I. CONCLUSION

In Parliamentary democracy representatives of the people make laws and govern them. Theoretically, these representatives are expected to represent the will of the people. But, many times, when it comes into practice, they try to quench their thirst for political and personal gains by changing their allegiance from one party to another undermining the interests of their electors. This process of floor-crossing is called Defection.

The dictionary meaning of defection is the action of falling away from allegiance or adherence to a leader, party or cause. However, there is no common agreement among scholars about the definition of defection. Some other terms used for this process are carpet crossing, crossing of floor, the politics of musical chairs, the politics of opportunism, the politics of instability etc. and some of these terms are used in different countries. The term defection was used for the first time when there was rampant floor-crossing after the Fourth General Election in 1967 and thereby formed a Committee which was known as Committee on Defections. Whereas, Anti-Defection Act, 1985 defines a defector, who voluntarily relinquishing his membership of the party or voting or abstaining from voting against a party whip issued by the party.

However, a democratic government is one which governs with the consent of people and is conscious of its duties and responsibilities to the electorate. If any democratic government, misuses the power and works against the interests of its citizens there is a right to change the government. In order to protect the
essentials of democracy an effective opposition is needed. This opposition in final analysis manifests itself in the form of political party or parties. Without parties the political system degenerates into a lifeless existence.

Whereas modern democracies are essentially party democracies. In a system of representative government the role of political parties are dominant, creative and comprehensive. In order to fight bossism in political parties, the defections being the natural adjunct of party democracy is as old as party system itself. There is a direct relationship between a representative and the party to which he belongs. Representative is free to change his allegiance if he differs from the ideology of the party on reasonable grounds. But if the change is done for personal gains without any justification on ideological and policy difference, this amounts to defection. In India, during Fourth General Elections in 1967 the evil of defections spread to such an extent which resulted in instability of governments, corruption and bribery by defectors, sense of insecurity to political parties and destabilized many popularly elected governments weakening the democratic fibre of the country.

Behind the problem of defection, there are so many causes which can be classified as historical, motivational, and socio-political. The first and foremost cause which leads to factionalism in the parties are ambition for power. The lust for money and status have motivated defectors to a great context. But some genuine cases of defection occur when legislatures lack faith in the policies and programmes of the party. Lack of political ideology and constitutional morality among politicians and political parties in India are other causes. It becomes necessary to curb defection because it creates government instability and constitute a fraud on the voter. Voters choose candidates chiefly on the basis of their party affiliation and changing party affiliation after elections lack popular legitimacy.
and for this important reason defections must be curbed. Further defections cause instability and topple governments leading to frequent elections and unwanted financial burden. For these and other reasons, there realizes a need to curb the evil of defections.

In India, after Fourth General Elections in 1967 politics of defection became most conspicuous particularly in the states. Though defections existed earlier also but between January 1952 and 1982, 66 State Governments and one Central Government fell because of defections. President's Rule was imposed 70 times during this period. Before independence, in 1945 in West Bengal Muslim League Ministry was toppled when Nawab Bahadur defected with fifteen other members. In 1948, some Congressmen defected and formed Congress Socialist Party, due to ideological reasons. This could be termed a justified defection since all these defecting members resigned immediately from the membership of the assembly and sought re-election. Defections during this period were rare and based on ideological grounds.

During the period between 1952 to 1967 defections took place from opposition to ruling party and vice-versa and consequently four State Governments ruled by Congress went out of Office. Before Fourth General Elections in 1967 socialist movement in the country suffered a setback. Congress managed to entice the opposition leaders and Praja Socialist Party which was emerging as a strong opposition suffered the most. The period between third and fourth general elections was a period of instability, restlessness and resentment due to bad economic and other policies of the government.

The fourth General Elections in February, 1967 constitute the most crucial period in the political history of the country. This time defections mostly took from Congress to opposition. Out of around
4,000 legislators about 1,400 defected between 1967 and 1980. In 1967 alone as many as 438 legislators defected whereas within fifteen years, 545 legislators had defected. Many defectors became Chief Ministers and others were given ministerial berths. The period showed the emergence of non-Congress parties coming forward to share power because of political instability in the States. Thirty two governments fell in ten States within a period of four years and President's Rule was imposed twenty two times.

During this period four defecting Congress leaders in cooperation with the opposition dethroned Congress Ministries and formed governments with the help of non-Congress parties. These were Rao Birender Singh in Haryana, Ch. Charan Singh in Uttar Pradesh, C.N. Singh in Madhya Pradesh and Bhola Paswan Shastri in Bihar. One thing was witnessed during this period in 1967 which did not exist before. Some leaders after defecting from the non-Congress parties formed the Government with the help of the Congress. They were Lachman Singh Gill in Punjab, P.C. Ghosh in West Bengal in 1967, Satish Prasad Singh and B.P. Mandal in Bihar in 1968. Minority governments consisting of defectors and supported by some parties from outside came into existence in Haryana, Punjab, West Bengal and Bihar.

The instability continued in spite of mid-term poll in seven States. Governor's exercised powers of appointing and dismissing ministers, proroguing and dissolving the Assemblies and recommending President's Rule etc. at times arbitrarily also. Between 1972 and Lok Sabha elections of 1977 defections took from non-Congress parties to Congress. During this period political instability was not as it was between 1967 and 1972. After landslide victory of Janata Party in Elections in 1977, eleven State Governments went out of office because of defections within a period of three years. Seventh Lok Sabha Elections gave thumping
majority to Congress (I) in the Centre. Between 1980 and 1982 seven State Governments fell. In Haryana in 1980, Bhajan Lal crossed over to the Congress Party with 37 members constituting about 75 per cent of the membership of the then Janata Party. The defections which took place after 1980 created political instability in Manipur and Assam only when President’s Rule had to be imposed in these States in 1981.

In the Centre, due to serious differences between the ‘syndicate’ and Mrs. ‘Indira Gandhi Group’ the great split in the Congress Party occurred during Bangalore Session of Congress in July 1969. 102 members of Congress Parliamentary Party formed Congress (O) and held opposition benches in the Parliament. On December 27 the President dissolved the Lok Sabha. However, during 1971 elections Congress (R) regained good majority with 350 seats out of 442 contested and the Congress was saved. This split had a rejuvenating effect to the Congress Party.

Defections are not restricted to India only. They are inevitable in a free democracy particularly where multi-party system exists. William Gladstone in England began as a Conservative in 1932 but crossed over to liberals later. In 1886 mass defection took place in liberal party of England. Winston Churchill started his political career as a Conservative in 1900 but crossed over to liberals in 1940. In 1924 he defected a second time and later returned to Conservative Party. Loose party system in Australia has led to a lot of instability. Due to defections Governments have been formed and toppled in quick succession, Cylon has a multi-party system and has witnessed a longer period of politics of defection. They have been examples of defections in U.S.A. also. Senator Storm Thurmond a democrat for number of years founded a third party and ran for President against Truman and joined Republican Party.
The present study covers total 65 Parliaments/Countries of the world, 40 belong to the Commonwealth and remaining 25 are outside the Commonwealth. Out of the 40 Parliaments in the commonwealth, 34 Parliaments have the experience of political defection, while only six do not have such experience.

To curb the evil of defections some attempts were made in India also. A high level committee comprising of eminent lawyers and public men was appointed on December 8, 1967 through a resolution passed by the Parliament. Before setting this committee, Home and Law Ministries gave their suggestions. Chavan Committee in its report recommended to attack the problem on ethical, political, constitutional and legislative levels simultaneously. In December 1970 these proposals were discussed but no consensus could be arrived at and due to this reason efforts of Chavan Committee proved to be a futile exercise. In the mid-term Poll to Lok Sabha in 1971 the Constitution (32nd Amendment) Bill, 1973 was moved to curb defection. The Bill was referred to a Joint Select Committee but due to one reason or the others expired with the dissolution of Lok Sabha in 1977. Another attempt to curb defections was in the form of Constitution (48th Amendment) Bill, 1978 but this Bill also could not be passed. In fact, this Bill was supposed to come under the purview of Article 19 of the Constitution which granted freedom of expression and would have been unconstitutional. To avoid this situation ‘Anti-Defection Provision’ was introduced as a Constitutional Amendment in 1985 and 52nd Constitutional Amendment Act, 1985 was passed which added Xth Schedule to the Constitution of India. This Act is popularly known as Anti-Defection Act, 1985.

