CHAPTER - 6

ROLE AND POSITION OF LOK SABHA SPEAKER
UNDER THE TENTH SCHEDULE

I. INTRODUCTION

The office of the Speaker occupies a pivotal position in our parliamentary democracy. In fact to a great extent the success of a parliamentary system depends upon him and at least the late Pandit Jawahar Lal Nehru was very well aware of this and that was the reason why he showed due respect to him. Shortly before the First General Election at an official reception; Congress had crowded around him as usual talking excitedly about the coming poll. In reply to a question, Nehru said his current worry was to get on the order delimiting constituencies, the signatures of Speaker Mavalankar before the latter left Delhi for convalescence in Ahmedabad.

That, boomed a few Congressmen in Hindi, was no problem. The word could be sent to Mr. Mavalankar to come to Parliament House. The famous frown appeared on Nehru’s brow. But the feared explosion did not follow. Instead he explained to his audience in a deliberately low tone and carefully measured words. "Speaker Sahib ko bulate nahin hain; unke pass jate hain." (It is not for us to send for the speaker, it is our duty to got to him.

The Speaker is the conventional and ceremonial head of the popular House of legislature. He is the guardian of the dignity of the House and of its rights and privileges. The

importance of the House of the Speaker was emphasized by the late Prime Minister, Jawahar Lal Nehru who observed:

"The Speaker represents the House. He represents the dignity of the House and because of the House represents the nation, in a particular way. The Speaker becomes the symbol of nation's freedom and liberty".³

Whereas, the responsibility entrusted to the Speaker is so onerous that he cannot afford to overlook any aspect of parliamentary life. His actions come under alone scrutiny in the House and also widely reported in the mass media. Now the Speaker action becomes important because he comes under the scrutiny of millions of people.

Even though the Speaker speaks rarely in the House when he does, he speaks for the House as a whole. The Speaker is looked upon as the true guardian of the traditions of parliamentary democracy. He is placed very high in the warrant of procedure in our country, standing next only to the President, the Vice-President and the Prime Minister. Adequate powers vested in the office of the Speaker to help him in the smooth conduct of the parliamentary proceedings and for protecting the independence and impartiality of the office.

II. ROLE/POSITION OF SPEAKER UNDER THE TENTH SCHEDULE

Besides others, the powers vested in the presiding officers or the position of the speaker under the Tenth

Schedule to the Constitution of India is being discussed as under:

(i) **Finality of the Decision by the Speaker**

*Para 6: Decision on question as to disqualification on ground of defection:*

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

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

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

Tenth Schedule was added to the Constitution by the Constitution (52nd Amendment) Act, 1985 with effect from 1st March, 1985, to provide for detailed provisions as to disqualification on the ground of defection with reference *inter alia*, to Article 102 (2) that deals with "disqualification for membership" of Parliament. Paragraph 6 (1) amongst others, vests the authority to take a decision on the question of
disqualification on ground of defection unto the Chairman of Rajya Sabha or the Speaker of Lok Sabha, as the case may be. This provision declares that the decision of the said authority "shall be final". Whereas, Para 6 (2) states that all the proceedings relating to decision on the question of disqualification on the ground of defection "shall be deemed to be proceedings in Parliament within the meaning of Article 122".

Paragraph 7 of Tenth Schedule contains an express bar of Jurisdiction of courts. It reads as under:

**Bar of Jurisdiction of Courts:** Not withstanding anything in this Constitution, no Court shall have any jurisdiction in respect of any matter connected with the disqualification of a member of a House under this Schedule.

It was in the context of these provision that question relating to the parameters of judicial review of the exercise of a constitutional power in the face of constitutional bar on the jurisdiction of the Court arose before a Constitution bench of the Supreme Court in the case of *Kihota Hollohan v. Zachillu*. Amongst others, the matter was examined by the Supreme Court with reference to the immunity under Article 122, exclusively of the jurisdiction vested in the authority mentioned in the Tenth Schedule and the concept of "finality", in addition to an express bar making it a non-justifiable area. Construing the word "finality" and referring, *inter alia*, to interpretation of similar finally clause in Article 217 (3) in the case of *Union of India v. Jyoti Prakash Mitter* and in Article

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311 (3) as construed in *Union of India v. Tulsi Ram Patel.* The Supreme Court held that the determinative jurisdiction of the Speaker or the Chairman in the Tenth Schedule was a judicial power and it was inappropriate to claim that it was within the non-justiciable legislative area. The court referred to the case of *Express Newspaper (P) Ltd. v. Union of India* and quoted the exposition as to what distinguishes a judicial power from a legislative power in *Australian Boot Trade Employees Federation v. Whybrod & Company.*

If the dispute is as to the relative right of parties as they rest on past or present circumstances, the award is in the nature of a judgment, which might have been the decree of ordinary judicial tribunal acting under the ordinary judicial power. There the law applicable to the case must be observed. If however, the dispute is as to what shall in the future be the mutual rights and responsibilities of the parties in other words, if no present rights are asserted or denied, but a future rule of conduct is to be prescribed, thus creating new rights and obligations, with sanctions for non-conformity, then the determination that so prescribes, call it an award, or arbitration, determination, or decision or what you will, is essentially of a legislative character, and limited only by the law which authorizes it. If, again, these are neither present rights asserted, nor a future rule of conduct prescribed, but merely a fact ascertained necessary for the practical effectuation of admitted rights, the

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8. (1910) 10 CLR 265.
proceeding, though called an arbitration, is rather in the nature of an appraisement or ministerial act.

The following observations in the judgment in *Kihota Hollohon* need to be quoted in extension:

The fiction in paragraph 6 (2), indeed, places it in the first clause of Article 122 or 212, as the case may be. The words “Proceedings in Parliament” or “proceedings in the Legislature of a State” in paragraph 6 (2) have their corresponding expression in Article 122 (1) and 212 (1) respectively. This attracts immunity from mere irregularities of proceedings. However, in the operative conclusions the Supreme Court pronounced on November 12, 1991 that judicial review in the area is limited in the manner indicated. If the adjudicatory authority is a tribunal, indeed the Court held it to be, why then, should its scope be so limited? The finality clause in paragraph 6 does not completely exclude the jurisdiction of the Court under Articles 136, 226 and 227 of the Constitution. But it does have the effect of limiting the scope of the jurisdiction. The principle that is applied by the Court is that inspite of a finality clause it is open to the Court to examine whether the action of the authority under challenge is *ultra virus* the powers conferred on the said authority. It will be *ultra virus* the powers conferred on the authority if it is vitiated by *mala fides* or is colourable exercise of power based on extraneous and irrelevant considerations. While exercising their *certiorari* jurisdiction, the courts have applied the test whether the impugned action falls within the jurisdiction of the authority taking the action or it falls outside such jurisdiction. If it falls outside the authority taking action and it was the decision of an
inferior tribunal, then the Court can review the decision, which has made error of law in deciding the matter.  

In the light of the decision referred to the above and the nature of function that is exercised by the Speaker/Chairman under paragraph 6, the scope of judicial review under Articles 136, 226, and 227 of the Constitution in respect of an order passed by the Speaker/Chairman under paragraph 6 would be confined to jurisdictional errors only viz., infirmities based on violation of constitutional mandate, *mala fides*, non-compliance with the rules of natural justice and perversity.

The Supreme Court further held that the Tenth Schedule does not in providing for an additional grant for disqualification and for adjudication of disputed disqualifications on seek to create a non-justifiable constitutional area. The power to resolve such respective vested in the Speaker or Chairman is a judicial power. The paragraphs 6 (i) of the Tenth Schedule, to the extent it seeks to impart finality to the decision of the Speakers/Chairman is valid. But the concept of statutory finality embodied in paragraph 6 (i) does not detract from or abrogate judicial review under Articles 136, 226 and 227 of the Constitution in so far as infirmities based on violations of constitutional mandates, *mala fides*, non-compliance with Rules of Natural Justice and Perversity, are concerned.

That the deeming provision in paragraphs 6 (2) of the Tenth Schedule attracts immunity analogous to that in Articles 122(1) and 212 (1) of the Constitution as understood and explained in Keshav Singh case to protect the validity of proceedings from mere irregularities of procedure. The

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deeming provision, having regard to the words "be deemed to be proceedings in parliament" or "proceedings in the legislature of a state" confines the scope of the fiction accordingly.

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

In answer to the above submissions, learned Counsel for Union of India would argue that the actions of Houses of Parliament in exercise of their powers and privileges under Article 105 cannot be subjected to the same parameters of judicial review as applied to other authorities. It was being classified in the case of Kihota Hollohon that the authority mentioned in the Tenth Schedule was a Tribunal and proceedings of disqualification before it are not proceedings before the House and thus decision under Para 6 (1) of the Tenth Schedule is not a decision of the House nor is it subject to the approval of the House and rather operates independently of the House.

However, in the case of Utter Pradesh Assembly, the issue was authoritatively settled by this court, and it was held at pages 455, 456 as under:

"Article 212 (i) seems to make it possible for a citizen to call in question in the appropriate court of law the validity of any proceedings inside the legislative chamber if his case is that the said proceedings suffer not from mere irregularity of procedure, but from an illegality. If the impugned procedure is illegal and unconstitutional it would be open to be scrutinized in
a court of law, though such scrutiny is prohibited if the complaint against the procedure is no more than this that the procedure was irregular”

Further, the Additional Solicitor General has also placed reliance on certain observations of this Court in *Indira Nehru Gandhi v. Raj Narain*, in the context of application of Article 122 on the contentions regarding unconstitutionality of the Constitution (30th Amendment) Act, 1975. Beg. J. in the course of his judgment observed as under:

“Article 122 of the Constitution prevents this court from going into any question relating to irregularity of proceedings in parliament”.

Thus, the Speakers/Chairman while exercising the powers and discharging functions under the Tenth Schedule acts as Tribunal adjudicating rights and obligations under the Tenth Schedule and their decisions in that capacity are amendable to judicial review. However, having regard to the constitutional scheme in the Tenth Schedule, judicial review should not cover any stage prior to the making of a decision by the Speaker/Chairman.

Although para 6 (1) says that the decision of the Speaker/Chairman “shall be final”, the Supreme Court has held that it would be subject to judicial review. These are number of instances where even the executive did not honour the decision of the Speaker in a defection case as final. For example, when in July, 1988, the Nagaland Speaker recognized a split in the NPCC(L) political party as well as in the legislature party, the Governor of the state refused to accept the Speaker’s decision

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10. *Supra* n., 51.
and held that there was no split. Similarly, when in Mizoram, the Speaker issued show cause notices to nine members of MNF and suspended them from membership of the House; the Governor questioned the validity of the Speaker's orders. A difficult situation arose in 1991 when the Supreme Court quashed the Manipur Speaker's decision of disqualifying seven legislators but the speaker referred to be bound by the Supreme Court's decision. The crisis was somewhat resolved when finally the Speaker yielded and rescinded the disqualifications.

In Goa, the Speaker Dr. Luis Proto Barbosa was alleged to have voluntarily given up the membership of his party and formed under his own leadership a new party. In fact, he was believed to have engineered defections in order to himself become the Chief Minister. On December 13, 1990 Dr. K.D. Jhalmi, a member of the Goa Legislative Assembly elected under para 6 (1) of the Tenth Schedule to consider a petition for disqualification of Speaker Dr. L.P. Barbosa, decided that Dr. Barbosa had become subject to disqualification for having voluntarily given up the membership of his party (Congress) and having formed or joined under his own leadership a new Goan People's Party. Dr. Jhalmi held that the protection of exemption under Para 5 of the Tenth Schedule was available to a speaker only for the purposes of being non-party or above parties while discharging the duties of a Presiding Officer. It could not be used to encourage the Speaker for becoming an active politician while remaining as Speaker.  

In Bhajaman Behera v. Speaker, Orissa Legislative Assembly, it was decided that the Speaker's adjudicating

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12. AIR 1990 Ori. (FB)
power under para 6 (1) of the Tenth Schedule to the Constitution does not depend on the provisions of para 8 that provides for the framing of rules, nor is the absence of any rule framed for that purpose in itself any hindrance for the Speaker to adjudicate on the matter. The Speaker under para 6 enjoys the authority to dispose the matter raised before him.

In another case of Prakash Singh Badal v. Union of India, regarding the recognition of split group of a party, the court held that an order of the Speaker made in regard to the recognition of a split is not an order under the provision of para 6 of the Tenth Schedule. But if a Speaker had passed an order under the provision of para 6 without issuing notice or giving the chance of hearing to the parties concerned, it would not hold ground for enforcement and would be ineffective against such parties.

Whereas, the objective of entrusting the responsibility of disqualification etc. under the Tenth Schedule to the Speaker were the need for (i) expedition in determination of defection case; & (ii) ensuring impartial, objective and non-partisan decisions. Some of the cases in the Courts of the Speakers have taken 'too long' and the objective of getting quick decisions has been defeated. Also, in present-day conditions it would be very unrealistic to expect a Speaker to completely avoid party considerations even in matters where questions of life and death for his party or its government or its leadership may be involved.

Whereas, it would have added to the high prestige of presiding officers if they had unanimously resolved that it was wrong for the Anti-Defection Law to put the Presiding Officers

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13. Air 1987 P & H 263 (FB)
in a position where they would become subjects of political controversies. It was not fair to put them in a situation where their decisions would cause the fall or enable the continuance of governments. The Presiding Officers could have asked for being relieved of all duties under the Anti-Defection Law. That would have raised their prestige in the esteem of the people at large. The law could then be amended to entrust the responsibility of determining within a strict time frame all matters of disqualification to a Special Bench in the Supreme Court and High Courts or an independent body consisting of judges.

The use of the word final *qua* any order passed by any authority under a provision of the Constitution or other statutes has always been understood to imply that no appeal, revision or review lies against that order and not that it overrides the power of judicial review, either of the High Court or of the Supreme Court under Article 226 or Article 136 of the Constitution, as the case may be.

