CHAPTER - 5
PROBLEM OF POLITICAL DEFECTION IN INDIA AND COMMONWEALTH COUNTRIES: A COMPARATIVE STUDY

I. INTRODUCTION

In a free democracy defection are inevitable, particularly where multi-party system exists. There have been phenomenon of defection or shifting party allegiance in advanced countries like United States, United Kingdom (Britain), Australia, Canada, New Zealand etc. This phenomenon is christanised as “floor crossing”, “Carpet Crossing”, “party hopping”, “dispute” and “waka-jumping” in different countries. In some countries defection are a non-issue and not perceived as problem, whereas in some other countries, they have at times threatened the very stability of the government. Naturally, therefore, while some countries deal with defections with the help of well established customs, conventions, and parliamentary practices and procedures, others have framed laws and rules to tackle the problems.

These defections are considered as an integral part of parliamentary democracy. What disappointed everyone in the Indian context is that these defections have been unprincipled, opportunistic and based on no ideology. It is not to say that the defections that have taken in other countries have all been principled defections based on sound ideology or principle with regard to the matter in issue, the researcher had adopted both the means i.e. digging into the past and taking an outlook at the position of law for defection around the globe having parliamentary form of government. The first aspect of Anti-Defection law in India -

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Beginning of New Era that led to the growth of Anti Defection Laws in India has been elaborately discussed in the previous chapter, while a sincere attempt has been made in this chapter to bring in the practice that prevails in other Nations/Parliaments of the world. Following are some cases of defection that took place in other Nations/countries.³

II. POLITICS OF DEFECTION IN COMMONWEALTH PARLIAMENTS VIS-A-VIS ANTI-DEFECTION LAW

(i) United Kingdom

In United Kingdom, changes of party allegiance do occur from time to time. However, the changes of party cause problems for the political parties concerned rather than for the House of Commons. In the past as well as in recent parliaments, there have been instances where members have changed their party affiliation⁴ Instances of fence sitting legislators, of some of the most eminent public men and parliamentarians defecting from their parties and of whole groups of legislators changing their political loyalties are not unknown in British Parliamentary history. The Austin Mitchell in his book “The Whigs in Opposition.” analyzes the voting pattern in the British House of Commons during the period 1812 to 1836 and relates the members vote on specific party issues with their party affiliation. He reaches the conclusion that while there was a hard core of unfailing government supporters and another hard core of consistent opposition members, there were two other categories. On both the sides which he calls the ‘Fringe’ and the ‘Weavers. While the formers defected from the party cause and voted against it only rarely, the latter were an unpredictable lot and did not show any consistency in their support to either party despite their formal party

³ Supra n., 1.
⁴ Supra n 2., at 68.
affiliations. Thus analyzed, the British House of Commons of 1802-26 had 250 MPs in the government ‘hard core’, 99 in the government ‘fringe’, 154 in the opposition ‘hard core’ and 66 in the opposition ‘fringe’. There were 114 MPs in the category of ‘Weavers’.5

Edmund Burke (1729-97 was the elected member of Parliament for Bristol in 1774. He, in his famous Bristol address on November 3, 1774 pronounced the doctrine clearly that a Member of Parliament is a representative of the people and not a delegate or ambassador of the constituency which elects him and that in his actions he must be guided above all by his own judgment and conscience. While Sir Robert Peel (1788-1850) did not accept the doctrine enunciated by Burke. He, in his Tammarth manifesto of 1835 and his subsequent address to his electors he held that the acts of a member of Parliament inside the House must be governed by the mandate he received from his constituents at the time of election and that having received such a mandate he was obliged to carry it out even if changed circumstances dictated a different course of action. However, ironically enough, Shortly after becoming Prime Minister for the second time in 1841, Peel himself had to desert the main programme of his 1835 manifesto and address. He had to adopt and implement a policy of free trade and introduce anti-corn-Law legislation in repudiation of the mandate for the protection of British agriculture by means of heavy import duties on foreign grain. But it is said that he had saved the nation only 112 conservative voting for him and 231 voted against him. He remain in the office with the help of free trader liberals till he was defected by United Front of Protectionists and Whigs in June 1846.6 William Gladstone (1809-1898) regarded as the greatest British statesman of the 19th century and the ‘Grand Old Man’ of Liberalism. He began his parliamentary career as a Conservative member in 1832. During Peel’s Ministry (1841-46) he crossed over to the liberal side and was

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5 Supra n., 1
made Vice-President of the Board of Trade and later Secretary of State for the Colonies. He lived to be Prime Minister four times. 

Between 1850-1865 Governments were defeated on an average of ten times in each session without resignation. The menace of defection, cross voting and fluidity of party alignment became so rampant that political parties had to tighten party discipline. In 1886 there was a mass defection from Liberal Party under the leadership of Joseph Chamberlain (1836-1914). Chamberlain was great opponent to the Irish Home Rule Bill crossed floor along with ninety three members of Parliament from the Ministry of Gladstone to form an independent group called Independent Unionists, but voted with Conservative which ultimately led to the fall of Gladstone Ministry.

Winston Churchill, who was returned to Parliament on the Conservative Party ticket in 1900 defected from the Conservative Party to join Liberal Party in 1904. From 1904 to 1922, he remained a liberal. Churchill was rewarded with office. He held various offices as a Liberal during 1906-1915 and from 1917-1922. Churchill contested the election in 1922 as a 'Lloyd George Liberal' and was defected by a massive majority. He was again defected second time when he contested a bye-election as an independent in 1924, and also third time to a conservative candidate. Finally he returned to Conservative Party and died as a Conservative.

In August 1931, the first Labour Prime Minister and one of the founders of the British Labour Party Ramsay MacDonald (1866-1937) defected from his party when majority of his cabinet refused to give consent to his proposal of enforcing cuts in unemployment benefits to save the country from general economic and foreign

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7 Id., at 49.
8 Rober J. Jackson, Rebels and Whips (1968), p.36.
9 Ibid.
10 Ibid.
exchange crisis. Only three of his cabinet colleagues namely J.H. Thomas, Snowden and Sankey followed him and defected from the Labour Party. Neither MacDonald nor any of his three supporters in the cabinet who repudiated the Labour Party with him, resigned their seats in the Commons to seek a fresh mandate. But at the General Election the non-defector members of MacDonald’s Labour Cabinet were routed while they were re-elected in October 1931. A no-confidence motion was brought against Nigel Nicolsen when some conservative members refused to support the conservative Government over the Suez issue. Mr. Nicolsen resigned his seat in the Parliament.

An even recent instances in British Parliamentary history where members have changed their party affiliations. Between 1979 and 1983, thirty one members (nearly all from Labour) left their party mainly to join a newly created party called the Social Democratic Party (SDP), between 1987 and 1992, three members left their party, there were two expulsions and two withdrawals of whip (one temporary) between 1977 and 1992, four member left their party, there were eight withdrawals of whip (all temporary, two resignations of whip (one temporary) and between 1977 and 2001 two members left their party there were four withdrawals of whip or suspensions from party (two temporary). It is relevant to mention here that in May 1976, the Labour Party lost its majority in the House of Commons. This was due mainly to by-election defeats but also to one member changing party.

There are no laws regarding the registration of political parties in U.K. If any members change his party alliance, he is not required to resign his seat in the Parliament. Similarly if a member expelled from his party would retain his seat. Seating in the House is

\[11\] Ibid.
\[12\] Supra n., 2, at 68.
\[13\] Ibid.
governed by convention and by not rules, but such a member would normally sit separately from party members.\textsuperscript{14}

In U.K. the members of the House of Lords are not elected and hold their seats for life. The House of Lords contains members from all the main political parties of United Kingdom. However the party balance is influenced indirectly only by elections, in that the Government can appoint as many of their supporters as they wish to seats in the House of Lords. Approximately one-third of the members of the House of Lords are not affiliated to any political party. They are politically independent. When a person is awarded a seat in the House of Lords, he does not immediately take a party whip and he is not required to declare his political affiliation. Equally they can resign a party whip at any time and this has virtually no impact on the political composition of the House. The Political balance of the House of Lords is, therefore, fluid. Party labels are not something that concern the House authorities. The House of Lords does not recognize defection as a problem or an issue of concern.\textsuperscript{15}

Rarely, members of the House of Lords do change their party affiliation or are expelled from their parties. There are no punitive measures imposed by the House on any member who can change their party affiliation. Similarly, there are no rules to stop independent members of the House joining a political party at any time. If a member of the House of Lords is expelled from his party, he is not disqualified from the membership of the House. The member would either join another party or sit as an independent member or freely cross benches which are separate seat from the party political seats. The change of party affiliation is not a problem. The individual political parties may have methods of trying to stop

\textsuperscript{14} Id., at 69.
\textsuperscript{15} ibid.
their members defecting but this is a matter for them not the House.  

(ii) **Australia**

Loose party system in Australia has led to a lot of instability. Real ideological polarization has not developed. Party alignments are too general and unstable with hardly any identification with party ideology or programmes. Legislators have not hesitated to shift their loyalties from a premier to an opposition leader and vice-versa with the result that new government have been formed and toppled in quick secession. Whereas, the functioning of the political parties in Australia can better be aptly described in the words of James Jupp:

"Australian political parties have been unstable phenomena. Party politics has been typified by faction, dissention and confusion .......... Governments change frequently enough.......the change of fortune has so often been accompanied by party disunity, by organizational chaos and the shifting of personal loyalties that it cannot be described as a swing in allegiances between two broad alternatives."  

In South Australia, for example, there were as many as 42 governments during a period of 45 years (1856-1901). In 1916 Hughes, Watson and Holoman defected from the Australian Labour Party(ALP) alongwith several legislators. In 1931 again several legislators under the leadership of Beasley deserted the Federal ALP and thereby brought about the downfall of the Seullin government. Because of this desertion Barley had earned the Nickname 'Stabber

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16 Supra n. 6 at 51-52.
18 Ibid.
Jack' and was called "Judas" by his erstwhile ALP colleagues. Again, after the September 1940 general elections, two independent members held the balance in the House of Representatives. The Fadden Government was overthrown when the two independents voted with Labour Opposition.

For twenty years, the typical governments in Australia at both the central and state levels have been coalitions often dependent on the support of minority groups. Handful of dissidents and small party factions have, therefore, acquired importance and power out of proportion to their strength and have played decisive roles in making and unmaking governments through actual or threatened defections. In 1916, 1929, 1931 and 1941 defections led to the fall of federal governments. At the state level as many as nine governments have been tippled due to intra-party factions and resultant defections. In the Australian Federal Parliament during the period 1950-2004 there had been 439 instances of floor crossing by members, Senator Reg Wright (Labour Party Tomowa) had the record of 150 times and another senator Ian Word (Labour Party Queensland) 130 times. But no action had been taken against those members by the House or by the party concerned.\(^\text{19}\)

While during the tenure of the thirty-ninth Parliament (1998-2001), two members of the House of Representatives resigned from the political party to which they belonged at the time of election in 1998. Even after resigning from their parties they still remained the members of the House, sat in the House as independents and moved to a different seating location in the chamber. At the General Elections held in November 2001, the members stood for re-election as independents, one was successful and other failed to retain his seat. In the senate also, there is nothing to prevent a member


\(^\text{20}\) Supra n., 2, at 34.
leaving his party in the course of the parliamentary term. There have been a few cases of sitting senators leaving their party and becoming independents or forming new parties. The most recent instance was that of a former leader of a minor party, the Australian Democrats, Senator Meg Lees, who became an independent in mid 2002 and has recently formed a new party called the Australian Progressive Alliance.

(iii) Canada

"Political parties" are the fundamental part of Canadian electoral process and detailed requirement concerning their registration are set out on part 18 of the Canada Elections Act. However, the Act does not define or describe what constitutes a "political party, instead defined a political party as an organization that has been registered in compliance with the procedures set out in the relevant legislation.\(^\text{21}\)

Canada has a biparty system. They are termed as Liberals and conservatives (now termed as "Progressive Conservatives). Besides these two main political parties, some small groups have also come up, viz., the cooperative commonwealth Federation, the Labour, the United Farmers, the Social Credit, etc. They are more of groups rather that parties. These parties are loosely organized and without any central organization.\(^\text{22}\) whereas, In the Canadian Parliament, although most members are elected with a party affiliation but they are not obliged to retain that party level during the whole of their mandate. A member who changes his party allegiance is under no obligation to resign his seat and stand for re-election. His entitlement to sit as a member in the House is not contingent upon political affiliation. There is no prohibition, legal or constitutional against the

\(^{21}\) Id., at 39.
practice of crossing the floor. There is no reference to the term 'defection' in the Constitution or in the Standing Order of the House of Commons or the Rules of the Senate. Also there is no provision for disqualifying a member on the ground of defection, who has voted against party lines or who has abstained from voting. However, in a responsible parliamentary Government, it is required that legislators, elected as party candidates, act in concert as united party caucuses during the term of the legislature and be held publicly accountable in the next election. The matter of discipline is particularly important for the Government party which must retain the support, or confidence, of the legislature to remain in office and more so if that Government party commands the support of only minority of legislators.  

If any member or members violates the whip or expelled from his party or chooses to sit as an independent, then the Speaker reassigns a new seat to the member. There are instances when members have changed parties and seating arrangements have been arranged accordingly. One of the opposition member named Jack Horner (Crowfoot) crossed the floor to the governing party on 20 April, 1977 and was appointed Minister without Portfolio the following day. During the thirty third Parliament (1984-88) one Government member (Robert Toupin) became an independent member and later became a member of the new Democrative Party before finally sitting again as an independent member. Every time the member announced the decision before the House and Speaker accordingly changed the seating arrangement in appropriate way as early as possible. Again during the thirty fourth Parliament (1988-93), a Government backbencher (Gilbert Chartrand) chose to sit as an independent with other members who had formed a new party, the Block Quebecois, a year later, the same member received

\[\text{Supra n., 2, at 39.}\]
permission to return to the Progressive Conservative Party causes and sit with its member.\textsuperscript{24}

Whereas the decision by a group of members to split from their original party has always been left entirely to the discretion of their members. The Speaker does not have any say in these matters. A split is deemed to have taken place when members request the Speaker to change the seating arrangements in the House so that they may sit opposite their former party or outside the block of seats reserved for it.\textsuperscript{25}

The decision of members to leave the party under which they were elected to form a new group has occurred on a number of occasions since confederation. These happenings occurred in 1943, 1963 and 1990. The most recent case of members splitting from a party to form another group occurred in September 2001 when eight members of the Canadian Alliance Party split off from the Democratic Representative caucus, while maintaining that they were still part of the Canadian Alliance Party. After being formally expelled from the Canadian Alliance party caucus, they decided to form a coalition with the twelve members of the progressive conservative party, to be identified as progressive conservative/Democratic Representative (PC /DR). The group requested full party recognition, namely with respect to seating in the House, Precedence and the allocation of time in all deliberations.\textsuperscript{26}

There have been several instances where members chose to leave their original political party and sit with another party or sit as an independent, in the Senate of Canada. Noteworthy of these are those of Senator Garry St. Germain, who was a progressive conservative from August 1983 to June 2001; became an

\textsuperscript{24} Ibid., at 40.
\textsuperscript{25} Ibid.
\textsuperscript{26} Ibid.

In his announcement, Senator Jean Paul Deschatelets stated that:

A number of Senators have reached the Conclusion that to serve Canada in the fullest sense, and to maintain the balance between representation by population and representation by region, they must take part in any proceedings or votes in the Senate independently and free of partisan dictates.