The idea of bringing in an Anti Defection Law in India had been brewing for so long before it was ultimately enacted in the first two months of the year 1985 – the year in which Shri Rajiv Gandhi
became the Prime Minister of the country with a massive mandate of his own. All Governments that followed did not have a majority of their own and any proposal for enactment of an Anti Defection Law through an amendment of the Constitution by those Governments would presumably have met with the same fate the Women Reservation Bill and the Lok Pal Bill are currently facing. Thus, if there had been no Rajiv Gandhi and his Government with an unparalleled massive majority, there would not have been any Anti Defection Law in the country. There was no threat to the stability of his Government; not even an iota of doubt in 1985 that stability would erode in the months and years to come, by any chance. It is still a political conundrum why his Government, with no pressing priorities for the Anti Defection Law, promised to Parliament through the Presidential Address in January, 1985, the enactment of the law i.e. Anti Defection Law.

However, in just a week after the Presidential Address, the then Union Law Minister Shri Ashok Kumar Sen introduced the Constitution (Fifty-second Amendment) Bill, 1985, in Lok Sabha on 24\(^{th}\) January, 1985. The parliamentary business was so arranged that Lok Sabha and Rajya Sabha, in succession, passed the bill on the last two days of January, 1985. Giani Zail Singh, the then President of India, gave his assent to the Bill on 15\(^{th}\) February, 1985. The Union Government issued a notification for the law to take effect from 1\(^{st}\) March, 1985. Thus, a Government which commended nearly four-fifths majority in the Lok Sabha, with unquestioned stability, chose to enact the Anti Defection Law just in two months which was otherwise hanging fire since 1967.

When politics was driven by allure and the number games in Legislatures were being played in the absence of Anti Defection Law, defections did not frequently bring about change in Government but had the effect of ruffling the leader's feathers.
Defections in the pre-Anti-Defection Law era were sharp pointers to the impending danger of downfall of the Governments in question. Instability did not necessarily accompany defections in those days. As splits and mergers took place without being limited by any timeframe, the process of culmination of instability caused by defections allowed all sides sufficient time for setting their houses in order. But with the advent of Anti Defection Law, individual defections rarely took place for fear of disqualification. Constitutionally permitted mass defections, in the form of splits and mergers, had become the order of the day in the post Anti Defection Law era, bringing Governments to kneel and replacing them with the new Governments mostly of opportunists against whom the law was brought on book. As splits and mergers are to be one-time affairs under the Anti Defection Law, they do not take place for fun of sitting in the opposition but solely aimed at dislodging the existing Government with utmost dispatch. Only after the capacity in terms of numbers is acquired through splits and mergers, the parties concerned go for the kill. Thus, every mass defection sanctioned by the Anti Defection Law is invariably accompanied by instability against which the law stands.

It is significant to note that the political history of the country, particularly in smaller States, bears testimony to the fact that the Anti-Defection Law has brought more instability than stability. Consider the hindrance the Anti defection Law has caused to Government formation in Bihar thereby compelling another election within six months in 2005. All said and done, the situation of the legislators turning into horses for trading has not changed with the advent of the Anti-Defection Law. Horse trading, however, from a retail business before the Anti-Defection Law, has expanded into a wholesale business after the coming into force of the Law, in view of the requirement of bulk number of legislators to defeat the disqualification provisions.
Whereas charisma and other factors which a political leader employed to keep his flock together are not quantitatively measurable and the risks and benefits of fleeing the flock are incalculable when Anti Defection Law was not in place, in the post-Anti-Defection Law period, the numbers specified in the Anti Defection Law for escaping the Law are so firmly indicative and quickly quantifiable, that the schemes have to focus on the number and dangle material benefits before those who can be lured. While it was hard to judge the consequences of revolt in party when Anti-Defection Law was not in force, it has become easy to muster the numbers required under the law to escape disqualification as well as to replace the Governments through permissible defections. Whether the law was there or not, offer of office, money, etc. worked as allurements both for breaking away to form new groups for alternative government formation as well as for remaining loyal in the flock. While the defectors, particularly the mass scale defectors, had an uphill task of convincing the public as to the reasons for their defections during the pre-Anti Defection Law days, the defectors of the present day will have to only convince the Speakers and Chairmen, that too only about the numbers they command. The vice of defections has now become a well regulated practice under the Anti Defection Law ever since its advent. Thus, the Anti defection Law has added to the woe it wanted to ameliorate.

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

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

The Anti-Defection Law had its first effect on the Rajiv Gandhi’s Government. Subsequently, it gobbled up several Governments, many in the States. The Law was to put a stop to the “Aya Ram Gaya Ram” politics but, it had pronounced “Ram Nam Sat Hai” on many governments with destabilizing effect.

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

On 32nd January, 1985 when Rajiv Gandhi was speaking on the Bill in the Rajya Sabha, he devoted the law to the memory of the Mahatma stating that “yesterday, the 30th January, we had all gone to Gandhiji’s Samadhi to pay our respects and homage. On Gandhiji’s Samadhi in very large letters are written what Gandhiji called “seven social steps”. The first step is against “politics without principles” and it was only appropriate that we took up this Bill in the Lok Sabha on the same day”. A very fine thought of a very fine Prime Minister.

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

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

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

The requirements of quantity for protection against disqualification under the Anti-Defection Law were, and are, heavily skewed against a simple majority, that being the fundamental principle of democracy. In the split provision, the law had one extreme of allowing dissent when the legislators commanded just 33 per cent (one thirds) of the strength of the legislature parties which was less than the simple majority by 18 per cent, a substantial quantum. In the merger provision that is still in the law, the law has another extreme of allowing it only when the legislators command 67 per cent (two-thirds) of the strength of the legislature parties which is more than the simple majority by 17 per cent, again a substantial quantum. The principle of simple majority had been and continues to be the casualty between these two extremes. Apart from this, unlike split, merger is not driven by dissent but by desire. There is thus in the Tenth Schedule, as amended by the Constitution (Ninety-first Amendment) Act, 2003, only provisions for punishment for defection and no provision for a safety-valve to release democratic dissent by as simple majority.
Whatever the Supreme Court may say under the Tenth Schedule is an assault on the freedom of legislators to speak and vote in the House. The reasoning given by the courts for reasonable restrictions on their right to speak and vote in the House is not convincing. Indeed fetters on the freedom of legislators to speak and vote in the House will come to direct conflict with Articles 75(3) and 164(2) of the Constitution which require the Council of Ministers to be collectively responsible to the legislatures. If the legislature’s expression of mind and vote are pre-determined through the provisions of the Anti-Defection Law, the operation of these Constitutional provisions, which are based upon the legislator’s freedom to speech and vote in the House, will gravely suffer.

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

The Anti Defection Law had also robbed politics of its dynamism. Legislators are no more interested in the first reading, second reading and third reading of the Bills but in the careful reading of the whips. Creativity and innovation amongst legislators have been constantly and continuously blunted. Governments have taken governance very casually because their continuance is assured, not on the basis of their performance and accountability to the legislatures, but because every member is bound by his party’s whip. With the split provision now gone, once their numbers are secure, the Governments can easily go into a five yearly slumber because even mass defections have now been made very difficult, since they require two-thirds support amongst legislators. With the
Court’s unreasonable interpretation of the words “voluntarily giving up membership of the political party” to extend to not merely formal resignations from the party but to such other acts which can be inferred as leaving the party, all reasonable criticism against the Government, in exercise of the legislature’s powers and freedom under Articles 75(3) and 164(2) of the Constitution, is effectively checked with the looming threat of disqualification arising out this (mis)interpretation.