Thus, from the above discussion, it is concluded that a decision under paragraph 6 (i) is not a decision of the House, nor is subject to the approval by the House. Therefore, a proceeding under para 6 (1) before the Speaker or the Chairperson cannot be construed as a proceedings in the Parliament or the Legislature of a State and the Speakers and Chairperson, while exercising powers and discharging functions under the Tenth Schedule and their decisions in that capacity are subjected to judicial review by the High Court and the Supreme Court.
(ii) **Time limit for decision by the Presiding Officers**

In the Tenth Schedule, there is no provision with regard to the time frame for adjudicating the questions of disqualification on ground of defection by the Speaker despite the intent of Parliament to vest the Presiding Officers the power of adjudication of questions under the law was to have speedier decisions. Both Houses of Parliament failed to apply their minds to the question of incorporating a time frame for decision making by the Chairman and Speakers of legislative bodies. Some Speakers to lapse with the dissolution of the lower House. In Gujarat Legislative Assembly, during the Tenth Gujarat Legislative Assembly (1998-2002), as many as 64 petitions for disqualification and claims for merger and splits lapsed on the dissolution of the Assembly. This would show how those trusted with the power to adjudicate under the Tenth Schedule have blunted the efficacy of the law and frustrated the noble objectives thereof.

Dr. Wilfred D’Souza, a legislator in the Goa Assembly, a few years ago knocked the doors of the Panaji Bench of Mumbai High Court for a direction to the Speaker of the Goa Legislative Assembly, Shri Pratap Singh Raoji Rane, to expeditiously dispose of the petitions for disqualification filed by him against other legislators before the Speaker. The Court dismissed the petition in view of the following law laid down in this regard by the Supreme Court in *Kihota Hollohon’s case*.\(^\text{14}\)

However, having regard to the Constitutional Schedule in the Tenth Schedule, judicial review should not cover any stage prior to the making of a decision by the Speakers/Chairman. Having

\(^{14}\) 1992, Supp (2) SC 651.
regard to the Constitutional intendment and the status of the repository of the adjudicatory power, *no qua timet* actions are permissible, the only exception for any interlocutory interference being cases of interlocutory disqualifications or suspensions which may have grave, immediate and irreversible repercussions and consequence.

In another case the Punjab and Haryana High Court, on August 6, 1997, sought to give a direction to the Speaker of the Haryana Legislative Assembly to decide a petition for disqualification of two members of Samata Party in the Haryana Legislative Assembly for becoming Ministers in Chaudhary Bansi Lal’s Cabinet. Twenty-one of 24 members of Samata Party merged with Samajwadi Janta Party (Rashtriya). These two respondents and one other members opted out of the merger. When the matter was pending decision with the Speaker, the petitioners approached the High Court for giving a direction to the Speaker not to treat the two members as ‘unattached’. The Speaker was made a party to the petition. The Court gave the following direction to the Speaker on August 6, 1997:

> We also impress upon the Speaker the importance of the petition and an early disposal of the same. The Speaker may consider the feasibility of proceeding with the matter on day-to-day basis. Counsels representing the petitioner and respondents undertook before us that their clients will take all steps before the Speaker for an early disposal of the petition and that they will not resort to any dilatory proceedings.
Another interim application by way of Special Leave Petition was filed before the Supreme Court seeking direction to the Speaker to decide the petitions for disqualification expeditiously. The Supreme Court on May 4, 1998 disposed of the Special Leave Petition by giving a direction to the Speaker to decide the petitions within a time frame.

Thus, these kinds of ding dong battles over time frame between the Speaker, the parties to petitions for disqualification and the courts could have been avoided if the law contained a strict time frame for decision making by the Presiding Officers. Rule 7 (3) of the Anti-Defection Rules of all legislative Houses provides the basic time frame for enforcement of the law:

If the petition complies with the requirements of rule 6, the Speaker shall cause copies of the petition and of the annexure thereto to be forwarded;
(a) to be member in relation to whom the petition has been made; and
(b) where such member belongs to any legislature party and such petition has not been made by the leader thereof, also to such leader, and such member or leader shall, within seven days of the receipt of such copies, or within such further period as the Chairman/Speaker may for sufficient cause allow, forward his comments in writing thereon to the Chairman/ Speaker.
The Anti-Defection Rules of Legislatures thus allow only seven days time for the respondents to file replies. If the original period prescribed is one week, the extension should be in terms of days, not in terms of weeks, what to talk of extension so in terms of months. But, Presiding Officers give extensions and prolong the adjudicative processes according to the political climate. When confidence and no confidence motions are round the corner, they suddenly come to action to quickly dispose of the matters.

In *Mayawati v. Makandeya Chand*, Justice M. Srinivasan of the Supreme Court observed the following in regard to desirability of having a time frame for all stages under the Tenth Schedule:

> It is absolutely necessary for every Speaker to fix a time schedule in the relevant Rules for disposal of the proceedings for disqualification of MLAs or MPs. In my opinion, all such proceedings shall be concluded and orders should be passed within a period of three weeks from the date on which the petition are taken on file.

Shri Kiyanihe Peseyie, the Speaker of the Tenth Nagaland Legislative Assembly, is the only Speaker in the country who had heeded the *obiter dicta* and introduced a fresh set of anti-defection rules which contains time frames for all stages of processes under the Tenth Schedule. The absence of a time frame for decision-making has made the law limping from achieving its objectives.

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AIR 1998 SC 3363.
In the absence of a time frame, the law of limitation should not apply to petitions for disqualification fixed under the Tenth Schedule or writ petitions filed before the Courts for judicial review of the decisions of the Presiding Officers. When the petitioner went in appeal in the Supreme Court, the Supreme Court in *Dr. Khasinath Jhalmi, v. The Speaker of the Goa Assembly*\(^\text{16}\) observed as under:

> In our opinion the exercise of discretion by the Court even where the application is delayed, is to be governed by the objective of promoting public interest and good administration; and on that basis it cannot be said that discretion would not be exercised in favour of interference where it is necessary to prevent continuance of usurpation of office or perpetuation of an illegality.

The recent example of the misuse of the Anti-Defection Law due to the non-existence of strict time-frame stipulated in the Tenth Schedule to be followed for deciding matters of disqualification /merger by the Speaker is the merger case of five members of the Haryan Janhit Congress (BL) into the Indian National Congress. The petitions seeking disqualification of the said five MLAs of Haryana Janhit Congress (BL), who have been ordered to be merged with the Indian National Congress, was filed before the Speaker, Haryana Vidhan Sabha on 09.12.2009. But the same has taken years for decision and same was decided by Supreme Court in January, 2013.\(^\text{17}\)

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\(^{16}\) 1993 (2) SCC 703.

\(^{17}\) *Speaker, Haryana Vidhan Sabha and Others v. Kuldeep Bishnoi and Others*; CWP No. 14194 of 2010 with LPA No. 366 of 2011 (O & M) with connected appeals, decided by Punjab & Haryana High Court on 20.12.2011.
The law laid down by the Supreme Court in regard to restraint over the courts' interference with the Speakers' orders under the Tenth Schedule, has given wide scope for the Presiding Officer to keep the petitions for disqualifications filed under the Tenth Schedule, in indeterminate state.

(iii) Presiding Officer's Power to Create Political Parties

Direction Nos. 120, 121, 122 and 123 under the caption recognition of, and Facilities to, Parliamentary Parties and Groups" in the rule book called "Directions by Speaker of Lok Sabha" existed before the Anti-defection Law and continued to exist thereafter also. These Directions are issued by the Speaker of Lok Sabha under Rule 389 of the Rules of Procedure and Conduct of Business in Lok Sabha which provides as under:

All matters not specifically provided for in these rules and all questions relating to the detailed working of these rules shall be regulated in such manner as the Speaker may, from time to time, direct.

Rajya Sabha has a set of Directions by Chairman, Rajya Sabha analogous to Directions by Speaker, Lok Sabha. All State Legislatures may be having such directions of the respective Presiding Officer. It would suffice to examine the direction Nos. 120 to 123 of the Speaker, Lok Sabha to know the conflict between them and the provisions of the anti-defection law and such an examination would have applicability
to other legislative bodies as it has to Lok Sabha. Directions 120 and 123 of the Speaker, Lok Sabha, read as under:

The Speaker may recognize an association of members as a Parliamentary Party or Group for the purpose of functioning in the House and his decision shall be final.

In recognizing a parliamentary party or group, the Speaker shall take into consideration the following principles:

(i) An association of members who proposed to form a parliamentary party:
   (a) Shall have announced at the time of general elections a distinct ideology and programme of parliamentary work on which they have been returned to the House.
   (b) Shall have an organization both inside and outside the House; and
   (c) Shall have at least a strength equal to the quorum fixed to constitute a sitting of the House, that is one tenth of the total number of members of the House.

(ii) An association of members to form a parliamentary group shall satisfy the conditions specified in parts (a) and (b) clause (i) and shall have at least strength of 30 members.

(I) The Speaker may grant the following facilities to a Party in the House, namely;
   (a) allotment of block or seats in the House in proportion to the strength of the Party and total number of seats available in the Chamber,
   (b) allotment of a room in the Parliamént House for the purposes of parliamentary work of the party;
(c) allotment of committee rooms or other available accommodation for holding party meetings;

(d) supply of parliamentary or government papers or publications which the Speaker may determine from time to time;

(e) nomination to a parliamentary committee in proportion to the strength of the party;

(f) submission to the Speaker of a panel of names for selection of members to be called to speak in debates;

(g) consultation where necessary, in the matter of arrangement of business of the House or any other important matter coming before the House.

(II) The Speaker may grant such of the facilities specified in this Direction as he may deem fit or feasible to a Parliamentary Group;

(III) The Speaker's decision in regard to the grant of facilities to a Parliamentary Party or Group shall be final.

An association of members who do not fulfill the conditions for recognition as a Parliamentary Party or Group may be granted certain facilities by the Speaker, if such a course shall, in his opinion, facilitate the conduct of business in the House.

The Constitution (Amendment) Bills of 1973 and 1978 which sought to curb defections had specific provisions relating to Speaker's powers of recognition of political parties. Clause 4 of the Constitution (Thirty -second Amendment) Bill, 1973 defined political party as under:
Political party means-

(i) a political party classified as a recognized political party under any law or any rule, regulation, order or notification having the force of law with respect to matters relating to, or in connection with, elections to either House of Parliament:
(ii) any other political party which is recognized by the Chairman or, as the case may be, the Speaker of such House as a political party and which on the date of such recognition consists of not less than one-fifteenth of the total number of members of such house.

Paragraph 1 (e) of the proposed Tenth schedule sought to be inserted by the constitution (Forty-eighth Amendment) Bill, 1978, defined 'political party' as under:

Political party in relation to a house, means-

(i) an association or body of citizens of India which is registered or deemed to be registered under this schedule with the Election Commission for the purposes of elections to such house; or
(ii) an association of body of members of the house (whether or not such association or body includes other persons) which is recognized by the Chairman or, as the case may be, the Speaker of such House as a political party for the purposes of this schedule.

The Constitution (Fifty-second Amendment) Act 1985 which inserted the Tenth Schedule in the Constitution carefully
omitted the definition of “political party” which its originators sought to define, thereby, keeping away the institution of the Presiding Officers of the Legislatures from the polemics of recognizing and de-recognizing political parties.

(iv) Unattached Members vis-à-vis Tenth Schedule

Despite the above legislative history of the clause relating to expulsion which was dropped from the Bill, which logically meant that expulsion is not to be acted upon for the purposes of the Tenth Schedule to the Constitution, the then Speaker, Lok Sabha (Dr. Balram Jakhar) led all other Presiding Officers of the Legislatures in the country, in taking note of expulsions and treating the expelled members as “unattached members” even after the advent of the Anti-Defection Law.

Under Direction 120 of the Directions of the Speaker, Lok Sabha, it used to be the practice of members who disassociated themselves from the political parties to which they earlier belonged, to intimate the Speaker that they would, in future, function as “unattached members”.

The Lok Sabha Secretariat made the following note in 1987, two years after the advent of the Anti-Defection Law, and got it approved from the Speaker, Lok Sabha:

The practice of showing ‘independent’ and lone members of legislature parties, as ‘unattached’ was done away with during eighth Lok Sabha on coming into force of Constitution (Fifty-second Amendment) Bill, 1985, which provides that 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. Accordingly, only those members who contested and won the election as independent candidates were shown as independents in the list of members with effect from 7 August, 1987. Nominated members were shown as such (instead of being clubbed with unattached members). Likewise, lone members elected on party tickets were shown as belonging to the respective parties to which they belonged. Only those members who had been elected on a party ticket but were subsequently expelled from the party were treated and shown as unattached in the list of members.

While independents and nominated members escaped the clutches of the above directions after the advent of the Anti-Defection Law. As though that was not enough, the Lok Sabha Secretariat, after treating the expelled members as "unattached", used to deduct their numbers from the total number of members in the Legislature Party concerned. Splits and mergers have been allowed by Chairmen and Speaker of legislatures after deducting the expelled members treated as "unattached", from the total number of members in the legislature party concerned.

The first such merger that was allowed by Speaker, Lok Sabha, was that of the Congress (S) with the Congress (I).\(^{18}\) The Congress (S) had four members in the Eighth Lok Sabha, namely, Shri K.P. Unnikrishnan, Shri V. Kishore Chandra Deo, Shri Sudarshan Das and Shri Sahabrao Patil Dongaonkar. The Congress (S) leadership expelled Shri K.P. Unnikrishnan and

\(^{18}\) Sudarshan Das and Sahabrao Patil Dongaonkar Case, 1987 (Eighth Lok Sabha), Speaker: Dr. Bal Ram Jakhar, decision date: 09.09.1987.
Shri V. Kishore Chandra Deo, who were treated as “unattached” members by the Speaker, Lok Sabha. The rest of the two members merged with Congress (I). The contentions of Shri K.P. Unnikrishnan that he could not be treated as 'unattached' and that the merger of the two Congress (S) members with the Congress (I) did not satisfy the numerical condition of 2/3rd members of the legislature party as prescribed in paragraph 4 of the Tenth Schedule, were rejected by the Speaker, Lok Sabha, but the contentions of Shri. K.P. Unnikrishnan stood vindicated by the decisions of Speaker Dr. Balram Jakhar19 and later on by the Supreme Court later.