However, these Senators did not change their party affiliation nor they formed or joined a new party. But they described that their role in the Senate" be in accord with the concept of the Fathers of Confederation.” They desired to be associated only in their individual freedom land individual independence with respect to the discharge of their responsibilities as members of the Senate of Canada. As far as Senate is concerned, it is not an elected chamber. Senators can belong to a political party or not. They can change their political affiliation after their appointment and during their tenure in the Senate or remain independent. The Rules of the Senate Traditionally have referred only to Government and Opposition and have not distinguished on the basis of political parties. On 5 February, 2002, the Senate adopted a report to “accord official recognition to parties
that are registered as parties under the Canada Elections Act at the time that recognition is sought in the Senate and have at least five members in the Senate. Recognition would be withdrawn only if the party’s membership in the Senate fell below five members.” The Rules are in the process of being amended to reflect this decision.27

(iv) Kenya

When Kenya got its independence in 1963, the Republic of Kenya had a multi-party political system. On 12 December, 1964, the parties merged under the Ruling Party, Kenya African National Union (KANU) making the country a defector Single party state. This continued until 14 April, 1966 when a new party called Kenya Peoples Union (KPU) was formed. After that many members changed their political affiliation and joined the KPU. The practice then was simple as all it required of members desiring to change parties was for them to change their sitting positions from either the Government to the opposition Benches or vice versa. KPU’s membership rose to 28 in less than two weeks time (that is by 22nd April, 1966). This alarmed the Ruling party KANU, which initiated legislation to curb defection.28

The first law on defection was enacted by KANU under the Chairmanship of President Jomo Kenyatta after the resignation of Odinga and his followers. On 28th April, 1966 by an amendment to the constitution for protecting the voters of Kenya from betrayal by requiring every Member of Parliament who resigned from his party to resign his seat and seek a fresh mandate from the voters. The measure which was enacted accordingly was to the effect that a rule be established in Parliament that any member who resigned from the political party which supported him when he was elected or resigned from the party with which whole of his former party was subsequently

27 Id., at 41.
28 Supra n., 2., at 45.
merged should vacate his seat at the end of the session then in progress or the following session and seek a fresh mandate from the electors. This rule was not to cases where a political party ceased to exist as a party in Parliament by reason of amalgamation, coalition or dissolution.29

In accordance with the enactment of 1966 Act, Kenya operated as a *de facto* single party state until it was changed into a *de jure* single party state on 9 June, 1982. It was not until December 1991 that, *de jure* multi-partism issue was introduced through another Constitutional Amendment, which re-introduced the law to regulate defections. Section 40 of the present Constitution contains the provisions on political defections.

Section 40 reads as:

A member of the National Assembly who, having stood at his election as an elected member with the support of or as a supporter of a political party, or having accepted appointment as a nominated member as a supporter of a political party, either:

(a) resign from that party at a time when that party is a parliamentary party; or

(b) having, after the dissolution of that party, been a member of another parliamentary party, resigns from that other party at a time when that other party is a parliamentary party.

- Shall vacate his seat forthwith unless in the meantime that party of which he was last a member has ceased to exist as a parliamentary party or he has resigned his seat.

- Provided that this sub-section shall not apply to any member who is elected as Speaker.

- Since this law came into force and till April 2002 there were 16 cases of defections in the National Assembly-15 in the

29 Supra n., 6, 54.
seventh Parliament and one in the Eighth Parliament. Each of these defections has resulted in loss of the parliamentary seat for the member, so defecting and in each case, a by election ensued.\textsuperscript{30}

\textbf{(v) Newzealand - An Unworkable Law}

New Zealand have the similar situation as we saw in our country some time ago would seem to have arisen at least once. In 1881 Election, the Continuous ministry had won a majority of seats but found itself in minority in 1884 owing to floor crossing by a few backbenchers and had to seek a premature dissolution. Since then, the other instance happened after a long time in 1949 when one Langston resigned from the Labour Party and set as an Independent Labour dwang the last few months before the general election in that year, in which he lost his seat.\textsuperscript{31}

Whereas electoral reforms made in 1996 introduced the German system of proportional representation in place of the ‘first-past-the-post’ system. This led to the formation of several parties. Seven, being represented in Parliament. Even then there were 11 members out of 120 who defected from their parties after the introduction of proportional representation Parliament. Previously there had been a two party system by there was a lack of cohesiveness. Now to curb the problems of defection, the Electoral (Integrity) Amendment Act, 2001 was passed after the 1999 election. This came into force on 22 December, 2001.\textsuperscript{32}

The term ‘defection’ is not mentioned in the Act. The Act provides that the seat of a member becomes vacant if the member ceases to be a parliamentary member of the political party for which

\textsuperscript{30} Supra n., 2, at 46.
\textsuperscript{31} Supra n., 6 at 55.
\textsuperscript{32} Supra n., 2, at 53.
the Member of Parliament was elected. The member may cease to be member of the Parliamentary party by resignation or by expulsion from it. Accordingly, the seat of a member becomes vacant on two grounds. One is, if the member gives the Speaker a written notice that he has resigned from parliamentary membership of a party or wishes to be recognized as an independent member or a member of another political party. The other ground for such eventuality is that if the parliamentary leader of party gives the Speaker written notice that a member has been expelled from that parliamentary party. An independent member is not affected by the anti-defection law. He can join any party and leave it without any legislative consequences.

Whereas, the Speaker cannot raise the issue related to defections. He can raise the issue, in case of resignation and in case of expulsion, by parliamentary party leader. The Speaker accordingly decides the fate of the member. The Speaker is concerned only with whether a notice in the correct form has been given. There is no appeal against the decisions taken under the legislation. The present anti-defection law does not deal with splits. It applies to individual resignations and expulsions.

(vi) Nigeria

The political defections popularly known as 'Carpet Crossing' were rampant during the first Parliament of Nigeria from 1960 to 1966. Thereafter, the period between 1966 and 1979 witnessed the military regime. When the Second Republic Civilian Administration ushered in 1979, the Presidential Constitution of 1979 which ushered in the second Republic Civilian Administration, made provisions to curb such excesses. The third Republic which existed

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33 Ibid.
34 Ibid.
35 Ibid.
36 Ibid.
from 1990 to 1992 did not record any case of defections. The fourth Republic which came into existence on 29th May 1999, under the 1999 Constitution however, has been witnessing the incidents of carpet crossing.\(^{37}\)

Though the terms defection has not been formally defined by the Constitution Laws/standing order etc., Section 68 (1) (g) of the 1999 Constitution deals with the issue of defections. The section provides that a member of the Senate or the House of Representatives shall vacate his seat in the House of which he is a member if being a person whose election to the House was sponsored by a political party, he becomes a member of another political party before the expiration of the period for which that House was elected; provided that his membership of the latter political party is not as a result of a division in the political party of which he was previously a member or of a merger of two or more political parties or factions by one of which he was previously sponsored.\(^{38}\)

'As has been mentioned in the provision of Section 68 (1) (g) of the Constitution of Nigeria, those members have been exempted who defect by way of splits or mergers. However, there is no prescribed number as to what constitutes a split or merger. It suffices when there is a merger of a faction of one political party with another or when there is a distinct split.'

Nigeria being a young democracy is still in the early stages of development. In this context, the various issues of political defection are yet to be fully addressed and politically and legally tested by the legislature.\(^{39}\)

\(^{37}\) Supra n 2., at 54.

\(^{38}\) Ibid.

\(^{39}\) Ibid.
(vii) South Africa: An Outdated Law

South Africa’s post-apartheid Constitution included an anti-defection clause modeled on that contained in India’s Tenth Schedule. The clause provides that politicians lose membership of a legislature-national or provincial-if they cease to be member of the party that nominated them. The aim was to ensure political stability in what was expected to be a volatile transition from apartheid to no-apartheid politics by i) protecting the proportionality of Parliament; and ii) protecting multi-party democracy. On the basis of the proportion of the vote it received at the election.

i) The anti-defection clause was seen as a means of protecting the proportionality of the legislature as decided at the election. That is, it would ensure that an elected member’s decision to quit a party after the election would not take away one of the seats to which the party was entitled.

A key argument here is that it is ‘the party, and not the members, which is entitled to the seats’.\(^{40}\) The logic of the argument is based on South Africa’s electoral system-list proportional representation-under which the names of parties, not individual candidates, appear on the ballot paper. Thus, voters decide how many seats a party should receive in Parliament and politicians gain their seats in the legislature through their position on a party’s list. Permitting a member to quit the party but retain the seat would distort the proportionality between parties decided by voter at the election. The anti-defection law ensures that if a politician chooses to leave his or her party, then the party has the right to take back its seat and give it to another person on its list.

\(^{40}\) South Africa’s Constitutional Court made this ruling when the anti-defection law was challenged in 1996 and 1997. See the summary in United Democratic Party v. President of South Africa et.al. (I), op.cit., pp.17-19.
ii) The anti-defection clause was also seen as a means to protect multi-party democracy by reinforcing the position of smaller parties in the proportional system. Smaller parties were seen to be under threat because the African National Congress, which held two-thirds of the seats in the National Assembly, was in a position to offer inducements to members of smaller parties in order to get them to join its ranks. If this were allowed to occur, then the number of parties ultimately would decline and multi-party democracy could fail.  

In addition, allowing a governing party to entice members to defect to its rank was seen to potentially 'enable the governing party to obtain a special majority which it might not otherwise be able to muster and which is not a reflection of the view of the electorate.' Such outcome was seen to be inconsistent with democracy.

The anti-defection clause was tested in the country’s Constitutional Court in 1996 and 1997 and was ruled to be 'consistent with the core policies and principles of democracy, including representative government, freedom of speech and freedom of association.'

Again the court’s ruling was based on the primacy of parties in the electoral system. It found that parties, not individuals, were accountable to the electorate. Under an anti-defection clause, individual members were still free to follow the dictates of personal conscience and could resign if they felt the party had abandoned core principles. However, voters held the right to judge whether or not it was true that the party had deviated from its policy platform, and could exercise this judgment at the next election. That is, the...

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41 United Democratic Party v. President of South Africa et al. (I), op. cit., p.26.
42 South Africa's constitutional court made this ruling when the anti-defection law was challenged in 1996 and 1997. See the summary in United Democratic Party v. President of South Africa et al. (I), op. cit., pp.17-19.
43 New Zealand Justice and Electoral Committee Report, op. cit., p.586.
Court noted: A party which abandons its manifesto in a way not accepted by the electorate would probably lose at the next election.

The positive view of the effect of the anti-defection regulation is not universal. Political consultant David Welsh, writing for a South African research institute, notes that the ANC has found the combination of list-system proportional representation and anti-defection legislation highly effective in controlling its politicians. He argues that the law; gives the leadership a tight grip on the compilation of lists and ensures that, once elected, MPs toe the party line or face expulsion from Parliament.

With several years having passed since the transition to a non-apartheid system, the circumstances under which the anti-defection clause was introduced can be argued to have changed. In June 2002, the South African government enacted two constitutional amendments aimed at relaxing the anti-defection controls. The ANC fought for the legislation on the grounds that it strengthened democracy by giving 'elected public representatives the right to make choices within the confines of the Constitution.'

An opposition party, the United Democratic Movement, immediately launched legal proceeding to have the amendments struck down as unconstitutional. However, in October 2002, the Constitutional Court upheld the legislation, ruling that the anti-defection provision was not so fundamental to our constitutional order as to preclude any amendment of their provisions. Moreover, defections in a proportional representation system were not

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44 United Democratic Party v. President of South Africa et al. (I), op.cit., p.18.
46 "Court says yes to floor-crossing", South Africa.info, 4 October, 2002.
47 United Democratic Party v. President of South Africa et al. (I), op.cit., p.11.
inconsistent with democracy, nor was an anti-defection provision an essential attachment to the proportional representation system.\footnote{Ibid.}

In an interesting difference to its earlier view, the Court appeared to rule in favour of individuals over parties, arguing that:

Between elections...voters have no control over the conduct of their representatives. They cannot dictate to them how they must vote in Parliament, nor do they have any legal right to insist that they conduct themselves or refrain from conducting themselves in a particular manner. The fact that political representatives may act inconsistently with their mandates is a risk in all electoral systems.

......( If voters are unhappy) their remedy comes at the time of the next election when they decide how to cast their votes.

Nonetheless, while the Court found that legislation allowing party jumping (called ‘floor-crossing in South Africa) was not inconsistent with the Constitution, it did not approve of the way the government had introduced the amendments allowing floor-crossing at the national provincial level. While it allowed the new legislation to apply at local government level, it insisted that the government introduce a further constitutional amendment for national and provincial changes.\footnote{Id., at 40-58.} As result of this decision, it ruled in November 2002 that five KwaZulu-Natal legislators who defected to the ANC would not be protected and would lose their seats. However, in a further complexity, these legislators may be reinstated this year (2003) if Parliament passes the floor-crossing legislation because the proposed laws allows for retrospective protection.\footnote{Court ‘no’ to ANC floor-crossers’, South Africa.info, 21 November, 2002.}
Sri Lanka has a multi-party system very similar to the one we are familiar. The Parliament of Sri Lanka has been the witness to several defections. The United National Party (UNP) which was in power in 1948 was a collection of diverse political groups. Its nine years of power were characterized by Howard Wriggins as a “generous bonanza of cabinet posts to reward the faithful and to enlist additional support among key groups of voters.”¹⁵¹ The first defection—that of one of UNP’s Ministers- took place in 1949 over the UNP government’s disfranchisement of the plantation workers. The government persuaded the Tamil Congress to join forces with it in order to recoup any loss of support it might suffer due to this defection and the leader of the Tamil Congress was given a ministerial post. This lead to a split in the Tamil Congress (TC) and an independent section of it broke off to form the Fedral Party (FP). The second break from the UNP came in July 1951 when S.W.R.D. Bandaranaike, Leader of the House, resigned from the cabinet and the party had formed the Sri Lanka Freedom Party (SLFP). Dudley Senanaike who was invited to take over the Prime Ministership after the death of his father, dissolved Parliament (May 1952) UNP was returned as a single majority party in the elections and formed the government with the support of the Tamil Congress and a number of independents. Following a state of emergency, Prime Minister Senanaike resigned in October, 1953 and was succeeded by Sir John Kotelawala. Soon after, another Minister left the UNP Cabinet and the party owing to personal rift.⁵²

In April 1956, General Election, UNP was routed and a new coalition Mahajan Eksath Peramuna (MEP) led by S.W.R.D. Bandaranaike took over the reins of the government. The fluid state of party loyalties was evident even on the eve of the general election

⁵² Supra n., 6, at 53.
when the SLFP lost two important members to the UNP by defections.  

In the year 1960 General Election was held and a number of parties contested the election and UNP was again returned as the single majority party with SLFP as a close second. It formed the government which was however, defected within a month of taking over. Parliament was dissolved and fresh election ordered. Mrs. Bandaranaike succeeded in effecting an electoral agreement between the SLFP and the other parties opposed to the UNP. The result was that SLFP won 75 seats and could form a government of its own. In March 1964, the government, unwilling to risk open defeat in the House, prorogued Parliament. Before it reassembled in July, some defections were secured by the ruling party and a section of the United Left Front was persuaded to join the government. This resulted in a split of the Lanka Sama Smaj Party (LSSP) a part of which joined the SLFP to form a coalition. In 2001, 13 Government members joined the opposition and thereby the Government collapsed. However, in 2000, there was also an incident when just the opposite happened. Five members from opposition joined the Government and strengthened it.

Article 99 (13) of the Constitution of 1978 provides for the Anti-Defection Law. Under the Law when a member ceases by way of resignation, expulsion or otherwise, to be a member of a recognized political party or independent group on whose nomination paper his name appeared at the time of his becoming such member of Parliament, his seat becomes vacant upon the expiration of a period of one month from the date of his ceasing to be such member.
However, in coalition partnership, a party can break away from the partnership without inviting the provision of the Law.  