Till 1985, there were not much instances of the Courts donning the mantle of the Executive. As governance seriously suffered due to the provisions in the Anti Defection Law which abated to nullity the invaluable Constitutional principle of legislators freely and without fetters calling to account (their own) Governments, the Courts, in the name of judicial review, have overstepped their jurisdiction and usurped the role of governance with no accountability. Whether the Governments govern during the regime of the Anti Defection Law or whether the Courts govern through what they call “judicial activism” or “creative jurisprudence”, in both cases, the principle of accountability has severely suffered. If governance has to be restored to the Executive as its exclusive preserve and domain and if Courts are to be held from crossing their Constitutional confines, it is imperative that legislatures will have to be restored to their pristine dignity as chambers of free play of legislators’ right to speech and vote. Only when the Governments are kept in suspense about the results of a voting in the House and only if the Governments feel that their unreasonable actions will run the risk of being quashed by motions on the floor, the quality of governance will improve. The Governments should always be kept on their toes. With the Anti Defection Law in force, the Governments are no more being effectively called to account in the Legislatures. Courts, in turn, and not Legislatures are laying down not only the law, but even the public policy which under the Constitution is not their job.
Between political instability and enslavement of legislators, one must prefer the former to the latter. Between corruption amongst legislators caused by defections when there is no law to curb defections, and corruption amongst them due to defections with the Anti Defection Law in force, one must prefer the former to the latter. Between the political instability without a law and the political instability with a law, one must prefer the former to the latter. It will be an insult to law to have continued corruption amongst legislators caused by defections and continued political instability despite the enactment of a law.

II. SUGGESTIONS

The Anti-Defection Law was well conceived, with good objectives, but it was born in sin and took too long to be born. It was a Bill prepared in haste and rushed through the two Houses of Parliament at a time when the ruling party had an unprecedented majority in the Lok Sabha. Since from its enactment, the Anti-Defection Law was subjected to severe criticism and many loopholes were pointed out by experts in their scholarly writings. They suggested various modifications in the Anti-Defection Law.

However, if we look at the debates on the Anti-Defection Law - the Fifty-Second Constitution Amendment, it becomes obvious that even the then Prime Minister Shri Rajiv Gandhi was aware of the flaws it has and proposed its acceptance as a beginning with the scope for improvements later. He told the Lok Sabha on 30th January, 1985, “there are lot of areas in the Bill which are grey. We are covering new ground which may not be covered anywhere else in the world. So there will be shortcomings in the Bill.”
Whereas, some of the situations that arose do not seem to have been foreseen by those who drafted the Fifty-Second Amendment for outlawing defections. Certain provisions of the Tenth Schedule were found to be amenable to entirely different interpretations by different Presiding Officers and thereby created terrible uncertainty and fluidity in the application of the law and brought to limelight a number of defects.

The Tenth Schedule of the Constitution of India has served to a great extent the purpose for which it has been brought into existence. Even then it has some weak points and loopholes too. They have become quite visible now and required to be thrown up immediately. They should not be allowed to continue. There is a need to analyse the main reforms which are earnestly required in the Anti-Defection Law and a few of the particular suggestions are as under:

(i) The words "Voluntarily Giving up Membership", "Defection" and "Political Party" should be defined under the Tenth Schedule:

Though the terms viz. 'voluntarily giving up the membership of his political party', 'political party' and 'defection' have been repeatedly used in the Tenth Schedule but have not been defined in the Tenth Schedule.

(A) Voluntarily Giving up Membership:

As per the 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.
As per the 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 a member in the Legislature concerned.

As per the provision contained in Para 2(3) of the Tenth Schedule, 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.

As per Paragraph 2(2) of the Tenth Schedule, 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.

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, 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 Thirunavukkarasu v. the Speaker, Tamil Nadu Legislative Assembly,\(^1\) the Supreme Court pronounced that if a member 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(l) of the Tenth Schedule. Of course, courts would insist on evidence which is positive, reliable and unequivocal.

Whereas, looking into the broader horizons of 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,\(^2\) the Supreme Court gave the judgment in regard to interpretation of the phraseology ‘voluntarily giving up the membership of the political party’ that “this appeal has been filed by Bhadekar 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(l)(a) and 2(l)(b) of the Tenth Schedule. From the judgment of the High Court, it appears that disqualification on the ground of para 2(l)(b) was not pressed on behalf of the contesting respondent and disqualification was sought on the ground of paragraph 2(l)(a) only. The said paragraph provides for disqualification of a member of a House belonging to a political party “if 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.

How the Supreme Court which ruled that despite expulsions, expellees continue to be member of the political party is totally inconceivable and 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 anti-party activities. The dichotomy in interpretation of the law by Supreme Court is baffling. 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 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, have been ruled out.
Whereas, the Tenth Schedule has the provision for disqualifying 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, Chairmen 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 Laldhoma, 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 has contested the Mizoram Assembly elections not on the Congress ticket being a member of
the Congress Party. The Speaker disqualified him on the 24th November, 1988.³

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

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

   b. 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?

   c. 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?

   d. Is the intent of the Anti-Defection Law to control the political behavior 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.

It is, therefore, suggested that the term ‘voluntarily giving up membership of political party’ should be defined in the Tenth Schedule itself to make the concepts contained in it more lucid and clear.

(B) Defections:

In the Tenth Schedule, the term 'voluntarily giving up membership' has been used and not the term 'defection'. But the term 'voluntarily giving up membership' has also not been defined either in the Tenth Schedule or the Rules made thereunder.

It is suggested that the term 'defection' should be defined in the Tenth Schedule itself to make the concepts contained in it more clear.

(C) Political Party

The interpretation of the term 'political party' is the another issue that has frequently come up for deliberation for deciding matters concerning defections.

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

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

In Assam the Speaker, while delivering decision in *Santi Ranjan Dasgupta and Others Case*[^4] under para 2(l)(a) of the Tenth Schedule has observed that as stipulated in the Election Symbols (Reservation and Allotment) Order, 1968, a political party for the purpose of defection is the one, which is recognized by the Election Commission of India and therefore, recognized for the purpose of election. In the case of respondents, however, it was clear that their Group was not a political party having powers to merge with another party. It could, therefore, not be claimed that a political party [i.e. the United Minorities Front (Santi Ranjan Dasgupta)] had merged with another political party (i.e. the Indian National Congress). The Speaker, therefore, held that the respondents incurred disqualification in terms of para 2(l)(a) of the Tenth Schedule to the Constitution. Accordingly, he allowed the petition and disqualified the respondents from the membership of the Assembly. Similarly, in another case, namely, Sahidul Alam Choudhury and Others case (Assam LA, 1986), the Speaker disallowed a petition against Shri Sahidul Alam Chaudhary and 14 other MLAs for having joined Asom Gana Parishad (AGP) Legislative Party. The Speaker in this case held that since the AGP was not a political party at the time of its joining by the respondents, provisions of para 2(2) of the Tenth Schedule did not apply in that case.^[5]

From the above discussion, it is suggested that the terms 'voluntarily giving up membership', 'defection' and 'political party'


should be defined in the Tenth Schedule itself for proper application of the Anti-Defection Law.

(ii) Restriction of Party Whip to some Specific Matters

In accordance to para 2(l)(b) of the Tenth Schedule to the Constitution of India, a member of a House belonging to any political party shall be disqualified for being a member of the House if he votes or abstains from voting in such House contrary to any direction issued by the political party to which he belongs or by any person or authority authorized by it in this behalf, without obtaining, in either case, the prior permission of such political party, person or authority and such voting or abstention has not been condoned by such political party, person or authority within fifteen days from the date of such voting or abstention.

However, serious doubts have been expressed whether this disqualification provision does not militate the basic freedoms of association, opinion and expression – including the freedom of changing association, opinion etc., guaranteed under the Fundamental Rights Chapter of the Constitution of India. Also the most fundamental privilege of members guaranteed under Article 105 and 194 of the Constitution namely that of freedom of speech and expression in the Houses of Legislatures stands curtailed. Limiting the freedom of choice or binding the vote of a legislator may amount to tampering with the fundamentals of the Constitution and democratic polity.