The Attorney-General (Shri. K. Parasaran) gave an opinion on the July 24, 1987, justifying the Speaker’s action in Shri K.P. Unnikrishnan’s case. Dissatisfied with the Attorney – General’s opinion, Shri. K.P. Unnikrishnan grumbled that the points he raised were not precisely formulated before the Attorney-General and promised to send the Speaker, Lok Sabha, another letter precisely formulating his points for opinion, which he had never done.

The Speakers and Chairman of the legislatures in India, encouraged by the decision of the Speaker in Unnikrishnan’s case and the opinion of the Attorney-General, treated all expelled members as “unattached” members and deducted them from the total number of members of the legislature parties concerned for the purpose of counting 1/3rd and 2/3rd for splits and mergers under the Tenth Schedule, regardless of the fact whether they had analogous Directions 120 to 123 of the Speaker, Lok Sabha, in their rule books or not.

A question whether a member who is declared 'unattached' by the Speaker consequent upon his expulsion from the original political party is free to form a new party or join another party without incurring disqualification, was later raised to the Attorney-General (Shri. K. Parasaran). His reply given on February 15, 1988, was as under:

Disqualification for a member of parliament is provided for in Article 102 of the Constitution and for a member of a Legislative Assembly by Article 191. The Tenth Schedule introduced by the Fifty-second Amendment provides for disqualification on the ground of defection in Para 2. None of these provisions provides that upon expulsion from the original political party a member who is declared unattached incurs any disqualification notwithstanding the fact that he forms a new party or joins another party. However, on that ground alone an expelled member who forms a new party or joins another party cannot be held not to incur disqualification in terms of the Constitution (52nd Amendment) Act, 1985. It is true that an expelled member ceases to be a member of that party to which he belonged but that is for the purpose of party discipline. In the interest of democracy, the matter should be approached from a broader perspective. A person belonging to a particular political party must owe allegiance to that party. He is bound by the discipline of that party. Not only is there a moral and political compulsion but so long as he belongs to that party, he has a duty to see that nothing he does prejudices in any manner the
effective functioning of that party as a political party. In the light of the above background, it has to be examined whether disqualification is incurred by a member of the party who has been expelled from the party in the event of certain overt acts on his part after he is expelled. The provisions for disqualification have to be strictly construed. A member cannot voluntarily give up membership of his political party except under Para 2 (1) (a) of the Tenth Schedule. As he has not voluntarily given up the membership of his original party but stands expelled, he does not incur disqualification under Para 2 (1) (a) of the Tenth Schedule. It may be possible to interpret the relevant provision that an expelled member of a party, as he does not incur disqualification because he did not voluntarily give up membership of his original political party though he suffers expulsion, he cannot any more belong to the political party from which he was expelled. So unless he can bring himself within the scope of a split of the original political party which group consists of not less than one-third of the members of such legislature party, he cannot belong to any other party. While he can, therefore, continue to be a member but is declared unattached, he cannot on the basis of the expulsion from the original political party from a new party or join a new party without incurring disqualification. This situation does not flow by operation of Para 2 (1) (c) of the Tenth Schedule because he has not voluntarily given up membership of his original political party. This
situation flows for the reason that being a member of the House he makes a claim of belonging to another party which does not constitute a group representing a faction which has arisen as a result of a split in his original political party and which group consists of not less than one-third of the members of such legislature party. In this connection, I have to advert to Para 2 (2) of the Tenth Schedule which is as follows:

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

An elected member of a House who has been elected otherwise than as a candidate set up by any political party (that is, who was elected as an independent candidate) will incur disqualification for being a member of the House if he joins any political party after such as election. If so, an expelled member from a political party cannot stand on a better footing than an independent member. While he will not incur disqualification as he has not voluntarily given up his membership but has been expelled, he with nevertheless incur a disqualification if when functioning as an unattached member he forms a new party or joins another party.
It may be that my view on this question may be on straining the language of the relevant provisions of the Tenth Schedule. It is not as if the contrary position cannot be argued at all. But I have taken this view bearing in mind the purpose underlying the 52nd Amendment Act to the Constitution, the mischief which it sought to suppress and the remedy which it sought to advance.

It is time to think of suitable amendments to the Tenth Schedule to place the matter beyond doubt so that the functioning of a healthy democracy is not impeded by defectors taking advantage of expulsion acting to the prejudice of the party on whose ticket they were elected and from which they were expelled for reasons of misconduct or other blamable conduct in the context of party discipline.

Mark the following words in the Attorney General's opinion:

An expelled member from a political party cannot stand on a better footing than an independent member.

Taking an indication from the above opinion of the Attorney-General Shri K. Parasaran, the Chairman of the Karnataka Legislative Council, as late as in July, 2000, on a request made on the 11th July, 2000, by a member of Janata Dal which had three members in the Council, allowed him to function as a split away group and also to function as an independent member. What a flawed application of law? A
party based legislator was converted to an independent member in gross violation of the law.\^{20}

All these irrational premises of the Attorney-General stood pool-poohed by the Speaker, Shri Shivraj Patil, and later by the Supreme Court in Shri G. Viswanathan and Shri Azhazu Thirunavukkarasu v. Speaker, Tamil Nadu.\^{21} It was during the Speakership of Shri Shivraj V. Patil that for the first time, expelled members were not treated as unattached. On December 26, 1991, Shri V. P. Singh, Leader of the Janata Dal Legislature Party, intimated the Speaker Shri. Shivraj V. Patil that Shri Ajit Singh had been expelled from the party. On January 4, 1992, Shri V.P. Singh intimated the Speaker that Sarvashri Rasheed Masood, Satyapal Singh Yadav and Harpal Panwar had been expelled from the party. On July 19 and 20, 1992, intimations were received by the Speaker that Sarvashri Rajnath Sonkar Shastri, Ram Awadh, Shivsharan Verma and Ramnihore Rai had been expelled from the Janata Dal. The Speaker, Shri. Shivraj Patil, for the first time in the history of the implementation of the Anti-defection law, did not treat those members as ‘unattached’ and allowed them to be shown as members of the Janata Dal Legislature Party on the records.\^{22}

Speaker Shri Rabi Ray of the Ninth Lok Sabha messed up the entire matter. In the first Janata Dal Split Case of 1991, he treated 25 members of the Janata Dal who had been expelled by the party as ‘unattached’ members. On request for rescission of the decision, he declined to do so. But when a claim of split from the Janata Dal was made by 54 members, he included all those ‘unattached’ members (rightly) in the 54

\^{20} Janata Dal Legislature Party Split Case –III (Karanataka Legislative Council); Chairman: Shri D. B. Kalmankar; decision date: 11.07.2000.
\^{21} AIR 1996, 2 SC 353.
\^{22} Janata Split Case, 1993 (Tenth Lok Sabha) Speaker Shri Shivraj V. Patil, decision date: 01.06.1993.
claimants much against the then prevailing practice of deducting the number of such 'unattached' members from the split away faction's numerical strength.  

The Supreme Court in *G. Viswanathan and Azhagu Thirunavukkarasu v. The Speaker, Tamil Nadu Legislative Assembly*, quashed the practice of treating expelled members as 'unattached' members and observed as under:

It appears that since the explanation to Para 2 (1) of the Tenth Schedule provides that 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 and elected as a member, such person so set up as a candidate and elected as a member, shall continue to belong to that party. Even if such a member is thrown out or expelled from that party, for the purposes of the Tenth Schedule, he will not cease to be a member of the political party that had set him up as a candidate for the election. He will continue to belong to that political party even if he is treated as 'unattached'. The further question is when does a person 'voluntarily give up' his membership of such political party, as provided in Para 2 (1) (a)? The act of voluntarily giving up the membership of the political party may be either express or implied. When a person who has been thrown out or expelled from the party which set him up as a candidate and got elected, joins another (new) party, it will certainly

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amount to his voluntarily giving up the membership of the political party which had set him up as a candidate for election as such member. [Para 11].

We are of the view that labeling of a member as 'unattached' finds no place nor has any recognition in the Tenth Schedule. It appears to us that the classification of the members in the Tenth Schedule proceeds only on the manner of their entry into the House: (1) one who has been elected on his being set up by a political party as a candidate for election as such member; (2) one who has been elected as a member otherwise than as a candidate set up by any political party usually referred to as an ‘independent’ candidate in an election; and (3) one who has been nominated. The categories mentioned are exhaustive. In our view, it is impermissible to invent a new category or clause other than the one envisaged or provided in the Tenth Schedule of the constitution. [Para 12].

Thus, the Supreme Court had upheld the contentions of Shri K.P. Unnikrishnan and the stand of Shri Shivraj V. Patil, the Speaker of the Tenth Lok Sabha. Since this judgment, almost all Presiding Officers have stopped treating the expelled members as ‘unattached members’ and more so, stopped deducting their numbers from the total number of members of the groups claiming split. But even now, the Presiding Officers have the fancy of retaining those Directions Nos. 120 to 123 in their rule books which caused so much of mischief and misguidance in the administration of the anti-defection law.
Despite the verdicts of Supreme Court and the Presiding Officers like Speaker Shri Shivraj Patil even in recent times, there were incident of Presiding Officers continuing to treat expelled members as 'unattached' members.

The strange decision was made by Speaker Shri. Ishwar Singh of the Haryana Legislative Assembly. He not only treated an expelled member as an 'unattached' member but granted him liberty to join another political party. Dr. Om Prakash Sharma was elected to the Haryana Legislative Assembly in the general election to the House held in 1991 from the Haryana Vikas Party. He was expelled from that party with effect from November 22, 1992. On request from the leader of the Haryana Vikas Party in the Legislative Assembly, he was declared as 'unattached' member. On February 24, 1993, the member informed the Speaker that he had joined the Indian National Congress. The Chief Whip of the Haryana Vikas Party filed a petition for disqualification against him and the Speaker rejected the petition and allowed the 'unattached' member to join another political party.  

(v) Meaning of 'Voluntarily Giving up the Membership of Political Party:

Paragraph 2 (1) (a) of the Tenth Schedule provides as under:

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

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

According to explanation (a) to paragraph 2 (1) of the Tenth Schedule, an elected member 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.

According to explanation (b) to paragraph 2 (1), a nominated member shall, 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; if he does not belong to any political party on the date of his nomination, be deemed to belong to the political party of which he first becomes a member before six months from the date of his taking oath as member in the legislature concerned.

Paragraph 2 (3) of the Tenth Schedule provides as under:

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

Paragraph 2 (2) of the Tenth Schedule provides as under:

An elected member of a House who has been elected as such otherwise than as a candidate set up by any political party shall be disqualified for being a member of the House if he joins any political party after such election.
Thus, an elected member belonging to a political party will be disqualified if he voluntarily gives up the membership of the political party to which he belongs. Though the anti-defection law does not use the words that he would be disqualified if he joins any other political party, if an elected member belonging to a political party joins any other political party, it shall have to be deemed that he has first voluntarily given up the membership of the political party to which he originally belonged and thereafter he joined another political party.

The law straightway prohibits the independents from joining any political party after election. Independents, however, are crucial elements in the government formation strategies. If they support the government from outside, since they are whips unto themselves, the purity of the anti-defection law is preserved. If they become Ministers or Chief Minister as in the case of Shri. Madhu Kora in Jharkhand recently, they blatantly violate the provisions of the Anti-defection Law. The noticeable difference between the elected members belonging to political parties and the independents is that while the political parties have a manifest or of action for governance, independents cannot have a programme or policy for governance. People give mandate only to political parties to govern them and not to independent members. If an independent member becomes a Chief Minister or a Minister, he is only toeing the programmes and policies of the party which is providing support and sustenance to him. It is constitutionally impermissible to allow independents to toe the policies and programmes of a political party which tantamounts to defection and attracts paragraph 2 (2) of the Tenth Schedule. When elected and nominated members belonging to
political parties support the policies and programmes of other political parties, they invite action under anti defection law on the broader interpretation of 'voluntarily giving up the membership of their political parties'. Independents, on that yardstick, are no exceptions. Thus, there is an inherent sanction against independents becoming ministers in the Tenth Schedule.

The Anti-Defection Law deems a nominated member, who belongs to a political party on the date of his nomination, to be a member belonging to that political party. Thus from the date of his nomination, he becomes just like an elected member belonging to a political party, and paragraph 2 (1) (a) and (b) will apply to him. If such a member voluntarily gives up the membership of the political party to which he belongs on the date of his nomination, or if he joins any other political party thereafter, he will be liable to be disqualified.

The Anti-defection law deems a nominated member, who does not belong to a political party on the date of his nomination, but who joins a political party before six months from the date of his taking seat in the House after taking oath, to belong to that political party of which he first becomes a member within the said period. If such a member voluntarily gives up the membership of the political party to which he first belongs within the said period of six months, or if he joins subsequently any other political party, he will be liable to be disqualified. It is not known why the law has not given freedom to such a nominated member to join a political party within six months from the date of his nomination, instead of from the date of taking his seat in the House after taking oath. If such a member does the mischief of joining a political party after the date of his nomination but before the date of his taking the seat
in the House after taking oath, and also joins another political party after taking the seat in the house after taking oath but before six months from that date, how would the member be accounted for in the anti-defection law for his mischief? The law does not provide for his party status from the date of nomination till he takes his seat in the legislature after taking oath.