(ix) United States

United States has a two party system. Legislators in USA are usually free from rigid party discipline. Every Senator and Congressman is a Law unto himself. There does exist the office of the whip but in actual practice the whip has no power to whip the members into party line. Voting on almost all important legislative matters cuts across party lines and follows either the conservative coalition approach or each legislator votes on the basis of the needs and interests of his own constituents irrespective of what party wants or national interests are. Also as Daniel Berman says:

"Outright corruption is probably rare in Congress but almost outright corruption is not so rare......... Members of Congress especially those in the House of Representatives often find themselves virtually in the pockets of pressure groups compelled to do their biddings with far greater strength than the Congressmen feel themselves obliged to do the biddings of the party."  

If we apply the definition of defection to this phenomenon in the US where many legislators vote against the party programme on important issues without actually resigning from the party, the U.S Congress would be found to be replete with defectors and defections can be taken to be matters of normal and frequent occurrence. If defections, interpreted in limited sense of giving up one’s party and joining another, some examples of defection in USA are these Senator Strom Thurmond a democrat for number of years, founded a third party and ran for President against Truman and joined in Republican Party. In 1952 Wayne Mores, a Republican refused to

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57 Ibid.
support. Eisenhower had defected to the Democratic Party. The same voters who earlier sent Thurmond and Morse on Democratic and Republican party tickets respectively, later returned them on the opposite tickets over and over again. However, the vote in the House or the Senate can't lead to the change of the government because the real power lies with the President (Executive) who is irremovable except by impeachment.

(x) Papua New Guinea: An Essential Law

Although Papua New Guinea boasts one of the developing world’s most impressive record of democratic longevity, having held elections for almost 40 years, democracy in practice has been

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59 Id., at 57.
60 Ibid.
61 Independent State of Papua New Guinea: Part 5 - Strengthening of Political Parties. Division 5. Defection from Political Party and Voting Restriction. Article 65. Defection from or voting against a Registered Political Party:

1. A member of the Parliament, who was an endorsed candidate of a registered political party at the election at which he was elected to the Parliament, shall, during the term of the Parliament for which he was elected –
   (a) Not withdraw or resign from that registered political party except in accordance with Division 2; and Conti....
   (b) Subject to Section 60(2)(d) or Section 60(3)(a), not join another registered political party; and
   (c) Subject to Subsection (2), vote only in accordance with a resolution of that registered political party as determined by the member of that registered political party who are Member of the Parliament is the following only:
      (i) A motion of no-confidence brought against the Prime Minister, the Ministry or a Minister under Section 145 (motion of no Confidence) of the Constitution; and (ii) a vote for the election of a Prime Minister under Section 142 (The Prime Minister) of the Constitution; and (iii) a vote for the approval of the National Budget; and (iv) a vote to enact, amend or repeal a Constitutional Law.

2. A member of the Parliament who is a member of a registered political party may abstain from voting in cases referred to in subsection (1)(c).

66. Vote contrary to the Provisions of Section 65(I)(C) not to be counted.
The Vote of a member of the Parliament contrary to the provisions of Section 65(I)(C) shall not be counted.
67. Deemed resignation from office.
Where a member of the Parliament contravenes Section 65(I) -
(a) He is deemed to have resigned from the registered political party of which he was a member; and
(b) The Speaker shall give notification of the matter to the Registrar; and
(c) The Registrar shall refer the matter to the Ombudsman Commission; and
(d) The matter shall proceed under Section 59(4), Sections 60 and 61 as if the resignation were a resignation under Section 58.
68. Other penalties for contravention of Section 65.
A Member of the Parliament who contravenes Section 65, but to whom Section 60 applies –
(a) Shall refund to the registered political party all campaign and other expenses received from the registered political party in supporting him at the election; and
(b) Shall not be appointed as a Prime Minister, Minister, Vice-Minister or Chairman or Deputy Chairman of a Committee of the Parliament for the remainder of the life of the Parliament.
difficult—no government since independence in 1975 has survived a full five-year parliamentary term.\textsuperscript{62} A major problem has been the fragmented and unstable party system, which suffers from uncontrolled party jumping. MPs have regularly switched allegiance in return for ‘ministerial posts, perks, and other financial inducements’\textsuperscript{63} as political scientists Benjamin Reilly observes:

Because most political parties are simply vehicles for achieving and then maintaining political power, and have little in the way of a common ideology or policy agenda, there is a great deal of ‘party hopping’ by elected parliamentarians moving from one party label or camp to the next, offer in exchange for rewards such as the promise of a ministry or more direct financial inducements.\textsuperscript{64}

Underlying the fractured party system is the ethnic diversity of the country, which Reilly describes as being ‘both a blessing and a curse’. That is, it is a ‘blessing’ in that it makes it unlikely for one group to be able to control power alone, but it is a ‘curse’ in that such cleavages make cohesion difficult, with government comprising ‘impermanent coalitions of various parties, group and individuals.\textsuperscript{65}

Papua New Guinea’s electoral system, first-past-the-post, makes worse the difficulties arising from the clan and tribal divisions in that it allows candidates to be elected with a very low level of support.\textsuperscript{66} Reilly notes, for example, that 15 members of Parliament were elected in 1997 with less than 10 per cent of the vote each, there had attracted less than 7 per cent of the vote. Thus, ‘for many

\textsuperscript{63} James Chin, ‘Road to Political Reform in PNG lined with potholes’, Canberra Times, 3 November 2000.
\textsuperscript{64} Reilly, op.cit., pp.706-07 or Supra note 63, pp.706-07.
\textsuperscript{65} Papua New Guinea is home to 852 of the World’s languages that are ‘spoken by several thousand small and often mutually hostile clan and tribal groups’. See ibid., page 704.
\textsuperscript{66} Ibid.
MPs, their constituency is not the electorate which they supposedly represent, but the much smaller subgroup within their electorate to which they owe their allegiance, and their parliamentary positions. With such low levels of support, politicians are vulnerable to losing their seats at the next election if there is even a small shift in vote share. The result is extreme electoral instability, 'over half the parliament regularly lose their seats at each election.68

The integrity of Political Parties and Candidates Law

Anti-defection legislation was introduced in December 2000 as part of a package of reforms aimed at improving the country's electoral system, parliament and party system. The Law, an Organic Law called the Integrity of Political Parties and Candidate and Candidates Law, came into force for the 2002 election.69 Its aim is to ensure politicians cannot 'hop around for reasons of political opportunism.70

The Integrity Law restricts the freedom of Members of Parliament to change parties, and imposes penalties if they leave the party with which they were aligned when first elected and joining another party or become independent. Those who choose to leave their party must face la 'leadership tribunal' (the Ombudsman Commission), which decides whether their grounds for resignation are valid. Under the legislation, valid resignations are possible only when the party has breached it own constitution or when the party has been declared insolvent. 71 If the tribunal rules against the politician, a by-election must be held.

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67 Ibid.
68 Ibid.
70 Ibid.
71 Reilly, op.cit., at .710 or Supra n., 63, at 710.
In addition, MPs elected with party endorsement must vote in accordance with their party's position on key issues including the election of a prime minister, the Budget, votes of no-confidence, and constitutional amendments. Reilly notes that MPs can abstain, but if they vote against their party's position, they face a range of possible penalties, up to and including dismissal from the parliament. The law also imposes a range of restrictions on politicians who are elected as independents but who then join a party.

Reilly notes that the Integrity Law is an attempt at 'political engineering' or 'crafting the institutional “rules of the game” to achieve certain objectives'—in this case, party stability and therefore government stability:

Inherent in the new party system laws is the expectation that parties can be 'built' to a certain extent, not from the bottom up (as is usually the case), but from the top down, by forcing what are currently shifting coalitions of independent and weak parties into more structured and indeed permanent alliances over the course of each Parliament.

Reilly acknowledge that the net effects of the laws are unlikely to be seen for some time as such institutions must be kept constant for several years and through several elections before their strategic impacts stabilize and become clear to political actors and voters alike. But others are doubtful about whether it is possible to change Papua New Guinea's entrenched Political culture 'from above-in effect, by constitutional fiat.
In addition, there are fears that the integrity Law will encroach on the rights of individual Members of Parliament to 'represent their constituents as independents' and that it may result in entrenching 'a poor or even dangerous' Prime Minister in office for five years.76

One commentator pointed to the increase in parties— from the usual 20 to 42 in the 2002 elections—to argue that candidates already were attempting to find a way around the laws.77 That is, candidates preferred to keep their option open, either avoiding party membership or leading their own minor parties, so that they were not locked in to supporting a particular party for five years.78

It is too early to judge how successful the law has been in achieving its aims. In the 2002 elections, independents won only 17 of Parliament's 109 seats, but more parties (24) won seats. Whether or not the law will guarantee stability with such result is not yet clear. However, Reilly argues that, at the very least, the law is an innovative institutional response' to problems that have plagued the country's politics.

(xi) India: A Problematic Law

In January 2001, a consultation paper on India's electoral law discussed in problem of party jumping, noting that defections had 'haunted the Indian polity' for more than 30 years. The numbers given for defection were shocking: between 1967 and 1972, nearly 2000 of the roughly 4000 members of the Lok Sabha and Legislative Assemblies in the states and Union Territories defected and counter-defected.79

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76 Ibid.
78 Ibid.
In a bid to control party jumping, in 1985, India introduced Anti-Defection Law—the Tenth Schedule—which disqualified from Parliament any politician who voluntarily quit his or her party or who voted against it without first obtaining permission from the party or without such a vote being a party-sanctioned free (conscience) vote. However, the schedule exempted from disqualification those politicians who left their parties through a party split or joined another party through a party merger. The question of when a politician could be said to have defected was to be judged by the Chairman or the Speaker of the House.

However, the anti-defection law has proved to be problematic. Critics argue that the clauses allowing party jumping through party splits and mergers have made the legislation ineffective. The 2001 Consultation Paper noted that the law had little effect on the number of jumpers, serving to decrease individual defection but increase *en masse* defection. It argued that much of the problem lay with the implementation of the Schedule, with Speakers tending to act in a partisan manner and without due regard to the law’s provisions.

India’s the then Chief Election Commissioner, Dr Manohar Singh Gill, reinforced this interpretation of the root of the problem in June 2001 when he blamed the law’s failure on the ‘enforcing authority, the Speaker of the Legislature’, and not on the law itself.°° He argued that, because the Speaker was dependent on a political party for his position, the ‘ineffective’ law could work only if responsibility for enforcing it was taken from the Speaker and given to an independent body such as the Election Commission. In the absence of such a move, ‘the malaise of defection’ would continue to eat ---- into the political system like a cancer'.

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°° *Ibid.*, 23-24, The report noted:
By the end of March, 1971 approximately 50% of the legislators had changed their party affiliations and several of them did it more than once – some of them as many as five times. One MLA was found to have defected five times to be a minister for only five days.
Apart from throwing light on the Historical Background of political defection in India (in the previous chapter) and in the commonwealth Parliaments (in the present chapter), it is also important to study the comparative law relating to defection in different countries/world parliaments. By that we can analyze the present law by relating to defection in India as well as in world parliaments and thereby the law can be amended/corrected accordingly. For our convenience we can divide our study under two sub-heads i.e. world Parliaments handling defections without legislation and Parliaments having Anti Defection Laws, as follows:-

III. POLITICS OF DEFECTION IN WORLD PARLIAMENT HAVING LAW/NOT HAVING THE LAW

(i) Parliament Handling Defection without Legislation

Foremost among the Parliaments having no law to deal with defections is the mother of Parliaments itself. In the United Kingdom there is no bar on members changing their party affiliations. A member who defects is not required to resign. Seating in the House of Commons is governed by conventions and not by rules, but a member who has defected, would normally sit separately from party members.

In the Australian Parliament as well, there is no law or rule governing defections, other than internal party arrangements. Similar is the case of the Parliament of Canada, where there is no prohibition-legal or constitutional-against the practice of crossing the floor. The member's entitlement to sit as a member in the House is not contingent upon his political affiliation. The ship makes changes

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in the seating of a member or members with in a party and notifies the Speaker. Where a members decides to cross the floor and sit with another party, his new party whip determines the seating arrangement for him.

In Barbados and Malaysia, there is no law regulating defections, though there are cases of defections. In Barbados if a member defects, his seat should be declared vacant, thereby having the way for a by-election whereas in Malaysia, there was a Private Member’s Bill in 1978 to check defection of elected representatives by requiring a member of Parliament to vacate his seat within 30 days on his resignation or expulsion from the party on whose ticket he was originally elected.

In Bermuda also there is no provision in the Laws or in the Rules of the House of Assembly of Bermuda concerning political defections or members crossing the floor of the House. There is no such requirement under the Law that a sitting member of Parliament who switches political parties must resign from the Parliament when doing so, although there have been a few instances of non-elected members of a political party switching their affiliations to another party. Whereas Botswana Parliament has faced the problem of political defection but to a lesser degree. The noticeable defection took place in 1999 when eleven members of Parliament belonging to opposition party defected to form a new political party. On defection, they remained in the House because they had been elected by their constituents. There has not been any formal measure taken to combat defection.

The Parliaments of Cameroon, Dominica and Jamaica though have experience of political defection but no law has been enacted in this regard it has been viewed as a serious problem. Though such acts have been ridiculed and taunted by other members as well as public, nobody viewed it as a curse to be removed. There is no
provision, constitutional or otherwise, for dealing with defections, and nowhere has the term 'defection been formally defined.

In Namibia, there is no defection case so far. If any member defects, he loses his seat in the Parliament. If a member is expelled from his party, he automatically loses his seat in the Parliament. Any action relating to defection is taken within the party. The leader of the Party only informs the Speaker about party decision of expelling the member and as a result that member loses his seat in the Parliament. The Presiding Officers are not concerned with the situations like splits and mergers and hence they do not deal with the development taking place within the parties.

The peculiarity of the Parliament of Nauru is that it has no cohesive force in the form of political parties. The unicameral Parliament of Nauru is an eighteen-member body, elected by the people on the basis of adult suffrage. Since there is no political party, the individual members are free to act on their conscience. Once elected the members either become government front benches or members of the ruling group known as 'caucus' or of the opposition known as 'backbenchers'. The general polity is run on the issue to issue basis. Parliament of Nauru has not faced the problem of defection in true sense of the word because there are no recognized political parties and the mechanism of 'Whip' does not come into play. But in practice, when the members of the caucus switch side to align with back-benchers to form coalitions, the governments are brought down by invoking Article 24 (i) of the Constitution of Nauru. The censure or want of confidence motion have been moved as many as thirty five times during the last 27 years. The motions have been successfully carried in the Parliament on eighteen occasions resulting in the President and Cabinets either

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82 Supra note 2.
having been removed or having resigned from office on all these occasions.

However, no serious steps have been taken in Nauru to combat this menace of frequent change of government in the above related manner which impliedly means defection, though not defined. There are no constitutional provisions, laws or standing orders to check the abuse of no-confidence motion and use of invoking Article 24(i) of the Constitution. There is a general feeling on concern about this problem and it has been felt that ways and means should be found to check the abuse of no-confidence motion vis-à-vis frequent change of governments. Some of the proposals which have come up are: direct election of the Executive President by the people instead of the present arrangement where the Parliament elects the Presidents; amending Article 24 (i) of the Constitution to define justifiable grounds for taking recourse to vote of no-confidence motion; removal of the President by way of impeachment voted by two-thirds of the members instead of the present arrangement where absolute majority of nine members can remove the President, and to provide a fixed minimum tenure to executive government with cautious optimism, etc. Though concerns have been expressed by the legislators, pressure groups and the civil society, it may be a long way ahead when steps are taken in Nauru to tackle this typical problem of Waka-jumpers or defections continuously by way of an enactment.  

Similarly, the Parliament of Seychells has not enacted any law on defections, though these have been cases of floor crossing there.

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83 Constitution of Nauru: Article 24(1) provides that where Parliament on a resolution approved by at least one-half of the total member of number of Parliament resolve that the President and Ministers be removed from office on the grounds that it has no confidence in the cabinet, an election of a President shall be held.