Defiance of party direction is not punished by unseating the member concerned in countries like U.K., Canada, Australia and New Zealand where parliamentary democracy similar to India prevails. Dissent is not considered defection because a dissenting member or one who does not comply with a particular party directive
has neither changed sides, nor crossed the floor; he continues to be a member of his party.

Whereas, question has been raised, if votes are not allowed to be altered by arguments and speeches, what is the use of the forum of Parliament? Also, if to ensure compliance by the members at all that is to be done is issuance of a whip, what happens to the quintessence of parliamentary democracy which is the continuous and day-to-day answerability of the Government enforced through the doctrine of ministerial responsibility?

Thus, the disqualification imposed by paragraph 2(l)(b) has robbed the politics of its dynamism. Legislators are no more interested in the first reading, second reading and third reading of the Bills but in the careful reading of the whips. The creativity and innovation amongst legislators have been constantly and continuously blunted. Governments have taken governance very casually because their continuance is assured, not on the basis of their performance and accountability to the legislatures, but because every member is bound by his party’s whip. Once their numbers are secure, the Governments can easily go into a five yearly sleep because even mass defections have now been made very difficult, since they require two-thirds support amongst legislators.

One may notice the contention as to the construction of the expression ‘any direction’ occurring in paragraph 2(l)(b) that if the expression really attracts within its sweep every direction or whip of any kind whatsoever it might be unduly restrictive of the freedom of speech and the right of dissent and that, therefore, should be given a meaning limited to the objects and purposes of the Tenth Schedule.
The reason behind is that a wider meaning of the words “any direction” would ‘cost it its constitutionality’ does not commend to us. But one may approve the conclusion that these words require to be construed harmoniously with the other provisions and appropriately confined to the objects and purposes of the Tenth Schedule. Those objects and purposes define and limit the contours of its meaning. The assignment of a limited meaning is not to read it down to promote its constitutionality but because such a construction is a harmonious construction in the context. There is no justification to give the words the wider meaning. While construing paragraph 2(l)(b), it cannot be ignored that under the Constitution, member of Parliament as well as of the State Legislature enjoy freedom of speech in the House though this freedom is subject to the provisions of the Constitution and the rules and standing orders regulating the Procedure of the House [Article 105(l) and Article 194(l)]. The disqualification imposed by paragraph 2(l)(b) must be so construed as not to unduly impinge on the said freedom of speech of a member. This would be possible if paragraph 2(l)(b) is confined in its scope by keeping in view the object underlying the amendments contained in the Tenth Schedule, namely, to curb the evil or mischief of political defections motivated by the lure of office or other similar considerations. The said object would be achieved if the disqualification incurred on the ground of voting or abstaining from voting by a member is confined to cases where a change of Government is likely to be brought about or is prevented, as the case may be, as a result of such voting or abstinence or when such voting or abstinence is on a matter which was a major policy and programme on which the political party to which the member belongs went to the polls. For this purpose the direction given by the political party to a member belonging to it, the violation of which may entail disqualification under paragraph 2(l)(b), would have to be limited to a vote on Motion of Confidence or No-confidence in the Government or where the motion under consideration relates to a matter which
was an integral policy and programme of the political party on the basis of which it approached the electorate. The voting or abstinence from voting by a member against the direction by the political party on such a motion would amount to disapproval of the programme on the basis of which he went before the electorate and got himself selected and such voting or abstinence would amount to a breach of the trust reposed in him by the electorate.

Keeping in view the consequences of the disqualification i.e. termination of the membership of a House, it would be appropriate that the direction or whip which results in such disqualification under paragraph 2(1)(b) is so worded as to clearly indicate that voting or abstaining from voting contrary to the said direction would result in incurring the disqualification under paragraph 2(1)(b) of the Tenth Schedule so that the member concerned has fore-knowledge of the consequences flowing from his conduct in voting or abstaining from voting contrary to such direction.

Consequently, the party whip or direction given by the political party to a member belonging to it, the violation of which may entail disqualification under para 2(1)(b) must be limited only to a vote on Motion of Confidence or No-confidence in the Government.

(iii) No Public Office to the Defectors, Independents and Nominated Members

Another loophole in the Tenth Schedule is that under its provision an independent member is disqualified if he joins any political party after his election and a nominated member is allowed to join a political party within six months of his nomination as a member. An independent member's freedom to join a party is fettered although he is master of himself and owes his election to no political party. On the contrary, the ruling party picks and chooses
Thus, 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 manifesto 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 tantamount 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(l)(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 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(I) of the Tenth schedule. Paragraph 2(I) is totally inapplicable to independent members.

Affiliation to a political party that offers a concrete programme of action for governance shall be made compulsory for contesting elections. independents, with no programme of action, take a heavy toll of political stability by being free floaters. They become Ministers and Chief Ministers with no conceivable programme for governance but to fall in line with the programmes and policies of dominant political parties.

It is, therefore, suggested that the defectors and the independents should be barred from being appointed or holding any public office such as the office of Chief Minister, Minister, Parliamentary Secretary, Speaker, Deputy Speaker, Chairman of any Corporation/Board or any other remunerative political post for at least the duration of the remaining term of the existing legislature or until the next fresh elections, whichever is earlier. It is also suggested that a Member of Legislature voluntarily changing his party affiliation after being elected on a particular party ticket must automatically and immediately lose his seat in the Legislature. There should be no exceptions and no provisos in this regard.

It is also suggested that the political party should be punished by withdrawing its recognition and by reserving the symbol of the political party which accepts the defectors into its fold.
Regarding nominated category of members, it is suggested that they should not have any vote in Legislatures. Their presence in the Legislatures is to reap the advantages of their wisdom. The right to vote in Legislatures should be enjoyed only by the elected members. Slowly the provision for nominating candidates to legislatures may be abolished especially when they can be associated in any number of bodies with the same or more pay, perks and facilities that are presently extended to nominated members.

(iv) Drafting Defects in the Merger Provision

Paragraph 4 of the Tenth Schedule has several drafting defects. Study the condition put by paragraph 4(2) of the Tenth Schedule for merger of a political party with another political party. The provision reads as under:

For the purposes of sub-paragraph (1) of this paragraph, the merger of the original political party or a member of a House shall be deemed to have taken place if, and only if, not less than two-thirds of the members of the legislature party concerned have agreed to such merger.

If a political party “A” that has no representation in the House wants to merge with another political party “B”, the provision in 4(2) has no application to “A” and “A” can freely merge with “B”. If a political party “C” which has representation of 3 members in the House and if it wants to merge with “B”, a minimum of 2 members of “C” shall have to agree to such merger. Thus, effectively, the Tenth Schedule regulates the internal affairs of political parties which have representation in legislatures as regards their mergers with other parties.
In case, two-third members of the legislature party do not agree to the merger, the original political party cannot merge with another political party. As the merger itself has not taken place, the members of the legislature party, whose number is short of two-third, cannot make a claim under paragraph 4(l)(a). There can also be a possibility that with two-thirds of the legislature party supporting the merger, for other reasons, the merger may not actually come through. The questions now would be, whether these members who have agreed to the merger but whose number fell short of two-third of the legislature party and whether these members in two-third numbers of their legislature party who have agreed to the merger but the merger, for other reasons, did not come through are liable for disqualification? They would not be incurring disqualification under paragraph 2(l)(a) of the Tenth Schedule because they have not voluntarily given up their membership since they have not joined any party as the party intended to be formed by merger has not come about. They continue to be in the same party whose merger was sought which could not be carried out for want of numbers or for other reasons. Such a predicament in interpretation arises because of the use of a terminology in paragraph 4 which is entirely different from the terminology used in paragraph 3.