Paragraph 2 (3) of the Anti-Defection Law takes care of the remaining category of the nominated members who do not belong to any political party on the date of their nomination or who do not become members of any political party before six months from the date of their taking seat in the House after taking oath. Again the law does not provide for the party status of this category of nominated members from the date of their nomination till they take their seats in the legislature after taking oath. If this third category of nominated members joins any political party after the expiry of six months from the date of their taking seat in the House after taking oath, they will be disqualified. Thus, paragraph 2 (3) is applicable exclusively to this third category of members. Paragraph 2 (3) is not applicable to the first two categories of nominated members, who are treated for disqualification purposes like elected members belonging to political parties under paragraph 2 (1) of the Tenth Schedule. Paragraph 2 (1) is totally inapplicable to independent members.

Though there is a drafting error in the Tenth Schedule that it does not, as of date, have an express provision prohibiting an elected member from joining another political party, the Supreme Court extended the meaning of the words ‘voluntarily giving up the membership of the political party’ to the act of joining a political party. In G. Viswanathan and
Azhagu Thiruṇavukkarasu v. The Speaker, Tamil Nadu Legislative Assembly\(^26\) the Supreme Court pronounced as under:

If he of his own volition joins another political party, as the appellants did in the present case, he must be taken to have acquired the membership of another political party by abandoning the political party to which he belonged or must be deemed to have belonged under the explanation to Para 2 (1) of the Tenth Schedule. Of course, courts would insist on evidence which is positive, reliable and unequivocal. [Para 14].

But expanding the meaning of the words "voluntarily giving up the membership of the party" beyond the unintended limits of the anti defection law will only lead to its further abuse. In Ravi Naik v. Sanjay Bhandekar,\(^27\) the Supreme Court gave the following judgment in regard to interpretation of the phraseology 'voluntarily giving up the membership of the political party:

This appeal has been filed Bandekar and Chopdekar who were elected to the Goa Legislative Assembly under the ticket of MGP. They have been disqualified from the membership of the Assembly under order of the Speaker dated December 13, 1992 on the ground of defection under paragraph 2 (1) (a) and 2 (1) (b) of the Tenth Schedule. From the judgment of the High Court, it appears that disqualification on

\(^{26}\) 1996 2 SCC 353.
\(^{27}\) AIR 1994, SC 1558.
the ground of paragraph 2 (1) (b) was not pressed on behalf of the contesting respondent and disqualification was sought on the ground of paragraph 2 (1) (a) only. The said paragraph provides for disqualification of a member of a House belonging to a political party. "It he has voluntarily given up his membership of such political party". The words "voluntarily given up his membership" are not synonymous with "resignation". A person may voluntarily give up his membership of a political party even though he has not tendered his resignation from the membership of that party. Even in the absence of a formal resignation from membership an inference can be drawn from the conduct of a member that he has voluntarily given up his membership of the political party to which he belongs. [Para 11].

It is totally inconceivable how the Supreme Court which ruled that despite expulsions, the expelled member continue to be member of the political party also ruled that even in the absence of formal resignation, an inference can be drawn that a member has voluntarily given up his membership. Political parties expel members not for fun but for their proven antiparty activities. If the political party itself feels that its own member has done something which can be inferred as voluntarily distancing himself from the party without formal resignation and expels him for anti-party activities, the law does not allow the expellee to be disqualified automatically. But the Supreme Court says that all his anti-party activities prior to his expulsion are capable of being inferred as voluntarily giving up his membership from the political party which may bring about the
effect of disqualification on him. It is difficult to harmonize both things because a substantive law is being made to sit on the tenterhooks of technicalities.

The newly created Anti-Defection Rules of 2003 of the Nagaland Legislative Assembly confines the Speaker's power to disqualify an elected member on the ground that he has voluntarily given up the membership of the political party to which he belongs or that he has joined another political party or to disqualify an independent member on the ground that he has joined a political party, to strict documentary evidence. Vague inferences, as suggested by the Supreme Court in *Ravi Naik's Case* (op.cit) have been ruled out.

The Tenth Schedule has the power to disqualify an elected or a nominated member belonging to a political party not only on the ground of his voluntarily giving up the party but also on the ground of his violation of whip. The best proof that someone has voluntarily given up his party without resigning from the party would be available when he chooses to violate the whip. A person who quietly obeys the whip cannot be construed by subjective inferences that he has voluntarily given up the membership of his political party. Therefore, till that stage as contemplated by the Tenth Schedule is reached, Chairman and Speakers are not supposed to be vested with the powers of widest amplitude to construe on the basis of inferences and conjectures that someone has voluntarily given up his membership. The word 'voluntarily' cannot be imposed on the affected member by others' inferences, estimates and conjectures. It would indeed amount to compelling the affected member to indulge in self-incrimination which is totally against the principles of natural justice and against all canons of jurisprudence. When an acid test (voting against whip) is
available in law, then only that should be employed. The only difficulty will be with regard to the disqualification of independent members who join a political party at any time and nominated members who join a political party after six months from the date of their taking seat in the House after taking oath. In these cases, it will not their voluntarily giving up the membership of the political party to which they belong will have to be proved but their joining a political party that has to be proved, since 'whip violation test' will not be applicable to them.

Shri Lalduhoma, the first member of Lok Sabha to incur disqualification on ground of voluntarily giving up membership, was a member of the Eighth Lok Sabha from the Congress Party. He was disqualified on the ground that he contested the Mizoram Assembly election not on the Congress ticket. The petition for disqualification was filed against him on the 21\textsuperscript{st} July 1987. The petition was referred to the Committee of Privileges by the Speaker which returned a recommendation that he should be disqualified under paragraph 2 (1) (a) though he had not formally resigned from the Congress Party. The Speaker accordingly disqualified him on the 24\textsuperscript{th} November 1988.\textsuperscript{28}

Some very important questions like the following were not answered either by the Speaker or the Committee before deciding to disqualify Shri Lalduhoma:

(1) Whether a person who liked to contest in more than one constituency can be compelled to file his nomination from the same party in all constituencies?

\textsuperscript{28} Lalduhoma Case, 1987-88 (Eighth Lok Sabha) Dr. Bal Ram Jakhar, decision date: 24.11.1988.
(2) If yes, can he contest the elections simultaneously as an independent and as a candidate set up by different political parties, though it would be difficult to get tickets from different political parties for the same elections?

(3) Whether the electoral laws will discriminately apply to a person who is not a member of a legislature and who can file candidature as an independent and from different political parties to test his luck, and a person who is a member of a legislature on whom the anti-defection law applies?

(4) Is the intent of the anti-defection law to control the political behaviour of a person in all walks of life or is it confined to keeping a watch on his party affiliation in relation to his membership in the legislature to which he has been elected?

If these questions were rationally answered, Shri. Lalduhoma's disqualification would have been a difficult exercise.

(vi) Interim Orders under the Tenth Schedule

The sole objective of the law makers in investing the powers to decide questions of disqualification on ground of defection in the Speakers and Chairman of Legislative Bodies was to have a fast track adjudicative process. The purpose of not envisaging a committee mechanism as part of that adjudicative process, which was later incorporated in the Anti-defection Rules unconstitutionally by all Presiding Officers,
which had been corrected recently by the Speaker of the Nagaland Legislative Assembly, was also to have an expeditious decision making process. Thus, the question of interim orders being passed by the adjudicating authority under the Anti-defection Law will only frustrate the scheme of expeditious decision-making under the law.

The first and only passive reference to Speakers'/Chairmen’s powers to pass interim orders on petitions for disqualification under the Tenth Schedule can be found in the Supreme Court judgment in *Kihoto Hollohon v. Zachillu Case*.  

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

Interim orders have not only been passed by the Speakers and Chairmen but even Courts have passed such Interim Orders in regard to disqualification cases on ground of defection. Speaker Shri. P.R. Kyndiah of the Meghalaya Legislature Assembly was the earliest to pass an interim order under the Tenth Schedule and suspended five independent

29. AIR 1993 SC 412.
members\textsuperscript{30} with effect from the August, 1991 till the final disposal of the case.\textsuperscript{31} This power of the Speaker to pass the interim order was contested by several members. They protested that the procedure ordained in the Anti-Defection Rules was not followed for passing the interim orders.

Again, Speaker of Meghalya Legislative Assembly Shri. E.K. Mawlong passed an interim order by placing Mrs. Maysalin War\textsuperscript{32} under suspension and along with her voting right in the Assembly.

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

\begin{quote}
That pending hearing and final disposal by this Court of the application mentioned above for stay after notice, the Petitioner herein shall be entitled to enjoy all the perks as a member of the House without the right to participate in the proceedings of the Legislature and in case the
\end{quote}

\textsuperscript{30} Five independent members were Dr. Donkupar Roy, Mrs. Mirian, Shr. Simon Siangshad, Shri. Monindra Agito and Shri. Chanerlin Mark.

\textsuperscript{31} Donkupar Roy Siangshai and Others Case, 1991 (Meghalya (a), Speaker: Shri P. R. Cyrdial, decision date 17. 8.1991.

petition fails, he shall be liable to refund all the money which he would have drawn by virtue of this court's aforementioned order.

The Supreme Court by such an interim order, has liberally equated an honourable member of legislative assembly to the position of a mere Government Servant. Unlike a Government servant, who is substantially concerned with his pay and perks, pay and perks are less worthy entitlements to a legislation than his right to represent his people in the legislature with his right to speak and vote.

A similar interim order was passed by the Supreme Court in writ appeals against the dismissal of writ petitions by the Mumbai High Court filed by respondents against the orders of the Speaker of the Maharashtra Legislative Assembly in petitions for disqualification on ground of defection. The Speaker's orders disqualified on ground of defection Shri Narayan Pawar, Shri. Shirishkumar Patil, Shri. ShivaJi Naik and Shri. Shririshkumar Vasantrao Kotwal, MLA in June 2002. The aggrieved MLAs challenged the orders of the Speaker in Mumbai High Court. The writ petitions were dismissed by Mumbai High Court. The respondents went in writ appeals to the Supreme Court. The Supreme Court passed an interim order to the effect that the respondents would not be entitled to speak or vote but can attend the House.

The Supreme Court improved upon its interim order in the cases of three MLAs of the Haryana Legislative Assembly, namely, Shri Karan Singh Dalal\textsuperscript{33} Shri Jagit Singh Sangwan\textsuperscript{34}

\begin{footnotesize}
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\item \textsuperscript{33} Karan Singh Dala Case, 2003, (Haryana LA), Speaker: Shri. Satbir Singh Kadian, decision date: 25.06.2004.
\item \textsuperscript{34} Jagit Singh Sangwan Case, 2003, (Haryana LA), Speaker: Shri. Satbir Singh Kadian, decision date: 25.06.2004.
\end{itemize}
\end{footnotesize}
and **Rajinder Singh Bisla**\(^{35}\) who were disqualified by the Speaker Shri. Satbir Singh Kadian of the Haryana Legislative Assembly in June 2004, on ground of defection. All the aggrieved members challenged Speaker’s decision in the Supreme Court, which stayed the operation of the Speaker’s orders and passed interim orders allowing all of them to attend the sittings of the House without the right to vote. Thus, this is an improvement on the interim orders passed by the Supreme Court in earlier cases which restricted both the right to speech and vote of the appellant members in the legislature.

It is always better for the High Courts and Supreme Court to dispose of writ petitions and writ appeals and other applications against the Speaker’s and Chairman’s orders under the Tenth Schedule at the earliest and more particularly within a time frame of weeks and not months. The orders of the Speakers and Chairmen under the Tenth Schedule should not be generally stayed and no interim order should be issued. If at all an interim order needs to be issued, it should be issued for maintaining the status of the members party status as it was just before the dispute, with his rights and privilege under the Tenth Schedule kept intact.

**(vii) Status of Expelled Members under the Tenth Schedule**

A strong party system is the hallmark of a vibrant democracy and political parties are among the most crucial institutions that determine and consolidate democratic processes. They not only represent citizens through elections, but also mobilize the social forces through their political programmes and ideologies that strengthen democracy, on a

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\(^{35}\) Rajinder Singh Bisla Case, 2004 (Haryana La), Speaker: Shri. Satbir Singh Kadian, decision date: 25.06.2004.
continuing basis. Because of their organizational base, pool of resources, and legal and constitutional standing, political parties provide distinct advantages to their member's vis-à-vis others to represent their constituents. Regardless of the nature and character of the political system, all democracies-presidential as well as parliamentary- accord due importance and role to political parties to sustain and deepen the values of representative democracy. In spite of the shortcoming of political parties, without them, citizens have few genuine democratic alternatives and a member of a party representing the people in the legislature has to function within the parameters set by such parties.

Given the importance of political parties in a democracy, the party leadership holds enormous control over their members, subjecting them to the rigour of party discipline, which includes complete adherence to the party's policies, programmes and ideologies. A member of a party is required to adhere to the interests of the party to which he belongs. The obligation is all the more on those who are elected to a legislature on a party ticket and hold several important positions on behalf of the party. Any deviation on the part of a member is considered a breach of party discipline, which invites the wrath of the party leadership resulting in the expulsion of the concerned member from the party. The related implications of expulsion of a member from the party on the membership of the House as also other official positions can be derived from a careful analysis of the law of the land, judicial pronouncements and practice and precedents of the House.

The Supreme Court has reserved its orders on the challenge to the power of Parliament to expel its members leading to declaration of their seats as vacant in the case of
expulsion of ten members of Lok Sabha and one member of Rajya Sabha in the case for query scam. The Supreme Court had *ad interim* stayed the order of declaration of their seats vacant. The arguments on both sides have churned out a wealth of information on the subject.