84 Supra n., 2, at 16.
A distinctive feature of the Parliament of Tuvalu is that it does not have political parties. Therefore, there is no measure of law to combat defections. Members are more or less independent individuals in the House. They are free to walk in or walk out of a group, i.e. the government or the opposition group, as they wish or can choose to even remain alone. The Parliament of Tuvalu has witnessed several such cases of defection from the government to the opposition and vice-versa. The nature of defection here is somewhat different in the sense that once the members (government members in particular) realize that some of their colleagues are heading towards or involved in corruption, abuse of powers etc., they defect to rid them off from power and form a new government. The Parliament, having only fifteen members, is very vulnerable to such defections. The consequence of such defections mostly is the fall of government and formation of a new government.\(^{85}\)

(ii) Parliaments Having Anti-Defection Laws

Under the present head, the researcher will discuss the world Parliaments which have enacted legislations or framed rules to deal with defections. An attempt has been made in the following paragraphs to give information in brief under certain parameters and thereby elucidate the position prevalent in different countries comparatively. The position in India is taken as a reference point to facilitate a comparison.

(A) Voluntarily Giving up Membership of the Party

The anti-Defection Law in India *inter alia* provides that an elected Member of Parliament or a State Legislature, who has been elected as candidate set up by a political party, would be disqualified for being a member of the House, on the ground of defection if he

\(^{85}\) *Id.*, at 58.
voluntarily gives up his membership of such political party.\textsuperscript{86} The law on the subject passed by Bangladesh Parliament, in 1980, provides \textit{inter alia} that Member of Parliament shall vacate his seat if he resigns from the political party on whose ticket he contested that election. In Belize, the law, which came into force in January 2001, provides that a person ceases to be member by reason of crossing the floor.

In Ghana, Article 97 (1) (g) of the Constitution\textsuperscript{87} \textit{inter alia} provides that a member of Parliament shall vacate his seat in Parliament if he leaves the party of which he was a member at the time of his election to Parliament, to join another party or remains in Parliament as an independent member.

In Guyana, which as a system of proportional representation, a Constitution Amendment Act was brought about in the year 2000\textsuperscript{88} providing for disqualification of those members who declare that they would not support the list from which their names were extracted, or abstain from supporting the list or declare support for another list.

In Kenya, if a member of the National Assembly resigns from the Parliamentary Party he belongs to, he shall vacate his seat forthwith, unless in the meantime that party has ceased to exist as a Parliamentary Party or he has resigned his seat.\textsuperscript{89} Section 40 of the Constitution of Kenya provides as follows:

\begin{quote}
\textit{...}
\end{quote}

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\footnotesize{\textsuperscript{86}} \textit{id.}, at 67.
\footnotesize{\textsuperscript{87}} Tenth Schedule to the Constitution of India: Para (l)(a): Subject to the provisions of paragraphs 3, 4 and 5, a member of a House belonging to any political party shall be disqualified for being a member of the House, if he has voluntarily given up his membership of such political party.
\footnotesize{\textsuperscript{88}} Constitution of Ghana: Article 97: (Chapter X Composition of Parliament) (g) if he leaves the party of which he was a member at the time of his election to Parliament to join another party or seeks to remain in Parliament as an independent member,
\footnotesize{\textsuperscript{89}} Vide Constitutional amendment in 2000, Paragraph (3) was inserted in Article 156 of the Constitution providing for disqualification of those members who declare that they would not support the list from which their names were extracted, or abstain from supporting the list or declare support for another list.
\end{flushright}
If a member of the National Assembly who, having stood at election as an elected member with the support of or as a supporter of a political party, or having accepted appointment as a nominated member or as a supporter of a political party, either-

(a) resigns from that party at a time when that party is a parliamentary party; or

(b) having, after the dissolution of the party, been a member of another parliamentary party, resigns from that other party at a time when that other party is a parliamentary party.

Shall vacate his seat forthwith unless in the meantime that party of which he was last a member has ceased to exist as a parliamentary party or he has resigned his seat provided that this sub-section shall not apply to any member who is elected as Speaker.

In Lesotho, an amendment to the Electoral Act provides for disqualification of proportional representation members if he crosses the floor or resigns from the party, which had supported his candidature. However, the law is not applicable to the members having constituency seat.

In Malawi,90 the practice is that the Speaker declares vacant the seats of those members who have voluntarily ceased the membership of their party or joined another party or association or

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90 Section 40 of the Constitution provides for forthwith vacation of seat by a member who defects. Under the Section if a member of the National Assembly who, having stood at election as an elected member with the support of or as a supporter of a political party, or having accepted appointment as a nominated member or as a supporter of a political party, either — (a) resigns from that party at a time when the party is a parliamentary party; or (b) having, after the dissolution of that party, been a member of another parliamentary party, resigns from that other party at a time when that other party is a parliamentary party, shall vacate his seat forthwith unless in the meantime that party of which he was last a member has ceased to exist as a parliamentary party or he has resigned his seat provided his seat provided that this sub-section shall not apply to any member who is elected as Speaker.
organization whose activities are political in nature. The Parliament of Mozambique has a law, i.e. law 2/95 of 8 May 1995 to prevent the phenomenon of defection. Under the law, a deputy loses his seat when during that particular Legislature; he becomes member or carries out duties of another party, other than the party through which he was elected.91

In New Zealand, where floor – crossing is called ‘Waka-Jumping’, after the election and formation of a coalition government in 1999, the Electoral (Integrity) Amendment Act, 2001 was passed, which came into force on 22 December 2001. The law inter alia provides that a member’s seat in Parliament falls vacant if he ceases to be a Parliamentary member of the political party for which he was elected.92

In Nigeria, defection is known as “carpet-crossing”. A member of the Senate or the House of Representatives shall vacate his seat

91 Section 65 of the Constitution of Malawi; (Chapter VI the Legislature)
Member of one political party represented in the National Assembly, who was, at the time of his or her election, a member of one political party represented in the National Assembly, other than by that member alone but who has voluntarily ceased to be a member of that party and has joined another political party represented in the National Assembly.
(2) Notwithstanding subsection (1), all members of all parties shall have the absolute right to exercise a free vote in any and all proceedings of the National Assembly, and a member shall not have his or her seat declared vacant solely on account of his or her voting in contradiction to the recommendations of a political party, represented in the National Assembly, of which he or she is a member. Source: http://www.sdnp.org.mw/constitut/dilindx.html.

92 Section 55 A of the New Zealand Electoral (Integrity) Amendment Act, 2001: Member ceasing to be parliamentary member of political party

"(f) This section applies to every Member of Parliament, except a member elected as an independent.
"(2) The seat of a member of Parliament to whom this section applies becomes vacant if the Member of Parliament ceases to be a parliamentary member of the political party for which the Member of Parliament was elected.
"(3) For the purposes of subsection (2) a member of Parliament ceases to be a parliamentary member of the political party for which the member of Parliament was elected if, and only if, -
"(a) the member of Parliament delivers to the Speaker a written notice that complies with new section 55B; or
"(b) the parliamentary leader of the political party for which the member of Parliament was elected delivers to the Speaker a written notice that complies with Section 55C.

New Section 55A Applies to all members of Parliament other than members who were elected as independent members. The seat of a Member of Parliament to whom this section applies becomes vacant if the member ceases to be a parliamentary member of the political party for which the member was elected. A member ceases to be a parliamentary member of the political party for which the member was elected if, and if, -- the member delivers to the Speaker a written notice that complies with new section 55B (which is a notice indicating the member has resigned from parliamentary membership of the political party to which he or she was elected or wishes to be recognized for parliamentary purposes as either an independent member of Parliament or a member of another political party); or the parliamentary leader of the political party for which the member of Parliament was elected delivers to the Speaker a written notice that complies with new section 55C. Source: http://www.legislation.govt.nz.
if being a person whose election to the House was sponsored by a political party; he joins another party before the expiration of the period for which that House is elected.\textsuperscript{93}

The Constitution of Sierra Leone\textsuperscript{94} provides that a Member of Parliament shall vacate his seat in Parliament if he ceases to be a member of the political party for which he was a member at the time of his election to Parliament.

The Constitution of the Republic of Singapore under Article 46 (2) (b) provides that the seat of member shall become vacant if he ceases to be a member of, or is expelled or resigns from the political party for which he stood in the election.\textsuperscript{95}

In Papua New Guinea, an anti-defection legislation called the Integrity of Political Parties and Candidates Law which came into force for the 2002 election restricts the freedom of politicians to change party affiliation. The law also envisages penalties if members of the Legislature leave their party, with which they were aligned when first elected and join another party or become independent. If the member changes the party, he is required to face the 'leadership tribunal' (the Ombudsman Commission), which decides whether the grounds for resignation are valid. Under the law, valid resignation is possible when the party has breached its own constitution or when it

\textsuperscript{93} Section 68(1)(g) of the Constitution of the Federal Republic of Nigeria 1999 (Chapter V the Legislature C – Qualifications for 68. (1) A member of the Senate or of the House of Representatives shall vacate his seat in the House of which he is a member if before the expiration of the period for which that House was elected; Provided that his membership of the latter political party is not as a result of a division in the political party of which he was previously a member or of a merger of two or more political parties or factions by one of which he was previously sponsored; Source: http://www.nigeria.law.org/ConstitutionOfTheFederalRepublicOfNigeria.html.


(1) A member of Parliament shall vacate his seat in Parliament –

(k) if he ceases to be a member of the political party of which he was a member at the time of his election to Parliament and he so informs the Speaker, or the Speaker is so informed by the Leader of that political party;


\textsuperscript{95} Constitution of the Republic of Singapore, 1965.
has been declared insolvent. If the tribunal rules against the member, a by-election must be held.\textsuperscript{96}

In Pakistan also, anti-defection law is in existence and there have been instance of political defections. The Constitution of Pakistan vide Article 63A lays down the grounds of defection on which a member of parliamentary party in a House is disqualified. These, \textit{inter alia}, are if he resigns from membership of his political party or joins another parliamentary party.\textsuperscript{97}

\textsuperscript{96} Independent State of Papua New Guinea

Part5. – Strengthening of Political Parties, Division 5, Defection from Political Party and Voting Restriction.

Article 65 : Defection from or Voting against a Registered Political Party.

(1) A Member of the Parliament, who was an endorsed candidate of a registered political party at the election at which he was elected to the Parliament, shall, during the term of the Parliament for which he was elected –

(a) Not withdraw or resign from that registered political party except in accordance with Division 2; and Conti. . . .

(b) Subject to Section 60(2)(d) or Section 60(3)(a), not join another registered political party; and

(c) Subject to subsection (2), vote only in accordance with a resolution of that registered political party as determined by the member of that registered political party who are Member of the Parliament is the following only:

(i) A motion of no-confidence brought against the Prime Minister, the Ministry or a Minster under Section 145 (motion of no confidence) of the Constitution; and (ii) a vote for the election of a Prime Minister under Section 142 (The Prime Minister) of the Constitution; and (iii) a vote for the approval of the National Budget; and (iv) a vote to enact, amend or repeal a Constitutional Law.

(2) A member of the Parliament who is a member of a registered political party may abstain from voting in cases referred to in Subsection (1)(c).

66. Vote contrary to the provisions of Section 65(1)(c) not to be counted

The vote of a Member of the Parliament contrary to the provisions of Section 65(1)(c) shall not be counted.

67. Demand resignation from office –

Where a member of the Parliament contravenes Section 65(l)-

(a) He is deemed to have resigned from the registered political party of which he was a member; and

(b) The Speaker shall give notification of the matter to the Registrar; and

(c) The Registrar shall refer the matter to the Ombudsman Commission; and

(d) The matter shall proceed under Section 59(4), Sections 60 and 61 as if the resignation were a resignation under Section 58.

68. Other penalties for contravenes Section 65.

A member of the Parliament who contravenes Section 65, but to whom Section 60 applies -

(a) Shall refund to the registered political party all campaign and other expenses received from the registered political party in supporting him at the election; and

(b) Shall not be appointed as a Prime Minister, Minister, Vice-Minister or Chairman or Deputy Chairman of a Committee of the Parliament for the remainder of the life of the Parliament.

Source: http://www.pacii.org/pq/legis/consol_act/olotioppac2003542.

\textsuperscript{97} The Constitution of the Islamic Republic of Pakistan Part III the Federation of Pakistan

Chapter 2: The Majlis-E-Shoora (Parliament)

63A. Disqualification on grounds of defection, etc.

(l) If a member of a Parliamentary Party composed of a single political party in a House –

(a) Resigns from membership of his political party or joins another Parliamentary Party; or

(b) Votes or abstains from voting in the House contrary to any direction issued by the Parliamentary Party to which he belongs, in relations to-

(i) Election of the Prime Minister or the Chief Minister; or

(ii) A vote of confidence or a vote of no-confidence; or

(iii) A Money Bill;
In Samoa, if a candidate elected as a member, where the ballot paper for such election cites the candidate’s membership of a political party, shall sit in the Legislative Assembly as a member of that political party during the term for which the candidate was so elected. Where the ballot paper for such election cites the candidate’s membership of a political party and upon election, but prior to taking the oath of allegiance, it appears that such political party does not have sufficient membership (which should not be less than eight) to be recognized as a political party in the Legislative Assembly, under standing orders, the candidate, may, prior to taking the oath of allegiance, join another political party or become an independent in the manner provided by standing orders and

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He may be declared in writing by the Head of the Parliamentary Party to have defected from the political party, and the Head of the Parliamentary Party may forward a copy of the declaration to the Presiding Officer, and shall similarly forward a copy thereof to the member concerned:

Provided that before making the declaration, the Head of the Parliamentary Party shall provide such member with an opportunity to show cause as to why such declaration may not be made against him.

(3) A member of a House shall be deemed to be a member of a Parliamentary Party if he having been elected as a candidate or nominee of a political party which constitutes the Parliamentary Party in the House or, having been elected otherwise than as a candidate or nominee of a political party, has become a member of such Parliamentary Party after such election by means of a declaration in writing.

(4) Upon receipt of the declaration under clause (1), the Presiding Officer of the House shall within two days refer the declaration to the Chief Election Commissioner who shall lay the declaration before the Election Commission for its decision thereon confirming the declaration or otherwise within thirty days of its receipt by the Chief Election Commissioner

(4) Where the Election Commission confirms the declaration, the member referred to in clause (1) shall cease to be a member of the House and his seat shall become vacant.

(5) Any party aggrieved by the decision of the Election Commission may within thirty days, prefer an appeal to the Supreme Court which shall decide the matter within three months from the date of the filing of the appeal.

(6) Nothing contained in this Article shall apply to the Chairman or Speaker of a House.

(7) For the purpose of this Article-

(a) “House” means the National Assembly or the Senate in relation to the Federation and a Provincial Assembly in relation to the Province, as the case may be.

(b) “Presiding Officer” means the Speaker of the National Assembly, the Chairman of the Senate or the Speaker of the Provincial Assembly, as the case may be.


98 The Electoral Amendment Act, 2005 which came into force on 1st April, 2005 amended Part II-A of the Principal Act by inserting Section 15F which inter alia provides that a candidate elected as a member, where the ballot paper for such election cites the candidate’s membership of a political party, shall sit in the Legislative Assembly as a member of that political party during the term for which the candidate was so elected. Where the ballot paper for such election cites the candidate’s membership of a political party and upon election, but prior to taking the oath of allegiance, it appears that such political party does not have sufficient membership (which should not be less than eight) to be recognized as a political party in the Legislative Assembly, under Standing Orders, the candidate, may, prior to taking the oath of allegiance, join another political party or become an independent in the manner provided by Standing Orders and thereafter the elected candidate shall sit in the Legislative Assembly as a member of such other political party or as an independent, as the case may require, during the term for which the candidate was so elected. Provided that if a candidate resigns subsequently from such political party and becomes a member of another political party during the term for which the candidate was so elected, the seat of such candidate as a member of Parliament shall become vacant and such candidate shall be disqualified from holding such seat.
thereafter the elected candidate shall sit in the Legislative Assembly as a member of such other political party or as an independent, as the case may require, during the term for which the candidate was so elected. However, if candidate resigns subsequently from such political party and becomes a member of another political party during the term for which the candidate was so elected, the seat of such candidate as a Member of Parliament shall become vacant and such candidate shall be disqualified from holding such seat.