Paragraph 4(l) is about non-application of disqualification provision to claimants of merger and to those who do not accept the merger; Paragraph 4(2) prescribes the condition for merger of a political party having representation in a legislative House with another political party. If one carefully studies the provision in paragraph 4(l), word by word, there is no prescription in the provision of any numerical strength required for the claimants of merger and for those who do not accept the merger. Once two-third members of the legislature party agree to a merger, the merger may take place. It may not take place also for other reasons, despite the
fulfillment of the condition of merger specified in paragraph 4(2). Between the date of agreement to the merger under paragraph 4(2) and the actual date on which the parties merge, any member of the legislature party who agreed to the merger may shift his stand. The time factor mentioned in paragraph 4(1) is the time of merger and not the time of agreement to merger by members of legislature party. There can be a long time gap between the two. As the merger shall be deemed to have taken place only if two-third members of the legislature party have agreed to such merger [paragraph 4(2)], the agreement to merger takes place prior to the claimants becoming members of the party or a new party that comes out of such merger [Paragraph 4(1)(a)]. In view of the time gap, a legislator who agreed to the merger may either claim that he has become member of the other political party in which his original political party merged or of a new political party formed by such merger or opt to function as a separate group, after the merger actually takes place. Paragraph 4(1) has not spelt out the minimum requirement of number of members of the legislature party for claiming that they have become the members of the political party or new political party formed after merger or for claiming that they have not accepted the merger, for being entitled to non-application of the disqualification provisions. This is a serious lacuna in the law and a fertile area for mischief.

Paragraph 4(1)(a) comprises members who become members of the party or a new party that comes out of the merger. Paragraph 4(1)(b) comprises members who do not accept the merger but who opt to function as a separate group. But besides the above two categories, there can be still members in the original political party who might not have claimed that they have become the members of the political party or new political party formed after merger or who might not have claimed that they do not accept the merger of the party thereby opting to function as a separate group, but still like to continue to be the members of the original political party that existed
before the merger. If “A” party has merged with “B” party, those legislators who claim that they have become the members of the “B” party after such merger, will be deemed to belong to “B” party for the purposes of the Tenth Schedule from the time of such merger. If some members of “A” party claim that they do not accept the merger with “B” and want to opt to function as a separate group “C”, then they would be deemed to belong to the political party “C” for the purposes of the Tenth Schedule from the time of such merger. If there are still members in “A” who do not make either claim, they continue to be the members of “A”. Consequent upon the merger of political parties with the agreement of two-third members of legislature party of the merging party, the entire legislature party of the merging party does not get completely demolished. If all the members of the legislature party of the merging party are arrayed into “B” and “C”, then the legislature party of the merging party gets emptied of all its old members. On merger, there will be no “A” as political party and legislature party as well. Thus, in the case of members of “C” and “A”, it may comprise only of legislators or more legislators with very few supports outside as party workers and functionaries. This has happened practically in every legislature. Member, when mergers took place, rarely used the provision in paragraph 4(1)(b)of the Tenth Schedule to opt for a separate group but, without making a claim under paragraph 4(1)(b), continued to remain in the original political party that existed before merger. Shri K. Parasaran, the then Attorney-General of India, while tendering his opinion on July 20, 1987, on certain issues referred to him by the Speaker, gave the following picture about the operation of paragraph 4(1)(b):

When the merger is by more than 2/3 members of the legislature party, the requirement of Section 4(1)(a) of the Constitution (52nd Amendment) Act, 1985 is satisfied. But the members of the party who have opted not to so merge and
therefore not accepted the merger have necessarily to function as a separate group under Section 4(1)(b). Those who have merged with the Congress (S) Party because that party has in law merged with Congress (I) as requirements of Section 4 of the Constitution (52nd Amendment) Act, 1985 are satisfied. It is open to the remaining members to opt to function as a separate group.

Claims under paragraphs 4(1)(a) and 4(1)(b) are voluntary. These are not compulsory choices. As given in the example above, after merger, political party “A” might have no existence outside the legislature, but if some members of “A” party in the legislature neither want to merge with another party nor want to opt as a separate group, their status to continue as members of “A” Legislature party, cannot be altogether obliterated. These difficulties have arisen because paragraph 4 has not been worked properly.

Another anomaly that arises out of the requirement of two-thirds of legislature party agreeing to the merger is that it is not clear whether the agreement to merger has to come from each and every legislative House in which the merging party’s members have representation. For example, if the political party “A” which has presence in almost all the legislative Houses in India wants to merge with another political party “B”, then, is it sufficient if two-third members of the political party “A” in Lok Sabha agree to the proposed merger or is it required that two-third of the members of the political party “A” in Lok Sabha, Rajya Sabha and State Legislatures will have to agree to the proposed merger? Reasonably, it would require the two-third of the members of the merging party in all legislative Houses. But, the law is ambiguously worded.
It is, therefore, suggested that Paragraph 4 of the Tenth Schedule be re-worded to remove such structural errors. It is further suggested that small political parties should be protected from victimization by the way of merger and paragraph 5 should be amended accordingly.

(v) Should not be decided by Presiding Officers

To vest the adjudicatory powers under the Tenth Schedule in the Presiding Officers of the Legislative Bodies is the biggest blunder by the Indian Parliament had committed. There was widespread doubt about the proper use of these powers by the Presiding Officers. Appreciating the fact that several Presiding Officers would not be above to extricate themselves from their petty political considerations which may colour their exercise of powers under the Tenth Schedule, paragraph 5 of the Tenth Schedule. But no Presiding Officer has so far set an example by resigning from his party using the exemption clause in the Tenth Schedule.

The objective of entrusting the responsibility of determining disqualification of members to the Presiding Officers was probably to ensure impartial, objective and non-partisan decisions. However, without questioning the impartiality of any Presiding Officer, it can safely be asserted that in the conditions of today in our country where the Speakers are usually chosen by the ruling party and depend for their continuance in office on party support, it would be unrealistic to expect them to function entirely without party considerations even in matters where questions of life and death for their party or its government, or its leadership may be involved. Though sometimes the House elects a Speaker unanimously, it will be difficult for the Speaker to be impartial in view of deciding the merger/disqualification matters under the Tenth Schedule on party and political lines very often. Indian conditions are entirely different from the social and political cultures of some of the western
countries with whom comparison is carelessly made. Under the Indian social and political conditions, it is very difficult for the Speakers to shed political affiliation. Objectivity and political affiliation are arch rivals. One will succeed at the cost of the other. There is no compulsion that India has to follow the Constitutional and Parliamentary procedures of a country which for centuries enslaved the Indians. It is high time that Indian Constitutional and parliamentary procedures were modified to the needs of the country in the most indigenous manner. It was, therefore, a fundamental mistake to involve the high office of the Presiding Officer/Speaker in this political and highly controversial matter of defection. In fact, it is believed that when the Anti-Defection Law was originally framed, the then Speaker was most reluctant, and rightly so, to accept the responsibility to consider questions of members' disqualification. The Presiding Officers who considered this matter at their conference were perhaps on the weakest wicket when it came to their attempt to safeguard their own position and role under the Anti-Defection Law. There was no justification for their trying to retain the authority to take decisions for disqualifying members under the Anti-Defection Law. It was not the part of the business of the House where, of course, the Presiding Officer's authority should be supreme and unfettered by courts of law outside. Also ideally it was not and should never be part of the duties of the high-ranking office of the Presiding Officer to be involved in highly political and controversial cases of conflicts of party interests and health and unhealthy scheming of power politics. It would have added to the high prestige of the Presiding Officers if they had unanimously resolved that it was wrong for the Anti-Defection Law to put the Presiding Officers in a position where they would become subjects of political controversies. It was not fair to put them in a situation where their decision 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. Suggesting that the decision by the Presiding Officers can be subject to review *inter alia* by the President or the Governor would be a remedy worse than the malady inasmuch as it would in effect mean that the government could upset the decision of the Presiding Officer. Instead of creating an authority to review the decision of the Presiding Officers, an independent authority may need to be created to take decisions under the Anti Defection Law so that the office of the Presiding Officers remains free from political controversy and its perfect honour and glory are restored.

The recent example of misuse of the Law is the order dated 10.1.2010 passed by the Speaker, Karnataka Legislative Assembly disqualifying the 16 MLAs with a view to save the BJP government in the State. Though the Supreme Court of India vide directive issued on 14.05.2011 quashed Speaker’s Order disqualifying the said 16 MLAs.