The Chairman of Rajya Sabha and the Speaker of Lok Sabha had earlier refused to accept the notices of Supreme Court in the matter. On February 4, 2006, the Presiding Officers of various Legislatures assembled in an emergent conference to endorse the stand taken by the Presiding Officers of Parliament in not accepting or not responding to the Supreme Court's notices in the matter of expulsion of the members of both Houses of Parliament. The conference passed the following resolution:

The Presiding Officers of the Legislative Bodies in India, having assembled in their Emergent Conference in New Delhi on February 4, 2006, and having deliberated on the issues arising out of and related to proceedings initiated in Courts of Law challenging the expulsion of Members of Parliament, unanimously endorse the decision taken by the Chairman, Rajya Sabha and the Speaker, Lok Sabha not to accept or respond to the notices issued by Courts of Law in the matter of expulsion of the members of the two Houses.

It would be altogether a different debate in a different place for and against the Presiding Officers refusal to accept...
the notice of the Court. But, what is important is to carefully think about the consequences of accepting a position that the House has got the powers to expel any member, may be on grounds of moral turpitude, resulting in the termination of their membership.

There is nothing wrong in comparing the position of Indian Legislature with the House of Commons, but the Constitution (Forty-fourth Amendment) Act, 1978 with effect from June 20, 1979 confined the privileges of Indian legislatures other than those enshrined in Articles 105 (1) and (2) and 194 (1) and (2), to those privileges that were available to the Houses before June 20, 1979. To quote the words of the Constitution in Article 105 (3):

In other respects, the power, privileges and immunities of each House of Parliament, and of the Members and the Committees of each House, shall be such as may from time to time be defined by Parliament by law, and until so defined, shall be those of that House and of its Members and Committees immediately before the coming into force of Section 15 of the Constitution (Forty-fourth Amendment) Act, 1978.

The words marked as, "shall be those of that House and of its Members and Committees" which do not mean "shall be those of the House of Commons, and of its Members and Committees".

The Constitution (Forty-Fourth Amendment) Act, 1978, had not removed merely the words "shall be those of the House of Commons and of its Members and Committees" but also the words "at the commencement of this Constitution". The words
"at the commencement of the Constitution" were substituted by the words "immediately before the coming into force of Section 15 of the Constitution (Forty-Fourth Amendment) Act, 1978."

Members of Parliament are public servants under Section 2 (c) of the Prevention of Corruption Act, Article 20 (2) of the Constitution provides that no person shall be prosecuted and punished for the same offence more than once. If in the "cash for query scam", ten members of Lok Sabha and one member of Rajya Sabha have been expelled by the respective Houses amounting to termination of their membership, and if that punishment for breach of privileges constitutes a punishment within the meaning of the words "prosecuted and punished" used in Article 20 (2) of the Constitution of India, then those members, cannot be prosecuted and punished under any other law. Legislatures cannot create a situation in which an offender escapes the punishment under law by pre-emptive use of privileges against the offender. The right of the state to prosecute an offender, including a member of a legislature, cannot be curtailed by legislatures. Only matters which are exclusively within the purview of privileges of legislature can be pursued by legislature in terms of breach of privileges against the erring members. Take for instance, the Prime Minister of the United Kingdom, Shri Tony Blair, currently facing police inquiries in relation to allegations of receipt of donations from leading industrialists for the Labour Party. Shri. Blair allows himself to be questioned by the police without invoking his privileges as member of the House of Commons to defend himself or without the House invoking the privileges of the House to defend him. Where an offence or an act of commission or omission is punishable under a law, then, whether he is an ordinary citizen or a legislator, he has to be
proceeded against under the law and not under the parliamentary privileges, if he is a legislator.

In India, we have a written Constitution, which Sir Anthony Eden, the Prime Minister of United Kingdom, called 'the largest magna carta of socio-economic transformation of a huge mass of backward people'. If in such a long written Constitution of the country, provisions exist to provide for the manner in which members will be disqualified and their seats declared vacant, in no other manner, including the manner by using parliamentary privileges, the same results shall be achieved. Article 101 of the Constitution of India talks about vacation of seats of members of Parliament and Article 102 talks about disqualification for membership of Parliament.

**Article 101 provides as under:**

101. **Vacation of seats:** (1) No person shall be a member of both Houses of Parliament and provision shall be made by Parliament by law for the vacation by a person who is chosen a member of both Houses of his seat in one House or the other.

(2) No person shall be a member of both of Parliament and of a House of the Legislature of a State, and if a person is chosen a member, both of Parliament and of a House of the Legislature of a State, then, at the expiration of such period as may be specified in rules made by the President, that person's seat shall become vacant, unless he has previously resigned his seat in the Legislature of the State.

(3) If a member of either House of Parliament-
(a) becomes subject to any of the disqualifications mentioned in clause (1) or clause (2) of Article 102; or

(b) resigns his seat by writing under his hand addressed to the Chairman or the Speaker, as the case may be, and his resignation is accepted by Chairman or the Speaker, as the case may be,

His seat shall thereupon become vacant.

Provided that in the case of any resignation referred to in sub clause (b), if from information received or otherwise and after making such inquiry as he thinks fit, the Chairman or the Speaker, as the case may be, is satisfied that such resignation is not voluntary or genuine, he shall not accept such resignation.

(4) If for a period of sixty days a member of either House of Parliament is without permission of the House absent from all meetings thereof, the House may declare his seat vacant:

Provided that in computing the said period of sixty days no account shall be taken of any period during which the House is prorogued or is adjourned for more than four consecutive days.

Article 102 provides as under:

102 Disqualifications for Membership: (1) A person shall be disqualified for being chosen as,
and for being, a member of either House of Parliament -

(a) If he holds any office of profit under the Government of India or the government of any State, other than an office declared by Parliament by law not to disqualify its holder;
(b) If he is of unsound mind and stands so declared by a competent court;
(c) If he is an undercharged insolvent;
(d) If he is not a citizen of India, or has voluntarily acquired the citizenship of a foreign state, or is under any acknowledgement of allegiance or adherence to a foreign state;
(e) If he is so disqualified by or under any law made by Parliament.

Explanation: For the purposes of this clause a person shall not be deemed to hold an office of profit under the Government of India or Government of any State by reason only that he is a Minister either for the Union or for such State.

(2) A person shall be disqualified for being a member of either House of Parliament if he is so disqualified under the Tenth Schedule.

Section 149 (1) of the Representation of the People Act, 1951 provides as under:

149. (1) When the seat of a member elected to the House of the People becomes vacant or is declared vacant or his election to the House of the People is declared void, the Election Commission shall, subject to the provisions of sub-section (2), by a notification in the Gazette of
India, call upon the Parliamentary constituency concerned to elect a person for the purpose of filling the vacancy so caused before such date as may be specified in the notification, and the provisions of this Act and of the rules and order made thereunder shall apply, as far as may be, in relation to the election of a member to fill such vacancy.

A seat of a member of either House of Parliament is declared vacant only for the reason of absence from sittings of the House concerned for 60 consecutive days subject to the conditions in the provision to Article 101 (4) of the Constitution. If a member of either House is disqualified under Article 102, his seat shall become vacant. The difference in the use of terminologies “seat being declared vacant” and: “seat becoming vacant” may be noted. If he absents from sittings of the House, his seat is declared vacant and if he is disqualified, his seat becomes vacant. The grounds on which disqualification of a member will take place are given in Article 102 which has a blank clause in Article 102 (1) (e) which says “if he is so disqualified by or under any law made by Parliament”. Similar provision is there with regard to disqualification of members in Article 191 (1) (e). Section 149 of the Representation of the People Act, 1951 contemplates following three situations in which a casual vacancy may arise in the Lok Sabha:

(1) the seat becoming vacant
(2) the seat being declared vacant
(3) if a member’s election is declared void.

On the other hand, Article 101 (3) of the Constitution provides for two situations in which a member’s seat may
become vacant: first, when he is disqualified under Article 102 and the next, when he resigns his seat. It does not contemplate other contingencies like his election being declared void or the vacancy being caused due to his death. Section 149 contemplates the situation of his election being declared void, which leads to his seat becoming vacant. His death is not, however, covered both by the Constitution and the Representation of the People Act, 1951.

As regard the power of the Houses to expel members leading to the termination of their membership, two High Court had given two differing verdicts. The Punjab and Haryana High Court in Shri Hardwari Lal's case\textsuperscript{37} held that the power of a legislature to expel its members leading to termination of membership to be unconstitutional, illegal and inoperative.

Motions of expulsions are revocable. In the case of the expulsion of Mrs. Indira Gandhi carried out by a motion of the Lok Sabha on December 19, 1978, the successor Lok Sabha, on May 7, 1981 rescinded the motion of expulsion with the following instruction:

\begin{quote}
The said proceedings of the Committee and the House shall not constitute a precedent in the law of Parliamentary privileges.
\end{quote}

Thus, when the Houses function on political lines, there is every danger of this power of the House to expel members leading to the termination of their membership, being abused by ruling parties or ruling fronts to trap members in cases of breach of ethics and morals and terminate their membership to gain consolidation over numbers in the House. The Tenth

\textsuperscript{37} [ILR {1977} Punjab & Haryana 269 at page 577].
Schedule to the Constitution, subject to the claims under the then existed paragraph 3 and the current paragraph 4, guarantees votes of the members of the legislature parties in favour of the legislature parties concerned. This guarantee will be imperiled, if the Houses, by majority, expel members on ground of unethical conduct. One has to recall how the BJP Government under Shri. Manohar Parikkar in Goa, in the beginning of the year 2005, was frantically looking for one extra vote for saving his Government. In an intense pursuit of political power, this legitimate power of the Houses to expel members has the potential of being misused. Legislatures must, therefore, abdicate this power before its possible abuse takes monstrous proportions.

The Rajya Sabha also expelled Dr. Chhattrapal Singh Lodha leading to the termination of his membership from Rajya Sabha. The House adopted the following motion on December 23, 2005:

That this House agrees with the recommendations contained in the seventh Report of the Committee on Ethics presented to the Rajya Sabha on December 23, 2005.\(^{38}\)

The seventh Report of the Committee on Ethics of Rajya Sabha inter-alia contained the following recommendation:

The Committee, therefore, recommends that Dr. Chhattrapal Singh Lodha be expelled from the membership of the House as his conduct is derogatory to the dignity of the

\(^{38}\) Committee on Ethics; Seventh Report, on telecasting of a programme entitled “Operation Duryodhan” by a private channel, presented on 23rd December, 2005, Rajya Sabha Secretariat, 2005.
Mrs. Sushma Swaraj gave a dissenting note to the Committee’s report seeking the reference of the matter to the Supreme Court for opinion under Article 143 of the Constitution of India before the House punishes the members.

The power of the Houses to revoke their own motions will stand curtailed, if, after expulsion of a member, his seat becomes vacant. Election to such casual vacancies are held in accordance with the time frame in the statute. A statutory process to fill a casual vacancy.

(A) Impact of Expulsion on Membership of the House

This issue has a direct link with India’s Anti-defection Law, which came into operation by the Constitution (52nd Amendment) Act, 1985. This Act added a new Schedule (Tenth Schedule) to the Constitution setting out certain provisions as to disqualification from membership of Parliament and State Legislatures on the ground of defection from the political party to which a member belongs. But this Schedule does not make any provision for meeting a situation when a member is expelled by his party. When the Constitution (52nd Amendment) Bill was introduced in the Lok Sabha, it had a provision for disqualifying an expelled member. However, on reconsideration, it was felt that expulsion being a political matter should be left out of the scope of the proposed law.

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39 Committee on Ethics: Seventh Report, on telecasting of a programme entitled “Operation Duryodhan” by a private channel, presented on 23rd December, 2005, Rajya Sabha Secretariat, 2005 (Supra).
Hence, that provision was deleted at the passing stage of the bill in the Lok Sabha. Thus, there is no direct impact on the status and position of a Member of Parliament in the House after he is expelled by the political party of which he was a member.

The issue relating to the effect of expulsion of a member from his/her political party or parties was dealt by Shri Shivraj Patil, the then Speaker, Lok Sabha (House of the People) in a Janta Dal Case in his decision given on 1 June, 1993 during the Tenth Lok Sabha. He observed that "It is not correct and legal to hold that if a member of a party is expelled from its primary membership, he loses his membership of legislature part....... As there are no provisions in the Tenth Schedule or any other part of the Constitution, the expulsion of the members for parliamentary purposes is not legal and cannot be allowed". Subsequently, Presiding Officers of Lok Sabha have reiterated this position in similar cases. As per the procedure followed in the Lok Sabha Chamber. However, no change is made in his/her party affiliation in the party position in Lok Sabha and other records. The position is clarified by way of a footnote in the party position to the effect that the concerned member has been seated separately in Lok Sabha consequent upon intimation of his/her expulsion from his/her party.

(B) Implication of Expulsion of Member from the party on various official positions

As per the present legal position, a member’s expulsion from his political party cannot take away his membership in the Legislature, if he does not attract the provisions of the anti-defection law. In this scenario, the basic issue is whether a

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40. Janata Split Case, 1993 (Tenth Lok Sabha) Speaker Shri Shivraj V. Patil, decision date: 01.06.1993.
member, who has been expelled from his party, continues to hold various official positions, including Chairmanship of a Parliamentary Committee/Legislative Committee.

The Rules of Procedure and Conduct of Business in the Council of States do not provide any rule for removal of any member, who has been expelled from his party, from Chairmanship/Membership of a Parliamentary Committee/Legislative Committee.

However, the following provisions exist in the Rajya Sabha rules for removal of a Chairman/Member of a Parliamentary Committee:

(a) Rule 73 (2) of the said rules relating to the Select Committees on Bills, which applies mutatis mutandis to the department related Parliamentary Standing Committees stages: If the Chairman of the Committee is for any reason unable to act, the Chairman may similarly appoint another Chairman of the Committee in his place.

(b) Rule 75 regarding discharge of absent member provide that “If a member is absent from two or more consecutive meetings of the Select Committee, without the permission of the Chairman of the Committee, a motion may be moved in the Council for the discharge of such Member from the Committee”.