In South Africa, Schedule 47 of the Constitution of South Africa, as amended by Act No. 2 of 2003 provides *inter alia* that a person loses membership of the National Assembly, if he ceases to be a member of the party that nominated him as a member of the Assembly, unless that member has become a member of another party in accordance with Schedule 6A. Similarly, S.106 as amended provides *inter alia* that a person loses membership of Provincial Legislature if he ceases to be a member of the party that nominated him as a member of the Legislature, unless that member has become a member of another party in accordance with Schedule 6A.

Schedule 6A *inter alia* lays down a mechanism of window period which provides for retention of membership of National Assembly or Provincial Legislature after a change of party membership, merger between parties, sub division of parties and sub-division and merger of parties. In term of legislation, the time of 15 days window periods are from the first to the fifteenth day of September in the second year following the date of an election of the

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Chapter 4 – Parliament Section 47(3): A person loses membership of the National Assembly if that person;

a) Cases to be eligible;

b) Is absent from the Assembly without permission in circumstances for which the rules and orders of the Assembly prescribe loss of membership; or

c) Cases to be a member of the path that nominated the person as a member of the Assembly.

legislature and from the first to the fifteenth day of September in the fourth year following the date of an election of the legislature. The Act also incorporates a provision for the members to change their party allegiance during the first 15 days immediately following the date of commencement of the Act.

It must, however, be noted that in order to retain the membership of the Legislature in the event of change of party membership, merger, subdivision and subdivision and merger of parties, a member of a legislature who becomes a member of a party (the new party) other than the party which nominated that person as a member (the nominating party), whether the new party participated in an election or not, remains a member of that legislature if that member, whether by himself or herself or together with one or more members who, during the window period ceased to be members of the nominating party, represents not less than 10% of the total number of seats held by the nominating party in that legislature.

In Sri Lanka, under Article 99(13) of the Constitution, a member who ceases to be a member of his political party or independent group by way of resignation, expulsion or otherwise, loses his seat in the Legislature upon the expiration of a period of one month from the date of his ceasing to be such member.100

(13) (a) Where a Member of Parliament ceases, by resignation, expulsion or otherwise, to be a member of a recognized political party or independent group on whose nomination paper (hereinafter referred to as the "relevant nomination paper") his name appeared at the time of his becoming such Member of Parliament, his seat shall become vacant upon the expiration of a period of one month from the date of his ceasing to be such member:
(b) Where the seat of a Member of Parliament becomes vacant as provided in Article 66 (other than paragraph (g) of that Article) or by virtue of the preceding provisions of this paragraph the candidate from the relevant recognized political party or independent group who has secured the next highest number of preferences shall be declared elected to fill such vacancy. Provided that in the case of the expulsion of a Member of Parliament his seat shall not become vacant if prior to the expiration of the said period of one month he applied to the Supreme Court by petition in writing, and the Supreme Court upon such application determines that such expulsion was invalid. Such petition shall be inquired into by three Judges of the Supreme Court who shall make their determination within two months of the filing of such petition. Where the Supreme Court determines that the expulsion was valid the vacancy shall occur from the date of such determination. Source: http://www.priu.gov.lk/Cons_/1978Constitution/html.
In Tanzania, a member of the National Assembly shall cease to be a member and shall vacate his seat in the National Assembly if he ceases to be a member of that political party to which he belonged when he was elected or appointed as Member of Parliament.\(^\text{101}\)

In Trinidad and Tobago,\(^\text{102}\) if a member resigns from or is expelled by a political party, the leader of the concerned party in the House of Representatives is required to inform the Speaker about the same in writing. After being so informed, Speaker at the next sitting of the House makes declarations about the resignation/expulsion within 14 days. If he does not do so, he shall vacate his seat at the end of the said period of 14 days. If within the stipulated period, the concerned member institutes legal proceedings, he is not required to vacate his seat until the proceeding instituted by him are withdrawn or the question has been finally determined by a decision upholding the resignation or expulsion. However, the Standing Order of the House of Representatives had not been amended to give effect to this section of the Constitution.

In Uganda, Article 83 (1) (g) of the Constitution provides that any Member of Parliament who leaves the political party of which he stood as a candidate for election to Parliament and joins another party or remains in Parliament, as an Independent Member shall vacate his seat.

\(^{101}\) Constitution of Tanzania, 1977, Article 71(l)(e) provides that a member of the National Assembly if he ceases to be a member of that political party.

\(^{102}\) In Trinidad and Tobago, as per Section 49A(l) of the Constitution, where a member resigns from or is expelled by a political party, the Leader of the concerned party in the House of Representatives is required to inform the Speaker about the same in writing. After being so informed, the Speaker at the next sitting of the House makes a declaration about the resignation/expulsion within 14 days. If he does not do so, he shall vacate his seat at the end of the said period of 14 days. If within the stipulated period, the concerned member institutes legal proceedings, he is not required to vacate his seat until the proceedings instituted by him are withdrawn or the question has been finally determined by a decision upholding the resignation or expulsion. However, the Standing Orders of the House of Representatives had not been amended to give effect to Section of the Constitution.
In the Zambian Parliament also, a member of the National Assembly who becomes a member of political party other than the party of which he was an authorized candidate when he was elected to the National Assembly, loses his seat in the Parliament.

In Zimbabwe if a member, elected from one of the 120 Common Roll Constituencies ceases to belong to his political party and the party writes to the Speaker declaring that they have since parted ways with the members, the member ceases to be the member of the Legislature.\(^{103}\)

(B) Violating Party Directions/Whip

A Member of Parliament or a State Legislature in India also comes under the rigor of anti-defection law if he votes or abstains from voting 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, in either case, the prior permission of such political party, person or authority and such voting or abstention has not been condoned by such political party, person or authority within fifteen days from the date of such voting or abstention.\(^{104}\) Similarly, in Bangladesh the Constitution provides

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\(^{103}\) The Constitution of Zimbabwe, Chapter V Part 4-General Matters Relating to Parliament Article 41 Tenure of Seats of Members

(1) Subject to the provisions of this section, the seat of a member of Parliament shall become vacant only –

(e) If, being a member referred to in section 38(l)(a) and having ceased to be a member of the political party of which he was a member at the date of his election to Parliament, the political party concerned, by written notice to the Speaker, declares that he has ceased to represent its interests in Parliament; Source: http://www.chr.up.ac.za/hr_docs/constitutions/docs/Zimbabwe.

\(^{104}\) Tenth Schedule to the Constitution of India: Para (l)(b): Subject to the provisions of paragraphs 3, 4 and 5, a member of a House belonging to any political party shall be disqualified for being a member of the House, if he votes or abstains from voting in such House contrary to any direction issued by the political party to which he belongs or by any persons or authority authorized by it in this behalf, without obtaining, in either case, the prior permission of such political party, person or authority and such voting or abstention has not been condoned by such political party, person or authority within fifteen days from the date of such voting or abstention.

Explanation- For the purposes of this sub-paragraph,—

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

(b) A nominated member of a House shall,—

(i) Where he is a member of any political party on the date of his nomination as such member, be deemed to belong to such political party;
that a member of Parliament shall vacate his seat if he votes in Parliament against the party.

The defection law as confined in Article 63A of the Constitution of Pakistan *inter alia* provides that a member of Parliamentary party in the House will be disqualified if he votes or abstains from voting in the House contrary to any direction issued by the Parliamentary party to which he belongs in relation to election of the Prime Minister or the Chief Minister, a Vote of Confidence or a Vote of No-Confidence or a Money Bill.\(^{105}\)

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\(^{105}\) The Constitution of the Islamic Republic of Pakistan

Part III The Federation of Pakistan

Chapter 2: The Majlis-E-Shoora (Parliament)

63A. Disqualification on grounds of defection, etc.

(1) If a Member of a Parliament Party composed of a single political party in a House-

(a) Resigns from membership of his political party or joins another Parliamentary Party; or

(b) Votes or abstains from voting in the House contrary to any direction issued by the parliamentary Party to which he belongs, in relations to-

(i) Election of the Prime Minister or the Chief Minister; or

(ii) A vote of confidence or a vote of no-confidence; or

(iii) A Money Bill;

He may be declared in writing by the head of the Parliamentary Party to have defected from the political party, and the Head of the Parliamentary Party may forward a copy of the declaration to the Presiding Officer, and shall similarly forward a copy thereof to the member concerned; Provided that before making the declaration, the Head of the Parliamentary Party shall provide such member with an opportunity to show cause as to why such declaration may not be made against him.

(2) A member of a House shall be deemed to be a member of a Parliamentary Party if he having been elected as a candidate or nominee of a political party which constitutes the Parliamentary Party in the House or, having been elected otherwise than as a candidate or nominee of a political party, has become a member of such Parliamentary Party after such election by means of a declaration in writing.

(3) Upon receipt of the declaration under clause (I), the Presiding Officer of the House shall within two days refer the declaration to the Chief Election Commissioner who shall lay the declaration before the Election Commission for its decision thereon confirming the declaration or otherwise within thirty days of its receipt by the Chief Election Commissioner;

(4) Where the Election Commission confirms the declaration, the member referred to in clause (I) shall cease to be a member of the House and his seat shall become vacant.

(5) Any party aggrieved by the decision of the Election Commission may within thirty days, prefer an appeal to the Supreme Court which shall decide the matter within three months from the date of the filing of the appeal.

(6) Nothing contained in this Article shall apply to the Chairman or Speaker of a House.

(7) For the purpose of this Article –

(a) “House” means the National Assembly or the Senate in relation to the Federation and a Provincial Assembly in relation to the Province, as the case may be.

(b) “Presiding Officer” means the Speaker of the National Assembly, the Chairman of the Senate or the Speaker of the Provincial Assembly, as the case may be. Source: http://news.indianfo.com/spotlight/pakistanpolitics/15pakban.html.
In Papua New Guinea, the anti-defection law envisages that Members of Parliament elected with party endorsement must vote in accordance with their party's position on key issues including the election of a Prime Minister, the Budget, votes of no-confidence and Constitutional Amendments.106

In Sierra Leone, a member is required to vacate his seat for sitting and voting with members of a different party.107

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106 Independent State of Papua New Guinea
Part 5. — Strengthening of Political Parties. Division 5. Defection from Political Party and Voting Restriction. Article 65. Defection from or voting against registered political party;
(1) A Member of the Parliament, who was an endorsed candidate of a registered political party at the election at which he was elected to the Parliament, shall, during the term of the Parliament for which he was elected —
(a) Not withdraw or resign from that registered political party except in accordance with Division 2; and Conti.
(b) Subject to Section 60(2)(d) or Section 6(3)(a), not join another registered political party; and
(c) Subject to Subsection (2), vote only in accordance with a resolution of that registered political party as determined by the member of that registered political party who are Member of the Parliament is the following only-
(i) A motion of no-confidence brought against the Prime Minister, the Ministry or a Minister under Section 145 (motion of no confidence) of the Constitution; and (ii) a vote for the election of a Prime Minister under Section 142 (The Prime Minister) of the Constitution; and (iii) a vote for the approval of the National Budget; and (iv) a vote to enact, amend or repeal a Constitutional Law.
(2) A member of the Parliament who is a member of a registered political party may abstain from voting in cases referred to in subsection (1)(c).
66. Vote contrary to the Provisions of Section 65(I)(C) not to be counted.
The vote of a Member of the Parliament contrary to the provisions of Section 65(I)(C) shall not be counted.
67. deemed resignation from office.
Where a member of parliament contravenes Section 65(l)-
(a) He is deemed to have resigned from the registered political party of which he was a member; and
(b) The Speaker shall give notification of the matter to the Registrar; and
(c) The Registrar shall refer the matter to the Ombudsman Commission; and
(d) The matter shall proceed under Section 59(4), Sections 60 and 61 as if the resignation were a resignation under Section 58.
68. Other penalties for contravention of Section 65.
A Member of the Parliament who contravenes Section 65, but to whom Section 60 applies —
Supporting him at the election; and
(a) Shall refund to the registered political party all campaign and other expenses received from the registered political party in supporting him at the election; and
(b) Shall not be appointed as a Prime Minister, Vice-Minister or Chairman or Deputy Chairman of a Committee of the Parliament for the remainder of the life of the Parliament.
Section 77. Tenure of Seats of Members of Parliament
(l) A Member of Parliament shall vacate his seat in Parliament —
(k) if he ceases to be a member of the political party of which he was a member at the time of his election to Parliament and he so informs the Speaker, or the Speaker is so informed by the Leader of that political party;
Interestingly, in Malawi, Section 65 (2) of the Constitution provides that all members of parties shall have absolute right to exercise a free vote in any and all proceeding of National Assembly and a member shall not have his seat declared vacant solely on account of his voting in contradiction to the recommendations of his political party in the National Assembly.\textsuperscript{108}

(C) Splits/Mergers

In India, the Anti-Defection Law as contained in the Constitution (Fifty Second Amendment) Act, 1985 provides that no disqualification would be incurred in case where split in a party or merger of a party with another was claimed, provided that in the event of a split in the Legislature Party not less than one-third of its members decided to quit the party and in the case of a merger the decision was supported by not less than two-third of the members of the Legislature party concerned.

(D) Split Provision Deleted in India

The provision relating to split was severely criticized in India on the ground that while individual defection was punished, collective defection was condoned. Therefore, the provision relating to split has been deleted by the Constitution (Ninety-first Amendment) Act, 2003.

\textsuperscript{108} Section 65 of the Constitution of Malawi: (Chapter VI The Legislature) 65(1) The Speaker shall declare vacant the seat of any member of the National Assembly who was, at the time of his or her election, a member of one political party represented in the National Assembly, other than by that member alone but who has voluntarily ceased to be a member of that party and has joined another political party represented in the National Assembly. (2) Notwithstanding subsection (1), all members of all parties shall have the absolute right to exercise a free vote in any and all proceedings of the National Assembly, and a member shall not have his or her seat declared vacant solely on account of his or her voting in contradiction to the recommendations of a political party, represented in the National Assembly, of which he or she is a member.

In Bangladesh, there is no specific provision for splits and mergers in the Constitution or in any law or Rules of Procedure. In Ghana, a merger of parties at the national level sanctioned by the Constitution or membership of a coalition government of which his original party forms part shall not affect the status of a Member of Parliament.\textsuperscript{109}

In Nigeria, exemption is given in case of splits and mergers, however, there is no prescribed number as to what constitutes a split or a merger.\textsuperscript{110}

In Sierra Leone, both collective as well as individual defection are penalized.\textsuperscript{111}

In South Africa, as mentioned earlier, following the laid down conditions and procedure, a party could merge, sub-divide or sub-divide and merge only once by written notification to the Speaker during the 15-day window period.\textsuperscript{112}

\textsuperscript{109}Constitution of Ghana Article 97: (Chapter X Composition of Parliament) (g) if he leaves the party of which he was a member at the time of his election to Parliament to join another party or seeks to remain in Parliament as an Independent member, Source: http://www.ghanaweb.com/GhanaHomePage/republiconstitution.

\textsuperscript{110}Section 68(1)(g) of the Constitution of the Federal Republic of Nigeria 1999 [Chapter V The Legislature C-Qualifications for Membership of National Assembly and Right of Attendance]

68. (1) A member of the Senate or of the House of Representatives shall vacate his seat in the House of which he is a member if –

(g) being a person whose election to the House was sponsored by a political party, he becomes a member of another political party before the expiration of the period for which that House was elected; Provided that his membership of the latter political party is not as a result of a division in the political party of which he was previously a member or of a merger of two or more political parties or factions by one of which he was previously sponsored; Source: http://www.nigeria.law.org/ConstitutionOfTheFederalRepublicOfNigeria.html.