The main reason why the Anti-Defection Law has failed to deliver the goods is that the Speakers who have to discharge important judicial functions of determining whether a member has incurred disqualification have, particularly in the State Legislatures, failed to live up to the high traditions of their high and august office. Unfortunately they regard themselves as the spokesmen of the political party which has been responsible for their election as Speakers. A majority of the incumbents of this office lack both judicial experience and, more important, judicial temperament. Many orders of the Speakers which have been challenged before the Courts reveal absence of fairness and objectivity, betray a high
degree of partisanship and a total lack of understanding of the true meaning and purpose of the Tenth Schedule. The Speakers have let down the Tenth Schedule.

The Government, however, seems to be basically concerned with finding out a suitable forum where a member disqualified by the Speaker could prefer an appeal. Unfortunately, the Government seems to be unwilling to go to the source of the problem and tackle it there by divesting the Presiding Officers of the responsibility to disqualify members under the Anti-Defection Law. Providing a mechanism for appeal outside the Court will not solve the problem and judicial review should not be ousted in the manner.

It is, therefore, suggested that the power of deciding the legal issue of disqualification under the Tenth Schedule should not be left to the Speaker or Chairman of the House. In respect of the Members of Parliament, it should be vested with the President, who shall act on the advice of the Election Commission of India, to whom the question shall be referred for determination, with Supreme Court as appellate authority and in respect of Members of State Legislatures with the Governor concerned, who shall act on the advice of the State Election Commission, with concerned High Court as appellate authority as in the case of any other post-election disqualification of a Member of Legislature. It is further suggested that a time frame upto maximum four months should also be stipulated for completing the process for deciding the legal issue of disqualification under the Anti-Defection Law. Disqualification matters should be decided by a body consisting of Leader of the Opposition, senior most member in the House and by the Speaker.
(vi) To Decide the Matters under the Tenth Schedule within Stipulated Time Frame

Though the law was made with the utmost speed, it has no provision for speedy adjudication of questions of disqualification on ground of defection. Both Houses of Parliament failed to apply their minds to the question of incorporating a time frame for decision-making by the Chairmen and Speakers of legislative bodies. Some Speakers have allowed questions of disqualification on ground of defection raised by members to lapse with the dissolution of the lower Houses. In Gujarat Legislative Assembly, during the Tenth Gujarat Legislative Assembly (1998-2002), as many as 64 petitions for disqualification and 4 claims for merger and split 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 law laid down in this regard by the Supreme Court in Kihoto Holohon's Case.

The law laid down by the Supreme Court in regard to restraint over the Courts' interference with the Chairmen and Speakers' orders under the Tenth Schedule, has given a wide scope for the Chairmen and Speakers of the legislative bodies to keep the petitions for disqualifications filed under the Tenth Schedule in indeterminate state.
The present example of this kind of the ding-dong battle between the Court, the Speaker, the petitioners, the respondents, and the political parties is over the merger case of five MLAs of the Haryana Janhit Congress (BL) into the Indian National Congress due to the non-existence of strict time-frame in the Tenth Schedule to be followed for deciding matters of disqualification/merger. The petitions seeking disqualification of the 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 is kept in indeterminate state till to-date.

Whereas, the Anti Defection Rules of Legislatures allow only seven days time for the respondents to file replies. If the original period prescribed is one week, the extensions should be in terms of days, not in terms of weeks, what to talk of extensions in terms of months. But, the 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 in regard to desirability of having a time frame for all stages under the Tenth Schedule that “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 his opinion, all such proceedings shall be concluded and orders should be passed within a period of three weeks from the date on which the petitions are taken on file.”

Shri Kiyanihe Peseyie, the Speaker of the Tenth Nagaland Legislative Assembly, is the only Speaker in the country who had

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AIR 1998 SC 3363.
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.

In the absence of a time frame, the law of limitation should not apply to petitions for disqualification filed under the Tenth Schedule or writ petitions filed before the Courts for judicial review of the decisions of the Presiding Officers. When some disqualified members were revived by the Acting Speaker, the Goa Bench of Mumbai High Court rejected a writ petition against the decision of the Acting Speaker on ground of laches. When the petitioner went in appeal in the Supreme Court, the Supreme Court in *Dr. Khasinath Jhalmi v. the Speaker of the Goa Assembly*\(^7\) observed that “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 the 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.”

It is suggested that the relevant law/rules should be so amended to ensure that all proceedings under the Tenth Schedule should be concluded and orders be passed within a period of three weeks from the date on which the petitions are taken on file.

(vii) **Politics of Interim Orders:**

The sole objective of the law makers in investing the powers to decide questions of disqualification on ground of defection in the Speakers and Chairmen of Legislative Bodies was to have a fast track adjudicative process. But the question of interim orders being

\(^7\) 1993 (2) SCC 703.
passed by the adjudicating authority under the Anti-defection Law has only frustrated the scheme of expeditious decision-making under the law.

The first and only passive reference to Speakers/Chairmen's power to pass interim orders on petitions for disqualification under the Tenth Schedule can be found in the Supreme Court judgment in *Kihoto Hollohon v. Zachillu Case.* In this case the Supreme Court held that “however, having regard to the Constitutional Scheme in the Tenth Schedule, judicial review should not cover any stage prior to the making of a decision by the Speakers/Chairmen. Having regard to the Constitutional intendment and the status of the repository of the adjudicatory power, no *qua timet* actions are permissible, the only exception for any interlocutory interference being cases of interlocutory disqualifications or suspensions which may have grave, immediate and irreversible repercussions and consequences”.

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

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

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AIR 1993 SC 412.
Speaker Shri P.R. Kyndiah of the Meghalaya Legislative Assembly was the earliest to pass an interim order under the Tenth Schedule on a petition filed against five independent members of the Meghalaya Legislative Assembly for disqualification on the ground that they had joined political parties. It was alleged in the petition that Dr. Donkupar Roy, Mrs. Miriam D. Shira and Shri Simon Siangshai, the independent members had joined the political party, namely, HSPDP (DL). It was also alleged that Shri Monindra Agitok and Shri Chamberlin Marak, the independent members, had joined HPU (BC), another political party. The petition was filed on August 5, 1991. The Speaker passed the interim order on August 7, 1991 that “The voting rights within the Assembly of the following independent members, namely (1) Dr. Donkupar Roy (2) Mrs. Miriam D. Shira (3) Shri Simon Siangshai (4) Shri Monindra Agitok and (5) Shri Chamberlin Marak shall remain suspended with effect from 7th August, 1991 till final disposal of the case.”

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

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9 Donkupar Roy Siangshai and Others Case (Meghalaya Legislative Assembly, 1991).
the Tenth Schedule to the Constitution of India read with Members of Meghalaya Legislative Assembly (Disqualification on Ground of Defection) Rules, 1988 is concerned, I am of the firm opinion that final orders under paragraph 6 of the Tenth Schedule to the Constitution of India can only be given after following these procedures. But an interim order has to be passed on *prima facie* perception of the case by the Speaker on available facts and material. Even in court proceedings, interim orders do not wait completion of pleadings and they are passed sometimes even *ex parte*. However, considering the sentiment expressed by Hon'ble members, I feel a duty is cast upon me to give a final decision in the matter at the earliest."

Again in Meghalaya, a petition for disqualification on ground of defection was filed on June 25, 1998 by Shri H.S. Lyngdoh, MLA, against Mrs. Maysalim War, MLA, a member of the HSPDP party, on the ground that she had voluntarily given up the membership of the original party and formed the HSPDP(M) which merged with UMPF coalition led by Shri D.D. Lapang. On the same day of filing the petition, the Speaker Shri E.K. Mawlong of the Meghalaya Legislative Assembly passed an interim order that "for the time being, I have no option but to pass this interim order by placing Mrs. Maysalim War under suspension and also her voting right till a final order is issued by me."

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

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also. Suspension from membership automatically suspends one's right to sit and vote in the House. The petitioner wanted to withdraw the petition and Speaker Shri E.W. Mawlong allowed the withdrawal and on December 17, 1998 rescinded the interim order. Thus, Mrs. Maysalim War became a full-fledged Member of the Meghalaya Legislative Assembly.

