures’ expression of mind and vote are pre-determined through the
provisions of the Anti Defection Law, the operation of these Constitutional provisions, which are based upon the legislators' freedom to speech and vote in the House, will gravely suffer.

In view of its prohibitive provisions, the Anti Defection Law, as it stands now, had so far led to precipitation of political instability thereby leading to calling of early elections to Lok Sabha and Legislative Assemblies since the flexibility that ought to be there for government formation has been rigidified. Wisdom perhaps is yet to dawn despite the initial warning of the Chavan Committee on Defection that law was no solution to problem of defections.

Until 1985, there were not much instances of the Courts donning the mantle of the executive. As governance seriously suffered due to the provisions in the Anti Defection Law which abated to nullity the invaluable Constitutional principle of legislators freely and without fetters to nullity the account (their own) Governments, the Courts, in the name of judicial review, have overstepped their jurisdiction and usurped the role of governance with no accountability. Whether the Governments govern during the regime of the Anti Defection Law or whether the Courts govern through what they call "judicial activism" or "creative jurisprudence", in both cases, the principle of accountability has severely suffered. If governance has to be restored to the Executive as its exclusive preserve and domain and if course are to be held from crossing their Constitutional confines, it is imperative that legislatures will have to be restored to their pristine dignity as chambers of free play of legislators' right to speech and vote. Only when the governments are kept in suspense about the results of a voting in the house and only if the governments feel that their unreasonable actions will run the risk of being quashed by motions on the floor, the quality of governance will improve. The governments should always be kept on their toes. With the anti defection law in force, the governments are no more being
effectively called to account in the legislatures. Courts, in turn, and not legislatures are laying down not only the law, but even the public policy which under the constitution is not their job.

Thus, from the above topical discussions, it can be concluded that during the course of the implementation of the anti defection law, it is felt that there are several defects and shortcomings in the law. Even during discussion on and after passing the constitution [Ninety-First Amendment] Bill, 2003, fundamental issues in regard to serious lacunae and shortcomings in the law were raised on the floor of the houses of Parliament, in the media and in scholarly writings by experts on the following points:-

(i) The biggest blunder is to vest the adjudicatory power under the tenth Schedule in the Chairmen and Speakers of the Legislative Bodies.

(ii) A lot of difficulties have been felt in the implementation of the Anti Defection Law on account if the law being silent on the aspect of expulsion of members from their political parties. A major lacuna in the Law is that it makes no provision to cope with the situation arising out of expulsion of members from his political party and the status of an expelled member in the Legislative Bodies.

(iii) The Tenth Schedule does not define also the terms ‘voluntarily giving up the membership of his political party’; ‘political party’ and ‘defection’ though these terms have been repeatedly used in the Tenth Schedule.

(iv) No time frame for deciding the matter under the Tenth Schedule by the Chairmen and the Speakers of the Legislative Bodies has been provided.

(v) The involvement of the Committee of privileges in decision making under the Tenth Schedule is wrong.

(vi) The right to petition under the Tenth Schedule is confined only to member of the respective House. Neither the
citizens have a right to initiate a petition for disqualification on ground of defection against his own representative in the House and nor Speaker can act suo motu. He is not to act until a petition is submitted to him by any member.

(vii) The Speaker has no power to create political party.

(viii) The Tenth Schedule, whatever the Supreme Court may say, is an assault on the freedom of legislators to speak and vote in the House. It has robbed the politics of its dynamism. The Legislators are no more interested in the careful reading; second reading and third reading of the Bills, but in the careful reading of the whips Creativity and innovation amongst Legislators have been constantly and continuously blunted.

(ix) The interim orders are passed by the Presiding Officers in most of the cases only in favour of the ruling party.

(x) The provisions with regard to the independent and nominated members are ambiguous.

(xi) There is no provision in the Tenth Schedule with regard to punish the political party which encourages political defections and takes the defectors in its fold.

(xii) There are several drafting defects in Paragraph 4 (merger provision) of the Tenth Schedule.

(xiii) There is no provision in the Tenth Schedule with regard to the members of Legislatures who have made the politics a family business for generations.

Thus even after the enactment of the Constitution (Ninety-first Amendment) Act, 2003, there are still some grey area in the Anti Defection Law. It is hoped that these issued would also receive due attention in the appropriate quarters in course of time. What is needed is a comprehensive legislation for making the law more effective.