\textsuperscript{111}The Constitution of Sierra Leone, 1991 (Act No. 6 of 1991) Chapter VI-Part I Section 77: Tenure of Seats of Members of Parliament

(l) A Member of Parliament shall vacate his seat in Parliament –

(k) if he ceases to be a member of the political party of which he was a member at the time of his election to Parliament and he so informs the Speaker, or the Speaker is so informed by the Leader of that political party; Source: http://www.sierra-leone.org.Laws/Constitution1991.


Chapter 4 – Parliament Section 47(3): A person loses membership of the National Assembly if that person;

(a) Ceases to be eligible;

(b) is absent from the Assembly without permission in circumstances for which the rules and orders of the Assembly prescribe loss of membership; or

(c) Ceases to be a member of the party that nominated that person as a member of the Assembly.

In Belize, Guyana, New Zealand, Sri Lanka, Trinidad and Tobago, there are no legal provision for splits and mergers. In Mozambique, the law does not formally recognize splits amounts to a change in party affiliation and is dealt with as such under the

Vide Constitutional amendment in 2000, Paragraph (3) was inserted in Article 156 of the Constitution providing for disqualification of those members who declare that they would not support the list from which their names were extracted, or abstain from supporting the list or declare support for another list.

Section 55 A of the New Zealand Electoral (Integrity) Amendment Act, 2001 Member ceasing to be parliamentary member of Political Party

"(1) this section applies to every Member of Parliament, except a member elected as an independent."(2) The seat of a member of Parliament to whom this section applies becomes vacant if the Member of Parliament ceases to be a parliamentary member of the political party for which the Member of Parliament was elected.

("3) For the purposes of subsection (2), a member of Parliament ceases to be a parliamentary member of the political party for which the member of Parliament was elected, if and only if, -

"(a) the member of Parliament delivers to the Speaker a written notice that complies with section 55B; or

"(b) the parliament leader of the political party for which the member of Parliament was elected delivers to the Speaker a written notice that complies with section 55C.

New section 55A applies to all members of Parliament other than members who were elected as independent members. The seat of a Member of Parliament to whom this section applies becomes vacant if the member ceases to be a parliamentary member of the political party for which the member was elected. A member ceases to be a parliamentary member of the political party for which the member was elected, if and only if, -- the member delivers to the Speaker a written notice that complies with new section 55B (which is a notice indicating that the member has resigned from parliamentary membership of the political party to which he or she was elected or wishes to be recognized for parliamentary purposes as either an independent member of Parliament or a member of another political party); or the parliamentary leader of the political party for which the member of Parliament was elected delivers to the Speaker a written notice that complies with new section 55-C. Source: http://www.legislation.govt.nz.


Section 99 (13) Proportional Representation:

(13)(a) Where a Member of Parliament ceases, by resignation, expulsion or otherwise, to be a member of a recognized political party or independent group on whose nomination paper (hereinafter referred to as the “relevant nomination paper”) his name appeared at the time of his becoming such Member of Parliament, his seat shall become vacant upon the expiration of a period of one month from the date of his ceasing to be such member:

(b) Where the seat of a Member of Parliament becomes vacant as provided in Article 66 (other than paragraph (g) of that Article) or by virtue of the preceding provisions of this paragraph the candidate from the relevant recognized political party or independent group who has secured the next highest number of preferences shall be declared elected to fill such vacancy.

Provided that in the case of the expulsion of a Member of Parliament his seat shall not become vacant if prior to the expiration of the said period of one month he applies to the Supreme Court by petition in writing, and the Supreme Court upon such application determines that such expulsion was invalid. Such petition shall be inquired into by three Judges of the Supreme Court who shall make their determination within two months of the filing of such petition. Where the Supreme Court determines that the expulsion was valid the vacancy shall occur from the date of such determination. Source: http://www.priu.gov.lk/Cons/1978Constituton/html.

In Trinidad and Tobago, as per Section 49A(l) of the Constitution, where a member resigns from or is expelled by a political party, the Leader of the concerned party in the House of Representatives is required to inform the Speaker about the same in writing. After being so informed, the Speaker at the next sitting of the House makes a declaration about the resignation/expulsion within 14 days. If he does not do so, he shall vacate his seat at the end of the said period of 14 days. If within the stipulated period, the concerned member institutes legal proceedings, he is not required to vacate his seat until the proceedings institutes by him are withdrawn or the question has been finally determined by a decision upholding the resignation or expulsion. However, the Standing Orders of the House of Representatives had not been amended to give effect to Section of the Constitution.
provision of Law. In Zimbabwe, no exemption is given in case of splits and mergers.\textsuperscript{117}

\textbf{(E) Independent and Nominated Members}

One more important dimension of anti-defection law is with regard to the status of independent and nominated members in the event of their joining a political party. In India, an independent Member of Parliament or a State Legislature is disqualified if he joins any political party after his election. A nominated Member of Parliament or a State Legislature who is not a member of a political party at the time of his nomination and who has not become a member of any political party at the time of his nomination and who has not become a member of any political party before the expiry of six months from the date on which he takes his seat in the House, is disqualified if he joins any political party after the expiry of the said period of six months.

In Bangladesh, if a person after being elected as a Member of Parliament as an independent candidate joins any political party, he is deemed to have been elected as a nominee of that party. There is no provision for nominated member in Bangladesh Parliament. In Ghana and Siera Leone also a Member of Parliament vacates his seat in Parliament if he is elected as an independent candidate and joins a political party. In Belize and Guyana, there is no provision in respect of independent and nominated member or members. In Mozambique, if a Deputy resigns or is expelled from his party or

\textsuperscript{117} The Constitution of Zimbabwe, Chapter V Part 4 – General Matters Relating to Parliament Article 41 Tenure of seats of members

(f) Subject to the provisions of this section, the seat of a member of Parliament shall become vacant only-

(e) if, being a member referred to in section 38(l)(a) and having ceased to be a member of the political party of which he was a member at the date of his election to Parliament, the political party concerned, by written notice to the Speaker, declares that he has ceased to represent its interests in Parliament;

Source: http://www.chr.up.ac.za/hr_doc/constitutions/doc/Zimbabwe.
parliamentary bench and he remains not affiliated to another party, he becomes an independent.

In Lesotho, Malawi, and New Zealand, independent members would not lose their seats if they join any political party after election. In Papua New Guinea, a member shall vacate his seat in Parliament if having been elected as an independent candidate, he joins a political party. In Kenya, a member of the National

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118 Section 65 of the Constitution of Malawi: (Chapter VI The Legislature)
65(I) The Speaker shall declare vacant the seat of any member of the National Assembly who was, at the time of his or her election, a member of one political party represented in the National Assembly, other than by that member alone but who has voluntarily ceased to be a member of that party and has joined another political party represented in the National Assembly.

(2) Notwithstanding subsection (I), all members of all parties shall have the absolute right to exercise a free vote in any and all proceedings of the National Assembly, and a member shall not have his or her seat declared vacant solely on account of his or her voting in contradiction to the recommendations of a political party, represented in the National Assembly, of which he or she is a member.

119 Section 55A of the New Zealand (Integrity) Amendment Act, 2001: Member ceasing to be parliamentary member of political party
*(1)* this section applies to every Member of Parliament, except a member elected as an independent.

*(2)* The seat of a member of Parliament to whom this section applies becomes vacant if the Member of Parliament ceases to be a parliamentary member of the political party for which the Member of Parliament was elected.

*(3)* For the purposes of subsection (2), a member of Parliament ceases to be a parliamentary member of the political party for which the member of Parliament was elected if, and only if, -
*(a)* the member of Parliament delivers to the Speaker a written notice that complies with section 55B; or
*(b)* the parliamentary leader of the political party for which the member of Parliament was elected delivers to the Speaker a written notice that complies with section 55C.

New section 55A applies to all members of Parliament other than members who were elected as independent members. The seat of a Member of Parliament to whom this section applies becomes vacant if the member ceases to be a parliamentary member of the political party for which the member was elected if, and only if, - the member delivers to the Speaker a written notice that complies with new section 55B (which is a notice indicating that the member has resigned from parliamentary membership of the political party to which he or she was elected or wishes to be recognized for parliamentary purposes as either an independent member of Parliament or a member of another political party); or the parliamentary leader of the political party for which the member of Parliament was elected delivers a written notice that complies with new section 55C.

120 Independent State of Papua New Guinea
Part 5 – Strengthening of Political Parties. Division 5. Defection from Political Party and Voting Restriction
Article 65. Defection From or Voting Against a Registered Political Party
(I) A Member of the Parliament, who was an endorsed candidate of a registered political party at the election at which he was elected to the Parliament, shall, during the term of the Parliament for which he was elected –
(a) Not withdraw or resign from that registered political party except in accordance with Division 2; and Conti...
(b) Subject to Section 60(2)(d) or Section 60(3)(a), not join another registered political party; and
(c) Subject to Subsection (2), vote only in accordance with a resolution of that registered political party who are Member of the Parliament is the following only:-
(i) A motion of no-confidence brought against the Prime Minister, the Ministry or a Minister under Section145 (motion of no confidence) of the Constitution; and (ii) a vote for the election of a Prime Minister under Section 142 (The Prime Minister)

268
Assembly having accepted appointment as a nominated member of a political party shall vacate his seat.\(^{121}\) In Samoa, a candidate elected as a member, where the ballot paper for such election cites the candidates as independent (meaning the candidate is not a member of political party at the time of election), may prior to taking the oath of allegiance, join a political party in the manner provided by the standing order and thereafter such elected candidate shall sit in the Legislative Assembly as a member of that political party during the term for which the candidate was so elected.\(^{122}\)
In Singapore also, a nominated member’s seat becomes vacant if the member stands as a candidate for any political party in an election or if he is elected as a Member of Parliament for any constituency.\(^{123}\)

In Sri Lanka, independent candidates cannot contest individually. But they can contest under the symbol of an independent group and they would be subject to the provisions of anti-defection law.\(^{124}\) In Trinidad and Tobago, there are no provisions with respect to independent or nominated members\(^{125}\) in Uganda, any Member of Parliament who leaves the political party to which he stood as a candidate for election to Parliament and joins another party or remains in Parliament as an independent member shall vacate his seat.\(^{126}\) In Zambia, if an independent member or a nominated Member or Parliament is not debarred from joining a political party of their choice after election or nomination.

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\(^{124}\) The Constitution of the Democratic Socialist Republic of Sri Lanka, 1977; Chapter XIV – The Franchise and Elections:

Original Article 99 repealed and replaced by the Fourteenth Amendment to the Constitution, Sec (7).

Section 99(13) Proportional Representation:

(13) (a) Where a Member of Parliament ceases, by resignation, expulsion or otherwise, to be a member of a recognized political party or independent group on whose nomination paper (hereinafter referred to as the “relevant nomination paper”) his name appeared at the time of his becoming such Member of Parliament, his seat become vacant upon the expiration of a period of one month from the date of his ceasing to be such member:

(b) Where the seat of a Member of Parliament becomes vacant as provided in Article 66 (other than paragraph (g) of that Article) or by virtue of the preceding provisions of this paragraph the candidate from the from the relevant recognized political party or independent group who has secured the next highest number of preferences shall be declared elected to fill such vacancy.

Provided that in the case of the expulsion of a Member of Parliament his seat shall not become vacant if prior to the expiration of the said period of one month he applies to the Supreme Court by petition in writing, and the Supreme Court upon such application determines that such expulsion was invalid. Such petition shall be inquired into by three Judges of the Supreme Court who shall make their determination within two months of the filing of such petition. Where the Supreme Court determines that the expulsion was valid, the vacancy shall occur from the date of such determination.


\(^{125}\) In Trinidad and Tobago, as per Section 49A(l) of the Constitution, where a member resigns from or is expelled by political party, the Leader of the concerned party in the House of Representatives is required to inform the Speaker about the same in writing. After being so informed, the Speaker at the next sitting of the House makes a declaration about the resignation/expulsion within 14 days. If he does not do so, he shall vacate his seat at the end of the said period of 14 days. If within this stipulated period, the concerned member institutes legal proceedings, he is not required to vacate his seat until the proceedings institutes by him are withdrawn or the question has been finally determined by a decision of the Supreme Court. However, the Standing Orders of the House of Representatives had not been amended to give effect to Section of the Constitution.

\(^{126}\) Article 83 (l)(g) of the Constitution of Uganda provides that any Member of Parliament who leaves the political party of which he stood as a candidate for election to parliament and joins another party or remains in Parliament, as an independent member shall vacate his seat.
(F) Expelled Members

The position with regard to members who have been expelled from the original political parties differs from country to country. The anti-defection law in India does not state the position and status of members who are expelled from their political parties. Such a member however continues to be a member of the House and is seated separately from the block of seats earmarked for his original political party. In Bangladesh, if a member is expelled from his political party, the ‘dispute’ is referred to the Election Commission; whose decision is final and no appeal can be made against it. In Lesotho, in case a member is expelled from his political party, he is not disqualified from the membership of the same party but is seated separately in the House as is the case in India. In Belize and Guyana, the Constitution does not have any provisions dealing with the members expelled from their parties. In Malawi, a member who is expelled by his party for reason other than crossing the floor does not lose his seat. He remains not affiliated to another party, he becomes an independent. He keeps his seat and status as Deputy of Parliament for the full tenure of the Legislature as a representative of his voters.

In New Zealand, a member’s seat falls vacant if he is expelled from the membership of his political party. In Sierra Leone, the

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127 Vide Constitutional amendment in 2000, Paragraph (3) was inserted in Article 156 of the Constitution providing for disqualification of those members who declare that they would not support the list from which their names were extracted, or abstain from supporting the list or declare support for another list.

128 Section 65 of the Constitution of Malawi: (Chapter VI the Legislature)

65 (1) The Speaker shall declare vacant the seat of any member of the National Assembly who was, at the time of his or her election, a member of one political party represented in the National Assembly, other than by that member alone but who has voluntarily ceased to be a member of that party and has joined another political party represented in the National Assembly.

(2) Notwithstanding subsection (1), all members of all parties shall have the absolute right to exercise a free vote in any and all proceedings of the National Assembly, and a member shall not have his or her seat declared vacant solely on account of his or her voting in contradiction to the recommendations of a political party, represented in the National Assembly, of which he or she is a member.


129 Section 55A of the New Zealand Electoral (Integrity) Amendment Act 2001: Member ceasing to be parliamentary member of Political Party

*(1) this section applies to every Member of Parliament except a member elected as an independent.

271
practice is that when a member is expelled from the party, the Speaker sets up a committee which enquires into the matter and reports to the Speaker and the Speaker takes a view of the matter. The Speaker’s decision is, however, appealable in a Court of Law. In Singapore \(^{130}\) and Sri Lanka \(^{131}\) if a member is expelled from his party, he will lose his seat in Parliament. In Zambia, where the Speaker receives intimation from a political party regarding the expulsion of a member from the party, he has the mandate of the law in such a situation to inform the President and Electoral Commission that a vacancy has occurred in the membership of National Assembly.

“(2) The seat of a member of Parliament to whom this section applies becomes vacant if the Member of Parliament ceases to be a parliamentary member of the political party for which the Member of Parliament was elected.

“(3) For the purposes of subsection (2), a member of Parliament ceases to be a parliamentary member of the political party for which the member of Parliament was elected if, and only if, -

“(a) the member of Parliament delivers to the Speaker a written notice that complies with section 55B; or

“(b) the parliamentary leader of the political party for which the member of Parliament was elected delivers to the Speaker a written notice that complies with section 55C.