A classic example of a very judicious interim order was passed by Mr. Kiyanilie Peseyie, the Speaker of the Tenth Nagaland Legislative Assembly when a prayer for interim relief was made by petitioners seeking disqualification of two MLAs of the Tenth Nagaland legislative Assembly pending final orders of the Speaker. The petitions were filed on December 7, 2004. As the issues raised in the petitions required deeper examination which would take long time, the Speaker, on December 15, 2004, without affecting the rights and privileges of the respondents concerned, namely, Shri Z. Obed and Shri Vastu Meru, MLAs, passed the interim order that “without prejudice to their rights to claim protection from disqualification under paragraph 4 of the Tenth Schedule to the Constitution, any vote recorded by Shri Z. Obed and Shri Vastu Meru, Members of the Tenth Legislative Assembly, in the Nagaland Legislative Assembly contrary to any direction issued by the Nagaland Peoples Front or by any person or authority authorized by it in this behalf, shall not be counted for declaration of the result of a voting or division in the House.”

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

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

However, suspension of membership and suspension of voting rights of a member are aspects of disqualification, if not exactly disqualification. While disqualification brings a permanent disability for being a member of a Legislature, suspension from membership brings about temporarily the same effect. Therefore, Speaker Shri P.R. Kyndiah’s explanation that he had to follow due procedure ordained in the Anti-Defection Law and Rules only in regard to making of the final orders and interim orders of grave consequences can be passed without affording an opportunity to the member affected, does not hold much water. The relevant provision in Rule 7(7) of the Anti-Defection Rules generally followed by all Legislatures, including the Meghalaya Legislative Assembly, is as under:

Neither the Speaker nor the Committee shall come to any finding that a member has become subject to disqualification under the Tenth Schedule without affording a reasonable opportunity to such member to represent his case and to be heard in person.

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

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

There is thus more politics than any justification for issue of interim orders in regard to petitions for disqualification on ground of defection. The absence of a time frame for decision making under the Anti-Defection Law may warrant the issue of interim orders but they should be in the nature of interim order passed by the Speaker of the Nagaland Legislative Assembly as aforesaid. Interim orders curtailing membership and voting rights of respondents to petitions for disqualification on ground of defection, that too, without hearing the respondents, should never be passed by high Constitutional functionaries like Speakers and Chairmen of legislatures.

The first known interim order in the matter of disqualification of a member of a Legislature on ground of defection passed 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 was passed by the Speaker on June 25, 1991 against Shri Jaspal Singh on a petition filed by Shri Dinsha Patil, MLA and Minister of Parliamentary Affairs of Gujarat. The interim order was passed by the Supreme Court on an interlocutory application for an ex parte stay order against the order of the Speaker. The Supreme Court on August 1, 1991 passed the interim order that pending hearing and final disposal by this court of the application mentioned above for stay after notice, the Petitioner herein shall be entitled to enjoy all the perks as a member of the House without the right to participate in the proceedings of the Legislature and in case the petition fails, he shall be liable to refund all the money which he would have drawn by virtue of this court’s aforementioned order.

The Supreme Court, by such an interim order, has liberally equated an honourable member of a Legislative Assembly to the position of a mere Government servant. Unlike a Government servant, who is substantially concerned with his pay and perks, pay and perks are less worthy entitlements to a legislator than his right to represent his people in the legislature with his right to speak and vote. At least for the sake of Constitutional principles, it should be appreciated that people have not elected a member to the Legislative Assembly for receiving perks without effectively representing them in the Assembly through his freedom of speech and vote in the House. The Supreme Court was not deciding an election petition. It was a matter relating to the order of a Speaker on a sitting member in relation to a petition for disqualification on ground of defection. Either he is a member with full freedom of speech and vote, or, his seat in the House is rendered vacant. The Supreme Court should have upheld the Speaker’s order or for, valid reasons, should have struck down his order. Instead, from August 1,
1991, till May 8, 1995, the Supreme Court kept the special leave application pending with it, causing inordinate delay. The member was reduced to a vegetable for this duration and the constituents never got the constitutionally assured opportunity of electing another representative in his place. If the Supreme Court did not have time and resources to expeditiously decide the Special Leave Application against the Speaker's order, it could have passed an interim order to the effect that, until disposal of the Special Leave Application, without prejudice to his rights and privileges under the Anti-Defection Law, his vote, if recorded contrary to the direction issued by the party to which he belonged immediately before the dispute, shall not be counted in any division on the floor of the House - an interim order just like the interim order passed by the Speaker of the Nagaland Legislative Assembly. All ends of justice would have been met in that case.

A similar interim order was passed by the Supreme Court in writ appeals against the dismissal of writ petitions by the Mumbai High Court filed by respondents against the orders of the Speaker of the Maharashtra Legislative Assembly in petitions for disqualification on ground of defection. The Speaker's orders disqualified on ground of defection Shri Narayan Pawar, Shri Narsingh Patil, Shri Shivraj Naik and Shri Shririshkumar Vasantrao Kotwal, MLAs in June 2002. The aggrieved MLAs challenged the orders of the Speaker in Mumbai High Court. The writ petitions were dismissed by Mumbai High Court. The respondents went in writ 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,¹¹ Shri Jagjit Singh Sangwan¹² and Rajinder Singh Bisla,¹³ 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.

Henceforth, 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 quo of the member's party status as it was just before the dispute, with the rights and privileges under the Tenth Schedule kept intact.

(viii) Citizens should be Empowered to Seek Disqualifications:

Paragraph 6(1) of the Tenth Schedule states that if any question arises as to whether a member of a House has become subject to disqualification under this Schedule, the question shall be

¹¹ Karan Singh Dalal Case, 2003 (Haryana LA), Speaker: Shri Satbir Singh Kadian, decision dated 25.6.1004.
¹³ Rajinder Singh Bisla Case, 2004 (Haryana LA), Speaker: Shri Satbri Singh Kadian, decision dated 25.06.2004.
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 copied by every other Presiding Officer, state that (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 to 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. A citizen does not have a 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 abandoned 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 shall 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) provides that 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.

In order to compare this with the provision in paragraph 6(l) 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(l) and 192 (l), if all citizens have a right to initiate proceedings, under paragraph 6(l) 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 that subject to the provisions of subparagraph (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 the procedure for deciding any question referred to in subparagraph 6 including the procedure for any inquiry which may be made for the purpose of deciding such question.

Who will be the respondents in a petition for disqualification on ground of defection is not in the disputed realm. The members of a Legislature will alone be the respondents. But who will be the petitioners will remain a matter for determination, if Constitution has not clearly spelt out. As stated above, if paragraph 6(l) is founded on phraseology similar to words used in other Articles, then, the delineation of the meaning of paragraph 6(l) will be similar to such other Articles. The word “Procedure” used in paragraph 8(l)(d) of the Tenth Schedule cannot be deemed to vest powers in the rule making authorities to alter that basic principle of interpretation. But the Speaker of Lok Sabha and exactly done an exercise opposite to the
basic canons of legislative drafting by enacting Rule 6(2) of the 
Members of Lok Sabha (Disqualification on Ground of Defection) 

A question may arise that a member of a House has become 
subject to disqualification under the Tenth Schedule in relation to 
the conduct of that member in the House or outside the House. 
Splits and mergers in the political parties that take place outside the 
precincts of the House percolate down to the Legislature Parties. 
The voluntarily giving up of the membership of a political party by a 
member attracting disqualification is not an act necessarily 
connected to any business in the House. Therefore, when these acts 
are committed outside the House, the questions under the Tenth 
Schedule may arise outside the physical borders of the House. 
Thus, besides the Members of the House, others should also be 
entitled to initiate action under the Tenth Schedule. Constituents 
who voted for the member are more aware of the ground realities 
than anyone and are the best owners of the rights to seek the 
disqualification of their representatives on ground of disqualification.