As per well established practice, Members of Rajya Sabha belonging to the major parties, i.e. parties having the strength
of five or more members in the House, are nominated to various committees on the basis of the quotas of their respective parties in these committees. Similarly, the Chairmanship of these committees is also allocated based on the respective party quotas, decided at the time of reconstitution of these Committees. Therefore, the natural question is whether a member, who was initially nominated as a member-appointed as Chairman of a Committee, loses that position following his/her expulsion from that party.

Since the rules are silent in this regard, it, therefore, seems that until and unless the concerned Member/Chairman comes under the purview of the above provisions, he/she cannot be removed from the membership/chairmanship of a Committee merely on the ground that he no longer belongs to the party quota against which he/she was nominated/appointed. The member may, however, voluntarily relinquish his position by submitting his resignation to the Presiding Officer.

Alternatively, the party will have to wait for the expiry of the term of the committees, which are generally reconstituted every year, to get an opportunity to make changes in the nomination of its party Members/Chairperson in various Parliamentary Committees. There have been instances in both the Houses when political parties sought the removal of their expelled members from the Membership/Chairmanship of Parliamentary Committees they held.

The first case pertains to Lok Sabha, where a member namely Shri. Jaswant Singh who had been appointed as Chairman of the Committee on Public Accounts when he was in Bharatiya Janta Party (BJP), was subsequently expelled from that party. He, however, refused to resign from that Committee
despite being asked by the BJP to do so. At that time, Hon’ble Speaker took the stand that the member concerned can be removed only in accordance with the rules. The case was finally resolved when the said member resigned from the Chairmanship of that Committee and another member was appointed as the new Chairman of the Committee.

Another case arose in Rajya Sabha when a member namely Shri Amar Singh, who was nominated to various Committees and also appointed as the Chairman of the Department-related Standing Committee on Health and Family Welfare against the quota of Samajwadi Party, was expelled from that party. The party sought his removal from the various positions he held in several Committees. It was decided that the Chairman of a Committee can be removed only in case he is for any reason unable to act as provided in Rule 73 (2) of the Rules of Procedure and Conduct of Business in the Council of States. Unless the concerned member voluntarily resigns from the Chairmanship of the Committee on Health and Family Welfare as well as membership of other Committee(s), he cannot be removed from this Committee. The situation was finally resolved at the time of the annual reconstitution of the Committee.

In the light of the above, at present, a Member/Chairman of a Committee cannot be removed from the membership/Chairmanship of a Committee merely on the ground that he/she no longer belongs to the party against whose quota he/she was nominated/appointed. However, it is open to debate whether such a member should continue to represent that party in the Committee even after he/she has been expelled from that party and a request from that party for his/her removal is received. This question, though applicable to all parties,
assumes more importance in the context of certain Committees such as the Department-related Standing Committee on Home Affairs and the Committee on Public Accounts, where their Chairmanship is traditionally held by senior members of the main opposition party. While there may be strong moral grounds on which such members should quit the position assigned to him/her in Committees upon their expulsion, there are not enough provisions enshrined in Law and Constitution or in the rules of procedure by involving which the Presiding Officer can ask the concerned member to vacate the membership or Chairmanship of the Committee(s), which he/she occupied as a member of a political party.

Besides this, that Presiding Officer has nothing to do with the domestic affairs of the political parties in respect of when they are administrating under anti-defection law. Shri Shivraj V. Patil, the then Speaker of Lok Sabha touched an entirely new ground when he asked himself whether the adjudicating authorities under the Tenth Schedule should be burdened with examination of matters relating to the affairs of political parties outside the legislatures and answered the question in the negative. This negation was expressed by the Speaker while deciding the Janta Dal Split Case in 1993.

Whereas, Justice Srinivasan of the Supreme Court in Mayawati v. Markandiya Chand made the following observations in regard to requirements of a valid split:

Para 3 of the Tenth Schedule excludes the operation of paras 2 (1) (a) and (b) where a member of a House makes a claim that he and any other member of his legislature party

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41. 1998 7 SCC 517.
constitute the group representing a faction which has arisen as a result of a split in his original political party and such group consists of not less than one-third of the members of such legislature party. The following are the conditions for satisfying the requirements of the para.

(i) A split in the original political party giving rise to a faction.
(ii) The faction is represented by a group of MPs /MLAs in the House
(iii) Such group consists of not less than one-third of the members of the Legislature party to which they belong.

For the purpose of that para, all the three conditions must be fulfilled. It is not sufficient if more than $1/3^{rd}$ members of a legislature party form a separate group and give themselves a different name without there being a split in the original political party. Thus the factum of split in the original party and the number of members in the ‘group’ exceeding $1/3^{rd}$ of the members of the legislature party are conditions to be proved. Such *Obiter dicta* of Courts and the requirements of the Law were more in breach than in observance.

Thus, in regard to matters of split, each Speaker and Chairman in the country interpreted the law in his own way with no common guiding principles. This led to be absolute abuse of paragraph 3 of the Tenth Schedule mostly resulting in injustices to both the claimants under paragraph 3 and 4 as
well as to the original political parties. It is good that the
Constitution (Ninety-First Amendment) Act, 2003 removed
paragraph 3 from the Tenth Schedule.

Further to add that Presiding Officers should have no
power to create political parties. But they have to follow the
direction in the rule book called “Directions by Speaker of Lok
Sabha" under the caption “Recognition of and Facilities to
Parliamentary Parties and Groups" vide Direction Nos. 120,
121, 122 and 123, which existed before Anti-Defection Law and
continued to exist thereafter also.

Rajya Sabha also has a set of direction by Chairman,
Rajya Sabha analogous to direction by Speaker, Lok Sabha.
All State Legislatures may be having such Direction of the
respective Presiding Officers.

The Constitution (Amendment) Bills of 1973 and 1978
which sought to curb defections had specific provisions relating
to Speaker’s powers of recognition of political parties. Clause
4 of their Constitution (Thirty second Amendment) Bill, 1973
defined ‘political party’ as under:

**Political party means:**

(i) a political party classified as a recognized political party
under any law or any rule, regulation, order or notification
having the force of law with respect to matter relating to,
or in connection with elections to either house of
Parliament

(ii) any other political party which is recognized by the
Chairman or, as the case may be, the Speaker of such
House and a political party and which on the date of such
recognition consists of not less than one-fifteenth of the total number of members of such House.

Paragraph 1 (e) of the proposed Tenth Schedule sought to be inserted by the Constitution (Forty-eighth Amendment) Bill, 1978, defined political party as under:

Political party in relation to a House, means-

(i) An association or body of citizens of India which is registered or deemed to be registered under this Schedule with the Election Commission for the purposes of elections to such Houses; or

(ii) an association or body of members of the House (whether or not such association or body includes other persons) which is recognized by the Chairman or, as the case may be, the Speaker of such House as a political party for the purposes of this Schedule.

The Constitution (Fifty-second Amendment) Act, 1985 which inserted the Tenth Schedule in the Constitution carefully omitted the definition of “political party” which its precursors sought to define, thereby, keeping away the institution of the Presiding Officers of the Legislature from the polemics of recognizing and de-recognizing political parties. Once this legislative intent behind the Tenth Schedule is known, the confusion created by the Directions 120 to 123 of the directions of the Speaker, Lok Sabha, and similar direction of the other Presiding Officers should have been removed at the earliest. Either these directions must go or if they are to be re trained, then, only in amended form. The Speakers and Chairman of Legislative Bodies in India do not have power to recognize or
de-recognize parties or groups except in the manner laid down in the Tenth Schedule.

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

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

Clauses (1) and (2) of Rule 6 of the Members of Lok Sabha (Disqualification on Ground of Defection) Rules, 1985, framed by the Speaker, Lok Sabha and copies by every other Presiding Officer, state as under:

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

(2) A petition in relation to a member may be made in writing to the Speaker by any other member.

Thus, the right to petition under the Tenth Schedule is confined only to members of the respective House. A member of Rajya Sabha cannot initiate a petition against a member of Lok Sabha.
and vice versa. The same is true of members of other legislatures.

Thus, a Presiding Officer does not have a right to decide the disqualification matter *suo sotu*. Similarly, a citizen also does not have any right to initiate a petition for disqualification on ground of defection against his own representative in the House. A political party's functionary cannot initiate a petition for disqualification against a member who has deliberately rejected the party's interests unless he is a member of the House in which the respondent is also a member. On the other hand, every question of disqualification under Article 102 (1) or 191 (1) of the Constitution can be referred to the President or the Governor, as the case may be, by any citizen. This right to initiate action against members is not confined only to members of the respective Legislative Houses. Articles 103 (1), 192 (1) and paragraph 6 (1) of the Tenth Schedule are similarly worded. To quote, for example, Article 103 (1):

> If any question arises as to whether a member of either House of Parliament has become subject to any of the disqualifications mentioned in clause (1) of Article 102, the question shall be referred for the decision of the President and his decision shall be final.

Compare this with the provision in paragraph 6 (1) of the Tenth Schedule quoted above. A future constitutional provision, if worded similarly to an existing Constitutional provision, it must be deemed to be giving a meaning similar to the meaning of the existing provision. If under Articles 103 (1) and 192 (1), if all citizens have a right to initiate proceedings, under paragraph 6 (1) also, all citizens should have a right to initiate petitions for disqualification on ground of defection.
The rule making paragraph, that is paragraph 8 of the Tenth Schedule, *inter alia*, provides as under:

Paragraph 8 (1) (d): Subject to the provisions of sub-paragraph (2) of this paragraph, the Chairman or the Speaker of a House may make rules for giving effect to the provisions of this schedule, and in particular, and without prejudice to the generality of the foregoing, such rules may provide for-

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

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

There is nothing in paragraph 6 or any of the other provisions in Tenth Schedule to limit the jurisdiction of the Speaker to decide a question of disqualification only on a petition filed by a member of the House. There is nothing in these provisions to indicate that Speaker cannot act *suo motu* if the conditions requisite for disqualification come to his notice by some process or the other. To hold otherwise, we are afraid, amount to reading...

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

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

(1) An authority (Speaker or Chairman) vested with the powers of adjudication under the Tenth Schedule will find it difficult to proceed against a member when there is none to lead or tender evidence against the respondent; Speaker or Chairman who belong to political parties, if take upon themselves the task of disqualifying members, their decisions will not be perceived as neutral; there is no accepted principle of jurisprudence where the judge himself will be leading evidence against the respondent, if others, particularly other members, do not cooperate in the inquiry.
(2) Rule 6 (1) of the anti-defection rules, which reads as under' effectively bars the Speakers from acting *suo motu*:

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

If any citizen is entitled to initiate action under the Tenth Schedule against members, the question whether Speaker can act *suo motu* would not have arisen at all.

In *Lotha and Others Case* in Nagaland, the Speaker disallowed the claim of split in the Nationalist Congress Party. The Speaker’s decision was interesting in the sense that even though there was no petition for disqualification before him, he disqualified the claimants of split.43

### III. AN ANALYSIS OF DECISIONS BY LOK SABHA SPEAKER UNDER THE TENTH SCHEDULE

The Anti-defection Law was expected to put an end to the evil of unprincipled defections. However, since the Constitution (Fifty-Second Amendment) Act, 1985 came into force, there have been many cases of defection from various parties not only in different State Legislatures, but in Rajya Sabha and Lok Sabha also. Henceforth, some of the State Governments were brought down through defections. In many States, there were reports, that defectors being made Ministers or Chairmen of very important Boards and Corporations. For unprincipled

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43. *Lotha and Other Case*, 1990 (Nagaland LA), Speaker Sjro Tjemicjhp, decision date: 15.12.1990.
political defections, no political party or state could be blamed, as they all behaved according to a very similar pattern. The irresponsible manner in which some of the Speakers exercised their powers brought disgrace to their high offices and sometimes let to the brink of open confrontation with the judiciary.

The cases under the Tenth Schedule to the Constitution broadly fall under three categories, namely petitions seeking disqualification of members, claims of splits and mergers. Para 6 of the Tenth Schedule to the Constitution contains provision regarding decision on petitions. As per the provisions of this para, the Speaker shall by order in writing (a) dismiss the petition or (b) declare that member in relation to whom the petition has been made has become subject to disqualification under the Tenth Schedule. Some of the noted cases as decided by various Speakers of Lok Sabha under the Tenth Schedule to the Constitution of India (See Annexure-III for detail) and their critical analysis of the decisions/orders have been analyzed as under:

Analysis of the Decision of Lok Sabha Speaker (Shri Rabi Raj) In Janta Split Case, 11 January, 1991 (See Annexure-III)

In Janta Split Case (11 January, 1991), the Speaker Shri Rab Ray, despite the demerits of the processes he had undertaken in adjudicating the case, like first treating some members expelled from Janta Dal Political Party as 'unattached' and then allowing them to come back to the fold for the purpose of counting all of them as claimants of split, gave a guiding principle to all the Chairmen and Speakers of the country that split cannot be spread over a period of time, but is a one time affair. Speaker Shri Rabi Ray, while dealing with the petition
for disqualification of Dr. Shakeelur Rehman, MP, Lok Sabha, on ground of defection, filed by Shri Devindra Prasad Yadav, MP, Lok Sabha on December 14, 1990, as part of the first Janata Dal split case, 2001, stated in his order dated January 11, 1991 as under:

In respect of Dr. Shakeelur Rehman, the petition alleges that on the 21st November, 1990, he was sworn in a member of the Council of Ministers in Shri Chandrasekhar's Government, and that this is tantamount to giving up membership voluntarily for the purpose of Paragraph 2(l)(a) of the Tenth Schedule. It is admitted that Dr. Shakeelur Rehman was a member of Janta Dal. His name appears in the list submitted by Shri Chandrasekhar on December 4, 1990, and Form III purported to have been signed by him on November 4, 1990, is enclosed in the letter of Shri Chandrasekhar. Dr. Rehman has thus given up membership of his party, namely, Janata Dal, within the meaning of Paragraph 2 (1)(a) of the Tenth Schedule. In his defence, as also in the oral submissions, it is pleaded that there were some discussions which indicted a possibility of restoration of status quo ante, that keeping this in view he had voted on November 7, 1990 and November 16, 1990 in favour of Shri Vishwanath Pratap Singh but had decided to join the Government subsequently. As discussed earlier the split is recognized with effect from November 5, 1990, and split for the purpose of the Tenth Schedule is only a one time affair, and cannot be an ongoing or continuous process or
phenomenon. The Form III purportedly signed on November 5, 1990, is clearly an afterthought, keeping in view the circumstances, namely, that the respondent was not in the list of members submitted by Shri Chandrasekhar on November 6, 1990 and also on November 16, 1990, that the alleged revised Form III was not submitted to me on or immediately after November 5, 1990 and that his name does not appear in the list dated November 14, 1990, submitted by Shri Harmohan Dhawan. The plea that on November 7, 1990 and November 16, 1990 he belonged to JD(S) and not to JD, is clearly an afterthought for the same reason. It has been stated during personal hearing that once a member makes a 'claim' about his party status, the 'claim' should be accepted, and that this should be the end of the matter. Even conceding for the sake of argument that a claim validly made could be accepted at face value, it is observed that the claim made here is not validly made inasmuch as (i) claim has not been made before the Speaker as required under the Disqualification Rules, 1985 and (ii) claim has not been made immediately, as required under the Disqualification Rules. Therefore, the claim is an afterthought. As such, while Dr. Rehman is liable to be disqualified under para 2(l)(a), he cannot have the protection of a split under para 3 of the Tenth Schedule. The Speaker, Rabi Ray, therefore, declare that Dr. Shakeelur Rehman has become disqualified under the Tenth Schedule and Rule 8(1)(b) of the Disqualification Rules.
Thus, the Speaker Shri Rabi Ray messed up the entire matter. In the first Janta Dal Split case of 1991, he treated 25 members of the Janta Dal who had been expelled by the party as ‘unattached’ members. On request for rescission of the decision, he declined to do so. But when a claim of split from the Janata Dal was made by 54 members, he included all those ‘unattached’ members (rightly) in the 54 claimants much against the then prevailing practice of deducting the number of such ‘unattached’ members from the split away faction’s numerical strength. The split took place on November 5, 1990, and the Speaker gave his decision on claim of split and petitions for disqualification on January 11, 1991. If the Speaker reversed the practice of not counting ‘unattached’ members as members of the split away faction, he should have put the members on advance notice of the reversal of practice and not at the time of making a decision when a claim was made. This had put a lot of members in a difficulty. The track of operation of the law cannot be changed without giving due notice to the players in the game. For this reason, the decision of the Speaker Shri Rabi Ray, may easily be construed as colourable exercise of power. His decision was challenged in Courts but the House was dissolved before the Courts could give a judgment. In the same way, the practice of not treating expelled members as ‘unattached’ members should have been notified well in advance. The advance notification about change in principles of interpretation of the Anti-defection Law is absolutely required as there would be no or less scope for the members to retract their steps after the matter had fallen into the hands of the Presiding Officers for decision making.

He was the first Speaker of Lok Sabha to have included expelled members, though wrongly treated as “unattached”, in
the group of the Legislature Party claiming split and thereby entitling them to protection from disqualification.

All the Presiding Officers of the country strictly followed the law enunciated by Speaker Shri Rabi Ray in regard to the principle of split being treated as a one-time affair. The only exception was the dilution of that principle by Speaker Shri Shivraj Patil of the Tenth Lok Sabha in the second Janata Dal Split, 1993. In Haryana Legislative Assembly, three members, namely, Shri Vasu Dev Sharma, Rao Ram Narain and Shri Azmat Khan, member of the Janta Dal, were disqualified by the Speaker when they claimed on 4th December, 1990 that they were part of the split from the Janata Dal into Janata Dal (Socialist) claimed by 41 members and recognized by the Speaker earlier on November 6, 1990. The Speaker of the Haryana Legislative Assembly ruled that the split is a one-time affair and any subsequent splits should satisfy the law relating to split once more.

In another Janta Split Case [1 June, 1993] (See Annexure III for detail), the Speaker Shri Shivraj Patil knew very well that, on the basis of the admission made by Shri Ajit Singh and three other Members that they had split away from the Janata Dal on February 5, 1992, they were bound to be disqualified on ground of voluntarily giving up membership of the Janata Dal. In the petition for disqualification filed on October 3, 1992, by Shri Srikant Jena, the Chief Whip of Janata Dal Parliamentary Party, against all those four MPs, the core contention that was taken was that the respondents had admitted to the alleged split in the Janata on February 5, 1992. While Shri S.R. Bommai, the President of the Janata Dal had expelled Shri Ajit Singh on December 26, 1991 and other three in January, 1992, the split, as admitted by the respondents,
took place in February, 1992. Both the Speaker and the petitioner were in agreement that expulsions do not affect the membership of the legislature party and the four continued to be in the fold of the Janata Dal Legislature Party. These four members and some other sixteen members of the Janata Dal presented a claim before the Speaker on August 7, 1992 that they had split away from the Janata Dal and represented a separate faction arising out of a split in the original political party, that was, Janata Dal.

Thus, with regard to split in the Janata Dal, there were two claims before Speaker Shri Shivraj Patil. One was the admission by Shri Ajit Singh, Shri Rasheed Masood, Shri Harpal Panwar and Shri Satyapal Singh Yadav that Janata Dal split on February 5, 1992 which was made in defence against the petition for disqualification filed by Shri Shrikant Jena against them. The other was when all these four MPs along with sixteen others above named, made a claim to the Speaker on August 7, 1992, that they had split away from Janata Dal.

The Speaker did not care to record the date of the split, though the date of the split is material to the date of effect of the Speaker's order.

Accordingly, there can never be an order recognizing a split away faction under the Tenth Schedule without recognizing such a split and its time. Thus all such recognitions are retrospective. Any inquiry by a Speaker without the material question of time of split being ascertained as part of that inquiry will be contrary to law.

By vaguely referring that the split had taken place before August 7, 1992, Speaker Shri Shivraj Patil, in effect, diluted the
concept of split taking place as a one-time affair, as carefully propounded by his predecessor Speaker Shri Rabi Ray. The Speaker finally upheld the second claim of twenty members made on August 7, 1992 but gives effect to the split from the date of his order that was from June 1, 1993. There was no express provision in his order that the split was to be given effect from August 7, 1992. That was totally against the time concept contained in the law as explained above.

As stated above, four members of the twenty member group were facing disqualification for violating the whip issued to them by the Janata Dal. They violated the whip on July 17, 1992 while voting contrary to the whip issued on the 'No Confidence Motion' moved against Shri Narasimha Rao. The petition for their disqualification was filed on August 11, 1992, by Shri V.P. Singh. They become claimants of the split alongwith sixteen others, claiming a split on August 7, 1992. To sequence their activities: they first violate the whip on July 17, 1992. After nearly twenty days of such violation, they along with sixteen others, claim split on August 7, 1992. They face a petition for disqualification on August 11, 1992. The manner in which the Speaker Shri Shivraj Patil went about deciding the petition against them, though disqualifying them finally, is a matter of interest. The Speaker made an inquiry into whether the members 'voluntarily' violated the whip which was beyond the mandate of the Anti-Defection Law. The Tenth Schedule uses the word 'voluntarily' only in respect of giving up membership of the political party and not for violation of whip. The question whether a member violated a whip voluntarily or under force is not a question for the Speaker or the Chairman of a legislative House to go into. A violation of a whip by a member happens when he, without obtaining prior permission of the party, votes contrary to the whip. Once he votes contrary
to the whip without obtaining prior permission of the party, only
the political party has the power to condone the violation, that
too, within a time frame of fifteen days from the date of
violation of whip. If a petition for disqualification is filed by the
leader of the legislature party to which the violator belongs, it
should be deemed that the violation has not been condoned
and the intention of the political party to get him disqualified is
made clear. The Speaker or the Chairman does not have any
power to inquire into this matter whether the violation is
voluntary or not. Suppose the violation is not found to be
voluntary, can the Speaker or the Chairman refuse to disqualify
the violator on that ground? Does the Speaker or the Chairman
possess power to condone the violation of whip by members?
The answers are no. When this is the position, Speaker Shri
Shivraj Patil examines the question in an unwarranted manner.

(IV) A CRITICAL ANALYSIS OF SPEAKER’S
DECISIONS: (FOR FACTS OF THE CASE/ORDER
SEE ANNEXURE-III)

Those who know Speaker Shri Shivraj V. Patil, know that
he has exceptional legal acumen. He was not the kind of
Speaker who could be led by nose by his officers. He wrote his
orders in his own hand on the notes in the files of the Lok
Sabha Secretariat and had a good grasp of the law and facts
relating to each case under the Tenth Schedule that came
before him. Nevertheless, under political compulsions, he
camouflaged some of the strange interpretations of the Anti
Defection Law with artful explanation. Despite all these, as far
as his capacity to bring order and discipline in the House and
his capacity to convince members and appear fair and
reasonable, are concerned, he was one of the outstanding
Speakers of Lok Sabha and ever chosen.
In the first Janata Dal split case, the Speaker Shri Rabi Ray enunciated the law in regard to the principle of split being treated as a onetime affair and was the first Speaker of Lok Sabha to have included expelled members in the group of the Legislature Party claiming split and thereby entitling them to protection from disqualification. All the Presiding Officers of the country strictly followed the law enunciated by Speaker Shri Rabi Ray. The only exception was the dilution of that principle by Speaker Shri Shivraj Patil of the Tenth Lok Sabha in the second Janata Dal split case, 1993.

In the famous case of second Janata Dal split involving Shri Ajit Singh and 19 other members of Lok Sabha, he knew fully well that, on the basis of the admissions made by Shri Ajit Singh, Shri Rasheed Masood, Shri Harpal Panwar and Shri Satyapal Singh Yadav that they had split away from the Janata Dal on February 5, 1992, they were bound to be disqualified on ground of voluntarily giving up membership of the Janata Dal. In the petition for disqualification filed on October 3, 1992, by Shri Srikant Jena, the Chief Whip of Janata Dal Parliamentary Party, against all those four MPs, the core contention that was taken was that the respondents had admitted to the alleged split in the Janata on February 5, 1992. While Shri S.R. Bommai, the President of the Janata Dal had expelled Shri Ajit Singh on December 26, 1991 and other three in January, 1993, the split, as admitted by the respondents, took place in February, 1992. Both the Speaker and the petitioner were in agreement that expulsions do not affect the membership of the legislature party and the four continued to be in the fold of the Janata Dal Legislature Party. These four members and some other sixteen members of the Janata Dal presented a claim before the Speaker on August 7, 1992 that they had split away from the Janata Dal and represented a separate faction arising
out of a split in the original political party, that was, Janata Dal. The other sixteen members of Lok Sabha were as under:

a. S/Shri Rajnath Sonker Shastri, Ramnihore Rai, Ram Avadh and Sivasharan Verma, who were expelled from the Janata Dal on July 19, 1992;

b. S/Shri Ram Sunder Das, Govind Chandra Munda, Ghulam Mohammed Khan and Ram Badan, who violated the Janata Dal Ship on July 17, 1992 while voting contrary to the whip on the 'No Confidence Motion' moved against Shri Narasimha Rao;


Petition for disqualification were filed against all the above twenty members by Shri V.P. Singh and Shri Srikanta Jena.

Thus, with regard to split in the Janata Dal, there were two claims before Speaker Shri Shivraj Patil. One was and admission by Shri Ajit Singh, Shri Rasheed Masood, Shri Harpal Panwar and Shri Satyapal Singh Yadav that Janata Dal split on February 5, 1992 which was made in defence against the petition for disqualification filed by Shri Shrikant Jena against them. The other was when all these four MPs along with sixteen others above named, made a claim to the Speaker on August 7, 1992, that they had split away from Janata Dal.

Speaker Shri Shivraj Patil, while dealing with the petition for disqualification against S/Shri Ajit Singh, Rasheed Masood, Harpal Panwar and Satyapal Singh Yadav, makes a passing
reference to the admission made by them about the split that took place on February 5, 1992, in the Janata Dal as claimed by these four MPs but overemphasizes on the expulsion not affecting their membership of the Legislature party of Janata Dal. The Speaker in paragraph 255 of his order stated as under:

There is ample evidence in the record to show that there had taken place a split in Janata Dal before 8th August, 1992.

The Speaker did not care to record the date of the split, though the date of the split is material to the date of effect of the Speaker's order. Paragraph 3(b) as it existed in the Tenth Schedule reads as under:

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

Accordingly, there can never be an order recognizing a split away faction under the Tenth Schedule without recognizing such a split and its time. Thus all such recognitions are retrospective. Any inquiry by a Speaker without the material question of time of split being ascertained as part of that inquiry will be contrary to law.

It is not clear why the Speaker Shri Shivraj Patil chose to make a reference that the split in Janata Dal took place before August 7, 1992. Immediately after making the reference, the Speaker goes on to add:
The Tenth Schedule relates to split in the Parliamentary party and not the political party outside the Parliament. The law proposes to protect the Parliamentary party, having elected members and does not protect the political party outside the House. It is meant to curb defection. It is not meant to protect political parties outside the Parliament.

The respondent, therefore, cannot be declared to have become disqualified on the ground of having left their party in sufficient number on February 5, 1992.

By vaguely referring that the split had taken place before August 7, 1992, Speaker Shri Shivraj Patil, in effect, diluted the concept of split taking place as a one-time affair, as carefully propounded by his predecessor Speaker Shri Rabi Ray. The Speaker finally upheld the second claim of twenty members made on August 7, 1992 but gives effect to the split from the date of his order that was from June 1, 1993. There was no express provision in his order that the split was to be given effect from August 7, 1992. That was totally against the time concept contained in the law as explained above.