New section 55A applies to all members of Parliament other than members who were elected as independent members. The seat of a Member of Parliament to whom this section applies becomes vacant if the member ceases to be a parliamentary member of the political party for which the member was elected. A member ceases to be parliamentary member of the political party for which the member was elected if, and only if, - the member delivers to the Speaker a written notice that complies with new section 55B (which is a notice indicating that the member has resigned from parliamentary membership of the political party to which he or she was elected or wishes to be recognized for parliamentary purposes as either an independent member of Parliament or a member of another political party); or the parliamentary leader of the political party for which the member of Parliament was elected delivers to the Speaker a written notice that complies with new section 55C.


Section 99 (13) Proportional Representation:

(13) (a) Where a Member of Parliament ceases, by resignation, expulsion or otherwise, to be a member of a recognized political party or independent group on whose nomination paper (hereinafter referred to as the “relevant nomination paper”) his name appeared at the time of his becoming such Member of Parliament, his seat shall become vacant upon the expiration of a period of one month from the date of his ceasing to be such member:

(b) Where the seat of a Member of Parliament becomes vacant as provided in Article 66 (other than paragraph (g) of that Article) or by virtue of the preceding provisions of this paragraph the candidate from the relevant recognized political party or independent group who has secured the next highest number of preferences shall be declared elected to fill such vacancy.

Provided that in the case of the expulsion of a Member of Parliament his seat shall not become vacant if prior to the expiration of the said period of one month he applies to the Supreme Court by petition in writing, and the Supreme Court upon such application determines that such expulsion was invalid. Such petition shall be inquired into by three Judges of the Supreme Court who shall make their determination within two months of the filing of such petition. Where the Supreme Court determines that the expulsion was valid the vacancy shall occur from the date of such determination.

In Zimbabwe, the circumstances under which a member can be deemed to have ceased to belong to his party are not defined which means it can be through resignation, expulsion or defection, thus leaving a lot of discretion with the party and the member concerned. In such eventuality, the seat of the member is declared vacant and an election has to be held.\textsuperscript{132}

\textbf{(G) Exempting the Presiding Officer}

In order to facilitate the neutrality of the Presiding Officers, they need to be exempted from the rigour of the law if they sever their political connection with their original political party after election to the chair. Under the anti-defection law in India, a special provision has been made in respect of Presiding Officers and Deputy Presiding Officers which enable them to sever their connections with the political party to which they originally belonged without incurring any disqualification.\textsuperscript{133} They can rejoin the political party after laying down the office under the relevant law in Bangladesh, Guyana,\textsuperscript{134} Nigeria,\textsuperscript{135} Singapore,\textsuperscript{136} and Sri Lanka\textsuperscript{137} no such provision for

\textsuperscript{132} The Constitution of Zimbabwe; Chapter V Part 4 – General Matters Relating to Parliament Article 41 Tenure of seats of members

\textsuperscript{133} Para 5 of the Tenth Schedule to the Constitution of India provides as under:

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

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

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

\textsuperscript{134} Vide Constitutional amendment in 2000, Paragraph (3) was inserted in Article 156 of the Constitution providing for disqualification of those members who declare that they would not support the list from which their names were extracted, or abstain from supporting the list or declare support for another list.

\textsuperscript{135} Section 68(l)(g) of the Constitution of the Federal Republic of Nigeria 1999 (Chapter V The Legislature
exemption is available to the Speaker or the Deputy Speaker. In Belize, the Speaker is also subject to disqualification as a member of the House of Representatives if he crosses the floor. In Kenya, exemption is given to a member who is elected as Speaker and he does not attract the Provision relating to the law in this regard. In Mozambique, the Speaker and the Deputy Speaker of the Assembly are not required to exercise any impartiality or dissension from the political parties they belong to. Further, they have the right to vote, which in principle, would be affected in compliance with the party through which they were elected.

C – Qualifications for Membership of National Assembly and Right of Attendance.

68. (1) A member of the Senate or of the House of Representatives shall vacate his seat in the House of which he is a member if –

(g) being a person whose election to the House was sponsored by a political party, he becomes a member of another political party before the expiration of the period for which that House was elected; Provided that his membership of the latter political party is not as a result of a division in the political party of which he was previously a member or of a merger of two or more political parties or factions by one of which he was previously sponsored; Source: http://www.nigeria-law.org/ConstitutionoftheFederalRepublicOfNigeria.html.


Section 99 (13) Proportional Representation:

(13)(a) Where a Member of Parliament ceases, by resignation, expulsion or otherwise, to be a member of a recognized political party or independent group on whose nomination paper (hereinafter referred to as the ”relevant nomination paper”) his name appeared at the time of his becoming such Member of Parliament, his seat shall become vacant upon the expiration of a period of one month from the date of his ceasing to be such member:

(b) Where the seat of a Member of Parliament becomes vacant as provided in Article 66 (other than paragraph (g) of that Article) or by virtue of the preceding provisions of this paragraph the candidate from the relevant recognized political party or independent group who has secured the next highest number of preferences shall be declared elected to fit such vacancy. Provided that in the case of the expulsion of a Member of Parliament his seat shall not become vacant if prior to the expiration of the said period of one month he applies to the Supreme Court by petition in writing, and the Supreme Court upon such application determines that such expulsion was invalid. Such petition shall be inquired into by three Judges of the Supreme Court who shall make their determination within two months of the filing of such petition. Where the Supreme Court determines that the expulsion was valid the vacancy shall occur from the date of such determination.


Section 40 of the Constitution provides for forthwith vacation of seat by a member who defects. Under the Section if a member of the National Assembly who, having stood at election as an elected member with the support of or as a supporter of a political party, or having accepted appointment as a nominated member or as a supporter of a political party, either – (a) resigns from that party at a time when that party is a parliamentary party; or (b) having, after the dissolution of that party, been a member of another parliamentary party, resigns from that other party at a time when that other party is a parliamentary party, been a member of another parliamentary party, resigns from that other party at a time when that other party is a parliamentary party, shall vacate his seat forthwith unless in the meantime that party of which he was last a member has ceased to exist as a parliamentary party or he has resigned his seat provided that this sub-section shall not apply to any member who is elected as Speaker.
In New Zealand, Presiding Officer (unless originally elected as independent members) are not treated differently from the other members of their Parliamentary party.\(^{139}\) In Pakistan also the defection law as contained in Article 63A of the Constitution of Pakistan is not applicable to Chairman or the Speaker of a House.\(^{140}\)

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\(^{139}\) Section 55A of the New Zealand Electoral (Integrity) Amendment Act 2001: Member causing to be parliamentary member of Political Party

"(a) this section applies to every Member of Parliament, except a member elected as an independent.

"(b) The seat of a member of Parliament to whom this section applies becomes vacant if the Member of Parliament ceases to be a parliamentary member of the political party for which the Member of Parliament was elected.

"(3) For the purposes of subsection (2), a member of Parliament ceases to be a parliamentary member of the political party for which the Member of Parliament was elected and only if -

"(a) the member of Parliament delivers to the Speaker a written notice that complies with section 55B; or

"(b) the parliamentary leader of the political party for which the member of Parliament was elected delivers to the Speaker a written notice that complies with Section 55C.

New section 55A applies to all members of Parliament other than members who were elected as independent members. The seat of a party for which the member was elected. A member ceases to be a parliamentary member of the political party for which the member was elected if, and only if, -- the member delivers to the Speaker a written notice that complies with new section 55B (which is a notice indicating that the member has resigned from parliamentary membership of the political party to which he or she was elected or wishes to be recognized for parliamentary purposes as either an independent member of Parliament or a member of another political party); or the parliamentary leader of the political party for which the member of Parliament was elected delivers to the Speaker a written notice that complies with new Section 55C. Source: [http://www.legislation.govt.nz](http://www.legislation.govt.nz).

\(^{140}\) The Constitution of the Islamic Republic of Pakistan

Part III The Federation of Pakistan

Chapter 2: The Majlis-E-Shoora (Parliament)

63A. Disqualification on grounds of defection, etc.

(1) If a member of a Parliamentary Party composed of a single political party in a House-

(a) Resigns from membership of his political party or joins another Parliamentary Party; or

(b) Votes or abstains from voting in the House contrary to any direction issued by the Parliamentary party to which he belongs, in relations to-

(i) Election of the Prime Minister or the Chief Minister; or

(ii) A vote of confidence or a vote of no-confidence; or

(iii) A Money Bill.

He may be declared in writing by the Head of the parliamentary Party to have defected from the political party, and the Head of the Parliamentary Party may forward a copy of the declaration to the Presiding Officer, and shall similarly forward a copy thereof to the member concerned:

Provided that before making the declaration, the Head of the Parliamentary Party shall provide such member with an opportunity to show cause as to why such declaration may not be made against him.

(2) A member of a House shall be deemed to be a member of a parliamentary Party if he having been elected as a candidate or nominee of a political party which constitutes the Parliamentary Party in the House or, having been elected otherwise than as a candidate or nominee of a political party, has become a member of such Parliamentary Party after such election by means of declaration in writing.

(3) Upon receipt of the declaration under clause (i), the Presiding Officer of the House shall within two days refer the declaration to the Chief Election Commissioner who shall lay the declaration before the Election Commission for its decision thereon confirming the declaration or otherwise within thirty days of its receipt by the Chief Election Commissioner.

(4) Where the Election Commission confirms the declaration, the member referred to in clause (i) shall cease to be a member of the House and his seat shall become vacant.

(5) Any party aggrieved by the decision of the Election Commission may within thirty days, prefer an appeal to the Supreme Court which shall decide the matter within three months from the date of the filing of the appeal.

(6) Nothing contained in this Article shall apply to the Chairman or Speaker of a House.
In Zimbabwe, the question of defection or change of party affiliation in the case of the Speaker does not arise because the Speaker is not member of the Assembly. The Constitution of Zimbabwe under Article 69 (1) provides that there shall be a Speaker of National Assembly who shall be elected by the members of the Assembly from amongst persons who are qualified to be elected as members of the Assembly but are not members of the Assembly.\footnote{Constitution of Zimbabwe; Chapter V Part 4 - General Matters Relating to Parliament Article 41 Tenure of Seats of members}

\(\text{(H) Presiding Officer (Speaker/Chairman) as Deciding Authority}\)

While in several parliaments, Presiding officers are competent and the final authority to take a decision with regard to defection cases, in some countries an appeal can be made to the Court of the Election Commission or some other bodies. The position in India is that the Chairman or the Speaker of the respective House determines the question as to whether a member of a House of Parliament or a State Legislature has become subject to disqualification. The Presiding Officer, however, cannot take any initiative \textit{suo moto}. It has to be on the basis of a petition to be filed by a member. Where the question is with reference to the Chairman or the Speaker himself, a member of the concerned House, elected by it, in that behalf, will be decide by it. Although anti-defection law in India envisaged that no court shall have any jurisdiction in respect of any matter connected with the disqualification of a member of a House under the Anti-Defection Law, the Supreme Court of India has

\footnote{\textbf{For the purpose of this Article} –
\(\text{(a) “House” means the National Assembly or the Senate in relation to the Federation and a Provincial Assembly in relation to the Province, as the case may be.}\)
\(\text{(b) “Presiding Officer” means the Speaker of the National Assembly, the Chairman of the Senate or the Speaker of the Provincial Assembly, as the case may be.}\)
\(\text{Constitution of Zimbabwe; Chapter V Part 4 – General Matters Relating to Parliament}\)
\(\text{Article 41 Tenure of Seats of members}\)
\(\text{(f) Subject to the provisions of this section, the seat of a member of Parliament shall become vacant only –}\)
\(\text{(f) If, being a member referred to in section 38(f)(a) and having ceased to be a member of the political party of which he was a member at the date of his election to Parliament, the political party concerned, by written notice to the Speaker, declares that he has ceased to represent its interests in Parliament; Source: http://www.chr.up.ac.za/hr_docs/constitution/docs/Zimbabwe.}\)
held this provision, which bars the jurisdiction of Courts in such matters as *ultra vires*. Hence, members on many occasions have moved the concerned courts challenging the orders of the Speaker. The Court’s judgments have been implemented also.\(^\text{142}\)

In Bangladesh, all the decisions given by the Election Commission are final and no provision for appeal lies against such decisions. Whereas in India only a member of the House can file a petition for disqualifications of another member, in Bangladesh any person or a member can bring the dispute to the notice of the Speaker. The Speaker then prepares a statement containing all details and sends it to the Election Commission. In Belize, the Speaker is competent to take decision in case relating to floor crossing. However, the decision of the Speaker is appealable in the Supreme Court. In Lesotho, the question regarding disqualification of a member is taken up by the Presiding Officer *suo-moto*.

In Malawi, the Speaker’s decision is preceded by a motion from another member. The Presiding Officer cannot act unless there is a motion for the removal of a member.\(^\text{143}\)

\(^{142}\) Para 6 of the Tenth Schedule to the Constitution of India provides as under:

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

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

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

\(^{143}\) Section 65 of the Constitution of Malawi: (Chapter VI The Legislature)

65(1) The Speaker shall declare vacant the seat of any member of the National Assembly who was, at the time of his or her election, a member of one political party represented in the National Assembly, other than by the member alone but who has voluntarily ceased to be a member of that party and has joined another political party represented in the National Assembly.

(2) Notwithstanding subsection (1), all members of all parties shall have the absolute right to exercise a free vote in any and all proceedings of the National Assembly, and a member shall not have his or her seat declared vacant solely on account of his or her voting in contradiction to the recommendations of a political party, represented in the National Assembly, of which he or she is a member.

In Mozambique, the loss of the mandate of a Deputy is declared by the Standing Committee, a body chaired by the Speaker, which should be announced in the plenary and published in the Government Gazette. It is upon the Standing Committee to discuss the sanctions in consultations with the Chief Whip of the bench the deputy belongs to. Further, there is the choice to appeal against the sanctions to the plenary within eight days after notification.

In New Zealand, the Speaker acts only upon a written notice received either from the member himself in case of his resignation from the parliamentary membership of a party or from the parliamentary leader of a party in case of member’s expulsion from the party. The Speaker cannot raise the issue on his own initiative. In both the eventualities, the Speaker is concerned only with whether a notice in the correct form has been given. As advice in the case of resignation can only come from the member himself, there is unlikely to be any conflict. In the case of expulsion, the Speaker has no power to review a parliamentary party’s decision to expel a member. However, a member can only be expelled if at least two-thirds of the parliamentary members of the party support the member’s expulsion.\footnote{Section 55A of the New Zealand Electoral (Integrity) Amendment Act, 2001: Member ceasing to be parliamentary member of Political party. \(\text{(1)}\) this section applies to every Member of Parliament, except a member elected as an independent. \(\text{(2)}\) The seat of a member of Parliament to whom this section applies becomes vacant if the Member of Parliament ceases to be a parliamentary member of the political party for which the Member of Parliament was elected. \(\text{(3)}\) For the purposes of subsection (2), a member of Parliament ceases to be a parliamentary member of the political party for which the member of Parliament was elected if, and only if, -- \(\text{(a)}\) the member of Parliament delivers to the Speaker a written notice that complies with section 55B, or \(\text{(b)}\) the parliamentary leader of the political party for which the member of Parliament was elected delivers to the Speaker a written notice that complies with section 55C. New section 55A applies to all members of Parliament other than members who were elected as independent members. The seat of a Member of Parliament to whom this section applies becomes vacant if the member ceases to be a parliamentary member of the political party for which the member was elected. A member ceases to be a parliamentary member of the political party for which the member was elected if, and only if, - the member delivers to the Speaker a written notice that complies with new Section 55B (which is a notice indicating that the member has resigned from parliamentary membership of the political party to which he or she was elected or wishes to be recognized for parliamentary purposes as either an independent member of Parliament or a member of another political party); or the parliamentary leader of the political party for which the member of Parliament was elected delivers to the Speaker a written notice that complies with new Section 55C.}
In Pakistan, if a member comes under the rigour of disqualifications on the grounds laid down under Article 63A of the Constitution of Pakistan, he may be declared in writing by the Head of the Parliamentary Party to have defected from the political party, and the Head of the parliamentary Party to have defected from the political party, and the Head of the Parliamentary party may forward a copy of the declaration to the Presiding Officer and the member concerned. However, before making such declaration, the Head of Parliamentary Party shall provide the member with an opportunity to show cause as to why such declaration may not be made against him. The Presiding Officer shall, within two days, refer the declaration to the Chief Election Commissioner. Where the Election Commission confirms the declarations, the member shall cease to be a member of the House and his seat shall become vacant. Any party aggrieved by the decision of the Election Commission may prefer an appeal to the Supreme Court, within thirty days and the Court shall decide the matter within three months from the date of the filing of the appeal.\(^\text{145}\)

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1. If a member of a Parliamentary Party composed of a single political party in a House-
   (a) Resigns from membership of his political party or joins another Parliamentary Party; or
   (b) Votes or abstains from voting in the House contrary to any direction issued by the Parliamentary party to which he belongs, in relations to-
      (i) An election of the Prime Minister or the Chief Minister; or
      (ii) A vote of confidence or a vote of no-confidence; or
      (iii) A Money Bill;

He may be declared in writing by the Head of the parliamentary Party to have defected from the political party, and the Head of the Parliamentary Party may forward a copy of the declaration to the Presiding Officer, and shall similarly forward a copy thereof to the member concerned:

Provided that before making the declaration, the Head of the Parliamentary Party shall provide such member with an opportunity to show cause as to why such declaration may not be made against him.