The question whether Speaker can act *suo moto* 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 that there is nothing in paragraph 6 or 
any of the other provisions in Tenth Schedule to limit the jurisdiction 
of the Speaker to decide a question of disqualification only on a 
petition filed by a Member of the House. There is nothing in these 
provisions to indicate that Speaker cannot act *suo motu* if the 
conditions requisite for disqualification come to his notice by some 
process or the other. To hold otherwise would, we are afraid, 
amount to reading something into Tenth Schedule which is not here 
and would also amount to frustrating the very object of 52nd

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14 (Civil Rule Nos. 110 to 119 of 1991 decided on 27.1.2992).
Amendment. The object is to preserve democratic structure of the legislature and safeguard political morality in legislators. If motion by a member of the House is pre-requisite for an order of disqualification being passed by the Speaker, all that is necessary, is that there should be a gentleman’s agreement between the Members not to complain to the Speaker about any member incurring disqualification. Such a narrow interpretation of the provisions of paragraph 6 of the Tenth Schedule cannot be accepted. The Guwahati High Court’s observations suffer from following flaws:

(1) An authority (Speaker or Chairman) vested with the powers of adjudication under the Tenth Schedule will find it difficult to proceed against a member when there is none to lead or tender evidence against the respondent; Speaker or Chairman who belong to political parties, if take upon themselves the task of disqualifying members, 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(l) of the Anti-Defection Rules, which reads as under, effectively bars the Speaker from acting *suo motu*:

No reference of any question as to whether a member has become subject 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.

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

Thus, it is suggested that every citizen of the country should be entitled to initiate action under the Tenth Schedule against Members. If they are made entitled to file a petition under the Tenth Schedule, it is obvious that the question whether Speaker can act *suo motu* would not have arisen at all.

(ix) **There should be a Ceiling on the Tenure of Member and Minister:**

In the Indian parliamentary democracy system, the opportunities to represent people are being concerned by a few persons. Some members are elected for more than several times from the same constituency. Some members of Legislatures have made politics a family business for generations. A politician, like a Government servant, cannot be in the profession of representing people for whole of his life. As Government servants who are in
receipt of salaries and pension on retirement, the legislators who are in receipt of salaries and pension, should also retire. Their long repetitive and boring presence on the political scene is a great obstacle to creative development. Representation in Legislatures alone is not public service. There are hundreds of ways in which leaders can serve people. Only once, under the “Kamaraj Plan”, a large number of politicians who had over spent their life in politics, quit representative politics and gave space to others. Politics will become competitive and more persons would become entitled to contribute to public welfare, if opportunities are spread out to those who have bright ideas of changing our world. Generally, people hear the same names again and again in electoral politics. Continuous weeding out of old hands is an imperative for cleaning present day politics of vested interests.

It is, therefore, suggested that the law should be amended to the effect that no one shall be elected to a House of a Legislature, whether it is Parliament or State Legislature, more than four times, whether continuous or not. Members should also be barred from resigning their seats once elected. A member's son, daughter, wife, grandparents and grandchildren should be allowed to contest elections to a Legislature only after five years from the expiration of his own membership in a Legislature. The Ministers, including the Prime Minister and Chief Minister, should be barred from holding the office for more than two tenures, whether continuous or not.

Such provisions will provide a kind of equity in terms of opportunities to aspirants for political power particularly the youths who have a vision for the country. The development of vested interests amongst politicians is one major reason for political corruption. It is the main reason for disgruntlement amongst those who have been continuously denied opportunities of participation.
thereby encouraging them to resort to defections and other malpractices.

(x) "Expulsion of Member" and "unattached member" is inconsistent with the Tenth Schedule:

Before coming into force of the Constitution (Fifty-second Amendment) Act, 1985, and the rules framed thereunder, it was an established practice in Lok Sabha that if a member of a political party was expelled from his party, he was treated as unattached in the House. The Constitution (Fifty-second Amendment) Act, 1985, and the rules framed thereunder do not make provision for a situation arising out of a member's expulsion from his political party for his activities outside the House.

While the political parties continue to retain the power to expel their members from the party under the provision of their party Constitution, the non-existence of any provision in the Tenth Schedule with regard to such members creates an anomalous situation inasmuch as the expelled member continues to be subject to the discipline and whips etc. of the party but may no longer enjoy any right under the party Constitution.

The Act and the rules do not stipulate the existence of an unattached member. The question as to whether the Speaker is empowered to declare a member who has been expelled from his party as unattached came up for determination during the Eighth Lok Sabha in Shri K.P. Unnikrishnan, MP's case.\(^1\) Shri K.P. Unnikrishnan, MP who had been declared unattached by the Speaker (Dr. Bal Ram Jakhar), consequent upon his expulsion from Congress(S), questioned the Speaker's authority to declare members elected on a party ticket/symbol as unattached. On Shri Unnikrishnan's request, the opinion of the Attorney-General for India

\(^1\) Congress (S) Case, 1987 (Eighth LS), Speaker: Shri Bal Ram Jakhar, decision dated 9.9.1987.
was obtained on the point, who opined that neither the Tenth Schedule to the Constitution nor the rules framed thereunder provide for existence of an unattached member. However, the Speaker has to see whether the provisions of directions 120 and 121 of the Directions by the Speaker are attracted in such cases, and if not, Speaker may treat them as unattached. A similar approach was adopted during the Ninth Lok Sabha when the Speaker (Shri Rabi Ray) declared 25 members expelled from the Janata Dal, as unattached.  

During the Tenth Lok Sabha, however, the Speaker (Shri Shivraj V. Patil) in his decision in the Janata Dal Case adopted a different approach and observed that in the past, in some cases, when the Members were expelled, they were called unattached, to distinguish them from the party Members as well as from the independent Members. The word 'unattached' is not used anywhere in the Tenth Schedule or any part of the Constitution of India or any other relevant laws or the Rules of Procedure followed in the Parliament.

In this context it would be pertinent to note the observations made by the Supreme Court of India in *G. Vishwanathan v. Speaker, Tamil Nadu Legislative Assembly* and *Azhaga Thirunavakkarasu v. Speaker, Tamil Nadu Legislative Assembly* cases that “even if a member is thrown out or expelled from the party, for the purposes of Tenth Schedule, he will not cease to be a member of the political party that had set him up as a candidate for the election. He will continue to belong to that political party even if he is treated as unattached”.

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17 1996 (2) SCC 353.
18 AIR 1996 SC 1060.
The consequences of expulsion are burdened with many difficult situations for an expelled member. For instance, a member may be expelled from the political party for various reasons other than voting against directive/whip in the House or for joining other party. As long as these provisions in the Constitutions of political parties regarding expulsions etc., members would continue to be expelled from their parties for anti-party activities. Such expulsions do not entail disqualification but creates a category of members which does not fit in the scheme of the Tenth Schedule. The present position vis-à-vis such members is that while in some Legislatures such members are treated as unattached, in others, including in Lok Sabha, such members continue to belong to the same party even after expulsion and are bound by its whips etc.

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

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

It is, therefore, suggested that the Government should bring forward a Constitutional amendment to amend the Tenth Schedule envisaging that while an expelled member should not be subject to victimization by the political party which expelled him and at the same time, certain fetters should be imposed upon him such as – prohibition on his joining any legislature party in the House/Political party outside the House; or holding any ministerial position or any other office in the Government etc. It is also suggested that consequences of expulsion from the political party should be clearly laid down in the Tenth Schedule so as to define the status, rights and obligations of expelled members in the House.

Thus, from the foregoing discussions, it is concluded that the defection has long been a malaise of Indian political life. It represents manipulation of the political system for furthering private interests and has been a potent source of political corruption and

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that there is no doubt that permitting defection in any form or context is a travesty of ethics in politics.

Thus, it is concluded that the Tenth Schedule of the Constitution which embodies the Anti Defection Law has several serious loopholes which have caused tremendous damage to our body politic and that the amendments are called for urgently. We have, however, developed a strange penchant for the politics of timing. Each leader tries to wait for the most opportune moment when to do the right thing would be of the maximum political benefit to him and/or to his party until in the process of this waiting, situation get explosive, out of hand and beyond management. Delay in bring forward a comprehensive amendment only increases doubts about the bona fides of the Government's intentions. What is needed urgently is a comprehensive amendment of the Tenth Schedule of the Constitution. This should be introduced at the earliest and circulated for obtaining public opinion.

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