As stated above, four members of the twenty member group were facing disqualification for violating the whip issued to them by the Janata Dal. They violated the whip on July 17, 1992 while voting contrary to the whip issued on the ‘No Confidence Motion’ moved against Shri Narasimha Rao. The petition for their disqualification was filed on August 11, 1992, by Shri V.P. Singh. They become claimants of the split alongwith sixteen others, claiming a split on August 7, 1992.
After nearly twenty days of such violation, they along with sixteen others, claim split on August 7, 1992. They face a petition for disqualification on August 11, 1992. The manner, in which the Speaker Shri Shivraj Patil went about deciding the petition against them, though disqualifying them finally, is a matter of interest. The Speaker made an inquiry into whether the members 'voluntarily' violated the whip which was beyond the mandate of the Anti-Defection Law. The Tenth Schedule uses the word ‘voluntarily’ only in respect of giving up membership of the political party and not for violation of whip. The question whether a member violated a whip voluntarily or under force is not a question for the Speaker or the Chairman of a legislative House to go into. A violation of a whip by a member happens when he, without obtaining prior permission of the party, votes contrary to the whip. Once he votes contrary to the whip without obtaining prior permission of the party, votes contrary to the whip. Once he votes contrary to the whip without obtaining prior permission of the party, only the political party has the power to condone the violation, that too, within a time frame of fifteen days from the date of violation of whip. If a petition for disqualification is filed by the leader of the legislature party to which the violator belongs, it should be deemed that the violation has not been condoned and the intention of the political party to get him disqualified is made clear. The Speaker or the Chairman does not have any power to inquire into this matter whether the violation is voluntary or not. Suppose the violation is not found to be voluntary, can the Speaker or the Chairman refuse to disqualify the violator on that ground? Does the Speaker or the Chairman possess power to condone the violation of whip by members? The answers are no. When this is the position, Speaker Shri Shivraj Patil examines the question in an unwarranted manner and gives replies to himself:
In petition against Shri Ram Sundar Dass:

170. The distance between the Library and the Lok Sabha Chamber is easily coverable, even by a slow walker, unless the person covering the distance purposely slows down or neglects to cover the distance by talking to the persons in the Central Hall or en route.

171. The respondent could have rested in the Lok Sabha, in the manner he could have rested in the Library, for the Library is not a place meant for resting and with facilities really to rest in a proper manner.

174. It is, therefore, concluded that his act of abstention from voting was not involuntary.

In petition against Shri Govind Chandra Munda:

188. Illness which he suffered from was not such that he could not have gone to the Lok Sabha Chamber to vote.

189. If he had really wanted to vote, he could have organized to be in the Lok Sabha, just at the time of voting and then retired to his house for rest or to the Doctor for medical assistance.

190. His plea that he had asked the Leader of the party to take him to the House in a vehicle with the permission of the Doctor, if his presence in the House was a must, is not acceptable. He could have gone to the Lok Sabha Chamber on his own, without asking his Leader to take him there. His asking the
leader to take him to the House appears to be an attempt to shift the responsibility to someone else for his default.

196. It is, therefore, held that he abstained from voting voluntarily and has become liable to be disqualified for being the Member of the Lok Sabha with effect from the date of this decision.

In petition against Shri Ghulam Mohammed Khan:

204. His stand that the leader of the Party should take him to the House, with the consent of the Doctor, is the kind of stand taken by Shri Govind Chandra Munda, a Respondent in the other Petition.

205. It is not convincing and acceptable. What he is asking his leader to do, he could have done himself.

213. In view of these facts, the plea adopted by the Respondent that his abstention from voting was involuntary cannot be accepted.

In petition against Shri Ram Badan:

216. He says that he asked the attendant in the House if his vote was recorded on the Board or not. According to him, the attendant informed him that it was recorded.

217. He says that his eye sight is weak and so he could not see the Board properly to find out if the vote was really recorded or not.
218. His plea is that he intended to vote but by accident he could not vote.

219. He examined himself to support his plea.

220. He did not examine the attendant in the House as his witness to corroborate his evidence on his plea.

222. The evidence produced by him is not convincing.

223. And so, it is not possible to hold that his abstention from voting was involuntary.

Explanation to Rule 3(6) of the Members of Lok Sabha (Disqualification on Ground of Defection) Rules, 1985, provides as under:

Explanation: A member may be regarded as having abstained from voting only when he, being entitled to vote, voluntarily refrained from voting.

This explanation is not applicable when a member votes "Yes" or "No" contrary to party’s direction. It is supposedly applicable when the member abstains from voting. If the intention of the explanation was to prevent disqualification of members who were physically obstructed from coming to the Legislature to participate in the voting, then such an undue influence is also possible in relation to voting for "Yes" or "No" even when the member is present on the floor. The use of the word “voluntarily” in the explanation is in excess of the words used in the substantive Constitutional Law, that is, the Tenth Schedule. A procedural law, that is, the Anti-Defection Rules,
cannot add to or subtract words from the Tenth Schedule, to touch newer dimensions. Even if the wrongly enacted explanation is to be gone by, the judgment whether someone has voluntarily abstained from voting or not, shall be made only by the party functionary and not by the Speaker.

The Speaker should have asked only three questions: (i) whether the members had obtained prior permission to vote contrary to the whip: (ii) Whether the authority concerned in political party condoned the voting contrary to the whip? And (iii) Whether the authority which condoned the voting contrary to whip, condoned the violation within 15 days of violation of whip? Rest of the questions which were examined were without the mandate of the law.

The next task of the Speaker Shri Shivraj Patil was to keep their membership alive on August 7, 1992, on which day, the respondents, along with other sixteen members, claimed a split in the Janata Dal and claimed protection from being disqualified under the then existed paragraph 3 of the Tenth Schedule. If his order on the respondents who violated the whip took retrospective effect, it could have taken effect on a date before August 7, 1992 in which case, only sixteen members of Janata Dal would have been the claimants of split as on August 7, 1992. There were 59 members of the Janata Dal at the time of constitution of the Tenth Lok Sabha. If four members were disqualified for violation of whip before August 7, 1992, then, on August 7, 1992, only sixteen members would have been the claimants of split out of fifty-five members of Janata Dal, who would have not satisfy one-third members of the Legislative Party of Janata Dal. The one-third of fifty-five members comes to 18 members if one leaves out the fraction 0.33. In order to avoid this grave contingency of losing sixteen more members of
the split away Janata Dal faction, it was decided that the orders of the Speaker took effect from prospective date, including the deeming of the split away faction as a political party for the purposes of the Tenth Schedule though the law said that the split away faction would have to be deemed as political party from the date of split. Even the Election Commission, while disqualifying members of legislatures for holding office of profit, disqualifies them from the date of holding the offices though the Constitutional provisions are silent about the time frame because that is the reasonable interpretation of law.

Shri Shivraj Patil took the opportunity of explaining that episode away in the Lok Sabha while participating in the Constitution (Ninety-seventh Amendment) Bill, 2003 on December 16, 2003. In the context of suggesting that the Presiding Officers should not any more be burdened with the task of decision making under the Tenth Schedule, Shri Shivraj Patil introspected on his own decision in the Janata Dal case, 1993 as under:

I would like to say that a decision was given by Shri Rabi Ray, who was the Speaker of this House earlier and the decision given by him was that the split has to be one-time affair, it cannot take place in bits and pieces and in phases. Now, if a number of persons are going away from a party, it has to be one group of one-third number of members of that party. If a few Members go away at one time, if a few members go away at another time and if a few Members go away at third time, it is not allowed. This was a right decision given by the then Speaker of this House. I did subscribe to that decision and everybody had subscribed to that decision. The Supreme Court and the High Courts also had subscribed to that decision.
Later on, I had the misfortune or fortune of deciding one of the cases. This will sound a little personal, but please allow me to say a few words on that because there is a lot of misunderstanding on the decision which I had given and that decision has been misinterpreted not only by the politicians, but also by the media friends. When I explained to them that is not the case and that is not the decision given by me, nobody bothered to read the decision and they kept on saying what they did. Later on, I gave a decision. That was a decision relating to nearly 15 or 17 members – I do not remember – in which I disqualified four members and rest of the members continued to be there. What was the decision given by me? My decision was not the split could not be one-time affair. They have been saying that, in my decision, I said that the split need not be a one-time affair. It is not correct. That is matter of record. It was published in the Gazette. Anybody can come and read that there is no reference to the matter relating to the split in the decision given by me. Not a word was written about the split. I did not say that Shri Rabi Ray's ruling was correct. I have not referred to the matter relating to the split.

What has actually happened? A political party had expelled a few Members from its hold in order to reduce the number from one-third to less than one-third. I said that this was a colourable exercise of law. A political party can expel the Member from its Parliamentary wing only if it is provided in the Constitution or provided in the law or the rules. I asked: "What was the provision in the Law?" They said "No". Were there any rules? They said "No". then, they said: "it was according to the Constitution of our party that we had expelled them." The consequence of allowing a party to expel the Members according to their Constitution, which was not passed by the Legislature and which was not registered also, was of
enormous dimensions. If it were allowed, then the private persons would be binding the decisions of the Presiding Officers by making the amendments in the Constitution of a party. There were nearly 24 parties in the House and the Speaker could not have been bound by the Constitution of 24 parties. That is why I said, "Show me the provisions in the Constitution or the Representation of the Peoples Act or in the rules or any other law that you can expel the members in order to reduce them from one-third to less than one-third, then I will allow. Now that was the gravamen of the decision given by me. Unfortunately, even the most reputed newspapers not only wrote in their news reports but also in the editorials. When I told them that this was not correct and that amounted to a breach of privilege and they should not have done that, they said, "Yes, yes, we will not do it later on." But they continued doing that. This was done on the electronic media and this was done in the print media also. I am saying this. I have never ventilated my views anywhere for the last so many years. But this is an occasion. I am saying this because this should be corrected and because I would like to say that the decisions given by the Presiding Officers have been correct. May be one or two decisions are wrong. Many times, they have been corrected. They have gone to the High Courts and the Supreme Court. The Supreme Court and High Courts have upheld their decision and yet people, for political reasons, have been criticizing the Presiding Officers which reduces the prestige of the Presiding Officer. So, I had written in my judgment: "Do not give this right to the Presiding Officer can retrain his prestige and dignity to conduct business of the House in a proper manner. Otherwise, do not criticize the Presiding Officer, at least wrongly." But that has been happening. I am sorry to say that there are newspaper. The people who are hearing me would know who had written that. I have been reading those
newspapers from my student days. Yet those newspapers had the temerity. They felt that they were well within their rights to write in the editorial also quoting the judgment wrongly. The judgment is a matter of record. It does not relate to any split. It relates to something different. Either they have misunderstood it or they intentionally wrote about it.

I know that it is a breach of privilege yet we did not do anything because we do not want to attach any importance to them. I am making a mention of this fact only at this point of time to show as to how onerous is the responsibility of the Presiding Officers why they are required to deal with these matters.

In a democracy, free expression of opinion, particularly by the media, is unavoidable and is a great source of strength for sustenance of democracy. Whether the criticism is right or wrong is not to be judged by those who face criticism. It is for the members of the general public to defend either of the views. If the views of the media are adjudged to be fair, the Speaker who made the decision must bow to the public opinion. In no informed democracy, the intimidation of the use of Parliamentary Privileges to quell the revolt (against injustice) in the minds of the people will ever succeed. If reasonable questions are asked by the people, they need to be answered, even if they are considered unreasonable, Speakers and Chairmen of Legislatures are symbols of public (emphasise the word “public”) authorities and not of any personal sovereignty. They are million times more accountable than any other ordinary public servant. The only way to avoid criticism is to do such deeds that are easily acceptable to the people, that are, at the face of them, just, fair and quickly digestible as truth and justice.
If the words of the law in paragraph 3 were to the effect "from the time of such claim" in place of the words "from the time of such split", the question whether the split has to be one time affair or not would not have arisen at all for consideration of Speakers and Chairmen. The split may be taking place for any long time, but once the claim is made, the quantity of claimants must be as required by the law. Claimants however cannot crop up in piecemeal manner, since, not for any great interpretation of law, but as per dictates of ordinary common sense, claim should be a onetime affair.

Nevertheless, the greatest contribution Speaker Shri Shivraj Patil made to the development of the Anti-Defection Law was to affirm categorically that expulsion of members of the Legislature party would not have any impact on their status as members of the Legislature Party.

V. SUM UP

Thus, from the above discussion and by analyzing the cases, it is obvious that the Anti-Defection Law has succeeded to some extent in checking the menace of defections in India's body politic. The Constitution (Ninety-first Amendment) Act, 2003, which has omitted the provisions regarding split from the Tenth Schedule, has also effectively put an end to the unhealthy practice of engineering split for facilitating backdoor merger with another party on the strength of one-third members of a legislature party instead of the required two-third members. Consequently, now the requirement for effecting a merger has really become stringent since it is not that easy to garner support of two third members as required under the provisions of para 4 of the Tenth Schedule.
There is a perception, however, that provision as to merger of legislature parties also suffers from some ambiguities. There is a view that even after doing away with the split provision from the Tenth Schedule of the Constitution, the bane of defection is far from over because the Constitution (Ninety-first Amendment) Act, 2003 has left paragraph 4 of the Anti-Defection Law dealing with mergers untouched.

The other provisions of the Anti-Defection Law viz., debarring a defector from holding the office of Minister or any remunerative political post for the specified period will also check the evil of defection.

Even after the enactment of the Constitution (Ninety-first Amendment) Act, 2003, there are still some grey areas in the Anti-Defection Law relating to the status of expelled members', interpretation of the term 'voluntarily giving up membership of party', absence of time frame for deciding the disqualification matters' retaining the provisions for not debarring a defector from holding the office of ministership or any remunerative political post' and 'deciding authority' for cases under the Anti-Defection Law. It is hoped that these issues would also receive due attention in the appropriate quarters in course of time. What is needed is a comprehensive legislation for making the law more effective.