2. A member of a House shall be deemed to be a member of a parliamentary Party if he having been elected as a candidate or nominee of a political party which constitutes the Parliamentary Party in the House or, having been elected otherwise than as a candidate or nominee of a political party, has become a member of such Parliamentary Party after such election by means of declaration in writing.

3. Upon receipt of the declaration under clause (i), the Presiding Officer of the House shall within two days refer the declaration to the Chief Election Commissioner who shall lay the declaration before the Election Commission for its decision thereon confirming the declaration or otherwise within thirty days of its receipt by the Chief Election Commissioner.
In Papua New Guinea, if a member chooses to change the party then he is required to face the 'leadership tribunal' (the Ombudsman Commission), which shall decide whether the grounds for resignation are valid. Under the legislation, valid resignation is possible only when the party has breached its own Constitution or when the party has been declared insolvent. If the tribunal rules against the member, a by-election must be held.\[146\]

(4) Where the Election Commission confirms the declaration, the member referred to in clause (l) shall cease to be a member of the House and his seat shall become vacant.

(5) Any party aggrieved by the decision of the Election Commission may within thirty days, prefer an appeal to the Supreme Court which shall decide the matter within three months from the date of the filing of the appeal.

(6) Nothing contained in this Article shall apply to the Chairman or Speaker of a House.

(7) For the purpose of this Article –
(a) "House" means the National Assembly or the Senate in relation to the Federation and a Provincial Assembly in relation to the Province, as the case may be.
(b) "Presiding Officer" means the Speaker of the National Assembly, the Chairman of the Senate or the Speaker of the Provincial Assembly, as the case may be.

Source: \[http://news.indiainfo.com/spotlight/pakistanpolls/15pakban.html\].

Independent State of Papua New Guinea
Part 5 - Strengthening of Political Parties. Division 5. Defection from Political Party and Voting Restriction
Article 65. Defection From or Voting Against a Registered Political Party

(1) A Member of the Parliament, who was an endorsed candidate of a registered political party at the election at which he was elected to the Parliament, shall, during the term of the Parliament for which he was elected –
(a) Not withdraw or resign from that registered political party except in accordance with Division 2; and Conti.....
(b) Subject to Section 60(2)(d) or Section 60(3)(a), not join another registered political party; and
(c) Subject to Subsection (2), vote only in accordance with a resolution of that registered political party who are Member of the Parliament is the following only:-
(i) A motion of no-confidence brought against the Prime Minister, the Ministry or a Minister under Section 145 (motion of no confidence) of the Constitution; and (ii) a vote for the election of a Prime Minister under Section 142 (The Prime Minister) of the Constitution; and (iii) a vote for the approval of the National Budget; and (iv) a vote to enact, amend or repeal a Constitutional Law.

(2) A member of the Parliament who is a member of a registered political party may abstain from voting in cases referred to in Subsection (l)(c).

66. Vote Contrary to Provisions of Section 65(l)(C) not to be counted.
The vote of a Member of the Parliament contrary to the provisions of Section 65(l)(c) shall not be counted.

67. Deemed Resignation from Office.
Where a member of the Parliament contravenes Section 65(l) –
(a) He is deemed to have resigned from the registered political party of which he was a member; and
(b) The Speaker shall give notification of the matter to the Registrar; and
(c) The Registrar shall refer the matter to the Ombudsman Commission; and
(d) The matter shall proceed under section 59(4), Sections 60 and 61 as if the resignation were a resignation under Section 58.

68. Other penalties for contravention of Section 65.
A Member of the Parliament who contravenes Section 65, but to whom Section 60 applies –
(a) Shall refund to the registered political party all campaign and other expenses received from the registered political party in supporting him at the election; and
(b) Shall not be appointed as a Prime Minister, Minister, Vice-Minister or Chairman or Deputy Chairman of a Committee of the Parliament for the remainder of the life of the Parliament.

Source: \[http://www.paclii.org/pg/legis/consol_act/olotioppac2003542\].
In Singapore, the Constitution gives Parliament the power to decide any question relating to the disqualification of a member. The decision of the Parliament in such cases is final. In South Africa, a member could resign from a party, during the window period, to form another party within the Legislature which had not been registered in terms of applicable law needed to formally apply for registration within the window period. Registration of the new party needed to be confirmed by the appropriate authority (i.e. the Independent Electoral Commission) within four months after the expiry of the window period. Within seven days after expiry of the window period, the Speaker would publish in the Gazette details of the altered composition of the Legislature. Where applicable, a party is required within seven days after the window period to submit to the Secretary of the Legislature a new list of candidates.

In Sri Lanka, there is no provision to enable a member to file a petition for disqualification against another member. Similarly, the Presiding Officer has no authority to take up matter relating to defection. However, in case of the expulsion of a member, his seat shall not become vacant if prior to the expiration of one month he applies to the Supreme Court by petition in writing and the Supreme Court upon such application determines that such expulsion was invalid. If the Court determines that the expulsion was valid, the vacancy shall occur from the date of such determination.

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   a) Ceases to be eligible;
   b) Is absent from the Assembly without permission in circumstances for which the rules and orders of the Assembly prescribe loss of membership; or
   c) Ceases to be a member of the party that nominated that person as a member of the Assembly.
149 The Constitution of the Democratic Socialist Republic of Sri Lanka, 1977; Chapter XIV - The Franchise and Elections:
Original Article 99 repealed and replaced by the Fourteenth Amendment to the Constitution, Sec.(7). Section 99 (13) Proportional Representation:
(13)(a) Where a Member of Parliament ceases, by resignation, expulsion or otherwise, to be a member
(I) Stipulation of Time limit for Deciding the Cases Relating to Defection

Under the anti-defection law in India, no time limit has been stipulated for deciding the cases relating to defection. There is a feeling in some quarters that there should be a reasonable time frame within which decision under the anti-defection law should be given. Unlike India, in Bangladesh, the Speaker shall, within thirty days after a dispute has arisen, prepare a statement and send it to the Election Commission to hear and determine the dispute. Where a dispute has been referred to the Election Commission by the Speaker for hearing and determination, the Commission shall, unless it is of opinion that a reference on any point regarding the dispute is required to be made to the Speaker, communicate, within fourteen days of the receipt of the statement, the statement to the parties to the dispute asking them to submit statements in writing, if any, on the dispute within such time as may be specified by it. The Election Commission decides the case and communicates its decision which is final and no appeal lies against such decision.

The position in Belize is that where a person is subject to disqualification for crossing the floor, the Leader of his party in the House of Representatives shall within seven days of such crossing of the floor, notify the Speaker in writing of such member crossing the floor. Upon receipt of the notice, the Speaker shall, if satisfied, make a declaration at the next sitting of the House of

of a recognized political party or independent group on whose nomination paper (hereinafter referred to as the "relevant nomination paper") his name appeared at the time of his becoming such Member of Parliament, his seat shall become vacant upon the expiration of a period of one month from the date of his ceasing to be such member:

(b) Where the seat of a Member of Parliament becomes vacant as provided in Article 66 (other than paragraph (g) of that Article) or by virtue of the preceding provisions of this paragraph the candidate from the relevant recognized political party or independent group who has secured the next highest number of preferences shall be declared elected to fit such vacancy.

Provided that in the case of the expulsion of a Member of Parliament his seat shall not become vacant if prior to the expiration of the said period of one month he applies to the Supreme Court by petition in writing, and the Supreme Court upon such application determines that such expulsion was invalid. Such petition shall be inquired into by three Judges of the Supreme Court who shall make their determination within two months of the filing of such petition. Where the Supreme Court determines that the expulsion was valid the vacancy shall occur from the date of such determination.

Representatives after receiving the notice that the member has ceased to be a member by reason of crossing the floor. The member may, within 21 days of making the declaration to the Speaker regarding disqualification, appeal against the declaration to the Supreme Court whose decision on the matter shall be final.

In New Zealand, when a member is expelled, he is given 21 working days time limit to respond and after considering the response (if any), at least two-thirds of the parliamentary members of that party shall agree that the leader should give notice to the Speaker that the member has been expelled from the party. In Pakistan, upon receipt of the declaration from the Head of the Parliamentary Party addressed to the Presiding Officer regarding defection of a member, the Presiding Officer of the House shall, within two days, refer the declaration to the Chief Election Commissioner, who shall lay the declaration before the Election Commission for its decision thereon confirming the declaration or otherwise within thirty days if its receipt by the Chief Election Commissioner. Any party aggrieved by the decision of the Election Commission may prefer an appeal to the Supreme Court within thirty days and the Court shall decide the matter with three months.\(^\text{150}\)

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\(^\text{150}\) Section 55 A of the New Zealand Electoral (Integrity) Amendment Act, 2001: Member ceasing to be parliamentary member of Political party.

*(1) this section applies to every Member of Parliament, except a member elected as an independent.

*(2) The seat of a member of Parliament to whom this section applies becomes vacant if the Member of Parliament ceases to be a parliamentary member of the political party for which the Member of Parliament was elected.

*(3) For the purposes of subsection (2), a member of Parliament ceases to be a parliamentary member of the political party for which the member of Parliament was elected if, and only if, --

*(a) the member of Parliament delivers to the Speaker a written notice that complies with section 55B; or

*(b) the parliamentary leader of the political party for which the member of Parliament was elected delivers to the Speaker a written notice that complies with section 55C.

New section 55A applies to all members of Parliament other than members who were elected as independent members. The seat of a Member of Parliament to whom this section applies becomes vacant if the member ceases to be a parliamentary member of the political party for which the member was elected. A member ceases to be a parliamentary member of the political party for which the member was elected if, and only if, - the member delivers to the Speaker a written notice that complies with new section 55B (which is a notice indicating that the member has resigned from parliamentary membership of the political party to which he or she was elected or wishes to be recognized for parliamentary purposes as either an independent member of Parliament or a member of another political party); or the parliamentary leader of the political party for which the member of Parliament was elected delivers to the Speaker a written notice that complies with new Section 55C.
In Sri Lanka, where a Member of Parliament ceases (by resignation, expulsion or otherwise), to be a member of a recognized political party or independent group on whose nomination paper his name appeared at the time of his becoming such Member of Parliament, his seat shall become vacant up on the expiration of a period of one month from the date of his ceasing to be such member.\footnote{151}

As mentioned earlier, in Trinidad and Tobago, a member who has been declared as having resigned from or been expelled by the party, has a right to institute legal proceedings challenging his resignation or expulsion. However, if within 14 days of such a declaration by the Speaker, the concerned member does not challenge the allegation of his resignation or expulsion; he shall vacate his seat at the end of 14 days. If within the stipulated period of 14 days, the concerned member institutes legal proceedings challenging his resignation or expulsion, he is not required to vacate his seat until the proceedings instituted by him are withdrawn, or the question has been finally determined by a decision upholding the resignation or expulsion.\footnote{152}

\footnote{151} The Constitution of the Democratic Socialist Republic of Sri Lanka, 1977; Chapter XIV – The Franchise and Elections; Original Article 99 repealed and replaced by the Fourteenth Amendment to the Constitution, Sec.(7). Section 99 (13) Proportional Representation: (13)(a) Where a Member of Parliament ceases, by resignation, expulsion or otherwise, to be a member of a recognized political party or independent group on whose nomination paper (hereinafter referred to as the "relevant nomination paper") his name appeared at the time of his becoming such Member of Parliament, his seat shall become vacant upon the expiration of a period of one month from the date of his ceasing to be such member:

\footnote{152} In Trinidad and Tobago, as per Section 49A(l) of the Constitution, where a member resigns from or is expelled by political party, the Leader of the concerned party in the House of Representatives is required to inform the Speaker about the same in writing. After being so informed, the Speaker at the next sitting of the House makes a declaration about the resignation/expulsion within 14 days. If he does
Anti-defection laws are, thus, evolving and dynamic. While many Parliaments have addressed the issue with the help of parliamentary rules, customs and conventions, some have passed laws and framed specific rules to cope with the issues relating to changing party affiliation by members.

On a fair perusal of the different strategies that are used to tackle the problems of defections, the researcher in the process of incorporating this chapter would cull out the important and key ways to handle the problem of defection in India which would be categorically addressed at the later part of the discussion, in accordance with the hypothesis.

IV. POSITION AT A GLANCE

On the basis of the study as explained in the foregoing pages of this chapter, a tabular statement given below indicates the position in a nutshell:

<table>
<thead>
<tr>
<th>Sr. No.</th>
<th>Name of the country/Parliament</th>
<th>Experience of defection</th>
<th>Having Anti-defection Law</th>
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<td>1.</td>
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<tr>
<td>7.</td>
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</tbody>
</table>

not do so, he shall vacate his seat at the end of the said period of 14 days. If within this stipulated period, the concerned member institutes legal proceedings, he is not required to vacate his seat until the proceedings instituted by him are withdrawn or the question has been finally determined by a decision upholding the resignation or expulsion. However, the Standing Orders of the House of Representatives had not been amended to give effect to Section of the Constitution.

Supra n., 2.
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<th></th>
<th>Country</th>
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Thus, a perusal of the above tabular statement reveals that total 65 nations/Parliaments of the world have been covered in this study. Out of total 65, only 10 nations/Parliaments do not have the experience of political defection whereas 55 do have the experience of defection; 30 nations have enacted the law to curb the malice of
political defections whereas 35 have not framed any law in this regard; 27 Parliaments have both the experience of defection and the law, 28 have experience of defection but have not enacted any law; seven have neither the experience of defection nor the law and three have anti defection law but have no experience of defection.

Out of total 65 Parliaments/countries of the world, 40 belong to the Commonwealth and remaining 25 are outside the Commonwealth. Out of the 40 Parliaments in the Commonwealth, 34 Parliaments have the experience of political defection, while only six do not have such experience. As regards the anti-defection laws, 23 nations/Parliaments in the Commonwealth have framed such laws while 17 countries do not have any such laws. Twenty Parliaments/countries have both; experience of political defections and the anti defection laws; 14 Parliaments have experience of political defection but have not framed any law in this regard, three Parliaments have neither the anti-defection law nor the experience of defection and three Parliaments have anti-defection laws but do not have any case of defection.

As far as the total 25 Parliaments/countries outside the Commonwealth are concerned, 21 Parliaments have the experience of political defection and only four Parliaments do not have any case of political defection; seven nations have framed the anti-defection laws and 18 do not have any such law; 7 Parliaments have both i.e. The experience of defection and Anti-defection Law and 14 have cases of political defection, but do not have any Anti-defection law; four Parliaments have neither the anti-defection laws nor the experience of political defections.